

A Public Records Access request has been submitted.

Request By: Michael Dulong

Signature: Michael Dulong

Request date: 12/07/2018

Affiliation: Riverkeeper, Inc.

Address: 20 Secor Rd

Email:



Phone number:



Personal Information Request: NO

Records seeking:

Pursuant to the New York Freedom of Information Law and New Jersey New Jersey Open Public Records Act, I request from the Port Authority all communications dated January 1, 2017, to the present and related to the Port Authority's request for proposals for the performance of professional services for the LaGuardia Airport Access Improvement Project (LGAAIP) (RFP# 54523) and/or the National Environmental Policy Act (NEPA) review for the LGAAIP. This request includes, and is limited to: (a) communications with bidders, proposers and/or respondents to RFP# 54523; (b) communications with entities or persons who inquired about RFP# 54523 or were contacted by Port Authority about same; (c) entities or persons who communicated with Port Authority about the forthcoming NEPA review for the LaGuardia Airport Access Improvement Project; and (d) communications with representatives from the Federal Aviation Administration about the the forthcoming NEPA review for the LGAAIP.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY PRA No. 19796  
PUBLIC RECORD ACCESS FORM

Action by (print / type name):

William Shalewitz

, Freedom of Information Administrator

Signature:

*William Shalewitz*

Date:

3/1/2021

On behalf of the Secretary of the Port Authority, as Records Access Officer and Custodian of Government Records of the Port Authority.

The requested records are being made available.

Any responsive records that may exist are currently in storage or archived, or are maintained in the files of a department or office of the agency, and a diligent search is being conducted. The Port Authority will respond by:

A diligent search has been conducted, and no records responsive to your request have been located.

The requested records that have been located are not being made available, as they are exempt from disclosure for the following specific reasons:

Some requested records that have been located are being made available. The remainder are exempt from disclosure for the following specific reasons:

The request does not reasonably describe or identify specific records; therefore, the Port Authority is unable to search for and locate responsive records. Please consider submitting a new request that describes or identifies the specific records requested with particularity and detail.

Other:

We are providing additional responsive documents. Exemptions applied for personal privacy.

**From:** [Lamond, Kathryn](#)  
**To:** [REDACTED]; [Drew Brooks](#); [REDACTED];  
[REDACTED]; [Tabafunda, Faith](#); [DiScenna, Matthew](#); [Clark, Patty](#); [Rogak, Elizabeth](#); [Herndon, Jane](#); [Cohen, Michelle](#)  
**Cc:** [Papasavvas, Krystina](#); [Summerville, James](#)  
**Subject:** LGA AirTrain Follow-up  
**Attachments:** [2017-12-18 draft PANYNJ MOU - combined FAA comments.docx](#)

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Due to the pending snow storm tomorrow, we would like to reschedule this meeting as a conference call. Stay safe everyone!

The goal of the meeting will be to address any remaining open issues on the attached draft of the MOU and also discuss the consultant selection process.

The following call-in information is available for anyone who cannot attend in-person:

Call-in number: [REDACTED]

Participant code [REDACTED]

Thanks and Happy Holidays everyone!

Katie

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION

AND

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

I. INTRODUCTION AND PURPOSE

- A. This Memorandum of Understanding ("MOU") provides a framework in which the United States Department of Transportation (the "DOT"), Federal Aviation Administration (the "FAA"), an executive agency of the United States, organized and existing under the laws of the United States, having its principal office at 800 Independence Avenue, S.W., Washington, D.C., 20591, will prepare an Environmental Impact Statement (the "EIS") for the LaGuardia ~~(LGA)~~ Airport ("LGA") AirTrain Project (the "Project") being proposed by ~~the~~The Port Authority of New York and New Jersey ~~+~~, an interstate compact agency created by Compact between the States of New York and New Jersey, with the consent of the Congress of the United States having its principal office at Four World Trade Center, 150 Greenwich Street, New York, NY10007 (the "PANYNJ" or "Sponsor"). The MOU describes the relationship of the above named parties in preparing the EIS. Subject to completion of the EIS, the FAA will issue a determination regarding the Project that will be set forth in a Record of Decision.
- B. As lead agency, the FAA has selected an independent contractor (the "Contractor") to prepare the EIS. The ~~PANYNJ~~ ("~~Sponsor~~") shall be the party responsible to engage and retain the Contractor with funds provided by the Sponsor. [\*Note to FAA-Assuming this will be signed after the Contractor is selected, why not identify the Contractor?]
- C. The EIS and any related documents shall comply with the provisions of the National Environmental Policy Act of 1969 ("NEPA") and Council on Environmental Quality ("CEQ"), DOT, and FAA environmental regulations and guidance, as well as all applicable local, state and Federal laws, as appropriate.
- D. It is the purpose of this MOU to establish an understanding between the Sponsor and the FAA regarding the responsibilities of the parties and the conditions and procedures to be followed in the development and preparation of the EIS.
- E. The parties that enter into this agreement intend that development and preparation of the EIS, as articulated in this MOU, will satisfy the pertinent environmental requirements of the FAA and any Cooperating Agencies (as that term is defined in

Commented [FAA1]: The MOU should be signed prior to contractor selection. It is important to have the roles defined prior to contractor selection especially since the MOU also clearly states that FAA selects the contractor

40 CFR § 1501.6 and 1508.5 that may have ~~connected—Federal Actions—jurisdiction over the Project.~~

## II. GENERAL PROVISIONS

- A. As the lead agency, the FAA will be responsible to ensure compliance with all the requirements of NEPA (42 U.S.C. 4321 et seq.), CEQ Regulations (40 C.F.R. Parts 1500-1508), ~~and~~ appropriate DOT and FAA environmental orders, and applicable state and local laws, including the New York State Environmental Quality Review Act (ECL §§ 8-0101, et seq.) ("SEQRA") and implementing regulations (6 NYCRR Part 617). The FAA shall ensure that all pertinent environmental issues and impacts, ~~reasonable alternatives and their impacts, as well as,~~ cumulative impacts and mitigation/conditions are treated in the EIS, and shall be responsible for the scope and content of the EIS.
- B. The Sponsor will engage and retain the Contractor, selected by the FAA, for the preparation of the EIS. The Contractor, with the approval of the FAA and Sponsor, may employ such other contractors and experts (collectively referred to as "Subcontractors"), as are required for the adequate development and preparation of the EIS.
- C. As approved by the FAA, the Contractor will provide, through its staff or by Subcontractor, the expertise, staffing, and technical capabilities required for the preparation of the EIS. The FAA will direct the scope of the EIS and will independently evaluate all information, environmental data and analyses submitted by the Contractor, the Sponsor or others, and revise or cause additional study and analyses to be performed as necessary.
- D. The Contracts between the Sponsor and Contractor and between the Contractor and Subcontractors (collectively the "Contract") shall be consistent with the provisions of this MOU and shall specifically incorporate those provisions articulated herein that address the conduct of the Contractor. ~~Before starting EIS preparation, the Contractor and Subcontractors shall provide verification to FAA that they have no financial interest in the outcome of the action of the EIS will address, consistent with FAA Order 5050.4B, Paragraph 1003(d).~~ The Contractor and Subcontractors working on the EIS may not bid on any future actions the EIS addresses until the approving FAA official issues a Record of Decision based on the EIS. This prohibition does not prevent the Sponsor from selecting the EIS Contractor or Subcontractors for later development actions, should they be approved. However, that selection must occur after free and open competition and there can be no implied or suggested guarantee that the Sponsor would favorably consider the EIS Contractor or Subcontractors. Further, the Sponsor shall ensure that the Contract shall specifically limit any remedies available to the Contractor and any Subcontractors, so as to affirmatively relieve the United States of America, the FAA, and any officer, agent or employee of same, from any liability

Commented [FAA2]: Can the Port please explain why this needs to be included? If the Port is subject to SEQRA, is the Port suggesting that this be a combined NEPA EIS and SEQRA EIS?

Commented [FAA3]: This language needs to remain

arising out of the performance or termination of the contract for preparation of the EIS, or out of this MOU.

1. Prior to ~~beginning work on~~ being engaged for the EIS Project, the Contractor and any Subcontractors shall sign a "Disclosure Statement" provided by the FAA per the requirements of FAA Order 5050.4B, Paragraph 1003(d), specifying they have no financial or other interest in the outcome of the project. [Note to FAA shouldn't this occur prior being engaged?]
  2. The FAA shall evaluate the Disclosure Statement prior to its approval.
- E. The Sponsor shall facilitate the coordination of effort and the exchange of information related to the planning, design, and construction of the Project, as these activities relate to the preparation of the EIS among and between the Contractor and its Subcontractors ~~and~~ the FAA and other federal, state or local entities as appropriate. The Sponsor shall make all reasonable efforts to assure the satisfactory and timely performance of the duties of the Contractor and Subcontractors as specified in this MOU.
- F. The Sponsor and FAA shall:
1. Appoint such representatives as necessary to accomplish the coordination necessary for the satisfactory preparation of the EIS. Notice to any such representative shall constitute notice to that party.
  2. Review substantive work products under the Contract(s) for the EIS as the FAA deems necessary, consistent with Article III of this MOU.
  3. Have their respective representatives attend meetings with other Federal, state, regional, and local agencies for the purpose of increasing communications and receiving comments, as the same may be necessary, desirable, or required by law in preparation of the EIS.
- G. All costs incurred in connection with the employment of the Contractor and any and all Subcontractors, or other persons retained or employed by the Sponsor, shall be the sole responsibility of the Sponsor. The Sponsor agrees to hold harmless and indemnify the FAA, its officers, agents, and employees, with respect to any and all judgments or settlements arising from claims, demands, causes of action, and the like, in connection with the Sponsor's employment of the Contractor and any and all Subcontractors which may arise from the termination or performance of the Contract or any other services, or purchase of materials utilized for the development and preparation of the EIS, or from termination of this MOU. This indemnification by the Sponsor does not extend to administrative or legal costs of the FAA, including suits by third parties (other than the Contractor or its Subcontractors) against the FAA, involving the legality or adequacy of the FAA's compliance with NEPA and other laws and regulations, to the extent of the

Commented [FAA4]: This should be "beginning work on" as it has to occur post-engagement. This can't be required prior to engagement as the contractor may ultimately not be selected due to negotiations on price and now has excluded themselves from other work. The process is contract signed, then disclosure statement provided. Project should also be defined.

Commented [FAA5]: We do not agree with this edit. As lead agency, it is FAA's role to determine the exchange of information.

FAA's liabilities on those issues. The Sponsor shall cooperate and shall ensure that the Contractor cooperates in defense of any such suit. Notwithstanding anything to the contrary in this Agreement, nothing shall be construed to waive the applications of statutory provisions, immunities and limitations available under the Federal Tort Claims Act, (28 U.S.C. Sections 2671, et. seq.) or any other governmental immunity act, as the same may be amended from time to time, with respect to, and in defense of, any claim or claims asserted by any person or entity.

### III. PROCEDURES

- A. Under the direction of the FAA, the Contractor shall develop and submit a ~~Plan~~plan of ~~Study~~study to the FAA for the EIS for approval. The "Plan of Study" shall ~~include~~mean a plan that includes detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated man-hours required for completion of each aspect, the schedule for performing each aspect and a description of the internal and external review procedures to assure quality control. Also, the Plan of Study shall include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the environmental data and analyses and the development and preparation of the EIS. The Plan of Study should also identify procedures for retention of all data and sources used in the development of the EIS for eventual consolidation into the Administrative Record. In developing the Plan of Study, the Contractor may consider and use~~utilize~~ as appropriate any relevant submissions made by the Sponsor, which submissions shall be made concurrently to the FAA and Contractor.
- B. The FAA will forward the Plan of Study to the Sponsor for review and comment. After receiving comments from the Sponsor, and the scoping process conducted pursuant to 40 C.F.R. Sec. 1501.7, the FAA will finalize and approve the Plan of Study. The Plan of Study and this MOU shall establish the scope of work required of the Contractor in the development and preparation of the EIS. [Note to FAA- Is it possible to have the plan of study completed prior to the scoping to be amended as needed?]
- C. The Plan of Study may be amended by the FAA from time to time as the work of the Contractor or its Subcontractors proceeds, but any amendments or changes which require the expenditure of additional funds by the Sponsor must be agreed to by the Sponsor. The Sponsor will be notified and consulted prior to any ~~significant~~ amendments or modifications to the Plan of Study.
- D. ~~Unless~~As each portion of any draft of sections of the EIS and unless otherwise directed by the FAA, any and all work performed by the Contractor and its Subcontractors in preparation of the EIS shall be submitted directly to the FAA, ~~and upon request of the FAA, with a concurrent copy~~ to the Sponsor. The Sponsor may communicate with the Contractor and its Subcontractors during the

**Commented [FAA6]:** This doesn't seem appropriate at Plan of Study phase, more so during initial data gathering concurrent to development of Plan of Study. Data should not be considered until FAA reviews, or directs the review, of the submissions. If this is supposed to mean that the plan of study should include a task that evaluates sponsor info, that would be acceptable.

**Commented [FAA7]:** Completing the plan prior to scoping does not allow for public input. Scoping allows public input into the plan itself.

**Commented [FAA8]:** This could cause a workflow issue. Minor scope changes are routine. Significant changes with cost implications are typically of concern to the Sponsor.

**Commented [FAA9]:** We do not agree with this edit. FAA needs to have the ability to direct the speed/frequency with which portions of the document are submitted.

**Commented [FAA10]:** We do not agree with this edit. FAA needs to receive and review the document prior to sharing it. Bear in mind the FOIA implications of sharing preliminary work products.

development of the EIS, but no prior review ~~or discussion of data or analyses of drafts of sections of the EIS~~ developed by the Contractor or Subcontractor as related to the EIS shall be afforded the Sponsor. In no case will the Sponsor ~~discuss, review, modify,~~ or edit the Contractor's work or the work of its Subcontractors prior to submission to the FAA, ~~or be provided the opportunity to do so.~~ All suggestions for modifications or changes to such sections recommended by the Sponsor shall only be made to the FAA, in accordance with Paragraph F below. [Note to FAA: this section has been slightly clarified to allow discussions between the entities but not edits, etc. of the documents prior to submission of EIS sections to the FAA. These clarifications are consistent with Paragraph H below, and fully preserve the integrity of the process and independence of the Contractor.]

E. The FAA reserves the right to review periodically and modify the work of the Contractor to ensure that requirements under NEPA, the Plan of Study and other applicable laws and regulations are satisfied. The Contractor shall submit monthly written reports on the progress of its work to the FAA, with a concurrent copy to the ~~sponsor~~ Sponsor. This report shall describe the present status of each aspect of the work, any problems encountered, and recommendations for modifications to the Plan of Study and any changes in personnel, methodology or schedules for completion.

F. As each portion of any ~~draft or~~ final document is completed, the FAA shall review each portion and those tasks completed thereunder and, after consultation with the Sponsor, shall approve, modify, comment thereon and/or direct further work with regard to such portion or tasks as necessary. the foregoing FAA review will be a concurrent review by all applicable offices/divisions/departments of the agency, including but not limited to the Office of the Regional Counsel (or Office of the Chief Counsel, as appropriate), to avoid unnecessary delay. Said directions and/or comments shall be made by the FAA in a ~~timely~~ manner so as to ensure expeditious completion of the EIS, and the Contractor shall ensure incorporation of such comments into any editorial changes to the satisfaction of the FAA. ~~Final drafts of any documents will require FAA approval.~~ Prior to approval, the FAA will forward final drafts to the Sponsor for review and comment. Comments from the Sponsor shall be sent to the FAA. The Contractor will only make modifications as the FAA directs regarding these comments. After the aforementioned consultation, final drafts of any documents will require FAA approval.

G. If requested, the Contractor will provide the FAA access to and review of all procedures and underlying data used by the Contractor in developing submitted sections of the EIS, including, but not limited to, field reports, Subcontractor reports, and interviews with concerned private and public parties, whether or not such information may be contained in a draft or final EIS. ~~The~~ Upon request by the Sponsor, the FAA will also have promptly provide the Sponsor with access to ~~such~~ all of the aforementioned procedures and underlying

Commented [FAA11]: We do not agree with all the edits in this section. FAA, as the lead federal agency, needs to maintain control of the process. Regularly scheduled meetings (bi-monthly/monthly) will facilitate these discussions. The Sponsor should not be having discussions directly with the Contractor without FAA present.

Commented [FAA12]: We do not agree with this edit. The Plan of Study does not satisfy a regulatory requirement.

Commented [FAA13]: Draft should remain. We will be reviewing drafts and having comments.

Commented [FAA14]: We do not agree with the edits in this section. This is not appropriate for an MOU. FAA will avoid unnecessary delay to the extent it can, however, external factors can influence our workload.



data. Such access information provided by the FAA ~~and Sponsor~~ shall be governed by paragraph III.F.U in this MOU.

Commented [FAA15]: Same as above. It is FAA's role to decide on information sharing.

H. To facilitate the development and preparation of the EIS, joint meetings among the FAA, Sponsor, and Contractor ~~may shall~~ be held. However, the FAA reserves the right to work directly with the Contractor for purposes of assuring objectivity in preparing reports and/or for assuring expeditious communications. The Contractor will notify the FAA and Sponsor of any substantive meetings that are scheduled with other agencies and of their purpose and will provide an opportunity for the parties to attend if desired. No meeting will be held between the Contractor ~~or and~~ Sponsor without prior notification to and approval of the FAA. A summary of all matters relating to EIS discussions in any meetings or communications between the Contractor and a party hereto without the participation of the other said party will be included in each formal monthly report submitted by the Contractor to the FAA and Sponsor. The FAA ~~reserves and the Sponsor each reserve~~ the right to consult directly with other Federal, state, and local officials and agencies during the preparation of the EIS to assure compliance with NEPA and other applicable laws and regulations.

Commented [FAA16]: Prefer "may"

Commented [FAA17]: We disagree with this edit. The purpose of this section is FAA/Sponsor coordination, not combined coordination with other agencies.

Commented [FAA18]: We disagree with this edit. FAA must be able to demonstrate ownership of the process. May need to find alternate language if the Port is subject to SEQRA and coordination under SEQRA is needed.

I. The Sponsor shall assure the full cooperation of the Contractor and its Subcontractors with respect to participating in any public workshops, hearings, or meetings as required by the FAA to foster public familiarity and participation with respect to the assessment of impacts related to the Project.

J. At such time as the FAA, after consultation with the Sponsor, has approved the Draft EIS developed and prepared by the Contractor and its Subcontractors, the Contractor shall print the ~~contracted~~ quantity of Draft EIS copies as specified by the FAA and submit same to the FAA. ~~The FAA shall submit an appropriate number of copies of the Draft EIS to and~~ the Sponsor.

Commented [FAA19]: We disagree with this edit. FAA has to transmit to show ownership.

K. The Contractor shall be responsible for the costs associated with the printing and publication of the draft and final copies of the EIS. The Contractor shall be responsible for all costs associated with the publication of FAA-approved notices announcing public workshops, meetings, hearings, and the like. The Contractor shall also be responsible for costs of stenographic and clerical services, preparation of graphics and visual aids associated with any public workshops, meetings, and hearings.

L. In all instances involving questions as to the content or relevance of the environmental data and analyses, and evaluations and wording prepared by the Contractor during the EIS process, the FAA, with appropriate advice and consultation ~~when it deems necessary, will~~ with the Sponsor, shall make the final determination on the inclusion, deletion or modification of the same in the Draft or Final EIS. [Note to FAA: this language is consistent with the language in Paragraph O below.]

Commented [FAA20]: We disagree with this edit. FAA does not consult with the sponsor prior to taking all actions. This language is only consistent with the Port modifications to Paragraph O, which we disagree with.

- M. Upon the anticipated completion of the Draft EIS, the FAA, with the Contractor's assistance, shall be responsible for organizing and conducting any public hearings.
- N. The FAA will receive all comments during the Draft EIS public review and comment period. This period (at least 45 days) will be initiated when the Environmental Protection Agency (EPA) publishes the "Draft EIS Notice of Availability" in the Federal Register.
- O. At the close of the Draft EIS public review and comment period, the FAA shall promptly provide the Sponsor and the Contractor with all comments received, and shall identify the issues and comments submitted which will require response in the Final EIS. The FAA will direct those issues and comments to the Contractor for preparation of proposed responses, and shall furnish the Sponsor with copies such identification of all issues and comments ~~received that require response in the Final EIS~~. The Contractor will furnish proposed responses concurrently to the FAA and Sponsor for review and comment. The ~~FAA will share the proposed responses with the Sponsor for additional review and comment with proposed changes back~~ Sponsor shall provide any comments to the FAA. The FAA, with appropriate advice and consultation with the Sponsor, shall modify the proposed responses as it deems necessary.
- P. After receipt of comments and preparation of responses, the FAA, after appropriate advice and consultation, may direct the Contractor to make changes to the text of the Draft EIS as necessary.
- Q. At such time as the FAA has approved the Final EIS, the Contractor shall print the contracted quantity of Final EIS. The FAA shall submit an appropriate number of copies of the Final EIS to the Sponsor.
- R. The FAA will receive all comments on the Final EIS during the mandatory "hold period". This period (at least 30 days) will be initiated when the EPA publishes the "Final EIS Notice of Availability" in the Federal Register.
- S. ~~To the extent permitted by applicable law, both the FAA and Contractor shall take all reasonable steps to ensure expeditious preparation and issuance of the Draft and Final EIS.~~
- T. ~~S-~~The FAA, with assistance from the Contractor, will expeditiously prepare and issue the FAA Record of Decision, after publication of the "Final EIS Notice of Availability," and will make it available to the public; if permitted by applicable law, the FAA shall issue the ROD contemporaneously with the Final EIS.
- U. ~~T-~~ Information developed under this MOU is disclosable to the public to the extent required by law. The FAA will maintain the confidentiality of, and will not release or allow access to, any information, documents or materials which in its

Commented [FAA21]: Same as above. These revisions undermine the FAA's independence in controlling the process.

Commented [FAA22]: Recommend deleting between "To the extent" and "both."

Commented [FAA23]: We disagree with this edit.

opinion are validly designated as confidential by the Sponsor or Contractor and which contain trade secrets, proprietary data, or commercial or financial information. ~~Information developed under this MOU is disclosable to the public to the extent required by law.~~ In any instance where the FAA proposes to release to the public or allow access to any information, documents or materials which the Sponsor or Contractor has designated as confidential, it shall notify the Sponsor or Contractor of its intention to do so and provide the Sponsor or Contractor the opportunity to appeal the decision in accordance with applicable regulations on such release or access prior to any such release or access. [\(See FAA Order 1270.1, Paragraph 35\(a\)\(4\).\)](#)

Commented [FAA24]: This cite should be changed to FAA Order 1270.1A.

V. ~~U.~~ The Contractor will maintain a segregated copy of each record/document relating to the project that is used by the FAA in their decision making process. This will form the basis for the FAA's administrative record of the EIS.

#### IV. CESSATION AND TERMINATION

- A. Any of the parties to this MOU may withdraw from the terms of this MOU for good cause upon 30 days written notice to the other party. During this period, the parties will actively attempt to resolve any disagreement.
- B. In the event of a termination of this MOU, and if the FAA determines that preparation of an EIS by the FAA is still required, it is agreed as follows:
  - 1. The FAA shall have access to all documentation, reports, analyses and data by the Contractor and Subcontractors with confidentiality governed by paragraph III.T.
  - 2. The FAA shall assume the responsibility for preparing the EIS. The Sponsor shall no longer be responsible for the payment of costs associated with preparation of the EIS under the terminated MOU, apart from costs already incurred and required under the Sponsor's contract with the Contractor.
  - 3. Liability for termination shall be in accordance with paragraph II.G. of this MOU.

#### VI. NO RIGHTS FOR NON-PARTIES

[This Agreement does not create any right or benefit enforceable by law or equity of any person who is not a party to this Agreement against the Sponsor or FAA.](#) No rights or privileges are created or intended to be created by this MOU in anyone not a signatory of this MOU.

#### VII. MODIFICATION

This MOU represents the entire agreement and may be modified by the parties hereto only by written agreement by all the parties.

**VIII. AUTHORITY TO EXECUTE**

The representative of each party signing this Agreement warrants that he/she is duly authorized to do so.

**IX. COUNTERPARTS**

A photocopy or PDF copy of this Agreement shall have the same force and effect as an original of this Agreement.

**X. NOTICES**

Notices and other communications under this Agreement shall be in writing and shall be directed as follows, or to such other address as the party receiving such notice or communication shall have previously specified by notice to the other party sending such notice:

If to the Sponsor:

Title:

The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 18<sup>th</sup> Floor  
New York, New York 10007

with a copy to:

General Counsel

The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 18<sup>th</sup> Floor  
New York, New York 10007

If to the FAA:

[FAA to provide contact]

[Title]

Federal Aviation Administration  
1 Aviation Plaza, Suite [ ]

Jamaica, New York 11434

with a copy to:

[FAA to provide contact]  
[Title]  
Federal Aviation Administration  
800 Independence Ave., S.W.,  
Washington, D.C., 20591

**XI. NO PERSONAL LIABILITY**

No Commissioner, director, officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

**XII. SIGNATORIES**

**United States Federal Aviation Administration**

\_\_\_\_\_  
**[FAA-SIGNATORY AND TITLE]**

\_\_\_\_\_  
**DATE**

**The Port Authority of New York and New Jersey**

\_\_\_\_\_  
**[PANYNJ-SIGNATORY AND TITLE]**

\_\_\_\_\_  
**DATE**

**Port Authority Use Only:**

<u>Approval as to Terms</u>	<u>Approval as to Form</u>

Document comparison by Workshare Compare on Friday, December 01, 2017  
1:23:00 PM

Input:	
Document 1 ID	file://U:\Tabafunda, F\Airports\LGA\Proposed Airtrain Willets Point\FAA MOU\FAA Draft MOU (11.3.17)\Draft PANYNJ MOU v2.docx
Description	Draft PANYNJ MOU v2
Document 2 ID	file://U:\Tabafunda, F\Airports\LGA\Proposed Airtrain Willets Point\FAA MOU\FAA Draft MOU (11.3.17)\Draft PANYNJ MOU LGA Air Train (11.29.17).docx
Description	(CLEAN) Draft PANYNJ FAA MOU LGA Air Train (11.29.17)
Rendering set	Standard

Legend:	
<a href="#">Insertion</a>	
<del>Deletion</del>	
<del>Moved from</del>	
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Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	119
Deletions	51
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	174

**From:** [Lamond, Kathryn](#)  
**To:** [REDACTED]; [Drew Brooks](#); [REDACTED]  
**Cc:** [Tabafunda, Faith](#); [DiScenna, Matthew](#); [Clark, Patty](#); [Rogak, Elizabeth](#); [Herndon, Jane](#); [Cohen, Michelle](#); [Bassis, Luke](#); [Papasavvas, Krystina](#); [Summerville, James](#); [Resnick, Risa](#)  
**Subject:** LGA Access Improvement Project: Draft Solicitation Documents  
**Date:** Monday, January 22, 2018 2:29:09 PM  
**Attachments:** [RFP Letter Draft\\_2018-01-22.docx](#)  
[Attachment A Draft\\_2018-01-22.docx](#)  
[Questions for Discussion\\_NEPA Procurement and Selection Process\\_2018-01-....docx](#)

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Good afternoon,

Attached for your review and input are draft documents that the Port Authority intends to include in the solicitation package to be sent to the list of firms previously identified in the “piggybacking” process narrative that was provided to FAA on 1/12. The attached draft documents include an RFP Letter, which outlines the proposal requirements and the selection process, and Attachment A, which describes the project, general scope of services expected to be performed, period of performance, and insurance. Also included as an attachment is a list of questions for discussion between the Port Authority and FAA regarding the selection and procurement process and timeline.

The Port Authority would like to request a meeting with FAA to discuss any comments on the attached draft RFP Letter and Attachment A, as well as to clarify the timeline and processes to be followed throughout the selection and procurement process. Please provide us with your availability to meet on the following dates: **Monday 1/29, Tuesday 1/30, and Wednesday 1/31**. If these dates do not work, please provide us with your earliest availability to meet.

Once the FAA and Port Authority have finalized the selection and procurement process, the Port Authority will incorporate the agreed upon processes into our comments on the MOU.

Please let us know if you have any comments or questions at this time.

Thanks,  
Katie

Kathryn Lamond, P.E.  
Environmental and Sustainability Specialist  
PANYNJ - Aviation Department  
4 World Trade Center, 150 Greenwich St.  
New York, NY 10007  
[REDACTED] (office)  
[REDACTED] (cell)



DRAFT AND DELIBERATIVE

ATTACHMENT A

**PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (“LGA”) ACCESS IMPROVEMENT PROJECT**

**I. BACKGROUND**

*General:*

For background with respect to The Port Authority of New York and New Jersey (the “Authority” or “Sponsor”) see [www.panynj.gov](http://www.panynj.gov). Additionally, the most recent electronic version of the Authority’s Annual Report is available at <http://www.panynj.gov/corporate-information/annual-reports.html>.

*Project Description:*

The Authority is proposing to construct a new automated people mover (“APM”) AirTrain system to provide a fast, convenient, and reliable transit alternative for air passenger and employee access to LaGuardia Airport (“LGA” or the “Airport”) and a relocated employee parking facility, as well as to enhance on-airport connectivity. The goal of this proposed project, herein referred to as the LaGuardia Airport Access Improvement Project (the “Project”), is to provide connections between the Airport and Long Island Rail Road (“LIRR”) and Metropolitan Transportation Authority’s (“MTA”) New York City Transit (“NYCT”) stations, as well as to construct an employee parking facility. Further, the LaGuardia Airport Access Improvement Project shall not preclude the potential future expansion of support facilities beyond the existing airport boundary. The Federal actions associated with the Authority’s proposed Project are decisions by the Federal Aviation Administration (“FAA”) on an updated Airport Layout Plan (“ALP”) and for the use of Passenger Facility Charge (“PFC”) funding, should the Authority pursue imposing and using PFC funding for the proposed Project.

The Authority’s preferred alternative is for the AirTrain to operate between the Airport and a transfer station at Willets Point. The proposed AirTrain system would include two on-airport stations and a terminus station at Willets Point providing connections to the LIRR Port Washington Branch and the Willets Point-Mets Station of the MTA NYCT Flushing No. 7 subway line. To achieve the goals for the proposed Project, an employee parking facility would be located at Willets Point. In addition to providing a connection to the LIRR and NYCT stations at the Willets Point terminus station, the proposed AirTrain would serve as an on-airport transit system that would facilitate transfers between airline terminals and provide connections to passenger parking. The proposed Project includes associated facilities and infrastructure (stations, guideway, maintenance/control facility, etc.) as well as the systems (vehicles, train control, power distribution system, etc.) for the AirTrain.

The Authority is seeking to accelerate the environmental review schedule for the proposed Project, with the goal of the FAA completing the issuance of a Record of Decision (“ROD”) and completing the National Environmental Policy Act (“NEPA”) review within a 12-month period from the Notice-to-Proceed (“NTP”) for services hereunder. In the event that the

## DRAFT AND DELIBERATIVE

proposed Project is included on the Federal Permitting Dashboard, the Consultant shall comply with the associated processes and procedures.

### *General Description of Consultant Services:*

The Authority is seeking a Consultant to provide professional services to assist the FAA in preparing an Environmental Impact Statement (“EIS”) to assess and disclose the potential environmental impacts of the construction of the Authority’s proposed Project and any reasonable alternatives in a manner that complies with all applicable federal, state and local environmental laws and regulations. The FAA is the lead Federal agency for preparing the EIS in accordance with the requirements of NEPA (42 U.S.C. 4321 et. seq.), the Council on Environmental Quality (“CEQ”) regulations (40 C.F.R. Parts 1500-1508), and appropriate U.S. Department of Transportation and FAA environmental orders. As stated above, the Federal actions associated with the Authority’s proposed Project is a decision by FAA on an updated ALP, and should the Authority pursue imposing and using PFC funding for its proposed Project, a decision by FAA regarding use of such PFC funds.

The Consultant shall be responsible to the FAA for the preparation of an EIS associated with the Authority’s proposed Project. The FAA shall direct the services provided by the Consultant hereunder. Unless otherwise directed by the FAA, the Consultant shall not interact with the Authority in the performance of the services summarized in this Attachment A. The Consultant’s interaction with the Authority shall be related only to matters of contract administration, invoicing and payment for services provided by the Consultant to the FAA, as accepted by the FAA. The Consultant shall serve as the independent third party assisting the FAA with conducting the EIS process in an efficient and cost-effective manner, while maintaining a high degree of credibility and validity in the production of all EIS deliverables.

## **II. SCOPE OF SERVICES**

Prior to agreement execution, and within ten (10) calendar days of notice of selection, the Consultant shall develop and submit a detailed scope of work for the entire assignment. The detailed scope of work is hereinafter referred to as the Plan of Study, which is subject to FAA approval. The Plan of Study will include detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated person-hours required for completion of each aspect, the schedule for performing each aspect, and a description of the internal and external review procedures to assure quality control. The Plan of Study will also include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the environmental data and analyses and the development and preparation of the EIS. Finally, the Plan of Study must comply with all applicable FAA regulations governing the preparation of EISs and must include such additional analytical requirements as provided by the FAA prior to completion. In addition, in producing or revising the Plan of Study, the Consultant may consider as appropriate any relevant submissions made by the Port Authority, with any such submissions provided concurrently to the FAA and the Consultant.

## DRAFT AND DELIBERATIVE

The EIS is to be accomplished in accordance with FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, Order 5050.4B, *NEPA Implementing Instructions for Airport Actions*, and associated Desk References (or the current version at time of contract award). Specific environmental issues to be included in the EIS may include, but are not limited to:

- a) Air Quality
- b) Biological Resources
- c) Climate
- d) Coastal Resources
- e) Department of Transportation Act, Section 4(f)
- f) Farmlands
- g) Hazardous Materials, Solid Waste, and Pollution Prevention
- h) Historical, Architectural, Archaeological, and Cultural Resources
- i) Land Use
- j) Natural Resources and Energy Supply
- k) Noise and Noise Compatible Land Use
- l) Socioeconomic, Environmental Justice, and Children's Environmental Health and Safety Risks
- m) Visual Effects
- n) Water Resources (Wetlands, Floodplains, Surface Waters, Groundwater, Wild and Scenic Rivers)
- o) Cumulative Impacts
- p) Irreversible and Irrecoverable Commitment of Resources

It is anticipated that the scope of work resulting from the Plan of Study may require the Consultant to perform the following services, at minimum:

1. Facilitate and conduct meetings necessary for the preparation and development of the EIS.
2. Provide project management duties, including but not limited to preparing reports, updating the Plan of Study as necessary, taking meeting minutes, coordinating activities between all stakeholders, schedule monitoring, preparing presentation materials, creating and maintaining the project file, etc.
3. Review project-related documents necessary for the development of the EIS.
4. Assist the FAA to fulfill its lead Federal agency role and enhance effective NEPA scoping to ensure early in the process that the EIS addresses key issues of concern to agencies and the public.
5. Develop the Purpose and Need Statement, to be utilized for the consideration and comparative evaluation of alternatives to the Sponsor's proposed Project. The Purpose should outline the goals and objectives that the Sponsor's proposed Project should achieve, and the Need should provide the data to support the Purpose.

DRAFT AND DELIBERATIVE

6. Prepare an alternatives analysis addressing a range of reasonable alternatives to the Sponsor's proposed Project. It is expected that the "No Action" and the Sponsor's proposed Project will be alternatives. The Consultant will identify any other potential alternatives and conduct a screening of alternatives, as appropriate.
7. Describe existing environmental resources and conditions that the Sponsor's proposed Project, any reasonable alternatives, and No Action would affect.
8. Describe impacts and environmental consequences of the Sponsor's proposed Project, any reasonable alternatives, and No Action that were previously identified for further evaluation.
9. Prepare draft and final versions of the EIS. It is anticipated that the draft and final version should include the following elements, at minimum:
  - a. Cover sheet
  - b. Summary
  - c. Table of contents
  - d. Purpose and need
  - e. Alternatives
  - f. Affected environment
  - g. Environmental consequences
  - h. Cumulative impacts
  - i. Mitigation
  - j. Public and agency outreach
  - k. List of preparers
  - l. List of EIS recipients
  - m. Index
  - n. Appendices
  - o. Incomplete or unavailable information
10. Solicit and facilitate public and stakeholder involvement throughout the EIS process in accordance with NEPA and relevant special purpose laws.
11. Ensure that the EIS documentation includes relevant information required for permitting applications and processes, as required.

All work prepared under this Agreement shall be delivered to the FAA in printed format and searchable .pdf files along with components associated with each item, such as data files, text files, image files, spreadsheets, graphs, and tables. These products, where applicable, will be compatible with and incorporated into the Airports Geographic Information System ("AGIS") managed by the FAA (as applicable). While performing work under this Agreement, the Consultant shall be responsible for managing the administrative project file and, upon completion of the work, will be responsible for submitting a completed administrative record for the project to the FAA, in accordance with FAA policy and guidance.

### **III. PERIOD OF PERFORMANCE**

The period of performance (through completion of the final EIS) of the services is not to exceed twelve (12) months from the NTP for services hereunder. The work will be performed in accordance with FAA's procedures for assessing environmental impacts including FAA Order 5050.4B (or the current version at time of agreement award). While it is conceivable that issues raised during the public comment process could affect the time of performance, the Consultant should assume that the FAA will grant any extensions of time for performance only for the most extraordinary circumstances. The Period of Performance establishes the expected outer limit for project development.

### **IV. LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE**

#### **A. Commercial Liability Insurance:**

1) The Consultant(s), and all of its/their Sub-consultants shall take out, maintain, and pay the premiums on **Commercial General Liability Insurance** for the life of the Agreement and such Insurance and shall be written on an ISO occurrence form CG 00 01 0413 or its equivalent covering the obligations assumed by the Consultant(s) under this Agreement, including, but not limited to, Premises-Operations, Products and Completed Operations, Broad form property damage, personal and advertising injury and Independent Contractor's coverages, with contractual liability language covering the obligations assumed by the Consultant(s) with insurance covering against claims for injuries to persons or damages to property which may arise from or in connection with products and materials supplied to the Agency in limits of not less than **\$10,000,000** combined single limit per occurrence and in the annual aggregate. If vehicles are to be used to carry out the performance of this Agreement, then the Consultant(s) shall also take out, maintain and pay the premiums on **Automobile Liability Insurance** covering all owned, non-owned and hired autos in not less than **\$5,000,000** combined single limit per accident for bodily injury and property damage. **(Only if Applicable)**

The insurance shall be written on an occurrence basis, as distinguished from a "claims made" basis, and shall not include any exclusions for "action over claims" (insured vs. insured) and minimally arranged to provide and encompass at least the following coverages:

- Contractual Liability to cover liability assumed under the Agreement;
- Independent Contractor's Coverage;
- Premises-Operations, Products and Completed Operations Liability Insurance;
- The insurance coverage (including primary, excess and/or umbrella) hereinafter afforded by the Consultant(s) and Sub-consultant(s) shall be primary insurance and non-contributory with respect to the additional insureds;
- Excess/umbrella policies shall "follow form" to the underlying policies;
- Excess/umbrella policies shall have a liberalization clause with drop down provision;
- To the extent any coverage the Consultant(s) and Sub-consultant(s) obtains and/or maintains under this Agreement contains "Other Insurance" language or provisions shall not be applicable to the additional insureds or to any insurance coverage maintained by the additional insureds;
- All insurance policies shall include a waiver of subrogation, as allowed by law, in favor

DRAFT AND DELIBERATIVE

of the additional insureds;

- Defense costs must be outside of policy limits. Eroding limits policies are not permitted;
- In the event the Consultant(s) and/or its Sub-consultant(s) obtains and/or maintains broader coverage and/or insurance in an amount greater than the minimum limits required under this Agreement, then the full limits of that insurance coverage will be available to respond to any claims asserted against the additional insureds that arises out of or is in any way connected with this Agreement;
- Additional insureds coverage shall not be restricted to vicarious liability unless required by controlling law;

In addition, the liability policy(ies) shall be written on a form at least as broad as ISO Form CG 20 10 10 01 (for ongoing operations work) together with ISO Form CG 20 37 10 01 (for completed operations work) or their equivalent and endorses to name “The Port Authority of New York and New Jersey, and its related entities, their Commissioners, Directors, Superintendents, officers, partners, employees, agents, their affiliates, successors or assigns”, in addition to: The City of New York, for all operations at John F. Kennedy and LaGuardia Airports; Port Authority Trans-Hudson Corporation, for operations at PATH; AFCO AvPorts Management LLC, for operations at Teterboro Airport; AFCO AvPorts Management LLC and NY State Dept. of Transportation, for operations at Stewart Int’l Airport, Trends Urban Renewal for operations at PATC and Silverstein Properties Inc.; The Port Authority of New York and New Jersey; Silverstein 2/3/4 WTC Redevelopment LLC; WTC Redevelopment LLC; World Trade Center Properties LLC; 4 World Trade Center LLC; Net Lessees Association of the World Trade Center; WTC Management and Development LLC; Silverstein WTC Mgmt. Co. LLC. Silverstein WTC Mgmt. Co II LLC; Silverstein WTC Properties LLC; Silverstein WTC Management and Development LLC; Silverstein WTC LLC.; WTC Investors LLC.; 4 WTC Holdings LLC; WTC Investors Management and Development LLC; World Trade Center Holdco LLC; 4 WTC Mezz LLC. for operations at the World Trade Center Site as “Insured” (as defined in the policy or in an additional insured endorsement amending the policy’s “Who Is An Insured” language as the particular policy may provide) on its liabilities policies with respect to liability arising out of work or operations performed by or on behalf of the Consultant(s) including, but not limited to, materials, parts or equipment furnished in connection with such work or operations. The “Insured” shall be afforded coverage and defense as broad as if they are the first named insured and regardless of whether they are otherwise identified as additional insureds under the liability policies, including but not limited to premises-operations, products-completed operations of the Commercial General Liability Policy. Such additional insureds status shall be provided regardless of privity of contract between parties. The liability policy(ies) and certificate of insurance shall contain cross-liability language providing severability of interests so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds shall not reduce or void coverage to the other insureds. The Consultant(s) is/are responsible for all deductibles or losses not covered by commercially procured insurance. Any portion of the coverage to be provided under a Self-Insured Retention (SIR) of the Consultant(s) is/are subject to the review and approval of the General Manager, Risk Financing. Furthermore, any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim.

Commented [SJ1]: We assume that the FAA will want to be an additional insured. If so, the PA will work with its RISK dept to add the appropriate language. That and to have the consultant cooperate with that indemnification

DRAFT AND DELIBERATIVE

Any self-insured retention shall cover any liability imposed upon the Consultant(s) and any and all subsidiaries with respect to all operations and obligations assumed by the Consultant(s) and any and all subsidiaries. The undersigned represents that such program provides the Additional Insureds (as defined in the Agreement) with all rights, immunities and protections that would be provided by traditional independent insurance required under the Agreement, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies pursuant to the terms of the Agreement.

If any of the Work is to be done on or at Port Authority facilities by the Sub-consultants and, if the Consultant(s) requires its Sub-consultant(s) to procure and maintain such insurance in the name of the Consultant(s), then such insurance as is required herein shall include and cover the additional insureds and it must have insurance limits not lower than those set forth by the Port Authority herein, along with all the insurance requirements in this "Insurance" section.

Further, it is the Consultant's responsibility to maintain, enforce and ensure that the type of coverages and all limits maintained by it and any of all Sub-consultants are accurate, adequate and in compliance with the Port Authority requirement. All certificates of insurance shall be turned over to the Port Authority prior to the start of work, and upon completion of the Agreement.

*The Consultant, its Sub-consultant(s) and its insurer(s) shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.*

**2) Workers' Compensation Insurance:**

The Consultant(s) and its/their Sub-consultant(s) shall take out, maintain and pay premiums on Workers' Compensation Insurance in accordance with the requirements of law in the state(s) where work will take place, and Employer's Liability Insurance with limits of not less than **\$1,000,000** each accident. Such policy shall include a waiver of subrogation endorsement in the benefit of the additional insureds.

**3) Additional Coverages:** The Consultant(s) shall have the policy endorsed "**Only when required by the Director**" for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) Any/all activities performed airside must, at all times, be performed while under security escort as approved in advance, and in writing by the Project Manager. If the services of the Consultant(s), as directed by the Authority, require the performance of services airside, the Commercial General Liability and Automobile Liability coverage limits stipulated in subparagraph 1, above, shall be increased to an amount not less than \$25,000,000 per occurrence as provided herein.

DRAFT AND DELIBERATIVE

- b) Endorsement to eliminate any exclusions applying to the explosion, collapse, and underground property damage (XCU) hazards.
  - c) Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
  - d) Coverage for work within fifty (50) feet of railroad.
- 4) **Additional Coverages:** The Consultant(s) shall have the policy endorsed “**Only when required by the Director**” for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:
- a) United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.
  - b) Coverage B Endorsement - Maritime (Masters or Members of the Crew of Vessels), in limits of not less than \$1,000,000 per occurrence.
  - c) Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$1,000,000 per occurrence.

**5) Professional Liability Insurance:**

The Consultant(s) shall take out, maintain and pay premiums on Professional Liability Insurance in limits of not less than **\$10,000,000** each occurrence, covering acts, errors, mistakes, and omissions arising out of the work or services performed by Consultant(s), or any person employed by Consultant(s). All endorsements and exclusions shall be evidenced on the certificate of insurance. The coverage shall be written on an occurrence basis or may be written on a claims made basis with a minimum of a three-year reporting/discovery period.

Each policy above shall contain an endorsement that the policy may not be canceled, terminated or modified without thirty (30) days' prior written notice to the Project Manager, at the location where the work will take place with a copy to the General Manager, Risk Financing.

The Port Authority may, at any time during the term of this Agreement, change or modify the limits and coverages of insurance. Should the modification or change result in an additional premium, the General Manager, Risk Financing for the Port Authority may consider such cost as an out-of-pocket expense.

Within five (5) days after award of this Agreement and prior to the start of work at the site, the Consultant(s) must submit an original certificate of insurance, to the Project Manager and Exigis email: [REDACTED] at the location where the work will take place. This certificate of insurance MUST show evidence of the above insurance policy(ies), including, but not limited to, the title of this Agreement, the P. A. Agreement number, the notice of cancellation provisions, prior to the start of work. The Consultant(s) is/are also responsible for maintaining and conforming to all insurance requirements from the additional insureds and their successors and assigns. The General Manager, Risk Financing must approve the certificate(s) of insurance before any work can begin. Upon request of the General Manager, Risk Financing/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.



DRAFT AND DELIBERATIVE

Renewal certificates of insurance or policies shall be delivered to the Authority's Project Manager, and upon request from the additional insureds, their successors or assigns at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Financing must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Authority, the Consultant(s) shall promptly obtain a new and satisfactory certificate and policy and provide same to the Port Authority.

If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then, the Consultant(s) and all Sub-consultants shall suspend performance of the Agreement at the premises until a satisfactory insurance policy(ies) and certificate of insurance is provided to and approved by Risk Financing, unless the Facility or Project Manager directs the Consultant(s), in writing, to continue to performing work under the Agreement. If the Agreement is so suspended, no extension of time shall be due on account thereof.

Failure by the Consultant(s) to meet any of the insurance requirements, including the requirement that the Port Authority be afforded the full extent of the insurance obtained under this Agreement without limitation, shall be deemed a material breach of Agreement and may be a basis for termination of this Agreement by the Port Authority.

The requirements for insurance procured by the Consultant(s) shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Consultant(s) under this Agreement. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Consultant against the obligations imposed on them by law or by this or any other Agreement.

All insurance coverage shall be provided by the Consultant(s) and/or by or for any of its/their Sub-consultant(s) at no additional expense to the Port Authority and its related entities. A copy of this "Insurance" section shall be given to your insurance agent and Sub-consultant(s) and shall form a part of the covered Agreement for insurance purposes in furtherance of the insurance requirements of this Agreement.

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NEPA Procurement and Selection Process Questions for Discussion:

1. Per the Port Authority’s understanding, the table below outlines the steps for the NEPA consultant procurement and selection process. The Port Authority requests FAA’s input on the steps and timeframe outlined below, as well as recommendations for specific dates to be assigned for each step based upon FAA availability for meetings, interviews, and reviews.

<b>NEPA Consultant Procurement &amp; Selection Process Schedule*</b>	
1/12/2018	Piggybacking process narrative sent to FAA
1/22/2018	Draft solicitation package sent to FAA for review
Week 1	Meeting with FAA to discuss comments on draft solicitation package and timeline through selection
Week 1	Solicitation issued
Week 3	Responses to solicitation due
Week 4	Selection Committee meeting (Phase 1 evaluation)
Week 5	Interviews** (Phase 2 evaluation)
Week 6	Selection made by FAA (Phase 2 evaluation)
Week 7-10	FAA formulates scope of work with selected consultant***
Week 10	Contract award

\*Schedule subject to FAA review and input.

\*\*All the firms to which the solicitation will be sent are to be notified by email that should they be selected to be interviewed, the interviews will be held on these specific dates.

\*\*\*Assumes that a detailed scope of work/draft Plan of Study is developed by the selected consultant prior to contract award, and would require back and forth between the selected consultant and FAA.

2. To what extent would the FAA be involved in the first phase of evaluation, which would include the review of the proposals, requesting clarifying information (if necessary), reference checks, and identification of a short list of firms by the Selection Committee?
3. For the second phase of evaluation, what would be Port Authority members’ role in participating in an “observational” capacity before and during the FAA’s interviews?

- a. Will the Port Authority be allowed to formulate questions (in conjunction with the FAA) before the interviews and ask questions during the interviews or participate in the debrief discussions following the interviews?
  - b. Does the FAA expect the Port Authority to interact with the short-listed firms in the Phase 2 process, for example, in the scheduling of the interviews, sending potential questions to the firms in advance of the interviews, recording questions during the meetings, taking meeting minutes, etc.?
4. The selection process is described in Section V of the RFP letter. The Port Authority expects that the listed evaluation criteria will be used in both phases of evaluation. Per protocol, the Port Authority does not identify the 'weights'/percentages associated with each evaluative criterion. Instead, the Port Authority lists the criteria in "order of importance."
  - a. Clarify if this approach (not identifying the weights but listing the criteria in order of importance) is acceptable to the FAA.
  - b. If acceptable, clarify if the following order of importance is acceptable: Organization and Management; Project Experience; Project Approach/Schedule; Description of Proposer/Team; QA/QC; References.
  - c. In Phase 1, the Port Authority intends to score the proposals according to the foregoing criteria. Clarify if the FAA expects to use the same scoring structure in Phase 2.
  - d. Assuming that the foregoing process and criteria are acceptable, including the order of importance, the Port Authority and the FAA need to agree on the 'weights'/percentages assigned to each criterion. The Port Authority proposes the following weights:
    - Organization and Management: 35%
    - Project Experience: 25%
    - Project Approach/Schedule: 20%
    - Description of Proposer: 10%
    - QA/QC: 5%
    - References: 5%
  - e. Per protocol, the Port Authority requests and vets the proposers MWBE plans. It's an evaluative factor, but not weighted. Please confirm that (a) it's acceptable to request MWBE information, not DBE, (b) it's acceptable for the Port Authority to evaluate MWBE plans per its usual protocols and (c) it's acceptable for MWBE be a factor but not a weighted criterion.
5. How many FAA members will participate in the evaluation process (in both Phase 1 and Phase 2), and how many copies of the proposals should be requested for the FAA?
6. In the case that two firms are tied in terms of the ranking criteria, does cost factor into the selection process?
7. How will selection decisions be recorded (for both Phase 1 and Phase 2 of the evaluation), and in what format?
8. The Port Authority requests FAA's consideration in having the selected consultant develop a detailed scope of work prior to the execution of the contract that would serve as the draft Plan of Study (subject to adjustments following public scoping and throughout the EIS process). With this proposed approach, the selected consultant would be requested to prepare a draft Plan of

Study for submittal to FAA for review within 10 calendar days of being notified that they have been selected. The FAA and the selected consultant would work together to revise and reach an agreed upon draft Plan of Study. The draft Plan of Study would serve as the basis for the cost negotiation between the selected consultant and the Port Authority and would serve as the scope of work to be attached to the contract for execution. This proposed process is described in the RFP letter on page 1 and Section VI Post-Selection Process, as well as in Attachment A in Section II Scope of Services.

- a. If the selected consultant submits the initial draft Plan of Study to the FAA for review within 10 calendar days of notification of their selection, the Port Authority assumes that 2 weeks is sufficient time to resolve open issues between the FAA and consultant. Please provide input on this timeframe for the formulation and agreement on the draft Plan of Study.
9. What FAA grant and program assurances, if any, should be attached to the agreement for the solicitation?
10. Who owns the data and package resulting from the preparations leading up to the Final EIS?
11. Describe the expected role of the FAA in the invoicing process, specifically in terms of validating work performed by the consultant and communicating that to the Port Authority?
  - a. Does the FAA envision that the invoices will relate only to labor/hourly rates, or will there be payments based upon deliverables/milestones?
12. Does the FAA expect the Port Authority's solicitation and agreement to include the FAA required contract clauses? If the FAA expects the agreement to include federal terms, which ones?
13. If the MOU is finalized prior to consultant selection, could the MOU be either attached to the RFP or provided after the issuance of the RFP, as information that will clarify the roles and responsibilities of the parties?
14. What procedures will be in place in to best protect the integrity of the selection process, considering that there are multiple parties involved?

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**THE PORT AUTHORITY OF NY & NJ**

DATE

**SUBJECT: REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (“LGA”) ACCESS IMPROVEMENT PROJECT (RFP# \*\*\*\*\*)**

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the “Authority”) is seeking proposals in response to this Request for Proposals (“RFP”) for a Consultant to provide the subject services. The services will require the preparation of an environmental impact statement (“EIS”) for the LGA Access Improvement Project (the “Project”). The Federal Aviation Administration (“FAA”) and the Authority, as the Airport Sponsor, will work together to prepare the EIS. The Authority is issuing this RFP, and both the Authority and FAA will participate in the process to evaluate proposals. The selected firm (the “Consultant”) will work directly with the FAA for the performance of the services that will culminate in the development of the EIS. The Authority and the Consultant will enter into an agreement resulting from this RFP, for the performance of the Consultant’s services for the FAA. The Authority will be responsible for overall contract administration and payment for the Consultant’s services as accepted by the FAA, while the Consultant reports to the FAA for direction on development of the EIS.

The general scope of services to be performed by you is set forth in Attachment A to the Authority’s agreement (the “Agreement”) included herewith. Within ten (10) calendar days of notice of selection, and prior to agreement execution, a detailed scope of work shall be drafted by the selected Consultant and provided to the FAA. This detailed scope of work shall serve as a Plan of Study for the assignment. You should carefully review this Agreement as it is the form of agreement that the Authority intends that you sign in the event of acceptance of your Proposal and forms the basis for the submission of proposals. The Port Authority’s intention is to have the services begin no later than the second quarter of 2018.

Commented [S11]: FYI to the FAA: sample agreement not being provided for review at this time, as it will differ from the Port Authority’s template agreement, to include terms set forth in the MOU btw the PA and FAA

#### **I. PROPOSER REQUIREMENTS**

The Authority will consider proposals only from firms (“Proposer(s)”) with an active (i.e. not expired) agreement with another governmental agency under which the Proposer provides environmental review services involving the preparation of an EIS or environmental assessment (“EA”) for rail and/or airport projects. Proposers that do not meet this requirement shall not be further considered. A determination that a Proposer meets this requirement is no assurance that the Proposer will be selected for performance of the subject services.

Hourly rates proposed in your response hereto shall not exceed the published government agreement rates. However, the Authority encourages Proposers to provide reductions to said rates, as appropriate.

**II. PROPOSAL FORMAT REQUIREMENTS:**

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

- A. To be acceptable, this Proposal shall be no more than **20** single sided pages or **10** double sided pages, using 12 point or greater font size, not including resumes. Each resume shall be a maximum of two-pages single-sided or one-page double-sided, using 12 point or greater font size. The page limit pertains only to Letters E, F and H in Section III, below. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with “Your Firm Name”, and **RFP Number \*\*\*\*\*** clearly indicated on the cover.
- B. Separate each section of the Proposal with a tab divider that is labeled in accordance with the letter of the requirements specified below in Section III.
- C. All proposals must be delivered in sealed envelopes and/or packages. Address the Proposal to: The Port Authority of New York and New Jersey, 4 World Trade Center, 21<sup>st</sup> Floor, New York, NY 10007, Attention: RFP Custodian.
- D. You shall submit the Proposal as follows:

- 1. **In one envelope, the Technical Proposal:** one (1) reproducible original hard copy containing original signatures along with **seven (7) compact disc copies of your technical proposal** for review. USB Flash Drives will not be accepted. In case of conflict, the reproducible original of the technical proposal shall take precedence over material on the CDs.

Commented [SJ2]: FAA: how many copies (for us and FAA)?

The Technical Proposal shall include all information requested in the “Technical Proposal” subsection of Section III hereof. **No pricing-related information shall be provided in the original and CD copies of the Technical Proposal.**

- 2. **In a separately sealed envelope, the Pricing Information:** one (1) reproducible original hard copy containing original signatures along with **seven (7) compact disc copies of your pricing information** for review. This envelope shall contain only the information requested under the “Pricing Information” subsection of Section III hereof.

Commented [SJ3]: FAA: how many copies (for us and FAA)?

- E. In each submission to the Authority, including any return address label, information on the compact disc and information on the reproducible original and copies of the proposal, the Proposer shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure to comply with this requirement may lead to delays in contract award and contract payments, which shall be the responsibility of the Proposer.
- F. Your Proposal should be forwarded in sufficient time so that the Authority receives it **no later than 2:00 p.m. on <DATE>**. The outermost cover of your submittal must be labeled to include the RFP Number and title as indicated in the “Subject” above. The Authority assumes no responsibility for delays caused by any delivery services.

If your Proposal is to be hand-delivered, note that only individuals with proper identification (e.g. photo identification) will be permitted access to the Authority’s offices. Individuals without proper identification will be turned away and their packages not accepted.

There is extensive security at the World Trade Center Site. You must present a valid government-issued photo ID to enter 4 WTC. Individuals without packages or carrying small packages, envelopes or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All packages, envelopes and boxes may be subject to additional security screening. There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited. Express carrier deliveries by commercial vehicles will only be made via vendors approved by Silverstein Properties, the WTC Property Manager, through the Vehicle Security Center (VSC). Please note that use of the U.S. Mail does not guarantee delivery to Authority offices by the below listed due date for submittals. Proposers using the U.S. Mail are advised to allow sufficient delivery time to ensure timely receipt of their proposals. Presently, UPS is the only delivery vendor with approved recurring delivery times. UPS makes deliveries to 4 WTC around 9:30 a.m. each day. Please plan your submission accordingly. As additional express carriers may be approved by Silverstein Properties and scheduled for recurring delivery times with the VSC, this information may be updated. Under certain circumstances, a solicitation may allow for a commercial vehicle to be approved to make a delivery in accordance with the VSC procedures. If applicable, the specific solicitation document will include that information. The Port Authority assumes no responsibility for delays, including, but not limited to, delays caused by any delivery services, building access procedures, or security requirements.

**III. SUBMISSION REQUIREMENTS:**

To respond to this RFP, provide the following information:

**1) TECHNICAL PROPOSAL:**

- A. In the front of your Technical Proposal, a copy of Attachment B (Agreement on Terms of Discussion) signed by an officer of your company. If proposing as a joint venture, each member of the joint venture must sign a copy of Attachment B.
- B. Complete a copy of Attachment C (Company Profile).
- C. Transmittal Letter

Submit the transmittal letter, on letterhead, signed by an authorized representative, demonstrating compliance with the aforementioned Proposer Requirements (Section I hereof). For active agreements with governmental agencies, include the name of the organization, a contact person and current telephone number and email address for verification purposes.

Include a statement indicating whether the Consultant is proposing as a single entity, or as a joint venture.

- 1. If a common-law joint venture submits a proposal, all participants in the joint venture shall be bound jointly and severally and each participant shall execute the proposal. If a single entity proposer cannot demonstrate that it meets all of the referenced qualifications, then the single entity proposer may, with others, form a joint venture and request that the joint venture be deemed to be the Proposer (i.e. members of the joint venture may meet the qualification requirement collectively).

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2. If the Proposer is a joint venture, the joint venture's Proposal shall contain an executed teaming agreement or, alternatively, if the entities making up the joint venture proposer have not executed a teaming agreement, the joint venture's proposal shall contain a summary of key terms of the anticipated agreement. If the joint venture proposer is a consortium, partnership or any other form of a joint venture, or an association that is not a legal entity, the proposal shall include a letter signed by each member indicating a willingness to accept joint and several liability until the point at which a corporation, limited liability company or other form of legal entity is formed for the purposes of undertaking the Agreement.

- D. Organization and Management: Provide an organizational chart and narrative description of the administrative structure proposed for managing this project. Outline major responsibilities and areas of expertise.

The overall project manager and key staff members (both prime firm and subconsultants) must be identified and resumes provided. The project manager is considered to be the single most important Consultant asset, and is expected to maintain responsibility for the project through completion of the EIS required by the scope of services (Attachment A).

Provide a list of projects that the proposed project manager is responsible for and expected completion dates. Resumes of firm principals are not required unless they are proposed as active, integral members of the Consultant team. Principals should, however, be listed on the organizational diagram in relation to the Consultant team. This section should also include the location of each firm and key staff members.

In addition, if the proposal includes a prime firm and subconsultants, demonstration of relevant past working experience as a team is desired. The relevance of past working experience will be prioritized based on the following: 1) experience on FAA-directed environmental projects; 2) experience on other airport projects not directed by the FAA; 3) experience on environmental projects for other modes under the umbrella of the Department of Transportation; and 4) experience on environmental projects for other federal agencies.

- E. Project Experience: Provide summaries of experience for past projects by prime consultant and team members (if applicable) that demonstrate experience and ability to undertake and complete an EIS specifically for airport projects and transit systems similar to the proposed project. Do not include projects for which key project personnel are no longer employed by the firm. List the names of key employees with each project. Projects for which individuals gained experience during previous employment should be indicated in this section.

For each qualifying project, include the following information in tabular form: project name, location, client, total contract amount, principal-in-charge, day-to-day technical project manager, key design staff, original estimated schedule and actual schedule of completion (defined for an EIS as Notice of Intent to Record of Decision and for an EA as Notice to Proceed to acceptance of the Final EA) client reference (name, position and phone number) and brief narrative description of the project.



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- F. Project Approach/Schedule: Demonstrate a thorough understanding of the FAA EIS process. Identify methodologies and approaches that would be utilized to analyze and resolve environmental issues. Describe the proposed public scoping and public hearing process, work products, detailed project schedule, along with the responsibilities of each of the proposed staff/team members and subconsultants and their anticipated percentage of each individual's time working on the project. Additionally, include a description of the proposed process for coordinating with FAA, the Authority, subconsultants work efforts, and general public. A description of the team's understanding of any unique issues associated with the preparation of the EIS at the LGA should be included. Describe procedures to be followed to adhere to the goal of completion of the issuance by the FAA of a Record of Decision ("ROD") and completion of the National Environmental Policy Act ("NEPA") review within a 12-month period from the Notice-to-Proceed ("NTP").
- G. Description of Proposer/Team: Provide a general description of the Proposer, including services offered, number of employees, office location, years in business, etc. Indicate aviation and rail-related EIS and EA work to which the firm is currently committed. Include similar descriptions for each sub-consultant.
- H. QA/QC: Describe quality assurance and quality control procedures. Demonstrate experience in successfully implementing quality control programs on comparable projects.
- I. References: provide a total of five (5) references of similar projects. For each reference include contact name, title, project name and location, mailing address, phone number, fax number and e-mail address.
- J. Your attention is directed to Paragraph **XX** of the Agreement in which the Authority has stated the Minority Business Enterprises (MBEs) and Women Business Enterprises (WBE) goals for participation in this program. For this Agreement, the Authority has set a targeted goal of thirty percent (30%) combined participation by qualified and certified MBEs and WBEs. Submit details on how you intend to meet these goals. A listing of certified MBE/WBE firms is available at <http://www.panynj.gov/business-opportunities/sd-mini-profile.html>.

The Proposer shall include its MBE/WBE Participation Plan (Form PA 3760C) with its Proposal, to be reviewed and approved by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

The MBE/WBE Plan submitted by the Proposer to the Authority shall contain, at a minimum, the following:

- Identification of MBE/WBEs: Provide the names and addresses of all MBE/WBEs included in the Plan. If none are identified, describe the process for selecting participant firms in order to achieve the good faith goals under this Contract.
- Level of Participation: Indicate the percentage of MBE/WBE participation expected to be achieved with the arrangement described in the Plan.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

All MBE/WBE subconsultants listed on the MBE/WBE Participation Plan must be certified by the Authority in order for the Consultant to receive credit toward the MBE/WBE goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/supplier-diversity.html> to search for MBE/WBEs by a particular commodity or service. The Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to the MBE/WBE Participation Plan must be submitted via a modified MBE/WBE Participation Plan to the Manager for review and approval by OBDCR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use form PA3760D. The Consultant shall not make changes to its approved MBE/WBE Participation Plan or substitute MBE/WBE subconsultants or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performance of work designated for a subconsultant by the Consultant's own forces, shall be deemed a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored by the Authority throughout the duration of the Agreement.

The Consultant shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments in the form of the MBE/WBE Participation Report, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subconsultant and supplier actually involved in the Agreement, a description of the work performed and/or the product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information as it may assist the Project Manager in determining the Consultant's compliance with the foregoing provisions.

**MBE/WBE Conditions of Participation**

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

1. Commercially Useful Function: An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Consultant and the MBE/WBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as a MBE/WBE, the Consultant will receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE

may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

2. Work Force: The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Contractor, other Subcontractors on the Contract, or their Affiliates. This does not preclude the employment by the MBE/WBE of an individual that has been previously employed by another firm involved in the Contract, provided that the individual was independently recruited by the MBE/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.

3. Supervision: All Work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Consultant, other subconsultants on the agreement, or their Affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the Work.

**Counting MBE/WBE Participation**

The value of the Work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. Subconsultants: One hundred percent (100%) of the value of the Work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such Work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Consultant, other subconsultants or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE subconsultant is itself a MBE/WBE. Work that a MBE/WBE subcontracts to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. Material Suppliers: Sixty percent (60%) of the expenditure to a MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. Broker's/Manufacturer's Representatives: One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees or commissions customarily allowed for similar services. The costs of materials and supplies themselves will not be counted.

4. Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces. Contact OBDCR at (201) 395-3958 for more information about requirements for such joint ventures.

- K. Provide a complete list of your firm's affiliates.
- L. If the Proposer or any employee, agent or subcontractor of the Proposer may have, or may give the appearance of a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict. The Authority reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any source could create, or give the appearance of, a conflict of interest. The Authority's determination regarding any question(s) of conflict of interest shall be final.

Proposer is required to disclose all work performed at LaGuardia Airport for a period of three (3) years prior to the date of submission. Proposer shall include work performed by all affiliates, and provide, to the extent applicable, start and end dates of each engagement, the name of the stakeholder or entity for which the Proposer performed work, and a short description of the nature of the work or project.

Proposers are directed to paragraph **XX** of the attached Agreement. Proposers are further advised that under this Agreement, firms must provide, written notice to the Port Authority of any existing or potential conflict of interest the firm(s) may have in the performance of Services under this Agreement.

Furthermore, Proposers should ensure that they are familiar with FAA regulations and policy on conflicts of interest of EIS consultants. Pursuant to 40 C.F.R. Part 1506.5(c), the selected Consultant and any subconsultants performing the work shall certify that they have not entered into and will not enter into during the lifetime of the EIS preparation any agreement affording the Consultant and any subconsultants with any direct or indirect financial interest in the planning, design, construction or operation of the project that is the subject of the EIS except the preparation of the EIS. Prior to beginning work on the EIS, the Consultant and any Subconsultants shall sign a "Disclosure Statement" per the requirements of 40 C.F.R. 1506.5(c) and FAA Orders 1050.1F and 5050.4B, specifying they have no financial or other interest in the outcome of the project.

- M. **Code of Ethics for Port Authority Vendors:** The Proposer's attention is directed to the Port Authority's "Code of Ethics for Port Authority Vendors." Vendors must certify in writing that they will comply with every aspect of this Code. The Proposer should submit an executed Compliance Certification with their Proposal. The Compliance Certification, once executed, will be a material and integral part of any Agreement

resulting from this solicitation. The Code of Ethics and the Compliance Certification can be found on the Authority's website at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

N. The selected Consultant(s) shall comply with the requirements of the Agreement. You should therefore not make any changes in this Agreement, nor restate any of its provisions in your Proposal or supporting material. However, if you have any specific exceptions, such exceptions should be set forth in a separate letter included with your response to this RFP. The Authority is under no obligation to entertain or accept any such specific exceptions. Exceptions raised at a time subsequent to proposal submission will not be accepted. The scope of tasks to be performed by you is set forth in Attachment A to the Authority's agreement.

2) **PRICING INFORMATION:** In a separately sealed envelope marked "Pricing Information," include all proposed pricing-related information for the Proposer (prime consultant) and proposed subconsultants. Such information shall be consistent with the rates contained in the relevant government agreement, and shall include billing rates for partners or principals and actual hourly rates and multipliers for all other billable employees. Compensation for premium pay (i.e. holidays, shift differentials, regular days, weekends and night work or union required payments) must be included and detailed.

**Commented [SJ4]:** For discussion with FAA: What about compliance with FAA is and cs? The MOU seems to indicate that the agreement has to contain terms as if it was a federally funded agreement

MOU includes disclosure statements and requirements on how to interact with the PA and FAA-at what point are those given the proposed consultants

**Commented [SJ5]:** Assuming this will remain b/c at the time of solicitation we will have a draft agreement that incorporates everything that is required – any FAA terms, disclosure requirement

V. **SELECTION PROCESS:**

The qualifications based selection shall take into consideration the technical criteria conveyed in this section (listed in order of importance). After consideration of these factors, the Authority may enter into negotiations with the firm(s) deemed best qualified, in terms of the forgoing Technical Proposal criteria, to perform the required services.

**Commented [SJ6]:** FAA: Let's discuss this and following sections

**Commented [SJ7]:** For discussion with FAA

The Authority will review proposals to determine if they satisfy the requirements of this RFP, including adherence to the RFP's specified format and the provision of all required documentation. Proposals will then be reviewed according to a two-phased evaluation process. The first phase of the evaluation process will involve Authority and FAA staff, and will include a detailed review and evaluation of the proposals according to the following criteria:

**Commented [SJ8]:** Subject to discussion with the FAA. In short, what is the expected level of participation, if any, by the FAA in the first phase of the evaluation?

1. Organization and Management;
2. Project Experience;
3. Project Approach/Schedule;
4. Description of Proposer/Team;
5. QA/QC;
6. References.

Only those proposals receiving the highest scores in the first phase of the evaluation process will be evaluated in the second phase of the evaluation process.

The second phase of the evaluation will involve staff from the Authority and FAA. Only FAA staff will score proposals in the second phase of the evaluation. The second phase of the evaluation commences with interviews of the highest-rated proposers from the first phase of

DRAFT AND DELIBERATIVE

evaluation. After the last interview, FAA staff will score the proposals and recommend that the Port Authority retain the highest-rated proposer from the second phase of the evaluation for the performance of the agreement resulting from this RFP. A notice of selection will be transmitted to the selected Proposer, prior to execution of the Agreement.

**VI. POST-SELECTION PROCESS (prior to agreement execution):**

Within ten (10) calendar days of notice of selection, and prior to agreement execution, a detailed scope of work shall be drafted by the selected Consultant and provided to the FAA. The Authority will compensate the Consultant for its efforts in developing the detailed scope of work at the rates provided in the Consultant's Pricing Information, as accepted by the Authority.

After this detailed scope of work has been finalized and accepted by the FAA, it shall serve as the Plan of Study for the assignment. The Authority will then negotiate a cost proposal with the Consultant for the services to be provided in accordance with the Plan of Study. The basis for negotiations shall be the billing rates/multipliers provided in the Consultant's Pricing Information. During price negotiations, the Authority will not entertain requests from the Consultant to increase the billing rates and multipliers submitted within its original pricing information.

**VII. ADDITIONAL INFORMATION:**

If your firm is selected for performance of the subject services, the agreement you will be asked to sign will include clauses entitled "Certification of No Investigation (Criminal Or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure Of Other Information" And "Non-Collusive Proposing, And Code Of Ethics Certification; Certification Of No Solicitation Based On Commission, Percentage, Brokerage, Contingent Or Other Fees." By submitting a proposal, the Consultant shall be deemed to have made the certifications contained therein unless said Consultant submits a statement with its proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your proposal clearly marked "CERTIFICATION STATEMENT."

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

Prior to commencing any work associated with this Project, the selected consultant and any subconsultants shall submit a Disclosure Statement, provided by the FAA.

Proposers are also advised that additional vendor information, including but not limited to forms, documents and other related information, may be found on the Authority website at [www.panynj.gov](http://www.panynj.gov) or <http://www.panynj.gov/business-opportunities/become-vendor.html>.

Commented [SJ9]: Depending upon the answer to the q re: do we ONLY need this from the selected firm OR from ALL proposers, I think we may want to move this to Submission Requirements, if we can get our hands on the document and include it (or a link) Plus any OTHER documents FAA may require to be submitted with the Proposal

DRAFT AND DELIBERATIVE

After a review of all proposals received, the Authority will forward two (2) copies of the Agreement and Attachment A thereto to the selected firm(s), which shall sign and return both copies. Signature shall be by a corporate officer. The return of one copy executed by the Authority will effectuate the Agreement.

Should you have any questions, please contact James Summerville, Solicitation Manager (██████████) and Krystina Papasavvas (██████████). All such correspondence must have your name, title, company, mailing address, telephone number, and state "RFP \*\*\*\*\*" in the subject line. The Authority must receive all questions no later than 4:00 P.M. EST, seven (7) working days before the RFP due date. Neither Mr. Summerville nor Ms. Papasavvas, nor any other employee of the Authority is authorized to interpret the provisions of this RFP or accompanying documents or give additional information as to their requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned and such writing shall form a part of this RFP, or the accompanying documents, as appropriate. For RFP updates and Addenda, if any, Proposers are encouraged to access, and monitor, the Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html>. You should, therefore, monitor the advertisement on said website, as appropriate, to ensure you are aware of changes, if any.

Proposal preparation costs are not reimbursable by the Authority. The Authority shall have no obligation to a firm except under a duly authorized agreement executed by the Authority.

No rights accrue to any Proposer except under a duly authorized agreement for performance of the specified services.

The Authority reserves the right, in its sole and absolute discretion, to reject all proposals, to undertake discussions and modifications with one or more Consultants, to waive defects in proposals, and to proceed with that Proposal or modified Proposal, if any, which in its judgment will, under all the circumstances, best serve the public interest.

Sincerely,

David Gutiérrez, CPPO  
Assistant Director  
Procurement Department

Attachments

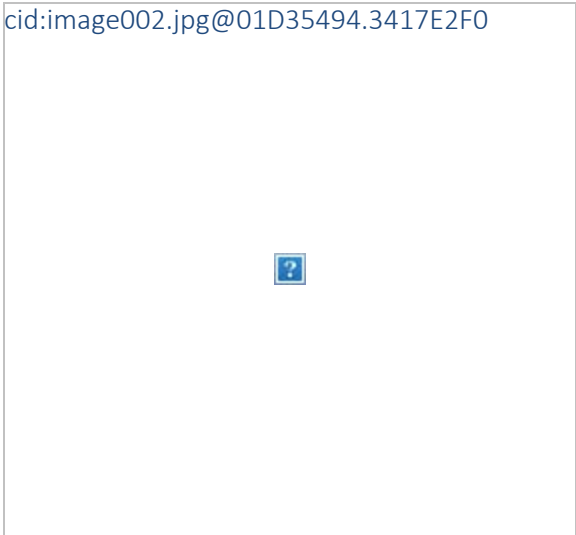
**From:** [REDACTED]  
**To:** [Lamond, Kathryn](#)  
**Cc:** [Tabafunda, Faith](#); [DiScenna, Matthew](#); [Clark, Patty](#); [Rogak, Elizabeth](#); [Herndon, Jane](#); [Cohen, Michelle](#); [Bassis, Luke](#); [Papasavvas, Krystina](#); [Summerville, James](#); [REDACTED]; [Drew Brooks](#); [REDACTED]  
**Subject:** RE: LaGuardia Airport Access Improvement Project  
**Date:** Wednesday, January 24, 2018 2:17:34 PM  
**Attachments:** [image003.jpg](#)  
[2018-01-12\\_Draft Piggybacking and Active Contracts Narrative\\_NEPA Consul....docx](#)

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Hi Katie,

Thank you for the updates. We are in the midst of a number of reviews including conducting ACIP meetings this week and next. We hope to have a response to the Port Authority shortly.

Thank you for your patience.



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**From:** Lamond, Kathryn [mailto:[REDACTED]]  
**Sent:** Friday, January 12, 2018 1:02 PM  
**To:** Urlass, Steve (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]>  
Brooks, Andrew (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]>  
McCarthy, Mary M (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]>  
Henn, Patricia (FAA) <[REDACTED]> Wells, Patrick J (FAA) <[REDACTED]> Gill,  
Sukhbir (FAA) <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
**Cc:** Tabafunda, Faith <[REDACTED]> DiScenna, Matthew <[REDACTED]>  
[REDACTED] Rogak, Elizabeth <[REDACTED]> Herndon, Jane  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Bassis, Luke  
<[REDACTED]> Papasavvas, Krystina <[REDACTED]> Summerville, James  
<[REDACTED]>  
**Subject:** LaGuardia Airport Access Improvement Project



All,

Thank you again for participating on the call Monday to discuss the proposed procurement process for the LaGuardia Airport Access Improvement Project EIS preparation. We have incorporated your initial feedback from the call and have expanded the list to include eight potential firms. The attached document outlines the procurement method we use at the Port Authority, known as “piggypacking”, and describes the process we used to develop the list of firms which will receive a request for proposal. Please let us know if you have any additional questions on the procurement approach.

In the near future, we anticipate providing you with a draft solicitation package for your review.

Please let us know if you have any comments or questions.

Thanks,  
Katie

Kathryn Lamond, P.E.  
Environmental and Sustainability Specialist  
PANYNJ - Aviation Department  
4 World Trade Center, 150 Greenwich St.  
New York, NY 10007  
[REDACTED] office)  
[REDACTED] (cell)

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

## DRAFT AND DELIBERATIVE

The Port Authority of New York and New Jersey (the Port Authority) considers the use of other government contracts, also referred to as piggybacking, as a best practice procurement method and a preferred method of purchase. This method expedites awards by utilizing the skills and benefits of other practitioners in establishing contracts. The Port Authority's protocols permit the direct solicitation of one or multiple proposals from firms that have demonstrated contractual experience in providing the contemplated services to other public agencies in the United States, without the Port Authority having to publicly advertise. Criteria to use this purchase method include the following:

1. The firm has an active contract with another public agency under which the firm provides the same or substantially similar services;
2. The contract must have been competitively secured;
3. The firm must be willing to propose pricing consistent with that of the contract with the other public agency.

In order to expedite the acquisition process for a consultant to perform environmental impact statement (EIS) services for the LaGuardia Airport Access Improvement Project, the Port Authority seeks to utilize this established best practice. The Port Authority developed a list of 38 recent or active contracts for which firms have or are currently providing environmental review services to another governmental agency for the preparation of an environmental assessment (EA) or EIS for rail and/or airport projects in accordance with the requirements of the National Environmental Policy Act (NEPA). This list of 38 contracts resulted from online research on recent or active EA or EIS studies conducted under the Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), and Federal Transit Administration (FTA) as the Federal lead agency. Online resources such as the Federal Register, FAA Airport Environmental Records of Decision webpage, and FRA Current Environmental Reviews webpage were utilized to identify recent or active contracts for airport and rail EAs or EISs. Further online research was conducted, through the use of search engines and review of project site information, in order to identify the firms contracted to perform the environmental review services for these recent or active contracts.

The list of 38 EA and EIS contracts was reviewed by the Port Authority with the purpose of identifying contracts, and the firms providing the environmental review services under these contracts, that are pertinent (as described below) to the LaGuardia Airport Access Improvement Project and meet the Port Authority purchase criteria for piggybacking. The following guidelines were utilized by the Port Authority to determine which contracts and firms are relevant and appropriate for further consideration for the performance of EIS services for the LaGuardia Airport Access Improvement Project:<sup>1</sup>

- A. Contract providing EA or EIS services for a rail project with an airport station preferred
- B. Firm experience with preparation of EA or EIS for rail projects required
- C. Firm experience working with FAA preferred
- D. Firm experience working with New York State and City agencies preferred
- E. Firm office location in New York preferred
- F. Firm must not be precluded due to existing AirTrain LGA related contract conflicts

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<sup>1</sup> To be considered further for procurement through piggybacking, it was not required that the contracts and firms meet all of the six guidelines outlined above.

DRAFT AND DELIBERATIVE

Upon review of the list of 38 EA and EIS contracts, the following contracts and firms were determined by the Port Authority to be relevant and appropriate for further consideration for procurement through piggybacking for the performance of EIS services for the LaGuardia Airport Access Improvement Project:

Subject of EA or EIS	Consultant Lead	Project Sponsor/Co-Lead Agency	Infrastructure Type	Federal Lead Agency	Airport Code	EA or EIS
New Parallel Runway and Associated Projects	VHB	Charlotte Douglas International Airport	Airport	FAA	CLT	EIS
Los Angeles International Airport Landside Access Modernization Program	Ricondo & Associates	Los Angeles World Airports	Airport+Rail	FAA	LAX	EA
Chicago-Milwaukee Intercity Passenger Rail Corridor	Quandel Consultants, LLC	Wisconsin Department of Transportation and the Illinois Department of Transportation	Airport+Rail	FRA	MKE	EA
Baltimore-Washington Superconducting Magnetic Levitation (Maglev) Project	AECOM	Baltimore-Washington Rapid Rail (BWRR)	Airport+Rail	FRA	BWI	EIS
Hudson Tunnel Project	AKRF	New Jersey Transit Corporation (NJ Transit)	Rail	FRA	N/A	EIS
DC to Richmond Southeast High Speed Rail Project (DC2RVA), Tier II EIS	HDR	Virginia Department of Rail and Public Transportation (DRPT)	Rail	FRA	N/A	EIS
Southwest Corridor Light Rail Project	Parametrix	Metro and Tri-Met of Oregon	Rail	FTA	N/A	EIS
East San Fernando Valley Transit Corridor	KOA Corporation	Los Angeles County Metropolitan Transportation Authority	Rail	FTA	N/A	EIS

Following the identification of the eight contracts and firms listed above, the Port Authority began its due diligence process of contacting the firms to request a copy of the leveraged contract and a copy of the request for proposal or solicitation from which the leveraged contract resulted. Four of these firms, AECOM, AKRF, HDR, and Ricondo & Associates, were contacted by the Port Authority the week of December 11, 2017. The Port Authority intends to contact the remaining four firms the week of January 8, 2018. This due diligence process is being conducted by the Port Authority to confirm that these contracts are active (not expired), were competitively secured, and involve providing substantially similar services to another public agency to those that would be required for the LaGuardia Airport Access Improvement Project.

Following the completion of the due diligence process, the next step would be for the Port Authority to solicit proposals for the preparation of an EIS for the LaGuardia Airport Access Improvement Project from those firms that are verified to meet the required criteria for piggybacking. The utilization of the Port Authority's best practice of soliciting submittals from such firms would save time and expedite the process to select an EIS consultant for a high priority project.

**From:** [Summerville, James](#)  
**To:** [REDACTED] [Lamond, Kathryn](#)  
**Cc:** [Tabafunda, Faith](#); [DiScenna, Matthew](#); [Clark, Patty](#); [Rogak, Elizabeth](#); [Herndon, Jane](#); [Cohen, Michelle](#); [Bassis, Luke](#); [Papasavvas, Krystina](#); [REDACTED] [Drew Brooks](#); [REDACTED]  
**Subject:** RE: LaGuardia Airport Access Improvement Project  
**Date:** Wednesday, January 24, 2018 2:28:01 PM  
**Attachments:** [LGA Access Improvement Project Draft Solicitation Documents.msg](#)  
[image002.jpg](#)

---

Evelyn,

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Sincerely,

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Port Authority of NY & NJ  
Procurement Dept.  
[REDACTED]

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Wednesday, January 24, 2018 2:14 PM  
**To:** Lamond, Kathryn <[REDACTED]>  
**Cc:** Tabafunda, Faith <[REDACTED]> DiScenna, Matthew <[REDACTED]>  
Clark, Patty <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Bassis, Luke  
<[REDACTED]> Papasavvas, Krystina <[REDACTED]> Summerville, James  
<[REDACTED]> [REDACTED] Drew Brooks <[REDACTED]>  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
**Subject:** RE: LaGuardia Airport Access Improvement Project

Hi Katie,

Thank you for the updates. We are in the midst of a number of reviews including conducting ACIP meetings this week and next. We hope to have a response to the Port Authority shortly.

Thank you for your patience.



---

**From:** Lamond, Kathryn [[mailto: \[REDACTED\]](#)]  
**Sent:** Friday, January 12, 2018 1:02 PM  
**To:** Urlass, Steve (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]>  
Brooks, Andrew (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]>  
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Sukhbir (FAA) <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
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<[REDACTED]>  
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Please let us know if you have any comments or questions.

Thanks,  
Katie

Kathryn Lamond, P.E.  
Environmental and Sustainability Specialist  
PANYNJ - Aviation Department  
4 World Trade Center, 150 Greenwich St.  
New York, NY 10007  
[REDACTED] (office)  
[REDACTED] (cell)

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**From:** [REDACTED]  
**To:** [Summerville, James](#); [Lamond, Kathryn](#)  
**Cc:** [Tabafunda, Faith](#); [DiScenna, Matthew](#); [Clark, Patty](#); [Rogak, Elizabeth](#); [Herndon, Jane](#); [Cohen, Michelle](#); [Bassis, Luke](#); [Papasavvas, Krystina](#); [REDACTED]; [Drew Brooks](#); [REDACTED]  
**Subject:** RE: LaGuardia Airport Access Improvement Project  
**Date:** Thursday, January 25, 2018 8:01:44 AM  
**Attachments:** [image004.jpg](#)  
[image002.jpg](#)  
[LGA Access Improvement Project Draft Solicitation Documents.msg](#)

---

Good morning James,

Yes, thank you. I did see Katie's subsequent email. However, we are preparing a response on the piggy backing narrative. I recommend that we meet after you receive our response. It is currently in review. We hope to have something back to you by next week.

Thank you

cid:image002.jpg@01D35494.3417E2F0



---

**From:** Summerville, James [mailto:[REDACTED]]  
**Sent:** Wednesday, January 24, 2018 2:27 PM  
**To:** Martinez, Evelyn (FAA) <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
**Cc:** Tabafunda, Faith <[REDACTED]> DiScenna, Matthew <[REDACTED]>  
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<[REDACTED]>

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[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]

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cid:image002.jpg@01D35494.3417E2F0



---

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**Sent:** Friday, January 12, 2018 1:02 PM  
**To:** Urlass, Steve (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]>  
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Katie

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Environmental and Sustainability Specialist  
PANYNJ - Aviation Department  
4 World Trade Center, 150 Greenwich St.  
New York, NY 10007

██████████ (office)

██████████ (cell)

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**From:** [DiScenna, Matthew](#)  
**To:** [REDACTED] [Summerville, James](#); [Lamond, Kathryn](#)  
**Cc:** [Tabafunda, Faith](#); [Clark, Patty](#); [Rogak, Elizabeth](#); [Herndon, Jane](#); [Cohen, Michelle](#); [Bassis, Luke](#); [Papasavvas, Krystina](#); [REDACTED] [Drew Brooks](#); [REDACTED]  
**Subject:** RE: LaGuardia Airport Access Improvement Project  
**Date:** Thursday, January 25, 2018 8:22:02 AM  
**Attachments:** [image002.jpg](#)  
[image003.jpg](#)

---

Hi Evelyn,

Thank you very much for your team's review of the piggybacking narrative. We look forward to receiving your response and having further discussion on the narrative and the next steps in the procurement process.

Thanks,  
Matt

Matt DiScenna  
Aviation Department  
Port Authority of NY & NJ  
[REDACTED] (office)  
[REDACTED] (cell)  
[REDACTED]

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Thursday, January 25, 2018 7:59 AM  
**To:** Summerville, James <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
**Cc:** Tabafunda, Faith <[REDACTED]> DiScenna, Matthew <[REDACTED]>  
Clark, Patty <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane  
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Drew Brooks <[REDACTED]> [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]  
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**Sent:** Wednesday, January 24, 2018 2:27 PM  
**To:** Martinez, Evelyn (FAA) <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
**Cc:** Tabafunda, Faith <[REDACTED]> DiScenna, Matthew <[REDACTED]>  
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Procurement Dept.  
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[REDACTED] [REDACTED] [REDACTED]

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**Sent:** Friday, January 12, 2018 1:02 PM

**To:** Urlass, Steve (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]>  
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Katie

Kathryn Lamond, P.E.  
Environmental and Sustainability Specialist  
PANYNJ - Aviation Department  
4 World Trade Center, 150 Greenwich St.  
New York, NY 10007  
[REDACTED] (office)  
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**Subject:** RE: LaGuardia Airport Access Improvement Project  
**Date:** Friday, February 02, 2018 3:39:29 PM  
**Attachments:** [image002.jpg](#)  
[LGA Access Improvement Project Draft Solicitation Documents.msg](#)  
[image2018-02-02-115110.pdf](#)

---

Good afternoon Patty and Katie,

Thank you for the attached narrative and the request to meet to discuss the draft RFP Letter and Attachment A for the LGA AirTrain project.

We have worked diligently along with our legal office to review and provide you an expedited position on the matter. Please review the attached and let's plan on scheduling a meeting to discuss next steps. I recommend we meet in person if possible. Please let me know if I can facilitate scheduling the meeting.

Thank you and have a great weekend.

Evelyn

cid:image002.jpg@01D35494.3417E2F0



---

**From:** Lamond, Kathryn [mailto:[REDACTED]]  
**Sent:** Friday, January 12, 2018 1:02 PM  
**To:** Urlass, Steve (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]>  
Brooks, Andrew (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]>  
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**Cc:** Tabafunda, Faith <[REDACTED]> DiScenna, Matthew <[REDACTED]>  
[REDACTED] Rogak, Elizabeth <[REDACTED]> Herndon, Jane  
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<[REDACTED]>

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Katie

Kathryn Lamond, P.E.  
Environmental and Sustainability Specialist  
PANYNJ - Aviation Department  
4 World Trade Center, 150 Greenwich St.  
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[REDACTED] (office)  
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**To:** [REDACTED]  
**Cc:** [Tabafunda, Faith](#); [DiScenna, Matthew](#); [Clark, Patty](#); [Rogak, Elizabeth](#); [Herndon, Jane](#); [Cohen, Michelle](#); [Bassis, Luke](#); [Papasavvas, Krystina](#); [Summerville, James](#); [REDACTED]; [Drew Brooks](#); [REDACTED]  
[REDACTED]; [REDACTED]; [Clark, Patty](#)  
**Subject:** RE: LaGuardia Airport Access Improvement Project  
**Date:** Monday, February 05, 2018 1:17:52 PM  
**Attachments:** [Attachment A Draft\\_2018-02-05.docx](#)  
[Draft Questions to FAA\\_2018-02-05.docx](#)  
[RFP Letter Draft\\_2018-02-05.docx](#)  
[image002.jpg](#)

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Evelyn,

Thank you for your review of our proposed procurement methodology and your associated response. We have reviewed your concerns with the “piggybacking” procurement approach and have decided to move forward with an open RFP solicitation process as you suggested.

Attached please find draft solicitation documents and a list of questions for discussion. The attached documents are materially the same as the documents we provided in the email dated 1/22, but have been slightly modified to reflect the open solicitation process. These modifications are reflected in track changes.

We look forward to discussing the procurement process with you further and agree that an in-person meeting would be best. Our team is available to meet at your office anytime on the following dates:

Thursday February 8<sup>th</sup>  
Friday February 9<sup>th</sup>  
Monday February 12<sup>th</sup>

Please let me know if any of those dates work for you and your team. Also please let us know if you have any questions in advance of the meeting.

Thanks,  
Katie

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Friday, February 02, 2018 3:37 PM  
**To:** Lamond, Kathryn <[REDACTED]> Clark, Patty <[REDACTED]>  
**Cc:** Tabafunda, Faith <[REDACTED]> DiScenna, Matthew <[REDACTED]>  
Clark, Patty <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Bassis, Luke  
<[REDACTED]> Papasavvas, Krystina <[REDACTED]> Summerville, James

<[REDACTED]> Drew Brooks <[REDACTED]>  
[REDACTED]  
[REDACTED]

**Subject:** RE: LaGuardia Airport Access Improvement Project

Good afternoon Patty and Katie,

Thank you for the attached narrative and the request to meet to discuss the draft RFP Letter and Attachment A for the LGA AirTrain project.

We have worked diligently along with our legal office to review and provide you an expedited position on the matter. Please review the attached and let's plan on scheduling a meeting to discuss next steps. I recommend we meet in person if possible. Please let me know if I can facilitate scheduling the meeting.

Thank you and have a great weekend.  
Evelyn



---

**From:** Lamond, Kathryn [[mailto:\[REDACTED\]](#)]  
**Sent:** Friday, January 12, 2018 1:02 PM  
**To:** Urlass, Steve (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]>  
Brooks, Andrew (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]>  
McCarthy, Mary M (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]>  
Henn, Patricia (FAA) <[REDACTED]> Wells, Patrick J (FAA) <[REDACTED]> Gill,  
Sukhbir (FAA) <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
**Cc:** Tabafunda, Faith <[REDACTED]> DiScenna, Matthew <[REDACTED]>

[REDACTED] Rogak, Elizabeth <[REDACTED]> Herndon, Jane  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Bassis, Luke  
<[REDACTED]> Papasavvas, Krystina <[REDACTED]> Summerville, James  
<[REDACTED]>

**Subject:** LaGuardia Airport Access Improvement Project

All,

Thank you again for participating on the call Monday to discuss the proposed procurement process for the LaGuardia Airport Access Improvement Project EIS preparation. We have incorporated your initial feedback from the call and have expanded the list to include eight potential firms. The attached document outlines the procurement method we use at the Port Authority, known as “piggypacking”, and describes the process we used to develop the list of firms which will receive a request for proposal. Please let us know if you have any additional questions on the procurement approach.

In the near future, we anticipate providing you with a draft solicitation package for your review.

Please let us know if you have any comments or questions.

Thanks,  
Katie

Kathryn Lamond, P.E.  
Environmental and Sustainability Specialist  
PANYNJ - Aviation Department  
4 World Trade Center, 150 Greenwich St.  
New York, NY 10007  
[REDACTED] (office)  
[REDACTED] (cell)

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

NEPA Procurement and Selection Process Questions for Discussion:

1. Per the Port Authority’s understanding, the table below outlines the steps for the NEPA consultant procurement and selection process. The Port Authority requests FAA’s input on the steps and timeframe outlined below, as well as recommendations for specific dates to be assigned for each step based upon FAA availability for meetings, interviews, and reviews.

NEPA Consultant Procurement & Selection Process Schedule*	
1/12/2018	Piggybacking process narrative sent to FAA**
1/22/2018	Draft solicitation package sent to FAA for review
<u>2/05/2018</u>	<u>Revised draft solicitation package sent to FAA for review</u>
Week 1	Meeting with FAA to discuss comments on draft solicitation package and timeline through selection
Week 1	Solicitation issued
Week 3	Responses to solicitation due
Week 4	Selection Committee meeting (Phase 1 evaluation)
Week 5	Interviews*** (Phase 2 evaluation)
Week <del>6</del> <u>5</u>	Selection made by FAA (Phase 2 evaluation)
Week <del>7-10</del> <u>5-6</u>	FAA formulates scope of work with selected consultant****
Week <del>10</del> <u>7</u>	Contract award

\*\_Schedule subject to FAA review and input.

\*\*The Port Authority has decided to publicly advertise the RFP, and thus will no longer pursue the “piggybacking process.”

\*\*\*All the firms to which the solicitation Firms will be sent are to be notified by email that should they be selected to be interviewed, the interviews will be held on these specific dates.

\*\*\*\*\_Assumes that a detailed scope of work/draft Plan of Study is developed by the selected consultant prior to contract award, and would require back and forth between the selected consultant and FAA.

2. To what extent would the FAA be involved in the first phase of evaluation, which would include the review of the proposals, requesting clarifying information (if necessary), reference checks, and identification of a short list of firms by the Selection Committee?
3. For the second phase of evaluation, what would be Port Authority members’ role in participating in an “observational” capacity before and during the FAA’s interviews?

- a. Will the Port Authority be allowed to formulate questions (in conjunction with the FAA) before the interviews and ask questions during the interviews or participate in the debrief discussions following the interviews?
  - b. Does the FAA expect the Port Authority to interact with the short-listed firms in the Phase 2 process, for example, in the scheduling of the interviews, sending potential questions to the firms in advance of the interviews, recording questions during the meetings, taking meeting minutes, etc.?
4. The selection process is described in Section ~~V~~III of the RFP letter. The Port Authority expects that the listed evaluation criteria will be used in both phases of evaluation. Per protocol, the Port Authority does not identify the 'weights'/percentages associated with each evaluative criterion. Instead, the Port Authority lists the criteria in "order of importance."
  - a. Clarify if this approach (not identifying the weights but listing the criteria in order of importance) is acceptable to the FAA.
  - b. If acceptable, clarify if the following order of importance is acceptable: Organization and Management; Project Experience; Project Approach/Schedule; Description of Proposer/Team; QA/QC; References.
  - c. In Phase 1, the Port Authority intends to score the proposals according to the foregoing criteria. Clarify if the FAA expects to use the same scoring structure in Phase 2.
  - d. Assuming that the foregoing process and criteria are acceptable, including the order of importance, the Port Authority and the FAA need to agree on the 'weights'/percentages assigned to each criterion. The Port Authority proposes the following weights:
    - Organization and Management: 35%
    - Project Experience: 25%
    - Project Approach/Schedule: 20%
    - Description of Proposer: 10%
    - QA/QC: 5%
    - References: 5%
  - e. Per protocol, the Port Authority requests and vets the proposers MWBE plans. It's an evaluative factor, but not weighted. Please confirm that (a) it's acceptable to request MWBE information, not DBE, (b) it's acceptable for the Port Authority to evaluate MWBE plans per its usual protocols and (c) it's acceptable for MWBE be a factor but not a weighted criterion.
5. How many FAA members will participate in the evaluation process (in both Phase 1 and Phase 2), and how many copies of the proposals should be requested for the FAA?
6. In the case that two firms are tied in terms of the ranking criteria, does cost factor into the selection process?
7. How will selection decisions be recorded (for both Phase 1 and Phase 2 of the evaluation), and in what format?
8. The Port Authority requests FAA's consideration in having the selected consultant develop a detailed scope of work prior to the execution of the contract that would serve as the draft Plan of Study (subject to adjustments following public scoping and throughout the EIS process). With this proposed approach, the selected consultant would be requested to prepare a draft Plan of

DRAFT AND DELIBERATIVE

ATTACHMENT A

**PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (“LGA”) ACCESS IMPROVEMENT PROJECT**

**I. BACKGROUND**

*General:*

For background with respect to The Port Authority of New York and New Jersey (the “Authority” or “Sponsor”) see [www.panynj.gov](http://www.panynj.gov). Additionally, the most recent electronic version of the Authority’s Annual Report is available at <http://www.panynj.gov/corporate-information/annual-reports.html>.

*Project Description:*

The Authority is proposing to construct a new automated people mover (“APM”) AirTrain system to provide a fast, convenient, and reliable transit alternative for air passenger and employee access to LaGuardia Airport (“LGA” or the “Airport”) and a relocated employee parking facility, as well as to enhance on-airport connectivity. The goal of this proposed project, herein referred to as the LaGuardia Airport Access Improvement Project (the “Project”), is to provide connections between the Airport and Long Island Rail Road (“LIRR”) and Metropolitan Transportation Authority’s (“MTA”) New York City Transit (“NYCT”) stations, as well as to construct an employee parking facility. Further, the LaGuardia Airport Access Improvement Project shall not preclude the potential future expansion of support facilities beyond the existing airport boundary. The Federal actions associated with the Authority’s proposed Project are decisions by the Federal Aviation Administration (“FAA”) on an updated Airport Layout Plan (“ALP”) and for the use of Passenger Facility Charge (“PFC”) funding, should the Authority pursue imposing and using PFC funding for the proposed Project.

The Authority’s preferred alternative is for the AirTrain to operate between the Airport and a transfer station at Willets Point. The proposed AirTrain system would include two on-airport stations and a terminus station at Willets Point providing connections to the LIRR Port Washington Branch and the Willets Point-Mets Station of the MTA NYCT Flushing No. 7 subway line. To achieve the goals for the proposed Project, an employee parking facility would be located at Willets Point. In addition to providing a connection to the LIRR and NYCT stations at the Willets Point terminus station, the proposed AirTrain would serve as an on-airport transit system that would facilitate transfers between airline terminals and provide connections to passenger parking. The proposed Project includes associated facilities and infrastructure (stations, guideway, maintenance/control facility, etc.) as well as the systems (vehicles, train control, power distribution system, etc.) for the AirTrain.

The Authority is seeking to accelerate the environmental review schedule for the proposed Project, with the goal of the FAA completing the issuance of a Record of Decision (“ROD”) and completing the National Environmental Policy Act (“NEPA”) review within a 12-month period from the Notice-to-Proceed (“NTP”) for services hereunder. In the event that the

## DRAFT AND DELIBERATIVE

proposed Project is included on the Federal Permitting Dashboard, the Consultant shall comply with the associated processes and procedures.

### *General Description of Consultant Services:*

The Authority is seeking a Consultant to provide professional services to assist the FAA in preparing an Environmental Impact Statement (“EIS”) to assess and disclose the potential environmental impacts of the construction of the Authority’s proposed Project and any reasonable alternatives in a manner that complies with all applicable federal, state and local environmental laws and regulations. The FAA is the lead Federal agency for preparing the EIS in accordance with the requirements of NEPA (42 U.S.C. 4321 et. seq.), the Council on Environmental Quality (“CEQ”) regulations (40 C.F.R. Parts 1500-1508), and appropriate U.S. Department of Transportation and FAA environmental orders. As stated above, the Federal actions associated with the Authority’s proposed Project is a decision by FAA on an updated ALP, and should the Authority pursue imposing and using PFC funding for its proposed Project, a decision by FAA regarding use of such PFC funds.

The Consultant shall be responsible to the FAA for the preparation of an EIS associated with the Authority’s proposed Project. The FAA shall direct the services provided by the Consultant hereunder. Unless otherwise directed by the FAA, the Consultant shall not interact with the Authority in the performance of the services summarized in this Attachment A. The Consultant’s interaction with the Authority shall be related only to matters of contract administration, invoicing and payment for services provided by the Consultant to the FAA, as accepted by the FAA. The Consultant shall serve as the independent third party assisting the FAA with conducting the EIS process in an efficient and cost-effective manner, while maintaining a high degree of credibility and validity in the production of all EIS deliverables.

## **II. SCOPE OF SERVICES**

Prior to agreement execution, and within ten (10) calendar days of notice of selection, the Consultant shall develop and submit a detailed scope of work for the entire assignment. The detailed scope of work is hereinafter referred to as the Plan of Study, which is subject to FAA approval. The Plan of Study will include detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated person-hours required for completion of each aspect, the schedule for performing each aspect, and a description of the internal and external review procedures to assure quality control. The Plan of Study will also include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the environmental data and analyses and the development and preparation of the EIS. Finally, the Plan of Study must comply with all applicable FAA regulations governing the preparation of EISs and must include such additional analytical requirements as provided by the FAA prior to completion. In addition, in producing or revising the Plan of Study, the Consultant may consider as appropriate any relevant submissions made by the Port Authority, with any such submissions provided concurrently to the FAA and the Consultant.

## DRAFT AND DELIBERATIVE

The EIS is to be accomplished in accordance with FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, Order 5050.4B, *NEPA Implementing Instructions for Airport Actions*, and associated Desk References (or the current version at time of contract award). Specific environmental issues to be included in the EIS may include, but are not limited to:

- a) Air Quality
- b) Biological Resources
- c) Climate
- d) Coastal Resources
- e) Department of Transportation Act, Section 4(f)
- f) Farmlands
- g) Hazardous Materials, Solid Waste, and Pollution Prevention
- h) Historical, Architectural, Archaeological, and Cultural Resources
- i) Land Use
- j) Natural Resources and Energy Supply
- k) Noise and Noise Compatible Land Use
- l) Socioeconomic, Environmental Justice, and Children's Environmental Health and Safety Risks
- m) Visual Effects
- n) Water Resources (Wetlands, Floodplains, Surface Waters, Groundwater, Wild and Scenic Rivers)
- o) Cumulative Impacts
- p) Irreversible and Irrecoverable Commitment of Resources

It is anticipated that the scope of work resulting from the Plan of Study may require the Consultant to perform the following services, at minimum:

1. Facilitate and conduct meetings necessary for the preparation and development of the EIS.
2. Provide project management duties, including but not limited to preparing reports, updating the Plan of Study as necessary, taking meeting minutes, coordinating activities between all stakeholders, schedule monitoring, preparing presentation materials, creating and maintaining the project file, etc.
3. Review project-related documents necessary for the development of the EIS.
4. Assist the FAA to fulfill its lead Federal agency role and enhance effective NEPA scoping to ensure early in the process that the EIS addresses key issues of concern to agencies and the public.
5. Develop the Purpose and Need Statement, to be utilized for the consideration and comparative evaluation of alternatives to the Sponsor's proposed Project. The Purpose should outline the goals and objectives that the Sponsor's proposed Project should achieve, and the Need should provide the data to support the Purpose.



## DRAFT AND DELIBERATIVE

6. Prepare an alternatives analysis addressing a range of reasonable alternatives to the Sponsor's proposed Project. It is expected that the "No Action" and the Sponsor's proposed Project will be alternatives. The Consultant will identify any other potential alternatives and conduct a screening of alternatives, as appropriate.
7. Describe existing environmental resources and conditions that the Sponsor's proposed Project, any reasonable alternatives, and No Action would affect.
8. Describe impacts and environmental consequences of the Sponsor's proposed Project, any reasonable alternatives, and No Action that were previously identified for further evaluation.
9. Prepare draft and final versions of the EIS. It is anticipated that the draft and final version should include the following elements, at minimum:
  - a. Cover sheet
  - b. Summary
  - c. Table of contents
  - d. Purpose and need
  - e. Alternatives
  - f. Affected environment
  - g. Environmental consequences
  - h. Cumulative impacts
  - i. Mitigation
  - j. Public and agency outreach
  - k. List of preparers
  - l. List of EIS recipients
  - m. Index
  - n. Appendices
  - o. Incomplete or unavailable information
10. Solicit and facilitate public and stakeholder involvement throughout the EIS process in accordance with NEPA and relevant special purpose laws.
11. Ensure that the EIS documentation includes relevant information required for permitting applications and processes, as required.

All work prepared under this Agreement shall be delivered to the FAA in printed format and searchable .pdf files along with components associated with each item, such as data files, text files, image files, spreadsheets, graphs, and tables. These products, where applicable, will be compatible with and incorporated into the Airports Geographic Information System ("AGIS") managed by the FAA (as applicable). While performing work under this Agreement, the Consultant shall be responsible for managing the administrative project file and, upon completion of the work, will be responsible for submitting a completed administrative record for the project to the FAA, in accordance with FAA policy and guidance.

### **III. PERIOD OF PERFORMANCE**

The period of performance (through completion of the final EIS) of the services is not to exceed twelve (12) months from the NTP for services hereunder. The work will be performed in accordance with FAA's procedures for assessing environmental impacts including FAA Order 5050.4B (or the current version at time of agreement award). While it is conceivable that issues raised during the public comment process could affect the time of performance, the Consultant should assume that the FAA will grant any extensions of time for performance only for the most extraordinary circumstances. The Period of Performance establishes the expected outer limit for project development.

### **IV. LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE**

#### **A. Commercial Liability Insurance:**

1) The Consultant(s), and all of its/their Sub-consultants shall take out, maintain, and pay the premiums on **Commercial General Liability Insurance** for the life of the Agreement and such Insurance and shall be written on an ISO occurrence form CG 00 01 0413 or its equivalent covering the obligations assumed by the Consultant(s) under this Agreement, including, but not limited to, Premises-Operations, Products and Completed Operations, Broad form property damage, personal and advertising injury and Independent Contractor's coverages, with contractual liability language covering the obligations assumed by the Consultant(s) with insurance covering against claims for injuries to persons or damages to property which may arise from or in connection with products and materials supplied to the Agency in limits of not less than **\$10,000,000** combined single limit per occurrence and in the annual aggregate. If vehicles are to be used to carry out the performance of this Agreement, then the Consultant(s) shall also take out, maintain and pay the premiums on **Automobile Liability Insurance** covering all owned, non-owned and hired autos in not less than **\$5,000,000** combined single limit per accident for bodily injury and property damage. **(Only if Applicable)**

The insurance shall be written on an occurrence basis, as distinguished from a "claims made" basis, and shall not include any exclusions for "action over claims" (insured vs. insured) and minimally arranged to provide and encompass at least the following coverages:

- Contractual Liability to cover liability assumed under the Agreement;
- Independent Contractor's Coverage;
- Premises-Operations, Products and Completed Operations Liability Insurance;
- The insurance coverage (including primary, excess and/or umbrella) hereinafter afforded by the Consultant(s) and Sub-consultant(s) shall be primary insurance and non-contributory with respect to the additional insureds;
- Excess/umbrella policies shall "follow form" to the underlying policies;
- Excess/umbrella policies shall have a liberalization clause with drop down provision;
- To the extent any coverage the Consultant(s) and Sub-consultant(s) obtains and/or maintains under this Agreement contains "Other Insurance" language or provisions shall not be applicable to the additional insureds or to any insurance coverage maintained by the additional insureds;
- All insurance policies shall include a waiver of subrogation, as allowed by law, in favor

DRAFT AND DELIBERATIVE

- of the additional insureds;
- Defense costs must be outside of policy limits. Eroding limits policies are not permitted;
  - In the event the Consultant(s) and/or its Sub-consultant(s) obtains and/or maintains broader coverage and/or insurance in an amount greater than the minimum limits required under this Agreement, then the full limits of that insurance coverage will be available to respond to any claims asserted against the additional insureds that arises out of or is in any way connected with this Agreement;
  - Additional insureds coverage shall not be restricted to vicarious liability unless required by controlling law;

In addition, the liability policy(ies) shall be written on a form at least as broad as ISO Form CG 20 10 10 01 (for ongoing operations work) together with ISO Form CG 20 37 10 01 (for completed operations work) or their equivalent and endorses to name “The Port Authority of New York and New Jersey, and its related entities, their Commissioners, Directors, Superintendents, officers, partners, employees, agents, their affiliates, successors or assigns”, in addition to: The City of New York, for all operations at John F. Kennedy and LaGuardia Airports; Port Authority Trans-Hudson Corporation, for operations at PATH; AFCO AvPorts Management LLC, for operations at Teterboro Airport; AFCO AvPorts Management LLC and NY State Dept. of Transportation, for operations at Stewart Int’l Airport, Trends Urban Renewal for operations at PATC and Silverstein Properties Inc.; The Port Authority of New York and New Jersey; Silverstein 2/3/4 WTC Redevelopment LLC; WTC Redevelopment LLC; World Trade Center Properties LLC; 4 World Trade Center LLC; Net Lessees Association of the World Trade Center; WTC Management and Development LLC; Silverstein WTC Mgmt. Co. LLC. Silverstein WTC Mgmt. Co II LLC; Silverstein WTC Properties LLC; Silverstein WTC Management and Development LLC; Silverstein WTC LLC.; WTC Investors LLC.; 4 WTC Holdings LLC; WTC Investors Management and Development LLC; World Trade Center Holdco LLC; 4 WTC Mezz LLC. for operations at the World Trade Center Site as “Insured” (as defined in the policy or in an additional insured endorsement amending the policy’s “Who Is An Insured” language as the particular policy may provide) on its liabilities policies with respect to liability arising out of work or operations performed by or on behalf of the Consultant(s) including, but not limited to, materials, parts or equipment furnished in connection with such work or operations. The “Insured” shall be afforded coverage and defense as broad as if they are the first named insured and regardless of whether they are otherwise identified as additional insureds under the liability policies, including but not limited to premises-operations, products-completed operations of the Commercial General Liability Policy. Such additional insureds status shall be provided regardless of privity of contract between parties. The liability policy(ies) and certificate of insurance shall contain cross-liability language providing severability of interests so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds shall not reduce or void coverage to the other insureds. The Consultant(s) is/are responsible for all deductibles or losses not covered by commercially procured insurance. Any portion of the coverage to be provided under a Self-Insured Retention (SIR) of the Consultant(s) is/are subject to the review and approval of the General Manager, Risk Financing. Furthermore, any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim.

Commented [SJ1]: We assume that the FAA will want to be an additional insured. If so, the PA will work with its RISK dept to add the appropriate language. That and to have the consultant cooperate with that indemnification

DRAFT AND DELIBERATIVE

Any self-insured retention shall cover any liability imposed upon the Consultant(s) and any and all subsidiaries with respect to all operations and obligations assumed by the Consultant(s) and any and all subsidiaries. The undersigned represents that such program provides the Additional Insureds (as defined in the Agreement) with all rights, immunities and protections that would be provided by traditional independent insurance required under the Agreement, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies pursuant to the terms of the Agreement.

If any of the Work is to be done on or at Port Authority facilities by the Sub-consultants and, if the Consultant(s) requires its Sub-consultant(s) to procure and maintain such insurance in the name of the Consultant(s), then such insurance as is required herein shall include and cover the additional insureds and it must have insurance limits not lower than those set forth by the Port Authority herein, along with all the insurance requirements in this "Insurance" section.

Further, it is the Consultant's responsibility to maintain, enforce and ensure that the type of coverages and all limits maintained by it and any of all Sub-consultants are accurate, adequate and in compliance with the Port Authority requirement. All certificates of insurance shall be turned over to the Port Authority prior to the start of work, and upon completion of the Agreement.

*The Consultant, its Sub-consultant(s) and its insurer(s) shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.*

**2) Workers' Compensation Insurance:**

The Consultant(s) and its/their Sub-consultant(s) shall take out, maintain and pay premiums on Workers' Compensation Insurance in accordance with the requirements of law in the state(s) where work will take place, and Employer's Liability Insurance with limits of not less than **\$1,000,000** each accident. Such policy shall include a waiver of subrogation endorsement in the benefit of the additional insureds.

**3) Additional Coverages:** The Consultant(s) shall have the policy endorsed "**Only when required by the Director**" for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) Any/all activities performed airside must, at all times, be performed while under security escort as approved in advance, and in writing by the Project Manager. If the services of the Consultant(s), as directed by the Authority, require the performance of services airside, the Commercial General Liability and Automobile Liability coverage limits stipulated in subparagraph 1, above, shall be increased to an amount not less than \$25,000,000 per occurrence as provided herein.

DRAFT AND DELIBERATIVE

- b) Endorsement to eliminate any exclusions applying to the explosion, collapse, and underground property damage (XCU) hazards.
  - c) Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
  - d) Coverage for work within fifty (50) feet of railroad.
- 4) **Additional Coverages:** The Consultant(s) shall have the policy endorsed “**Only when required by the Director**” for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:
- a) United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.
  - b) Coverage B Endorsement - Maritime (Masters or Members of the Crew of Vessels), in limits of not less than \$1,000,000 per occurrence.
  - c) Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$1,000,000 per occurrence.

**5) Professional Liability Insurance:**

The Consultant(s) shall take out, maintain and pay premiums on Professional Liability Insurance in limits of not less than **\$10,000,000** each occurrence, covering acts, errors, mistakes, and omissions arising out of the work or services performed by Consultant(s), or any person employed by Consultant(s). All endorsements and exclusions shall be evidenced on the certificate of insurance. The coverage shall be written on an occurrence basis or may be written on a claims made basis with a minimum of a three-year reporting/discovery period.

Each policy above shall contain an endorsement that the policy may not be canceled, terminated or modified without thirty (30) days' prior written notice to the Project Manager, at the location where the work will take place with a copy to the General Manager, Risk Financing.

The Port Authority may, at any time during the term of this Agreement, change or modify the limits and coverages of insurance. Should the modification or change result in an additional premium, the General Manager, Risk Financing for the Port Authority may consider such cost as an out-of-pocket expense.

Within five (5) days after award of this Agreement and prior to the start of work at the site, the Consultant(s) must submit an original certificate of insurance, to the Project Manager and Exigis email: [REDACTED] at the location where the work will take place. This certificate of insurance MUST show evidence of the above insurance policy(ies), including, but not limited to, the title of this Agreement, the P. A. Agreement number, the notice of cancellation provisions, prior to the start of work. The Consultant(s) is/are also responsible for maintaining and conforming to all insurance requirements from the additional insureds and their successors and assigns. The General Manager, Risk Financing must approve the certificate(s) of insurance before any work can begin. Upon request of the General Manager, Risk Financing/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.

DRAFT AND DELIBERATIVE

Renewal certificates of insurance or policies shall be delivered to the Authority's Project Manager, and upon request from the additional insureds, their successors or assigns at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Financing must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Authority, the Consultant(s) shall promptly obtain a new and satisfactory certificate and policy and provide same to the Port Authority.

If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then, the Consultant(s) and all Sub-consultants shall suspend performance of the Agreement at the premises until a satisfactory insurance policy(ies) and certificate of insurance is provided to and approved by Risk Financing, unless the Facility or Project Manager directs the Consultant(s), in writing, to continue to performing work under the Agreement. If the Agreement is so suspended, no extension of time shall be due on account thereof.

Failure by the Consultant(s) to meet any of the insurance requirements, including the requirement that the Port Authority be afforded the full extent of the insurance obtained under this Agreement without limitation, shall be deemed a material breach of Agreement and may be a basis for termination of this Agreement by the Port Authority.

The requirements for insurance procured by the Consultant(s) shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Consultant(s) under this Agreement. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Consultant against the obligations imposed on them by law or by this or any other Agreement.

All insurance coverage shall be provided by the Consultant(s) and/or by or for any of its/their Sub-consultant(s) at no additional expense to the Port Authority and its related entities. A copy of this "Insurance" section shall be given to your insurance agent and Sub-consultant(s) and shall form a part of the covered Agreement for insurance purposes in furtherance of the insurance requirements of this Agreement.

\*\*\*\*

Study for submittal to FAA for review within 10 calendar days of being notified that they have been selected. The FAA and the selected consultant would work together to revise and reach an agreed upon draft Plan of Study. The draft Plan of Study would serve as the basis for the cost negotiation between the selected consultant and the Port Authority and would serve as the scope of work to be attached to the contract for execution. This proposed process is described in the RFP letter on page 1 and Section VI Post-Selection Process, as well as in Attachment A in Section II Scope of Services.

- a. If the selected consultant submits the initial draft Plan of Study to the FAA for review within 10 calendar days of notification of their selection, the Port Authority assumes that 2 weeks total is sufficient time to resolve open issues between the FAA and consultant. Please provide input on this timeframe for the formulation and agreement on the draft Plan of Study.
9. What FAA grant and program assurances, if any, should be attached to the agreement for the solicitation?
  10. Who owns the data and package resulting from the preparations leading up to the Final EIS?
  11. Describe the expected role of the FAA in the invoicing process, specifically in terms of validating work performed by the consultant and communicating that to the Port Authority?
    - a. Does the FAA envision that the invoices will relate only to labor/hourly rates, or will there be payments based upon deliverables/milestones?
  12. Does the FAA expect the Port Authority's solicitation and agreement to include the FAA required contract clauses? If the FAA expects the agreement to include federal terms, which ones?
  13. If the MOU is finalized prior to consultant selection, could the MOU be either attached to the RFP or provided after the issuance of the RFP, as information that will clarify the roles and responsibilities of the parties?
  14. What procedures will be in place in to best protect the integrity of the selection process, considering that there are multiple parties involved?

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THE PORT AUTHORITY OF NY & NJ

DATE

**SUBJECT: REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (“LGA”) ACCESS IMPROVEMENT PROJECT (RFP# \*\*\*\*\*)**

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the “Authority”) is seeking proposals in response to this Request for Proposals (“RFP”) for a Consultant to provide the subject services. The services will require the preparation of an environmental impact statement (“EIS”) for the LGA Access Improvement Project (the “Project”). The Federal Aviation Administration (“FAA”) and the Authority, as the Airport Sponsor, will work together to prepare the EIS. The Authority is issuing this RFP, and both the Authority and FAA will participate in the process to evaluate proposals. The selected firm (the “Consultant”) will work directly with the FAA for the performance of the services that will culminate in the development of the EIS. The Authority and the Consultant will enter into an agreement resulting from this RFP, for the performance of the Consultant’s services for the FAA. The Authority will be responsible for overall contract administration and payment for the Consultant’s services as accepted by the FAA, while the Consultant reports to the FAA for direction on development of the EIS.

The general scope of services to be performed by you is set forth in Attachment A to the Authority’s agreement (the “Agreement”) included herewith. Within ten (10) calendar days of notice of selection, and prior to agreement execution, a detailed scope of work shall be drafted by the selected Consultant and provided to the FAA. This detailed scope of work shall serve as a Plan of Study for the assignment. You should carefully review this Agreement as it is the form of agreement that the Authority intends that you sign in the event of acceptance of your Proposal and forms the basis for the submission of proposals. The Port Authority’s intention is to have the services begin no later than the second quarter of 2018.

Commented [S11]: FYI to the FAA: sample agreement not being provided for review at this time, as it will differ from the Port Authority’s template agreement, to include terms set forth in the MOU btw the PA and FAA

**I. PROPOSER REQUIREMENTS**

~~The Authority will consider proposals only from firms (“Proposer(s)”) with an active (i.e. not expired) agreement with another governmental agency under which the Proposer provides environmental review services involving the preparation of an EIS or environmental assessment (“EA”) for rail and/or airport projects. Proposers that do not meet this requirement shall not be further considered. A determination that a Proposer meets this requirement is no assurance that the Proposer will be selected for performance of the subject services.~~

~~Hourly rates proposed in your response hereto shall not exceed the published government agreement rates. However, the Authority encourages Proposers to provide reductions to said rates, as appropriate.~~



**I. PROPOSAL FORMAT REQUIREMENTS:**

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

- A. To be acceptable, this Proposal shall be no more than 20 single sided pages or 10 double sided pages, using 12 point or greater font size, not including resumes. Each resume shall be a maximum of two-pages single-sided or one-page double-sided, using 12 point or greater font size. The page limit pertains only to Letters E, F and H in Section III, below. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with "Your Firm Name", and **RFP Number \*\*\*\*\*** clearly indicated on the cover.
- B. Separate each section of the Proposal with a tab divider that is labeled in accordance with the letter of the requirements specified below in Section III.
- C. All proposals must be delivered in sealed envelopes and/or packages. Address the Proposal to: The Port Authority of New York and New Jersey, 4 World Trade Center, 21<sup>st</sup> Floor, New York, NY 10007, Attention: RFP Custodian.
- D. You shall submit the Proposal as follows:
  - 1. **In one envelope, the Technical Proposal: one (1) reproducible original hard copy** containing original signatures along with **seven (7) compact disc copies of your technical proposal** for review. USB Flash Drives will not be accepted. In case of conflict, the reproducible original of the technical proposal shall take precedence over material on the CDs.

Commented [SJ2]: FAA: how many copies (for us and FAA)?

The Technical Proposal shall include all information requested in the "Technical Proposal" subsection of Section III hereof. **No pricing-related information shall be provided in the original and CD copies of the Technical Proposal.**

- 2. **In a separately sealed envelope, the Pricing Information: one (1) reproducible original hard copy** containing original signatures along with **seven (7) compact disc copies of your pricing information** for review. This envelope shall contain only the information requested under the "Pricing Information" subsection of Section III hereof.
- E. In each submission to the Authority, including any return address label, information on the compact disc and information on the reproducible original and copies of the proposal, the Proposer shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure to comply with this requirement may lead to delays in contract award and contract payments, which shall be the responsibility of the Proposer.
- F. Your Proposal should be forwarded in sufficient time so that the Authority receives it **no later than 2:00 p.m. on <DATE>**. **The outermost cover of your submittal must be labeled to include the RFP Number and title as indicated in the "Subject" above.** The Authority assumes no responsibility for delays caused by any delivery services.

Commented [SJ3]: FAA: how many copies (for us and FAA)?

If your Proposal is to be hand-delivered, note that only individuals with proper identification (e.g. photo identification) will be permitted access to the Authority's offices. Individuals without proper identification will be turned away and their packages not accepted.

There is extensive security at the World Trade Center Site. You must present a valid government-issued photo ID to enter 4 WTC. Individuals without packages or carrying

small packages, envelopes or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All packages, envelopes and boxes may be subject to additional security screening. There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited. Express carrier deliveries by commercial vehicles will only be made via vendors approved by Silverstein Properties, the WTC Property Manager, through the Vehicle Security Center (VSC). Please note that use of the U.S. Mail does not guarantee delivery to Authority offices by the below listed due date for submittals. Proposers using the U.S. Mail are advised to allow sufficient delivery time to ensure timely receipt of their proposals. Presently, UPS is the only delivery vendor with approved recurring delivery times. UPS makes deliveries to 4 WTC around 9:30 a.m. each day. Please plan your submission accordingly. As additional express carriers may be approved by Silverstein Properties and scheduled for recurring delivery times with the VSC, this information may be updated. Under certain circumstances, a solicitation may allow for a commercial vehicle to be approved to make a delivery in accordance with the VSC procedures. If applicable, the specific solicitation document will include that information. The Port Authority assumes no responsibility for delays, including, but not limited to, delays caused by any delivery services, building access procedures, or security requirements.

**III. SUBMISSION REQUIREMENTS:**

To respond to this RFP, provide the following information:

**1) TECHNICAL PROPOSAL:**

- A. In the front of your Technical Proposal, a copy of Attachment B (Agreement on Terms of Discussion) signed by an officer of your company. If proposing as a joint venture, each member of the joint venture must sign a copy of Attachment B.
- B. Complete a copy of Attachment C (Company Profile).
- C. Transmittal Letter

~~Submit the transmittal letter, on letterhead, signed by an authorized representative, demonstrating compliance with the aforementioned Proposer Requirements (Section I hereof). For active agreements with governmental agencies, include the name of the organization, a contact person and current telephone number and email address for verification purposes.~~

Include a statement indicating whether the Consultant is proposing as a single entity, or as a joint venture.

- 1. If a common-law joint venture submits a proposal, all participants in the joint venture shall be bound jointly and severally and each participant shall execute the proposal. If a single entity proposer cannot demonstrate that it meets all of the referenced qualifications, then the single entity proposer may, with others, form a joint venture and request that the joint venture be deemed to be the Proposer (i.e. members of the joint venture may meet the qualification requirement collectively).
- 2. If the Proposer is a joint venture, the joint venture's Proposal shall contain an executed teaming agreement or, alternatively, if the entities making up the joint venture proposer

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have not executed a teaming agreement, the joint venture's proposal shall contain a summary of key terms of the anticipated agreement. If the joint venture proposer is a consortium, partnership or any other form of a joint venture, or an association that is not a legal entity, the proposal shall include a letter signed by each member indicating a willingness to accept joint and several liability until the point at which a corporation, limited liability company or other form of legal entity is formed for the purposes of undertaking the Agreement.

- D. Organization and Management: Provide an organizational chart and narrative description of the administrative structure proposed for managing this project. Outline major responsibilities and areas of expertise.

The overall project manager and key staff members (both prime firm and subconsultants) must be identified and resumes provided. The project manager is considered to be the single most important Consultant asset, and is expected to maintain responsibility for the project through completion of the EIS required by the scope of services (Attachment A).

Provide a list of projects that the proposed project manager is responsible for and expected completion dates. Resumes of firm principals are not required unless they are proposed as active, integral members of the Consultant team. Principals should, however, be listed on the organizational diagram in relation to the Consultant team. This section should also include the location of each firm and key staff members.

In addition, if the proposal includes a prime firm and subconsultants, demonstration of relevant past working experience as a team is desired. The relevance of past working experience will be prioritized based on the following: 1) experience on FAA-directed environmental projects; 2) experience on other airport projects not directed by the FAA; 3) experience on environmental projects for other modes under the umbrella of the Department of Transportation; and 4) experience on environmental projects for other federal agencies.

- E. Project Experience: Provide summaries of experience for past projects by prime consultant and team members (if applicable) that demonstrate experience and ability to undertake and complete an EIS specifically for airport projects and transit systems similar to the proposed project. Do not include projects for which key project personnel are no longer employed by the firm. List the names of key employees with each project. Projects for which individuals gained experience during previous employment should be indicated in this section.

For each qualifying project, include the following information in tabular form: project name, location, client, total contract amount, principal-in-charge, day-to-day technical project manager, key design staff, original estimated schedule and actual schedule of completion (defined for an EIS as Notice of Intent to Record of Decision and for an EA as Notice to Proceed to acceptance of the Final EA) client reference (name, position and phone number) and brief narrative description of the project.

- F. Project Approach/Schedule: Demonstrate a thorough understanding of the FAA EIS process. Identify methodologies and approaches that would be utilized to analyze and

resolve environmental issues. Describe the proposed public scoping and public hearing process, work products, detailed project schedule, along with the responsibilities of each of the proposed staff/team members and subconsultants and their anticipated percentage of each individual's time working on the project. Additionally, include a description of the proposed process for coordinating with FAA, the Authority, subconsultants work efforts, and general public. A description of the team's understanding of any unique issues associated with the preparation of the EIS at ~~the~~ LGA should be included. Describe procedures to be followed to adhere to the goal of completion of the issuance by the FAA of a Record of Decision ("ROD") and completion of the National Environmental Policy Act ("NEPA") review within a 12-month period from the Notice-to-Proceed ("NTP").

- G. Description of Proposer/Team: Provide a general description of the Proposer, including services offered, number of employees, office location, years in business, etc. Indicate aviation and rail-related EIS and EA work to which the firm is currently committed. Include similar descriptions for each sub-consultant.
- H. QA/QC: Describe quality assurance and quality control procedures. Demonstrate experience in successfully implementing quality control programs on comparable projects.
- I. References: provide a total of five (5) references of similar projects. For each reference include contact name, title, project name and location, mailing address, phone number, fax number and e-mail address.
- J. Your attention is directed to Paragraph **XX** of the Agreement in which the Authority has stated the Minority Business Enterprises (MBEs) and Women Business Enterprises (WBE) goals for participation in this program. For this Agreement, the Authority has set a targeted goal of thirty percent (30%) combined participation by qualified and certified MBEs and WBEs. Submit details on how you intend to meet these goals. A listing of certified MBE/WBE firms is available at <http://www.panynj.gov/business-opportunities/sd-mini-profile.html>.

The Proposer shall include its MBE/WBE Participation Plan (Form PA 3760C) with its Proposal, to be reviewed and approved by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

The MBE/WBE Plan submitted by the Proposer to the Authority shall contain, at a minimum, the following:

- Identification of MBE/WBEs: Provide the names and addresses of all MBE/WBEs included in the Plan. If none are identified, describe the process for selecting participant firms in order to achieve the good faith goals under this Contract.
- Level of Participation: Indicate the percentage of MBE/WBE participation expected to be achieved with the arrangement described in the Plan.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

All MBE/WBE subconsultants listed on the MBE/WBE Participation Plan must be certified by the Authority in order for the Consultant to receive credit toward the

MBE/WBE goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/supplier-diversity.html> to search for MBE/WBEs by a particular commodity or service. The Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to the MBE/WBE Participation Plan must be submitted via a modified MBE/WBE Participation Plan to the Manager for review and approval by OBD CR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use form PA3760D. The Consultant shall not make changes to its approved MBE/WBE Participation Plan or substitute MBE/WBE subconsultants or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performance of work designated for a subconsultant by the Consultant's own forces, shall be deemed a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored by the Authority throughout the duration of the Agreement.

The Consultant shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments in the form of the MBE/WBE Participation Report, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subconsultant and supplier actually involved in the Agreement, a description of the work performed and/or the product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information as it may assist the Project Manager in determining the Consultant's compliance with the foregoing provisions.

**MBE/WBE Conditions of Participation**

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

1. Commercially Useful Function: An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Consultant and the MBE/WBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as a MBE/WBE, the Consultant will receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

2. Work Force: The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Contractor, other

Subcontractors on the Contract, or their Affiliates. This does not preclude the employment by the MBE/WBE of an individual that has been previously employed by another firm involved in the Contract, provided that the individual was independently recruited by the MBE/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.

3. Supervision: All Work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Consultant, other subconsultants on the agreement, or their Affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the Work.

**Counting MBE/WBE Participation**

The value of the Work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. Subconsultants: One hundred percent (100%) of the value of the Work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such Work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Consultant, other subconsultants or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE subconsultant is itself a MBE/WBE. Work that a MBE/WBE subcontracts to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. Material Suppliers: Sixty percent (60%) of the expenditure to a MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. Broker's/Manufacturer's Representatives: One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees or commissions customarily allowed for similar services. The costs of materials and supplies themselves will not be counted.

4. Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work will be counted toward the MBE/WBE goal, provided the fee is

reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces. Contact OBDCR at (201) 395-3958 for more information about requirements for such joint ventures.

K. Provide a complete list of your firm's affiliates.

L. If the Proposer or any employee, agent or subcontractor of the Proposer may have, or may give the appearance of a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict. The Authority reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any source could create, or give the appearance of, a conflict of interest. The Authority's determination regarding any question(s) of conflict of interest shall be final.

Proposer is required to disclose all work performed at LaGuardia Airport for a period of three (3) years prior to the date of submission. Proposer shall include work performed by all affiliates, and provide, to the extent applicable, start and end dates of each engagement, the name of the stakeholder or entity for which the Proposer performed work, and a short description of the nature of the work or project.

Proposers are directed to paragraph **XX** of the attached Agreement. Proposers are further advised that under this Agreement, firms must provide, written notice to the Port Authority of any existing or potential conflict of interest the firm(s) may have in the performance of Services under this Agreement.

Furthermore, Proposers should ensure that they are familiar with FAA regulations and policy on conflicts of interest of EIS consultants. Pursuant to 40 C.F.R. Part 1506.5(c), the selected Consultant and any subconsultants performing the work shall certify that they have not entered into and will not enter into during the lifetime of the EIS preparation any agreement affording the Consultant and any subconsultants with any direct or indirect financial interest in the planning, design, construction or operation of the project that is the subject of the EIS except the preparation of the EIS. Prior to beginning work on the EIS, the Consultant and any Subconsultants shall sign a "Disclosure Statement" per the requirements of 40 C.F.R. 1506.5(c) and FAA Orders 1050.1F and 5050.4B, specifying they have no financial or other interest in the outcome of the project.

M. **Code of Ethics for Port Authority Vendors:** The Proposer's attention is directed to the Port Authority's "Code of Ethics for Port Authority Vendors." Vendors must certify in writing that they will comply with every aspect of this Code. The Proposer should submit an executed Compliance Certification with their Proposal. The Compliance Certification, once executed, will be a material and integral part of any Agreement resulting from this solicitation. The Code of Ethics and the Compliance Certification can be found on the

Authority's website at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

N. The selected Consultant(s) shall comply with the requirements of the Agreement. You should therefore not make any changes in this Agreement, nor restate any of its provisions in your Proposal or supporting material. However, if you have any specific exceptions, such exceptions should be set forth in a separate letter included with your response to this RFP. The Authority is under no obligation to entertain or accept any such specific exceptions. Exceptions raised at a time subsequent to proposal submission will not be accepted. The scope of tasks to be performed by you is set forth in Attachment A to the Authority's agreement.

2) **PRICING INFORMATION:** In a separately sealed envelope marked "Pricing Information," include all proposed pricing-related information for the Proposer (prime consultant) and proposed subconsultants. ~~Such information shall be consistent with the rates contained in the relevant government agreement, and shall include billing rates for partners or principals and actual hourly rates and multipliers for all other billable employees.~~ Compensation for premium pay (i.e. holidays, shift differentials, regular days, weekends and night work or union required payments) must be included and detailed.

### **III. SELECTION PROCESS:**

The qualifications based selection shall take into consideration the technical criteria conveyed in this section (listed in order of importance). After consideration of these factors, the Authority may enter into negotiations with the firm(s) deemed best qualified, in terms of the forgoing Technical Proposal criteria, to perform the required services.

The Authority will review proposals to determine if they satisfy the requirements of this RFP, including adherence to the RFP's specified format and the provision of all required documentation. Proposals will then be reviewed according to a two-phased evaluation process. The **first phase of the evaluation process** will involve Authority and FAA staff, and will include a detailed review and evaluation of the proposals according to the following criteria:

1. Organization and Management;
2. Project Experience;
3. Project Approach/Schedule;
4. Description of Proposer/Team;
5. QA/QC;
6. References.

Only those proposals receiving the highest scores in the first phase of the evaluation process will be evaluated in the **second phase of the evaluation process**.

The **second phase of the evaluation** will involve staff from the Authority and FAA. Only FAA staff will score proposals in the second phase of the evaluation. The second phase of the evaluation commences with interviews of the highest-rated proposers from the first phase of evaluation. After the last interview, FAA staff will score the proposals and recommend that the Port Authority retain the highest-rated proposer from the second phase of the evaluation

**Commented [SJ4]:** For discussion with FAA: What about compliance with FAA ts and cs? The MOU seems to indicate that the agreement has to contain terms as if it was a federally funded agreement

MOU includes disclosure statements and requirements on how to interact with the PA and FAA-at what point are those given the proposed consultants

**Commented [SJ5]:** Assuming this will remain b/c at the time of solicitation we will have a draft agreement that incorporates everything that is required – any FAA terms, disclosure requirement

**Commented [SJ6]:** FAA: Let's discuss this and following sections

**Commented [SJ7]:** For discussion with FAA

**Commented [SJ8]:** Subject to discussion with the FAA In short, what is the expected level of participation, if any, by the FAA in the first phase of the evaluation?



for the performance of the agreement resulting from this RFP. A notice of selection will be transmitted to the selected Proposer, prior to execution of the Agreement.

**VI. POST-SELECTION PROCESS (prior to agreement execution):**

Within ten (10) calendar days of notice of selection, and prior to agreement execution, a detailed scope of work shall be drafted by the selected Consultant and provided to the FAA. The Authority will compensate the Consultant for its efforts in developing the detailed scope of work at the rates provided in the Consultant's Pricing Information, as accepted by the Authority.

After this detailed scope of work has been finalized and accepted by the FAA, it shall serve as the Plan of Study for the assignment. The Authority will then negotiate a cost proposal with the Consultant for the services to be provided in accordance with the Plan of Study. The basis for negotiations shall be the billing rates/multipliers provided in the Consultant's Pricing Information. During price negotiations, the Authority will not entertain requests from the Consultant to increase the billing rates and multipliers submitted within its original pricing information.

**VII. ADDITIONAL INFORMATION:**

If your firm is selected for performance of the subject services, the agreement you will be asked to sign will include clauses entitled "Certification of No Investigation (Criminal Or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure Of Other Information" And "Non-Collusive Proposing, And Code Of Ethics Certification; Certification Of No Solicitation Based On Commission, Percentage, Brokerage, Contingent Or Other Fees." By submitting a proposal, the Consultant shall be deemed to have made the certifications contained therein unless said Consultant submits a statement with its proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your proposal clearly marked "CERTIFICATION STATEMENT."

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

Prior to commencing any work associated with this Project, the selected consultant and any subconsultants shall submit a Disclosure Statement, provided by the FAA.

Proposers are also advised that additional vendor information, including but not limited to forms, documents and other related information, may be found on the Authority website at [www.panynj.gov](http://www.panynj.gov) or <http://www.panynj.gov/business-opportunities/become-vendor.html>.

After a review of all proposals received, the Authority will forward two (2) copies of the Agreement and Attachment A thereto to the selected firm(s), which shall sign and return both

Commented [SJ9]: Depending upon the answer to the q re: do we ONLY need this from the selected firm OR from ALL proposers, I think we may want to move this to Submission Requirements, if we can get our hands on the document and include it (or a link) Plus any OTHER documents FAA may require to be submitted with the Proposal

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copies. Signature shall be by a corporate officer. The return of one copy executed by the Authority will effectuate the Agreement.

Should you have any questions, please contact James Summerville, Solicitation Manager (██████████) and Krystina Papasavvas (██████████). All such correspondence must have your name, title, company, mailing address, telephone number, and state "RFP \*\*\*\*\*" in the subject line. The Authority must receive all questions no later than 4:00 P.M. EST, seven (7) working days before the RFP due date. Neither Mr. Summerville nor Ms. Papasavvas, nor any other employee of the Authority is authorized to interpret the provisions of this RFP or accompanying documents or give additional information as to their requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned and such writing shall form a part of this RFP, or the accompanying documents, as appropriate. For RFP updates and Addenda, if any, Proposers are encouraged to access, and monitor, the Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html>. You should, therefore, monitor the advertisement on said website, as appropriate, to ensure you are aware of changes, if any.

Proposal preparation costs are not reimbursable by the Authority. The Authority shall have no obligation to a firm except under a duly authorized agreement executed by the Authority.

No rights accrue to any Proposer except under a duly authorized agreement for performance of the specified services.

The Authority reserves the right, in its sole and absolute discretion, to reject all proposals, to undertake discussions and modifications with one or more Consultants, to waive defects in proposals, and to proceed with that Proposal or modified Proposal, if any, which in its judgment will, under all the circumstances, best serve the public interest.

Sincerely,

David Gutiérrez, CPPO  
Assistant Director  
Procurement Department

Attachments

**From:** [REDACTED]  
**To:** [Lamond, Kathryn](#); [REDACTED]  
**Cc:** [Tabafunda, Faith](#); [DiScenna, Matthew](#); [Clark, Patty](#); [Rogak, Elizabeth](#); [Herndon, Jane](#); [Cohen, Michelle](#); [Bassis, Luke](#); [Papasavvas, Krystina](#); [Summerville, James](#); [REDACTED]; [Drew Brooks](#); [REDACTED]; [REDACTED]; [Clark, Patty](#)  
**Subject:** RE: LaGuardia Airport Access Improvement Project  
**Date:** Tuesday, February 06, 2018 8:18:11 AM  
**Attachments:** [image001.jpg](#)

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We are available to meet on Thursday 2/8 at 1pm. I have reserved the NYADO Conference Room (111). Would you be able to send out the meeting invitation with the relevant documents attached?

I will also need a list of who will be attending from the Port for security.

## Marie C. Jenet

Environmental Specialist  
Federal Aviation Administration  
New York Airports District Office  
159-30 Rockaway Blvd, Suite 111  
Jamaica, New York 11434

[REDACTED]  
[REDACTED]

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**From:** Lamond, Kathryn [mailto:[REDACTED]]  
**Sent:** Monday, February 05, 2018 1:18 PM  
**To:** Martinez, Evelyn (FAA) <[REDACTED]>  
**Cc:** Tabafunda, Faith <[REDACTED]> DiScenna, Matthew <[REDACTED]>  
[REDACTED] Rogak, Elizabeth <[REDACTED]> Herndon, Jane  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Bassis, Luke  
<[REDACTED]> Papasavvas, Krystina <[REDACTED]> Summerville, James  
<[REDACTED]> Urlass, Steve (FAA) <[REDACTED]> Brooks, Andrew (FAA)  
<[REDACTED]> Sanchez, David (FAA) <[REDACTED]> McCarthy, Mary M  
(FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]> Henn, Patricia (FAA)  
<[REDACTED]> Wells, Patrick J (FAA) <[REDACTED]> Gill, Sukhbir (FAA)  
<[REDACTED]> Jenet, Marie (FAA) <[REDACTED]> [REDACTED]  
**Subject:** RE: LaGuardia Airport Access Improvement Project

Evelyn,

Thank you for your review of our proposed procurement methodology and your associated response. We have reviewed your concerns with the "piggybacking" procurement approach and have decided to move forward with an open RFP solicitation process as you suggested.

Attached please find draft solicitation documents and a list of questions for discussion. The attached documents are materially the same as the documents we provided in the email

dated 1/22, but have been slightly modified to reflect the open solicitation process. These modifications are reflected in track changes.

We look forward to discussing the procurement process with you further and agree that an in-person meeting would be best. Our team is available to meet at your office anytime on the following dates:

- Thursday February 8<sup>th</sup>
- Friday February 9<sup>th</sup>
- Monday February 12<sup>th</sup>

Please let me know if any of those dates work for you and your team. Also please let us know if you have any questions in advance of the meeting.

Thanks,  
Katie

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**From:** [redacted] [\[mailto:\[redacted\]\]](#)  
**Sent:** Friday, February 02, 2018 3:37 PM  
**To:** Lamond, Kathryn <[redacted]> Clark, Patty <[redacted]>  
**Cc:** Tabafunda, Faith <[redacted]> DiScenna, Matthew <[redacted]>  
Clark, Patty <[redacted]> Rogak, Elizabeth <[redacted]> Herndon, Jane  
<[redacted]> Cohen, Michelle <[redacted]> Bassis, Luke  
<[redacted]> Papasavvas, Krystina <[redacted]> Summerville, James  
<[redacted]> [redacted] Drew Brooks <[redacted]>  
[redacted] [redacted] [redacted] [redacted]  
[redacted] [redacted] [redacted]

**Subject:** RE: LaGuardia Airport Access Improvement Project

Good afternoon Patty and Katie,

Thank you for the attached narrative and the request to meet to discuss the draft RFP Letter and Attachment A for the LGA AirTrain project.

We have worked diligently along with our legal office to review and provide you an expedited position on the matter. Please review the attached and let's plan on scheduling a meeting to discuss next steps. I recommend we meet in person if possible. Please let me know if I can facilitate scheduling the meeting.

Thank you and have a great weekend.

Evelyn

cid:image002.jpg@01D35494.3417E2F0



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**From:** Lamond, Kathryn [<mailto:> [REDACTED]]  
**Sent:** Friday, January 12, 2018 1:02 PM  
**To:** Urlass, Steve (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]>  
Brooks, Andrew (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]>  
McCarthy, Mary M (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]>  
Henn, Patricia (FAA) <[REDACTED]> Wells, Patrick J (FAA) <[REDACTED]> Gill,  
Sukhbir (FAA) <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
**Cc:** Tabafunda, Faith <[REDACTED]> DiScenna, Matthew <[REDACTED]>  
[REDACTED] Rogak, Elizabeth <[REDACTED]> Herndon, Jane  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Bassis, Luke  
<[REDACTED]> Papisavvas, Krystina <[REDACTED]> Summerville, James  
<[REDACTED]>  
**Subject:** LaGuardia Airport Access Improvement Project

All,

Thank you again for participating on the call Monday to discuss the proposed procurement process for the LaGuardia Airport Access Improvement Project EIS preparation. We have incorporated your initial feedback from the call and have expanded the list to include eight potential firms. The attached document outlines the procurement method we use at the Port Authority, known as “piggypacking”, and describes the process we used to develop the list of firms which will receive a request for proposal. Please let us know if you have any additional questions on the procurement approach.

In the near future, we anticipate providing you with a draft solicitation package for your review.

Please let us know if you have any comments or questions.

Thanks,  
Katie

Kathryn Lamond, P.E.  
Environmental and Sustainability Specialist  
PANYNJ - Aviation Department  
4 World Trade Center, 150 Greenwich St.  
New York, NY 10007

██████████ (office)

██████████ (cell)

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

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**From:** [REDACTED]  
**To:** [Lamond, Kathryn](#); [Tabafunda, Faith](#); [DiScenna, Matthew](#); [Clark, Patty](#); [Rogak, Elizabeth](#); [Herndon, Jane](#); [Cohen, Michelle](#); [Bassis, Luke](#); [Papasavvas, Krystina](#); [Summerville, James](#); [REDACTED]; [Drew Brooks](#);  
[REDACTED]  
**Subject:** RE: LaGuardia Airport Access Improvement Project  
**Date:** Wednesday, February 07, 2018 11:49:48 AM  
**Attachments:** [2018-02-08 Draft Meeting Agenda.docx](#)

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Attached is an agenda for tomorrow's meeting

## Marie C. Jenet

Environmental Specialist  
Federal Aviation Administration  
New York Airports District Office  
159-30 Rockaway Blvd, Suite 111  
Jamaica, New York 11434  
[REDACTED]  
[REDACTED]

-----Original Appointment-----

**From:** Lamond, Kathryn [mailto:[REDACTED]]  
**Sent:** Tuesday, February 06, 2018 11:01 AM  
**To:** Lamond, Kathryn; Tabafunda, Faith; DiScenna, Matthew; [REDACTED] Rogak, Elizabeth; Herndon, Jane; Cohen, Michelle; Bassis, Luke; Papasavvas, Krystina; Summerville, James; Urllass, Steve (FAA); Brooks, Andrew (FAA); Sanchez, David (FAA); McCarthy, Mary M (FAA); Doyle, John (FAA); Henn, Patricia (FAA); Wells, Patrick J (FAA); Gill, Sukhbir (FAA); Jenet, Marie (FAA); Martinez, Evelyn (FAA)  
**Subject:** LaGuardia Airport Access Improvement Project  
**When:** Thursday, February 08, 2018 1:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** NYADO Conf Rm 111

All,

The purpose of the meeting will be to review the attached draft procurement documents, resolve outstanding questions, and finalize next steps.

Thanks,  
Katie

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

**From:** [Lamond, Kathryn](#)  
**To:** [Tabafunda, Faith](#); [DiScenna, Matthew](#); [Clark, Patty](#); [Rogak, Elizabeth](#); [Herndon, Jane](#); [Cohen, Michelle](#); [Bassis, Luke](#); [Papasavvas, Krystina](#); [Summerville, James](#); [REDACTED]; [Drew Brooks](#); [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** LaGuardia Airport Access Improvement Project  
**Attachments:** [Attachment A Draft\\_2018-02-05.docx](#)  
[Draft Questions to FAA\\_2018-02-05.docx](#)  
[RFP Letter Draft\\_2018-02-05.docx](#)  
[2018-02-08 Draft Meeting Agenda.docx](#)

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Please find a call-in number for use if needed. I have also attached a copy of the draft meeting agenda for your convenience.

All,

The purpose of the meeting will be to review the attached draft procurement documents, resolve outstanding questions, and finalize next steps.

Thanks,  
Katie



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ATTACHMENT A

**PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (“LGA”) ACCESS IMPROVEMENT PROJECT**

**I. BACKGROUND**

*General:*

For background with respect to The Port Authority of New York and New Jersey (the “Authority” or “Sponsor”) see [www.panynj.gov](http://www.panynj.gov). Additionally, the most recent electronic version of the Authority’s Annual Report is available at <http://www.panynj.gov/corporate-information/annual-reports.html>.

*Project Description:*

The Authority is proposing to construct a new automated people mover (“APM”) AirTrain system to provide a fast, convenient, and reliable transit alternative for air passenger and employee access to LaGuardia Airport (“LGA” or the “Airport”) and a relocated employee parking facility, as well as to enhance on-airport connectivity. The goal of this proposed project, herein referred to as the LaGuardia Airport Access Improvement Project (the “Project”), is to provide connections between the Airport and Long Island Rail Road (“LIRR”) and Metropolitan Transportation Authority’s (“MTA”) New York City Transit (“NYCT”) stations, as well as to construct an employee parking facility. Further, the LaGuardia Airport Access Improvement Project shall not preclude the potential future expansion of support facilities beyond the existing airport boundary. The Federal actions associated with the Authority’s proposed Project are decisions by the Federal Aviation Administration (“FAA”) on an updated Airport Layout Plan (“ALP”) and for the use of Passenger Facility Charge (“PFC”) funding, should the Authority pursue imposing and using PFC funding for the proposed Project.

The Authority’s preferred alternative is for the AirTrain to operate between the Airport and a transfer station at Willets Point. The proposed AirTrain system would include two on-airport stations and a terminus station at Willets Point providing connections to the LIRR Port Washington Branch and the Willets Point-Mets Station of the MTA NYCT Flushing No. 7 subway line. To achieve the goals for the proposed Project, an employee parking facility would be located at Willets Point. In addition to providing a connection to the LIRR and NYCT stations at the Willets Point terminus station, the proposed AirTrain would serve as an on-airport transit system that would facilitate transfers between airline terminals and provide connections to passenger parking. The proposed Project includes associated facilities and infrastructure (stations, guideway, maintenance/control facility, etc.) as well as the systems (vehicles, train control, power distribution system, etc.) for the AirTrain.

The Authority is seeking to accelerate the environmental review schedule for the proposed Project, with the goal of the FAA completing the issuance of a Record of Decision (“ROD”) and completing the National Environmental Policy Act (“NEPA”) review within a 12-month period from the Notice-to-Proceed (“NTP”) for services hereunder. In the event that the

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proposed Project is included on the Federal Permitting Dashboard, the Consultant shall comply with the associated processes and procedures.

### *General Description of Consultant Services:*

The Authority is seeking a Consultant to provide professional services to assist the FAA in preparing an Environmental Impact Statement (“EIS”) to assess and disclose the potential environmental impacts of the construction of the Authority’s proposed Project and any reasonable alternatives in a manner that complies with all applicable federal, state and local environmental laws and regulations. The FAA is the lead Federal agency for preparing the EIS in accordance with the requirements of NEPA (42 U.S.C. 4321 et. seq.), the Council on Environmental Quality (“CEQ”) regulations (40 C.F.R. Parts 1500-1508), and appropriate U.S. Department of Transportation and FAA environmental orders. As stated above, the Federal actions associated with the Authority’s proposed Project is a decision by FAA on an updated ALP, and should the Authority pursue imposing and using PFC funding for its proposed Project, a decision by FAA regarding use of such PFC funds.

The Consultant shall be responsible to the FAA for the preparation of an EIS associated with the Authority’s proposed Project. The FAA shall direct the services provided by the Consultant hereunder. Unless otherwise directed by the FAA, the Consultant shall not interact with the Authority in the performance of the services summarized in this Attachment A. The Consultant’s interaction with the Authority shall be related only to matters of contract administration, invoicing and payment for services provided by the Consultant to the FAA, as accepted by the FAA. The Consultant shall serve as the independent third party assisting the FAA with conducting the EIS process in an efficient and cost-effective manner, while maintaining a high degree of credibility and validity in the production of all EIS deliverables.

## **II. SCOPE OF SERVICES**

Prior to agreement execution, and within ten (10) calendar days of notice of selection, the Consultant shall develop and submit a detailed scope of work for the entire assignment. The detailed scope of work is hereinafter referred to as the Plan of Study, which is subject to FAA approval. The Plan of Study will include detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated person-hours required for completion of each aspect, the schedule for performing each aspect, and a description of the internal and external review procedures to assure quality control. The Plan of Study will also include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the environmental data and analyses and the development and preparation of the EIS. Finally, the Plan of Study must comply with all applicable FAA regulations governing the preparation of EISs and must include such additional analytical requirements as provided by the FAA prior to completion. In addition, in producing or revising the Plan of Study, the Consultant may consider as appropriate any relevant submissions made by the Port Authority, with any such submissions provided concurrently to the FAA and the Consultant.

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The EIS is to be accomplished in accordance with FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, Order 5050.4B, *NEPA Implementing Instructions for Airport Actions*, and associated Desk References (or the current version at time of contract award). Specific environmental issues to be included in the EIS may include, but are not limited to:

- a) Air Quality
- b) Biological Resources
- c) Climate
- d) Coastal Resources
- e) Department of Transportation Act, Section 4(f)
- f) Farmlands
- g) Hazardous Materials, Solid Waste, and Pollution Prevention
- h) Historical, Architectural, Archaeological, and Cultural Resources
- i) Land Use
- j) Natural Resources and Energy Supply
- k) Noise and Noise Compatible Land Use
- l) Socioeconomic, Environmental Justice, and Children's Environmental Health and Safety Risks
- m) Visual Effects
- n) Water Resources (Wetlands, Floodplains, Surface Waters, Groundwater, Wild and Scenic Rivers)
- o) Cumulative Impacts
- p) Irreversible and Irrecoverable Commitment of Resources

It is anticipated that the scope of work resulting from the Plan of Study may require the Consultant to perform the following services, at minimum:

1. Facilitate and conduct meetings necessary for the preparation and development of the EIS.
2. Provide project management duties, including but not limited to preparing reports, updating the Plan of Study as necessary, taking meeting minutes, coordinating activities between all stakeholders, schedule monitoring, preparing presentation materials, creating and maintaining the project file, etc.
3. Review project-related documents necessary for the development of the EIS.
4. Assist the FAA to fulfill its lead Federal agency role and enhance effective NEPA scoping to ensure early in the process that the EIS addresses key issues of concern to agencies and the public.
5. Develop the Purpose and Need Statement, to be utilized for the consideration and comparative evaluation of alternatives to the Sponsor's proposed Project. The Purpose should outline the goals and objectives that the Sponsor's proposed Project should achieve, and the Need should provide the data to support the Purpose.

## DRAFT AND DELIBERATIVE

6. Prepare an alternatives analysis addressing a range of reasonable alternatives to the Sponsor's proposed Project. It is expected that the "No Action" and the Sponsor's proposed Project will be alternatives. The Consultant will identify any other potential alternatives and conduct a screening of alternatives, as appropriate.
7. Describe existing environmental resources and conditions that the Sponsor's proposed Project, any reasonable alternatives, and No Action would affect.
8. Describe impacts and environmental consequences of the Sponsor's proposed Project, any reasonable alternatives, and No Action that were previously identified for further evaluation.
9. Prepare draft and final versions of the EIS. It is anticipated that the draft and final version should include the following elements, at minimum:
  - a. Cover sheet
  - b. Summary
  - c. Table of contents
  - d. Purpose and need
  - e. Alternatives
  - f. Affected environment
  - g. Environmental consequences
  - h. Cumulative impacts
  - i. Mitigation
  - j. Public and agency outreach
  - k. List of preparers
  - l. List of EIS recipients
  - m. Index
  - n. Appendices
  - o. Incomplete or unavailable information
10. Solicit and facilitate public and stakeholder involvement throughout the EIS process in accordance with NEPA and relevant special purpose laws.
11. Ensure that the EIS documentation includes relevant information required for permitting applications and processes, as required.

All work prepared under this Agreement shall be delivered to the FAA in printed format and searchable .pdf files along with components associated with each item, such as data files, text files, image files, spreadsheets, graphs, and tables. These products, where applicable, will be compatible with and incorporated into the Airports Geographic Information System ("AGIS") managed by the FAA (as applicable). While performing work under this Agreement, the Consultant shall be responsible for managing the administrative project file and, upon completion of the work, will be responsible for submitting a completed administrative record for the project to the FAA, in accordance with FAA policy and guidance.

### **III. PERIOD OF PERFORMANCE**

The period of performance (through completion of the final EIS) of the services is not to exceed twelve (12) months from the NTP for services hereunder. The work will be performed in accordance with FAA's procedures for assessing environmental impacts including FAA Order 5050.4B (or the current version at time of agreement award). While it is conceivable that issues raised during the public comment process could affect the time of performance, the Consultant should assume that the FAA will grant any extensions of time for performance only for the most extraordinary circumstances. The Period of Performance establishes the expected outer limit for project development.

### **IV. LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE**

#### **A. Commercial Liability Insurance:**

1) The Consultant(s), and all of its/their Sub-consultants shall take out, maintain, and pay the premiums on **Commercial General Liability Insurance** for the life of the Agreement and such Insurance and shall be written on an ISO occurrence form CG 00 01 0413 or its equivalent covering the obligations assumed by the Consultant(s) under this Agreement, including, but not limited to, Premises-Operations, Products and Completed Operations, Broad form property damage, personal and advertising injury and Independent Contractor's coverages, with contractual liability language covering the obligations assumed by the Consultant(s) with insurance covering against claims for injuries to persons or damages to property which may arise from or in connection with products and materials supplied to the Agency in limits of not less than **\$10,000,000** combined single limit per occurrence and in the annual aggregate. If vehicles are to be used to carry out the performance of this Agreement, then the Consultant(s) shall also take out, maintain and pay the premiums on **Automobile Liability Insurance** covering all owned, non-owned and hired autos in not less than **\$5,000,000** combined single limit per accident for bodily injury and property damage. **(Only if Applicable)**

The insurance shall be written on an occurrence basis, as distinguished from a "claims made" basis, and shall not include any exclusions for "action over claims" (insured vs. insured) and minimally arranged to provide and encompass at least the following coverages:

- Contractual Liability to cover liability assumed under the Agreement;
- Independent Contractor's Coverage;
- Premises-Operations, Products and Completed Operations Liability Insurance;
- The insurance coverage (including primary, excess and/or umbrella) hereinafter afforded by the Consultant(s) and Sub-consultant(s) shall be primary insurance and non-contributory with respect to the additional insureds;
- Excess/umbrella policies shall "follow form" to the underlying policies;
- Excess/umbrella policies shall have a liberalization clause with drop down provision;
- To the extent any coverage the Consultant(s) and Sub-consultant(s) obtains and/or maintains under this Agreement contains "Other Insurance" language or provisions shall not be applicable to the additional insureds or to any insurance coverage maintained by the additional insureds;
- All insurance policies shall include a waiver of subrogation, as allowed by law, in favor

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- of the additional insureds;
- Defense costs must be outside of policy limits. Eroding limits policies are not permitted;
  - In the event the Consultant(s) and/or its Sub-consultant(s) obtains and/or maintains broader coverage and/or insurance in an amount greater than the minimum limits required under this Agreement, then the full limits of that insurance coverage will be available to respond to any claims asserted against the additional insureds that arises out of or is in any way connected with this Agreement;
  - Additional insureds coverage shall not be restricted to vicarious liability unless required by controlling law;

In addition, the liability policy(ies) shall be written on a form at least as broad as ISO Form CG 20 10 10 01 (for ongoing operations work) together with ISO Form CG 20 37 10 01 (for completed operations work) or their equivalent and endorses to name “The Port Authority of New York and New Jersey, and its related entities, their Commissioners, Directors, Superintendents, officers, partners, employees, agents, their affiliates, successors or assigns”, in addition to: The City of New York, for all operations at John F. Kennedy and LaGuardia Airports; Port Authority Trans-Hudson Corporation, for operations at PATH; AFCO AvPorts Management LLC, for operations at Teterboro Airport; AFCO AvPorts Management LLC and NY State Dept. of Transportation, for operations at Stewart Int’l Airport, Trends Urban Renewal for operations at PATC and Silverstein Properties Inc.; The Port Authority of New York and New Jersey; Silverstein 2/3/4 WTC Redevelopment LLC; WTC Redevelopment LLC; World Trade Center Properties LLC; 4 World Trade Center LLC; Net Lessees Association of the World Trade Center; WTC Management and Development LLC; Silverstein WTC Mgmt. Co. LLC. Silverstein WTC Mgmt. Co II LLC; Silverstein WTC Properties LLC; Silverstein WTC Management and Development LLC; Silverstein WTC LLC.; WTC Investors LLC.; 4 WTC Holdings LLC; WTC Investors Management and Development LLC; World Trade Center Holdco LLC; 4 WTC Mezz LLC. for operations at the World Trade Center Site as “Insured” (as defined in the policy or in an additional insured endorsement amending the policy’s “Who Is An Insured” language as the particular policy may provide) on its liabilities policies with respect to liability arising out of work or operations performed by or on behalf of the Consultant(s) including, but not limited to, materials, parts or equipment furnished in connection with such work or operations. The “Insured” shall be afforded coverage and defense as broad as if they are the first named insured and regardless of whether they are otherwise identified as additional insureds under the liability policies, including but not limited to premises-operations, products-completed operations of the Commercial General Liability Policy. Such additional insureds status shall be provided regardless of privity of contract between parties. The liability policy(ies) and certificate of insurance shall contain cross-liability language providing severability of interests so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds shall not reduce or void coverage to the other insureds. The Consultant(s) is/are responsible for all deductibles or losses not covered by commercially procured insurance. Any portion of the coverage to be provided under a Self-Insured Retention (SIR) of the Consultant(s) is/are subject to the review and approval of the General Manager, Risk Financing. Furthermore, any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim.

Commented [SJ1]: We assume that the FAA will want to be an additional insured. If so, the PA will work with its RISK dept to add the appropriate language. That and to have the consultant cooperate with that indemnification

DRAFT AND DELIBERATIVE

Any self-insured retention shall cover any liability imposed upon the Consultant(s) and any and all subsidiaries with respect to all operations and obligations assumed by the Consultant(s) and any and all subsidiaries. The undersigned represents that such program provides the Additional Insureds (as defined in the Agreement) with all rights, immunities and protections that would be provided by traditional independent insurance required under the Agreement, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies pursuant to the terms of the Agreement.

If any of the Work is to be done on or at Port Authority facilities by the Sub-consultants and, if the Consultant(s) requires its Sub-consultant(s) to procure and maintain such insurance in the name of the Consultant(s), then such insurance as is required herein shall include and cover the additional insureds and it must have insurance limits not lower than those set forth by the Port Authority herein, along with all the insurance requirements in this "Insurance" section.

Further, it is the Consultant's responsibility to maintain, enforce and ensure that the type of coverages and all limits maintained by it and any of all Sub-consultants are accurate, adequate and in compliance with the Port Authority requirement. All certificates of insurance shall be turned over to the Port Authority prior to the start of work, and upon completion of the Agreement.

*The Consultant, its Sub-consultant(s) and its insurer(s) shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.*

**2) Workers' Compensation Insurance:**

The Consultant(s) and its/their Sub-consultant(s) shall take out, maintain and pay premiums on Workers' Compensation Insurance in accordance with the requirements of law in the state(s) where work will take place, and Employer's Liability Insurance with limits of not less than **\$1,000,000** each accident. Such policy shall include a waiver of subrogation endorsement in the benefit of the additional insureds.

**3) Additional Coverages:** The Consultant(s) shall have the policy endorsed "**Only when required by the Director**" for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) Any/all activities performed airside must, at all times, be performed while under security escort as approved in advance, and in writing by the Project Manager. If the services of the Consultant(s), as directed by the Authority, require the performance of services airside, the Commercial General Liability and Automobile Liability coverage limits stipulated in subparagraph 1, above, shall be increased to an amount not less than \$25,000,000 per occurrence as provided herein.

DRAFT AND DELIBERATIVE

- b) Endorsement to eliminate any exclusions applying to the explosion, collapse, and underground property damage (XCU) hazards.
  - c) Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
  - d) Coverage for work within fifty (50) feet of railroad.
- 4) **Additional Coverages:** The Consultant(s) shall have the policy endorsed “**Only when required by the Director**” for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:
- a) United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.
  - b) Coverage B Endorsement - Maritime (Masters or Members of the Crew of Vessels), in limits of not less than \$1,000,000 per occurrence.
  - c) Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$1,000,000 per occurrence.

**5) Professional Liability Insurance:**

The Consultant(s) shall take out, maintain and pay premiums on Professional Liability Insurance in limits of not less than **\$10,000,000** each occurrence, covering acts, errors, mistakes, and omissions arising out of the work or services performed by Consultant(s), or any person employed by Consultant(s). All endorsements and exclusions shall be evidenced on the certificate of insurance. The coverage shall be written on an occurrence basis or may be written on a claims made basis with a minimum of a three-year reporting/discovery period.

Each policy above shall contain an endorsement that the policy may not be canceled, terminated or modified without thirty (30) days' prior written notice to the Project Manager, at the location where the work will take place with a copy to the General Manager, Risk Financing.

The Port Authority may, at any time during the term of this Agreement, change or modify the limits and coverages of insurance. Should the modification or change result in an additional premium, the General Manager, Risk Financing for the Port Authority may consider such cost as an out-of-pocket expense.

Within five (5) days after award of this Agreement and prior to the start of work at the site, the Consultant(s) must submit an original certificate of insurance, to the Project Manager and Exigis email: [REDACTED] at the location where the work will take place. This certificate of insurance MUST show evidence of the above insurance policy(ies), including, but not limited to, the title of this Agreement, the P. A. Agreement number, the notice of cancellation provisions, prior to the start of work. The Consultant(s) is/are also responsible for maintaining and conforming to all insurance requirements from the additional insureds and their successors and assigns. The General Manager, Risk Financing must approve the certificate(s) of insurance before any work can begin. Upon request of the General Manager, Risk Financing/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.



DRAFT AND DELIBERATIVE

Renewal certificates of insurance or policies shall be delivered to the Authority's Project Manager, and upon request from the additional insureds, their successors or assigns at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Financing must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Authority, the Consultant(s) shall promptly obtain a new and satisfactory certificate and policy and provide same to the Port Authority.

If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then, the Consultant(s) and all Sub-consultants shall suspend performance of the Agreement at the premises until a satisfactory insurance policy(ies) and certificate of insurance is provided to and approved by Risk Financing, unless the Facility or Project Manager directs the Consultant(s), in writing, to continue to performing work under the Agreement. If the Agreement is so suspended, no extension of time shall be due on account thereof.

Failure by the Consultant(s) to meet any of the insurance requirements, including the requirement that the Port Authority be afforded the full extent of the insurance obtained under this Agreement without limitation, shall be deemed a material breach of Agreement and may be a basis for termination of this Agreement by the Port Authority.

The requirements for insurance procured by the Consultant(s) shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Consultant(s) under this Agreement. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Consultant against the obligations imposed on them by law or by this or any other Agreement.

All insurance coverage shall be provided by the Consultant(s) and/or by or for any of its/their Sub-consultant(s) at no additional expense to the Port Authority and its related entities. A copy of this "Insurance" section shall be given to your insurance agent and Sub-consultant(s) and shall form a part of the covered Agreement for insurance purposes in furtherance of the insurance requirements of this Agreement.

\*\*\*\*

NEPA Procurement and Selection Process Questions for Discussion:

1. Per the Port Authority’s understanding, the table below outlines the steps for the NEPA consultant procurement and selection process. The Port Authority requests FAA’s input on the steps and timeframe outlined below, as well as recommendations for specific dates to be assigned for each step based upon FAA availability for meetings, interviews, and reviews.

NEPA Consultant Procurement & Selection Process Schedule*	
1/12/2018	Piggybacking process narrative sent to FAA**
1/22/2018	Draft solicitation package sent to FAA for review
<u>2/05/2018</u>	<u>Revised draft solicitation package sent to FAA for review</u>
Week 1	Meeting with FAA to discuss comments on draft solicitation package and timeline through selection
Week 1	Solicitation issued
Week 3	Responses to solicitation due
Week 4	Selection Committee meeting (Phase 1 evaluation)
Week 5	Interviews*** (Phase 2 evaluation)
Week <del>6</del> <u>5</u>	Selection made by FAA (Phase 2 evaluation)
Week <del>7-10</del> <u>5-6</u>	FAA formulates scope of work with selected consultant****
Week <del>10</del> <u>7</u>	Contract award

\*\_Schedule subject to FAA review and input.

\*\*The Port Authority has decided to publicly advertise the RFP, and thus will no longer pursue the “piggybacking process.”

\*\*\*All the firms to which the solicitation Firms will be sent are to be notified by email that should they be selected to be interviewed, the interviews will be held on these specific dates.

\*\*\*\*\_Assumes that a detailed scope of work/draft Plan of Study is developed by the selected consultant prior to contract award, and would require back and forth between the selected consultant and FAA.

2. To what extent would the FAA be involved in the first phase of evaluation, which would include the review of the proposals, requesting clarifying information (if necessary), reference checks, and identification of a short list of firms by the Selection Committee?
3. For the second phase of evaluation, what would be Port Authority members’ role in participating in an “observational” capacity before and during the FAA’s interviews?

- a. Will the Port Authority be allowed to formulate questions (in conjunction with the FAA) before the interviews and ask questions during the interviews or participate in the debrief discussions following the interviews?
  - b. Does the FAA expect the Port Authority to interact with the short-listed firms in the Phase 2 process, for example, in the scheduling of the interviews, sending potential questions to the firms in advance of the interviews, recording questions during the meetings, taking meeting minutes, etc.?
4. The selection process is described in Section ~~V~~III of the RFP letter. The Port Authority expects that the listed evaluation criteria will be used in both phases of evaluation. Per protocol, the Port Authority does not identify the 'weights'/percentages associated with each evaluative criterion. Instead, the Port Authority lists the criteria in "order of importance."
  - a. Clarify if this approach (not identifying the weights but listing the criteria in order of importance) is acceptable to the FAA.
  - b. If acceptable, clarify if the following order of importance is acceptable: Organization and Management; Project Experience; Project Approach/Schedule; Description of Proposer/Team; QA/QC; References.
  - c. In Phase 1, the Port Authority intends to score the proposals according to the foregoing criteria. Clarify if the FAA expects to use the same scoring structure in Phase 2.
  - d. Assuming that the foregoing process and criteria are acceptable, including the order of importance, the Port Authority and the FAA need to agree on the 'weights'/percentages assigned to each criterion. The Port Authority proposes the following weights:
    - Organization and Management: 35%
    - Project Experience: 25%
    - Project Approach/Schedule: 20%
    - Description of Proposer: 10%
    - QA/QC: 5%
    - References: 5%
  - e. Per protocol, the Port Authority requests and vets the proposers MWBE plans. It's an evaluative factor, but not weighted. Please confirm that (a) it's acceptable to request MWBE information, not DBE, (b) it's acceptable for the Port Authority to evaluate MWBE plans per its usual protocols and (c) it's acceptable for MWBE be a factor but not a weighted criterion.
5. How many FAA members will participate in the evaluation process (in both Phase 1 and Phase 2), and how many copies of the proposals should be requested for the FAA?
6. In the case that two firms are tied in terms of the ranking criteria, does cost factor into the selection process?
7. How will selection decisions be recorded (for both Phase 1 and Phase 2 of the evaluation), and in what format?
8. The Port Authority requests FAA's consideration in having the selected consultant develop a detailed scope of work prior to the execution of the contract that would serve as the draft Plan of Study (subject to adjustments following public scoping and throughout the EIS process). With this proposed approach, the selected consultant would be requested to prepare a draft Plan of

Study for submittal to FAA for review within 10 calendar days of being notified that they have been selected. The FAA and the selected consultant would work together to revise and reach an agreed upon draft Plan of Study. The draft Plan of Study would serve as the basis for the cost negotiation between the selected consultant and the Port Authority and would serve as the scope of work to be attached to the contract for execution. This proposed process is described in the RFP letter on page 1 and Section VI Post-Selection Process, as well as in Attachment A in Section II Scope of Services.

- a. If the selected consultant submits the initial draft Plan of Study to the FAA for review within 10 calendar days of notification of their selection, the Port Authority assumes that 2 weeks total is sufficient time to resolve open issues between the FAA and consultant. Please provide input on this timeframe for the formulation and agreement on the draft Plan of Study.
9. What FAA grant and program assurances, if any, should be attached to the agreement for the solicitation?
  10. Who owns the data and package resulting from the preparations leading up to the Final EIS?
  11. Describe the expected role of the FAA in the invoicing process, specifically in terms of validating work performed by the consultant and communicating that to the Port Authority?
    - a. Does the FAA envision that the invoices will relate only to labor/hourly rates, or will there be payments based upon deliverables/milestones?
  12. Does the FAA expect the Port Authority's solicitation and agreement to include the FAA required contract clauses? If the FAA expects the agreement to include federal terms, which ones?
  13. If the MOU is finalized prior to consultant selection, could the MOU be either attached to the RFP or provided after the issuance of the RFP, as information that will clarify the roles and responsibilities of the parties?
  14. What procedures will be in place in to best protect the integrity of the selection process, considering that there are multiple parties involved?

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THE PORT AUTHORITY OF NY & NJ

DATE

**SUBJECT: REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (“LGA”) ACCESS IMPROVEMENT PROJECT (RFP# \*\*\*\*\*)**

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the “Authority”) is seeking proposals in response to this Request for Proposals (“RFP”) for a Consultant to provide the subject services. The services will require the preparation of an environmental impact statement (“EIS”) for the LGA Access Improvement Project (the “Project”). The Federal Aviation Administration (“FAA”) and the Authority, as the Airport Sponsor, will work together to prepare the EIS. The Authority is issuing this RFP, and both the Authority and FAA will participate in the process to evaluate proposals. The selected firm (the “Consultant”) will work directly with the FAA for the performance of the services that will culminate in the development of the EIS. The Authority and the Consultant will enter into an agreement resulting from this RFP, for the performance of the Consultant’s services for the FAA. The Authority will be responsible for overall contract administration and payment for the Consultant’s services as accepted by the FAA, while the Consultant reports to the FAA for direction on development of the EIS.

The general scope of services to be performed by you is set forth in Attachment A to the Authority’s agreement (the “Agreement”) included herewith. Within ten (10) calendar days of notice of selection, and prior to agreement execution, a detailed scope of work shall be drafted by the selected Consultant and provided to the FAA. This detailed scope of work shall serve as a Plan of Study for the assignment. You should carefully review this Agreement as it is the form of agreement that the Authority intends that you sign in the event of acceptance of your Proposal and forms the basis for the submission of proposals. The Port Authority’s intention is to have the services begin no later than the second quarter of 2018.

Commented [S11]: FYI to the FAA: sample agreement not being provided for review at this time, as it will differ from the Port Authority’s template agreement, to include terms set forth in the MOU btw the PA and FAA

**I. PROPOSER REQUIREMENTS**

~~The Authority will consider proposals only from firms (“Proposer(s)”) with an active (i.e. not expired) agreement with another governmental agency under which the Proposer provides environmental review services involving the preparation of an EIS or environmental assessment (“EA”) for rail and/or airport projects. Proposers that do not meet this requirement shall not be further considered. A determination that a Proposer meets this requirement is no assurance that the Proposer will be selected for performance of the subject services.~~

~~Hourly rates proposed in your response hereto shall not exceed the published government agreement rates. However, the Authority encourages Proposers to provide reductions to said rates, as appropriate.~~

**I. PROPOSAL FORMAT REQUIREMENTS:**

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

- A. To be acceptable, this Proposal shall be no more than 20 single sided pages or 10 double sided pages, using 12 point or greater font size, not including resumes. Each resume shall be a maximum of two-pages single-sided or one-page double-sided, using 12 point or greater font size. The page limit pertains only to Letters E, F and H in Section III, below. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with "Your Firm Name", and **RFP Number \*\*\*\*\*** clearly indicated on the cover.
- B. Separate each section of the Proposal with a tab divider that is labeled in accordance with the letter of the requirements specified below in Section III.
- C. All proposals must be delivered in sealed envelopes and/or packages. Address the Proposal to: The Port Authority of New York and New Jersey, 4 World Trade Center, 21<sup>st</sup> Floor, New York, NY 10007, Attention: RFP Custodian.
- D. You shall submit the Proposal as follows:
  - 1. **In one envelope, the Technical Proposal: one (1) reproducible original hard copy** containing original signatures along with **seven (7) compact disc copies of your technical proposal** for review. USB Flash Drives will not be accepted. In case of conflict, the reproducible original of the technical proposal shall take precedence over material on the CDs.

Commented [SJ2]: FAA: how many copies (for us and FAA)?

The Technical Proposal shall include all information requested in the "Technical Proposal" subsection of Section III hereof. **No pricing-related information shall be provided in the original and CD copies of the Technical Proposal.**

- 2. **In a separately sealed envelope, the Pricing Information: one (1) reproducible original hard copy** containing original signatures along with **seven (7) compact disc copies of your pricing information** for review. This envelope shall contain only the information requested under the "Pricing Information" subsection of Section III hereof.
- E. In each submission to the Authority, including any return address label, information on the compact disc and information on the reproducible original and copies of the proposal, the Proposer shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure to comply with this requirement may lead to delays in contract award and contract payments, which shall be the responsibility of the Proposer.
- F. Your Proposal should be forwarded in sufficient time so that the Authority receives it **no later than 2:00 p.m. on <DATE>**. **The outermost cover of your submittal must be labeled to include the RFP Number and title as indicated in the "Subject" above.** The Authority assumes no responsibility for delays caused by any delivery services.

Commented [SJ3]: FAA: how many copies (for us and FAA)?

If your Proposal is to be hand-delivered, note that only individuals with proper identification (e.g. photo identification) will be permitted access to the Authority's offices. Individuals without proper identification will be turned away and their packages not accepted.

There is extensive security at the World Trade Center Site. You must present a valid government-issued photo ID to enter 4 WTC. Individuals without packages or carrying

small packages, envelopes or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All packages, envelopes and boxes may be subject to additional security screening. There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited. Express carrier deliveries by commercial vehicles will only be made via vendors approved by Silverstein Properties, the WTC Property Manager, through the Vehicle Security Center (VSC). Please note that use of the U.S. Mail does not guarantee delivery to Authority offices by the below listed due date for submittals. Proposers using the U.S. Mail are advised to allow sufficient delivery time to ensure timely receipt of their proposals. Presently, UPS is the only delivery vendor with approved recurring delivery times. UPS makes deliveries to 4 WTC around 9:30 a.m. each day. Please plan your submission accordingly. As additional express carriers may be approved by Silverstein Properties and scheduled for recurring delivery times with the VSC, this information may be updated. Under certain circumstances, a solicitation may allow for a commercial vehicle to be approved to make a delivery in accordance with the VSC procedures. If applicable, the specific solicitation document will include that information. The Port Authority assumes no responsibility for delays, including, but not limited to, delays caused by any delivery services, building access procedures, or security requirements.

**III. SUBMISSION REQUIREMENTS:**

To respond to this RFP, provide the following information:

**1) TECHNICAL PROPOSAL:**

- A. In the front of your Technical Proposal, a copy of Attachment B (Agreement on Terms of Discussion) signed by an officer of your company. If proposing as a joint venture, each member of the joint venture must sign a copy of Attachment B.
- B. Complete a copy of Attachment C (Company Profile).
- C. Transmittal Letter

~~Submit the transmittal letter, on letterhead, signed by an authorized representative, demonstrating compliance with the aforementioned Proposer Requirements (Section I hereof). For active agreements with governmental agencies, include the name of the organization, a contact person and current telephone number and email address for verification purposes.~~

Include a statement indicating whether the Consultant is proposing as a single entity, or as a joint venture.

- 1. If a common-law joint venture submits a proposal, all participants in the joint venture shall be bound jointly and severally and each participant shall execute the proposal. If a single entity proposer cannot demonstrate that it meets all of the referenced qualifications, then the single entity proposer may, with others, form a joint venture and request that the joint venture be deemed to be the Proposer (i.e. members of the joint venture may meet the qualification requirement collectively).
- 2. If the Proposer is a joint venture, the joint venture's Proposal shall contain an executed teaming agreement or, alternatively, if the entities making up the joint venture proposer

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have not executed a teaming agreement, the joint venture's proposal shall contain a summary of key terms of the anticipated agreement. If the joint venture proposer is a consortium, partnership or any other form of a joint venture, or an association that is not a legal entity, the proposal shall include a letter signed by each member indicating a willingness to accept joint and several liability until the point at which a corporation, limited liability company or other form of legal entity is formed for the purposes of undertaking the Agreement.

- D. Organization and Management: Provide an organizational chart and narrative description of the administrative structure proposed for managing this project. Outline major responsibilities and areas of expertise.

The overall project manager and key staff members (both prime firm and subconsultants) must be identified and resumes provided. The project manager is considered to be the single most important Consultant asset, and is expected to maintain responsibility for the project through completion of the EIS required by the scope of services (Attachment A).

Provide a list of projects that the proposed project manager is responsible for and expected completion dates. Resumes of firm principals are not required unless they are proposed as active, integral members of the Consultant team. Principals should, however, be listed on the organizational diagram in relation to the Consultant team. This section should also include the location of each firm and key staff members.

In addition, if the proposal includes a prime firm and subconsultants, demonstration of relevant past working experience as a team is desired. The relevance of past working experience will be prioritized based on the following: 1) experience on FAA-directed environmental projects; 2) experience on other airport projects not directed by the FAA; 3) experience on environmental projects for other modes under the umbrella of the Department of Transportation; and 4) experience on environmental projects for other federal agencies.

- E. Project Experience: Provide summaries of experience for past projects by prime consultant and team members (if applicable) that demonstrate experience and ability to undertake and complete an EIS specifically for airport projects and transit systems similar to the proposed project. Do not include projects for which key project personnel are no longer employed by the firm. List the names of key employees with each project. Projects for which individuals gained experience during previous employment should be indicated in this section.

For each qualifying project, include the following information in tabular form: project name, location, client, total contract amount, principal-in-charge, day-to-day technical project manager, key design staff, original estimated schedule and actual schedule of completion (defined for an EIS as Notice of Intent to Record of Decision and for an EA as Notice to Proceed to acceptance of the Final EA) client reference (name, position and phone number) and brief narrative description of the project.

- F. Project Approach/Schedule: Demonstrate a thorough understanding of the FAA EIS process. Identify methodologies and approaches that would be utilized to analyze and



resolve environmental issues. Describe the proposed public scoping and public hearing process, work products, detailed project schedule, along with the responsibilities of each of the proposed staff/team members and subconsultants and their anticipated percentage of each individual's time working on the project. Additionally, include a description of the proposed process for coordinating with FAA, the Authority, subconsultants work efforts, and general public. A description of the team's understanding of any unique issues associated with the preparation of the EIS at ~~the~~ LGA should be included. Describe procedures to be followed to adhere to the goal of completion of the issuance by the FAA of a Record of Decision ("ROD") and completion of the National Environmental Policy Act ("NEPA") review within a 12-month period from the Notice-to-Proceed ("NTP").

- G. Description of Proposer/Team: Provide a general description of the Proposer, including services offered, number of employees, office location, years in business, etc. Indicate aviation and rail-related EIS and EA work to which the firm is currently committed. Include similar descriptions for each sub-consultant.
- H. QA/QC: Describe quality assurance and quality control procedures. Demonstrate experience in successfully implementing quality control programs on comparable projects.
- I. References: provide a total of five (5) references of similar projects. For each reference include contact name, title, project name and location, mailing address, phone number, fax number and e-mail address.
- J. Your attention is directed to Paragraph **XX** of the Agreement in which the Authority has stated the Minority Business Enterprises (MBEs) and Women Business Enterprises (WBE) goals for participation in this program. For this Agreement, the Authority has set a targeted goal of thirty percent (30%) combined participation by qualified and certified MBEs and WBEs. Submit details on how you intend to meet these goals. A listing of certified MBE/WBE firms is available at <http://www.panynj.gov/business-opportunities/sd-mini-profile.html>.

The Proposer shall include its MBE/WBE Participation Plan (Form PA 3760C) with its Proposal, to be reviewed and approved by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

The MBE/WBE Plan submitted by the Proposer to the Authority shall contain, at a minimum, the following:

- Identification of MBE/WBEs: Provide the names and addresses of all MBE/WBEs included in the Plan. If none are identified, describe the process for selecting participant firms in order to achieve the good faith goals under this Contract.
- Level of Participation: Indicate the percentage of MBE/WBE participation expected to be achieved with the arrangement described in the Plan.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

All MBE/WBE subconsultants listed on the MBE/WBE Participation Plan must be certified by the Authority in order for the Consultant to receive credit toward the

MBE/WBE goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/supplier-diversity.html> to search for MBE/WBEs by a particular commodity or service. The Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to the MBE/WBE Participation Plan must be submitted via a modified MBE/WBE Participation Plan to the Manager for review and approval by OBD CR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use form PA3760D. The Consultant shall not make changes to its approved MBE/WBE Participation Plan or substitute MBE/WBE subconsultants or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performance of work designated for a subconsultant by the Consultant's own forces, shall be deemed a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored by the Authority throughout the duration of the Agreement.

The Consultant shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments in the form of the MBE/WBE Participation Report, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subconsultant and supplier actually involved in the Agreement, a description of the work performed and/or the product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information as it may assist the Project Manager in determining the Consultant's compliance with the foregoing provisions.

**MBE/WBE Conditions of Participation**

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

1. Commercially Useful Function: An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Consultant and the MBE/WBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as a MBE/WBE, the Consultant will receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

2. Work Force: The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Contractor, other

Subcontractors on the Contract, or their Affiliates. This does not preclude the employment by the MBE/WBE of an individual that has been previously employed by another firm involved in the Contract, provided that the individual was independently recruited by the MBE/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.

3. Supervision: All Work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Consultant, other subconsultants on the agreement, or their Affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the Work.

**Counting MBE/WBE Participation**

The value of the Work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. Subconsultants: One hundred percent (100%) of the value of the Work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such Work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Consultant, other subconsultants or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE subconsultant is itself a MBE/WBE. Work that a MBE/WBE subcontracts to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. Material Suppliers: Sixty percent (60%) of the expenditure to a MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. Broker's/Manufacturer's Representatives: One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees or commissions customarily allowed for similar services. The costs of materials and supplies themselves will not be counted.

4. Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work will be counted toward the MBE/WBE goal, provided the fee is

reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces. Contact OBDCR at (201) 395-3958 for more information about requirements for such joint ventures.

K. Provide a complete list of your firm's affiliates.

L. If the Proposer or any employee, agent or subcontractor of the Proposer may have, or may give the appearance of a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict. The Authority reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any source could create, or give the appearance of, a conflict of interest. The Authority's determination regarding any question(s) of conflict of interest shall be final.

Proposer is required to disclose all work performed at LaGuardia Airport for a period of three (3) years prior to the date of submission. Proposer shall include work performed by all affiliates, and provide, to the extent applicable, start and end dates of each engagement, the name of the stakeholder or entity for which the Proposer performed work, and a short description of the nature of the work or project.

Proposers are directed to paragraph **XX** of the attached Agreement. Proposers are further advised that under this Agreement, firms must provide, written notice to the Port Authority of any existing or potential conflict of interest the firm(s) may have in the performance of Services under this Agreement.

Furthermore, Proposers should ensure that they are familiar with FAA regulations and policy on conflicts of interest of EIS consultants. Pursuant to 40 C.F.R. Part 1506.5(c), the selected Consultant and any subconsultants performing the work shall certify that they have not entered into and will not enter into during the lifetime of the EIS preparation any agreement affording the Consultant and any subconsultants with any direct or indirect financial interest in the planning, design, construction or operation of the project that is the subject of the EIS except the preparation of the EIS. Prior to beginning work on the EIS, the Consultant and any Subconsultants shall sign a "Disclosure Statement" per the requirements of 40 C.F.R. 1506.5(c) and FAA Orders 1050.1F and 5050.4B, specifying they have no financial or other interest in the outcome of the project.

M. **Code of Ethics for Port Authority Vendors:** The Proposer's attention is directed to the Port Authority's "Code of Ethics for Port Authority Vendors." Vendors must certify in writing that they will comply with every aspect of this Code. The Proposer should submit an executed Compliance Certification with their Proposal. The Compliance Certification, once executed, will be a material and integral part of any Agreement resulting from this solicitation. The Code of Ethics and the Compliance Certification can be found on the

Authority's website at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

N. The selected Consultant(s) shall comply with the requirements of the Agreement. You should therefore not make any changes in this Agreement, nor restate any of its provisions in your Proposal or supporting material. However, if you have any specific exceptions, such exceptions should be set forth in a separate letter included with your response to this RFP. The Authority is under no obligation to entertain or accept any such specific exceptions. Exceptions raised at a time subsequent to proposal submission will not be accepted. The scope of tasks to be performed by you is set forth in Attachment A to the Authority's agreement.

2) **PRICING INFORMATION:** In a separately sealed envelope marked "Pricing Information," include all proposed pricing-related information for the Proposer (prime consultant) and proposed subconsultants. ~~Such information shall be consistent with the rates contained in the relevant government agreement, and shall include billing rates for partners or principals and actual hourly rates and multipliers for all other billable employees.~~ Compensation for premium pay (i.e. holidays, shift differentials, regular days, weekends and night work or union required payments) must be included and detailed.

### III.V. SELECTION PROCESS:

The qualifications based selection shall take into consideration the technical criteria conveyed in this section (listed in order of importance). After consideration of these factors, the Authority may enter into negotiations with the firm(s) deemed best qualified, in terms of the forgoing Technical Proposal criteria, to perform the required services.

The Authority will review proposals to determine if they satisfy the requirements of this RFP, including adherence to the RFP's specified format and the provision of all required documentation. Proposals will then be reviewed according to a two-phased evaluation process. The **first phase of the evaluation process** will involve Authority and FAA staff, and will include a detailed review and evaluation of the proposals according to the following criteria:

1. Organization and Management;
2. Project Experience;
3. Project Approach/Schedule;
4. Description of Proposer/Team;
5. QA/QC;
6. References.

Only those proposals receiving the highest scores in the first phase of the evaluation process will be evaluated in the **second phase of the evaluation process**.

The **second phase of the evaluation** will involve staff from the Authority and FAA. Only FAA staff will score proposals in the second phase of the evaluation. The second phase of the evaluation commences with interviews of the highest-rated proposers from the first phase of evaluation. After the last interview, FAA staff will score the proposals and recommend that the Port Authority retain the highest-rated proposer from the second phase of the evaluation

**Commented [SJ4]:** For discussion with FAA: What about compliance with FAA ts and cs? The MOU seems to indicate that the agreement has to contain terms as if it was a federally funded agreement

MOU includes disclosure statements and requirements on how to interact with the PA and FAA-at what point are those given the proposed consultants

**Commented [SJ5]:** Assuming this will remain b/c at the time of solicitation we will have a draft agreement that incorporates everything that is required – any FAA terms, disclosure requirement

**Commented [SJ6]:** FAA: Let's discuss this and following sections

**Commented [SJ7]:** For discussion with FAA

**Commented [SJ8]:** Subject to discussion with the FAA In short, what is the expected level of participation, if any, by the FAA in the first phase of the evaluation?

for the performance of the agreement resulting from this RFP. A notice of selection will be transmitted to the selected Proposer, prior to execution of the Agreement.

**VI. POST-SELECTION PROCESS (prior to agreement execution):**

Within ten (10) calendar days of notice of selection, and prior to agreement execution, a detailed scope of work shall be drafted by the selected Consultant and provided to the FAA. The Authority will compensate the Consultant for its efforts in developing the detailed scope of work at the rates provided in the Consultant's Pricing Information, as accepted by the Authority.

After this detailed scope of work has been finalized and accepted by the FAA, it shall serve as the Plan of Study for the assignment. The Authority will then negotiate a cost proposal with the Consultant for the services to be provided in accordance with the Plan of Study. The basis for negotiations shall be the billing rates/multipliers provided in the Consultant's Pricing Information. During price negotiations, the Authority will not entertain requests from the Consultant to increase the billing rates and multipliers submitted within its original pricing information.

**VII. ADDITIONAL INFORMATION:**

If your firm is selected for performance of the subject services, the agreement you will be asked to sign will include clauses entitled "Certification of No Investigation (Criminal Or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure Of Other Information" And "Non-Collusive Proposing, And Code Of Ethics Certification; Certification Of No Solicitation Based On Commission, Percentage, Brokerage, Contingent Or Other Fees." By submitting a proposal, the Consultant shall be deemed to have made the certifications contained therein unless said Consultant submits a statement with its proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your proposal clearly marked "CERTIFICATION STATEMENT."

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

Prior to commencing any work associated with this Project, the selected consultant and any subconsultants shall submit a Disclosure Statement, provided by the FAA.

Proposers are also advised that additional vendor information, including but not limited to forms, documents and other related information, may be found on the Authority website at [www.panynj.gov](http://www.panynj.gov) or <http://www.panynj.gov/business-opportunities/become-vendor.html>.

After a review of all proposals received, the Authority will forward two (2) copies of the Agreement and Attachment A thereto to the selected firm(s), which shall sign and return both

Commented [SJ9]: Depending upon the answer to the q re: do we ONLY need this from the selected firm OR from ALL proposers, I think we may want to move this to Submission Requirements, if we can get our hands on the document and include it (or a link) Plus any OTHER documents FAA may require to be submitted with the Proposal

DRAFT AND DELIBERATIVE

copies. Signature shall be by a corporate officer. The return of one copy executed by the Authority will effectuate the Agreement.

Should you have any questions, please contact James Summerville, Solicitation Manager (██████████) and Krystina Papasavvas (██████████). All such correspondence must have your name, title, company, mailing address, telephone number, and state "RFP \*\*\*\*\*" in the subject line. The Authority must receive all questions no later than 4:00 P.M. EST, seven (7) working days before the RFP due date. Neither Mr. Summerville nor Ms. Papasavvas, nor any other employee of the Authority is authorized to interpret the provisions of this RFP or accompanying documents or give additional information as to their requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned and such writing shall form a part of this RFP, or the accompanying documents, as appropriate. For RFP updates and Addenda, if any, Proposers are encouraged to access, and monitor, the Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html>. You should, therefore, monitor the advertisement on said website, as appropriate, to ensure you are aware of changes, if any.

Proposal preparation costs are not reimbursable by the Authority. The Authority shall have no obligation to a firm except under a duly authorized agreement executed by the Authority.

No rights accrue to any Proposer except under a duly authorized agreement for performance of the specified services.

The Authority reserves the right, in its sole and absolute discretion, to reject all proposals, to undertake discussions and modifications with one or more Consultants, to waive defects in proposals, and to proceed with that Proposal or modified Proposal, if any, which in its judgment will, under all the circumstances, best serve the public interest.

Sincerely,

David Gutiérrez, CPPO  
Assistant Director  
Procurement Department

Attachments

**From:** [REDACTED]  
**To:** [Lamond, Kathryn](#); [Tabafunda, Faith](#); [DiScenna, Matthew](#); [Clark, Patty](#); [Rogak, Elizabeth](#); [Herndon, Jane](#); [Cohen, Michelle](#); [Bassis, Luke](#); [Papasavvas, Krystina](#); [Summerville, James](#); [REDACTED]; [Drew Brooks](#);  
[REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: LaGuardia Airport Access Improvement Project  
**Date:** Thursday, February 08, 2018 2:39:21 PM  
**Attachments:** [combined-federal-contract-provisions.pdf](#)

---

Re: Question #12 -Attached please see the recently updated combined federal contract provision guide. Please use the table on page 5. Again, assuming the Port wants to preserve ability to use PFCs and there will be \$0 AIP, they want to use the column on the far right (Non-AIP) to determine the applicable contract clauses. The Civil Rights clauses are the only ones required because the Port is obligated. Note: although we do not require Federal Fair Labor Standards and OSHA, but they are actually required by the federal government just not by us. These are listed as "info" in the column. Here is the link to the FAA webpage containing the guide:

[https://www.faa.gov/airports/aip/procurement/federal\\_contract\\_provisions/](https://www.faa.gov/airports/aip/procurement/federal_contract_provisions/)

Patricia Henn  
Planning and Programming Branch Manager, AEA 610  
Federal Aviation Administration  
Eastern Region Airports Division  
1 Aviation Plaza  
Jamaica, NY 11434  
[REDACTED]

-----Original Appointment-----

**From:** Lamond, Kathryn [mailto:[REDACTED]]  
**Sent:** Tuesday, February 06, 2018 11:01 AM  
**To:** Lamond, Kathryn; Tabafunda, Faith; DiScenna, Matthew; pclark--panynjgov; Rogak, Elizabeth; Herndon, Jane; Cohen, Michelle; Bassis, Luke; Papasavvas, Krystina; Summerville, James; Urlass, Steve (FAA); Brooks, Andrew (FAA); Sanchez, David (FAA); McCarthy, Mary M (FAA); Doyle, John (FAA); Henn, Patricia (FAA); Wells, Patrick J (FAA); Gill, Sukhbir (FAA); Jenet, Marie (FAA); Martinez, Evelyn (FAA)  
**Cc:** Wolfers-Lawrence, Jean (FAA)  
**Subject:** LaGuardia Airport Access Improvement Project  
**When:** Thursday, February 08, 2018 1:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** NYADO Conf Rm 111 Call-in number: [REDACTED] Code: [REDACTED]

Please find a call-in number for use if needed. I have also attached a copy of the draft meeting agenda for your convenience.

All,



The purpose of the meeting will be to review the attached draft procurement documents, resolve outstanding questions, and finalize next steps.

Thanks,

Katie

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



# **Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects**

## **Contents**

Contract Guidance .....	3
1. Purpose of this Document .....	3
2. Sponsor Requirements.....	3
3. Typical Procurement Steps .....	4
4. Applicability Matrix for Contract Provisions .....	4
Appendix A – CONTRACT PROVISIONS .....	1
A1 ACCESS TO RECORDS AND REPORTS .....	1
A2 AFFIRMATIVE ACTION REQUIREMENT .....	2
A3 BREACH OF CONTRACT TERMS .....	5
A4 BUY AMERICAN PREFERENCE .....	6
A5 CIVIL RIGHTS - GENERAL.....	12
A6 CIVIL RIGHTS – TITLE VI ASSURANCE .....	14
A7 CLEAN AIR AND WATER POLLUTION CONTROL .....	24
A8 CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS .....	25
A9 COPELAND “ANTI-KICKBACK” ACT.....	27
A10 DAVIS-BACON REQUIREMENTS.....	29
A11 DEBARMENT AND SUSPENSION.....	36
A12 DISADVANTAGED BUSINESS ENTERPRISE .....	38
A13 DISTRACTED DRIVING .....	41
A14 ENERGY CONSERVATION REQUIREMENTS .....	42
A15 DRUG FREE WORKPLACE REQUIREMENTS.....	43
A16 EQUAL EMPLOYEMENT OPPORTUNITY (EEO).....	44
A17 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE) .....	51
A18 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES.....	52
A19 PROHIBITION of SEGREGATED FACILITIES.....	54
A20 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 .....	56
A21 PROCUREMENT OF RECOVERED MATERIALS.....	57
A22 RIGHT TO INVENTIONS.....	59
A23 SEISMIC SAFETY.....	60
A24 TAX DELINQUENCY AND FELONY CONVICTIONS .....	62
A25 TERMINATION OF CONTRACT .....	64
A26 TRADE RESTRICTION CERTIFICATION .....	69
A27 VETERAN’S PREFERENCE .....	71

## RECORD OF CHANGES

No.	Date	Item	Change
1	1/29/2016	Entire Document	Re-structured document to enhance user understanding of use and applicability; added suggested provisions for "Termination for Cause", "Recovered Materials", "Seismic Safety".
2	6/10/2016	Table 1	Distracted Driving: Updated "Dollar Threshold" to \$3,500 to reflect current micro-purchase threshold.
3	6/10/2016	A2, Affirmative Action	Update the reference to the Department of Labor online document to be "Participation Goals for Minority and Females"
4	6/10/2016	A12, Disadvantaged Business Enterprise	A12.3: Changed Title to "Required Provisions" A12.3.1: Corrected starting timeframe for submitting written confirmation from "Owner Notice of Award" to "bid opening" A12.3.1: Provided two sets of last paragraphs to reflect change (7 days to 5 days) that occurs on December 31, 2016. A12.3.2: Moved Race/Gender Neutral language up and renamed heading to reflect text is solicitation language. A12.3.3: Moved and renamed contract clause information and clarified it is for prime contract covered by a DBE program.
5	12/12/2017	Cover	Change title of document for clarity
6	12/12/2017	1. Purpose of this Document	Added clarifying text addressing purpose and limitations of this guidance. 1.7-1.9: Added definitions of contract, applicant, bid
7	12/12/2017	2. Sponsor requirements	Added clarifying text addressing sponsor responsibilities.
8	12/12/2017	3. Typical Procurement Steps	Added clarifying text for typical procurement process steps.
9	12/12/2017	Table 1 – Applicability Matrix	Re-arranged table in alphabetic order. Added "Solicitation" column to address solicitation provisions Item I, Seismic Safety: Added Limited Application Added note on Airport Concessions Disadvantaged Business Enterprises
10	12/12/2017	All Clauses	Clarifying revisions made to applicability section.
11	12/12/2017	A5, Civil Rights - General	Rephrased General Civil Rights Provision to simplify language and to clarify duration of obligation for tenant/concessionaire/lessee
12	12/12/2017	A6.3.1 Civil Rights – Solicitations	Added sponsor must select either DBE or ACDBE
12	12/12/2017	A12, Disadvantaged Business Enterprise	The deadline to submit DBE confirmation of participation is now 5 days after bid opening or as a matter of bid responsiveness. Updated DBE contract assurance (12.3.3) to match language of 49 CFR § 26.13
13	12/12/2017	A24, Tax Delinquency and Felony Conviction	New certification addressing contractor tax delinquency and felony conviction.

# CONTRACT GUIDANCE

## 1. Purpose of this Document

- 1) The purpose of this document is to establish a convenient resource for Sponsors that consolidates all possible provisions and clauses into one document that includes an applicability matrix. This document itself does not create, revise or delete requirements for participation in the Airport Improvement Program. The source of requirements addressed within this document are identified within the section for each individual clause.
- 2) Federal laws and regulations require that an sponsor (a recipient of federal assistance) include specific clauses in certain contracts, solicitations, or specifications regardless of whether or not the project is federally funded.
- 3) The term **sponsor** is used in this document to mean either an obligated sponsor on a project that is not federally funded, or a sponsor on an AIP funded project.
- 4) The term **Owner** is generally used in the solicitation or contract clauses because of its common use in public contracts.
- 5) An Owner becomes an obligated sponsor upon acceptance of the Airport Improvement Program (AIP) grant assurances associated with current or prior AIP grant funded projects.
- 6) For purposes of determining requirements for contract provisions, the term **contract** includes subcontracts and supplier contracts such as purchase orders.
- 7) For purpose of remaining compliant with its obligations, a sponsor must incorporate applicable contract provisions in all its procurements and contract documents. Unless otherwise stated, these provisions flow down to subcontracts and sub-tier agreements.
- 8) The term **contractor** is understood to mean a contractor, subcontractor, or consultant; and means one who participates, through a contract or subcontract (at any tier).
- 9) The term **bid** is understood to mean a bid, an offer, or a proposal.
- 10) **Applicant:**
  - a. For the Equal Employment Opportunity (EEO) clause, the term **applicant** means an applicant for employment (whether or not the phrase, *for employment*, follows the word applicant or applicants).
  - b. For all other clauses, the term **applicant** means a bidder, offeror, or proposer for a contract.

## 2. Sponsor Requirements

In general, the sponsor must take the following actions in order to remain consistent with its obligations:

- 1) Include in its procurements the provisions that are applicable to its project.
- 2) Not incorporate the entire contract provisions guidelines in its solicitation or contract documents, whether by reference or by inclusion in whole. Incorporation of this entire guidance document creates potential for ambiguous interpretation and may lead to improper application that unnecessarily increases price. A sponsor that fails to properly incorporate applicable contract clauses may place themselves at risk for audit findings or denial of Federal funding.

Incorporate applicable contract provisions using mandatory language as required. The subheading entitled *Applicability* advises whether a particular clause or provision has mandatory language that a sponsor must use.

- (a) **Mandatory Language** - Whenever a clause or provision has mandatory text, the sponsor must incorporate the text of the provision **without change**, except where specific adaptive input is necessary (e.g. such as the sponsor's name).
- (b) **No Mandatory Language Provided** - For provisions without mandatory language, this guidance provides model language acceptable to the FAA. Some sponsors may already have

standard procurement language that is equivalent to those federal provisions. In these cases, sponsors may use their existing standard procurement provision language provided the text meets the intent and purpose of the Federal law or regulation.

Require the contractor (including all subcontractors) to insert these contract provisions in each lower tier contract (e.g. subcontract or sub-agreement).

Require the contractor (including all subcontractors) to incorporate the applicable requirements of these contract provisions by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services.

- 6) Require that the prime contractor be responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor or service provider.
- 7) Verify that any required local or State provision does not conflict with or alter a Federal law or regulation.

### **3. Typical Procurement Steps**

The usual procurement steps in a project are:

- 1) Solicitation, Request for Bids or Request for Proposals – This is also called the Advertisement or Notice to Bidders.
- 2) Bidding or Accepting Proposals – In this stage, the bidders receive a complete set of the procurement documents, also known as the project manual. The project manual will typically include a copy of the solicitation, instructions-to-bidders, bid forms, certifications and representations, general provisions, contract conditions, copy of contract, project drawings, technical specifications and related project documents.
- 3) Bid/Proposal Evaluation – Period when Sponsor tabulates and reviews all proposals for bid responsiveness and bidder responsibility.
- 4) Award – Point when the Sponsor formally awards the contract to the successful bidder.
- 5) Execution of Contract – Point at which the Sponsor formally enters into a legally binding agreement to perform services or provide goods.

### **4. Applicability Matrix for Contract Provisions**

[Table 1](#) summarizes the applicability of contract provisions based upon the type of contract or agreement. The dollar threshold represents the value at which, when equal to or exceeded, the sponsor must incorporate the provision in the contract or agreement.

Supplemental information addressing applicability and use for each provision is located in Appendix A. Appendix A and the Matrix include notes indicating when the sponsor may incorporate references in the **solicitation** in lieu of including the entire text.

## Meaning of cell values

- Info – Sponsor has discretion on whether to include clause in its contracts.
- Limited – Provision with limited applicability depending on circumstances of the procurement.
- n/a – Provision that is not applicable for that procurement type.
- NIS – Provision that does not need to be included or referenced in the solicitation document
- REF – Provision to be incorporated into the solicitation by reference.
- REQD - Provision the sponsor must incorporate into procurement documents.

**Table 1 – Applicability of Provisions**

Provisions/Clauses	Dollar Threshold	Solicitation	Professional Services	Construction	Equipment	Property (Land)	Non-AIP Contracts
<a href="#">Access to Records and Reports</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Affirmative Action Requirement</a>	\$10,000	REQD	Limited	REQD	Limited	Limited	n/a
<a href="#">Breach of Contract</a>	\$150,000	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Buy American Preferences</a>	\$ 0	REF	Limited	REQD	REQD	Limited	n/a
(1) <a href="#">Buy American Statement</a>	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(2) <a href="#">BA – Total Facility</a>	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(3) <a href="#">B.A. – Manufactured Product</a>	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
<a href="#">Civil Rights – General</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
<a href="#">Civil Rights - Title VI Assurances</a>	\$ 0	REF	REQD	REQD	REQD	REQD	REQD
(1) <a href="#">Notice – Solicitation</a>	\$ 0	REQD	REQD	REQD	REQD	REQD	REQD
(2) <a href="#">Clause – Contracts</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
(3) <a href="#">Clause – Transfer of U.S. Property</a>	\$ 0	NIS	n/a	n/a	n/a	Limited	REQD
(4) <a href="#">Clause – Transfer of Real Property</a>	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(5) <a href="#">Clause – Construct/Use/Access to Real Property</a>	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(6) <a href="#">List – Pertinent Authorities</a>	\$0	NIS	REQD	REQD	REQD	REQD	REQD
<a href="#">Clean Air/Water Pollution Control</a>	\$150,000	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Contract Work Hours and Safety Standards</a>	\$100,000	NIS	Limited	REQD	Limited	Limited	n/a
<a href="#">Copeland Anti-Kickback</a>	\$ 2,000	NIS	Limited	REQD	Limited	Limited	n/a
<a href="#">Davis Bacon Requirements</a>	\$ 2,000	REF	Limited	REQD	Limited	Limited	n/a
<a href="#">Debarment and Suspension</a>	\$25,000	REF	REQD	REQD	REQD	Limited	n/a
<a href="#">Disadvantaged Business Enterprise</a>	\$ 0	REF	REQD	REQD	REQD	REQD	n/a
<a href="#">Distracted Driving</a>	\$3,500	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Energy Conservation Requirements</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Equal Employment Opportunity</a>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(1) <a href="#">EEO Contract Clause</a>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(2) <a href="#">EEO Specification</a>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
<a href="#">Federal Fair Labor Standards Act</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	Info
<a href="#">Foreign Trade Restriction</a>	\$ 0	REF	REQD	REQD	REQD	REQD	n/a
<a href="#">Lobbying Federal Employees</a>	\$ 100,000	REF	REQD	REQD	REQD	REQD	n/a
<a href="#">Occupational Safety and Health Act</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	Info
<a href="#">Prohibition of Segregated Facilities</a>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
<a href="#">Recovered Materials</a>	\$10,000	REF	Limited	REQD	REQD	Limited	n/a
<a href="#">Rights to Inventions</a>	\$ 0	NIS	Limited	Limited	Limited	n/a	n/a
<a href="#">Seismic Safety</a>	\$ 0	NIS	Limited	Limited	Limited	n/a	n/a
<a href="#">Tax Delinquency and Felony Conviction</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Termination of Contract</a>	\$10,000	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Veteran’s Preference</a>	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a

## Airport Concessions Disadvantage Business Enterprise (ACDBE) Notes:

1. Language relative to solicitation for ACDBEs does not need to be included in AIP funded solicitations, since in no case are concessions activities funded with federal funds.
2. Airport sponsors must include the appropriate Title VI language in their solicitation notices when they seek proposals for concessions.

## **APPENDIX A – CONTRACT PROVISIONS**

### **A1 ACCESS TO RECORDS AND REPORTS**

#### **A1.1 SOURCE**

2 CFR § 200.333

2 CFR § 200.336

FAA Order 5100.38

#### **A1.2 APPLICABILITY**

2 CFR § 200.333 requires a sponsor to retain records pertinent to a Federal award for a period of three years from submission of final closure documents. 2 CFR § 200.336 establishes that sponsors must provide Federal entities the right to access records pertinent to the Federal award. FAA policy extends these requirements to the sponsor's contracts and subcontracts of AIP funded projects.

**Contract Types** – The sponsor must include this provision in all contracts and subcontracts of AIP funded projects.

**Use of Provision** – No mandatory language provided. The following language is acceptable to the FAA with meeting the intent of this requirement. If the sponsor prefers to use different language, the sponsor's language must fully satisfy the requirements of §§ 200.333 and 200.336.

#### **A1.3 CONTRACT CLAUSE**

##### **ACCESS TO RECORDS AND REPORTS**

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

## **A2 AFFIRMATIVE ACTION REQUIREMENT**

### **A2.1 SOURCE**

41 CFR part 60-4

Executive Order 11246

### **A2.2 APPLICABILITY**

**Minority Participation.** Sponsors are required to set goals for minority participation in AIP funded projects exceeding \$10,000. The goals for minority participation derive from Economic Area (EA) and Standard Metropolitan Statistical Area (SMSA) as established in Volume 45 of the Federal Register dated 10/3/80. Page 65984 contains a table of all EAs and SMSAs and the associated minority participation goals.

To find the goals for minority participation, a sponsor must either refer to the Federal Register Notice or to the Department of Labor online document, "[Participation Goals for Minorities and Females](#)". EAs and SMSAs span state boundaries. A sponsor may have to refer to entries for adjacent states in order to locate the goal for the project location.

**Female Participation.** Executive Order 11246 has set a goal of 6.9% nationally for female participation for all construction projects. This value remains constant for all counties and states.

#### **Contract Types –**

*Construction* – The sponsor must incorporate this notice in all solicitations for bids or requests for proposals for AIP funded construction work contracts and subcontracts that exceed \$10,000. Construction work means construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection and other onsite functions incidental to the actual construction.

*Equipment* – The sponsor must incorporate this notice in any equipment project exceeding \$10,000 that involves installation of equipment onsite (e.g. electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at a manufacturer's plant (e.g. firefighting and snow removal vehicles).

*Professional Services* – The sponsor must incorporate this notice in any professional service agreement if the professional services agreement includes tasks that meet the definition of construction work [as defined by the U.S. Department of Labor (DOL)] and exceeds \$10,000. Examples include installation of monitoring systems (e.g. noise, environmental, etc.).



*Property/Land* – The sponsor must incorporate this notice in any agreement associated with land acquisition if the agreement includes construction work (defined above) that exceeds \$10,000. Examples include demolition of structures or installation of boundary fencing.

**Use of Provision – MANDATORY TEXT.** The sponsor must:

- (a) Incorporate the text of this provision in its solicitations without modification.
- (b) Incorporate the applicable minority participation goal and the covered area by geographic name.
- (c) Not simply insert a reference to the 1980 Federal Register Notice.

## **A2.3 SOLICITATION CLAUSE**

### **NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION to ENSURE EQUAL EMPLOYMENT OPPORTUNITY**

1. The Offeror’s or Bidder’s attention is called to the “Equal Opportunity Clause” and the “Standard Federal Equal Employment Opportunity Construction Contract Specifications” set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor’s aggregate workforce in each trade on all construction work in the covered area, are as follows:

#### **Timetables**

Goals for minority participation for each trade: **[sponsor must insert established goal]**  
Goals for female participation in each trade: 6.9%

These goals are applicable to all of the Contractor’s construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor’s compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a) and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor’s goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer

identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the “covered area” is **[sponsor must insert state, county, and city]**.

## **A3 BREACH OF CONTRACT TERMS**

### **A3.1 SOURCE**

2 CFR § 200 Appendix II(A)

### **A3.2 APPLICABILITY**

This provision requires sponsors to incorporate administrative, contractual or legal remedies if contractor violate or breach contract terms. The sponsor must also include appropriate sanctions and penalties.

**Contract Types** – This provision is required for all contracts that exceed the simplified acquisition threshold as stated in 2 CFR Part 200, Appendix II (A). This threshold is occasionally adjusted for inflation and is now equal to \$150,000.

**Use of Provision** – No mandatory language provided. The following language is acceptable to the FAA as meeting the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of part 200. Select either “contractor” or “consultant” as applicable.

### **A3.3 CONTRACT CLAUSE**

#### **BREACH OF CONTRACT TERMS**

Any violation or breach of terms of this contract on the part of the [Contractor / Consultant] or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide [Contractor / Consultant] written notice that describes the nature of the breach and corrective actions the [Contractor / Consultant] must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner’s notice will identify a specific date by which the [Contractor / Consultant] must correct the breach. Owner may proceed with termination of the contract if the [Contractor / Consultant] fails to correct the breach by the deadline indicated in the Owner’s notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

## **A4 BUY AMERICAN PREFERENCE**

### **A4.1 SOURCE**

Title 49 USC § 50101

### **A4.2 APPLICABILITY**

The Buy American Preference requirement in 49 USC § 50101 requires that all steel and manufactured goods used on AIP projects be produced in the United States. The statute gives the FAA the ability to issue a waiver to a sponsor to use non-domestic material on an AIP funded project subject to meeting certain conditions. A sponsor may request that the FAA issue a waiver from the Buy American Preference requirements if the FAA finds that:

- 1) Applying the provision is not in the public interest;
- 2) The steel or manufactured goods are not available in sufficient quantity or quality in the United States;
- 3) The cost of components and subcomponents produced in the United States is more than 60 percent of the total components of a facility or equipment, and final assembly has taken place in the United States. Items that have an FAA standard specification item number (such as specific airport lighting equipment) are considered the equipment.
- 4) Applying this provision would increase the cost of the overall project by more than 25 percent.

**Timing of Waiver Requests.** Sponsors desiring a Type 1 or Type 2 waiver must submit their waiver requests *before* issuing a solicitation for bids or a request for proposal for a project.

The sponsor must submit Type 3 or Type 4 waiver requests *prior* to executing the contract. The FAA will generally not consider waiver requests after execution of the contract except where extraordinary and extenuating circumstances exist. The FAA cannot review waiver requests with incomplete information. Sponsors must assess the adequacy of the waiver request and associated information prior to forwarding a waiver request to the FAA for action.

**Buy American Conformance List.** The FAA Office of Airports maintains a listing of equipment that has received a nationwide waiver from the Buy American Preference requirements or that fully meet the Buy American requirements. The Nationwide Buy American Waiver List is available online at [www.faa.gov/airports/aip/buy\\_american/](http://www.faa.gov/airports/aip/buy_american/). Products listed on the Buy American Conformance list do not require additional submittal of domestic content information under a project specific Buy American Preference waiver.

**Facility Waiver Requests.** For construction of a facility, the sponsor may submit the waiver request after bid opening, but prior to contract execution. Examples of facility construction include terminal buildings, terminal renovation, and snow removal equipment buildings.

## **Contract Types –**

*Construction and Equipment* – The sponsor must meet the Buy American Preference requirements of 49 USC § 50101 for all AIP funded projects that require steel or manufactured goods. The Buy America requirements flow down from the sponsor to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are also in compliance.

Note: The Buy American Preference does not apply to equipment a contractor uses as a tool of its trade and which does not remain as part of the project.

*Professional Services* – Professional service agreements (PSAs) do not normally result in a deliverable that meets the definition of a manufactured product. However, the emergence of various project delivery methods has created situations where task deliverables under a PSA may include a manufactured product. If a PSA includes providing a manufactured good as a deliverable under the contract, the sponsor must include the Buy American Preference provision in the agreement.

*Property* – Most land transactions do not involve acquiring a manufactured product. However, under certain circumstances, a property acquisition project could result in the installation of a manufactured product. For example, the installation of property fencing, gates, doors and locks, etc. represent manufactured products acquired under an AIP funded land project that must comply with Buy American Preferences.

**Use of Provision** – No mandatory language provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s revised language must fully comply with 49 USC § 50101.

There are two types of Buy American certifications. The sponsor must incorporate the appropriate “Certificate of Buy America Compliance” in the solicitation:

- Projects for a facility (buildings such as terminals, snow removal equipment (SRE) buildings, aircraft rescue and firefighting (ARFF) buildings, etc.) – Insert the Certificate of Compliance Based on Total Facility.
- Projects for non-facility development (non-building construction projects such as runway or roadway construction or equipment acquisition projects) – Insert the Certificate of Compliance Based on Equipment and Materials Used on the Project.

## **A4.3 SOLICITATION CLAUSE**

### **A4.3.1 Buy American Preference Statement**

#### **BUY AMERICAN PREFERENCE**

The Contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP funded projects are produced in the

United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must complete and submit the Buy America certification included herein with their bid or offer. The Owner will reject as nonresponsive any bid or offer that does not include a completed Certificate of Buy American Compliance.

#### **A4.3.2 Certificate of Buy American Compliance – Total Facility**

##### **CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR TOTAL FACILITY**

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with its proposal. The bidder or offeror must indicate how it intends to comply with 49 USC § 50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark (✓) or the letter “X”.

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
- a) Only installing steel and manufactured products produced in the United States; or
  - b) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
  - To faithfully comply with providing U.S. domestic products.
  - To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
- a) To submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that supports the type of waiver being requested.
  - b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
  - c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
  - d) To furnish U.S. domestic product for any waiver request that the FAA rejects.

- e) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

**Required Documentation**

**Type 3 Waiver** – The cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the “facility”. The required documentation for a Type 3 waiver is:

- a) Listing of all manufactured products that are not comprised of 100 percent U.S. domestic content (excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c) Percentage of non-domestic component and subcomponent cost as compared to total “facility” component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

**Type 4 Waiver** – Total cost of project using U.S. domestic source product exceeds the total project cost using non-domestic product by 25 percent. The required documentation for a Type 4 of waiver is:

- a) Detailed cost information for total project using U.S. domestic product
- b) Detailed cost information for total project using non-domestic product

**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

\_\_\_\_\_

Company Name

\_\_\_\_\_

Title

### **A4.3.3 Certificate of Buy American Compliance – Manufactured Product**

#### **Certificate of Buy American Compliance for Manufactured Products**

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter “X”.

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
- a) Only installing steel and manufactured products produced in the United States;
  - b) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
2. To faithfully comply with providing U.S. domestic product.
3. To furnish U.S. domestic product for any waiver request that the FAA rejects
4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

- The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

1. To submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that supports the type of waiver being requested.
2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.
3. To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

#### **Required Documentation**

**Type 3 Waiver** – The cost of the item components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the “item”. The required documentation for a Type 3 waiver is:



- a) Listing of all product components and subcomponents that are not comprised of 100 percent U.S. domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c) Percentage of non-domestic component and subcomponent cost as compared to total “item” component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver** – Total cost of project using U.S. domestic source product exceeds the total project cost using non-domestic product by 25 percent. The required documentation for a Type 4 of waiver is:

- a) Detailed cost information for total project using U.S. domestic product
- b) Detailed cost information for total project using non-domestic product

**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

\_\_\_\_\_

Company Name

\_\_\_\_\_

Title

## **A5 CIVIL RIGHTS - GENERAL**

### **A5.1 SOURCE**

49 USC § 47123

### **A5.2 APPLICABILITY**

There are two separate civil rights provisions that apply to projects:

1. FAA General Civil Rights Provision and,
2. Title VI provisions, which are addressed in Appendix A6.

**Contract Types** – The General Civil Rights Provisions found in 49 USC § 47123, derived from the Airport and Airway Improvement Act of 1982, Section 520, apply to all sponsor contracts *regardless* of funding source.

**Use of Provision – MANDATORY TEXT.** There are two separate general civil rights provisions —one that is used for contracts, and one that is used for lease agreements or transfer agreements. The sponsor must incorporate the text of the appropriate provision without modification into the contract, or the lease or transfer agreement.

### **A5.3 CONTRACT CLAUSE (Use the Correct Clause for the Situation)**

#### **A5.3.1 Clause that is used for Contracts**

##### **GENERAL CIVIL RIGHTS PROVISIONS**

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

#### **A5.3.2 Clause that is used for Lease Agreements or Transfer Agreements**

##### **GENERAL CIVIL RIGHTS PROVISIONS**

The (tenant/concessionaire/lessee) agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the (tenant/concessionaire/lessee) transfers its obligation to another, the transferee is obligated in the same manner as the (tenant/concessionaire/lessor).

This provision obligates the (tenant/concessionaire/lessee) for the period during which the property is owned, used or possessed by the (tenant/concessionaire/lessee) and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

## A6 CIVIL RIGHTS – TITLE VI ASSURANCE

### A6.1 SOURCE

49 USC § 47123

FAA Order 1400.11

### A6.2 APPLICABILITY

Title VI of the Civil Rights Act of 1964, as amended, (Title VI) prohibits discrimination on the grounds of race, color, or national origin under any program or activity receiving Federal financial assistance. Sponsors must include appropriate clauses from the Standard DOT Title VI Assurances in all contracts and solicitations.

The text of each individual clause comes from the U.S. Department of Transportation [Order DOT 1050.2](#), Standard Title VI Assurances and Nondiscrimination Provisions, effective April 24, 2013. These assurances require that the Recipient (the sponsor) insert the appropriate clauses in the form provided by the DOT. Where the clause refers to the applicable activity, project, or program, it means the AIP project.

The clauses are as follows:

#### A6.2.1 Applicability of Title VI Solicitation Notice

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
<p>Title VI Solicitation Notice –</p> <ul style="list-style-type: none"><li>Assurance 2 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li><li>Assurance 30d of the Airport Sponsor Assurances</li></ul>	<ol style="list-style-type: none"><li>All AIP funded solicitations for bids, requests for proposals, or any work subject to Title VI regulations; and</li><li>All sponsor proposals for negotiated agreements <b>regardless of funding source</b>.</li></ol>	A6.3.1
<p>Title VI Clauses for Compliance with Nondiscrimination Requirements</p> <ul style="list-style-type: none"><li>Assurance 3 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li><li>Assurance 30e.1 of the Airport Sponsor Assurances</li></ul>	<p>Every contract or agreement (unless the sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities)</p> <p>It has been determined that service contracts with utility companies that are already subject to nondiscrimination requirements must include this clause.</p>	A6.4.1

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
<p>Title VI Required Clause for Property Interests Transferred from the United States</p> <ul style="list-style-type: none"> <li>Assurance 4 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li> <li>Assurance 30e.3 of the Airport Sponsor Assurances</li> </ul>	<p>As a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.</p> <p>This is a rare occurrence and it will be the responsibility of the United States government to include the clause in the contract.</p>	A6.4.2
<p>Title VI Required Clause for Transfer of Real Property Acquired or Improved Under the Activity, Facility or Program –</p> <ul style="list-style-type: none"> <li>Assurance 5 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li> <li>Assurance 30e.4a of the Airport Sponsor Assurances</li> </ul>	<p>As a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the sponsor with other parties for all transfers of real property acquired or improved under Airport Improvement Program</p> <p>This applies to agreements such as leases where a physical portion of the airport is transferred for use, for example a fuel farm, apron space, or a parking facility.</p>	A6.4.3
<p>Clause for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program</p> <ul style="list-style-type: none"> <li>Assurance 6 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li> <li>Assurance 30e.4b of the Airport Sponsor Assurances</li> </ul>	<p>In any future (deeds, leases, licenses, permits, or similar instruments) entered into by the sponsor with other parties for the construction or use of, or access to, space on, over, or under real property acquired or improved under Airport Improvement Program</p> <p>This applies to agreements such as leases of concession space in a terminal.</p>	A6.4.4
<p>Title VI List of Pertinent Nondiscrimination Acts and Authorities</p> <ul style="list-style-type: none"> <li>Assurance 3 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li> <li>Assurance 30e.2 of the Airport Sponsor Assurances</li> </ul>	<p>Insert this list in every contract or agreement, unless the sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities.</p> <p><b>This list can be omitted if the FAA has determined that the contractor or company is already subject to nondiscrimination requirements.</b></p>	A6.4.5

### **A6.3 SOLICITATION CLAUSE**

**The sponsor must include this clause in:**

- 1) All AIP funded solicitations for bids, requests for proposals, or any work subject to Title VI regulations; and
- 2) All sponsor proposals for negotiated agreements **regardless of funding source.**

#### **A6.3.1 Title VI Solicitation Notice**

**Title VI Solicitation Notice:**

The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, [select disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

## A6.4 CONTRACT CLAUSES

### A6.4.1 Title VI Clauses for Compliance with Nondiscrimination Requirements

The sponsor must include this contract clause in:

- 1) Every contract or agreement (unless the sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities); and
- 2) Service contracts with utility companies that are already subject to nondiscrimination requirements.

#### **Compliance with Nondiscrimination Requirements:**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor’s noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### **A6.4.2 Title VI Clauses for Deeds Transferring United States Property**

This is a rare occurrence, and it will be the responsibility of the United States government to include the clause in the contract. It will be included as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.

#### **CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of the Airport Improvement Program grant assurances.

**NOW, THEREFORE**, the Federal Aviation Administration as authorized by law and upon the condition that the (*Title of Sponsor*) will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), for the (**Airport Improvement Program or other program for which land is transferred**), and the policies and procedures prescribed by the Federal Aviation Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 USC § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (*Title of Sponsor*) all the right, title and interest of the U.S. Department of Transportation/Federal Aviation Administration in and to said lands described in (*Exhibit A attached hereto or other exhibit describing the transferred property*) and made a part hereof.

#### **(HABENDUM CLAUSE)**

**TO HAVE AND TO HOLD** said lands and interests therein unto (*Title of Sponsor*) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the (*Title of Sponsor*), its successors and assigns.



The (*Title of Sponsor*), in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the (*Title of Sponsor*) will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the Federal Aviation Administration and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

#### **A6.4.3 Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program**

This applies to agreements such as leases where a physical portion of the airport is transferred for use—for example a fuel farm, apron space, or a parking facility—and will be included as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the sponsor with other parties for all transfers of real property acquired or improved under the Airport Improvement Program.

#### **CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE AIRPORT IMPROVEMENT PROGRAM**

The following clauses will be included in (deeds, licenses, leases, permits, or similar instruments) entered into by the (*Title of Sponsor*) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
  1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, *(Title of Sponsor)* will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the *(Title of Sponsor)* will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the *(Title of Sponsor)* and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

**A6.4.4 Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program**

This applies to agreements such as leases of concession space in a terminal and any future deeds, leases, licenses, permits, or similar instruments entered into by the sponsor with other parties for the construction or use of, or access to, space on, over, or under real property acquired or improved under the Airport Improvement Program.

**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by (*Title of Sponsor*) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above nondiscrimination covenants, (*Title of Sponsor*) will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*
- C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, (*Title of Sponsor*) will there upon revert to and vest in and become the absolute property of (*Title of Sponsor*) and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

#### **A6.4.5 Title VI List of Pertinent Nondiscrimination Acts and Authorities**

Insert this list in every contract or agreement, unless the sponsor has determined and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities. This list can be omitted if the FAA has determined that the contractor or company is already subject to nondiscrimination requirements.

##### **Title VI List of Pertinent Nondiscrimination Acts and Authorities**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

## **A7 CLEAN AIR AND WATER POLLUTION CONTROL**

### **A7.1 SOURCE**

2 CFR § 200, Appendix II(G)

### **A7.2 APPLICABILITY**

**Contract Types** – This provision is required for all contracts and lower tier contracts that exceed \$150,000.

**Use of Provision** – No mandatory language provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor's language must fully satisfy the requirements of Appendix II to 2 CFR §200.

### **A7.3 CONTRACT CLAUSE**

#### **CLEAN AIR AND WATER POLLUTION CONTROL**

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceeds \$150,000.

## **A8 CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

### **A8.1 SOURCE**

2 CFR § 200, Appendix II(E)

### **A8.2 APPLICABILITY**

Contract Workhours and Safety Standards Act Requirements (CWHSSA) requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek. CWHSSA prohibits unsanitary, hazardous, or dangerous working conditions on federally assisted projects. The Wage and Hour Division (WHD) within the U.S. Department of Labor (DOL) enforces the compensation requirements of this Act, while DOL's Occupational Safety and Health Administration (OSHA) enforces the safety and health requirements

#### **Contract Types –**

*Construction* – This provision applies to all contracts and lower tier contracts that exceed \$100,000, and employ laborers, mechanics, watchmen, and guards.

*Equipment* – This provision applies to any equipment project exceeding \$100,000 that involves installation of equipment onsite (e.g. electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g. ARFF and SRE vehicles).

*Professional Services* – This provision applies to professional service agreements that exceed \$100,000 and employs laborers, mechanics, watchmen, and guards. This includes members of survey crews and exploratory drilling operations.

*Property* – While most land transactions do not involve employment of laborers, mechanics, watchmen, and guards, under certain circumstances, a property acquisition project could require such employment. Examples include the installation of property fencing or testing for environmental contamination

**Use of Provision – MANDATORY TEXT.** Sponsors must incorporate this text without modification.

### **A8.3 CONTRACT CLAUSE**

#### **CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

##### **1. Overtime Requirements.**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a

rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

## 2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

## 3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

## 4. Subcontractors.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.



## **A9 COPELAND “ANTI-KICKBACK” ACT**

### **A9.1 SOURCE**

2 CFR § 200, Appendix II(D)

29 CFR Parts 3 and 5

### **A9.2 APPLICABILITY and PURPOSE**

The Copeland (Anti-Kickback) Act (18 USC 874 and 40 USC 3145) makes it unlawful to induce by force, intimidation, threat of dismissal from employment, or by any other manner, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week.

#### **Contract Types –**

*Construction* – This provision applies to all construction contracts and subcontracts financed under the AIP that exceed \$2,000.

*Equipment* – This provision applies to all equipment installation projects (e.g. electrical vault improvements) financed under the AIP that exceed \$2,000. This provision does not apply to equipment acquisitions where the equipment is manufactured at the vendor’s plant (e.g. SRE and ARFF vehicles).

*Professional Services* –The emergence of different project delivery methods has created situations where Professional Service Agreements (PSAs) include tasks that meet the definition of construction, alteration, or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration, or repair and it exceeds \$2,000, the PSA must incorporate the Copeland Anti-kickback provision.

*Property* –Ordinarily, land acquisition projects would not involve employment of laborers or mechanics and thus the Copeland Anti-Kickback provision would not apply. However, land projects that involve installation of boundary fencing and demolition of structures would involve laborers and mechanics. The sponsor must include this provision if the land acquisition project involves employment of laborers or mechanics for a contract exceeding \$2,000.

**Use of Provision – MANDATORY TEXT.** 29 CFR Part 5 establishes specific language a sponsor must use in construction contracts. The sponsor may not make any modification to the standard language. Architectural/Engineering (A/E) firms that employ laborers and mechanics on a task that meets the definition of construction, alteration, or repair are acting as a contractor. The sponsor may not substitute the term “contractor” for “consultant” in such instances.

### **A9.3 CONTRACT CLAUSE**

#### **COPELAND “ANTI-KICKBACK” ACT**

Contractor must comply with the requirements of the Copeland “Anti-Kickback” Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

## **A10 DAVIS-BACON REQUIREMENTS**

### **A10.1 SOURCE**

2 CFR § 200, Appendix II(D)

29 CFR Part 5

### **A10.2 APPLICABILITY**

The Davis-Bacon Act ensures that laborers and mechanics employed under the contract receive pay no less than the locally prevailing wages and fringe benefits as determined by the Department of Labor.

#### **Contract Types –**

*Construction* – Incorporate into all construction contracts and subcontracts that exceed \$2,000 and include funding from the AIP.

*Equipment* – This provision applies to all equipment installation projects (e.g. electrical vault improvements) financed under the AIP that exceed \$ 2, 000. This provision does not apply to equipment acquisitions where the equipment is manufactured at the vendor’s plant (e.g. SRE and ARFF vehicles)

*Professional Services* – The emergence of different project delivery methods has created situations where Professional Service Agreements (PSAs) includes tasks that meet the definition of construction, alteration, or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration, or repair and it exceeds \$2,000, the PSA must incorporate this clause.

*Property* – Ordinarily, land acquisition projects would not involve employment of laborers or mechanics and thus the provision would not apply. However, land projects that involve installation of boundary fencing and demolition of structures would involve laborers and mechanics. The sponsor must include this provision if the land acquisition project involves employment of laborers or mechanics for a contract exceeding \$2,000.

*Fencing Projects* – Fencing projects that exceed \$2,000 must include this provision.

**Use of Provision – MANDATORY TEXT.** 29 CFR part 5 establishes specific language a sponsor must use. The sponsor may not make any modification to the standard language. A/E firms that employ laborers and mechanics on a task that meets the definition of construction, alteration, or repair are acting as a contractor. The sponsor may not substitute the term “Contractor” for “Consultant” in such instances.

## **A10.3 CONTRACT CLAUSE**

### **DAVIS-BACON REQUIREMENTS**

#### 1. Minimum Wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by

the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: *Provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 2. Withholding.

The Federal Aviation Administration or the sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the Contractor, Sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### 3. Payrolls and Basic Records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and that show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.* the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at [www.dol.gov/whd/forms/wh347instr.htm](http://www.dol.gov/whd/forms/wh347instr.htm) or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) The payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;

(2) Each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

(3) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the sponsor, the Federal Aviation Administration, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less

than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.



#### 5. Compliance with Copeland Act Requirements.

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

#### 6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

#### 7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

#### 8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

#### 9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### 10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

## **A11 DEBARMENT AND SUSPENSION**

### **A11.1 SOURCE**

2 CFR part 180 (Subpart C)

2 CFR part 1200

DOT Order 4200.5

### **A11.2 APPLICABILITY**

The sponsor must verify that the firm or individual that it is entering into a contract with is not presently suspended, excluded, or debarred by any Federal department or agency from participating in federally assisted projects. The sponsor accomplishes this by:

- 1) Checking the System for Award Management (SAM.gov) to verify that the firm or individual is not listed in SAM.gov as being suspended, debarred, or excluded;
- 2) Collecting a certification from the firm or individual that it is not suspended, debarred, or excluded; and
- 3) Incorporating a clause in the contract that requires lower tier contracts to verify that no suspended, debarred, or excluded firm or individual is included in the project.

**Contract Types** – This requirement applies to *covered transactions*, which are defined in 2 CFR part 180. AIP funded contracts are non-procurement transactions, as defined by §180.970. Covered transactions include any AIP-funded contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the amount of the contract is expected to equal or exceed \$25,000. This includes contracts associated with land acquisition projects.

**Use of Provision** – No mandatory language provided. The following language is acceptable to the FAA in meeting the intent of this requirement. If the sponsor uses different language, the sponsor's language must fully satisfy the requirements of 2 CFR part 180. For professional service agreements, sponsor may substitute bidder/offeror with consultant.

### **A11.3 SOLICITATION CLAUSE**

#### **A11.3.1 Bidder or Offeror Certification**

##### **CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT**

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

### **A11.3.2 Lower Tier Contract Certification**

#### **CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT**

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must verify each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>.
2. Collecting a certification statement similar to the Certification of Offerer /Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

## **A12 DISADVANTAGED BUSINESS ENTERPRISE**

### **A12.1 SOURCE**

49 CFR part 26

### **A12.2 APPLICABILITY**

A sponsor that anticipates awarding \$250,000 or more in AIP funded prime contracts in a federal fiscal year must have an approved Disadvantaged Business Enterprise (DBE) program on file with the FAA Office of Civil Rights (§ 26.21). The approved DBE program will identify a 3-year overall program goal that the sponsor bases on the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on the project (§ 26.45).

**Contract Types** – Sponsors with a DBE program on file with the FAA must include the three following provisions, if applicable:

- 1) Clause in all solicitations for proposals for which a contract goal has been established,
- 2) Clause in each prime contract, and
- 3) Clause in solicitations that are obtaining DBE participation through race/gender neutral means.

#### **Use of Provision –**

1. *Solicitations with a DBE Project Goal* – No mandatory language provided. 49 CFR §26.53 requires a sponsor's solicitation to address what a contractor must submit on proposed DBE participation. The language of A12.3.1 is acceptable to the FAA in meeting the intent of this requirement. If the sponsor uses different language, the sponsor's revised language must fully satisfy these requirements. The sponsor may require the contractor's submittal on proposed DBE participation either at bid opening as a matter of responsiveness or within five days of bid opening as a matter of responsibility.
2. *Solicitations Relying on Race-gender Neutral Means* – No mandatory language provided. The language of A12.3.2 is acceptable to the FAA in meeting the intent of this requirement. If the sponsor uses different language, the sponsor's revised language must fully satisfy requirements for a sponsor that is not applying a project specific contract goal but is covered by a DBE program on file with the FAA.
3. *Contracts Covered by DBE Program* – **MANDATORY TEXT PROVIDED.** Sponsors must incorporate this language if they have a DBE program on file with the FAA. This includes projects where DBE participation is obtained through race-gender neutral means (i.e. no project goal). Sections §26.13 and §26.29 establish mandatory language for contractor assurance and prompt payment. The sponsor must not modify the language.
4. Sponsors that are not required to have a DBE program on file with the FAA are not required to include DBE provisions and clauses.

## **A12.3 REQUIRED PROVISIONS**

### **A12.3.1 Solicitation Language (Solicitations that include a Project Goal)**

#### Information Submitted as a matter of bidder responsiveness:

The Owner's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR §26.53.

As a condition of bid responsiveness, the Bidder or Offeror must submit the following information with its proposal on the forms provided herein:

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1)
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner's project goal; and
- 5) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26.

#### Information submitted as a matter of bidder responsibility:

The Owner's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR §26.53.

The successful Bidder or Offeror must provide written confirmation of participation from each of the DBE firms the Bidder or Offeror lists in its commitment within five days after bid opening.

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1)
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner's project goal; and
- 5) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26.

### **A12.3.2 Solicitation Language (Race/Gender Neutral Means)**

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the [Insert Name of Owner] to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. The Owner encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

### **A12.3.3 Prime Contracts (Projects Covered by a DBE Program)**

#### **DISADVANTAGED BUSINESS ENTERPRISES**

##### **Contract Assurance (§ 26.13) –**

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

**Prompt Payment (§26.29)** – The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than [specify number] days from the receipt of each payment the prime contractor receives from [Name of recipient]. The prime contractor agrees further to return retainage payments to each subcontractor within [specify the same number as above] days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the [Name of Recipient]. This clause applies to both DBE and non-DBE subcontractors.

## **A13 DISTRACTED DRIVING**

### **A13.1 SOURCE**

Executive Order 13513

DOT Order 3902.10

### **A13.2 APPLICABILITY**

The FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

**Contract Types** – Sponsors must insert this provision in all AIP funded contracts that exceed the micro-purchase threshold of 2 CFR §200.67 (currently set at \$3,500).

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA in meeting the intent of this requirement. If the sponsor uses different language, the sponsor’s revised language must fully satisfy these requirements.

### **A13.3 CONTRACT CLAUSE**

#### **TEXTING WHEN DRIVING**

In accordance with Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving”, (10/1/2009) and DOT Order 3902.10, “Text Messaging While Driving”, (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

## **A14 ENERGY CONSERVATION REQUIREMENTS**

### **A14.1 SOURCE**

2 CFR § 200, Appendix II(H)

### **A14.2 APPLICABILITY**

The Energy Conservation Requirements of 2 CFR § 200 Appendix II(H) requires this provision on energy efficiency.

**Contract Types** – The sponsor must include this provision in all AIP funded contracts and lower-tier contracts.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s revised language must fully satisfy these requirements. Sponsor may substitute “Contractor and subcontractor” with “Consultant and sub-consultant” for professional service agreements.

### **A14.3 CONTRACT CLAUSE**

#### **ENERGY CONSERVATION REQUIREMENTS**

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201*et seq.*).



## **A15 DRUG FREE WORKPLACE REQUIREMENTS**

### **A15.1 SOURCE**

49 CFR part 32

Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended)

### **A15.2 APPLICABILITY**

The Drug-Free Workplace Act of 1988 requires some Federal contractors and *all* Federal grantees to agree that they will provide drug-free workplaces as a condition of receiving a contract or grant from a Federal agency. The Act does **not** apply to contractors, subcontractors, or subgrantees, although the Federal grantees workplace may be where the contractors, subcontractors, or subgrantees are working.

**Contract Types** – This provision applies to all AIP funded projects, but not to the contracts between the grantee (the sponsor) and a contractor, subcontractors, suppliers, or subgrantees.

**Use of Provision** – No mandatory or recommended text provided because the requirements do not extend beyond the sponsor level.

### **A15.3 CONTRACT CLAUSE**

None.

## **A16 EQUAL EMPLOYEMENT OPPORTUNITY (EEO)**

### **A16.1 SOURCE**

2 CFR 200, Appendix II(C)

41 CFR § 60-1.4

41 CFR § 60-4.3

Executive Order 11246

### **A16.2 APPLICABILITY**

The purpose of this provision is to provide equal opportunity for all persons, without regard to race, color, religion, sex, or national origin who are employed or seeking employment with contractors performing under a federally assisted construction contract. There are two provisions — a construction clause and a specification clause.

The equal opportunity contract clause must be included in any contract or subcontract when the amount exceeds \$10,000. Once the equal opportunity clause is determined to be applicable, the contract or subcontract must include the clause for the remainder of the year, regardless of the amount or the contract.

#### **Contract Types –**

*Construction* – The sponsor must incorporate contract and specification language in all construction contracts and subcontracts as required above.

*Equipment* – The sponsor must incorporate contract and specification language into all equipment contracts as required above that involves installation of equipment onsite (e.g. electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g. ARFF and SRE vehicles).

*Professional Services* – The sponsor must include contract and specification language into all professional service agreements as required above.

*Property* – The sponsor must include contract and specification language into all land acquisition projects that include work that qualifies as construction work as defined by 41 CFR part 60 as required above. An example is installation of boundary fencing.

**Use of Provision – MANDATORY TEXT.** 41 CFR § 60-1.4 provides the mandatory ***contract*** language. 41 CFR § 60-4.3 provides the mandatory ***specification*** language. The sponsor must incorporate these clauses without modification.

## **A16.3 MANDATORY CONTRACT CLAUSE**

### **A16.3.1 EEO Contract Clause**

#### **EQUAL OPPORTUNITY CLAUSE**

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identify, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

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

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or

vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

### **A16.3.2 EEO Specification**

#### **STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS**

1. As used in these specifications:

- a. “Covered area” means the geographical area described in the solicitation from which this contract resulted;
- b. “Director” means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. “Employer identification number” means the Federal social security number used on the Employer’s Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. “Minority” includes:
  - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
  - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR part 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal

under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the Contractor during the training period and the Contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such

individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or female sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions, including specific review of these items, with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally), the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).



## **A17 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

### **A17.1 SOURCE**

29 USC § 201, et seq

### **A17.2 APPLICABILITY**

The U.S. Department of Labor (DOL) Wage and Hour Division administers the Fair Labor Standards Act (FLSA). This act prescribes federal standards for basic minimum wage, overtime pay, record keeping, and child labor standards.

**Contract Types** – Per the Department of Labor, all employees of certain enterprises having workers engaged in interstate commerce; producing goods for interstate commerce; or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by the FLSA.

All consultants, sub-consultants, contractors, and subcontractors employed under this federally assisted project must comply with the FLSA.

*Professional Services* – 29 CFR § 213 exempts employees in a bona fide executive, administrative or professional capacity. Because professional firms employ individuals that are not covered by this exemption, the sponsor's agreement with a professional services firm must include the FLSA provision.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor's language must fully satisfy the requirements of 29 USC § 201. The sponsor must select *contractor* or *consultant*, as appropriate for the contract.

### **A17.3 SOLICITATION CLAUSE**

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The [*Contractor / Consultant*] has full responsibility to monitor compliance to the referenced statute or regulation. The [*Contractor / Consultant*] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

## **A18 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

### **A18.1 SOURCE**

31 USC § 1352 – Byrd Anti-Lobbying Amendment

2 CFR part 200, Appendix II(J)

49 CFR part 20, Appendix A

### **A18.2 APPLICABILITY**

Consultants and contractors that apply or bid for an award of \$100,000 or more must certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or another award covered by 31 USC 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

**Contract Types** – The sponsor must incorporate this provision into all contracts exceeding \$100,000.

**Use of Provision – MANDATORY TEXT.** Appendix A to 49 CFR Part 20 prescribes language the sponsor must use. The sponsor must incorporate this provision without modification.

### **A18.3 CONTRACT CLAUSE**

#### **CERTIFICATION REGARDING LOBBYING**

The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under

grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **A19 PROHIBITION of SEGREGATED FACILITIES**

### **A19.1 SOURCE**

41 CFR § 60

### **A19.2 APPLICABILITY**

The contractor must comply with the requirements of the EEO clause by ensuring that facilities they provide for employees are free of segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. This clause must be included in all contracts that include the equal opportunity clause, regardless of the amount of the contract.

**Contract Types** – AIP sponsors must incorporate the Prohibition of Segregated Facilities clause in any contract containing the Equal Employment Opportunity clause of 41 CFR §60.1. This obligation flows down to subcontract and sub-tier purchase orders containing the Equal Employment Opportunity clause.

*Construction* – Construction work means construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

*Equipment* – On site installation of equipment such as airfield lighting control equipment meets the definition of construction and thus this provision would apply. This provision does not apply to equipment projects involving manufacture of the item at a vendor’s manufacturing plant. An example would be the manufacture of a SRE or ARFF vehicle.

*Professional Services* – Professional services that include tasks that qualify as construction work as defined by 41 CFR part 60. Examples include the installation of noise monitoring equipment.

*Property/Land* – Land acquisition contracts that include tasks that qualify as construction work as defined by 41 CFR part 60. Examples include demolition of structures or installation of boundary fencing.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of 41 CFR § 60.

### **A19.3 CONTRACT CLAUSE**

#### **PROHIBITION OF SEGREGATED FACILITIES**

(a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.

(b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

## **A20 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

### **A20.1 SOURCE**

29 CFR part 1910

### **A20.2 APPLICABILITY**

**Contract Types** – All contracts and subcontracts must comply with the Occupational Safety and Health Act of 1970 (OSH). The U.S. Department of Labor Occupational Safety and Health Administration (OSHA) oversees the workplace health and safety standards wage provisions from OSH.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of 20 CFR part 1910.

### **A20.3 CONTRACT CLAUSE**

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

## **A21 PROCUREMENT OF RECOVERED MATERIALS**

### **A21.1 SOURCE**

2 CFR § 200.322

40 CFR part 247

Solid Waste Disposal Act

### **A21.2 APPLICABILITY**

Sponsors of AIP funded development and equipment projects must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Section 6002 emphasizes maximizing energy and resource recovery through use of affirmative procurement actions for recovered materials identified in the Environmental Protection Agency (EPA) guidelines codified at 40 CFR part 247. When acquiring items designated in the guidelines, the sponsor must procure items that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

**Contract Types** – This provision applies to any contracts that include procurement of products designated in subpart B of 40 CFR part 247 where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000.

*Construction and Equipment* – Include this provision in all construction and equipment projects.

*Professional Services and Property* – Include this provision if the agreement includes procurement of a product that exceeds \$10,000.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor's language must fully satisfy the requirements of 2 CFR § 200.

### **A21.3 CONTRACT CLAUSE**

#### **PROCUREMENT OF RECOVERED MATERIALS**

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- 1) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or
- 2) The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at [www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products](http://www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products).

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.



## **A22 RIGHT TO INVENTIONS**

### **A22.1 SOURCE**

2 CFR § 200, Appendix II(F)

37 CFR §401

### **A22.2 APPLICABILITY**

**Contract Types** – This provision applies to all contracts and subcontracts with small business firms or nonprofit organizations that include performance of *experimental, developmental, or research work*. This clause is not applicable to construction, equipment, or professional service contracts unless the contract includes *experimental, developmental, or research work*.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of Appendix II to 2 CFR part 200.

### **A22.3 CONTRACT CLAUSE**

#### **RIGHTS TO INVENTIONS**

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.

## **A23 SEISMIC SAFETY**

### **A23.1 SOURCE**

49 CFR part 41

### **A23.2 APPLICABILITY**

**Contract Types** – This provision applies to construction of new buildings and additions to existing buildings financed in whole or in part through the Airport Improvement Program.

*Professional Services*– Sponsor must incorporate this clause in any contract involved in the construction of new buildings or structural addition to existing buildings.

*Construction* – Sponsor must incorporate this clause in any contract involved in the construction of new buildings or structural addition to existing buildings.

*Equipment* – Sponsor must include the construction provision if the project involves construction or structural addition to a building such as an electrical vault project to accommodate or install equipment.

*Land* – This provision will not typically apply to a property/land project.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of 49 CFR part 41.

### **A23.3 CONTRACT CLAUSE**

#### **A23.3.1 Professional Service Agreements for Design**

##### **SEISMIC SAFETY**

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard that provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a “certification of compliance” that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

#### **A23.3.2 Construction Contracts**

##### **SEISMIC SAFETY**

The Contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction

Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

## **A24 TAX DELINQUENCY AND FELONY CONVICTIONS**

### **A24.1 SOURCE**

Sections 415 and 416 of Title IV, Division L of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76), and similar provisions in subsequent appropriations acts.

DOT Order 4200.6 - Requirements for Procurement and Non-Procurement Regarding Tax Delinquency and Felony Convictions

### **A24.2 APPLICABILITY**

The sponsor must ensure that no funding goes to any contractor who:

- Has been convicted of a Federal felony within the last 24 months; or
- Has any outstanding tax liability for which all judicial and administrative remedies have lapsed or been exhausted.

**Contract Types** – This provision applies to all contracts funded in whole or part with AIP.

**Use of Provision** – The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of DOT Order 4200.6.

### **A24.3 CONTRACT CLAUSE**

#### **CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS**

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

#### **Certifications**

- 1) The applicant represents that it is (  ) is not (  ) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2) The applicant represents that it is (  ) is not (  ) is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

#### **Note**

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government’s interests. The applicant therefore must

provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

### **Term Definitions**

**Felony conviction:** Felony conviction means a conviction within the preceding twentyfour (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

**Tax Delinquency:** A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

## **A25 TERMINATION OF CONTRACT**

### **A25.1 SOURCE**

2 CFR § 200 Appendix II(B)

FAA Advisory Circular 150/5370-10, Section 80-09

### **A25.2 APPLICABILITY**

**Contract Types** – All contracts and subcontracts in excess of \$10,000 must address *termination for cause* and *termination for convenience* by the sponsor. The provision must address the manner (i.e. notice, opportunity to cure, and effective date) by which the sponsor’s contract will be affected and the basis for settlement (i.e. incurred expenses, completed work, profit, etc.).

#### **Use of Provision –**

*Termination for Default* – **MANDATORY TEXT.** Section 80-09 of FAA Advisory Circular 150/5370-10 establishes standard language for Termination for Default under a construction contract. The sponsor must not make any changes to this standard language.

*Termination for Convenience* – No mandatory text provided. The sponsor must include a clause for termination for convenience. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of Appendix II to 2 CFR part 200.

*Equipment, Professional Services, and Property* – No mandatory text provided. The sponsor may use their established clause language provided that it adequately addresses the intent of Appendix II(B) to Part 200, which addresses termination for fault and for convenience.

### **A25.3 CONTRACT CLAUSE**

#### **A25.3.1 Termination for Convenience**

##### **TERMINATION FOR CONVENIENCE (CONSTRUCTION & EQUIPMENT CONTRACTS)**

The Owner may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of Owner. Upon receipt of a written notice of termination, except as explicitly directed by the Owner, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.

4. Deliver to the Owner all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work, and as directed in the written notice.
5. Complete performance of the work not terminated by the notice.
6. Take action as directed by the Owner to protect and preserve property and work related to this contract that Owner will take possession.

Owner agrees to pay Contractor for:

- 1) completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
- 2) documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
- 3) reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
- 4) reasonable and substantiated expenses to the Contractor directly attributable to Owner's termination action.

Owner will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Owner's termination action.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract.

#### **TERMINATION FOR CONVENIENCE (PROFESSIONAL SERVICES)**

The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

#### **A25.3.2 Termination for Default**

##### **TERMINATION FOR DEFAULT (CONSTRUCTION)**

Section 80-09 of FAA Advisory Circular 150/5370-10 establishes conditions, rights, and remedies associated with Owner termination of this contract due to default of the Contractor.

### **TERMINATION FOR DEFAULT (EQUIPMENT)**

The Owner may, by written notice of default to the Contractor, terminate all or part of this Contract if the Contractor:

1. Fails to commence the Work under the Contract within the time specified in the Notice- to- Proceed;
2. Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
3. Fails to make delivery of the equipment within the time specified in the Contract, including any Owner approved extensions;
4. Fails to comply with material provisions of the Contract;
5. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements; or
6. Becomes insolvent or declares bankruptcy.

If one or more of the stated events occur, the Owner will give notice in writing to the Contractor and Surety of its intent to terminate the contract for cause. At the Owner's discretion, the notice may allow the Contractor and Surety an opportunity to cure the breach or default.

If within [10] days of the receipt of notice, the Contractor or Surety fails to remedy the breach or default to the satisfaction of the Owner, the Owner has authority to acquire equipment by other procurement action. The Contractor will be liable to the Owner for any excess costs the Owner incurs for acquiring such similar equipment.

Payment for completed equipment delivered to and accepted by the Owner shall be at the Contract price. The Owner may withhold from amounts otherwise due the Contractor for such completed equipment, such sum as the Owner determines to be necessary to protect the Owner against loss because of Contractor default.

Owner will not terminate the Contractor's right to proceed with the Work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such acceptable causes include: acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the Contractor's right to proceed, the Owner determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the Owner issued the termination for the convenience the Owner.

The rights and remedies of the Owner in this clause are in addition to any other rights and remedies provided by law or under this contract.

### **TERMINATION FOR DEFAULT (PROFESSIONAL SERVICES)**

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party



initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- a) **Termination by Owner:** The Owner may terminate this Agreement in whole or in part, for the failure of the Consultant to:
1. Perform the services within the time specified in this contract or by Owner approved extension;
  2. Make adequate progress so as to endanger satisfactory performance of the Project; or
  3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

- b) **Termination by Consultant:** The Consultant may terminate this Agreement in whole or in part, if the Owner:
1. Defaults on its obligations under this Agreement;
  2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
  3. Suspends the Project for more than [180] days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Engineer is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of

termination action. Owner agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

## **A26 TRADE RESTRICTION CERTIFICATION**

### **A26.1 SOURCE**

49 USC § 50104

49 CFR part 30

### **A26.2 APPLICABILITY**

Unless waived by the Secretary of Transportation, sponsors may not use AIP funds on a product or service from a foreign country included in the current list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR).

**Contract Types** – The trade restriction certification and clause applies to all AIP funded projects.

**Use of Provision – MANDATORY TEXT.** 49 CFR part 30 prescribes the language for this model clause. The sponsor must include this certification language in all contracts and subcontracts without modification.

### **A26.3 SOLICITATION CLAUSE**

#### **TRADE RESTRICTION CERTIFICATION**

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC Section 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or
- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

## **A27 VETERAN'S PREFERENCE**

### **A27.1 SOURCE**

49 USC § 47112(c)

### **A27.2 APPLICABILITY**

**Contract Types** – This provision applies to all AIP funded projects that involve labor to carry out the project. This preference, which excludes executive, administrative, and supervisory positions, applies to covered veterans (as defined under § 47112(c)) only when they are readily available and qualified to accomplish the work required by the project.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor's language must fully satisfy the requirements of 49 USC § 47112.

### **A27.3 CONTRACT CLAUSE**

#### **VETERAN'S PREFERENCE**

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

**From:** [DiScenna, Matthew](#)  
**To:** [Cohen, Michelle](#)  
**Subject:** Fwd: LGA Airtrain / Access Improvement Project - FAA comments on Port Authority RFQ Documents  
**Date:** Monday, February 12, 2018 8:33:11 AM  
**Attachments:** [Attachment A Draft 2018-02-05 FAA combined comments.docx](#)  
[ATT00001.htm](#)  
[Draft Questions to FAA 2018-02-05 FAA combined responses.docx](#)  
[ATT00002.htm](#)  
[RFP Letter Draft 2018-02-05 FAA combined comments.docx](#)  
[ATT00003.htm](#)

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Begin forwarded message:

**From:** <[REDACTED]>  
**Date:** February 9, 2018 at 6:01:27 PM EST  
**To:** <[REDACTED]> <[REDACTED]>  
<[REDACTED]>  
**Cc:** <[REDACTED]> <[REDACTED]>  
<[REDACTED]> <[REDACTED]> <[REDACTED]>  
<[REDACTED]> <[REDACTED]> <[REDACTED]> <[jean.wolfers-lawrence@faa.gov](mailto:jean.wolfers-lawrence@faa.gov)>, <[REDACTED]>  
<[REDACTED]> <[REDACTED]>  
**Subject:** LGA Airtrain / Access Improvement Project - FAA comments on Port Authority RFQ Documents

Thank you taking the time to meet with us yesterday to discuss the subject project.

Attached please find our comments to the proposed RFQ documents as well as answers to your questions.

We need to stress the following points:

- <!--[if !supportLists]-->1) <!--[endif]-->We believe that early sharing of the planning documentation will assist in achieving the aggressive schedule targeted. We need to see the planning studies and have the ALP change prior to NOI issuance; however, sharing the documents even sooner will assist in the evaluation of project approach in the proposals and the expedited development of the scope of work. Additionally it will greatly inform the development of a reasonable yet expedited EIS schedule from the start. The planning is the foundation of the EIS, so we cannot stress enough how essential it is that it is provided to us as early as possible.
- <!--[if !supportLists]-->2) <!--[endif]-->We need to see the revised language prior to distribution of the RFP, especially additional language discussed during yesterday's meeting and regarding the schedule/duration of performance.
- <!--[if !supportLists]-->3) <!--[endif]-->We need to see the Non-Disclosure

Agreement samples they mentioned yesterday as well in order to determine how we can work together on consultant evaluations.

Patricia Henn  
Planning and Programming Branch Manager, AEA 610  
Federal Aviation Administration  
Eastern Region Airports Division  
1 Aviation Plaza  
Jamaica, NY 11434



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THE PORT AUTHORITY OF NY & NJ

DATE

**SUBJECT: REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (“LGA”) ACCESS IMPROVEMENT PROJECT (RFP# \*\*\*\*\*)**

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the “Authority”) is seeking proposals in response to this Request for Proposals (“RFP”) for a Consultant to provide the subject services. The services will require the preparation of an environmental impact statement (“EIS”) for the LGA Access Improvement Project (the “Project”). The Federal Aviation Administration (“FAA”) and the Authority, as the Airport Sponsor, will work together to prepare the EIS. The Authority is issuing this RFP, and both the Authority and FAA will participate in the process to evaluate proposals. The selected firm (the “Consultant”) will work directly with the FAA for the performance of the services that will culminate in the development of the EIS. The Authority and the Consultant will enter into an agreement resulting from this RFP, for the performance of the Consultant’s services ~~for on behalf of~~ the FAA. The Authority will be responsible for overall contract administration and payment for the Consultant’s services as accepted by the FAA, while the Consultant reports to the FAA for direction on development of the EIS.

Commented [MJ1]: Suggest rewording to clearly demonstrate Port Authority (short list) and FAA (selection) roles

The general scope of services to be performed by you is set forth in Attachment A to the Authority’s agreement (the “Agreement”) included herewith. Within ten (10) calendar days of notice of selection, and prior to agreement execution, a detailed scope of work shall be drafted by the selected Consultant and provided to the FAA. This detailed scope of work shall serve as a Plan of Study for the assignment. You should carefully review this Agreement as it is the form of agreement that the Authority intends that you sign in the event of acceptance of your Proposal and forms the basis for the submission of proposals. The Port Authority’s intention is to have the services begin no later than the second quarter of 2018.

Commented [SJ2]: FYI to the FAA: sample agreement not being provided for review at this time, as it will differ from the Port Authority’s template agreement, to include terms set forth in the MOU btw the PA and FAA

#### I. PROPOSER REQUIREMENTS

~~The Authority will consider proposals only from firms (“Proposer(s)”) with an active (i.e. not expired) agreement with another governmental agency under which the Proposer provides environmental review services involving the preparation of an EIS or environmental assessment (“EA”) for rail and/or airport projects. Proposers that do not meet this requirement shall not be further considered. A determination that a Proposer meets this requirement is no assurance that the Proposer will be selected for performance of the subject services.~~

~~Hourly rates proposed in your response hereto shall not exceed the published government agreement rates. However, the Authority encourages Proposers to provide reductions to said rates, as appropriate.~~



**I. PROPOSAL FORMAT REQUIREMENTS:**

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

- A. To be acceptable, this Proposal shall be no more than **20** single sided pages or **10** double sided pages, using 12 point or greater font size, not including resumes. Each resume shall be a maximum of two-pages single-sided or one-page double-sided, using 12 point or greater font size. The page limit pertains only to Letters E, F and H in Section III, below. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with “Your Firm Name”, and **RFP Number \*\*\*\*\*** clearly indicated on the cover.
- B. Separate each section of the Proposal with a tab divider that is labeled in accordance with the letter of the requirements specified below in Section III.
- C. All proposals must be delivered in sealed envelopes and/or packages. Address the Proposal to: The Port Authority of New York and New Jersey, 4 World Trade Center, 21<sup>st</sup> Floor, New York, NY 10007, Attention: RFP Custodian.
- D. You shall submit the Proposal as follows:

- 1. **In one envelope, the Technical Proposal:** one (1) reproducible original hard copy containing original signatures along with **seven (7) compact disc copies of your technical proposal** for review. USB Flash Drives will not be accepted. In case of conflict, the reproducible original of the technical proposal shall take precedence over material on the CDs.

The Technical Proposal shall include all information requested in the “Technical Proposal” subsection of Section III hereof. **No pricing-related information shall be provided in the original and CD copies of the Technical Proposal.**

- 2. **In a separately sealed envelope, the Pricing Information:** one (1) reproducible original hard copy containing original signatures along with **seven (7) compact disc copies of your pricing information** for review. This envelope shall contain only the information requested under the “Pricing Information” subsection of Section III hereof.

- E. In each submission to the Authority, including any return address label, information on the compact disc and information on the reproducible original and copies of the proposal, the Proposer shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure to comply with this requirement may lead to delays in contract award and contract payments, which shall be the responsibility of the Proposer.
- F. Your Proposal should be forwarded in sufficient time so that the Authority receives it **no later than 2:00 p.m. on <DATE>**. **The outermost cover of your submittal must be labeled to include the RFP Number and title as indicated in the “Subject” above.** The Authority assumes no responsibility for delays caused by any delivery services.

If your Proposal is to be hand-delivered, note that only individuals with proper identification (e.g. photo identification) will be permitted access to the Authority’s offices. Individuals without proper identification will be turned away and their packages not accepted.

There is extensive security at the World Trade Center Site. You must present a valid government-issued photo ID to enter 4 WTC. Individuals without packages or carrying

Commented [SJ3]: FAA: how many copies (for us and FAA)?

Commented [BA(4R3)]: If all submittals are electronic, we could have anywhere from 1-4

Commented [SJ5]: FAA: how many copies (for us and FAA)?

Commented [BA(6R5)]: FAA should not have any pricing information

Commented [BA(7)]: FAA’s position is this should be a qualifications based selection only. Cost proposals are not included in a response

small packages, envelopes or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All packages, envelopes and boxes may be subject to additional security screening. There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited. Express carrier deliveries by commercial vehicles will only be made via vendors approved by Silverstein Properties, the WTC Property Manager, through the Vehicle Security Center (VSC). Please note that use of the U.S. Mail does not guarantee delivery to Authority offices by the below listed due date for submittals. Proposers using the U.S. Mail are advised to allow sufficient delivery time to ensure timely receipt of their proposals. Presently, UPS is the only delivery vendor with approved recurring delivery times. UPS makes deliveries to 4 WTC around 9:30 a.m. each day. Please plan your submission accordingly. As additional express carriers may be approved by Silverstein Properties and scheduled for recurring delivery times with the VSC, this information may be updated. Under certain circumstances, a solicitation may allow for a commercial vehicle to be approved to make a delivery in accordance with the VSC procedures. If applicable, the specific solicitation document will include that information. The Port Authority assumes no responsibility for delays, including, but not limited to, delays caused by any delivery services, building access procedures, or security requirements.

#### **III. SUBMISSION REQUIREMENTS:**

To respond to this RFP, provide the following information:

##### **1) TECHNICAL PROPOSAL:**

- A. In the front of your Technical Proposal, a copy of Attachment B (Agreement on Terms of Discussion) signed by an officer of your company. If proposing as a joint venture, each member of the joint venture must sign a copy of Attachment B.
- B. Complete a copy of Attachment C (Company Profile).
- C. Transmittal Letter

~~Submit the transmittal letter, on letterhead, signed by an authorized representative, demonstrating compliance with the aforementioned Proposer Requirements (Section I hereof). For active agreements with governmental agencies, include the name of the organization, a contact person and current telephone number and email address for verification purposes.~~

Include a statement indicating whether the Consultant is proposing as a single entity, or as a joint venture.

- 1. If a common-law joint venture submits a proposal, all participants in the joint venture shall be bound jointly and severally and each participant shall execute the proposal. If a single entity proposer cannot demonstrate that it meets all of the referenced qualifications, then the single entity proposer may, with others, form a joint venture and request that the joint venture be deemed to be the Proposer (i.e. members of the joint venture may meet the qualification requirement collectively).
- 2. If the Proposer is a joint venture, the joint venture's Proposal shall contain an executed teaming agreement or, alternatively, if the entities making up the joint venture proposer

Commented [MJ8]: Should this term be defined? Are there any kinds of these arrangements that would not be acceptable?

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have not executed a teaming agreement, the joint venture's proposal shall contain a summary of key terms of the anticipated agreement. If the joint venture proposer is a consortium, partnership or any other form of a joint venture, or an association that is not a legal entity, the proposal shall include a letter signed by each member indicating a willingness to accept joint and several liability until the point at which a corporation, limited liability company or other form of legal entity is formed for the purposes of undertaking the Agreement.

- D. Organization and Management: Provide an organizational chart and narrative description of the administrative structure proposed for managing this project. Outline major responsibilities and areas of expertise.

The overall project manager and key staff members (both prime firm and subconsultants) must be identified and resumes provided. The project manager is considered to be the single most important Consultant asset, and is expected to maintain responsibility for the project through completion of the EIS required by the scope of services (Attachment A).

Provide a list of projects that the proposed project manager is responsible for and expected completion dates. Resumes of firm principals are not required unless they are proposed as active, integral members of the Consultant team. Principals should, however, be listed on the organizational diagram in relation to the Consultant team. This section should also include the location of each firm and key staff members.

In addition, if the proposal includes a prime firm and subconsultants, demonstration of relevant past working experience as a team is desired. The relevance of past working experience will be prioritized based on the following: 1) experience on FAA-directed environmental projects; 2) experience on other airport projects not directed by the FAA; 3) experience on environmental projects for other modes under the umbrella of the Department of Transportation; and 4) experience on environmental projects for other federal agencies.

- E. Project Experience: Provide summaries of experience for past projects by prime consultant and team members (if applicable) that demonstrate experience and ability to undertake and complete an EIS specifically for airport projects and transit systems similar to the proposed project. Do not include projects for which key project personnel are no longer employed by the firm. List the names of key employees with each project. Projects for which individuals gained experience during previous employment should be indicated in this section.

For each qualifying project, include the following information in tabular form: project name, location, client, total contract amount, principal-in-charge, day-to-day technical project manager, key design staff, original estimated schedule and actual schedule of completion (defined for an EIS as Notice of Intent to Record of Decision and for an EA as Notice to Proceed to acceptance of the Final EA) client reference (name, position and phone number) and brief narrative description of the project.

- F. Project Approach/Schedule: Demonstrate a thorough understanding of the FAA EIS process. Identify methodologies and approaches that would be utilized to analyze and

resolve environmental issues. Describe the proposed public scoping and public hearing process, work products, detailed project schedule, along with the responsibilities of each of the proposed staff/team members and subconsultants and their anticipated percentage of each individual's time working on the project. Additionally, include a description of the proposed process for coordinating with FAA, the Authority, subconsultants work efforts, and general public. A description of the team's understanding of any unique issues associated with the preparation of the EIS at the LGA should be included. Describe procedures to be followed to adhere to the goal of completion of the issuance by the FAA of a Record of Decision ("ROD") and completion of the National Environmental Policy Act ("NEPA") review within a 12-month period from the Notice-to-Proceed ("NTP").

Commented [MJ9]: Replace with either 'an EIS at LGA' or the EIS for the LGA Access Improvement Project'

Commented [BA(10)]: As discussed during our meeting on 2/8, the FAA suggests this language be reworked here and throughout the RFP and Attachment A. We would like to see the revised language prior to issuing the solicitation

- G. Description of Proposer/Team: Provide a general description of the Proposer, including services offered, number of employees, office location, years in business, etc. Indicate aviation and rail-related EIS and EA work to which the firm is currently committed. Include similar descriptions for each sub-consultant.
- H. QA/QC: Describe quality assurance and quality control procedures. Demonstrate experience in successfully implementing quality control programs on comparable projects.
- I. References: provide a total of five (5) references of similar projects. For each reference include contact name, title, project name and location, mailing address, phone number, fax number and e-mail address.
- J. Your attention is directed to Paragraph XX of the Agreement in which the Authority has stated the Minority Business Enterprises (MBEs) and Women Business Enterprises (WBE) goals for participation in this program. For this Agreement, the Authority has set a targeted goal of thirty percent (30%) combined participation by qualified and certified MBEs and WBEs. Submit details on how you intend to meet these goals. A listing of certified MBE/WBE firms is available at <http://www.panynj.gov/business-opportunities/sd-mini-profile.html>.

The Proposer shall include its MBE/WBE Participation Plan (Form PA 3760C) with its Proposal, to be reviewed and approved by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

The MBE/WBE Plan submitted by the Proposer to the Authority shall contain, at a minimum, the following:

- Identification of MBE/WBEs: Provide the names and addresses of all MBE/WBEs included in the Plan. If none are identified, describe the process for selecting participant firms in order to achieve the good faith goals under this Contract.
- Level of Participation: Indicate the percentage of MBE/WBE participation expected to be achieved with the arrangement described in the Plan.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

All MBE/WBE subconsultants listed on the MBE/WBE Participation Plan must be certified by the Authority in order for the Consultant to receive credit toward the

MBE/WBE goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/supplier-diversity.html> to search for MBE/WBEs by a particular commodity or service. The Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to the MBE/WBE Participation Plan must be submitted via a modified MBE/WBE Participation Plan to the Manager for review and approval by OBDCR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use form PA3760D. The Consultant shall not make changes to its approved MBE/WBE Participation Plan or substitute MBE/WBE subconsultants or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performance of work designated for a subconsultant by the Consultant's own forces, shall be deemed a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored by the Authority throughout the duration of the Agreement.

Commented [MJ11]: Define

The Consultant shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments in the form of the MBE/WBE Participation Report, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subconsultant and supplier actually involved in the Agreement, a description of the work performed and/or the product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information as it may assist the Project Manager in determining the Consultant's compliance with the foregoing provisions.

**MBE/WBE Conditions of Participation**

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

1. Commercially Useful Function: An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Consultant and the MBE/WBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as a MBE/WBE, the Consultant will receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

2. Work Force: The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Contractor, other

Subcontractors on the Contract, or their Affiliates. This does not preclude the employment by the MBE/WBE of an individual that has been previously employed by another firm involved in the Contract, provided that the individual was independently recruited by the MBE/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.

3. Supervision: All Work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Consultant, other subconsultants on the agreement, or their Affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the Work.

**Counting MBE/WBE Participation**

The value of the Work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. Subconsultants: One hundred percent (100%) of the value of the Work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such Work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Consultant, other subconsultants or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE subconsultant is itself a MBE/WBE. Work that a MBE/WBE subcontracts to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. Material Suppliers: Sixty percent (60%) of the expenditure to a MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. Broker's/Manufacturer's Representatives: One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees or commissions customarily allowed for similar services. The costs of materials and supplies themselves will not be counted.

4. Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work will be counted toward the MBE/WBE goal, provided the fee is

reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces. Contact OBDCR at (201) 395-3958 for more information about requirements for such joint ventures.

K. Provide a complete list of your firm's affiliates.

L. If the Proposer or any employee, agent or subcontractor of the Proposer may have, or may give the appearance of a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict. The Authority reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any source could create, or give the appearance of, a conflict of interest. The Authority's determination regarding any question(s) of conflict of interest shall be final.

Proposer is required to disclose all work performed at LaGuardia Airport for a period of three (3) years prior to the date of submission. Proposer shall include work performed by all affiliates, and provide, to the extent applicable, start and end dates of each engagement, the name of the stakeholder or entity for which the Proposer performed work, and a short description of the nature of the work or project.

Proposers are directed to paragraph **XX** of the attached Agreement. Proposers are further advised that under this Agreement, firms must provide, written notice to the Port Authority of any existing or potential conflict of interest the firm(s) may have in the performance of Services under this Agreement.

Furthermore, Proposers should ensure that they are familiar with FAA regulations and policy on conflicts of interest of EIS consultants. Pursuant to 40 C.F.R. Part 1506.5(c), the selected Consultant and any subconsultants performing the work shall certify that they have not entered into and will not enter into during the lifetime of the EIS preparation any agreement affording the Consultant and any subconsultants with any direct or indirect financial interest in the planning, design, construction or operation of the project that is the subject of the EIS except the preparation of the EIS. Prior to beginning work on the EIS, the Consultant and any Subconsultants shall sign a "Disclosure Statement" per the requirements of 40 C.F.R. 1506.5(c) and FAA Orders 1050.1F and 5050.4B, specifying they have no financial or other interest in the outcome of the project.

M. **Code of Ethics for Port Authority Vendors:** The Proposer's attention is directed to the Port Authority's "Code of Ethics for Port Authority Vendors." Vendors must certify in writing that they will comply with every aspect of this Code. The Proposer should submit an executed Compliance Certification with their Proposal. The Compliance Certification, once executed, will be a material and integral part of any Agreement resulting from this solicitation. The Code of Ethics and the Compliance Certification can be found on the

Authority's website at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

N. The selected Consultant(s) shall comply with the requirements of the Agreement. You should therefore not make any changes in this Agreement, nor restate any of its provisions in your Proposal or supporting material. However, if you have any specific exceptions, such exceptions should be set forth in a separate letter included with your response to this RFP. The Authority is under no obligation to entertain or accept any such specific exceptions. Exceptions raised at a time subsequent to proposal submission will not be accepted. The scope of tasks to be performed by you is set forth in Attachment A to the Authority's agreement.

2) **PRICING INFORMATION:** In a separately sealed envelope marked "Pricing Information," include all proposed pricing-related information for the Proposer (prime consultant) and proposed subconsultants. ~~Such information shall be consistent with the rates contained in the relevant government agreement, and shall include billing rates for partners or principals and actual hourly rates and multipliers for all other billable employees.~~ Compensation for premium pay (i.e. holidays, shift differentials, regular days, weekends and night work or union required payments) must be included and detailed.

### III.V. SELECTION PROCESS:

The qualifications based selection shall take into consideration the technical criteria conveyed in this section (listed in order of importance). After consideration of these factors, the Authority may enter into negotiations with the firm(s) deemed best qualified, in terms of the forgoing Technical Proposal criteria, to perform the required services.

The Authority will review proposals to determine if they satisfy the requirements of this RFP, including adherence to the RFP's specified format and the provision of all required documentation. Proposals will then be reviewed according to a two-phased evaluation process. The **first phase of the evaluation process** will involve Authority and FAA staff, and will include a detailed review and evaluation of the proposals according to the following criteria:

1. Organization and Management;
2. Project Experience;
3. Project Approach/Schedule;
4. Description of Proposer/Team;
5. QA/QC;
6. References.

Only those proposals receiving the highest scores in the first phase of the evaluation process will be evaluated in the **second phase of the evaluation process**.

The **second phase of the evaluation** will involve staff from the Authority and FAA. Only FAA staff will score proposals in the second phase of the evaluation. The second phase of the evaluation commences with interviews of the highest-rated proposers from the first phase of evaluation. After the last interview, FAA staff will score the proposals and recommend that the Port Authority retain the highest-rated proposer from the second phase of the evaluation

**Commented [SJ12]:** For discussion with FAA: What about compliance with FAA ts and cs? The MOU seems to indicate that the agreement has to contain terms as if it was a federally funded agreement

MOU includes disclosure statements and requirements on how to interact with the PA and FAA-at what point are those given the proposed consultants

**Commented [BA(13R12):** Terms and conditions were provided at the meeting on 2/8 Disclosure Statement is required following selection but prior to execution of contract

**Commented [SJ14]:** Assuming this will remain b/c at the time of solicitation we will have a draft agreement that incorporates everything that is required – any FAA terms, disclosure requirement

**Commented [BA(15):** Again, FAA does not allow for consideration of cost in a qualifications based selection

**Commented [SJ16]:** FAA: Let's discuss this and following sections

**Commented [BA(17):** In general, we recommend that target dates for the selection process be incorporated into the document

**Commented [SJ18]:** For discussion with FAA

**Commented [SJ19]:** Subject to discussion with the FAA In short, what is the expected level of participation, if any, by the FAA in the first phase of the evaluation?

**Commented [BA(20):** The more involved we are, the less likely we would select from outside the short list Two reviewers for proposals and on the short list would suffice



for the performance of the agreement resulting from this RFP. A notice of selection will be transmitted to the selected Proposer, prior to execution of the Agreement.

**VIIV. POST-SELECTION PROCESS (prior to agreement execution):**

Within ten (10) calendar days of notice of selection, and prior to agreement execution, a detailed scope of work shall be drafted by the selected Consultant and provided to the FAA. The Authority will compensate the Consultant for its efforts in developing the detailed scope of work at the rates provided in the Consultant's Pricing Information, as accepted by the Authority.

After this detailed scope of work has been finalized and accepted by the FAA, it shall serve as the Plan of Study for the assignment. The Authority will then negotiate a cost proposal with the Consultant for the services to be provided in accordance with the Plan of Study. The basis for negotiations shall be the billing rates/multipliers provided in the Consultant's Pricing Information. During price negotiations, the Authority will not entertain requests from the Consultant to increase the billing rates and multipliers submitted within its original pricing information.

**Commented [BA(21):** One thing we forgot to clarify during our meeting of 2/8 is that interviews would be comprised of a presentation by the consultant team followed by a question and answer session. The presentation portion could be graded on the same criteria as the proposals themselves and the Q&A would have specific point values assigned to each question as in the sample provided via e-mail yesterday.

**Commented [BA(22):** We should add in information similar to the sample RFP regarding notification of unsuccessful submitters.

**VIH. ADDITIONAL INFORMATION:**

If your firm is selected for performance of the subject services, the agreement you will be asked to sign will include clauses entitled "Certification of No Investigation (Criminal Or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure Of Other Information" And "Non-Collusive Proposing, And Code Of Ethics Certification; Certification Of No Solicitation Based On Commission, Percentage, Brokerage, Contingent Or Other Fees." By submitting a proposal, the Consultant shall be deemed to have made the certifications contained therein unless said Consultant submits a statement with its proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your proposal clearly marked "CERTIFICATION STATEMENT."

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

Prior to commencing any work associated with this Project, the selected consultant and any subconsultants shall submit a Disclosure Statement, provided by the FAA.

Proposers are also advised that additional vendor information, including but not limited to forms, documents and other related information, may be found on the Authority website at [www.panynj.gov](http://www.panynj.gov) or <http://www.panynj.gov/business-opportunities/become-vendor.html>.

After a review of all proposals received, the Authority will forward two (2) copies of the Agreement and Attachment A thereto to the selected firm(s), which shall sign and return both

**Commented [SJ23]:** Depending upon the answer to the q re: do we ONLY need this from the selected firm OR from ALL proposers, I think we may want to move this to Submission Requirements, if we can get our hands on the document and include it (or a link) Plus any OTHER documents FAA may require to be submitted with the Proposal.

**Commented [BA(24R23):** We only need this from the selected firm prior to execution of contract.

**Commented [BA(25):** Suggest replacing this language with Conflict of Interest Language from sample RFQ.

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copies. Signature shall be by a corporate officer. The return of one copy executed by the Authority will effectuate the Agreement.

Should you have any questions, please contact James Summerville, Solicitation Manager (██████████) and Krystina Papasavvas (██████████). All such correspondence must have your name, title, company, mailing address, telephone number, and state "RFP \*\*\*\*\*" in the subject line. The Authority must receive all questions no later than 4:00 P.M. EST, seven (7) working days before the RFP due date. Neither Mr. Summerville nor Ms. Papasavvas, nor any other employee of the Authority is authorized to interpret the provisions of this RFP or accompanying documents or give additional information as to their requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned and such writing shall form a part of this RFP, or the accompanying documents, as appropriate. For RFP updates and Addenda, if any, Proposers are encouraged to access, and monitor, the Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html>. You should, therefore, monitor the advertisement on said website, as appropriate, to ensure you are aware of changes, if any.

Proposal preparation costs are not reimbursable by the Authority. The Authority shall have no obligation to a firm except under a duly authorized agreement executed by the Authority.

No rights accrue to any Proposer except under a duly authorized agreement for performance of the specified services.

The Authority reserves the right, in its sole and absolute discretion, to reject all proposals, to undertake discussions and modifications with one or more Consultants, to waive defects in proposals, and to proceed with that Proposal or modified Proposal, if any, which in its judgment will, under all the circumstances, best serve the public interest.

Sincerely,

David Gutiérrez, CPPO  
Assistant Director  
Procurement Department

Attachments

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NEPA Procurement and Selection Process Questions for Discussion:

1. Per the Port Authority's understanding, the table below outlines the steps for the NEPA consultant procurement and selection process. The Port Authority requests FAA's input on the steps and timeframe outlined below, as well as recommendations for specific dates to be assigned for each step based upon FAA availability for meetings, interviews, and reviews.

NEPA Consultant Procurement & Selection Process Schedule*	
1/12/2018	Piggybacking process narrative sent to FAA**
1/22/2018	Draft solicitation package sent to FAA for review
<u>2/05/2018</u>	<u>Revised draft solicitation package sent to FAA for review</u>
<u>Week 1</u>	<u>Meeting with FAA to discuss comments on draft solicitation package and timeline through selection</u>
Week 1	Solicitation issued
Week 3	Responses to solicitation due
Week 4	Selection Committee meeting (Phase 1 evaluation)
Week 5	Interviews*** (Phase 2 evaluation)
Week <u>6<sub>5</sub></u>	Selection made by FAA (Phase 2 evaluation)
Week <u>7-10<sub>5-6</sub></u>	FAA formulates scope of work with selected consultant****
Week <u>10<sub>7</sub></u>	Contract award

\* Schedule subject to FAA review and input.

\*\* The Port Authority has decided to publicly advertise the RFP, and thus will no longer pursue the "piggybacking process."

\*\*\* All the firms to which the solicitation firms will be sent to be notified by email that should they be selected to be interviewed, the interviews will be held on these specific dates.

\*\*\*\* Assumes that a detailed scope of work/draft Plan of Study is developed by the selected consultant prior to contract award, and would require back and forth between the selected consultant and FAA.

Commented [BA(1)]: Should have specific, agreed upon dates prior to issuing RFP

Commented [BA(2)]: As we discussed yesterday, this schedule seems very aggressive and we have concerns about the ability to meet it considering the absence of planning documentation shared with the FAA to date. Please also see comments regarding timing of solicitation in the RFP and Attachment A documents.

2. To what extent would the FAA be involved in the first phase of evaluation, which would include the review of the proposals, requesting clarifying information (if necessary), reference checks, and identification of a short list of firms by the Selection Committee?
3. For the second phase of evaluation, what would be Port Authority members' role in participating in an "observational" capacity before and during the FAA's interviews?

Commented [BA(3)]: My suggestion is that at a minimum Marie and I review and grade proposals for inclusion in the decision of the short list. The more involved we are now, the less likely we are to expand the list later. If more people should be included (Jean, Steve) I am ok with that.

DRAFT AND DELIBERATIVE

- a. Will the Port Authority be allowed to formulate questions (in conjunction with the FAA) before the interviews and ask questions during the interviews or participate in the debrief discussions following the interviews?
  - b. Does the FAA expect the Port Authority to interact with the short-listed firms in the Phase 2 process, for example, in the scheduling of the interviews, sending potential questions to the firms in advance of the interviews, recording questions during the meetings, taking meeting minutes, etc.?
4. The selection process is described in Section ~~V-III~~ of the RFP letter. The Port Authority expects that the listed evaluation criteria will be used in both phases of evaluation. Per protocol, the Port Authority does not identify the 'weights'/percentages associated with each evaluative criterion. Instead, the Port Authority lists the criteria in "order of importance."
- a. Clarify if this approach (not identifying the weights but listing the criteria in order of importance) is acceptable to the FAA.
  - b. If acceptable, clarify if the following order of importance is acceptable: Organization and Management; Project Experience; Project Approach/Schedule; Description of Proposer/Team; QA/QC; References.
  - c. In Phase 1, the Port Authority intends to score the proposals according to the foregoing criteria. Clarify if the FAA expects to use the same scoring structure in Phase 2.
  - d. Assuming that the foregoing process and criteria are acceptable, including the order of importance, the Port Authority and the FAA need to agree on the 'weights'/percentages assigned to each criterion. The Port Authority proposes the following weights:
    - Organization and Management: 35%
    - Project Experience: 25%
    - Project Approach/Schedule: 20%
    - Description of Proposer: 10%
    - QA/QC: 5%
    - References: 5%
  - e. Per protocol, the Port Authority requests and vets the proposers MWBE plans. It's an evaluative factor, but not weighted. Please confirm that (a) it's acceptable to request MWBE information, not DBE, (b) it's acceptable for the Port Authority to evaluate MWBE plans per its usual protocols and (c) it's acceptable for MWBE be a factor but not a weighted criterion.
5. How many FAA members will participate in the evaluation process (in both Phase 1 and Phase 2), and how many copies of the proposals should be requested for the FAA?
6. In the case that two firms are tied in terms of the ranking criteria, does cost factor into the selection process?
7. How will selection decisions be recorded (for both Phase 1 and Phase 2 of the evaluation), and in what format?
8. The Port Authority requests FAA's consideration in having the selected consultant develop a detailed scope of work prior to the execution of the contract that would serve as the draft Plan of Study (subject to adjustments following public scoping and throughout the EIS process). With this proposed approach, the selected consultant would be requested to prepare a draft Plan of

Commented [BA(4)]: Formulate questions prior to interviews: yes. During interviews: no, as it is a structured q&a following the presentations. Debriefs after, yes.

Commented [BA(5)]: I would expect that the interview would occur at the NY ADO or RO conference room and be scheduled by FAA (based on Port availability). We do not send questions in advance. Port attendees can take any notes they wish during the interview; however, they will become part of the selection process file.

Commented [BA(6)]: That's fine

Commented [BA(7)]: FAA suggests Project Experience and Project Approach/Schedule as co-number 1, Org and Mgmt as 2, then References, Description of Team, and QA/QC.

Commented [BA(8)]: We would base our scores on the presentation and responses to interview questions as a separate evaluation, which would then be held alongside the evaluation scores of the proposals to determine the overall most qualified firm.

Commented [BA(9)]: Experience and Approach/Schedule 30 each, Org and Mgmt 20, References 10, Team and QA/QC 5 each

Commented [BA(10)]: This is all acceptable since there will be no AIP.

Commented [BA(11)]: Suggest at least 2 for Phase 1 and 4 for Phase 2. Interviewers in Phase 2 would need to be familiar with the proposals of the short-listed firms.

Commented [BA(12)]: No

Commented [BA(13)]: Each interviewer will be provided a packet of questions on which notes of the responses should be recorded along with an overall score of the response. The packets will be aggregated and a record of the decision will be developed.

DRAFT AND DELIBERATIVE

Study for submittal to FAA for review within 10 calendar days of being notified that they have been selected. The FAA and the selected consultant would work together to revise and reach an agreed upon draft Plan of Study. The draft Plan of Study would serve as the basis for the cost negotiation between the selected consultant and the Port Authority and would serve as the scope of work to be attached to the contract for execution. This proposed process is described in the RFP letter on page 1 and Section VI Post-Selection Process, as well as in Attachment A in Section II Scope of Services.

- a. If the selected consultant submits the initial draft Plan of Study to the FAA for review within 10 calendar days of notification of their selection, the Port Authority assumes that 2 weeks total is sufficient time to resolve open issues between the FAA and consultant. Please provide input on this timeframe for the formulation and agreement on the draft Plan of Study.
- 9. What FAA grant and program assurances, if any, should be attached to the agreement for the solicitation?
- 10. Who owns the data and package resulting from the preparations leading up to the Final EIS?
- 11. Describe the expected role of the FAA in the invoicing process, specifically in terms of validating work performed by the consultant and communicating that to the Port Authority?
  - a. Does the FAA envision that the invoices will relate only to labor/hourly rates, or will there be payments based upon deliverables/milestones?
- 12. Does the FAA expect the Port Authority's solicitation and agreement to include the FAA required contract clauses? If the FAA expects the agreement to include federal terms, which ones?
- 13. If the MOU is finalized prior to consultant selection, could the MOU be either attached to the RFP or provided after the issuance of the RFP, as information that will clarify the roles and responsibilities of the parties?
- 14. What procedures will be in place in to best protect the integrity of the selection process, considering that there are multiple parties involved?

Commented [MJ14]: Clarify – 2 weeks starting when?

Commented [BA(15)]: I am getting confused on the difference between Plan of Study and Scope of Work in this context.

Commented [SD(16)]: Since no AIP funds will be applied to this project, only the PFC assurances would be applicable.

Commented [BA(17)]: The Administrative Record would belong to the FAA; however, copies can be provided to the Port Authority.

Commented [SD(18)]: Payments may be made for all work performed by the consultant during that period since the last invoice. Overall work progress on the EIS however must be evaluated against percentage of the budget spend to date.

Commented [SD(19)]: Federal Contract Provisions under 49 CFR 18.36 (2CFR 200.326) apply to AIP funded projects. I believe only civil rights clauses are required for non-AIP (or in this case PFC) funded projects.

Commented [BA(20)]: We have no objection to this.

Commented [BA(21)]: During the meeting, the need for FAA to sign NDAs was mentioned. Please provide the NDA language to FAA for review.

ATTACHMENT A

PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (“LGA”) ACCESS IMPROVEMENT PROJECT

I. **BACKGROUND**

*General:*

For background with respect to The Port Authority of New York and New Jersey (the “Authority” or “Sponsor”) see [www.panynj.gov](http://www.panynj.gov). Additionally, the most recent electronic version of the Authority’s Annual Report is available at <http://www.panynj.gov/corporate-information/annual-reports.html>.

*Project Description:*

The Authority is proposing to construct a new automated people mover (“APM”) AirTrain system to provide a fast, convenient, and reliable transit alternative for air passenger and employee access to LaGuardia Airport (“LGA” or the “Airport”) and a relocated employee parking facility, as well as to enhance on-airport connectivity. The goal of this proposed project, herein referred to as the LaGuardia Airport Access Improvement Project (the “Project”), is to provide connections between the Airport and Long Island Rail Road (“LIRR”) and Metropolitan Transportation Authority’s (“MTA”) New York City Transit (“NYCT”) stations, as well as to construct an employee parking facility. Further, the LaGuardia Airport Access Improvement Project shall not preclude the potential future expansion of support facilities beyond the existing airport boundary. The Federal actions associated with the Authority’s proposed Project are decisions by the Federal Aviation Administration (“FAA”) on an updated Airport Layout Plan (“ALP”) and for the use of Passenger Facility Charge (“PFC”) funding, should the Authority pursue imposing and using PFC funding for the proposed Project.

The Authority’s preferred alternative is for the AirTrain to operate between the Airport and a transfer station at Willets Point. The proposed AirTrain system would include two on-airport stations and a terminus station at Willets Point providing connections to the LIRR Port Washington Branch and the Willets Point-Mets Station of the MTA NYCT Flushing No. 7 subway line. To achieve the goals for the proposed Project, an employee parking facility would be located at Willets Point. In addition to providing a connection to the LIRR and NYCT stations at the Willets Point terminus station, the proposed AirTrain would serve as an on-airport transit system that would facilitate transfers between airline terminals and provide connections to passenger parking. The proposed Project includes associated facilities and infrastructure (stations, guideway, maintenance/control facility, etc.) as well as the systems (vehicles, train control, power distribution system, etc.) for the AirTrain.

The Authority is seeking to accelerate the environmental review schedule for the proposed Project, with the goal of the FAA completing the issuance of a Record of Decision (“ROD”) and completing the National Environmental Policy Act (“NEPA”) review within a 12-month period from the Notice-to-Proceed (“NTP”) for services hereunder. In the event that the

**Commented [SD(1)]:** Port Authority should clarify that no additional airport access improvements are planned besides the AirTrain

**Commented [MJ2]:** See highlighted text. A goal to provide connections is extremely broad. The statement about future expansion of support facilities beyond the airport boundary is open to interpretation. Please be as specific as possible here.

**Commented [SD(3)]:** There is no mention here of a consolidated rental car facility, but it has been discussed by the Port previously as a potential part of the project’s scope.

**Commented [BA(4)]:** We have concerns regarding the amount of information being provided on which the consultants can base a response. One of the primary selective factors will be project approach and schedule, yet it is exceedingly difficult for a consultant team to provide a robust approach and schedule given the limited information provided. Based on our experience with EISs, we would expect that consultants would respond either by extending the schedule developed to account for significant contingencies during the early phases of the EIS (Purpose and Need, Alternatives, Planning review, etc.) to account for planning work on a range of alternatives that may or may not be warranted or by increasing scope development (post selection) and associated cost estimates substantially to account for additional planning work. Additionally, we do not see how the robust project approach could be developed within the two weeks provided for response to solicitation nor do we see how a viable scope could be established within the 10 days allotted as we are not familiar with the extent of planning done to date. Sharing any available planning with the FAA and potential respondents will only benefit a potential EIS process in terms of quality of work performed and overall schedule. The schedule element is key as the EIS will need to revalidate existing planning and greater access to the data available as early as possible will allow for the EIS team to dedicate more time early on to tasks such as Affected Environment and Impact identification rather than conducting additional planning analysis.

**Commented [BA(5)]:** As discussed during our meeting on 2/8, the FAA suggests this language be reworked here and throughout the RFP and Attachment A. We would like to see the revised language prior to issuing the solicitation.

**Commented [WJ(6)]:** This is concerning given the recent move to conduct robust planning during the NTP to NOI phase in order to reduce the overall EIS timeframe.

proposed Project is included on the Federal Permitting Dashboard, the Consultant shall comply with the associated processes and procedures.

Commented [MJ7]: Revise this language to refer to the overarching Executive Order

*General Description of Consultant Services:*

The Authority is seeking a Consultant to provide professional services to assist the FAA in preparing an Environmental Impact Statement ("EIS") to assess and disclose the potential environmental impacts of the construction of the Authority's proposed Project and any reasonable alternatives in a manner that complies with all applicable federal, state and local environmental laws and regulations. The FAA is the lead Federal agency for preparing the EIS in accordance with the requirements of NEPA (42 U.S.C. 4321 et. seq.), the Council on Environmental Quality ("CEQ") regulations (40 C.F.R. Parts 1500-1508), and appropriate U.S. Department of Transportation and FAA environmental orders. As stated above, the Federal actions associated with the Authority's proposed Project is a decision by FAA on an updated ALP, and should the Authority pursue imposing and using PFC funding for its proposed Project, a decision by FAA regarding use of such PFC funds.

Commented [WJ8]: There are no processes and procedures per the Dashboard that would need to be complied with. It is a reporting tool. Requirements to comply with are those in the two EO's regarding timeframes and 'one federal decision'. The consultant would need to support FAA in meeting these requirements but ultimately it is FAA that is responsible for reporting on the Dashboard

Commented [MJ9]: Be consistent (in other doc it says 'for FAA') [I prefer assist]

Commented [MJ10]: Add, 'and operation'

Commented [MJ11]: ANY reasonable alternatives is very broad

The Consultant shall be responsible to the FAA for the preparation of an EIS associated with the Authority's proposed Project. The FAA shall direct the services provided by the Consultant hereunder. Unless otherwise directed by the FAA, the Consultant shall not interact with the Authority in the performance of the services summarized in this Attachment A. The Consultant's interaction with the Authority shall be related only to matters of contract administration, invoicing and payment for services provided by the Consultant to the FAA, as accepted by the FAA. The Consultant shall serve as the independent third party assisting the FAA with conducting the EIS process in an efficient and cost-effective manner, while maintaining a high degree of credibility and validity in the production of all EIS deliverables.

Commented [MJ12]: Suggest revising this to be more broad as a project of this nature may include Federal Actions on behalf of other agencies beyond the FAA

Commented [BA13]: Ideally the MOU should be executed prior to or in accordance with the issuance of the RFP; however, I do not believe it is necessarily required. The MOU governs this arrangement

**II. SCOPE OF SERVICES**

Prior to agreement execution, and within ten (10) calendar days of notice of selection, the Consultant shall develop and submit a detailed scope of work for the entire assignment. The detailed scope of work is hereinafter referred to as the Plan of Study, which is subject to FAA approval. The Plan of Study will include detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated person-hours required for completion of each aspect, the schedule for performing each aspect, and a description of the internal and external review procedures to assure quality control. The Plan of Study will also include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the environmental data and analyses and the development and preparation of the EIS. Finally, the Plan of Study must comply with all applicable FAA regulations governing the preparation of EISs and must include such additional analytical requirements as provided by the FAA prior to completion. In addition, in producing or revising the Plan of Study, the Consultant may consider as appropriate any relevant submissions made by the Port Authority, with any such submissions provided concurrently to the FAA and the Consultant.

Commented [MJ14]: Prefer using the word 'accuracy' over 'credibility', credibility seems subjective

Commented [MJ15]: Suggest changing to 'all applicable regulations' rather than FAA regulations governing preparation of EISs

Commented [MJ16]: Any Port submissions must be made to FAA and then FAA may choose to use and provide to the consultant. This language should be revised to reflect this arrangement

DRAFT AND DELIBERATIVE

The EIS is to be accomplished in accordance with FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, Order 5050.4B, *NEPA Implementing Instructions for Airport Actions*, and associated Desk References (or the current version at time of contract award). Specific environmental issues to be included in the EIS may include, but are not limited to:

- a) Air Quality
- b) Biological Resources
- c) Climate
- d) Coastal Resources
- e) Department of Transportation Act, Section 4(f)
- f) Farmlands
- g) Hazardous Materials, Solid Waste, and Pollution Prevention
- h) Historical, Architectural, Archaeological, and Cultural Resources
- i) Land Use
- j) Natural Resources and Energy Supply
- k) Noise and Noise Compatible Land Use
- l) Socioeconomic, Environmental Justice, and Children's Environmental Health and Safety Risks
- m) Visual Effects
- n) Water Resources (Wetlands, Floodplains, Surface Waters, Groundwater, Wild and Scenic Rivers)
- o) Cumulative Impacts
- p) Irreversible and Irrecoverable Commitment of Resources

It is anticipated that the scope of work resulting from the Plan of Study may require the Consultant to perform the following services, at minimum:

1. Facilitate and conduct meetings necessary for the preparation and development of the EIS.
2. Provide project management duties, including but not limited to preparing reports, updating the Plan of Study as necessary, taking meeting minutes, coordinating activities between all stakeholders, schedule monitoring, preparing presentation materials, creating and maintaining the project file, etc.
3. Review project-related documents necessary for the development of the EIS.
4. Assist the FAA to fulfill its lead Federal agency role and enhance effective NEPA scoping to ensure early in the process that the EIS addresses key issues of concern to agencies and the public.
5. Develop the Purpose and Need Statement, to be utilized for the consideration and comparative evaluation of alternatives to the Sponsor's proposed Project. The Purpose should outline the goals and objectives that the Sponsor's proposed Project should achieve, and the Need should provide the data to support the Purpose.

Commented [BA(17)]: Not sure this is the term to be used here Perhaps justification?



DRAFT AND DELIBERATIVE

6. Prepare an alternatives analysis addressing a range of reasonable alternatives to the Sponsor's proposed Project. It is expected that the "No Action" and the Sponsor's proposed Project will be alternatives. The Consultant will identify any other potential alternatives and conduct a screening of alternatives, as appropriate.
7. Describe existing environmental resources and conditions that the Sponsor's proposed Project, any reasonable alternatives, and No Action would affect.
8. Describe impacts and environmental consequences of the Sponsor's proposed Project, any reasonable alternatives, and No Action that were previously identified for further evaluation, including the No Action Alternative.
9. Prepare draft and final versions of the EIS. It is anticipated that the draft and final version should include the following elements, at minimum:
  - a. Cover sheet
  - b. Summary
  - c. Table of contents
  - d. Purpose and need
  - e. Alternatives
  - f. Affected environment
  - g. Environmental consequences
  - h. Cumulative impacts
  - i. Mitigation
  - j. Public and agency outreach
  - k. List of preparers
  - l. List of EIS recipients
  - m. Index
  - n. Appendices
  - o. Incomplete or unavailable information
10. Solicit and facilitate public and stakeholder involvement throughout the EIS process in accordance with NEPA and relevant special purpose laws.
11. Ensure that the EIS documentation includes relevant information required for permitting applications and processes, as required.

Commented [MJ18]: Here and in following paragraphs 7 and 8, using the term ANY can lead to a very broad analysis (e.g. subway extensions) Suggest removing 'any' and just using 'reasonable alternatives'

Commented [BA(19): may

Commented [MJ20]: We suggest specifying here that draft chapters and preliminary drafts will also be prepared

Commented [WJ(21): This list should reflect the contents of an EIS established by FAA Order 1050 IF, Paragraph 7-1.1

Commented [MJ22]: Suggest adding 'on behalf of FAA'

Commented [MJ23]: May want to specify how far this should go – could be interpreted to be completing the permit process

Commented [MJ24]: Do we want to also add the establishment of a web page for the project and the ability to receive public comments electronically?

Commented [BA(25): Suggest adding prepare draft decision document

Commented [WJ(26): The Administrative Record is discussed below but should be included in the task list here

All work prepared under this Agreement shall be delivered to the FAA in printed format and searchable .pdf files along with components associated with each item, such as data files, text files, image files, spreadsheets, graphs, and tables. These products, where applicable, will be compatible with and incorporated into the Airports Geographic Information System ("AGIS") managed by the FAA (as applicable). While performing work under this Agreement, the Consultant shall be responsible for managing the administrative project file and, upon completion of the work, will be responsible for submitting a completed administrative record for the project to the FAA, in accordance with FAA policy and guidance.

### III. PERIOD OF PERFORMANCE

The period of performance (through completion of the final EIS) of the services is not to exceed twelve (12) months from the NTP for services hereunder. The work will be performed in accordance with FAA's procedures for assessing environmental impacts including FAA Order 5050.4B (or the current version at time of agreement award). While it is conceivable that issues raised during the public comment process could affect the time of performance, the Consultant should assume that the FAA will grant any extensions of time for performance only for the most extraordinary circumstances. The Period of Performance establishes the expected outer limit for project development.

Commented [BA(27)]: As discussed during our meeting on 2/8, the FAA suggests this language be reworked here and throughout the RFP and Attachment A. We would like to see the revised language prior to issuing the solicitation.

### IV. LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE

#### A. Commercial Liability Insurance:

1) The Consultant(s), and all of its/their Sub-consultants shall take out, maintain, and pay the premiums on Commercial General Liability Insurance for the life of the Agreement and such Insurance and shall be written on an ISO occurrence form CG 00 01 0413 or its equivalent covering the obligations assumed by the Consultant(s) under this Agreement, including, but not limited to, Premises-Operations, Products and Completed Operations, Broad form property damage, personal and advertising injury and Independent Contractor's coverages, with contractual liability language covering the obligations assumed by the Consultant(s) with insurance covering against claims for injuries to persons or damages to property which may arise from or in connection with products and materials supplied to the Agency in limits of not less than \$10,000,000 combined single limit per occurrence and in the annual aggregate. If vehicles are to be used to carry out the performance of this Agreement, then the Consultant(s) shall also take out, maintain and pay the premiums on Automobile Liability Insurance covering all owned, non-owned and hired autos in not less than \$5,000,000 combined single limit per accident for bodily injury and property damage. (Only if Applicable)

The insurance shall be written on an occurrence basis, as distinguished from a "claims made" basis, and shall not include any exclusions for "action over claims" (insured vs. insured) and minimally arranged to provide and encompass at least the following coverages:

- Contractual Liability to cover liability assumed under the Agreement;
- Independent Contractor's Coverage;
- Premises-Operations, Products and Completed Operations Liability Insurance;
- The insurance coverage (including primary, excess and/or umbrella) hereinafter afforded by the Consultant(s) and Sub-consultant(s) shall be primary insurance and non-contributory with respect to the additional insureds;
- Excess/umbrella policies shall "follow form" to the underlying policies;
- Excess/umbrella policies shall have a liberalization clause with drop down provision;
- To the extent any coverage the Consultant(s) and Sub-consultant(s) obtains and/or maintains under this Agreement contains "Other Insurance" language or provisions shall not be applicable to the additional insureds or to any insurance coverage maintained by the additional insureds;
- All insurance policies shall include a waiver of subrogation, as allowed by law, in favor

DRAFT AND DELIBERATIVE

of the additional insureds;

- Defense costs must be outside of policy limits. Eroding limits policies are not permitted;
- In the event the Consultant(s) and/or its Sub-consultant(s) obtains and/or maintains broader coverage and/or insurance in an amount greater than the minimum limits required under this Agreement, then the full limits of that insurance coverage will be available to respond to any claims asserted against the additional insureds that arises out of or is in any way connected with this Agreement;
- Additional insureds coverage shall not be restricted to vicarious liability unless required by controlling law;

In addition, the liability policy(ies) shall be written on a form at least as broad as ISO Form CG 20 10 10 01 (for ongoing operations work) together with ISO Form CG 20 37 10 01 (for completed operations work) or their equivalent and endorses to name “The Port Authority of New York and New Jersey, and its related entities, their Commissioners, Directors, Superintendents, officers, partners, employees, agents, their affiliates, successors or assigns”, in addition to: The City of New York, for all operations at John F. Kennedy and LaGuardia Airports; Port Authority Trans-Hudson Corporation, for operations at PATH; AFCO AvPorts Management LLC, for operations at Teterboro Airport; AFCO AvPorts Management LLC and NY State Dept. of Transportation, for operations at Stewart Int’l Airport, Trends Urban Renewal for operations at PATC and Silverstein Properties Inc.; The Port Authority of New York and New Jersey; Silverstein 2/3/4 WTC Redevelopment LLC; WTC Redevelopment LLC; World Trade Center Properties LLC; 4 World Trade Center LLC; Net Lessees Association of the World Trade Center; WTC Management and Development LLC; Silverstein WTC Mgmt. Co. LLC. Silverstein WTC Mgmt. Co II LLC; Silverstein WTC Properties LLC; Silverstein WTC Management and Development LLC; Silverstein WTC LLC.; WTC Investors LLC.; 4 WTC Holdings LLC; WTC Investors Management and Development LLC; World Trade Center Holdco LLC; 4 WTC Mezz LLC. for operations at the World Trade Center Site as “Insured” (as defined in the policy or in an additional insured endorsement amending the policy’s “Who Is An Insured” language as the particular policy may provide) on its liabilities policies with respect to liability arising out of work or operations performed by or on behalf of the Consultant(s) including, but not limited to, materials, parts or equipment furnished in connection with such work or operations. The “Insured” shall be afforded coverage and defense as broad as if they are the first named insured and regardless of whether they are otherwise identified as additional insureds under the liability policies, including but not limited to premises-operations, products-completed operations of the Commercial General Liability Policy. Such additional insureds status shall be provided regardless of privity of contract between parties. The liability policy(ies) and certificate of insurance shall contain cross-liability language providing severability of interests so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds shall not reduce or void coverage to the other insureds. The Consultant(s) is/are responsible for all deductibles or losses not covered by commercially procured insurance. Any portion of the coverage to be provided under a Self-Insured Retention (SIR) of the Consultant(s) is/are subject to the review and approval of the General Manager, Risk Financing. Furthermore, any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim.

**Commented [SJ28]:** We assume that the FAA will want to be an additional insured. If so, the PA will work with its RISK dept to add the appropriate language. That and to have the consultant cooperate with that indemnification

DRAFT AND DELIBERATIVE

Any self-insured retention shall cover any liability imposed upon the Consultant(s) and any and all subsidiaries with respect to all operations and obligations assumed by the Consultant(s) and any and all subsidiaries. The undersigned represents that such program provides the Additional Insureds (as defined in the Agreement) with all rights, immunities and protections that would be provided by traditional independent insurance required under the Agreement, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies pursuant to the terms of the Agreement.

If any of the Work is to be done on or at Port Authority facilities by the Sub-consultants and, if the Consultant(s) requires its Sub-consultant(s) to procure and maintain such insurance in the name of the Consultant(s), then such insurance as is required herein shall include and cover the additional insureds and it must have insurance limits not lower than those set forth by the Port Authority herein, along with all the insurance requirements in this "Insurance" section.

Further, it is the Consultant's responsibility to maintain, enforce and ensure that the type of coverages and all limits maintained by it and any of all Sub-consultants are accurate, adequate and in compliance with the Port Authority requirement. All certificates of insurance shall be turned over to the Port Authority prior to the start of work, and upon completion of the Agreement.

*The Consultant, its Sub-consultant(s) and its insurer(s) shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.*

**2) Workers' Compensation Insurance:**

The Consultant(s) and its/their Sub-consultant(s) shall take out, maintain and pay premiums on Workers' Compensation Insurance in accordance with the requirements of law in the state(s) where work will take place, and Employer's Liability Insurance with limits of not less than **\$1,000,000** each accident. Such policy shall include a waiver of subrogation endorsement in the benefit of the additional insureds.

**3) Additional Coverages:** The Consultant(s) shall have the policy endorsed "**Only when required by the Director**" for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) Any/all activities performed airside must, at all times, be performed while under security escort as approved in advance, and in writing by the Project Manager. If the services of the Consultant(s), as directed by the Authority, require the performance of services airside, the Commercial General Liability and Automobile Liability coverage limits stipulated in subparagraph 1, above, shall be increased to an amount not less than \$25,000,000 per occurrence as provided herein.

DRAFT AND DELIBERATIVE

- b) Endorsement to eliminate any exclusions applying to the explosion, collapse, and underground property damage (XCU) hazards.
  - c) Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
  - d) Coverage for work within fifty (50) feet of railroad.
- 4) **Additional Coverages:** The Consultant(s) shall have the policy endorsed “**Only when required by the Director**” for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:
- a) United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.
  - b) Coverage B Endorsement - Maritime (Masters or Members of the Crew of Vessels), in limits of not less than \$1,000,000 per occurrence.
  - c) Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$1,000,000 per occurrence.

**5) Professional Liability Insurance:**

The Consultant(s) shall take out, maintain and pay premiums on Professional Liability Insurance in limits of not less than **\$10,000,000** each occurrence, covering acts, errors, mistakes, and omissions arising out of the work or services performed by Consultant(s), or any person employed by Consultant(s). All endorsements and exclusions shall be evidenced on the certificate of insurance. The coverage shall be written on an occurrence basis or may be written on a claims made basis with a minimum of a three-year reporting/discovery period.

Each policy above shall contain an endorsement that the policy may not be canceled, terminated or modified without thirty (30) days' prior written notice to the Project Manager, at the location where the work will take place with a copy to the General Manager, Risk Financing.

The Port Authority may, at any time during the term of this Agreement, change or modify the limits and coverages of insurance. Should the modification or change result in an additional premium, the General Manager, Risk Financing for the Port Authority may consider such cost as an out-of-pocket expense.

Within five (5) days after award of this Agreement and prior to the start of work at the site, the Consultant(s) must submit an original certificate of insurance, to the Project Manager and Exigis email: [REDACTED] at the location where the work will take place. This certificate of insurance MUST show evidence of the above insurance policy(ies), including, but not limited to, the title of this Agreement, the P. A. Agreement number, the notice of cancellation provisions, prior to the start of work. The Consultant(s) is/are also responsible for maintaining and conforming to all insurance requirements from the additional insureds and their successors and assigns. The General Manager, Risk Financing must approve the certificate(s) of insurance before any work can begin. Upon request of the General Manager, Risk Financing/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.

DRAFT AND DELIBERATIVE

Renewal certificates of insurance or policies shall be delivered to the Authority's Project Manager, and upon request from the additional insureds, their successors or assigns at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Financing must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Authority, the Consultant(s) shall promptly obtain a new and satisfactory certificate and policy and provide same to the Port Authority.

If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then, the Consultant(s) and all Sub-consultants shall suspend performance of the Agreement at the premises until a satisfactory insurance policy(ies) and certificate of insurance is provided to and approved by Risk Financing, unless the Facility or Project Manager directs the Consultant(s), in writing, to continue to performing work under the Agreement. If the Agreement is so suspended, no extension of time shall be due on account thereof.

Failure by the Consultant(s) to meet any of the insurance requirements, including the requirement that the Port Authority be afforded the full extent of the insurance obtained under this Agreement without limitation, shall be deemed a material breach of Agreement and may be a basis for termination of this Agreement by the Port Authority.

The requirements for insurance procured by the Consultant(s) shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Consultant(s) under this Agreement. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Consultant against the obligations imposed on them by law or by this or any other Agreement.

All insurance coverage shall be provided by the Consultant(s) and/or by or for any of its/their Sub-consultant(s) at no additional expense to the Port Authority and its related entities. A copy of this "Insurance" section shall be given to your insurance agent and Sub-consultant(s) and shall form a part of the covered Agreement for insurance purposes in furtherance of the insurance requirements of this Agreement.

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We need to stress the following points:

- 1) We believe that early sharing of the planning documentation will assist in achieving the aggressive schedule targeted. We need to see the planning studies and have the ALP change prior to NOI issuance; however, sharing the documents even sooner will assist in the evaluation of project approach in the proposals and the expedited development of the scope of work. Additionally it will greatly inform the development of a reasonable yet expedited EIS schedule from the start. The planning is the foundation of the EIS, so we cannot stress enough how essential it is that it is provided to us as early as possible.
- 2) We need to see the revised language prior to distribution of the RFP, especially additional language discussed during yesterday's meeting and regarding the schedule/duration of performance.
- 3) We need to see the Non-Disclosure Agreement samples they mentioned yesterday as well in order to determine how we can work together on consultant evaluations.

Patricia Henn  
Planning and Programming Branch Manager, AEA 610  
Federal Aviation Administration  
Eastern Region Airports Division  
1 Aviation Plaza  
Jamaica, NY 11434





**REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT  
PROFESSIONAL PORT PLANNING SERVICES FOR THE DEVELOPMENT OF A  
LONG-RANGE MASTER PLAN FOR THE PORT OF NEW YORK AND NEW JERSEY  
ON AN “AS NEEDED” BASIS (RFP #XXXXX)**

**NARRATIVE**

**FIRM A**

*Staff Qualifications* – XXXX’s proposed staff demonstrated a distinctive blend of experience in port planning, economic strategy, financial analysis, and stakeholder engagement. In particular, the proposed Project Manager, XXXXX, most recently served as Project Manager and technical lead on the XXXXXX, where he led a team in analyzing issues directly related to the XXXX such as port operations and capacity constraints, on-port infrastructure, and off-port transportation networks. The evaluation committee gave XXXX’s proposal high marks for its inclusion of a dedicated “strategic planning team” led by XXXX, who demonstrated experience in producing strategic, future-focused analyses, trade projections, fleet forecasts, and land use evaluations for XXXX and XXXX port facilities. The “strategic planning team” also included XXXX, who will serve as a port-funding strategist and brings intimate familiarity with both the institutions of the Authority and New York State as well as transportation and infrastructure projects, having provided financial analysis for the XXXXX and XXXXX replacement programs. The project management and strategic planning components of the proposal were rounded off with a strong stakeholder outreach team, consisting of XXXX, who will apply his intimate knowledge of the port commerce industry to incorporate the interests of the port’s business partners into this master planning effort. XXXX’s involvement adds strong maritime/port sector knowledge and experience to the Master Plan work scope especially as it relates to competitive port leasing practices as well as rates and charges. XXXXX possesses intimate knowledge of ports on the East, Gulf and West Coast due to the fact that his firm completes periodic economic impact studies and strategic plans for many ports throughout the U.S. The stakeholder outreach team also included XXXX’s XXXX, who has direct experience conducting stakeholder outreach for the Port Commerce Department, having recently provided similar services for the department’s Cross Harbor Program. Collectively, XXXX’s proposed staff exhibited a breadth and depth of experience in tasks related to this scope of work that made this firm uniquely qualified to deliver a comprehensive, strategic master plan for the PONYNJ.

*Firm Qualifications* – XXXX’s proposal demonstrated more direct experience in producing strategic plans for port facilities and transportation agencies than other proposers. XXXX demonstrated that it has provided services included in this RFP, such as market analysis, capacity assessment, and land use planning, while preparing studies for the Port Authority of XXXX and the XXXXX in South Africa. The firm’s overall experience was complimented by that of XXXX, a main sub consultant in XXXX’s proposal, which has provided economic analysis and forecasting services for the XXXXX. Moreover, XXXX and two of its sub consultants, XXXX and XXXX, demonstrated an ability to successfully work together by citing their past collaboration on the

development plan for the XXXXX in Philadelphia, which involved tasks that paralleled those contemplated for this project including public outreach, market and forecasting, as well as terminal and rail planning. The proposal indicated that while XXXX has extensive maritime-based planning experience, the firm has less direct experience working with the Authority, especially as compared to other firms. Yet, the committee felt this was an advantage for XXXX and that as a relative outsider to the Agency, the firm could provide a fresh set of eyes and new way of thinking with respect to planning for the PONYNJ's future.

***Technical Approach*** – XXXX demonstrated a significantly stronger technical approach than other proposers. The approach described a thorough methodology that detailed the steps XXXX would take to address each task and ultimately produce a comprehensive master plan that will be useful as a decision-making tool when planning for the PONYNJ's next 30+ years. XXXX's technical approach was particularly strong in the visioning task, which called for working with internal stakeholders to develop vision and mission statements as well as a baseline set of criteria for the PONYNJ to meet on interim and long-term bases. The firm's technical approach also made clear that its master plan would deliver industry benchmarking, best practices, and economic impact evaluations for the PONYNJ while taking into consideration the financial aspects of the port's performance. It was evident that the firm would employ rigorous financial analysis to shape the master plan's recommendations and strategies, while also applying its maritime industry expertise and fresh perspectives to create a truly strategic master plan. XXXX's cost estimate did include more hours than the Agency had independently estimated and other proposals had included. However, upon analysis of those hours, the committee felt the additional hours were more a function of XXXX's dedication to providing rigorous analysis and producing quality deliverables rather than its misunderstanding of the project's scope.

***Management Approach*** – XXXX demonstrated a strong management approach. The firm's proposal included an organization chart that clearly assigned a single point of contact for the overall project as well as leads within each of the proposed sub-teams. The proposal included a schedule that illustrated stakeholder engagement occurring throughout the planning effort and the management approach section highlighted the firm's eagerness to actively engage and work with the Port Authority to produce the PONYNJ Master Plan. The committee also noted that of all the proposals, XXXX seemed to take M/WBE participation most seriously by quantifying M/WBE participation and assigning M/WBE firms to lead tasks where appropriate. XXXX's clearly outlined management approach gave the committee confidence that the firm could successfully manage the project and ultimately deliver a master plan that will meet expectations.

## **FIRM B**

*Staff Qualifications* – XXXX submitted qualified staff to perform the tasks in this scope of work, with several of the proposed staff demonstrating extensive experience working with the Authority. The proposed Project Principal, XXXX, was a previous Executive Director for the XXXX and several task leads cited experience either working directly for the Authority in managerial roles or having performed consulting services for the Agency in the past. Two of the stakeholder outreach leads had worked for the Authority’s Government and Community Relations department, demonstrating direct experience working with many of the internal and external interest groups specific to this project. The proposed Project Manager, XXXX, demonstrated familiarity with port planning issues as well as a facility for financial analysis and master planning, having completed the XXXXX’s cost benefit analysis for the Authority’s Planning Department, the XXXXX in the early 2000s, and various analyses for the PONYNJ’s terminal operators. The staffing proposal also included subject matter experts known for their work in topics related to the Master Plan. The Market Analysis task lead, XXXX, demonstrated experience in this field, having completed market studies for facilities at Port Elizabeth and Port Newark Container Terminal, a “Long-Term U.S. East Coast Port Cargo Forecast” for a private industrial development company, as well as a cargo demand forecast for the Panama Canal Authority. The staff person assigned to evaluate port competitiveness, XXXX demonstrated an expertise in analyzing port uses and markets, which he developed throughout his career while holding positions such as an economist at the U.S. Panama Canal Commission and Manager of Business Planning and Marketing for Sea-Land Corporation. Overall, XXXX’s proposed staff exhibited maritime knowledge along with prior experience working within or for the Port Authority, helping the firm’s proposal demonstrate an intimate, keen understanding of the issues surrounding the task at hand.

*Firm Qualifications* – XXXX’s proposal demonstrated comprehensive port planning experience. The firm qualifications section relayed that XXXX has completed hundreds of studies and evaluations analyzing components of port facilities from piers and wharves to terminals and wider environmental elements like flood control and coastal engineering mechanisms. XXXX’s proposal demonstrated that it has worked directly for the Authority, as a “call-in” consultant for port related studies, as well as for similar port facilities like the Ports of Los Angeles and Long Beach as well as the Virginia Port Authority. While the “Relevant Expertise of XXXX Team” matrix included in this section listed a multitude of studies and plans that appeared similar to this scope of work, some of the project examples more thoroughly highlighted in the latter pages of this section appeared unrelated to the PONYNJ master planning effort. For instance, the firm’s work on the XXXX and the XXXX Terminal Master Plan appeared to involve planning for the development of new port facilities on greenfield sites, which qualitatively differs from planning land uses for a port constricted by a heavily developed urban environment as in the case of the PONYNJ. The *Port Everglades Master/Vision Plan* project cited in the proposal did involve many of the planning activities identified for this scope of work, however, there are significant differences in the size and relative geography between the PONYNJ and XXXXX. While the firm demonstrated its ability to perform port planning tasks, especially related to the physical aspects of a port facility,

it did not clearly evidence its experience in preparing a comprehensive, strategic plan for a port as large and complex as the PONYNJ.

***Technical Approach*** – XXXX presented a strong technical approach. The proposal provided an adequate description of how XXXX would complete each task described in the scope of work. The proposal also included a detailed description of the process that would be used to conduct stakeholder outreach, one of the main tasks in this project. The approach also included use of a digital simulation tool to evaluate options for the final deliverable, which the committee found to be a value add to the overall proposal. The firm’s technical approach, however, was lacking description of the real estate considerations that would be included in the master planning effort. In addition, the firm did not emphasize use of metrics or quantitative analysis to the degree that other firms did in their proposals, making XXXX appear less equipped to produce a strategic, financially focused plan as compared to other firms.

***Management Approach*** – XXXX presented a strong management approach. The proposal included an organization chart that clearly assigned a single point-of-contact for the project as well as task leads and illustrated the firm had an appropriate mix of sub consultants that XXXX could manage to complete the task at hand. Throughout the proposal, XXXX included matrixes that clearly showed the roles and responsibilities of various project staff along with their associated experience and expertise to demonstrate the rationale behind staffing assignments and overall strength of the proposed team. The proposal also displayed a schedule that demonstrated the firm understood and could meet the expected timeline of the overall project.

## **FIRM C**

***Staff Qualifications*** – XXXX proposed staff qualified to perform this scope of work. The proposed Project Manager, XXXX, demonstrated extensive experience with port and rail planning, particularly in the NY-NJ area, having served in leadership roles for the Authority’s Port Commerce Department and the MTA’s Long Island Rail Road, directing studies and developing strategic plans for port facilities and rail networks while in those respective positions. Similar to the Project Manager, the stakeholder outreach task lead, XXXX, demonstrated familiarity with the Authority and the Agency’s goods movement challenges, having conducted stakeholder outreach for the Authority’s XXXX. The Master Plan Development task lead, XXXX, demonstrated experience in producing comprehensive maritime plans for west coast ports, including the Port of Long Beach and the Port of Oakland. Mr. XXXX also displayed an intimate knowledge of local port operations as he served as XXXXX in Bayonne, NJ and has provided redevelopment planning services for Port Newark Container Terminal in the past. While the proposed staff evidenced expertise in master planning and a deep knowledge of port-related issues, it did not demonstrate equal levels of experience with and an emphasis on financial and quantitative analysis, when compared to other firms, resulting in a relatively lower score in this category.

***Firm Qualifications*** – XXXX’s proposal demonstrated comprehensive experience in port master planning. The proposal cited XXXX’s work on the XXXXX to demonstrate the firm’s experience

in leading a comprehensive planning effort for a port similar to the PONYNJ in terms of size and scope. XXXX's proposal also cited its work on other port planning projects, including the XXXX and the XXXX XXXX as further evidence of its ability to develop future forward strategies for port facilities. Additionally, the firm's proposal highlighted its contributions to the XXXXX, which showed that XXXX has successfully worked with agencies related to the Authority, like the American Association of Port Authorities and the US Maritime Administration, while gaining a thorough understanding of port resources and tools applicable to this project, resulting in the firm's relatively high score in this category.

***Technical Approach*** – While XXXX demonstrated a strong approach to preparing a comprehensive master plan, the firm's approach was not as strong as the top firm's proposal, which focused more deeply on application of quantitative and metrics-based analysis to determine the plan's strategies and recommendations. XXXX's approach adequately detailed the firm's methods for performing each task in the scope of work. It clearly demonstrated a thorough project understanding and detailed XXXX's process to engage stakeholders, specifically outlining the various forums and meetings that would be used to obtain stakeholder input. The proposal drew particular attention to the firm's use of in-house modeling software that would meld the various planning tasks, like the market analysis and capacity assessment, with the physical features and land use patterns of the PONYNJ, to develop the master plan's recommendations, an aspect that helped the overall strength of XXXX's technical proposal. However, the technical approach focused less on the economic and financial implications of those studies, resulting in a lower score in this category as compared to the successful proposer.

***Management Approach*** – XXXX presented an adequate management approach. The firm's proposal included an organization chart that clearly assigned task leads and a single point-of-contact responsible for the overall project. The approach specified weekly and monthly meetings with the Authority, demonstrating its ability to work closely with the Agency on the development of this master plan. The firm included a project schedule that demonstrated its ability to complete the project in the expected timeframe. Finally, the proposal also included a description of XXXX's cost control measures to monitor project spending and its quality assurance approach, though these descriptions appeared relatively generic in nature.

## **FIRM D**

***Staff Qualifications*** – The proposal submitted by XXXX included staff experienced in port facility and transportation planning, economic analysis, and environmental planning within the project's leadership team. For instance, Mr. XXXX, the proposed project manager, demonstrated strong experience with topics relevant to this master planning effort, citing his experience as a project

manager for several Port Authority studies including a rail simulation for Greenville Yards, a chassis supply optimization study for the PONYNJ, facility planning and design evaluations for Port Newark Container Terminal, and land use studies for Port Jersey South as well as the Agency's properties at the former site of the Military Ocean Terminal at Bayonne. The Port Assessment Task Lead, XXXX, listed experience providing economic analysis for a number of port facilities and most recently for the Port Commerce Department's XXXXX and XXXX, the proposed environmental subject matter expert for the project, pointed to her experience in providing environmental assessment expertise on studies prepared for facilities and/or stakeholders within NY harbor. Additionally, two of the proposed technical advisors, Mr. XXXXX and Mr. XXXX, demonstrated intimate knowledge of port operations. Both proposed advisors cited 40 years of seaport management, with Mr. XXXX having served in leadership roles with the Port of Galveston and the Georgia Ports Authority and Mr. XXXX having served as the XXXX of ports in California and Florida. Collectively, however, the proposed staff lacked experience in developing comprehensive port master plans, especially when compared to other firms, resulting in a relatively lower score in this category.

***Firm Qualifications*** – XXXX's firm qualifications section demonstrated strong experience with many of the tasks involved in preparing a port master plan. The firm's proposal scored highly in this category given the demonstrated experience with benchmarking, productivity, and capacity assessments. Example projects included in the proposal, such as the XXXX for the Philadelphia Regional Port Authority and the XXXX for Los Angeles County, highlighted the engineering, design, and transportation planning expertise that this firm and its sub consultants could contribute to the project. The proposal failed to demonstrate, however, that the firm has directly led a comprehensive master planning effort for a port similar in size and complexity to the PONYNJ, making this firm less qualified when compared to higher ranked proposers in this criteria.

***Technical Approach*** – XXXX's proposal presented a fairly rigorous technical approach. The proposal demonstrated the firm's deep understanding of the analytical work needed to support the master plan by including a detailed listing of the background research, benchmarking exercises, and market assessments the firm would conduct as part of its technical work. The committee gave the firm high marks for its use of the XXXXX and the proposal's mention of evaluating off-port expansion options. The committee felt, however, that the firm's technical approach did not give equal consideration to analyzing land uses at both New York and New Jersey terminals, which led to a reduction in the firm's score for this category.

***Management Approach*** – XXXX's management approach was general in nature. The proposed project schedule demonstrated the firm's ability to deliver the project within the allotted timeframe, but the proposal failed to specifically outline the project management process that would be used to ensure completion of deliverables. The proposal did include a project organization chart. However, the evaluation committee noted that the project team consisted of 12 different firms as well as dozens of technical experts and team personnel, drawing into question

whether the firm could successfully coordinate with and communicate amongst the varied resources to execute its plan.

## **FIRM E**

*Staff Qualifications* – The staff proposed by XXXX were highly qualified in the consulting realm, demonstrating robust experience with the topics of transportation, infrastructure, logistics, industry, manufacturing, and public sector management. The proposed “core leadership team” included XXXX’s Transportation & Logistics practice lead for North America and the firm’s Public Sector practice lead for the NY metro area, both of which had 20 or more years working in the consulting field. The Transportation and Logistics practice lead, XXXX, cited experience with developing growth strategies for European and South African ports as well as having done work for companies in the manufacturing and industrial goods spheres and for transportation companies, primarily related to bus and rail modes. The Public Sector practice lead, XXXX, cited experience that included developing strategies for a rail and ocean transportation equipment manufacturer along with public sector experience, having worked with the Authority on its fleet management improvement initiative. While XXXX demonstrated experience in strategic planning for port facilities and the project team included a well-known maritime firm as a sub consultant (XXXX) along with one of the top experts in port design (XXXX), the proposed staff did not collectively demonstrate the depth of maritime and port-based planning experience as desired by the committee or required for this effort, especially when compared to other proposals. The lack of proposed maritime-based planning expertise was particularly apparent at the “daily project management” level. Both proposed project managers demonstrated experience with performing operational efficiency work for companies in the transportation and logistics sectors as well as experience in strategic planning, but neither demonstrated having led the development of a comprehensive maritime-based master plan in the past.

*Firm Qualifications* – XXXX demonstrated strong experience in strategic planning, organizational and change management, financial and market analysis, as well as industry benchmarking. XXXX’s proposal described its use of rigorous, data-driven analysis to successfully provide consulting, change management, and other services to clients spanning the public sector spectrum, from the Department of Defense to the Texas Department of Transportation and the World Bank. The committee scored XXXX relatively highly in the firm qualifications category as the proposal highlighted XXXX’s prior partnerships with XXXX, a sub included in this proposal, to complete a strategic business plan for the XXXX and a growth master plan for XXXX, both of which included one or multiple elements similar to tasks identified in this scope of work. Additionally, the firm’s proposal pointed to activities such as the development of a tool to analyze global trade flows and contributions to publications like “XXXX and XXXX” as examples of the research, analysis, and industry insights XXXX would bring to this scope of work.

*Technical Approach* – Based on XXXX’s proposal, the committee felt that the firm could contribute fresh perspectives, out-of-the-box thinking, and metrics-based analysis to produce a thorough, strategic master plan. The technical approach section mentioned development of

benchmarks and key performance indicators (KPIs) and included flow charts and process diagrams to illustrate the firm's proposed technical methodologies. While it was apparent that the firm would use a strategic, analytical, metrics-based approach, the proposal did not specifically state how the firm would address the maritime-based issues key to this project. Furthermore, the amount of hours included in the cost estimate as well as the overall project cost far exceeded the Agency's estimate for this effort as well as the mean estimated cost of all proposals submitted, making the proposal uncompetitive when compared to other firms, and bringing into question whether XXXX adequately understood the time required to complete the tasks at hand.

**Management Approach** – XXXX's management approach was general in nature. The proposal presented a matrix of project management-related documents and tools (i.e. checklists, communications plans, workstream roadmaps, schedules, dashboards, etc.) that would be used to plan and track execution of tasks. However, while mentioning "people" as one of the three pillars of the firm's management approach, the proposal did not clearly assign single point-of-contacts who would be responsible for the completion of tasks. XXXX did provide an organization chart, however, the chart appeared to illustrate significant management hierarchy. The core working groups were presented as collections of subject matter experts with no identifiable team/task leaders. Additionally, the leadership team was comprised of four individuals, making it unclear who would be the sole individual ultimately responsible for leading and guiding the project.

## **FIRM F**

**Staff Qualifications** – XXXX's proposed staff appeared to have an intimate knowledge of the Authority and its port facilities as well as familiarity with the maritime-based planning issues that shape the context in which the PONYNJ operates. Their proposal scored high in staff qualifications when compared to other firms mainly due to the presence of XXXX president of XXXXX, who cited having over 35 years of experience with port projects including the XXXXXX. The proposed staff also included XXXX's XXXX, a former Assistant Director for the Port Commerce Department, and XXXX of Baird, who cited experience with NY-NJ-based projects such as the development of Port Newark Container Terminal and the New York/New Jersey Harbor Navigation Project. However, the team did not include a real estate broker or advisory consultant, which made them uncompetitive as compared to other firms in performing real estate related tasks called for in the RFP.

**Firm Qualifications** – XXXX's proposal was lacking in the firm qualifications and experience category. The proposal failed to demonstrate experience in leading the development of a master plan for at least one port similar in size and complexity to the PONYNJ as explicitly stated in the "proposer requirements" section of the RFP. The firm's project examples were limited to preparation of master plans for port facilities incomparable to the PONYNJ in terms of size and geography (i.e. the XXXXX, XXXX and the Port XXXX) and cited topics far removed from those related to the PONYNJ, such as sediment in the Lower Mississippi River Delta wetlands. While some of XXXXX's projects demonstrated familiarity with aspects of the PONYNJ's business



practices, these examples failed to demonstrate that the firm would be qualified to prepare a master plan that comprehensively evaluated the multifaceted and varied issues relevant to the PONYNJ.

**Technical Approach** – XXXX’s technical approach appeared strong as it clearly outlined the process the firm would use to execute the scope of work and identified the deliverables that would be produced at the end of each task. Specifically, the firm’s approach to stakeholder engagement, with options for engaging stakeholders in either a one-on-one format or group-based roundtables, demonstrated that the firm thoroughly understood the nuances of the stakeholder engagement process needed for this scope of work. The technical approach also stood out with its mention of evaluating the PONYNJ’s competitive advantage as well as benchmarking its position relative to that of competitor port facilities.

**Management Approach** – The management approach presented in XXXX’s proposal was relatively general in nature. XXXX did provide an organization chart and outlined the project schedule, including an option for fast-tracking the completion of this effort, which helped its score in this category. However, the day-to-day project manager identified in the proposal came from one of XXXX’s sub consultants, XXXX, questioning XXXX’s ability to adequately resource this effort as the prime firm. Additionally, other elements of the firm’s management approach, like the document management and project quality statements, did not offer many details and appeared generic when compared to other proposals.

## **FIRM G**

**Staff Qualifications** – XXXX proposed a strong collection of sub consultants and subject matter experts to form the team that would take on this scope of work, with staff demonstrating knowledge across diverse subject matter including port infrastructure components, maritime industry issues, energy and environment, traffic and risk management, cost benefit analysis, and stakeholder engagement. The assigned Project Manager, XXXX, demonstrated familiarity with market analysis and capacity assessments having contributed to the XXXXX for the US Maritime Administration as well as cargo demand outlooks for port facilities around the world. The proposed Deputy Project Manager, XXXX, complimented Mr. XXXX’s forecasting skills with expertise in environmental and infrastructure planning, citing experience with environmental impact statements and permit applications for various port facilities as well as direct involvement with the Port Authority as a manager of a call-in contract to provide civil and marine engineering services for the Agency. Beyond the project management level, however, proposed staff did not demonstrate the necessary levels of experience for this effort as compared to other firms. The technical lead for the master planning task, XXXX, demonstrated experience with leading master plans for east coast ports including Port XXXX and the Port of XXXX, yet those ports do not compare to the PONYNJ in terms of size and complexity. Additionally, the lead assigned to the visioning and stakeholder management task, XXXX, appeared experienced in land use planning, community outreach, and sustainability, having applied expertise in those areas to manage master plans for the Marine Corps. Yet, Ms. XXXX and the support staff for the stakeholder management task failed to demonstrate familiarity in working with interest groups and stakeholders specific to

the PONYNJ and the issues relevant to them. The firm also did not include a real estate broker or advisory consultant, making its proposed staffing plan look insufficient when considering other firms' proposals.

***Firm Qualifications*** – The overall proposal made clear that XXXX is an engineering firm with experience in planning and engineering the hard infrastructure components of port facilities including rolling stock, gantry cranes, and the like. Yet, the firm's qualifications and experience as related to producing comprehensive master plans were lacking when compared to other proposers. XXXX's firm qualifications and experience section focused on involvement in performing or supporting preparation of master plans for ports like XXXX, XXXX and XXXX, which are smaller in size and scope than the PONYNJ, and failed to demonstrate the requisite experience in preparing master plans for ports comparable to the PONYNJ.

***Technical Approach*** – XXXX's proposed technical approach was general in nature. The firm's approach appeared to restate the tasks outlined in the RFP issued for this effort and did not substantively detail or expand upon how the firm would apply its unique skills and expertise to complete the tasks outlined in the scope. Additionally, the firm's proposed amount of hours in the cost proposal was far below the Agency's estimate, particularly in the areas of market analysis and port assessment and master plan completion, bringing into question whether the firm adequately understood the amount of time needed to complete the tasks in this scope of work.

***Management Approach*** – XXXX's management approach was general in nature. The proposal included a schedule, an organization chart that indicated use of MBE/WBE firms, a matrix of the types of project status reports to be used throughout the master planning process, and a description of its quality assurance process.

## **FIRM H**

***Staff Qualifications*** – XXXX's proposed staff lacked the breadth and depth of experience in producing comprehensive, long-range master plans for ports like the PONYNJ, especially as compared to other firms. The experience demonstrated in the proposal focused primarily on services related to engineering, structural design, and construction management. The resume provided for the proposed Project Manager, XXXX, listed work activities such as providing technical engineering and project management services for the Battery Park City Ferry Terminal and producing feasibility and planning studies for waterfront structures and piers at the Port of Philadelphia as well as for properties near waterfronts, like Hoboken Terminal. Similarly, the proposed Chief Planner for this project, XXXX, cited experience with preparing redevelopment and master plans for counties in Pennsylvania as well as providing analysis for the XXXX and Brick Township's XXXX. While these activities demonstrated Mr. XXXX's experience with aspects of maritime-related land uses and structures and Mr. XXXX's experience with preparing master plans, these work activities appeared unrelated to producing a comprehensive master plan

for an operating port environment like the PONYNJ. Furthermore, the proposal designated an Assistant Project Manager in the organization chart, but there was no profile or resume provided for the individual, and so it was unclear if they were qualified for the role. The staff included in the proposal also appeared less experienced in strategic planning and stakeholder engagement than other firms and there was no real estate broker or advisory consultant included in the staffing mix, further lowering the firm's score in this category.

***Firm Qualifications*** – The firm qualifications presented in XXXX's proposal were not as strong when compared to other proposers. The firm qualifications included for XXXX, the prime firm, consisted of a generic summary of the firm's core services along with one project example. Several of the specialties listed under the firm's "comprehensive planning services" section, such as "active adult planning" and "hospital zoning and planning," were unrelated to the tasks in this scope of work. The firm's project example showcased its work on the XXXX, however, that work was limited to providing structural and marine engineering services for the project and failed to demonstrate the firm was capable of producing a comprehensive master plan. The proposal did highlight port master planning experience and related work of select sub consultants, such as XXXXX' work on the XXXX, XXXX's contributions to the XXXX and XXXX' XXXX for the NYCEDC. Yet, collectively, these examples did not demonstrate that XXXX and its sub consultants could together produce a holistic, comprehensive master plan as called for in the RFP, especially as compared to other proposers that demonstrated a greater depth of experience with preparing comprehensive port master plans.

***Technical Approach*** – XXXX presented a thorough technical approach that outlined their methodology for completing each task described in the scope of work. The technical approach highlighted the firm's use of market-driven analysis and solutions as a guiding theme, and while this will be one aspect of the plan, the firm's proposal seemed to lack the big-picture, qualitative thinking desired for the comprehensive, long-range port master plan.

***Management Approach*** – XXXX's management approach lacked sufficient detail to ensure the firm could manage this project to completion. The approach included an organization chart, which identified deputy planners to oversee collections of multi-disciplinary technical teams. However, the roles and responsibilities within each of those teams were not defined. In addition, the proposal did not include an overall project schedule or timeline, failing to demonstrate that the firm could complete this effort in the allotted period of time that was specified in the RFP.

Based on the evaluation conducted by the Committee, it is recommended that the firm of Hatch, be awarded an agreement for this project.

Committee:

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XXXX XXXX

XXXX XXXX

XXXX XXXX

**Subject: RFP TITLE \_\_\_\_\_**

**NON-CONFLICT OF INTEREST AND CONFIDENTIALITY CERTIFICATION**

As a member of the Proposal Evaluation Committee (“Committee Member”), assigned to review, rate and rank proposals submitted in response to the RFP, by signing below, I hereby certify that

to the best of my knowledge, information and belief, neither I, nor any member of my immediate family, have a financial or other interest in the procurement to which the RFP relates (the “Procurement”). I have not participated in any way in the preparation of any proposal submitted in response to the RFP;

to the best of my knowledge, information and belief, no business in which I, or any member of my immediate family, has a financial or other interest, is involved in the Procurement. [A business shall be deemed to be involved in Procurement if it is a prospective party to a contract, as well as when it is a party to an executed contract, or a proposed or actual party to a subcontract under a contract.];

to the best of my knowledge, information and belief, no person with whom I or a member of my immediate family is (or has been) negotiating or has an arrangement concerning prospective employment, is involved in the Procurement;

I will not (and have not previously) solicit(ed), demand(ed), accept(ed) or agree(d) to accept from another person anything of value or offer of employment, for myself or for a member of my immediate family, which I know or have reason to believe is (was) offered with the intent to influence or could reasonably be expected to influence the performance of my duties as a Committee Member, or was intended as a reward for an action on my part as a Committee Member;

I will not (and have not previously) knowingly use(d) confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of another person;

I will not (and have not previously) engage(d) in conduct which (i) gives reasonable basis for the impression that any person can improperly influence me or enjoy my favor in the performance of my duties as a Committee Member; or (ii) which might reasonably lead to the conclusion that I am engaged in acts which are in violation of the public trust.

As used herein, the terms indicated below are defined as follows:

“Business” means a private legal entity formed for profit including a corporation, partnership, sole proprietorship, joint stock company, or joint venture.

“Confidential information” means information which is available to me only because of my status as a Committee Member and is not a matter of public knowledge or available to the public on request.

“Financial interest” means:

1. ownership of an interest or involvement in a relationship from which or as a result of which a person has received within the past year, or is entitled to receive in any future year, more than \$1,000 or its equivalent; or

2. ownership of an interest other than in tangible personal property which has a market value in excess of \$1,000. In determining the value of an interest, debts, liens or other encumbrances thereon are not subtracted; or
3. ownership of an interest in tangible personal property other than motor vehicles which has a market value in excess of \$10,000. In determining the value of an interest, debts, liens or other encumbrances thereon are not subtracted; or
4. liability or indebtedness to a person in excess of \$5,000.

“Immediate family” means a spouse, children, parents, brothers and sisters.

“Other interest” means holding a position in a business such as an officer, director, trustee, partner, employee, or a position of management, or acting as a consultant, agent or representative in any capacity.

“Person” means a business, individual, union, committee, club, or other organization or group of individuals.

Should any circumstance arise regarding my participation as a Committee Member in connection with the Procurement where I believe a financial or other interest or involvement on my part might present a conflict of interest or other breach of ethical standards, I will immediately disclose the interest or involvement to the appropriate Procurement Department representative and disqualify myself from further participation in connection with the Procurement until advised in writing by the Law Department or the Port Authority Ethics Board that I may continue to participate.

I hereby agree that I will not intentionally discuss or intentionally disclose in any way to anyone, any information relating to the subject Request For Proposals (hereinafter, “RFP”) evaluation process, including, but not limited to the evaluation, negotiation, or selection of a proposer, or the contents of any letters, memoranda, documents, proposals or other materials, written or otherwise, which form a part of or are in any way involved in the RFP evaluation process, except as required by law, by governmental directive, or for the sole purpose of evaluating Project proposals, participating in negotiations, and/or selecting a proposer, without prior written approval by the appropriate Contract Specialist, or Manager in the Procurement Department.

Furthermore, I will not hold any discussions or respond to any written correspondence with any vendor regarding any portion of this RFP process, including but not limited to, if applicable, the vendor holding the current contract. I will immediately refer any such correspondence directly to the appropriate Contract Specialist, who is responsible for all communication with the vendor community and other outside parties for the duration of the RFP process, until an award is concluded. For the purposes of this paragraph, “vendor” shall include any principal, officer, director, employee, consultant, agent or representative in any capacity.

Signature	Name (Print)
Date	Title

Approved: \_\_\_\_\_

Procurement Manager (Signature)	Name (Print)	Date
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**From:** [Summerville, James](#)  
**To:** [REDACTED]  
**Cc:** [REDACTED]; [Clark, Drew](#)  
[Patty; DiScenna, Matthew; Tabafunda, Faith; Rogak, Elizabeth; Lamond, Kathryn; Brooks; Cohen, Michelle; Papasavvas, Krystina; Resnick, Risa](#)  
**Subject:** RE: LGA AirTrain / Access Improvement Project - Port Authority RFP Documents  
**Date:** Thursday, March 08, 2018 11:46:47 AM  
**Attachments:** [RFP Letter Draft\\_2018-03-08\\_PA Responses to FAA Comments.docx](#)  
[Attachment A Draft\\_2018-03-08\\_PA Responses to FAA Comments.docx](#)

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Marie et al,

Thanks again for the updated documents yesterday. We met internally this morning to review and discuss your comments, and we have further updated the documents accordingly. In anticipation of today's teleconference at 1 PM, please see the attached updated documents.

Thanks, James, [REDACTED]

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**From:** Summerville, James  
**Sent:** Wednesday, March 07, 2018 12:25 PM  
**To:** [REDACTED] <[REDACTED]> Papasavvas, Krystina  
<[REDACTED]>  
**Cc:** [REDACTED]; Clark, Patty <[REDACTED]> DiScenna, Matthew  
<[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Lamond, Kathryn <[REDACTED]> Drew  
Brooks <[REDACTED]>  
**Subject:** RE: LGA AirTrain / Access Improvement Project - Port Authority RFP Documents

Marie,

Confirming receipt – thanks.

Thank, James, [REDACTED]

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**From:** [REDACTED] [\[mailto:\[REDACTED\]\]](#)  
**Sent:** Wednesday, March 07, 2018 12:20 PM  
**To:** Papasavvas, Krystina <[REDACTED]>  
**Cc:** [REDACTED]; Clark, Patty <[REDACTED]> DiScenna, Matthew  
<[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Lamond, Kathryn <[REDACTED]> Summerville, James  
<[REDACTED]> Drew Brooks <[REDACTED]>  
**Subject:** RE: LGA AirTrain / Access Improvement Project - Port Authority RFP Documents

As discussed on Monday's call (3/5), attached are FAA's comments on the procurement

documents that were revised on 2/23.

## Marie C. Jenet

Environmental Specialist  
Federal Aviation Administration  
New York Airports District Office  
159-30 Rockaway Blvd, Suite 111  
Jamaica, New York 11434

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**From:** Papasavvas, Krystina [mailto: [REDACTED]]  
**Sent:** Friday, February 23, 2018 4:31 PM  
**To:** Jenet, Marie (FAA) < [REDACTED] > Brooks, Andrew (FAA) < [REDACTED] >  
**Cc:** Urlass, Steve (FAA) < [REDACTED] > Martinez, Evelyn (FAA) < [REDACTED] >  
Sanchez, David (FAA) < [REDACTED] > Doyle, John (FAA) < [REDACTED] > Wolfers-  
Lawrence, Jean (FAA) < [REDACTED] > DiScenna, Matthew  
< [REDACTED] > Tabafunda, Faith < [REDACTED] > Rogak, Elizabeth  
< [REDACTED] > Lamond, Kathryn < [REDACTED] > Summerville, James  
< [REDACTED] > Henn, Patricia (FAA) < [REDACTED] >  
**Subject:** LGA Airtrain / Access Improvement Project - Port Authority RFP Documents

Hello Marie and Andrew -

Attached for your review are revised drafts of the RFP Letter and Attachment A, which the Port Authority intends to include in the publicly advertised solicitation for a third party consultant to assist the FAA with the preparation of an EIS for the LaGuardia Airport Access Improvement Project. The attached documents include Port Authority revisions responding to FAA comments provided during the 2/8 meeting and the written comments provided on 2/9.

The Port Authority would like to request a conference call with FAA to close out any outstanding items regarding the attached revised draft RFP Letter and Attachment A, in order to finalize the documents and move forward with the issuance of the solicitation for proposals. The Port Authority is targeting issuance of this RFP no later than Monday, March 5<sup>th</sup>.

If necessary to discuss any of our changes, we would prefer to have a teleconference with you next week, preferably Tuesday, the 27<sup>th</sup>.

Thank you and we look forward to working together to finalizing the solicitation documents and issuing the RFP in the near future.

Thank you,

Krystina and James of the Procurement Department



**Krystina Papasavvas**

Integrity, Compliance and Contract Review

Port Authority of New York and New Jersey Procurement Department

4 World Trade Center

150 Greenwich Street, 21st Floor

New York, NY 10007

T: [REDACTED]

F: [REDACTED]

email: [REDACTED]

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

THE PORT AUTHORITY OF NY & NJ

DATE

SUBJECT: REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (LGA) ACCESS IMPROVEMENT PROJECT (RFP# \*\*\*\*\*)

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the Authority) is seeking proposals in response to this Request for Proposals (RFP) for a Consultant to provide the subject services. The services will require the preparation of an Environmental Impact Statement (EIS) for the LGA Access Improvement Project (the "Project"). [The Authority's goal is to complete the proposed Project and commence passenger service as close as possible to the completion of Terminal B and several key landside components of Terminal C end of 2022, when other major redevelopment at LGA, both of which will projects are expected to be completed by, in order to minimize the end of 2022 duration of construction-related disruptions to customers. Therefore, the Authority is committed to supporting the completion of the EIS within 12 months of the Notice of Intent ("NOI") to enable construction of the proposed Project to begin in 2019. As such, both the Authority, as the Airport Sponsor, and the Federal Aviation Administration ("FAA") will work together to facilitate the expeditious preparation of the EIS. The Authority is issuing this RFP, and both the Authority and FAA will participate in the process to evaluate proposals. The roles of the Authority and FAA in the evaluation process are set forth below in Section III. Selection Process. The selected firm (the "Consultant") will work directly with the FAA for the performance of the services that will culminate in the development of the EIS. The Authority and the Consultant will negotiate and enter into an agreement ("Agreement") resulting from this RFP, for the performance of the Consultant's services on behalf of the FAA. The Authority will be responsible for overall contract administration and payment for the Consultant's services as accepted by the FAA, while the Consultant reports to the FAA for direction on the development of the EIS.

Commented [FAA1]: Rework this language to focus on the stress of construction and customer disruption rather than specifically mentioning the Terminals  
Commented [CM2R1]: Revised language accordingly

The general scope of services to be performed by the Consultant is set forth in Attachment A. In accordance with Section IV below, ~~within ten (10) calendar days of notice of selection, and prior to Agreement execution and to meet the Authority's goal for the expeditious completion of the EIS,~~ a detailed scope of work should be drafted by the selected Consultant and provided to the FAA for review within fifteen (15) business days of notice of selection, and prior to Agreement execution. This detailed scope of work shall serve as a Plan of Study for the assignment. The draft Plan of Study must be accepted by the FAA prior to contract award and subsequent issuance of the FAA's NOI to conduct an EIS. ~~The~~ it is the Authority's goal that the NOI shall be issued by the FAA no later than May 24, the end of the second quarter of 2018.

Commented [FAA3]: Ten days is not a reasonable timeframe to develop a quality document. Time will be needed to review the planning information when it becomes available since it will be used in developing the Plan of Study. Additionally, the FAA is responsible for setting the scope and a time limit of this nature will restrict our ability to develop this aspect of the project. We recommend phrasing this in the context of Port Authority targets for schedule

Commented [CM4R3]: Extended time period to 15 business days and added text referring to the Port Authority's goal

I. PROPOSAL FORMAT REQUIREMENTS:

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

Commented [FAA5]: Remove It is not appropriate to prescribe a date here in a PANYNJ document when the issuance of the NOI is a federal role

A. To be acceptable, this Proposal shall be no more than 20 single sided pages or 10 double sided pages, using 12 point or greater font size, not including resumes. Each resume shall

Commented [CM6R5]: Revised to state that it is the Port Authority's goal to have the NOI issued within this timeframe, and extended to end of Q2 2018. Additionally, clarified that FAA will issue the NOI

## DRAFT AND DELIBERATIVE

be a maximum of two-pages single-sided or one-page double-sided, using 12 point or greater font size. The page limit pertains only to Numbers 4 through 9 (excluding resumes requested in Number 6) in Section II, below. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with "Your Firm Name", and **RFP Number \*\*\*\*\*** clearly indicated on the cover.

- B. Separate each section of the Proposal with a tab divider that is labeled in accordance with the letter of the requirements specified below in Section II.
- C. All proposals must be delivered in sealed envelopes and/or packages. Address the Proposal to: The Port Authority of New York and New Jersey, 4 World Trade Center, 21<sup>st</sup> Floor, New York, NY 10007, Attention: RFP Custodian.

~~D.~~ You shall submit the Technical Proposal as follows:

~~D.~~ ~~In~~ ~~in~~ one envelope, ~~the Technical Proposal, one~~

One (1) reproducible original hard copy containing original signatures along with twenty (20) compact disc copies of your ~~technical-Technical proposal-Proposal~~ for review. USB Flash Drives will not be accepted. In case of conflict, the reproducible original of the ~~technical-Technical proposal-Proposal~~ shall take precedence over material on the CDs.

The Technical Proposal shall include all information requested in the "Technical Proposal" subsection of Section II hereof. **No pricing-related information shall be provided in the original and CD copies of the Technical Proposal.**

~~0.~~ ~~In a separately sealed envelope, the Pricing Information, one (1) reproducible original hard copy containing original signatures along with five (5) compact disc copies of your pricing information for review. This envelope shall contain only the information requested under the "Pricing Information" subsection of Section II hereof.~~

F.E. In each submission to the Authority, including any return address label, information on the compact disc and information on the reproducible original and copies of the proposal, the Proposer shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure to comply with this requirement may lead to delays in contract award and contract payments, which shall be the responsibility of the Proposer.

G.F. Your Proposal should be forwarded in sufficient time so that the Authority receives it **no later than 2:00 p.m. on <DATE>**. The outermost cover of your submittal must be labeled to include the RFP Number and title as indicated in the "Subject" above. The Authority assumes no responsibility for delays caused by any delivery services.

If your Proposal is to be hand-delivered, note that only individuals with proper identification (e.g. photo identification) will be permitted access to the Authority's offices. Individuals without proper identification will be turned away and their packages not accepted.

There is extensive security at the World Trade Center Site. You must present a valid government-issued photo ID to enter 4 WTC. Individuals without packages or carrying small packages, envelopes or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All packages, envelopes and boxes may be subject to additional security screening. There is no parking available at 4 WTC/150 Greenwich Street, and

Commented [FAA7]: FAA's position is this should be a qualifications based selection only. Cost is not a factor in the selection process

Commented [CM8R7]: Removed request for pricing information

## **DRAFT AND DELIBERATIVE**

parking in the surrounding area is extremely limited. Express carrier deliveries by commercial vehicles will only be made via vendors approved by Silverstein Properties, the WTC Property Manager, through the Vehicle Security Center (VSC). Please note that use of the U.S. Mail does not guarantee delivery to Authority offices by the below listed due date for submittals. Proposers using the U.S. Mail are advised to allow sufficient delivery time to ensure timely receipt of their proposals. Presently, UPS is the only delivery vendor with approved recurring delivery times. UPS makes deliveries to 4 WTC around 9:30 a.m. each day. Please plan your submission accordingly. As additional express carriers may be approved by Silverstein Properties and scheduled for recurring delivery times with the VSC, this information may be updated. Under certain circumstances, a solicitation may allow for a commercial vehicle to be approved to make a delivery in accordance with the VSC procedures. If applicable, the specific solicitation document will include that information. The Port Authority assumes no responsibility for delays, including, but not limited to, delays caused by any delivery services, building access procedures, or security requirements.

### **II. SUBMISSION REQUIREMENTS:**

To respond to this RFP, provide the following information:

#### **A. TECHNICAL PROPOSAL:**

1. In the front of your Technical Proposal, a copy of Attachment B (Agreement on Terms of Discussion) signed by an officer of your company. If proposing as a joint venture, each member of the joint venture must sign a copy of Attachment B.
2. Complete a copy of Attachment C (Company Profile).
3. Transmittal Letter
  - a. Include a statement indicating whether the Consultant is proposing as a single entity, or as a joint venture.
  - b. If a joint venture which has not been established as a distinct legal entity (a common-law joint venture) submits a proposal, all participants in the joint venture shall be bound jointly and severally and each participant shall execute the proposal. If a single entity proposer cannot demonstrate that it meets all of the referenced qualifications, then the single entity proposer may, with others, form a joint venture and request that the joint venture be deemed to be the Proposer (i.e. members of the joint venture may meet the qualification requirement collectively).
  - c. If the Proposer is a joint venture, the joint venture's Proposal shall contain an executed teaming agreement or, alternatively, if the entities making up the joint venture proposer have not executed a teaming agreement, the joint venture's proposal shall contain a summary of key terms of the anticipated agreement. If the joint venture proposer is a consortium, partnership or any other form of a joint venture, or an association that is not a legal entity, the proposal shall include a letter signed by each member indicating a willingness to accept joint and several liability until the point at which a corporation, limited liability company or other form of legal entity is formed for the purposes of undertaking the Agreement.

## DRAFT AND DELIBERATIVE

4. Project Approach/Schedule: Demonstrate a thorough understanding of the FAA EIS process. Identify methodologies and approaches that would be utilized to analyze and resolve environmental issues. Describe the proposed public scoping and public hearing process, work products, detailed project schedule, along with the responsibilities of each of the proposed staff/team members and subconsultants and their anticipated percentage of each individual's time working on the project. Propose in order to meet the Authority's goal for the expeditious completion of the EIS, propose an approach to enable the expeditious development a draft Plan of Study within ~~ten (10) calendar~~ fifteen (15) business days of notice of selection and provide any assumptions related to producing an EIS within twelve (12) months of an NOI. To achieve the 12-month schedule, include a description of the proposed process for 1) efficient coordination with FAA, the Authority, subconsultant work efforts, other federal, state and local agencies and the general public; 2) expediting the development of EIS documentation 3) facilitating accelerated completion of comment review, responses and associated revisions. For example, developing a detailed timeline for development of the EIS and an approach for gaining commitment from all necessary stakeholders to adhere to the timeline; initiating the Draft EIS documentation in parallel with preparation for public scoping, as appropriate; and streamlining comment collection from necessary stakeholders through roundtable reviews.

A description of the team's understanding of any unique issues associated with the preparation of an EIS at LGA should be included. Describe procedures to be followed to adhere to the Authority's goal of completion of the issuance by the FAA of a Record of Decision ("ROD") and completion of the National Environmental Policy Act ("NEPA") review within a 12-month period from the Notice of Intent ("NOI"). In addition, if the Proposer proposes an alternate schedule (exceeding the aforementioned twelve months), the Proposer shall provide its rationale for the longer schedule, its assumptions to producing an EIS within the longer proposed period, and a description of procedures to be followed to adhere to the alternate schedule.

5. Project Experience: Provide summaries of experience for past projects by prime consultant and team members (if applicable) that demonstrate experience and ability to undertake and complete an EIS specifically for airport projects and transit systems similar to the proposed project. Do not include projects for which key project personnel are no longer employed by the firm. List the names of key employees with each project. Projects for which individuals gained experience during previous employment should be indicated in this section.

For each qualifying project, include the following information in tabular form: project name, location, client, total contract amount, principal-in-charge, day-to-day technical project manager, key design staff, original estimated schedule and actual schedule of completion (defined for an EIS as Notice of Intent to Record of Decision and for an EA as Notice to Proceed to acceptance of the Final EA) client reference (name, position and phone number) and brief narrative description of the project.

6. Organization and Management: Provide an organizational chart and narrative description of the administrative structure proposed for managing this project. Outline major responsibilities and areas of expertise.

Commented [FAA9]: Same as above – ten days is not a reasonable timeframe

Commented [CM10R9]: Extended time period to 15 business days and added text referring to the Port Authority's goal

## DRAFT AND DELIBERATIVE

The overall project manager and key staff members (both prime firm and subconsultants) must be identified and resumes provided. The project manager is considered to be the single most important Consultant asset, and is expected to maintain responsibility and availability for the project through completion of the EIS required by the scope of services (Attachment A).

Provide a list of projects that the proposed project manager is responsible for and expected completion dates. Resumes of firm principals are not required unless they are proposed as active, integral members of the Consultant team. Principals should, however, be listed on the organizational diagram in relation to the Consultant team. This section should also include the location of each firm and key staff members.

In addition, if the proposal includes a prime firm and subconsultants, demonstration of relevant past working experience as a team is desired. The relevance of past working experience will be prioritized based on the following: 1) experience on FAA-directed environmental projects; 2) experience on other airport projects not directed by the FAA; 3) experience on environmental projects for other modes under the umbrella of the Department of Transportation; 4) experience on environmental projects for other Federal agencies; and 5) experience with expedited completion of environmental projects

7. References: provide a total of five (5) references of similar projects. For each reference include contact name, title, project name and location, mailing address, phone number, fax number and e-mail address.
8. Description of Proposer/Team: Provide a general description of the Proposer, including services offered, number of employees, office location, years in business, etc. Indicate aviation and rail-related EIS and EA work to which the firm is currently committed. Include similar descriptions for each subconsultant.
9. QA/QC: Describe quality assurance and quality control procedures. Demonstrate experience in successfully implementing quality control programs on comparable projects.
10. See Appendix A to this RFP letter for the MBE/WBE Subcontracting Provisions.
11. Provide a complete list of your firm's affiliates.
12. If the Proposer or any employee, agent or subcontractor of the Proposer may have, or may give the appearance of a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict. The Authority reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any source could create, or give the appearance of, a conflict of interest. The Authority's determination regarding any question(s) of conflict of interest shall be final.

Proposer is required to disclose all work performed at LaGuardia Airport for a period of three (3) years prior to the date of submission. Proposer shall include work performed by all affiliates, and provide, to the extent applicable, start and end dates of each engagement, the name of the stakeholder or entity for which the Proposer performed work, and a short description of the nature of the work or project.

## DRAFT AND DELIBERATIVE

Proposers are further advised that under this Agreement, firms must provide, written notice to the Port Authority of any existing or potential conflict of interest the firm(s) may have in the performance of Services under this Agreement.

Furthermore, Proposers should ensure that they are familiar with FAA regulations and policy on conflicts of interest of EIS consultants. Pursuant to 40 C.F.R. Part 1506.5(c), the selected Consultant and any subconsultants performing the work shall certify that they have not entered into and will not enter into during the lifetime of the EIS preparation any agreement affording the Consultant and any subconsultants with any direct or indirect financial interest in the planning, design, construction or operation of the project that is the subject of the EIS except the preparation of the EIS. Prior to beginning work on the EIS, the Consultant and any subconsultants shall sign a "Disclosure Statement" per the requirements of 40 C.F.R. 1506.5(c) and FAA Orders 1050.1F and 5050.4B, specifying they have no financial or other interest in the outcome of the project.

13. **Code of Ethics for Port Authority Vendors:** The Proposer's attention is directed to the Port Authority's "Code of Ethics for Port Authority Vendors." Vendors must certify in writing that they will comply with every aspect of this Code. The Proposer should submit an executed Compliance Certification with their Proposal. The Compliance Certification, once executed, will be a material and integral part of any Agreement resulting from this solicitation. The Code of Ethics and the Compliance Certification can be found on the Authority's website at <https://www.panynj.gov/business-opportunities/become-vendor.html>.
14. The selected Consultant(s) shall comply with the requirements of the Agreement. The scope of tasks to be performed by you is summarized in Attachment A and will be detailed in the Plan of Study, which will be attached to and incorporated in the final Agreement and will amend and restate Section II. Scope of Services of Attachment A.

~~**B. PRICING INFORMATION:** In a separately sealed envelope marked "Pricing Information," include all proposed pricing related information (e.g. billing rates and multipliers) for the Proposer (prime consultant) and proposed subconsultants. Compensation for premium pay (i.e. holidays, shift differentials, regular days, weekends and night work or union required payments) must be included and detailed.~~

Commented [FAA11]: FAA does not allow for consideration of cost in a qualifications based selection

Commented [CM12R11]: Removed request for pricing information

### III. SELECTION PROCESS:

The qualifications based selection shall take into consideration the technical criteria conveyed in this section (listed in order of importance). After consideration of these factors, the Authority may enter into negotiations with the firm(s) deemed best qualified, in terms of the forgoing Technical Proposal criteria, to perform the required services.

The Authority will review proposals to determine if they satisfy the requirements of this RFP, including adherence to the RFP's specified format and the provision of all required documentation. Proposals will then be reviewed according to a two-phased evaluation process. The **first phase of the evaluation process** will involve Authority and FAA staff, and will include a detailed review and evaluation of the proposals according to the following criteria:

## DRAFT AND DELIBERATIVE

1. Project Approach/Schedule;
2. Project Experience;
3. Organization and Management;
4. References;
5. Description of Proposer/Team;
6. QA/QC;

Only those proposals receiving the highest scores in the first phase of the evaluation process will be evaluated in the **second phase of the evaluation process**.

The **second phase of the evaluation** will involve staff from the Authority and FAA. Only FAA staff will score proposers in the second phase of the evaluation. The second phase of the evaluation commences with interviews of the highest-rated proposers from the first phase of evaluation. The interviews will consist of presentations by the highest-rated proposers, followed by a question and answer session led by FAA staff. After the last interview, FAA staff will score the interviews and add the interview scores to the first phase scores, and recommend that the Port Authority retain the proposer that received the highest combined score for the performance of the agreement resulting from this RFP. A notice of selection will be transmitted to the selected Proposer, prior to execution of the Agreement.

The following is the anticipated schedule for the selection process:

March ~~5~~<sup>12</sup>, 2018 Request for proposals advertised  
~~March 26~~<sup>April 2</sup>, 2018 Proposals due to the Authority  
April ~~9~~<sup>16</sup>, 2018 Selection Committee holds interviews with select firms  
April ~~10~~<sup>17</sup>, 2018 Selected firm is notified and commences draft Plan of Study with FAA  
May ~~4~~<sup>23</sup>, 2018 Contract award

#### IV. POST-SELECTION PROCESS (prior to agreement execution):

~~Within ten (10) calendar days of notice of selection, and prior to agreement execution~~ In order to meet the Authority's goal for the expeditious completion of the EIS, a detailed scope of work should be drafted by the selected Consultant and provided to the FAA ~~within fifteen (15) business days of notice of selection, and prior to agreement execution.~~ The Authority will compensate the Consultant for its efforts in developing the detailed scope of work at the rates provided in the Consultant's ~~Pricing Information~~ cost proposal, as accepted by the Authority.

After this detailed scope of work has been finalized and accepted by the FAA, it shall serve as the Plan of Study for the assignment. The Authority will then negotiate a cost proposal with the Consultant for the services to be provided in accordance with the Plan of Study. ~~The basis for negotiations shall be the billing rates/multipliers provided in the Consultant's Pricing Information. During price negotiations, the Authority will not entertain requests from the Consultant to increase the billing rates and multipliers submitted within its original pricing information.~~

Commented [FAA13]: Update Increase time to develop Plan of Study

Commented [CM14R13]: Revised schedule assuming Monday March 12<sup>th</sup> release, maintaining previous timeframes through selection

Added additional time for draft scope of work submittal to FAA to reflect 15 business days proposed above

Added additional time for FAA review and agreement on draft scope of work, now May 8<sup>th</sup> – May 18<sup>th</sup>

Commented [FAA15]: Same as above

Commented [CM16R15]: Extended time period to 15 business days and added text referring to the Port Authority's goal



## DRAFT AND DELIBERATIVE

### V. ADDITIONAL INFORMATION:

If your firm is selected for performance of the subject services, the agreement you will be asked to sign will include clauses entitled "Certification of No Investigation (Criminal Or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure Of Other Information" And "Non-Collusive Proposing, And Code Of Ethics Certification; Certification Of No Solicitation Based On Commission, Percentage, Brokerage, Contingent Or Other Fees." By submitting a proposal, the Consultant shall be deemed to have made the certifications contained therein unless said Consultant submits a statement with its proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your proposal clearly marked "CERTIFICATION STATEMENT."

Rejection of a proposal shall be only by either (a) a notice in writing specifically stating that the proposal is not accepted, signed by an authorized representative of the Authority and provided to the Proposer, or (b) omission of the Authority to accept the proposal within 180 days after the Proposal Due Date. No other act of the Authority, its Commissioners, officers, agents, representatives or employees shall constitute rejection of a proposal.

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

Prior to commencing any work associated with this Project, the selected consultant and any subconsultants shall submit a Disclosure Statement.

Proposers are also advised that additional vendor information, including but not limited to forms, documents and other related information, may be found on the Authority website at [www.panynj.gov](http://www.panynj.gov) or <http://www.panynj.gov/business-opportunities/become-vendor.html>.

After a review of all proposals received, the Authority will forward two (2) copies of the Agreement and Attachment A thereto to the selected firm(s), which shall sign and return both copies. Signature shall be by a corporate officer. The return of one copy executed by the Authority will effectuate the Agreement.

Should you have any questions, please contact James Summerville, Solicitation Manager [REDACTED] and Krystina Papasavvas [REDACTED]. All such correspondence must have your name, title, company, mailing address, telephone number, and state "RFP \*\*\*\*\*" in the subject line. **The Authority must receive all questions no later than 4:00 P.M. EST four (4) working days after the RFP issuance date.** Neither Mr. Summerville nor Ms. Papasavvas, nor any other employee of the Authority is authorized to interpret the provisions of this RFP or accompanying documents or give additional information as to their requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned and such writing shall form a part of this RFP, or the accompanying documents, as appropriate. For RFP updates and Addenda, if any, Proposers are

## DRAFT AND DELIBERATIVE

encouraged to access, and monitor, the Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html>. You should, therefore, monitor the advertisement on said website, as appropriate, to ensure you are aware of changes, if any.

Proposal preparation costs are not reimbursable by the Authority. The Authority shall have no obligation to a firm except under a duly authorized agreement executed by the Authority.

No rights accrue to any Proposer except under a duly authorized agreement for performance of the specified services.

The Authority reserves the right, in its sole and absolute discretion, to reject all proposals, to undertake discussions and modifications with one or more Consultants, to waive defects in proposals, and to proceed with that Proposal or modified Proposal, if any, which in its judgment will, under all the circumstances, best serve the public interest.

Sincerely,

David Gutiérrez, CPPO  
Assistant Director  
Procurement Department

Attachments

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## DRAFT AND DELIBERATIVE

### APPENDIX A – MBE/WBE SUBCONTRACTING PROVISIONS

For this Agreement, the Consultant shall use good faith efforts to achieve participation equivalent to twenty percent (20%) of the total Agreement price for Authority certified MBEs and ten percent (10%) of the total Agreement price for Authority certified WBEs. Submit details on how you intend to meet these goals. A listing of certified MBE/WBE firms is available at <http://www.panynj.gov/business-opportunities/sd-mini-profile.html>.

The Proposer shall include its MBE/WBE Participation Plan (Form PA 3760C) with its Proposal, to be reviewed and approved by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

The MBE/WBE Plan submitted by the Proposer to the Authority shall contain, at a minimum, the following:

- Identification of MBE/WBEs: Provide the names and addresses of all MBE/WBEs included in the Plan. If none are identified, describe the process for selecting participant firms in order to achieve the good faith goals under this Contract.
- Level of Participation: Indicate the percentage of MBE/WBE participation expected to be achieved with the arrangement described in the Plan.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

All MBE/WBE subconsultants listed on the MBE/WBE Participation Plan must be certified by the Authority in order for the Consultant to receive credit toward the MBE/WBE goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/supplier-diversity.html> to search for MBE/WBEs by a particular commodity or service. The Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to the MBE/WBE Participation Plan must be submitted via a modified MBE/WBE Participation Plan to the Manager for review and approval by OBDCR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use form PA3760D. The Consultant shall not make changes to its approved MBE/WBE Participation Plan or substitute MBE/WBE subconsultants or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performance of work designated for a subconsultant by the Consultant's own forces, shall be deemed a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored by the Authority throughout the duration of the Agreement.

The Consultant shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments in the form of the MBE/WBE Participation Report, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subconsultant and supplier actually involved in the Agreement, a description of the work performed and/or the product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information as it may assist the Project Manager in determining the Consultant's compliance with the foregoing provisions.

## **DRAFT AND DELIBERATIVE**

### **MBE/WBE Conditions of Participation**

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

1. **Commercially Useful Function:** An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Consultant and the MBE/WBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as a MBE/WBE, the Consultant will receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

2. **Work Force:** The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Contractor, other Subcontractors on the Contract, or their Affiliates. This does not preclude the employment by the MBE/WBE of an individual that has been previously employed by another firm involved in the Contract, provided that the individual was independently recruited by the MBE/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.

3. **Supervision:** All Work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Consultant, other subconsultants on the agreement, or their Affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the Work.

### **Counting MBE/WBE Participation**

The value of the Work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. **Subconsultants:** One hundred percent (100%) of the value of the Work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such Work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Consultant, other subconsultants or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE

## DRAFT AND DELIBERATIVE

subconsultant is itself a MBE/WBE. Work that a MBE/WBE subcontracts to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. Material Suppliers: Sixty percent (60%) of the expenditure to a MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. Broker's/Manufacturer's Representatives: One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees or commissions customarily allowed for similar services. The costs of materials and supplies themselves will not be counted.

4. Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces. Contact OBDCR at (201) 395-3958 for more information about requirements for such joint ventures.

ATTACHMENT A

PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (“LGA”) ACCESS IMPROVEMENT PROJECT

I. **BACKGROUND**

*General:*

For background with respect to The Port Authority of New York and New Jersey (the “Authority” or “Sponsor”) see [www.panynj.gov](http://www.panynj.gov). Additionally, the most recent electronic version of the Authority’s Annual Report is available at <http://www.panynj.gov/corporate-information/annual-reports.html>.

*Project Description:*

The Authority is proposing to construct a new automated people mover (“APM”) AirTrain system to provide a fast, convenient, and reliable transit alternative for air passenger and employee access to LaGuardia Airport (“LGA” or the “Airport”). This proposed project, herein referred to as the LaGuardia Airport Access Improvement Project (the “Project”), is to provide a direct connection between the Airport and Metropolitan Transportation Authority’s (“MTA”) Long Island Rail Road (“LIRR”) and New York City Transit (“NYCT”) stations. Further, the LaGuardia Airport Access Improvement Project shall not preclude the potential future expansion of support facilities beyond the existing airport boundary, such as a consolidated rental car facility and/or additional airport parking. The Federal actions associated with the Authority’s proposed Project are decisions by the Federal Aviation Administration (“FAA”) on an updated Airport Layout Plan (“ALP”) and for the use of Passenger Facility Charge (“PFC”) funding, should the Authority pursue imposing and using PFC funding for the proposed Project.

The Authority’s preferred alternative is for an elevated AirTrain to operate between the Airport and a transfer station at Willets Point. The proposed AirTrain system would include two on-airport stations and a terminus station at Willets Point providing connections to the Mets-Willets Point stations of the LIRR Port Washington Branch and the NYCT Flushing No. 7 subway line. In addition to providing a connection to the LIRR and NYCT stations at the Willets Point terminus station, the proposed AirTrain would serve as an on-airport transit system that would facilitate transfers between airline terminals and provide connections to potential future passenger and employee parking and a consolidated rental car facility. The proposed AirTrain system would provide access to LGA’s primary passenger terminals and must not preclude a future extension to the Marine Air Terminal. The proposed Project includes associated facilities and infrastructure (stations, guideway, maintenance/control facility, etc.) as well as the systems (vehicles, train control, power distribution system, etc.) for the AirTrain.

The Authority’s goal is to complete the proposed Project and commence passenger service as close as possible to the completion of Terminal B and several key landside components of Terminal C end of 2022, when other major redevelopment at LGA, both of which will projects are expected to be completed by in order to minimize the end of 2022 duration of

Commented [FAA1]: The requested ALP change needs to be submitted as soon as possible. The submittal of the ALP is the trigger for the start of the NEPA review

Commented [CM2R1]: ALP change updates are in progress

Commented [FAA3]: We understand from our 3/5/18 call that it is the intent of the PANYNJ to have a schedule for submittal of the planning information to us in the very near future. This information is needed not only for FAA use, but also for use by the potential bidders in developing their proposals. As discussed on the above referenced call, we have concerns regarding the amount of information being provided on which the consultants can base a response. The planning information is a critical component needed to achieve a quality product as well as the schedule goal

Commented [CM4R3]: For further discussion with FAA

~~construction-related disruptions to customers.~~ As such, the Authority is seeking to accelerate the environmental review schedule for the proposed Project, with the goal of the FAA completing the issuance of a Record of Decision (“ROD”) and completing the National Environmental Policy Act (“NEPA”) review ~~within as early as 12-month period~~ months from the Notice of Intent (“NOI”) for services hereunder to enable construction of the proposed Project to begin in 2019. This ~~hypothetical proposed~~ timeframe may be impacted by a number of factors, including concurrent environmental review by other Federal, ~~state, and state~~ local agencies. The Consultant shall comply with the processes and procedures outlined in Executive Order ~~13604 on Improving Performance of Federal~~ 13807: Establishing Discipline and Accountability in the Environmental Review and Permitting and Review of Process for Infrastructure Projects, signed on August 15, 2017., such as facilitation of efficient collaboration and communication with agencies involved with the environmental review and permitting for the proposed Project.

*General Description of Consultant Services:*

The Authority is seeking a Consultant to provide professional services to assist the FAA in preparing an Environmental Impact Statement (“EIS”) to assess and disclose the potential environmental impacts of the construction and operation of the Authority’s proposed Project and reasonable alternatives in a manner that complies with all applicable federal, state and local environmental laws and regulations. The FAA is the lead Federal agency for preparing the EIS in accordance with the requirements of NEPA (42 U.S.C. 4321 et. seq.), the Council on Environmental Quality (“CEQ”) regulations (40 C.F.R. Parts 1500-1508), and appropriate U.S. Department of Transportation and FAA environmental orders. As stated above, the Federal actions associated with the Authority’s proposed Project include but are not limited to a decision by FAA on an updated ALP, and should the Authority pursue imposing and using PFC funding for its proposed Project, a decision by FAA regarding use of such PFC funds.

The Consultant shall be responsible to the FAA for the preparation of an EIS associated with the Authority’s proposed Project. The FAA shall direct the services provided by the Consultant hereunder. The Consultant shall serve as the independent third party assisting the FAA with conducting the EIS process in an efficient and cost-effective manner, while maintaining a high degree of accuracy and validity in the production of all EIS deliverables.

~~Preliminary planning work is being conducted by the Authority. The documentation for the Authority’s planning efforts will be provided by the Authority to the FAA. This documentation will be provided to the Consultant at the discretion of the FAA.~~

**II. SCOPE OF SERVICES**

Prior to agreement execution, and within ~~ten (10) calendar~~ fifteen (15) business days of notice of selection, the Consultant should develop and submit a detailed scope of work for the entire assignment. ~~in order to meet the Authority’s goal for the expeditious completion of the EIS.~~ The detailed scope of work is hereinafter referred to as the Plan of Study, which is subject to FAA approval. The draft Plan of Study shall be accepted by the FAA prior to contract award and subsequent issuance of the NOI. ~~The~~ It is the Authority’s goal that the NOI ~~shall~~ be

Commented [FAA5]: Rework this language to focus on the stress of construction and customer disruption rather than specifically mentioning the Terminals

Commented [CM6R5]: Revised language to focus on minimizing construction related disruptions

Commented [FAA7]: Recommend changing to “as early as 12 months from the Notice of Intent”

Commented [CM8R7]: Revised accordingly

Commented [CM9]: Minor edit

Commented [CM10]: Added reference to local agencies

Commented [FAA11]: It is EO 13807 Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects Please reference properly, including the date the order was issued The second EO is related to ‘high priority infrastructure projects,’ thus far this project has not been designated as such Please remove EO 13604

Commented [CM12R11]: Revised accordingly

Commented [FAA13]: This language implies that the Port Authority will be providing documentation directly to the consultant, which should occur through the FAA This is potentially misleading, as a prospective firm may believe the FAA already has preliminary information that could be requested by the consultant Recommend adding a qualifier, For example: “Once the Authority’s planning information is shared with the FAA, documentation will be provided ”

Commented [CM14R13]: Revised to clarify that the Authority will provide these documents to FAA directly Included a separate sentence which states that FAA will then provide this documentation to the Consultant, at FAA’s discretion

DRAFT AND DELIBERATIVE

issued no later than ~~May 24, the end of the second quarter of 2018.~~ The Plan of Study will include detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated person-hours required for completion of each aspect, the schedule for performing each aspect, and a description of the internal and external review procedures to assure quality control. The Plan of Study will also include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the environmental data and analyses and the development and preparation of the EIS. Finally, the Plan of Study must comply with all applicable regulations and must include such additional analytical requirements as provided by the FAA prior to completion. In addition, in producing or revising the Plan of Study, the Consultant may consider as appropriate any relevant submissions made by the Authority or its representative to the FAA. The Plan of Study, as accepted by the FAA, shall amend and restate the entirety of this section, Section II. Scope of Services.

The EIS is to be accomplished in accordance with FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, Order 5050.4B, *NEPA Implementing Instructions for Airport Actions*, and associated Desk References (or the current version at time of contract award) and special purpose laws. Specific environmental issues to be included in the EIS may include, but are not limited to:

- a) Air Quality
- b) Biological Resources
- c) Climate
- d) Coastal Resources
- e) Department of Transportation Act, Section 4(f)
- f) Farmlands
- g) Hazardous Materials, Solid Waste, and Pollution Prevention
- h) Historical, Architectural, Archaeological, and Cultural Resources
- i) Land Use
- j) Natural Resources and Energy Supply
- k) Noise and Noise Compatible Land Use
- l) Socioeconomic, Environmental Justice, and Children's Environmental Health and Safety Risks
- m) Visual Effects
- n) Water Resources (Wetlands, Floodplains, Surface Waters, Groundwater, Wild and Scenic Rivers)
- o) Cumulative Impacts
- p) Irreversible and Irretrievable Commitment of Resources

The individual scope of these studies may be modified by the needs and requirements of the FAA designated cooperating agencies.

It is anticipated that the scope of work resulting from the Plan of Study may require the Consultant to perform the following services, at minimum:

**Commented [FAA15]:** To reiterate a comment made on previous versions of this document, we continue to have concerns about the development of a robust project approach within the two weeks provided for response to solicitation and the establishment of a viable scope within the 10 days allotted

The preparation of a draft Plan of Study, and the FAA's approval of that Plan, is preconditioned on the availability of and access to planning information. Heretofore we have not received any planning information, nor have we been told when it will be provided. Neither the FAA nor the contractor can bind itself to dates or timelines until planning information is provided

**Commented [CM16R15]:** Extended time period to 15 business days and added text referring to Port Authority's goal

**Commented [FAA17]:** Remove. It is not appropriate to prescribe a date here in a PANYNJ document when the issuance of the NOI is a federal role. Additionally, this level of schedule detail is not appropriate for inclusion in an RFP

**Commented [CM18R17]:** Revised to refer to Port Authority goal and extended to end of Q2 2018

**Commented [FAA19]:** Reference to planning/justification data should be included here as well

**Commented [CM20R19]:** Please clarify the comment and potential edit that should be made

**Commented [FAA21]:** Edit

**Commented [CM22R21]:** Accepted edit

**Commented [FAA23]:** Edit

**Commented [CM24R23]:** Accepted edit



DRAFT AND DELIBERATIVE

1. Facilitate and conduct meetings necessary for the preparation and development of the EIS.
2. Provide project management duties, including but not limited to preparing reports, updating the Plan of Study as necessary, taking meeting minutes, coordinating activities between all stakeholders, schedule monitoring, preparing presentation materials, creating and maintaining the project file, ~~administrative record~~assisting in the identification and compilation of the administrative record in the event of any potential legal proceedings associated with the environmental review or final agency actions or decisions, and assistance throughout any potential legal proceedings, etc.
3. Review project-related documents necessary for the development of the EIS, including planning documents provided to the FAA by the Authority or its representative. The Consultant shall review and independently evaluate the materials prepared by the Authority or its representative and shall complete the EIS documentation as required.
4. Assist the FAA to fulfill its lead Federal agency role and enhance effective NEPA scoping to ensure early in the process that the EIS addresses key issues of concern to agencies and the public.
5. Develop the Purpose and Need Statement, to provide the parameters for defining a reasonable range of alternatives and to be utilized for the comparative evaluation of alternatives to the Sponsor's proposed Project. The Purpose should outline the goals and objectives that the Sponsor's proposed Project should achieve, and the Need should provide the data to support the Purpose.
6. Prepare an alternatives analysis addressing a range of reasonable alternatives to the Sponsor's proposed Project. It is expected that the "No Action" and the Sponsor's proposed Project will be alternatives. The Consultant will identify other potential alternatives and conduct a screening of alternatives, as appropriate.
7. Describe existing environmental resources and conditions that the Sponsor's proposed Project, reasonable alternatives, and No Action may affect.
8. Describe impacts and environmental consequences of the Sponsor's proposed Project and reasonable alternatives that were previously identified for further evaluation, including the No Action alternative.
9. Prepare draft and final versions of the EIS, including the preparation of draft chapters and preliminary draft EIS and preliminary final EIS. It is anticipated that the draft and final version should include the following elements, at minimum:
  - a. Cover Page
  - b. Executive Summary
  - c. Table of Contents
  - d. Purpose and Need
  - e. Alternatives

Commented [FAA25]: Recommend expanding: "assisting in the identification and compilation of the administrative record in the event of litigation and assistance throughout the litigation"

Commented [CM26R25]: Revised language to include reference to potential legal proceedings associated with the environmental review or final agency actions or decisions

## DRAFT AND DELIBERATIVE

- f. Affected Environment
  - g. Environmental Consequences
  - h. Mitigation
  - i. List of Preparers
  - j. List of Agencies, Organizations, and Persons to Whom Copies of the Statement are Sent
  - k. Index
  - l. Appendices (if any)
  - m. Comments
  - n. Footnotes
10. Solicit and facilitate public and stakeholder involvement on behalf of FAA throughout the EIS process in accordance with NEPA and relevant special purpose laws.
11. Ensure that the EIS documentation includes relevant information required for future permitting applications and processes, as required.
12. Assist the FAA in the preparation of a draft ROD.

All work prepared under this Agreement shall be delivered to the FAA in printed format and searchable .pdf files along with components associated with each item, such as data files, text files, image files, spreadsheets, graphs, and tables. These products, where applicable, will be compatible with and incorporated into the Airports Geographic Information System (“AGIS”) managed by the FAA (as applicable). While performing work under this Agreement, the Consultant shall be responsible for managing the administrative project file and, upon completion of the work, will be responsible for submitting a completed administrative record for the project to the FAA, in accordance with FAA policy and guidance.

### **III. PERIOD OF PERFORMANCE**

The period of performance (through completion of the final EIS) of the services is not to exceed that which is to be directed by the FAA as the lead Federal agency for services hereunder. The work will be performed in accordance with FAA's procedures for assessing environmental impacts including FAA Orders 1050.1F and 5050.4B (or the current version(s) at time of agreement award). While it is conceivable that issues raised during the public comment process could affect the time of performance, the Consultant should assume that the FAA will grant any extensions of time for performance only for the most extraordinary circumstances. The Period of Performance establishes the expected outer limit for project development.

Commented [FAA27]: Edit

Commented [CM28R27]: Accepted edit

### **IV. LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE**

#### **A. Commercial Liability Insurance:**

1) The Consultant(s), and all of its/their Sub-consultants shall take out, maintain, and pay the premiums on **Commercial General Liability Insurance** for the life of the Agreement and such Insurance and shall be written on an ISO occurrence form CG 00 01 0413 or its equivalent covering the obligations assumed by the Consultant(s) under this Agreement, including, but not limited to, Premises-Operations, Products and Completed Operations, Broad form property

DRAFT AND DELIBERATIVE

damage, personal and advertising injury and Independent Contractor's coverages, with contractual liability language covering the obligations assumed by the Consultant(s) with insurance covering against claims for injuries to persons or damages to property which may arise from or in connection with products and materials supplied to the Agency in limits of not less than **\$10,000,000** combined single limit per occurrence and in the annual aggregate. If vehicles are to be used to carry out the performance of this Agreement, then the Consultant(s) shall also take out, maintain and pay the premiums on **Automobile Liability Insurance** covering all owned, non-owned and hired autos in not less than **\$5,000,000** combined single limit per accident for bodily injury and property damage. **(Only if Applicable)**

The insurance shall be written on an occurrence basis, as distinguished from a "claims made" basis, and shall not include any exclusions for "action over claims" (insured vs. insured) and minimally arranged to provide and encompass at least the following coverages:

- Contractual Liability to cover liability assumed under the Agreement;
- Independent Contractor's Coverage;
- Premises-Operations, Products and Completed Operations Liability Insurance;
- The insurance coverage (including primary, excess and/or umbrella) hereinafter afforded by the Consultant(s) and Sub-consultant(s) shall be primary insurance and non-contributory with respect to the additional insureds;
- Excess/umbrella policies shall "follow form" to the underlying policies;
- Excess/umbrella policies shall have a liberalization clause with drop down provision;
- To the extent any coverage the Consultant(s) and Sub-consultant(s) obtains and/or maintains under this Agreement contains "Other Insurance" language or provisions shall not be applicable to the additional insureds or to any insurance coverage maintained by the additional insureds;
- All insurance policies shall include a waiver of subrogation, as allowed by law, in favor of the additional insureds;
- Defense costs must be outside of policy limits. Eroding limits policies are not permitted;
- In the event the Consultant(s) and/or its Sub-consultant(s) obtains and/or maintains broader coverage and/or insurance in an amount greater than the minimum limits required under this Agreement, then the full limits of that insurance coverage will be available to respond to any claims asserted against the additional insureds that arises out of or is in any way connected with this Agreement;
- Additional insureds coverage shall not be restricted to vicarious liability unless required by controlling law;

In addition, the liability policy(ies) shall be written on a form at least as broad as ISO Form CG 20 10 10 01 (for ongoing operations work) together with ISO Form CG 20 37 10 01 (for completed operations work) or their equivalent and endorses to name "The Port Authority of New York and New Jersey, and its related entities, their Commissioners, Directors, Superintendents, officers, partners, employees, agents, their affiliates, successors or assigns", in addition to: **The Federal Aviation Administration**, The City of New York, for all operations at John F. Kennedy and LaGuardia Airports; Port Authority Trans-Hudson Corporation, for operations at PATH; AFCO AvPorts Management LLC, for operations at Teterboro Airport; AFCO AvPorts Management LLC

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and NY State Dept. of Transportation , for operations at Stewart Int'l Airport, Trends Urban Renewal for operations at PATC and Silverstein Properties Inc.; The Port Authority of New York and New Jersey; Silverstein 2/3/4 WTC Redevelopment LLC; WTC Redevelopment LLC; World Trade Center Properties LLC; 4 World Trade Center LLC; Net Lessees 'Association of the World Trade Center; WTC Management and Development LLC; Silverstein WTC Mgmt. Co. LLC. Silverstein WTC Mgmt. Co II LLC; Silverstein WTC Properties LLC; Silverstein WTC Management and Development LLC; Silverstein WTC LLC.; WTC Investors LLC.; 4 WTC Holdings LLC; WTC Investors Management and Development LLC; World Trade Center Holdco LLC; 4 WTC Mezz LLC. for operations at the World Trade Center Site as “Insured” (as defined in the policy or in an additional insured endorsement amending the policy’s “Who Is An Insured” language as the particular policy may provide) on its liabilities policies with respect to liability arising out of work or operations performed by or on behalf of the Consultant(s) including, but not limited to, materials, parts or equipment furnished in connection with such work or operations. The “Insured” shall be afforded coverage and defense as broad as if they are the first named insured and regardless of whether they are otherwise identified as additional insureds under the liability policies, including but not limited to premises-operations, products-completed operations of the Commercial General Liability Policy. Such additional insureds status shall be provided regardless of privity of contract between parties. The liability policy(ies) and certificate of insurance shall contain cross-liability language providing severability of interests so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds shall not reduce or void coverage to the other insureds. The Consultant(s) is/are responsible for all deductibles or losses not covered by commercially procured insurance. Any portion of the coverage to be provided under a Self-Insured Retention (SIR) of the Consultant(s) is/are subject to the review and approval of the General Manager, Risk Financing. Furthermore, any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim.

Any self-insured retention shall cover any liability imposed upon the Consultant(s) and any and all subsidiaries with respect to all operations and obligations assumed by the Consultant(s) and any and all subsidiaries. The undersigned represents that such program provides the Additional Insureds (as defined in the Agreement) with all rights, immunities and protections that would be provided by traditional independent insurance required under the Agreement, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies pursuant to the terms of the Agreement.

If any of the Work is to be done on or at Port Authority facilities by the Sub-consultants and, if the Consultant(s) requires its Sub-consultant(s) to procure and maintain such insurance in the name of the Consultant(s), then such insurance as is required herein shall include and cover the additional insureds and it must have insurance limits not lower than those set forth by the Port Authority herein, along with all the insurance requirements in this “Insurance” section.

Further, it is the Consultant’s responsibility to maintain, enforce and ensure that the type of coverages and all limits maintained by it and any of all Sub-consultants are accurate, adequate and in compliance with the Port Authority requirement. All certificates of insurance shall be turned over to the Port Authority prior to the start of work, and upon completion of the Agreement.

DRAFT AND DELIBERATIVE

*The Consultant, its Sub-consultant(s) and its insurer(s) shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.*

**2) Workers' Compensation Insurance:**

The Consultant(s) and its/their Sub-consultant(s) shall take out, maintain and pay premiums on Workers' Compensation Insurance in accordance with the requirements of law in the state(s) where work will take place, and Employer's Liability Insurance with limits of not less than **\$1,000,000** each accident. Such policy shall include a waiver of subrogation endorsement in the benefit of the additional insureds.

**3) Additional Coverages:** The Consultant(s) shall have the policy endorsed "**Only when required by the Director**" for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) Any/all activities performed airside must, at all times, be performed while under security escort as approved in advance, and in writing by the Project Manager. If the services of the Consultant(s), as directed by the Authority, require the performance of services airside, the Commercial General Liability and Automobile Liability coverage limits stipulated in subparagraph 1, above, shall be increased to an amount not less than \$25,000,000 per occurrence as provided herein.
- b) Endorsement to eliminate any exclusions applying to the explosion, collapse, and underground property damage (XCU) hazards.
- c) Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
- d) Coverage for work within fifty (50) feet of railroad.

**4) Additional Coverages:** The Consultant(s) shall have the policy endorsed "**Only when required by the Director**" for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.
- b) Coverage B Endorsement - Maritime (Masters or Members of the Crew of Vessels), in limits of not less than \$1,000,000 per occurrence.
- c) Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$1,000,000 per occurrence.

**5) Professional Liability Insurance:**

DRAFT AND DELIBERATIVE

The Consultant(s) shall take out, maintain and pay premiums on Professional Liability Insurance in limits of not less than **\$10,000,000** each occurrence, covering acts, errors, mistakes, and omissions arising out of the work or services performed by Consultant(s), or any person employed by Consultant(s). All endorsements and exclusions shall be evidenced on the certificate of insurance. The coverage shall be written on an occurrence basis or may be written on a claims made basis with a minimum of a three-year reporting/discovery period.

Each policy above shall contain an endorsement that the policy may not be canceled, terminated or modified without thirty (30) days' prior written notice to the Project Manager, at the location where the work will take place with a copy to the General Manager, Risk Financing.

The Port Authority may, at any time during the term of this Agreement, change or modify the limits and coverages of insurance. Should the modification or change result in an additional premium, the General Manager, Risk Financing for the Port Authority may consider such cost as an out-of-pocket expense.

Within five (5) days after award of this Agreement and prior to the start of work at the site, the Consultant(s) must submit an original certificate of insurance, to the Project Manager and Exigis email: [REDACTED] at the location where the work will take place. This certificate of insurance MUST show evidence of the above insurance policy(ies), including, but not limited to, the title of this Agreement, the P. A. Agreement number, the notice of cancellation provisions, prior to the start of work. The Consultant(s) is/are also responsible for maintaining and conforming to all insurance requirements from the additional insureds and their successors and assigns. The General Manager, Risk Financing must approve the certificate(s) of insurance before any work can begin. Upon request of the General Manager, Risk Financing/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.

Renewal certificates of insurance or policies shall be delivered to the Authority's Project Manager, and upon request from the additional insureds, their successors or assigns at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Financing must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Authority, the Consultant(s) shall promptly obtain a new and satisfactory certificate and policy and provide same to the Port Authority.

If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then, the Consultant(s) and all Sub-consultants shall suspend performance of the Agreement at the premises until a satisfactory insurance policy(ies) and certificate of insurance is provided to and approved by Risk Financing, unless the Facility or Project Manager directs the Consultant(s), in writing, to continue to performing work under the Agreement. If the Agreement is so suspended, no extension of time shall be due on account thereof.

Failure by the Consultant(s) to meet any of the insurance requirements, including the requirement that the Port Authority be afforded the full extent of the insurance obtained under this Agreement

DRAFT AND DELIBERATIVE

without limitation, shall be deemed a material breach of Agreement and may be a basis for termination of this Agreement by the Port Authority.

The requirements for insurance procured by the Consultant(s) shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Consultant(s) under this Agreement. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Consultant against the obligations imposed on them by law or by this or any other Agreement.

All insurance coverage shall be provided by the Consultant(s) and/or by or for any of its/their Sub-consultant(s) at no additional expense to the Port Authority and its related entities. A copy of this "Insurance" section shall be given to your insurance agent and Sub-consultant(s) and shall form a part of the covered Agreement for insurance purposes in furtherance of the insurance requirements of this Agreement.

\*\*\*\*

**From:** [REDACTED]  
**To:** [Clark, Patty](#); [Summerville, James](#)  
**Cc:** [REDACTED]; [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Papasavvas, Krystina](#); [Resnick, Risa](#); [REDACTED]; [Felix, Thomas](#); [Xu, Hui](#); [Radinson, William](#); [Summerville, James](#); [REDACTED]; [Drew Brooks](#)  
**Subject:** RE: LGA AirTrain / Access Improvement Project - Port Authority RFP Documents  
**Date:** Friday, March 16, 2018 1:11:51 PM  
**Attachments:** [image002.jpg](#)  
[image2018-03-16-090952.pdf](#)

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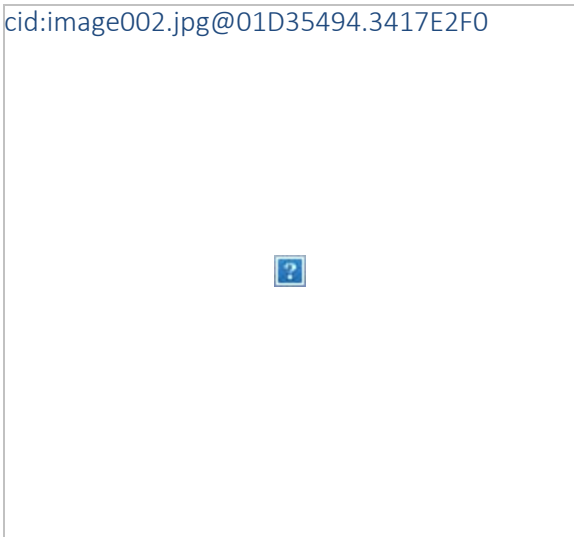
Good afternoon Patty and James,

We have worked diligently along with our legal office to provide you an expedited position on the matter of necessary planning documents. Please review the attached and let's plan on scheduling a meeting to discuss next steps. I recommend we meet in person if possible. Please let me know if I can facilitate scheduling the meeting.

Thank you and have a great weekend.

Evelyn

cid:image002.jpg@01D35494.3417E2F0



---

**From:** Brooks, Andrew (FAA)  
**Sent:** Thursday, March 08, 2018 3:05 PM  
**To:** Summerville, James <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
**Cc:** Martinez, Evelyn (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]> DiScenna, Matthew <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Lamond, Kathryn <[REDACTED]> Henn, Patricia (FAA) <[REDACTED]> Cohen, Michelle <[REDACTED]> Papasavvas, Krystina <[REDACTED]> Resnick, Risa <[REDACTED]>  
**Subject:** RE: LGA AirTrain / Access Improvement Project - Port Authority RFP Documents



James,

Thank you for your time on the call today. We are preparing a response and should have it either tomorrow or early next week.

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

---

**From:** Summerville, James [[mailto:\[REDACTED\]](mailto:[REDACTED])]  
**Sent:** Thursday, March 08, 2018 11:47 AM  
**To:** Jenet, Marie (FAA) <[REDACTED]>  
**Cc:** Martinez, Evelyn (FAA) <[REDACTED]> Sanchez, David (FAA)  
<[REDACTED]> Doyle, John (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA)  
<[REDACTED]> [REDACTED] DiScenna, Matthew  
<[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Lamond, Kathryn <[REDACTED]> Henn, Patricia (FAA)  
<[REDACTED]> Brooks, Andrew (FAA) <[REDACTED]> Cohen, Michelle  
<[REDACTED]> Papasavvas, Krystina <[REDACTED]> Resnick, Risa  
<[REDACTED]>  
**Subject:** RE: LGA AirTrain / Access Improvement Project - Port Authority RFP Documents

Marie et al,

Thanks again for the updated documents yesterday. We met internally this morning to review and discuss your comments, and we have further updated the documents accordingly. In anticipation of today's teleconference at 1 PM, please see the attached updated documents.

Thanks, James, [REDACTED]

---

**From:** Summerville, James  
**Sent:** Wednesday, March 07, 2018 12:25 PM  
**To:** [REDACTED] <[REDACTED]> Papasavvas, Krystina  
<[REDACTED]>  
**Cc:** [REDACTED] <[REDACTED]> [REDACTED] <[REDACTED]>  
[REDACTED]; Clark, Patty <[REDACTED]> DiScenna, Matthew  
<[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Lamond, Kathryn <[REDACTED]> [REDACTED] Drew  
Brooks <[REDACTED]>

**Subject:** RE: LGA AirTrain / Access Improvement Project - Port Authority RFP Documents

Marie,

Confirming receipt – thanks.

Thank, James, [REDACTED]

---

**From:** [REDACTED] [\[mailto:\[REDACTED\]\]](#)  
**Sent:** Wednesday, March 07, 2018 12:20 PM  
**To:** Papasavvas, Krystina <[REDACTED]>  
**Cc:** [REDACTED]; Clark, Patty <[REDACTED]> DiScenna, Matthew  
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<[REDACTED]> Lamond, Kathryn <[REDACTED]> Summerville, James  
<[REDACTED]> Drew Brooks <[REDACTED]>  
**Subject:** RE: LGA AirTrain / Access Improvement Project - Port Authority RFP Documents

As discussed on Monday's call (3/5), attached are FAA's comments on the procurement documents that were revised on 2/23.

## Marie C. Jenet

Environmental Specialist  
Federal Aviation Administration  
New York Airports District Office  
159-30 Rockaway Blvd, Suite 111  
Jamaica, New York 11434

---

**From:** Papasavvas, Krystina [\[mailto:\[REDACTED\]\]](#)  
**Sent:** Friday, February 23, 2018 4:31 PM  
**To:** Jenet, Marie (FAA) <[REDACTED]> Brooks, Andrew (FAA) <[REDACTED]>  
**Cc:** Urlass, Steve (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]>  
Sanchez, David (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]> Wolfers-  
Lawrence, Jean (FAA) <[REDACTED]> DiScenna, Matthew  
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<[REDACTED]> Lamond, Kathryn <[REDACTED]> Summerville, James  
<[REDACTED]> Henn, Patricia (FAA) <[REDACTED]>  
**Subject:** LGA Airtrain / Access Improvement Project - Port Authority RFP Documents

Hello Marie and Andrew -

Attached for your review are revised drafts of the RFP Letter and Attachment A, which the

Port Authority intends to include in the publicly advertised solicitation for a third party consultant to assist the FAA with the preparation of an EIS for the LaGuardia Airport Access Improvement Project. The attached documents include Port Authority revisions responding to FAA comments provided during the 2/8 meeting and the written comments provided on 2/9.

The Port Authority would like to request a conference call with FAA to close out any outstanding items regarding the attached revised draft RFP Letter and Attachment A, in order to finalize the documents and move forward with the issuance of the solicitation for proposals. The Port Authority is targeting issuance of this RFP no later than Monday, March 5<sup>th</sup>.

If necessary to discuss any of our changes, we would prefer to have a teleconference with you next week, preferably Tuesday, the 27<sup>th</sup>.

Thank you and we look forward to working together to finalizing the solicitation documents and issuing the RFP in the near future.

Thank you,

Krystina and James of the Procurement Department

**Krystina Papasavvas**

Integrity, Compliance and Contract Review

Port Authority of New York and New Jersey Procurement Department

4 World Trade Center

150 Greenwich Street, 21st Floor

New York, NY 10007

T: [REDACTED]

F: [REDACTED]

email: [REDACTED]

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

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**Subject:** RE: LGA AirTrain / Access Improvement Project - Port Authority RFP Documents  
**Date:** Tuesday, March 20, 2018 4:12:53 PM  
**Attachments:** [image002.jpg](#)

---

Evelyn,

I'm confirming receipt of your email – thank you. We'll be in touch.

Sincerely,

James Summerville, Sr. Proj. Contracts Specialist  
Port Authority of NY & NJ  
Procurement Dept.  
[REDACTED]

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Friday, March 16, 2018 1:08 PM  
**To:** Clark, Patty <[REDACTED]> Summerville, James <[REDACTED]>  
**Cc:** [REDACTED]; [REDACTED]; [REDACTED]; Clark, Patty <[REDACTED]> DiScenna, Matthew <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Lamond, Kathryn <[REDACTED]> Cohen, Michelle <[REDACTED]> Papasavvas, Krystina <[REDACTED]> Resnick, Risa <[REDACTED]> [REDACTED]; Felix, Thomas <[REDACTED]> Xu, Hui <[REDACTED]> Radinson, William <[REDACTED]> Summerville, James <[REDACTED]> [REDACTED]; Drew Brooks <[REDACTED]>  
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Brooks <[REDACTED]

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159-30 Rockaway Blvd, Suite 111  
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Krystina and James of the Procurement Department

**Krystina Papasavvas**

Integrity, Compliance and Contract Review

Port Authority of New York and New Jersey Procurement Department

4 World Trade Center

150 Greenwich Street, 21st Floor

New York, NY 10007

T:

[REDACTED]

email:

[REDACTED]

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**From:** [Lamond, Kathryn](#)  
**To:** [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [REDACTED]  
[Drew Brooks](#); [REDACTED] [Herndon, Jane](#)  
**Subject:** LGA Access Improvement Project

---

Here are a few agenda items for our call:

- 1) Planning documents to be submitted prior to our 5/2 meeting
- 2) Legislation update

**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** [REDACTED] [Cohen, Michelle](#)  
**Subject:** RE: LGA AirTrain Discussion - Wednesday's webinar meeting  
**Date:** Tuesday, May 01, 2018 1:53:01 PM

---

Hi Jen,

Yes – we're all set on our end here. We'll have an FAA computer available to use for the presentation that you can bring on your jump drive.

I just tried again to log in and start the meeting following the procedure we used with Brian last month. Everything appears to be working correctly, so I think we should be all set for tomorrow.

Thanks for checking in.

Dave

**From:** Jennifer Hogan [mailto:[REDACTED]]  
**Sent:** Tuesday, May 01, 2018 12:46 PM  
**To:** Sanchez, David (FAA) <[REDACTED]>  
**Cc:** Brian Yabindranauth <[REDACTED]> Christopher Calvert [REDACTED]  
Cohen, Michelle <[REDACTED]>  
**Subject:** LGA AirTrain Discussion - Wednesday's webinar meeting

Hi Dave,

Are you all set for tomorrow's meeting? I believe we agreed that the FAA would have a computer available and we would bring the meeting materials/presentation on a jump drive.

Brian is copied on this message. He helped us last month with testing the Join.Me links. Are you still able to log in? Did you want a refresher or have any questions about logging in for tomorrow?

Thanks,  
Jen

--  
**Jennifer Hogan, CM**  
Senior Technical Director, Transportation and Aviation  
.....

**AKRF, Inc.**  
*Environmental, Planning, and Engineering Consultants*

440 Park Avenue South, 7th Floor | New York, NY 10016  
[REDACTED] | [REDACTED]

M: [REDACTED]

[www.akrf.com](http://www.akrf.com)

**From:** [Lamond, Kathryn](#)  
**To:** [Marie Jenet](#); [Drew Brooks](#); [REDACTED]  
**Cc:** [DiScenna, Matthew](#); [Cohen, Michelle](#); [Clark, Patty](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Herndon, Jane](#)  
**Subject:** LGA AirTrain Planning Documents - 5/16 submittal  
**Date:** Wednesday, May 16, 2018 8:07:42 PM

---

AirTrain Team,

In response to your request, the Port Authority has prepared the following planning documents for submittal in support of the environmental review process for the proposed AirTrain LGA project (LaGuardia Airport Access Improvement Project):

- Project Purpose, Goals, and Objectives
- Alternatives Analysis Outline Tiers 1 and 2
- Alternatives Analysis Tier 3 Screening Map
- Ridership Report and Appendices

These planning documents can be accessed through AKRF's Extranet site, in a folder dated May 16<sup>th</sup>. Instructions for accessing the files from the Extranet site are included at the end of the email below. The Port Authority is of the opinion that the planning information included in these documents is sufficient for the purposes of moving forward with NEPA consultant procurement process.

In addition to providing the planning documents listed above, the Port Authority has also prepared a proposed schedule for the NEPA consultant procurement process and planning document submittals (also included in the Extranet folder). The intent of this schedule is to provide the FAA with an overview of at what point in the procurement process the Port Authority intends to submit the subsequent planning documents.

The Port Authority would like to request that we use our May 24<sup>th</sup> 9:00 to 10:00 am call to discuss any questions on the enclosed planning documents and proposed schedule, as well as to touch base on closing out any open items on the solicitation package (RFP Letter and Attachment A).

We look forward to further discussions and to the issuance of the solicitation in the near future. If you have any questions prior to the May 24<sup>th</sup> call, please be in touch.

Thank you,  
Katie

#### **AKRF WebFolders LogOn Instructions**

Below are instructions for securely sending/receiving large files for project via AKRF's Extranet:

1. Click on (or otherwise navigate to): [REDACTED]

Login with credentials:

Username: [REDACTED]

Password: [REDACTED]

[Please Note: Username and Password are cAsE sEnsltive]

2. A window should appear where you can:
  - Select extranet files to transfer to your computer; or
  - Select files on your computer to transfer to the extranet.

Notes:

As of 7/1/14: Files stored on AKRF's WebFolders system are available for thirty days only, based on the date they were uploaded.

WebFolders works best with the latest version of your web browser. If you are using an older web browser or a mobile phone , you may have trouble using the "full version" of the site: After a successful login, try the "View Lite Version" link at the bottom of the page.

If you are having trouble, contact your IT department. For password issues, contact AKRF's IT Help Desk [REDACTED] or [email us](#).

This site can also be reached from <https://www.akrf.com> (on the top menu, select "extranet" --> clients).

**From:** [Lamond, Kathryn](#)  
**To:** [DiScenna, Matthew](#); [Clark, Patty](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Cohen, Michelle](#) [REDACTED]  
**Cc:** [Papasavvas, Krystina](#); [Summerville, James](#)  
**Subject:** LGA Airtrain MOU and RFP

---

Revised agenda:

1. follow-up to our 5/31 discussion on the draft MOU
2. Review the current status of the draft RFP letter and Attachment A
3. Next steps

**From:** [Lamond, Kathryn](#)  
**To:** [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [REDACTED]  
Drew Brooks; [REDACTED] [Herndon, Jane](#)  
**Cc:** [Summerville, James](#); [Papasavvas, Krystina](#); [Resnick, Risa](#); [REDACTED] [Puliafico, Jessica](#);  
[REDACTED]  
**Subject:** LGA Access Improvement Project

---

Brief agenda for our discussion:

- 1) MOU
- 2) RFP documents
- 3) FAA comments on planning documents
- 4) ALP drawing requirements
- 5) Next steps for selection and procurement process

**From:** [REDACTED]  
**To:** [Summerville, James](#); [Lamond, Kathryn](#); [DiScenna, Matthew](#); [Clark, Patty](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Cohen, Michelle](#); [REDACTED]; [Papasavvas, Krystina](#); [REDACTED]  
**Subject:** RE: LGA Airtrain MOU  
**Date:** Thursday, June 21, 2018 8:20:17 AM

---

James,

Thank you for sending these documents along. I was unable to respond earlier due to being at a conference in DC for the first part of the week.

We have no comments on the revisions made. We do; however, note that there is no discussion of the process by which documents will be made available to the consultant teams for review. This should be added to RFP so that the bidding firms are aware of their ability to access this information. Additionally, page 9 should include language that written answers to any questions received will be posted to the website, as the link is already provided in the RFP.

Please let us know if you have any questions on these two items. We would like to review the language again after these have been addressed within the RFP.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

---

**From:** Summerville, James [mailto:[REDACTED]]  
**Sent:** Tuesday, June 12, 2018 2:26 PM  
**To:** Lamond, Kathryn <[REDACTED]> DiScenna, Matthew <[REDACTED]>  
[REDACTED] Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Wolfers-Lawrence, Jean (FAA)  
<[REDACTED]> Jenet, Marie (FAA) <[REDACTED]> Brooks, Andrew  
(FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]> Doyle, John (FAA)  
<[REDACTED]> Papasavvas, Krystina <[REDACTED]>  
**Subject:** RE: LGA Airtrain MOU

Everyone,

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Authority. If we can't resolve all open items in the RFP on Thursday, let's discuss a plan for resolving them in the near future, so we will have a ready-to-be-issued RFP when the 'green light' appears.

Therefore, in addition to the MOU, attached for discussion during our conference call scheduled for Thursday 6/14 are the most current drafts of the RFP Letter and Attachment A, which the Port Authority intends to include in the publicly advertised solicitation for the third party consultant to assist the FAA with the preparation of an EIS for the LaGuardia Airport Access Improvement Project. These documents are overall the same as the track changes versions we last discussed on March 8th, but include minor changes and updates to our responses to comments.

Please note that we should also discuss language in the RFP Letter describing the availability of planning documents for review by potential proposers in a reading room.

Thank you and we look forward to discussing this further on Thursday 6/14.

Thanks,

James Summerville, Sr. Projects Contracts Specialist  
Port Authority of NY & NJ  
Procurement Dept.

[REDACTED]

-----Original Appointment-----

**From:** Lamond, Kathryn

**Sent:** Monday, June 11, 2018 2:44 PM

**To:** Lamond, Kathryn; DiScenna, Matthew; Clark, Patty; Tabafunda, Faith; Rogak, Elizabeth; Cohen, Michelle; [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

**Cc:** Summerville, James; Papasavvas, Krystina

**Subject:** FW: LGA Airtrain MOU

**When:** Thursday, June 14, 2018 8:30 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).

**Where:** [REDACTED] participant code: [REDACTED] Host (Katie): [REDACTED]

-----Original Appointment-----

**From:** Lamond, Kathryn

**Sent:** Friday, June 01, 2018 11:05 AM

**To:** Lamond, Kathryn; DiScenna, Matthew; Clark, Patty; Tabafunda, Faith; Rogak, Elizabeth; Cohen, Michelle; [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

**Subject:** LGA Airtrain MOU

**When:** Thursday, June 14, 2018 8:30 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).

**Where:** [REDACTED] participant code: [REDACTED] Host (Katie): [REDACTED]

**From:** [REDACTED]  
**To:** [Summerville, James](#); [Lamond, Kathryn](#); [DiScenna, Matthew](#); [Clark, Patty](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Cohen, Michelle](#); [REDACTED]; [Papavasvas, Krystina](#); [REDACTED]; [Resnick, Risa](#)  
**Cc:** [REDACTED]  
**Subject:** RE: LGA Airtrain MOU  
**Date:** Wednesday, July 11, 2018 9:47:48 AM

---

Good Morning James,

We have no further comments on the RFP documents. Once the appropriate dates are finalized, these should be good to go.

Thank you,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

---

**From:** Summerville, James <[REDACTED]>  
**Sent:** Tuesday, July 03, 2018 3:11 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
DiScenna, Matthew <[REDACTED]> [REDACTED] Tabafunda, Faith  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Cohen, Michelle  
<[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Jenet,  
Marie (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]> Doyle, John  
(FAA) <[REDACTED]> Papavasvas, Krystina <[REDACTED]> Teodorescu,  
Andrew P (FAA) <[REDACTED]> Resnick, Risa <[REDACTED]>  
**Subject:** RE: LGA Airtrain MOU

Andrew et al,

We're looking forward to the call on Thursday. In anticipation of that call and in response to your email below, I've attached the following documents:

**For review and discussion between the FAA and the Port Authority:**

Updated RFP letter. We've introduced a section for the reading room (yellow-highlighted sections on pp 7-9) and highlighted the area addressing addenda, which would include, as necessary, Q&A (pg 10)

A document conveying certain procurement- and evaluation-related topics, for discussion between the FAA and the Port Authority

**For reference:**

A new document with instructions for the Reading Room. This is being provided for your reference.

Attachment A (no changes from the last submission). This should be the final copy that will be included in the solicitation. Provided as reference at this time

Have a great 4<sup>th</sup>.

Thanks, James @ the Port Authority

**From:** [redacted] [\[mailto:\[redacted\]\]](mailto:[redacted])  
**Sent:** Thursday, June 21, 2018 8:20 AM  
**To:** Summerville, James <[redacted]> Lamond, Kathryn <[redacted]>  
DiScenna, Matthew <[redacted]> Clark, Patty <[redacted]> Tabafunda, Faith  
<[redacted]> Rogak, Elizabeth <[redacted]> Cohen, Michelle  
<[redacted]> [redacted] [redacted]  
[redacted] [redacted] Papasavvas, Krystina <[redacted]>  
[redacted]

**Subject:** RE: LGA Airtrain MOU

James,

Thank you for sending these documents along. I was unable to respond earlier due to being at a conference in DC for the first part of the week.

We have no comments on the revisions made. We do; however, note that there is no discussion of the process by which documents will be made available to the consultant teams for review. This should be added to RFP so that the bidding firms are aware of their ability to access this information. Additionally, page 9 should include language that written answers to any questions received will be posted to the website, as the link is already provided in the RFP.

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Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [redacted]

**From:** Summerville, James [<mailto:> [REDACTED]]  
**Sent:** Tuesday, June 12, 2018 2:26 PM  
**To:** Lamond, Kathryn <[REDACTED]> DiScenna, Matthew <[REDACTED]>  
[REDACTED] Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Wolfers-Lawrence, Jean (FAA)  
<[REDACTED]> Jenet, Marie (FAA) <[REDACTED]> Brooks, Andrew  
(FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]> Doyle, John (FAA)  
<[REDACTED]> Papasavvas, Krystina <[REDACTED]>  
**Subject:** RE: LGA Airtrain MOU

Everyone,

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Please note that we should also discuss language in the RFP Letter describing the availability of planning documents for review by potential proposers in a reading room.

Thank you and we look forward to discussing this further on Thursday 6/14.

Thanks,

James Summerville, Sr. Projects Contracts Specialist  
Port Authority of NY & NJ  
Procurement Dept.  
[REDACTED]

-----Original Appointment-----

**From:** Lamond, Kathryn  
**Sent:** Monday, June 11, 2018 2:44 PM  
**To:** Lamond, Kathryn; DiScenna, Matthew; Clark, Patty; Tabafunda, Faith; Rogak, Elizabeth; Cohen, Michelle; [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
**Cc:** Summerville, James; Papasavvas, Krystina

**Subject:** FW: LGA Airtrain MOU

**When:** Thursday, June 14, 2018 8:30 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).

**Where** [REDACTED] participant code: [REDACTED] Host (Katie): [REDACTED]

-----Original Appointment-----

**From:** Lamond, Kathryn

**Sent:** Friday, June 01, 2018 11:05 AM

**To:** Lamond, Kathryn; DiScenna, Matthew; Clark, Patty; Tabafunda, Faith; Rogak, Elizabeth; Cohen, Michelle; [REDACTED] [REDACTED] [REDACTED]

**Subject:** LGA Airtrain MOU

**When:** Thursday, June 14, 2018 8:30 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).

**Where:** [REDACTED] participant code: [REDACTED] Host (Katie): [REDACTED]

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**From:** [Summerville, James](#)  
**To:** [Drew Brooks](#); [Lamond, Kathryn](#); [DiScenna, Matthew](#); [Clark, Patty](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Cohen, Michelle](#); [REDACTED]  
**Cc:** [REDACTED]; [Papasavvas, Krystina](#); [REDACTED]; [Resnick, Risa](#)  
**Subject:** RE: LGA Airtrain MOU  
**Date:** Wednesday, July 11, 2018 9:49:08 AM

---

Thank you, Andrew.

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Wednesday, July 11, 2018 9:48 AM  
**To:** Summerville, James <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
DiScenna, Matthew <[REDACTED]> Clark, Patty <[REDACTED]> Tabafunda, Faith  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Cohen, Michelle  
<[REDACTED]> [REDACTED]  
[REDACTED] Papasavvas, Krystina <[REDACTED]>  
[REDACTED] Resnick, Risa <[REDACTED]>  
**Cc:** [REDACTED]; [REDACTED]; [REDACTED]  
**Subject:** RE: LGA Airtrain MOU

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Thank you,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

---

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**Sent:** Tuesday, July 03, 2018 3:11 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
DiScenna, Matthew <[REDACTED]> [REDACTED] Tabafunda, Faith  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Cohen, Michelle  
<[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Jenet,  
Marie (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]> Doyle, John  
(FAA) <[REDACTED]> Papasavvas, Krystina <[REDACTED]> Teodorescu,  
Andrew P (FAA) <[REDACTED]> Resnick, Risa <[REDACTED]>  
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**From:** [redacted] [[mailto:\[redacted\]](mailto:[redacted])]  
**Sent:** Thursday, June 21, 2018 8:20 AM  
**To:** Summerville, James <[redacted]> Lamond, Kathryn <[redacted]>  
DiScenna, Matthew <[redacted]> Clark, Patty <[redacted]> Tabafunda, Faith  
<[redacted]> Rogak, Elizabeth <[redacted]> Cohen, Michelle  
<[redacted]> [redacted] [redacted]  
[redacted] [redacted] Papasavvas, Krystina <[redacted]>  
[redacted]

**Subject:** RE: LGA Airtrain MOU

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**From:** Summerville, James [[mailto:\[REDACTED\]](mailto:[REDACTED])]  
**Sent:** Tuesday, June 12, 2018 2:26 PM  
**To:** Lamond, Kathryn <[REDACTED]> DiScenna, Matthew <[REDACTED]>  
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<[REDACTED]> Cohen, Michelle <[REDACTED]> Wolfers-Lawrence, Jean (FAA)  
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(FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]> Doyle, John (FAA)  
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**Subject:** RE: LGA Airtrain MOU

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Thanks,



James Summerville, Sr. Projects Contracts Specialist  
Port Authority of NY & NJ  
Procurement Dept.

[REDACTED]

-----Original Appointment-----

**From:** Lamond, Kathryn  
**Sent:** Monday, June 11, 2018 2:44 PM  
**To:** Lamond, Kathryn; DiScenna, Matthew; Clark, Patty; Tabafunda, Faith; Rogak, Elizabeth; Cohen, Michelle; [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
**Cc:** Summerville, James; Papasavvas, Krystina  
**Subject:** FW: LGA Airtrain MOU  
**When:** Thursday, June 14, 2018 8:30 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** [REDACTED] participant code: [REDACTED] Host (Katie): [REDACTED]

-----Original Appointment-----

**From:** Lamond, Kathryn  
**Sent:** Friday, June 01, 2018 11:05 AM  
**To:** Lamond, Kathryn; DiScenna, Matthew; Clark, Patty; Tabafunda, Faith; Rogak, Elizabeth; Cohen, Michelle; [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
**Subject:** LGA Airtrain MOU  
**When:** Thursday, June 14, 2018 8:30 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** [REDACTED] participant code: [REDACTED] Host (Katie): [REDACTED]

This call is a follow-up to our 5/31 discussion on the draft MOU.

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**From:** [DiScenna, Matthew](#)  
**To:** [Drew Brooks](#); [Jenet, Marie \(FAA\)](#); [REDACTED]  
**Cc:** [Clark, Patty](#); [Lamond, Kathryn](#); [Cohen, Michelle](#); [Puliafico, Jessica](#); [Herndon, Jane](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#)  
**Subject:** RE: LGA AirTrain Planning Documents  
**Date:** Monday, July 30, 2018 10:04:26 PM

---

Good evening,

The following documents have been added to the below AKRF Extranet site in a folder dated July 30:

- Port Authority's draft Alternatives Analysis Report
- Port Authority responses to FAA comments on the draft Project Purpose, Goals and Objectives and AA outline that were submitted to FAA on May 16
  - Note: PA is holding off on responses to comments on our draft Ridership Report until comments are received from FTA so that we can respond to all comments together

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Please let us know if you would like to set up a call prior to this week's regular Thursday call to discuss the draft Alternatives Analysis report or any related topics.

Regards,  
Matt

---

**From:** DiScenna, Matthew  
**Sent:** Friday, July 27, 2018 7:37 PM  
**To:** [REDACTED] Drew Brooks <[REDACTED]> [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
**Cc:** Puliafico, Jessica <[REDACTED]> Cohen, Michelle <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Clark, Patty <[REDACTED]> Lamond, Kathryn <[REDACTED]> Tabafunda, Faith <[REDACTED]> Herndon, Jane <[REDACTED]>  
**Subject:** LGA AirTrain Planning Documents

AirTrain Team,

We are completing final edits on our draft Alternatives Analysis report over the weekend and will submit to you by Monday.

We have prepared the following documents for today's submittal:

- <!--[if !supportLists]-->• <!--[endif]-->Port Authority's proposed alignment ROW drawing with aerial background (same corridor depicted on ALP submittal)
- <!--[if !supportLists]-->• <!--[endif]-->Updated proposed NEPA consultant procurement and planning document submittal schedule

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Password: [REDACTED]

[Please Note: Username and Password are cAsE sEnstive]

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Thank you and have a great weekend –

Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ  
[REDACTED] (office)  
[REDACTED] (cell)



**From:** [REDACTED]  
**To:** [Felix, Thomas](#)  
**Cc:** [REDACTED]; [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Malovik, Tatiana](#); [Jenet, Marie \(FAA\)](#); [Drew Brooks](#); [REDACTED]  
**Subject:** RE: LaGuardia ALP Revision #16 - LGA Airtrain  
**Date:** Wednesday, July 25, 2018 6:00:01 AM

---

Thank you Tom.

David T. Sanchez  
Lead Civil Engineer  
Federal Aviation Administration  
New York Airports District Office  
1 Aviation Plaza, Room 111  
Jamaica, NY 11434  
[REDACTED]

---

**From:** Felix, Thomas <[REDACTED]>  
**Sent:** Tuesday, July 24, 2018 5:06 PM  
**To:** Sanchez, David (FAA) <[REDACTED]>  
**Cc:** Martinez, Evelyn (FAA) <[REDACTED]> [REDACTED] DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Malovik, Tatiana <[REDACTED]>  
**Subject:** LaGuardia ALP Revision #16 - LGA Airtrain

Dave:

Please see attached submission of the pen & ink revision, #16, to the LGA ALP. The original are being send via UPS.

Thanks.

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**From:** [REDACTED]  
**To:** DiScenna, Matthew; Jenet, Marie (FAA); [REDACTED]  
**Cc:** Clark, Patty; Lamond, Kathryn; Cohen, Michelle; Puliafico, Jessica; Herndon, Jane; Tabafunda, Faith; Rogak, Elizabeth  
**Subject:** RE: LGA AirTrain Planning Documents  
**Date:** Tuesday, July 31, 2018 6:37:36 AM

---

Matt,

Thank you for your submission. Per previous discussion, we will commence our agreed upon two week review. Our goal is to provide you enough lead time to enable publication of an RFP on August 14<sup>th</sup>, which is two weeks after our initial receipt of the documentation; however, the lead time was not known to us at the time that we agreed to two weeks.

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At this point, we do not have a need to meet prior to Thursday's call. Please let me know if you have any questions.

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

---

**From:** DiScenna, Matthew <[REDACTED]>  
**Sent:** Monday, July 30, 2018 10:04 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
Martinez, Evelyn (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]>  
Henn, Patricia (FAA) <[REDACTED]> McCarthy, Mary M (FAA) <[REDACTED]>  
<[REDACTED]> Doyle, John (FAA) <[REDACTED]> Teodorescu, Andrew P (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]>  
[REDACTED]  
**Cc:** [REDACTED] Lamond, Kathryn <[REDACTED]> Cohen, Michelle <[REDACTED]>  
<[REDACTED]> Puliafico, Jessica <[REDACTED]> Herndon, Jane <[REDACTED]>  
<[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]>  
<[REDACTED]>  
**Subject:** RE: LGA AirTrain Planning Documents

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Please let us know if you would like to set up a call prior to this week's regular Thursday call to discuss the draft Alternatives Analysis report or any related topics.

Regards,  
Matt

---

**From:** DiScenna, Matthew

**Sent:** Friday, July 27, 2018 7:37 PM

**To:** [REDACTED] Drew Brooks <[REDACTED]> [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

**Cc:** Puliafico, Jessica <[REDACTED]> Cohen, Michelle <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Clark, Patty <[REDACTED]> Lamond, Kathryn <[REDACTED]> Tabafunda, Faith <[REDACTED]> Herndon, Jane <[REDACTED]>

**Subject:** LGA AirTrain Planning Documents

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We have prepared the following documents for today's submittal:

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Thank you and have a great weekend –

Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ  
[REDACTED] (office)  
[REDACTED] (cell)  
[REDACTED]

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**From:** [REDACTED]  
**To:** [DiScenna, Matthew](#); [Jenet, Marie \(FAA\)](#); [REDACTED]  
**Cc:** [Clark, Patty](#); [Lamond, Kathryn](#); [Cohen, Michelle](#); [Puliafico, Jessica](#); [Herndon, Jane](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#)  
**Subject:** RE: LGA AirTrain Planning Documents  
**Date:** Monday, August 13, 2018 9:13:43 PM

---

Good Evening Everyone,

We are working to transmit comments on the Alts Analysis tomorrow in accordance with our deadline we indicated below. I had said last week that we were working towards Monday (today) but that did not come to be.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

---

**From:** Brooks, Andrew (FAA)  
**Sent:** Tuesday, July 31, 2018 6:37 AM  
**To:** 'DiScenna, Matthew' <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
Martinez, Evelyn (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]>  
Henn, Patricia (FAA) <[REDACTED]> McCarthy, Mary M (FAA)  
<[REDACTED]> Doyle, John (FAA) <[REDACTED]> Teodorescu, Andrew P  
(FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) [REDACTED]  
[REDACTED]  
**Cc:** [REDACTED] Lamond, Kathryn <[REDACTED]> Cohen, Michelle  
<[REDACTED]> Puliafico, Jessica <[REDACTED]> Herndon, Jane  
<[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]>  
**Subject:** RE: LGA AirTrain Planning Documents

Matt,

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Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

---

**From:** DiScenna, Matthew <[REDACTED]>  
**Sent:** Monday, July 30, 2018 10:04 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
Martinez, Evelyn (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]>  
Henn, Patricia (FAA) <[REDACTED]> McCarthy, Mary M (FAA)  
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(FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) [REDACTED]  
[REDACTED]  
**Cc:** [REDACTED] Lamond, Kathryn <[REDACTED]> Cohen, Michelle  
<[REDACTED]> Puliafico, Jessica <[REDACTED]> Herndon, Jane  
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**Subject:** RE: LGA AirTrain Planning Documents

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Regards,  
Matt

---

**From:** DiScenna, Matthew  
**Sent:** Friday, July 27, 2018 7:37 PM  
**To:** [REDACTED] Drew Brooks <[REDACTED]> [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
**Cc:** Puliafico, Jessica <[REDACTED]> Cohen, Michelle <[REDACTED]> Rogak,  
Elizabeth <[REDACTED]> Clark, Patty <[REDACTED]> Lamond, Kathryn  
<[REDACTED]> Tabafunda, Faith <[REDACTED]> Herndon, Jane  
<[REDACTED]>  
**Subject:** LGA AirTrain Planning Documents

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Thank you and have a great weekend –

Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ  
[REDACTED] (office)  
[REDACTED] cell)  
[REDACTED]

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**From:** [REDACTED]  
**To:** [DiScenna, Matthew](#); [Clark, Patty](#); [Lamond, Kathryn](#)  
**Cc:** [Cohen, Michelle](#); [Puliafico, Jessica](#); [Herndon, Jane](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Jenet, Marie \(FAA\)](#); [REDACTED]  
**Subject:** RE: LGA AirTrain Planning Documents  
**Date:** Tuesday, August 14, 2018 5:02:26 PM  
**Attachments:** [2018-08-14 Final Letter transmitting AA comments and outstanding issues.pdf](#)  
[Alternatives Report FAA Combined Comments Matrix.docx](#)

---

Good Afternoon Patty,

I am transmitting the attached letter and Alternatives Analysis comment set on behalf of the NY ADO and the FAA AirTrain EIS Team. A hard copy has been sent as well; all cc's are via this email. We can be available to discuss any questions or comments you have throughout the week.

Thank you,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

---

**From:** DiScenna, Matthew <[REDACTED]>  
**Sent:** Monday, July 30, 2018 10:04 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
Martinez, Evelyn (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]>  
Henn, Patricia (FAA) <[REDACTED]> McCarthy, Mary M (FAA) <[REDACTED]>  
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[REDACTED]  
**Cc:** [REDACTED] Lamond, Kathryn <[REDACTED]> Cohen, Michelle <[REDACTED]>  
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<[REDACTED]>  
**Subject:** RE: LGA AirTrain Planning Documents

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Regards,  
Matt

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**Sent:** Friday, July 27, 2018 7:37 PM

**To:** [REDACTED] Drew Brooks <[REDACTED]> [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

**Cc:** Puliafico, Jessica <[REDACTED]> Cohen, Michelle <[REDACTED]> Rogak,  
Elizabeth <[REDACTED]> Clark, Patty <[REDACTED]> Lamond, Kathryn  
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Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ  
[REDACTED] (office)  
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**Subject:** LGA Airport Access Improvement Project Purpose and Objectives and Analysis of Alternatives Report - Draft Final dated July 30, 2018

**Reviewer/Organization:** FAA

Comment No.	Section	Page	Reviewer Comments	Response
1	ALP	1 and 2	Proposed ALP drawing does not depict actual preferred alignment of AirTrain on off-airport property between the airport boundary and proposed Willets Point Station, though alignment is actually depicted on Figure 2-23 of the Alternatives Analysis Report. Lacking depiction of the final preferred alternative, an unconditional approval of the ALP concurrent with the NEPA EIS decision would not be possible. Any subsequent ALP review and approval process could cause impacts and delays to the overall project schedule.	
2	Global		In general, screening criteria are not uniformly applied to the alternatives. Operational service changes create arguments against alternatives being carried forward but are not acknowledged in reference to the preferred alternative. Constructability issues are made to be insurmountable for certain alternatives, yet the same issues for the preferred alternative (transitioning across major interchanges) seem to be glossed over. Please see specific examples that follow.	
3	Global		Many points of discussion relating to the Sponsor's Preferred Alternative seem to be informed by preliminary design (duration of closures of LIRR or the 7 train for example). Please provide any preliminary design documentation that has been prepared to the FAA for consideration and review. As we have stated previously, our standard for proceeding with an EIS is to have design advanced to the point that it informs the impact analysis. Any gaps in design information will need to be accommodated by a potential consultant selected to assist in EIS preparation, which will add additional scope and time to the process.	
4	1.3.1.2	1-3	Discussion of LGA slots should indicate what the current slot limit is as it provides helpful context.	

Comment No.	Section	Page	Reviewer Comments	Response
5	1.3.2	1-4	Please define acronym SBS in discussion of Q70 SBS service.  Discussion of New York Airporter service triggers the question of how AirTrain would truly be considered in ridership options when the competing car services offer door to door service.	
6	1.3.3	1-6	Refer to separate LGA Ground Access Survey comments relating to the source of data used in Tables 1-1, 1-2, 1-3, and 1-4.	
7	1.3.4	1-8	Text refers to 1500 parking spaces at LGA for employees, yet each alternative only considers accommodating a parking lot of 500 spaces off airport. Why is the discrepancy between the two so large? How was 500 determined to be the appropriate level of off airport parking?	
8	1.4	1-9	Reference is made to Gov. Cuomo's 2015 Airport Advisory Panel report's recommendations for projects. Through the panel recommended ferry service and a hotel, neither of those is discussed here.	
9	1.4.1 and General		This section and elsewhere in the document describes a "major redevelopment" of LGA and cites to the recommendations of Governor Cuomo's advisory panel. This type of description raises concerns about segmentation and compels a thorough discussion of cumulative impacts from past and future actions, and inclusion of any connected actions.  Though the text indicates that each recommendation addressed distinct aspirations, each with its own purpose, functionality, and timeframe, this sentiment is not reflected in the report to the Governor that is cited here and throughout the document. Please indicate why this project is being targeted to initiate construction on an aggressive schedule if each recommendation is subject to its own timeframe.	

Comment No.	Section	Page	Reviewer Comments	Response
10	1.4.1	1-10	<p>The status of the consolidated rental car facility and hotel mentioned in the text must be more thoroughly explained. The status of future projects should be detailed and provided. If projects yet to be funded or approved are not to be considered as part of the project, then this information would be needed to inform a thorough and robust cumulative impacts assessment within the EIS. .</p> <p>The link to the report provided in Footnote 13 doesn't work.</p>	
11	1.4.2	1-11	Is there cross-over between the "major obstacles" in the LASA Study and the new proposal? If so, how does this new proposal address the major obstacles that came up in the LASA study?	
12	1.4.2	1-12	The rationale for excluding the Ferry Service at this time but holding it as an option for future transit consideration does not follow. This study is for access improvement. If it doesn't meet the purpose and need for access improvement now, then it shouldn't in the future. Consideration of it in the future must re-evaluate all of the options similarly dismissed in this analysis based on new criteria that would make it viable.	
13	1.5	1-12	The first criteria of the Purpose and Need is for convenient access to New York City. Seeing as the airport is located in New York City itself, I would presume this is intended to refer to Manhattan rather than the entirety of New York City. If this is the case, then it should state that convenient access to Manhattan is the goal.	
14	1.5.2	1-14	How much have speed limits impacted the slower travel MPH and higher travel times? NYC Mayor lowered speed limit on city surface streets in 2014, within the timeframe that data is being pulled from for this report.	

Comment No.	Section	Page	Reviewer Comments	Response
15	1.5.2	1-15	<p>FAA's comments on the referenced LGA Ground Access Mode Choice study still hold and have not been formally responded to. Please consider all of those comments relevant to this study's use in this report.</p> <p>The last paragraph also establishes a fundamental issue with how travel time data is treated throughout the analysis. The 30 minute standard assumes that a passenger is starting at the Penn Station or GCT train platform and the train is present. It does not account for transit time to the train platform or the wait time at the originating platform in determining whether or not the trip meets the 30 minute travel time. Yet other modes of transportation (car, bus, ferry) are found to not meet the 30 minute travel standard while accounting for the time to reach the mode from the point of origin. It contributes to uneven application of screening criteria across modes. A 36-minute door-to-door car ride may actually be quicker than a 28 minute train ride when the time to travel from the door to the station platform is factored in.</p>	
16	1.5.2	1-16	Table 1-6 indicates no change to transit/AirTrain combined travel time from 2025 to 2045. However, no mention is made as to how Subway/LIRR will address increased ridership/population growth in region and its impact on transit service reliability.	
17	1.5.2	1-17	Uncertainty of automobile travel times is described, but no mention is made of uncertainty of transit travel times.	

Comment No.	Section	Page	Reviewer Comments	Response
18	1.5.4	1-18	<p>The second paragraph identifies the need to relocate employee parking in order to increase airside space. This raises the question, what aeronautical uses are planned for the current employee parking areas? The requirement for providing off-airport employee parking is cited as project objective #5 and used to eliminate several alternatives which fail to provide it. If additional aeronautical needs would require use of the existing Parking Lot P-10 and/or other employee lots, the proposed development in those areas should be evaluated as part of this EIS to the extent practicable, or otherwise be included in a cumulative impacts analysis. The last sentence of that paragraph states, "a long term solution for Airport employee parking is a major component of the LGA Redevelopment Program." As such, any factors driving the need to relocate employee parking must be considered as part of this environmental review.</p> <p>The third paragraph starts mid sentence.</p>	
19	1.6	1-19	Where is basis for 30 minute travel time from Penn or GCT to LGA established?	
20	2.2.1	2-1 and 2-2	Discussion of alternatives analysis process should be limited to how it relates to Port's objectives only. There should be no discussion of the alternatives screening process that the FAA will conduct in the EIS here or anywhere in this document.	
21	2.3.1	2-4	Objective 1 – predictable travel time between midtown and LGA. How do you define predictable?	
22	2.3.1	2-4	<p>Objective 1 – How was 30 minute travel time established as the baseline?</p> <p>Globally: Current capacity and reliability issues with NYCT and MTA/LIRR transit systems do not appear to be addressed within the report, but these systems will be relied upon to meet the 30 min travel time from LGA to GCT.</p>	

Comment No.	Section	Page	Reviewer Comments	Response
23	2.3.1	2-4	<p>Objective 6 – This objective provides a link between the proposed development and other future actions. If the design of either this project or a future project is influenced by the other, then it should be accounted for within the same analysis</p> <p>The status of the future projects should be detailed and provided. If projects yet to be funded or approved are not to be considered as part of the project, then this information would be needed to inform a thorough and robust cumulative impacts assessment within the EIS.</p>	
24	2.3.1	2-4	<p>Objective 7 – Not precluding future service to Terminal A is an objective. The entirety of the service should be analyzed to the extent practicable within the forthcoming EIS. Assumptions should be made regarding the future service to Terminal A, especially since challenges that would need to be addressed to accommodate such service are used as rationale for dismissing other alternatives within this document.</p>	
25	2.3.1	2-4	<p>Objective 8 – Minimization of community impacts is something that should be considered throughout the impact analysis, but it should not be used as a criteria for screening alternatives from consideration for impact analysis. The decision regarding the preferred alternative should be made following informed disclosure of impacts from various alternatives. Using minimization of impacts to screen out alternatives leads to arbitrary and unevenly applied criteria that are not fully informed by the full range of impacts associated with each alternative. It also only allows one alternative to possibly meet the criteria since the goal is minimization of impact.</p>	

Comment No.	Section	Page	Reviewer Comments	Response
26	2.3.2	General	There is inconsistent use of employee parking (objective 5) as a screening criterion in this section. For example, TSM, TDM, and Use of Other Airports are excluded in part because they would not meet Objective 5. However, an exclusive roadway for buses and ferry service would also not meet objective 5, yet that objective was not cited as a reason for not advancing those projects.	
27	2.3.2.3	2-7	The discussion on TDM seems to focus on reducing employee vehicle access to the airport. Employee vehicle trips represent a much smaller number than passenger vehicle trips. Please provide additional explanation on if/how TDM could be used to reduce passenger vehicle trips.	
28	2.3.2.5	2-8	Off airport roadway expansion alternative doesn't consider the full extent of the expansion required as it is limited by congestion issues in Manhattan.	
29	2.3.2.7	2-9	Although reasons were given why the Ferry Service alternative was not selected for further consideration, the Governor's 2015 Airport Advisory Panel did include future Ferry Service in its recommendations. How would that proposed service fit into the analysis of all potential transportation options considered here for LGA?	
30	2.3.2.7	2-9	The NYCEDC study concluded that ferry service <i>would</i> be reliable and convenient. If this alternative is going to reach a different conclusion it should explain why it is refuting NYCEDC study.	
31	2.3.2.7	2-9	If this analysis does not seek to refute the NYCEDC study, consider advancing the ferry alternative to Level 2 screening. This approach would make it more defensible to propose a project to introduce ferry service in the future.	

Comment No.	Section	Page	Reviewer Comments	Response
32	2.3.2.8	2-10	<p>Rail or Subway Extensions – In reference to the LASA study, MTA concluded that existing and planned transit network did not have sufficient capacity to accommodate additional service to provide peak hour service to LGA. Although the AirTrain would be separate from the MTA's existing transit modes (NYC Subway and LIRR) how would those modes provide sufficient capacity to reach the AirTrain?</p> <p>Is the LASA Study available to the public? Discussion of how this alternative meets Objectives 5 and 6 is missing from the text.</p>	
33	2.3.2.9	2-11	<p>Fixed Guideway – It states that the fixed guideway alternative would be independent of the existing MTA subway and rail systems. From an infrastructure standpoint, that may be true, but it would be dependent on both of those systems to provide sufficient capacity and frequency to deliver passengers to the off airport fixed guideway terminal station.</p> <p>In that respect, how many trains would be operated, how frequently will they arrive and depart from on-airport/off-airport stations?</p> <p>Based on the text, it appears that Rail or Subway Extensions would be better at achieving Objectives 1, 2, and 3 than Fixed Guideway. There is no summation of degree to which each alternative meets the required objectives.</p>	
34	2.3.3	2-13	<p>Table 2-1. For alternatives such as the Ferry Service, listed as “Not considered as a standalone alternative. May be implemented as a separate initiative.” How will these be addressed from a NEPA cumulative impacts analysis perspective?</p>	



Comment No.	Section	Page	Reviewer Comments	Response
35	2.4.1	2-14	<p>Level 2 Evaluation Criteria – Why were the evaluation criteria limited to these 4 criteria? There are numerous other NEPA resource categories. Is there a reason no other potential impact categories were included in the screening of alternatives?</p> <p>Additionally, the criteria should be clearly defined and applied uniformly to each of the development alternatives.</p>	
36	2.4.1	2-14	<p>Discussion of constructability factor indicates that some design work on each has been completed in order to determine minimization of impacts to existing infrastructure and construction techniques. Please provide any design work for our consideration.</p> <p>Additionally, discussion of problematic site conditions triggers questions with regard to any geotechnical boring that may have been done to support design for each alternative. Please share the results of any such work as well.</p>	
37	2.4.1	2-15	<p>FAA's NEPA process is intended to ensure consideration and disclosure of community impacts. There is no substantive requirement to avoid community impacts. Therefore, the sponsor must articulate its own reason seeking to avoid community impacts rather than citing to FAA's NEPA guidance.</p>	
38	2.4.2	2-15	<p>Describe how the three proposed alignments were selected and why other alternatives were excluded.</p>	
39	2.4.2	2-15	<p>All of the Rail/Subway Alternatives focus exclusively on extending the N/W Astoria Subway line to LGA. Why was no rail alternative considered that would have spurred LIRR via its junction with the NY Connecting Railroad just to the west of St. Michael's cemetery and only a mile from airport property?</p>	

Comment No.	Section	Page	Reviewer Comments	Response
40	2.4.2	General	The evaluation of alternative section for each rail or subway extension alternative raises issues that would also apply to the sponsor's preferred alternative, yet are not addressed with regard to the fixed guideway from Willets Point. For example, under operations, each subway alternative mentions the need to adjust N and W line service. Adjustments would also need to be made to LIRR service at Willets, especially with regard to hitting the 30 minute transit time criteria (Objective 1) and improving travel options criteria (Objective 3) as well as the overall goal of the Purpose and Need to provide predictable and reliable service. Additionally, constructability obstacles for subway and rail extensions would also be present for the preferred alternative, especially with regard to not precluding future service to terminal A (Objective 7). How are these factors addressed for the sponsor's proposed alternative?	
41	2.4.2.3	2-22	For all elevated track alignments, are there estimates for how many footings would need to be installed to support either an AirTrain or NYCT extension?	
42	2.4.2.4.1	2-25	Discussion of tunneling options should explain why tunnel routes would need to follow streets and not establish a more direct path to the destination.	
43	2.4.2.4.2	2-28	Vent plants and tunnels can be designed so that they fit the character of the neighborhood.	
44	2.4.3	2-28	Is six miles from LGA a criteria or it just happened that all of the sites considered were located within six miles? If it is a criteria explain why.  Additionally, why were only five locations considered as connections for the fixed guideway? How were these locations determined? What criteria were used to develop this list? Why was Junction Boulevard (an express stop on the 7 line) excluded?	
45	2.4.3	Figure 2-6	The map should show the other subway and LIRR stops not considered for connections to the fixed guideway.	

Comment No.	Section	Page	Reviewer Comments	Response
46	2.4.3.1.1	2-29	Transit time to Astoria is shown as 15-20 minutes. Text on 2-16 says transit time to Astoria-Ditmars (the next stop) is 22-25 minutes. That seems like a big gap in transit times between stops.	
47	2.4.3.1.2	2-32	Under operations, this should acknowledge modifications to the N and W service, as would be required for the subway and rail extensions. Additionally, the repetitive discussion of the Hell Gate railroad trestle as a restriction on so many development alternatives indicates that this structure should be shown on the maps depicting each alternative alignment.	
48	2.4.3.2.1	2-33	Discussion of transit time to Woodside should indicate that the 16 minute subway ride is express service and also show what the time is for a local train.	
49	2.4.3.2.2	2-35	Evaluation of Woodside leaves out the critical point that the LIRR station here serves almost every branch of the LIRR whereas the Willets Point LIRR station only serves the Port Washington branch.  Additionally, failure to meet Objective 8 should not be the sole basis for discontinuing consideration of an alternative. This applies to each proposed alignment eliminated for this reason.	
50	2.4.3.4.2	2-41	Based on other comments regarding application of 30 minute transit time, as well as lack of rationale for 30 minutes as the standard, a Fixed Guideway from Jamaica should not be screened out for failure to meet 30 minute transit time alone. Based on the text, it is unclear that the sponsors preferred alternative will reliably meet the 30 minute travel time standard without service adjustments to the LIRR.	
51	2.4.3.5	2-42	Fixed Guideway Willets Point Alternative – It states that currently LIRR service is limited to only Mets home games/US Open Tennis Tournament, but no discussion of how additional LIRR service would be added to accommodate servicing the new AirTrain terminus.	

Comment No.	Section	Page	Reviewer Comments	Response
52	2.4.3.5.1	2-42	<p>There isn't a figure outlining the Willets Point Fixed Guideway Alternative like there was for each of the others. Is this because there are several alignment options within this alternative?</p> <p>Also, discussion indicates that travel time via the 7 train is 24-28 minutes to Willets Point. Combined with the estimated transit time to LGA and the walk from the 7 station to the AirTrain Station, as well as average wait time for an AirTrain, transit to Willets Point via subway would appear to not meet the 30 minute travel time standard of Objective 1. Additionally, service via LIRR is currently so intermittent as to not reliably meet the 30 minute transit time as well. How would LIRR service change to meet this objective? What changes to LIRR operation, equipment, or infrastructure would be needed to support the operational changes needed?</p>	
53	2.4.3.5.2	2-43	<p>There is no discussion of operational changes that are needed to support this alternative. See other comments regarding this issue throughout this comment set.</p>	
54	2.4.3.5.2	2-44	<p>Under Community Impacts, it states that the alignment would be within transportation right of way and parking lots. The proposed ALP revision for this alignment appears to impact parkland as well, including the World's Fair Marina promenade. This should be identified in the description of the community impacts. It is mentioned under 2.4.3.5.3 for the Above-Grade Alignment Option, but should be included here as well.</p> <p>It is premature to state that an alignment from Willets Point to LGA would not result in substantial construction or permanent impacts to residential neighborhoods.</p>	
55	2.4.3.5.3	2-46	<p>All of the constructability issues identified for the below-grade alignment option would apply to an eventual extension of service to terminal A for the preferred alternative in accordance with Objective 7.</p>	

Comment No.	Section	Page	Reviewer Comments	Response
56	2.4.3.5.3	2-47	Similar constructability issues for the above grade option with regard to crossing major interchanges were raised regarding other alternatives, yet seem to be minimized here.	
57	2.4.3.5.4	2-54	In the discussion of Segment 3, how would the design of the previously approved terminals be influenced by the AirTrain? Similarly, how would the AirTrain design be influenced by the terminals?	
58	2.4.3.5.4	2-55	Figure 2-19 depicts Alternative 4 as the Sponsor's preferred alternative, however no explanation or rationale is given within the text of this section as to how this decision was reached. Reference must be made to the later sections that explain the preferred alternative decision rationale or move this figure to that section of the document.	
59	2.4.4.1.2	2-56	Terminal A extension is second development action that is not included but could be considered in the future. The forthcoming EIS should consider all future action subject to NEPA simultaneously. This should include development discussed in the Governor's Report from 2015. Any action yet to be funded or approved and not considered as part of the project, would inform a thorough and robust cumulative impacts assessment within the EIS.	
60	2.4.6.2.1	2-59	Is the South Field Lot East Site only used for Mets games overflow? It looks nearly at capacity in Figure 2-22 without a game going on.	
61	2.5	2-60	The statement regarding the NY State legislation allowing property acquisition for a specific alignment (Alternative 4) appears to indicate that this alignment was pre-determined to be the chosen alignment prior to the EIS process thereby potentially limiting the range of possible alternatives.	
62	2.6	2-62	Table 2-2, For Alternatives 2 and 4 (Segment 1, Roosevelt Ave.), it states there will be no anticipated disruption of LIRR service. However, the ALP drawing depicts vertical circulation from LIRR, which would appear to imply construction of elevator/escalators from LIRR platforms. It would appear that this could potentially impact service during construction.	

Comment No.	Section	Page	Reviewer Comments	Response
63	2.6	2-62	Table 2-2, For Alternatives 1 and 2 (Segment 2, GCP Median.), it states there the GCP must be shifted 8ft to the southward to accommodate AirTrain guideway. Why couldn't the GCP be shifted 8ft northward away from residences toward the Promenade, thereby helping to minimize impacts to residents?	

**From:** [REDACTED]  
**To:** [DiScenna, Matthew](#); [Jenet, Marie \(FAA\)](#)  
**Cc:** [Lamond, Kathryn](#); [Clark, Patty](#); [Cohen, Michelle](#)  
**Subject:** RE: LGA AirTrain Planning Documents  
**Date:** Friday, August 17, 2018 7:41:26 AM

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Matt,

That is a specific instance of the more general comment located in the first paragraph of comment 15:

FAA's comments on the referenced LGA Ground Access Mode Choice study still hold and have not been formally responded to. Please consider all of those comments relevant to this study's use in this report.

I hope this helps.

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

---

**From:** DiScenna, Matthew <[REDACTED]>  
**Sent:** Thursday, August 16, 2018 5:39 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
**Cc:** Lamond, Kathryn <[REDACTED]> [REDACTED] Cohen, Michelle <[REDACTED]>  
**Subject:** RE: LGA AirTrain Planning Documents

Andrew/Marie,

Thanks again for submitting your comments to us. We have one question so far as we are reviewing the comments.

Can you clarify comment #6? As written, we are not sure what is meant by that comment. Is it possible to rephrase for us?

Thanks,  
Matt

---

**From:** [REDACTED] [[mailto:\[REDACTED\]](mailto:[REDACTED])]  
**Sent:** Tuesday, August 14, 2018 4:59 PM  
**To:** DiScenna, Matthew <[REDACTED]> Clark, Patty <[REDACTED]> Lamond,

Kathryn <[REDACTED]>  
**Cc:** Cohen, Michelle <[REDACTED]> Puliafico, Jessica <[REDACTED]> Herndon,  
Jane <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Jenet, Marie (FAA) <[REDACTED]> [REDACTED]

**Subject:** RE: LGA AirTrain Planning Documents

Good Afternoon Patty,

I am transmitting the attached letter and Alternatives Analysis comment set on behalf of the NY ADO and the FAA AirTrain EIS Team. A hard copy has been sent as well; all cc's are via this email. We can be available to discuss any questions or comments you have throughout the week.

Thank you,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

---

**From:** DiScenna, Matthew <[REDACTED]>  
**Sent:** Monday, July 30, 2018 10:04 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
Martinez, Evelyn (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]>  
Henn, Patricia (FAA) <[REDACTED]> McCarthy, Mary M (FAA)  
<[REDACTED]> Doyle, John (FAA) <[REDACTED]> Teodorescu, Andrew P  
(FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) [REDACTED]

**Cc:** [REDACTED] Lamond, Kathryn <[REDACTED]> Cohen, Michelle  
<[REDACTED]> Puliafico, Jessica <[REDACTED]> Herndon, Jane  
<[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]>

**Subject:** RE: LGA AirTrain Planning Documents

Good evening,

The following documents have been added to the below AKRF Extranet site in a folder dated July 30:

- Port Authority's draft Alternatives Analysis Report



Port Authority responses to FAA comments on the draft Project Purpose, Goals and Objectives and AA outline that were submitted to FAA on May 16

- Note: PA is holding off on responses to comments on our draft Ridership Report until comments are received from FTA so that we can respond to all comments together

Lastly, regarding FAA's question on the lead time for notification to the PA of a greenlight on the release of the RFP (targeted for Friday, August 10), our Procurement Dept has requested a minimum of 24 hours' notice prior to RFP release, with 48 hours being their preference. This is due to the internal coordination between various PA departments required to finalize the RFP for release.

Please let us know if you would like to set up a call prior to this week's regular Thursday call to discuss the draft Alternatives Analysis report or any related topics.

Regards,  
Matt

---

**From:** DiScenna, Matthew

**Sent:** Friday, July 27, 2018 7:37 PM

**To:** [REDACTED] Drew Brooks <[REDACTED]> [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

**Cc:** Puliafico, Jessica <[REDACTED]> Cohen, Michelle <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Clark, Patty <[REDACTED]> Lamond, Kathryn <[REDACTED]> Tabafunda, Faith <[REDACTED]> Herndon, Jane <[REDACTED]>

**Subject:** LGA AirTrain Planning Documents

AirTrain Team,

We are completing final edits on our draft Alternatives Analysis report over the weekend and will submit to you by Monday.

We have prepared the following documents for today's submittal:

- Port Authority's proposed alignment ROW drawing with aerial background (same corridor depicted on ALP submittal)
- Updated proposed NEPA consultant procurement and planning document submittal schedule

These documents can be accessed through AKRF's Extranet site, in a folder dated July 27<sup>th</sup>. Instructions for accessing the files from the Extranet site are included at the end of the email below.

**AKRF WebFolders LogOn Instructions**

Below are instructions for securely sending/receiving large files for project via AKRF's Extranet:  
Click on (or otherwise navigate to): [REDACTED]

Login with credentials:

Username: [REDACTED]

Password: [REDACTED]

[Please Note: Username and Password are cAsE sEnstive]

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Select extranet files to transfer to your computer; or

Select files on your computer to transfer to the extranet.

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If you are having trouble, contact your IT department. For password issues, contact AKRF's IT Help Desk [REDACTED] or [email us](mailto:).

This site can also be reached from <https://www.akrf.com> (on the top menu, select "extranet" --> clients).

Thank you and have a great weekend –

Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ  
[REDACTED] (office)  
[REDACTED] (cell)  
[REDACTED]

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**From:** [REDACTED]  
**To:** [Lamond, Kathryn](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Jenet, Marie \(FAA\)](#); [REDACTED]; [Herndon, Jane](#)  
**Cc:** [REDACTED]; [Puliafico, Jessica](#); [REDACTED]  
**Subject:** RE: LGA Access Improvement Project: Weekly Check-in  
**Date:** Wednesday, August 01, 2018 5:11:57 PM

---

Katie,

I don't believe that we will be able to share our initial impressions on the documentation tomorrow. We haven't had enough time to go through it and discuss internally yet.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

-----Original Appointment-----

**From:** Lamond, Kathryn <[REDACTED]>  
**Sent:** Friday, April 13, 2018 7:50 AM  
**To:** Lamond, Kathryn; [REDACTED]; DiScenna, Matthew; Cohen, Michelle; Tabafunda, Faith; Rogak, Elizabeth; Jenet, Marie (FAA); Brooks, Andrew (FAA); Martinez, Evelyn (FAA); Sanchez, David (FAA); McCarthy, Mary M (FAA); Doyle, John (FAA); Henn, Patricia (FAA); Herndon, Jane  
**Cc:** Wolfers-Lawrence, Jean (FAA); Puliafico, Jessica; Teodorescu, Andrew P (FAA)  
**Subject:** LGA Access Improvement Project: Weekly Check-in  
**When:** Thursday, August 02, 2018 8:30 AM-9:30 AM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** Call-in [REDACTED] Code: [REDACTED] Host (Katie) [REDACTED]

Below please find a brief agenda for our call:

- 1) Planning documents submittal
- 2) Proposed consultant selection and procurement schedule
- 3) Cooperating agency meeting
- 4) Pre-scoping activities

Thanks,  
Katie

**NOTICE: THIS E-MAIL AND ANY ATTACHMENTS CONTAIN INFORMATION FROM THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY AND AFFILIATES. IF**

YOU BELIEVE YOU HAVE RECEIVED THIS E-MAIL IN ERROR, PLEASE NOTIFY THE SENDER IMMEDIATELY, PERMANENTLY DELETE THIS E-MAIL (ALONG WITH ANY ATTACHMENTS), AND DESTROY ANY PRINTOUTS.

**From:** [Clark, Patty](#)  
**To:** [Drew Brooks](#); [DiScenna, Matthew](#); [Lamond, Kathryn](#)  
**Cc:** [Cohen, Michelle](#); [Puliafico, Jessica](#); [Herndon, Jane](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Jenet, Marie \(FAA\)](#); [REDACTED]  
**Subject:** RE: LGA AirTrain Planning Documents  
**Date:** Tuesday, August 14, 2018 5:41:54 PM

---

Thanks, much, Andrew and team.

pc

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**From:** Drew Brooks [mailto:[REDACTED]]  
**Sent:** Tuesday, August 14, 2018 4:59 PM  
**To:** DiScenna, Matthew <[REDACTED]> Clark, Patty <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
**Cc:** Cohen, Michelle <[REDACTED]> Puliafico, Jessica <[REDACTED]> Herndon, Jane <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]> [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
**Subject:** RE: LGA AirTrain Planning Documents

Good Afternoon Patty,

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Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

---

**From:** DiScenna, Matthew <[REDACTED]>  
**Sent:** Monday, July 30, 2018 10:04 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
Martinez, Evelyn (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]>  
Henn, Patricia (FAA) <[REDACTED]> McCarthy, Mary M (FAA) <[REDACTED]>  
<[REDACTED]> Doyle, John (FAA) <[REDACTED]> Teodorescu, Andrew P

(FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) [REDACTED]

**Cc:** [REDACTED] Lamond, Kathryn <[REDACTED]> Cohen, Michelle  
<[REDACTED]> Puliafico, Jessica <[REDACTED]> Herndon, Jane  
<[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]>

**Subject:** RE: LGA AirTrain Planning Documents

Good evening,

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  - Note: PA is holding off on responses to comments on our draft Ridership Report until comments are received from FTA so that we can respond to all comments together

Lastly, regarding FAA’s question on the lead time for notification to the PA of a greenlight on the release of the RFP (targeted for Friday, August 10), our Procurement Dept has requested a minimum of 24 hours’ notice prior to RFP release, with 48 hours being their preference. This is due to the internal coordination between various PA departments required to finalize the RFP for release.

Please let us know if you would like to set up a call prior to this week's regular Thursday call to discuss the draft Alternatives Analysis report or any related topics.

Regards,  
Matt

---

**From:** DiScenna, Matthew

**Sent:** Friday, July 27, 2018 7:37 PM

**To:** [REDACTED] Drew Brooks <[REDACTED]> [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

**Cc:** Puliafico, Jessica <[REDACTED]> Cohen, Michelle <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Clark, Patty <[REDACTED]> Lamond, Kathryn <[REDACTED]> Tabafunda, Faith <[REDACTED]> Herndon, Jane <[REDACTED]>

**Subject:** LGA AirTrain Planning Documents

AirTrain Team,

We are completing final edits on our draft Alternatives Analysis report over the weekend and will submit to you by Monday.

We have prepared the following documents for today's submittal:

- Port Authority's proposed alignment ROW drawing with aerial background (same corridor depicted on ALP submittal)
- Updated proposed NEPA consultant procurement and planning document submittal schedule

These documents can be accessed through AKRF's Extranet site, in a folder dated July 27<sup>th</sup>. Instructions for accessing the files from the Extranet site are included at the end of the email below.

### **AKRF WebFolders LogOn Instructions**

Below are instructions for securely sending/receiving large files for project via AKRF's Extranet: Click on (or otherwise navigate to) [REDACTED]

Login with credentials:

Username: [REDACTED]

Password: [REDACTED]

[Please Note: Username and Password are cAsE sEnstive]

A window should appear where you can:

Select extranet files to transfer to your computer; or

Select files on your computer to transfer to the extranet.

Notes:

As of 7/1/14: Files stored on AKRF's WebFolders system are available for thirty days only, based on the date they were uploaded.

WebFolders works best with the latest version of your web browser. If you are using an older web browser or a mobile phone, you may have trouble using the "full version" of the site: After a successful login, try the "View Lite Version" link at the bottom of the page.

If you are having trouble, contact your IT department. For password issues, contact AKRF's IT Help Desk (646) 388-9729 or [email us](mailto:help@akrf.com).

This site can also be reached from <https://www.akrf.com> (on the top menu, select "extranet" --> clients).

Thank you and have a great weekend –

Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department



Port Authority of NY & NJ

[REDACTED] (office)

[REDACTED] (cell)

[REDACTED]

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# LaGuardia Airport Access Improvement Project: Interagency Meeting

**Presented by:** Federal Aviation Administration  
Project Team

**Date:** August 23, 2018



**Federal Aviation  
Administration**



# Welcome

- **Steve Urllass, FAA Eastern Region Airports Division Director**
- **Rick Cotton, Port Authority of New York and New Jersey Executive Director**



# Introductions

- **Federal Aviation Administration Project Team**
- **Port Authority of New York and New Jersey Project Team**
- **Agency Representatives**



# Roles and Responsibilities

- **Federal Aviation Administration (FAA)**
  - Conducts environmental analysis; coordination with federal, state, and local agencies; and public outreach
  - Ensures compliance with applicable environmental laws and regulations
  - Prepares EIS documentation
  - Approves or disapproves documents and federal actions
  - Prepares Record of Decision under One Federal Decision Memorandum of Understanding for all federal actions



# Roles and Responsibilities

- **Port Authority of New York and New Jersey (PANYNJ)**
  - Leases and Operates LaGuardia Airport (LGA)
  - Sponsor of the Proposed LGA Access Improvement Project
  - Provides planning, design, and other information to assist the FAA in carrying out its responsibilities with EIS preparation

## **THE PORT AUTHORITY OF NEW YORK & NEW JERSEY**



# Roles and Responsibilities

- **Federal, State, and Local Agencies**

- Determine Cooperating and Participating Agency Status
- Provide Input into development of Permitting Timetable
- Ensure EIS and Record of Decision address necessary requirements



FEMA



NOAA FISHERIES



Federal Aviation Administration

# **Proposed LGA Access Improvement Project**

**The Port Authority of New York and New Jersey will present the project to be reviewed.**

**Presentation is by Matt DiScenna, Program Manager for the LaGuardia Access Improvement Project**





# Regulatory Background

- **EIS for LaGuardia Access Improvement Project will be developed subject to NEPA, CEQ Regulations, and FAA Orders 1050.1F and 5050.4B**
- **FAA is the Lead Federal Agency for the EIS because the Federal Actions sought fall under FAA jurisdiction. They are:**
  - Approval of a change to the Airport Layout Plan (ALP) for LaGuardia to depict the proposed project
  - (Potential) Approval of a request to Impose and Use Passenger Facility Charges to finance the proposed development



# One Federal Decision

- **Framework established by Executive Order 13807, *Establishing Discipline and Accountability in the Environmental Review Process for Infrastructure Projects***
- **One Federal Decision covers Major Infrastructure Projects. These are projects where:**
  - Lead Federal agency has determined that it will prepare an environmental impact statement (EIS)
  - Multiple authorizations by Federal agencies will be required to proceed with construction
  - Project sponsor has identified the reasonable availability of funds sufficient to complete the project.



# One Federal Decision MOU

- **Memorandum of Understanding Implementing One Federal Decision (effective March 21, 2018)**
  - Establishes cooperative relationship among federal agencies
  - Develop permitting timetable that includes all federally required authorizations for the project
  - All individual agency decisions should be incorporated in one Record of Decision (ROD)
  - Two year average timeframe from Notice of Intent to ROD
  - All permits issued within 90 days of the ROD
  - Sets forth a dispute resolution process
  - Identifies exceptions



# One Federal Decision- Agency Obligations

- **Actively participate in environmental reviews and authorization processes for major infrastructure projects and communicate with one another as well as applicants and sponsors in an effective and structured manner that starts early and continues throughout the review process**
- **Conduct concurrent reviews with respect to the environmental review and authorization decisions**



# One Federal Decision- Agency Obligations

- **Work together to meet milestones established on the permitting timetable**
- **Commit to process enhancements - agencies will work individually & collectively to:**
  - remove impediments to OFD
  - implement best practices
  - develop & implement programmatic agreements



# One Federal Decision- FAA Strategies

- **FAA is implementing the One Federal Decision framework through strategies building on best practices and lessons learned from past experience**
- **To achieve the two-year goal, we are targeting aspects of the permitting and NEPA review process that have caused delays in prior EIS projects**
  - Pre-scoping with Agencies and Public
  - Concurrence points at Purpose and Need, Alternatives, and identification of Preferred Alternative
  - Monitoring schedules via the Permitting Dashboard
- **Will develop project-specific Cooperative Agreement with other agencies**



# Discussion Topics

**Facilitator:**

**Marie Jenet, New York Airports District Office, FAA**

- 1. Questions on the Proposed Project**
- 2. Identification of Resource Issues for Scope Development**



# Discussion Topics

**Facilitator:**

**Jean Wolfers-Lawrence, Airport Planning and Environmental Division, FAA Headquarters**

- 3. Permits Needed and Pre-Application Procedures**
- 4. Permitting Dashboard**





# Permitting Dashboard

- **EO 13604 – Improving Performance of Federal Permitting and Review of Infrastructure Projects (May 2012)**
- **FAST Act requires an online, publically accessible website to publish the status of NEPA and permitting for all projects requiring an EA or EIS.**
- **DOT memo**
- **EO 13807 – Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure (Aug 2017)**
- **OFD Memo (April 2018)**



# Permitting Dashboard

The screenshot shows a web browser window with the URL <https://www.permits.performance.gov>. The page header includes the text "PERMITTING DASHBOARD" and "FEDERAL INFRASTRUCTURE PROJECTS". A search bar with the placeholder "Search the site" and a "GO" button is located in the top right. Below the header is a navigation bar with tabs for "About", "Projects", "Resources & Tools", and "Map". The main content area features a large image of a train in a tunnel. Below the image is the heading "The Permitting Dashboard" and a sub-heading: "A website that provides transparency for the environmental review and authorization process for infrastructure projects to increase predictability for project sponsors and promote government accountability in the review process".

The page is divided into three columns:

- PROJECT MAP:** The map below depicts all Federal infrastructure projects tracked on the Permitting Dashboard. For an interactive version of this map that features project classification overlays and individual project details, please click here or select 'Map' from the navigation bar.
- BECOME A FAST-41 COVERED PROJECT:** Infrastructure project sponsors interested in the benefits of Title 41 of the Fixing America's Surface Transportation Act ("FAST-41") are encouraged to select: "Becoming a FAST-41 Covered Project"
- NEWS:**  
**PERMITTING COUNCIL REDUCES SCHEDULE FOR PROPOSED PROJECT BY ALMOST TWO YEARS**  
**April 19, 2018**  
The Federal Permitting Improvement Steering Council (Permitting Council)

A "Submit Feedback >" button is located in the bottom right corner of the content area. The Windows taskbar at the bottom shows various application icons and the system clock indicating 10:22 AM on 8/17/2018.



# Discussion Topics

**Facilitator:**

**Andrew Brooks, Eastern Region Airports Division,  
FAA**

**5. Identification of Analytical Needs**

**6. Timeframes and Schedule Goals**



# Cooperative Agreement

- **Based on today's discussion and follow-up, FAA will proceed to identify Cooperating and Participating Agencies**
- **Formal Invitations will be issued in the next few weeks including requests to designate a point of contact for representation**
- **Cooperating and Participating Agencies would be party to a Project Cooperative Agreement under One Federal Decision**



# Cooperative Agreement Contents

- **Commitments of resources on behalf of reviewing agencies**
- **Commitment to concurrent reviews**
- **Timeframes for review periods**
- **Coordination protocols including:**
  - Data sharing
  - Identification of analytical needs to support One Federal Decision
  - Pre-Application processes for applicable permitting actions
  - Dispute Resolution Procedures



# Closing Remarks

- **Future Meetings**

- Targeting next meeting for mid-Fall to discuss Cooperative Agreement and additional project info.
- Formal Agency Scoping Meeting will also be held following issuance of Notice of Intent
- Will work to establish recurring meetings on monthly or bi-monthly basis to support coordination of all agencies

- **Final points of discussion or questions?**



**From:** [REDACTED]  
**To:** [DiScenna, Matthew](#); [Lamond, Kathryn](#); [Herndon, Jane](#); [Clark, Patty](#); [Rogak, Elizabeth](#); [Tabafunda, Faith](#)  
**Cc:** [Jenet, Marie \(FAA\)](#); [REDACTED]; [REDACTED]; [Cohen, Michelle](#); [Puliafico, Jessica](#)  
**Subject:** RE: Presentation for Thursday's Meeting  
**Date:** Wednesday, August 22, 2018 1:23:46 PM

---

Matt,

Thanks for sending this along. We are finishing up the last edits on our end and will send it when it is done.

On a side note, I think we need to leave the presentations separate. We have branding standards that we need to have for all of our slides, so we would need to modify your slides with our footers if we were to integrate them. Additionally, when I started to merge the two, there were minor formatting issues with the page numbers on your presentation. Let me know if you are ok with leaving them separate moving forward.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

---

**From:** DiScenna, Matthew <[REDACTED]>  
**Sent:** Wednesday, August 22, 2018 12:27 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
Herndon, Jane <[REDACTED]> [REDACTED] Rogak, Elizabeth  
<[REDACTED]> Tabafunda, Faith <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]>  
Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Doyle, John (FAA)  
<[REDACTED]> Teodorescu, Andrew P (FAA) <[REDACTED]> Martinez,  
Evelyn (FAA) <[REDACTED]> Henn, Patricia (FAA) <[REDACTED]> Cohen,  
Michelle <[REDACTED]> Puliafico, Jessica <[REDACTED]>  
**Subject:** RE: Presentation for Thursday's Meeting

Andrew and team –

Here is our updated presentation, we made some small changes based on your feedback this morning. We removed old slide 2 and made a small addition to the "Progress to Date" slide (new slide 2).

Thanks,  
Matt

---

**From:** DiScenna, Matthew

**Sent:** Tuesday, August 21, 2018 7:21 PM

**To:** [REDACTED] <[REDACTED]> Lamond, Kathryn  
<[REDACTED]> Herndon, Jane <[REDACTED]> Clark, Patty  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Tabafunda, Faith  
<[REDACTED]>

**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] [REDACTED]  
[REDACTED]; [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] Cohen, Michelle <[REDACTED]> Puliafico, Jessica  
<[REDACTED]>

**Subject:** RE: Presentation for Thursday's Meeting

Thank you, Andrew. We are reviewing and will let you know if we have any questions during our call tomorrow morning.

The Port Authority's project overview presentation for Thursday is attached here. Please be in touch with any questions.

Thanks,  
Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ  
[REDACTED] (office)  
[REDACTED] (cell)  
[REDACTED]

---

**From:** [REDACTED] <[\[mailto:\[REDACTED\]\]](mailto:[REDACTED])>

**Sent:** Tuesday, August 21, 2018 7:25 AM

**To:** DiScenna, Matthew <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
Herndon, Jane <[REDACTED]> Clark, Patty <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Tabafunda, Faith <[REDACTED]>

**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]

**Subject:** Presentation for Thursday's Meeting



Good Morning,

Attached for courtesy review is the presentation for Thursday's Meeting. Please let us know if you have any questions as soon as you are able.

Additionally, please provide a copy of the presentation you will be giving regarding the project. It will be necessary to incorporate that presentation into the project administrative file, so we would appreciate having a copy as soon as you are able to share it.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

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**From:** [DiScenna, Matthew](#)  
**To:** [Drew Brooks](#); [Lamond, Kathryn](#); [Herndon, Jane](#); [Clark, Patty](#); [Rogak, Elizabeth](#); [Tabafunda, Faith](#)  
**Cc:** [Jenet, Marie \(FAA\)](#); [REDACTED]; [Cohen, Michelle](#); [Puliafico, Jessica](#)  
**Subject:** RE: Presentation for Thursday's Meeting  
**Date:** Tuesday, August 21, 2018 7:22:21 PM  
**Attachments:** [PA Presentation FAA Interagency Kickoff Meeting 2018-08-23 - final.pptx](#)

---

Thank you, Andrew. We are reviewing and will let you know if we have any questions during our call tomorrow morning.

The Port Authority's project overview presentation for Thursday is attached here. Please be in touch with any questions.

Thanks,  
Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ  
[REDACTED] (office)  
[REDACTED] (cell)  
[REDACTED]

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Tuesday, August 21, 2018 7:25 AM  
**To:** DiScenna, Matthew <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
Herndon, Jane <[REDACTED]> Clark, Patty <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Tabafunda, Faith <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
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appreciate having a copy as soon as you are able to share it.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

# LaGuardia Airport Access Improvement Project

## The Port Authority of NY & NJ

Interagency Meeting  
Thursday, August 23, 2018

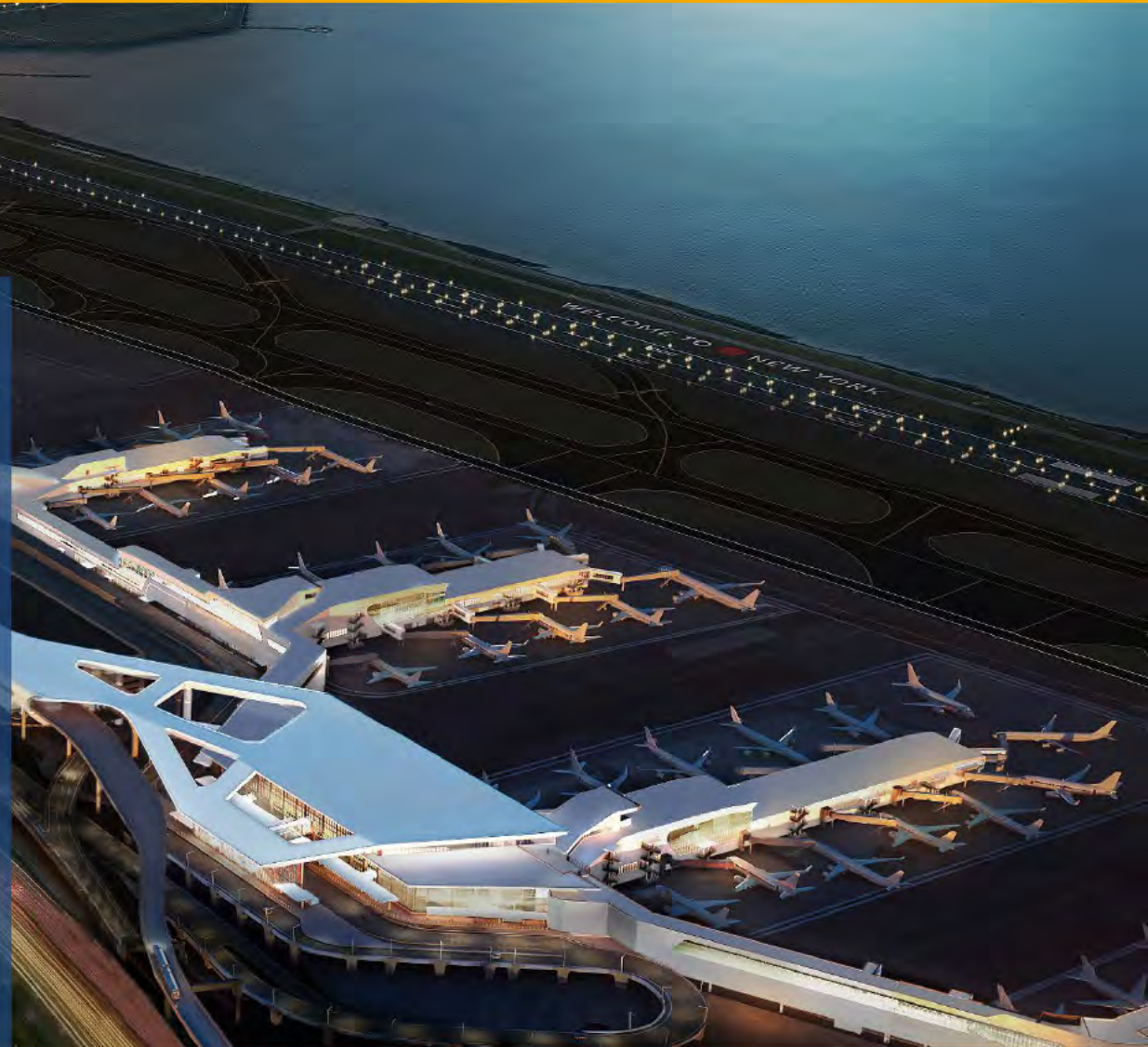


DRAFT & CONFIDENTIAL

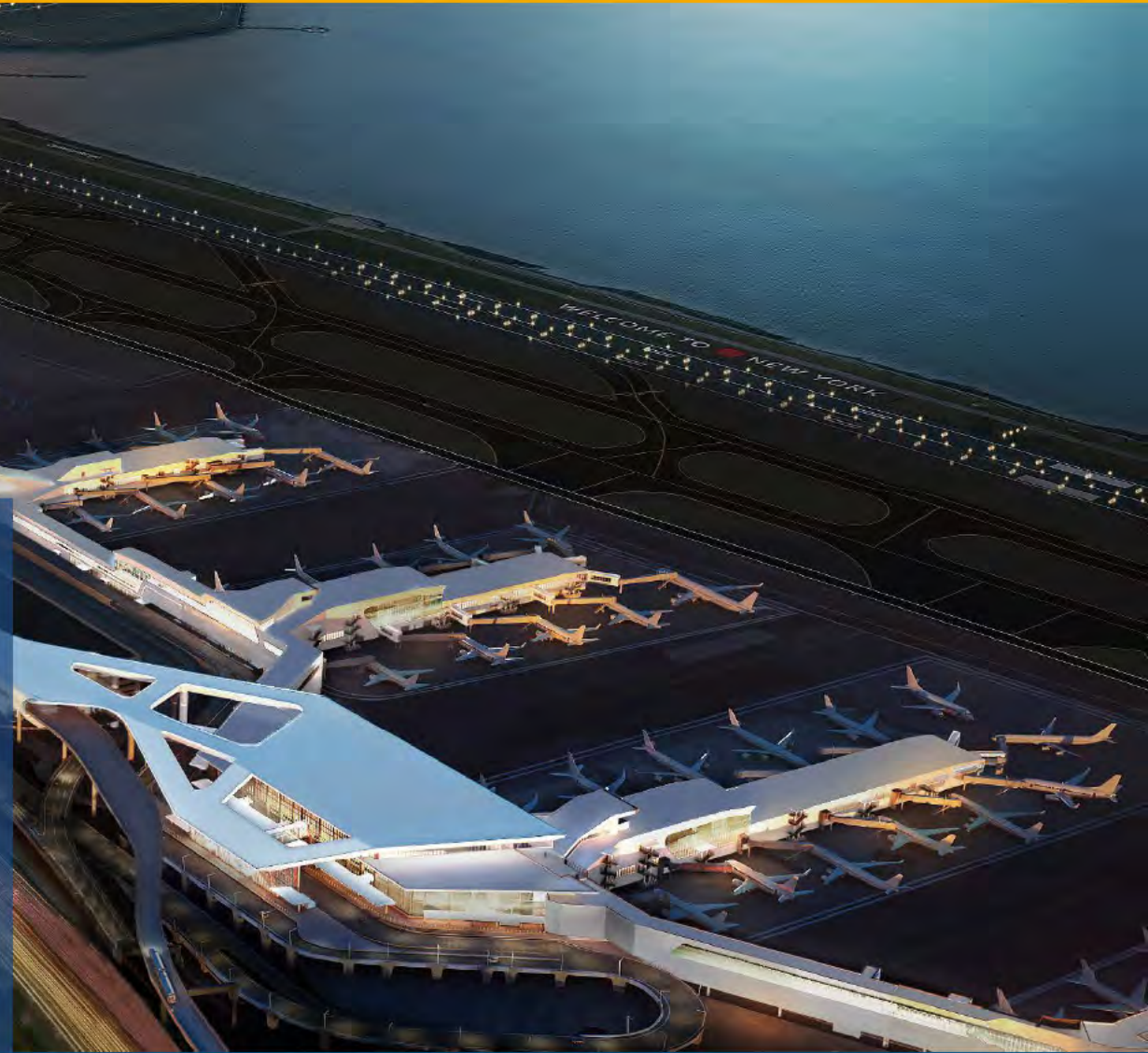
THE PORT AUTHORITY OF NY & NJ

# Airport Advisory Panel Recommendations for LGA – Announced July 2015

- Single, unified airport
- Airside improvements
- Sustainable and resilient airport
- Local employment and MWBE opportunities
- Potential on-airport hotel
- Improved roadway configuration
- Cell phone lot and wait areas
- Adequate on-airport parking
- **Future rail connection – AirTrain LGA**



- February 2017 – Phase I Planning Authorization approved by PA Board
- November 2017 – Phase II Planning Authorization approved by PA Board
- June 2018 – New York State Legislature passes bill authorizing a potential corridor for AirTrain project



## Project Background: Passenger Characteristics

- Approximately 77 percent of LGA passengers are arriving at LGA from NYC or leaving LGA for destinations within NYC.
- Of total LGA passengers, 48.6 percent are traveling to/from Manhattan, 10.4 percent to/from Brooklyn, 11.6 percent to/from Queens, 5.6 percent to/from the Bronx, and 1.0 percent to/from Staten Island.
- More than half of LGA passengers with origins and destinations in Manhattan are traveling to/from Midtown. Midtown Manhattan customers represent 26.3 percent of all LGA passengers.

# Project Background: Passenger and Airport Employee Travel Patterns

- Today, LGA passengers and employees depend almost exclusively on roadway-based vehicles for part of or the entire trip.

## Passengers

- 87.1 percent of passengers arrive by private vehicle, rental car, taxi/for-hire vehicle
- 5.6 percent arrive by shuttle bus/van (shared ride services and hotel shuttles)
- 6.2 percent arrive by public transportation

## Employees

- 55.7 percent of employees drive to work
- 40.1 percent of employees commute by transit (bus)
- 4.2 percent of employees are dropped off or commute by another mode



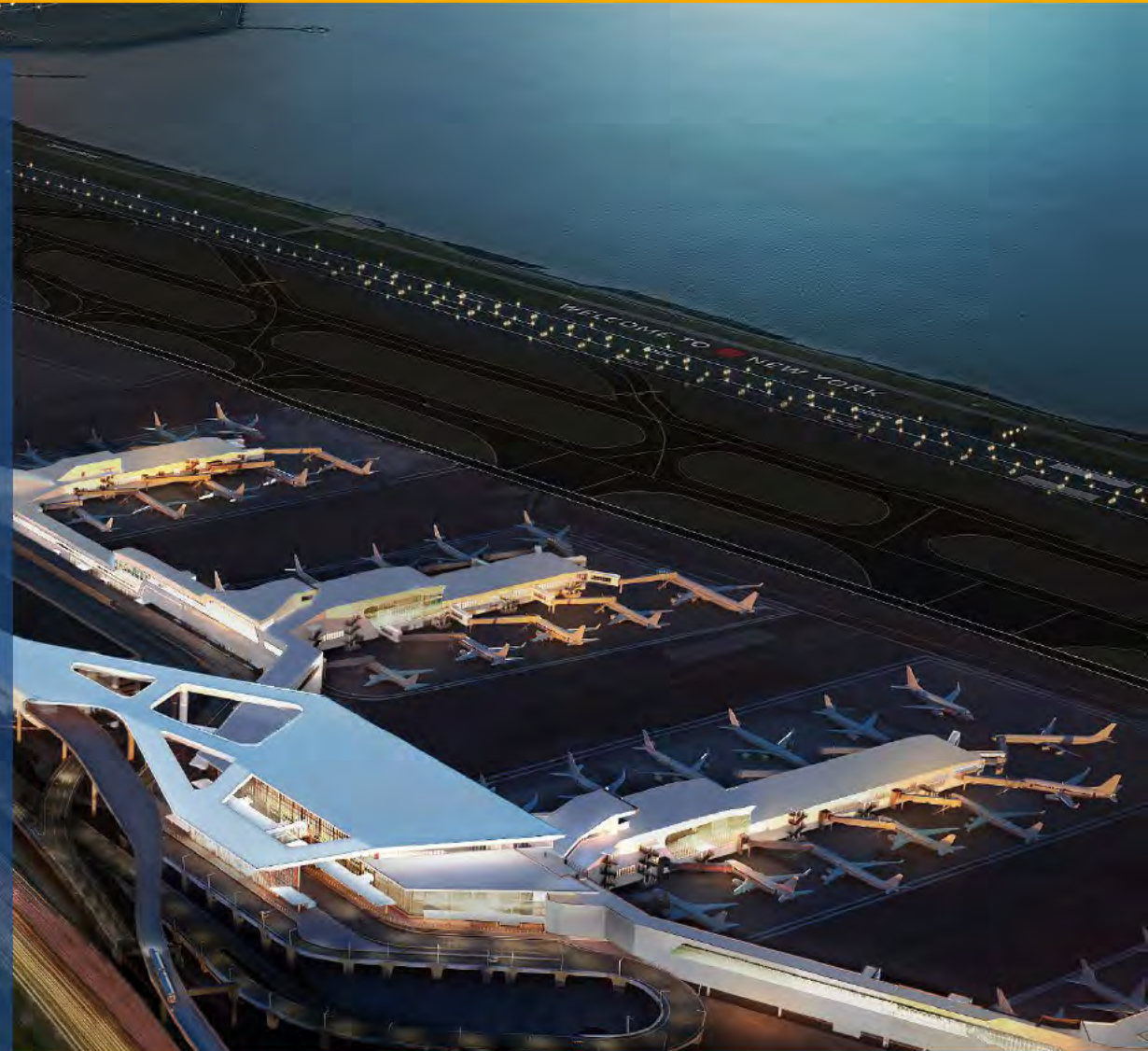
## Project Background: Need for More Reliable Travel Times to/from the Airport

- Congestion in the NYC region has increased and airport travelers have had to adjust travel patterns accordingly by allotting greater time for their trip.
- Average traffic speeds in Midtown Manhattan have decreased from 6.5 mph to 4.7 mph over the past five years.



## Project Background: Need for More Reliable Travel Times to/from the Airport

- Congestion on the highway systems near LGA is projected to increase by a daily average of 10 percent from 2017 through 2045, and local road congestion by a daily average of 11 percent, according to NYMTC's Best Practice Model (BPM).
- Based on the Bureau of Public Roads Volume-Delay Function used in the BPM, an increase of 5-10 percent in volume on an already congested road can result in 10-50 percent growth in travel times without an alternative travel mode option.



# Project Background: Need for More Reliable Travel Times to/from the Airport

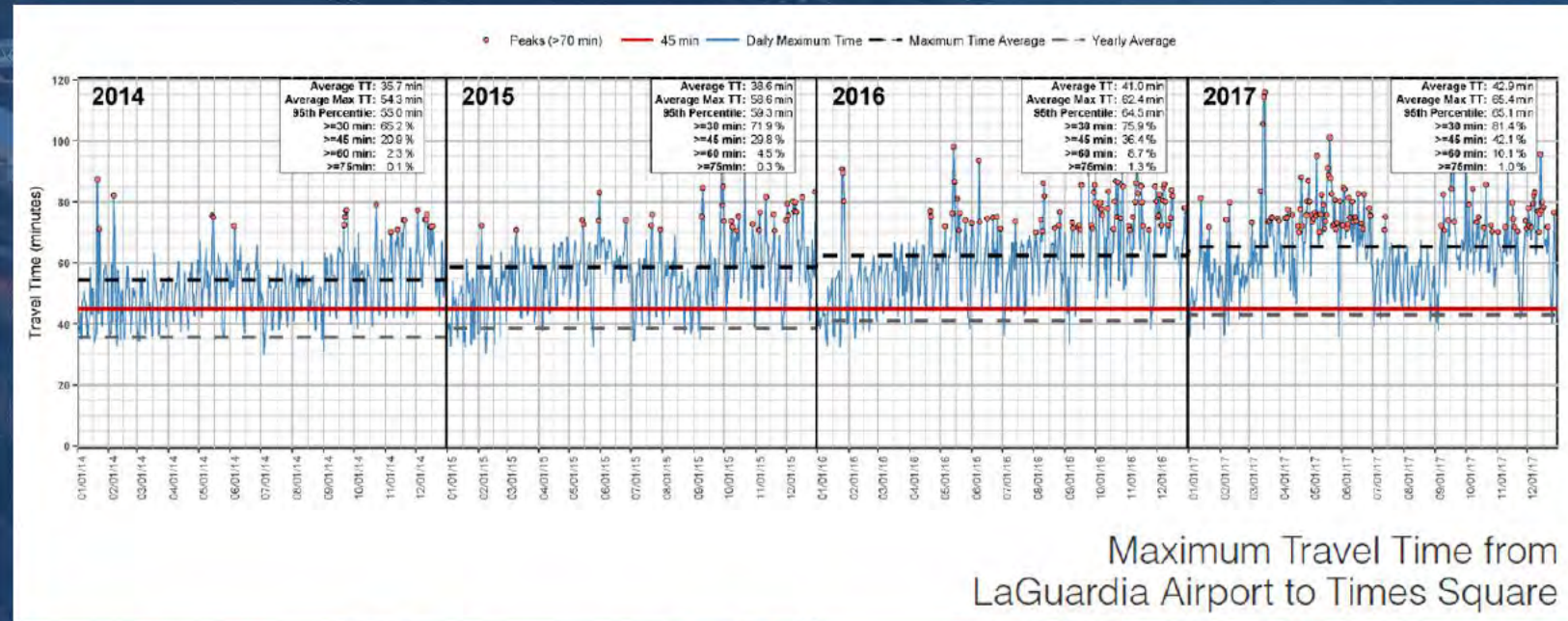
- With only roadway connections to LGA, access is dependent on unreliable traffic conditions.
- The 95th percentile auto travel time represents the worst possible case that the travelers must take into account.

**Comparisons of Auto and Transit Travel Times to LGA from Selected Locations in 2025 and 2045 in the PM Peak**

Reference Location	Mean Auto Travel Time (min)	95th Percentile Auto Time (min) <sup>1</sup>	Transit Travel Time (min) <sup>2</sup>	Transit Mode
<b>2025</b>				
Grand Central Terminal	41	64	27	LIRR, AirTrain
Penn Station	50	78	27	LIRR, AirTrain
<b>2045</b>				
Grand Central Terminal	44	75	27	LIRR, AirTrain
Penn Station	54	92	27	LIRR, AirTrain

# Project Background: Need for More Reliable Travel Times to/from the Airport

- Vehicular travel times between Midtown Manhattan and LGA vary greatly by day, with four-year taxi travel time data showing that travel times generally ranged between 35-80 minutes.
- Travel time has increased from year to year, a trend that is expected to continue.



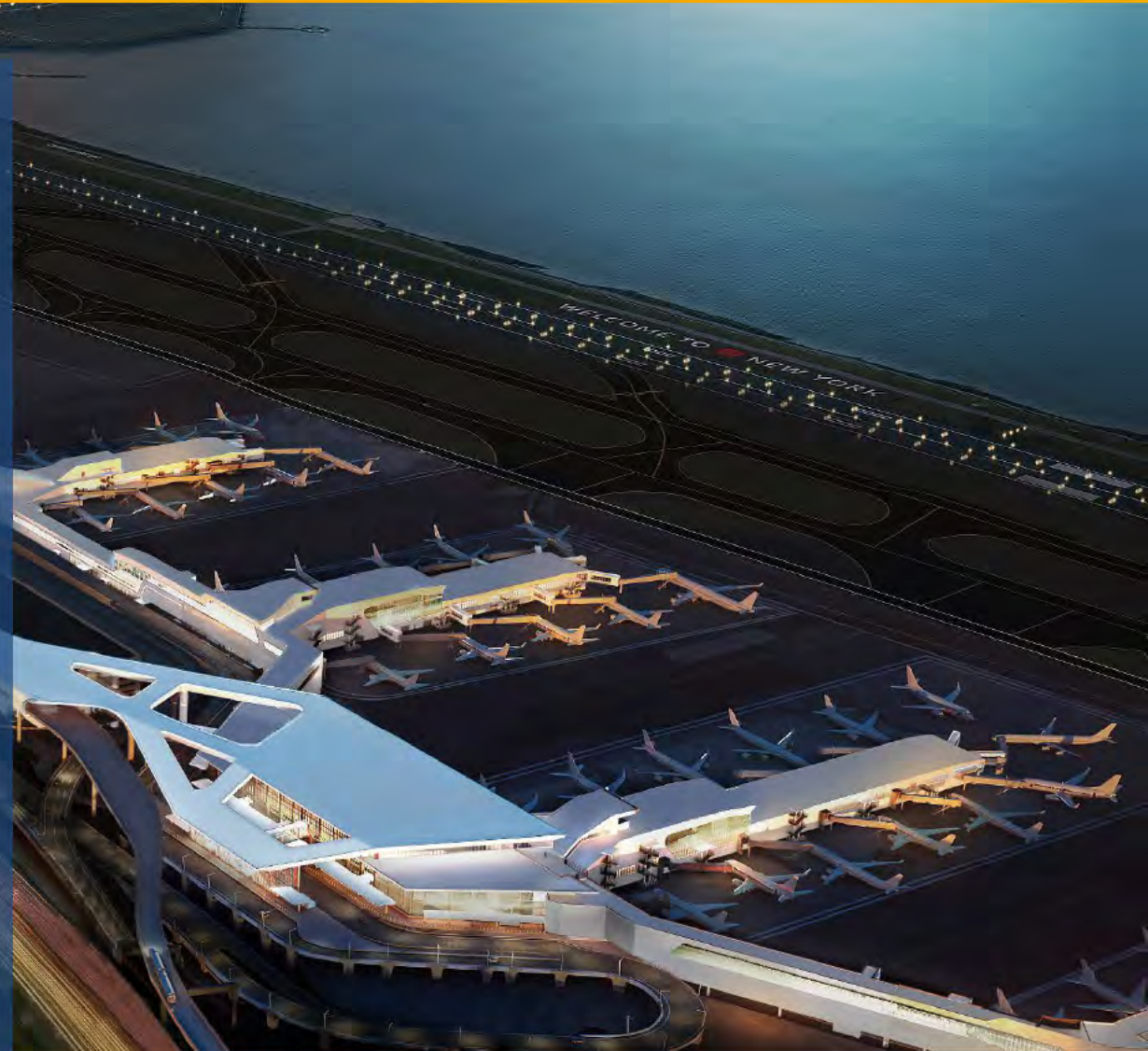
Source: The NYC Taxi and Limousine Commission. Taxi GPS Dataset.

# Project Background: Need for More Reliable Travel Times to/from the Airport

For trips from LGA to Times Square from 2014-2017:

- The annual average travel time increased from 36 to 43 minutes → 20 percent.
- The annual average daily maximum travel time increased from 54 to 65 minutes → 20 percent.
- The number of extreme travel days (when a trip took 70 minutes or more) increased from 21 to 114 → more than five-fold.

Source: The NYC Taxi and Limousine Commission. Taxi GPS Dataset.



# Project Purpose

- The primary purpose of the LGA Airport Access Improvement Project is to provide convenient, predictable, and reliable access to LGA for its customers and employees that complements existing mass transit services and does not contribute to roadway congestion.

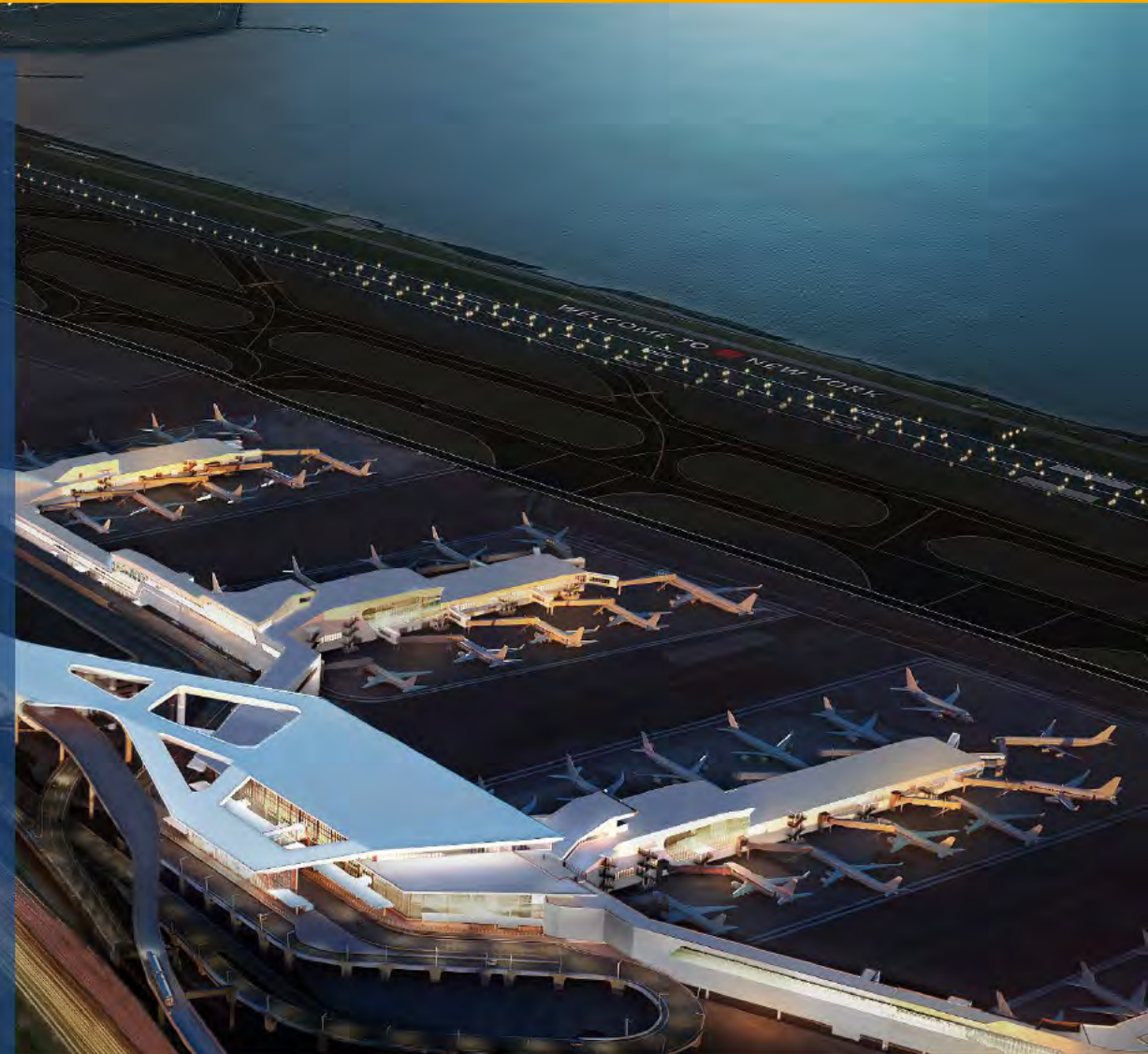


# Port Authority's Project Objectives

- Provide a new or enhanced transportation option to LGA with reliable and predictable travel time from Midtown Manhattan, Queens, and other areas of the region (less than 30 minutes from Penn Station or Grand Central Terminal).
- Enhance the passenger experience by providing a transportation option tailored to air travel customers that is convenient and easily navigable for customers with baggage and travelers that may not know the area.
- Improve travel options to LGA by providing convenient, direct connections between LGA and existing transit systems.
- Reduce the use of on-road vehicles to move passengers to, from, and within LGA.
- Accommodate the provision of off-site employee parking with convenient access by way of the new transportation service to LGA.
- Provide a new or enhanced transportation service that is consistent with the ongoing redevelopment program, including elements that are yet to be funded or approved, and allows for the highest and best use of the airport property.
- Provide a transportation option that provides access to new terminals B and C, used by at least 75 percent of the passengers on-airport, and does not preclude future service to Terminal A.
- Minimize adverse community impacts during both construction and long-term operation of the project.

## Description of Port Authority's Project

- Automated people-mover AirTrain system to provide a convenient and reliable transit alternative for air passenger and employee access to LGA.
- The LGA Airport Access Improvement Project would provide a direct connection between LGA and existing transit services including the LIRR and NYCT subway, as well as provision for an off-site employee parking facility.
- The project also would be consistent with current and future LGA development plans.





# Range of Alternatives

- No Action Alternative
- Transportation Systems Management
- Transportation Demand Management
- Use of Other Airports
- Off-Airport Roadway Expansion
- Bus (Exclusive Roadway)
- Ferry Service
- Rail or Subway Extensions
- Fixed Guideway
- Emerging Transportation Technologies



# Fixed Route Off-Airport Terminal Station Alternatives

## Rail or Subway Extension Alternatives

- Astoria Boulevard Subway Station Extension – Above GCP
- Astoria-Ditmars Boulevard Subway Station Extension – Elevated via 19<sup>th</sup> Avenue
- Astoria-Ditmars Boulevard Subway Station Extension – Tunnel Beneath 19<sup>th</sup> Avenue

## Fixed Guideway Alternatives

- Astoria Boulevard Subway Station
- Woodside LIRR and 61<sup>st</sup> Street-Woodside Subway Station
- Roosevelt Avenue–Jackson Heights Subway Station
- Jamaica Station Transportation Hub
- Mets-Willets Point LIRR and Subway Station

# Wilets Point Off-Airport Station Alignment Alternatives

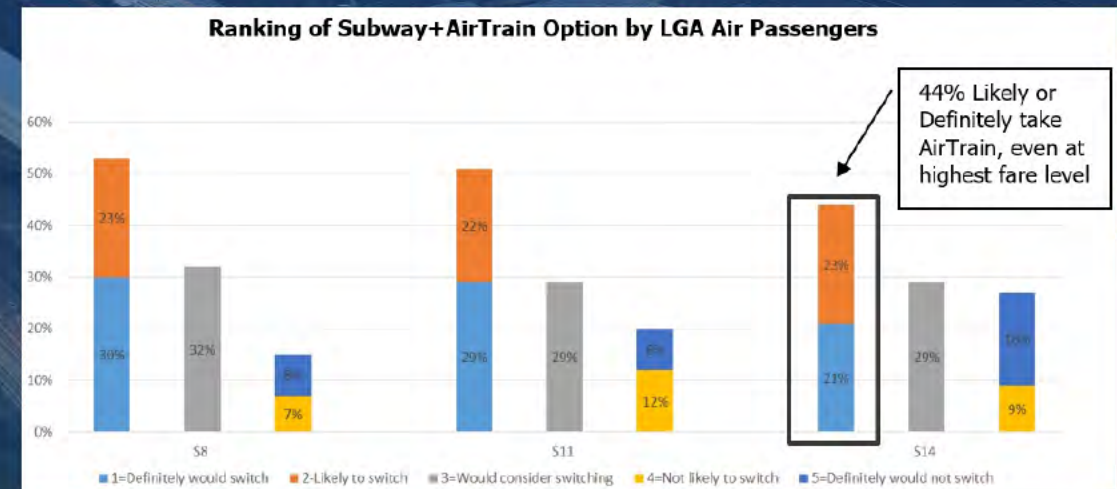
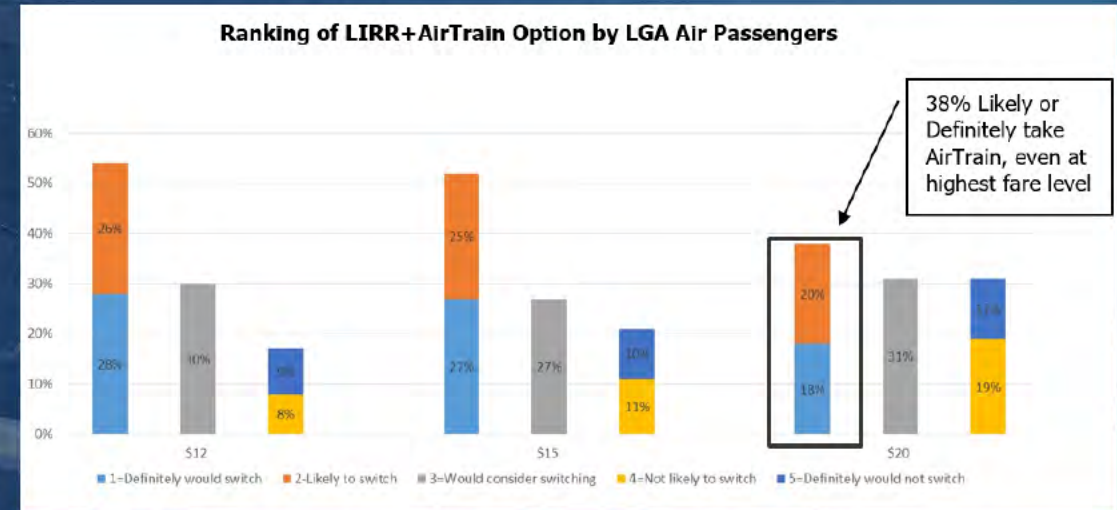


# Port Authority's Preferred Alignment Alternative



# LGA Passenger Preference Survey

- In August 2017, an on-airport survey of arriving and departing passengers at LGA was conducted by Kantar TNS on behalf of the Port Authority.
- This included a passenger preference survey which asked respondents to rank the likelihood of using a new AirTrain system that was connected to the LIRR and subway at Willets Point assuming different fare scenarios.
- Passengers expressed a high level of interest in using the future system in combination with both LIRR and subway service.



## LGA Ground Access Mode Choice Model Background

- An LGA ground access mode choice model was developed by WSP between Q2 2017 and Q2 2018 to generate the ridership forecasts for AirTrain LGA.
- The model was developed using information from the Best Practice Model which is the regional travel model of the New York Metropolitan Transportation Council.
- The model is structured as a conventional logit mode choice model that builds upon recent airport access models
- The primary sources for the LGA passenger and employee data in the model were the LGA Ground Access Survey conducted in 2017 and the Port Authority Customer Satisfaction Surveys from 2014-2016. Secondary data sources were used to expand the survey data.

# LGA Ground Access Mode Choice Model Results

- Year 2025 → Over 6.6 million annual trips on AirTrain LGA, comprised of approximately 5.2 million trips by air passengers and 1.4 million trips by airport employees.
- Year 2045 → Over 8.4 million annual trips on AirTrain LGA, comprised of approximately 6.8 million trips by air passengers and 1.7 million trips by airport employees.
- The model estimates that AirTrain LGA would capture about 17 percent of the total origin-destination (non-connecting) air passenger market in 2025 and 18 percent in 2045.
- Connecting passengers and other unpaid riders are projected to total approximately 1.3 million in 2025 and 1.5 million in 2045.

# Port Authority Goals for Schedule Milestones

- Q3 2018 – EIS Consultant Solicitation Issued
- Q4 2018 – Notice of Intent Issued
- Q4 2019 – ROD Signed
- Q1 2020 – Construction Begins
- Q4 2022 – Construction Substantially Complete





Thank You



**From:** [Lamond, Kathryn](#)  
**To:** [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Jenet, Marie \(FAA\)](#); [Drew Brooks](#); [REDACTED]; [Herndon, Jane](#)  
**Cc:** [REDACTED]; [Puliafico, Jessica](#); [REDACTED]  
**Subject:** LGA Access Improvement Project: Weekly Check-in  
**Attachments:** [Scheduled LGA Community Meetings through Dec 2018\\_DRAFT\\_2018-08-28.xlsx](#)

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Below please find a brief agenda for our call:

1. Interagency Meeting Follow Up
2. Schedule for NEPA Consultant Selection and Procurement
3. FTA Review of Ridership Report
4. Pre-Scoping Meetings
5. MOU Status

As requested, attached please find a list of community meetings scheduled through December 2018. This list will inform our discussion during item #4 of the above agenda.

Thanks,  
Katie

**Scheduled Community Group Meetings through December 2018**

<b>Meeting</b>	<b>Date</b>	<b>Time</b>
Community Board 1	20-Sep	6:30 PM
Community Board 1	16-Oct	6:30 PM
Community Board 1	20-Nov	6:30 PM
Community Board 1	18-Dec	6:30 PM
Community Board 3	20-Sep	7:45 PM
Community Board 3	18-Oct	7:45 PM
Community Board 3	15-Nov	7:45 PM
Community Board 3	20-Dec	7:45 PM
East Elmhurst Corona Civic - LGA Quarterly Update	15-Oct	
Ditmars Block Association - LGA Quarterly Update	25-Oct	

Location	Notes
25-22 Astoria Boulevard, Astoria, NY 11102	
25-22 Astoria Boulevard, Astoria, NY 11102	
25-22 Astoria Boulevard, Astoria, NY 11102	
25-22 Astoria Boulevard, Astoria, NY 11102	
IS 227Q, Louis Armstrong Middle School, 32-02 Junction Blvd., Cafeteria, East Elmhurst, NY 11369	
IS 227Q, Louis Armstrong Middle School, 32-02 Junction Blvd., Cafeteria, East Elmhurst, NY 11369	
IS 227Q, Louis Armstrong Middle School, 32-02 Junction Blvd., Cafeteria, East Elmhurst, NY 11369	
IS 227Q, Louis Armstrong Middle School, 32-02 Junction Blvd., Cafeteria, East Elmhurst, NY 11369	
Elmcor Senior Center, 98-19 Astoria Blvd, East Elmhurst, NY 11369	October is likely month for LGA quarterly briefing but not confirmed
LaGuardia Plaza Hotel, 104-04 Ditmars Blvd, East Elmhurst, NY 11369	October is likely month for LGA quarterly briefing but not confirmed

**From:** [DiScenna, Matthew](#)  
**To:** [Drew Brooks](#); [Jenet, Marie \(FAA\)](#)  
**Cc:** [REDACTED]; [Rogak, Elizabeth](#); [Cohen, Michelle](#); [Puliafico, Jessica](#); [Lamond, Kathryn](#); [Herndon, Jane](#); [Clark, Patty](#); [Tabafunda, Faith](#)  
**Subject:** Interagency Meeting Minutes, 8/23  
**Date:** Wednesday, August 29, 2018 9:06:26 AM  
**Attachments:** [AirTrain LGA-FAA Interagency Meeting-DRAFT Meeting Minutes 2018-08-29.docx](#)

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Marie/Andrew,

Thanks again for a great initial interagency meeting last week. We have heard very positive feedback from all of the PA attendees.

Our draft meeting minutes are attached here for your review.

We can discuss on our call tomorrow morning if necessary.

Katie will be in touch later today with our proposed agenda for tomorrow morning's call.

Thank you,  
Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ

[REDACTED]  
[REDACTED]

**LaGuardia Airport Access Improvement Project- Interagency Meeting****August 23, 2018****Four World Trade Center**

- I. Welcome (Marie Jenet)
- II. Introductory remarks
  - FAA (Steve Ulass)
  - Port Authority (Rick Cotton)
- III. Presentation of roles and responsibilities and One Federal Decision (Andrew Brooks)
  - See PowerPoint for key points
- IV. Presentation of the Port Authority's proposed project (Matt DiScenna)
  - See PowerPoint for key points
- V. Discussion- Questions on the proposed project and identification of resource issues for scope development
  - United States Environmental Protection Agency (USEPA)-
    - Information on the other alternatives needs to be included in the EIS and made available to the public for review.
      - FAA responded that once the FAA's consultant is on board, they will look at a range of alternatives, beyond the Port Authority's proposed project, as part of the EIS.
    - A year for the completion of the EIS may be a challenge. A year and a half may be more achievable.
  - Federal Emergency Management Agency (FEMA)-
    - The entirety of the Port Authority's proposed project is within a one percent annual flood risk area. Additionally, Segment 2 of the Port Authority's proposed project alignment would need to be protected for wave hazards.
    - Design for the Port Authority's proposed project should account for flood hazards.
  - New York State Department of Transportation (NYSDOT)-
    - The Tappan Zee Bridge EIS was done within a period of 12 months between NOI and ROD. 12 months is doable, keeping in mind there was a lot of work conducted upfront.
  - New York City Department of Parks and Recreation (NYCDPR)-
    - NYC Parks has been working with the Port Authority over the past few months, as the Port Authority's proposed alignment passes through Parks property. NYC Parks would like to ensure that the EIS covers user and urban design features, as well as operational facilities that will need to be accommodated. NYC Parks

noted that the Port Authority is well aware of this and coordination has been taking place.

- Construction and forestry permits would be needed.
- Necessary to ensure that activities and resources, such as the following, can continue to function or be relocated: World's Fair Marina, boat yard and hoists, Citi Field access, real estate and parking arrangements with the Mets, the Promenade.
- Is it the FAA's intention to incorporate CEQR into the NEPA EIS? This would be helpful.
- Federal Highway Administration (FHWA)-
  - Considering that the Port Authority's proposed project includes an employee parking lot at Willets Point, will there be changes to the interchange and roadway network?
    - Port Authority responded that they have been coordinating with New York City Department of Transportation (NYCDOT) and conducting traffic analyses. Additionally, part of the New York City Economic Development Corporation (EDC) project includes having an off-ramp from the Van Wyck to the EDC site for the outer years.
    - EDC noted that funds are still budgeted for the proposed off-ramp.
- New York City Department of Environmental Protection (NYCDEP)-
  - Environmental infrastructure and outfalls are located along the shoreline. Steel water mains are present in the parking area by Willets Point. The alignment would cross a water main as it approaches the maintenance facility.
  - It would be necessary to design to account for any impacts to such infrastructure. A construction permit and associated review would also be needed if impacting this infrastructure.
  - If ridership increases in the Willets Point area, there may be a need to upgrade the subway station and to identify associated impacts on the infrastructure.
  - There are also other service permits that may be needed such as water line and site connection permits.
  - There are large combined sewer outfalls in the area and there is a large scale project to begin design for CSO storage (underground tunnel from Astoria Boulevard around area of the interchange to the Bowery Bay treatment plant). Would be necessary to coordinate with this project.
  - If the EIS were to incorporate CEQR, it would speed up environmental approvals for the City.
- U.S. Army Corps of Engineers-
  - A wetlands permit may be needed for the area around the proposed maintenance facility since it appears close to Flushing Creek. It would be helpful to receive more information on that.
  - In the area around the Marina, shoreline stabilization may be necessary, depending on the structure.
  - If construction would occur from the water side, there may be Section 10 jurisdiction.

- New York State Department of Environmental Conservation (NYSDEC)-
  - The proposed maintenance facility appears to be located in a tidal wetland adjacent area. Would this be temporary or permanent? State permit may be required.
- New York City Mayor's Office of Environmental Coordination-
  - Looking into the possibility that the State authorized legislation for the corridor might obviate the need for City discretionary actions for the proposed project. If that is the case, there might not be a formal City environmental review document that comes from this project.
  - The City would still want to coordinate closely with all relevant agencies on the project, but in terms of issuing a City document, it might not be necessary because of the State legislation. To be followed up on in the near future.
- New York State Historic Preservation Office (NYSHPO)-
  - Have already put together a team to look at surveying.
  - Segment 2 of the Port Authority's proposed alignment, anticipate that this is the cleanest section. There may be some archeological concerns, such as a Native American site to the east. Would suggest starting the Phase 1A archeological effort.
  - Segment 1 of the Port Authority's proposed alignment (area by Willets Point) includes listed resources from the World's Fairs, and would like for those to be maintained and not impacted.
  - Segment 3 of the Port Authority's proposed alignment (area on-airport) includes some listed but not eligible sites. Would like to look at impacts to the airport façade.
  - How will Section 106 be part of the process? Marina is an eligible resource.
    - FAA responded that it would anticipate that they would seek to integrate Section 106 into the process, as it would be incorporated into One Federal Decision.

#### VI. Presentation of Permitting Timetable and Permitting Dashboard for Federal Infrastructure Projects (Jean Wolfers-Lawrence)

- See PowerPoint for key points
- The questions below were asked following the presentation:
  - When would applications start being submitted so that all permits can be issued within 90 days?
  - Design-build versus design-bid-build, how does that affect the 90-day period?
  - Who will be the point of contact (POC) for updating the Dashboard?
    - FAA responded that Andrew Brooks and Marie Jenet will be the primary POCs, and will coordinate with Jean Wolfers-Lawrence on the Dashboard updates.
- A recommendation was made by USEPA that FAA speak with Melissa Toni at FHWA who did all the permitting for Tappan Zee Bridge.

#### VII. Discussion – Identification of analytical needs and timeframes and schedule goals



- U.S. Army Corps of Engineers-
    - In order to meet the schedule goals, recommend that a wetlands delineation be conducted now before the EIS consultant is selected and is on board (due to seasonality).
    - Seasonality of any necessary field studies should be considered in the timetable.
  - MTA-
    - In response to FAA's question about potential connected actions and LIRR service, the MTA explained that the East Side Access EIS contemplated many service changes, including on the Port Washington branch of the LIRR.
    - MTA can have LIRR provide the East Side Access EIS to FAA.
  - USEPA-
    - A cooperative agreement MOU can take a significant amount of time to develop. Informal commitment to deadlines is also important.
  - NYCDPR-
    - Does FAA have a sense as to likely timing for the development of the alternatives for the EIS?
      - FAA responded that this would likely occur spring/summer of 2019, but it could be earlier.
  - NYSDOT-
    - This type of project requires thinking outside of the box and sometimes doing things at different times than they usually are done. For example, wetlands delineation should happen now.
    - It is important to think not only about the permit issuance, but also about what the permitting agency actually needs to issue the permit. Therefore, ahead of time it is necessary to identify what the information needs are and to get that done early on so that the permit process can be routine and quick.
  - National Oceanic and Atmospheric Administration/National Marine Fisheries Service-
    - Essential fish habitat assessment, as well as, endangered species work may be needed.
- VIII. Presentation on formal cooperating agency requests and cooperative agreement (John Doyle and Andrew Teodorescu)
- See PowerPoint for key points
- IX. Closing remarks (Marie Jenet)
- Letters will be sent to agencies regarding participation as a cooperating or coordinating agency
  - Presentations and sign-in sheet will be sent to attendees

**From:** [DiScenna, Matthew](#)  
**To:** [Jenet, Marie \(FAA\)](#); [Lamond, Kathryn](#)  
**Cc:** [Drew Brooks](#); [REDACTED]; [Clark, Patty](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#)  
**Subject:** RE: FTA comments on Port Ridership report - LGA AirTrain  
**Date:** Wednesday, August 29, 2018 6:17:42 PM

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Thank you, Marie. Part of FTA's note requires some clarification from us, which we can discuss on tomorrow's call.

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**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Wednesday, August 29, 2018 3:23 PM  
**To:** DiScenna, Matthew <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
**Cc:** Drew Brooks <[REDACTED]> [REDACTED]  
[REDACTED]  
[REDACTED]  
**Subject:** FW: FTA comments on Port Ridership report - LGA AirTrain

See email below. FTA feels that it is premature to provide formal comments at this time.

## Marie C. Jenet

Environmental Specialist  
Federal Aviation Administration  
New York Airports District Office  
159-30 Rockaway Blvd, Suite 111  
Jamaica, New York 11434  
[REDACTED]  
[REDACTED]

---

**From:** Burns, Donald (FTA)  
**Sent:** Wednesday, August 29, 2018 2:08 PM  
**To:** Jenet, Marie (FAA) <[REDACTED]>  
**Cc:** Brooks, Andrew (FAA) <[REDACTED]> Goveia, James (FTA)  
<[REDACTED]> Roux, Jeffrey (FTA) <[REDACTED]>  
**Subject:** RE: FTA comments on Port Ridership report - LGA AirTrain

Hi Marie,

Originally when FAA ask us about ridership we thought that Part Authority was looking for ideas on the type of analysis and forecast modeling for the study. I discussed the project with Jeff and James and we agree that it's premature in the project development process for FTA to provide meaningful ridership forecast report comments. Port Authority is still gathering information, the LIRR East Side Access operating plan is the most important piece of information needed to provide the basis for the alignment and other important project location considerations. If that connection doesn't work then the project may not make sense as presented. MTA is only now providing that information to

Port Authority.

Port Authority should also provide a rigorous alternatives analysis since during the EIS process they'll receive questions about: a) one-seat ride to Manhattan, b) why not connect LGA Airtrain to Jamaica (connect to JFK) or Flushing (a more active LIRR station), c) why not a tunnel alternative along the same alignment instead of an elevated?

FTA will continue to provide assistance as the project develops. Please contact me if you have any questions.

Donald-

**Donald Burns, AICP**

USDOT FTA Region 2

**From:** [DiScenna, Matthew](#)  
**To:** [Drew Brooks](#); [Jenet, Marie \(FAA\)](#)  
**Cc:** [REDACTED]; [Rogak, Elizabeth](#); [Cohen, Michelle](#); [Puliafico, Jessica](#); [Lamond, Kathryn](#); [Herndon, Jane](#); [Clark, Patty](#); [Tabafunda, Faith](#)  
**Subject:** RE: Interagency Meeting Minutes, 8/23  
**Date:** Wednesday, September 05, 2018 6:26:50 PM  
**Attachments:** [AirTrain LGA-FAA Interagency Meeting-DRAFT Meeting Minutes\\_2018-09-04.docx](#)  
[AirTrain LGA Procurement and Planning Doc Schedule\\_DRAFT 2018-09-05.pdf](#)

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All –

Updated draft interagency meeting minutes are attached here, incorporating the further detail on the SHPO comment that we discussed last week in redline.

We're also attaching the updated consultant selection schedule. Note that we added in line items with proposed timing for closing out the Terms and Conditions of the contract as that is a key open item that was not previously included in our schedule.

Thanks,  
Matt

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**From:** DiScenna, Matthew  
**Sent:** Wednesday, August 29, 2018 9:06 AM  
**To:** [REDACTED] <[REDACTED]> Jenet, Marie (FAA)  
<[REDACTED]>  
**Cc:** [REDACTED] Rogak, Elizabeth  
<[REDACTED]> [REDACTED] [REDACTED]  
[REDACTED] Cohen, Michelle <[REDACTED]> Puliafico, Jessica  
<[REDACTED]> Lamond, Kathryn <[REDACTED]> Herndon, Jane  
<[REDACTED]> Clark, Patty <[REDACTED]> Tabafunda, Faith  
<[REDACTED]>  
**Subject:** Interagency Meeting Minutes, 8/23

Marie/Andrew,

Thanks again for a great initial interagency meeting last week. We have heard very positive feedback from all of the PA attendees.

Our draft meeting minutes are attached here for your review.

We can discuss on our call tomorrow morning if necessary.

Katie will be in touch later today with our proposed agenda for tomorrow morning's call.

Thank you,

Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ

[REDACTED] (office)

[REDACTED] (cell)

[REDACTED]

**LaGuardia Airport Access Improvement Project- Interagency Meeting****August 23, 2018****Four World Trade Center**

- I. Welcome (Marie Jenet)
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    - The entirety of the Port Authority's proposed project is within a one percent annual flood risk area. Additionally, Segment 2 of the Port Authority's proposed project alignment would need to be protected for wave hazards.
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    - The Tappan Zee Bridge EIS was done within a period of 12 months between NOI and ROD. 12 months is doable, keeping in mind there was a lot of work conducted upfront.
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    - NYC Parks has been working with the Port Authority over the past few months, as the Port Authority's proposed alignment passes through Parks property. NYC Parks would like to ensure that the EIS covers user and urban design features, as well as operational facilities that will need to be accommodated. NYC Parks

noted that the Port Authority is well aware of this and coordination has been taking place.

- Construction and forestry permits would be needed.
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  - If ridership increases in the Willets Point area, there may be a need to upgrade the subway station and to identify associated impacts on the infrastructure.
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  - Have already put together a team to look at surveying.
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  - Segment 1 of the Port Authority's proposed alignment (area by Willets Point) includes listed resources from the World's Fairs, and would like for those to be maintained and not impacted.
  - Segment 3 of the Port Authority's proposed alignment (area on-airport) includes some listed but not eligible sites. Will there be any changes to the historic hangars to match the new terminal ~~could like to look at impacts to the airport façade?~~
    - PA has indicated that under the existing MOA, the PA is required to maintain the buildings and is looking into options for the maintenance of the exterior for the state of good repair. There is no intent for the hangars to match the new terminal façade.
  - How will Section 106 be part of the process? Marina is an eligible resource.
    - FAA responded that it would anticipate that they would seek to integrate Section 106 into the process, as it would be incorporated into One Federal Decision.

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- See PowerPoint for key points

IX. Closing remarks (Marie Jenet)

- Letters will be sent to agencies regarding participation as a cooperating or coordinating agency

- Presentations and sign-in sheet will be sent to attendees

DRAFT

**Proposed NEPA Consultant Procurement and Planning Document Submittal Schedule- LGA Airport Access Improvement Project**

Date	Action	Planning Documents Submittal
5/16/2018	PA provides initial planning documents to FAA	Project Purpose, Goals, and Objectives
		Alternatives Analysis Outline
		Alternatives Analysis Tier 3 Screening Map
		Ridership Report and Appendices
7/24/2018	PA submits Airport Layout Plan (for Conditional Approval) to FAA	
7/30/2018	PA submits Alternatives Analysis Report to FAA	
Week of 9/10/2018	PA submits revised Alternatives Analysis Report and Ridership Report to FAA *	
Week of 9/17/2018	Consultant solicitation issued	
Week of 10/1/2018	PA provides draft Terms & Conditions to FAA for review	
Week of 10/8/2018	FAA completes review of draft Terms & Conditions and provides comments to PA	
Week of 10/8/2018	Statements of qualifications due	
Week of 10/15/2018	Selection committee meeting (Phase 1 evaluation) and PA and FAA determine shortlist	
Week of 10/15/2018	PA invites shortlisted firms for interviews	
Week of 10/15/2018	Finalize interview questions	
Week of 10/22/2018	Interviews (Phase 2 evaluation)	
Week of 10/22/2018	Selection made by FAA (Phase 2 evaluation) and Terms & Conditions provided to selected consultant	
10/25/2018 - 11/09/2018	FAA formulates scope of work with selected consultant	
11/13/2018 - 11/19/2018	PA and FAA review of scope of work	
11/20/2018	Finalize scope of work	
11/21/2018 - 11/28/2018	Review pricing and negotiate contract	
11/29/2018 - 11/30/2018	Contract execution/ Notice to Proceed for selected consultant	
December 2018	Notice of Intent issued	

\*Timing of submittal of preliminary Affected Environment Report to be determined

**From:**

**To:**

[Redacted]

**Cc:**

[Drew Brooks](#); [Redacted]

[Fisher, Amy](#); [Rogak, Elizabeth](#); [Tabafunda, Faith](#); [Herndon, Jane](#); [Puliafico, Jessica](#); [Lamond, Kathryn](#); [Venech, Lou](#); [Scully, Lysa](#); [Helman, Marc](#); [Mark Chertok](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Lafazia, Michael](#); [Clark, Patty](#); [Baig, Rizwan \(Mirza\)](#)

**Subject:**

LaGuardia Airport Access Improvement Project - 8/23/18 Interagency Meeting Notes and Revised List of Attendees

**Date:**

Thursday, September 06, 2018 4:36:14 PM

**Attachments:**

[2018-09-06 Meeting Notes 8-23-2018 Interagency Meeting.docx](#)  
[2018-09-06 Revised Attended.pdf](#)

---

Please see attached for the meeting notes and a revised list of attendees.

## Marie C. Jenet

Environmental Specialist

Federal Aviation Administration

New York Airports District Office

159-30 Rockaway Blvd, Suite 111

Jamaica, New York 11434

[Redacted]  
[Redacted]

## LaGuardia Airport Access Improvement Project- Interagency Meeting

August 23, 2018

Four World Trade Center

- I. Welcome (Marie Jenet)
- II. Introductory remarks
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  - Federal Highway Administration (FHWA)-
    - Considering that the Port Authority’s proposed project includes an employee parking lot at Willets Point, will there be changes to the interchange and roadway network?
      - Port Authority responded that they have been coordinating with New York City Department of Transportation (NYCDOT) and conducting traffic analyses. Additionally, part of the New York City Economic Development Corporation (EDC) project includes having an off-ramp from the Van Wyck to the EDC site for the outer years.
      - EDC noted that funds are still budgeted for the proposed off-ramp.
  - New York City Department of Environmental Protection (NYCDEP)-
    - Environmental infrastructure and outfalls are located along the shoreline. Steel water mains transitioning to concrete are present in the parking area by Willets Point. The alignment would cross a water main as it approaches the maintenance facility.
    - It would be necessary to design to account for any impacts to such infrastructure. A construction permit and associated review would also be needed if impacting this infrastructure.
    - If ridership increases in the Willets Point area, there may be a need to upgrade the subway station and to identify associated impacts on the infrastructure.
    - There are also other service permits that may be needed such as water line and site connection permits for the AirTrain maintenance and operations facility.
    - There are large combined sewer outfalls in the area and there is a large scale project to begin design for CSO storage (underground tunnel from Astoria Boulevard around area of the interchange to the Bowery Bay treatment plant). Would be necessary to coordinate with this project. (Note: 25 million gallon storage tunnel and dewatering pump to capture overflows from two CSO Outfalls that discharge into the Flushing Bay. Details here - [https://www.dec.ny.gov/docs/water\\_pdf/csoflushingbayaprltr.pdf](https://www.dec.ny.gov/docs/water_pdf/csoflushingbayaprltr.pdf))
    - If the EIS were to incorporate CEQR, it would speed up environmental approvals for the City.
  - U.S. Army Corps of Engineers-
    - A wetlands permit may be needed for the area around the proposed maintenance facility since it appears close to Flushing Creek. It would be helpful to receive more information on that.

- In the area around the Marina, shoreline stabilization may be necessary, depending on the structure.
- If construction would occur from the water side, there may be Section 10 jurisdiction.
- New York State Department of Environmental Conservation (NYSDEC)-
  - The proposed maintenance facility appears to be located in a tidal wetland adjacent area. Would this be temporary or permanent? State permit may be required.
- New York City Mayor's Office of Environmental Coordination-
  - Looking into the possibility that the State authorized legislation for the corridor might obviate the need for City discretionary actions for the proposed project. If that is the case, there might not be a formal City environmental review document that comes from this project.
  - The City would still want to coordinate closely with all relevant agencies on the project, but in terms of issuing a City document, it might not be necessary because of the State legislation.
- New York State Historic Preservation Office (NYSHPO)-
  - Have already put together a team to look at surveying.
  - Segment 2 of the Port Authority's proposed alignment, anticipate that this is the cleanest section. There may be some archeological concerns, such as a Native American site to the east. Would suggest starting the Phase 1A archeological effort.
  - Segment 1 of the Port Authority's proposed alignment (area by Willets Point) includes listed resources from the World's Fairs, and would like for those to be maintained and not impacted.
  - Segment 3 of the Port Authority's proposed alignment (area on-airport) includes some listed and not listed but eligible sites. Would like to look at impacts to the airport façade.
    - PA has indicated that under the existing MOA, the PA is required to maintain the buildings and is looking into options for the maintenance of the exterior for the state of good repair. There is no intent for the hangars to match the new terminal façade.
  - How will Section 106 be part of the One Federal Decision process? Marina is an eligible resource.
    - FAA responded that it would anticipate that they would seek to integrate Section 106 into the process, as it is an 'authorization' as per the One Federal Decision framework.

VI. Presentation of Permitting Timetable and Permitting Dashboard for Federal Infrastructure Projects (Jean Wolfers-Lawrence)

- See PowerPoint for key points
- The questions below were asked following the presentation:
  - When would applications start being submitted so that all permits can be issued within 90 days?

- FAA responded that permit applications would be incorporated into the Permitting Timetable for each Cooperating and/or Participating Agency.
- Design-build versus design-bid-build, how does that affect the 90-day period?
  - FAA responded that the effect of the design/build contract on the Permitting Timetables has not been determined yet, but will be discussed with each Cooperating and/or Participating agency when developing the schedule. A delineation will need to be made between permits for environmental approvals vs those needed only for construction actions influencing timeline development.
- Who will be the point of contact (POC) for updating the Dashboard?
  - FAA responded that Andrew Brooks and Marie Jenet will be the primary POCs, and will coordinate with Jean Wolfers-Lawrence on the Dashboard updates.
- A recommendation was made by USEPA that FAA speak with Melissa Toni at FHWA who did all the permitting for Tappan Zee Bridge.

## VII. Discussion – Identification of analytical needs and timeframes and schedule goals

- U.S. Army Corps of Engineers-
  - In order to meet the schedule goals, recommend that a wetlands delineation be conducted now before the EIS consultant is selected and is on board (due to seasonality).
  - Seasonality of any necessary field studies should be considered in the timetable.
- MTA-
  - In response to FAA’s question about potential connected actions, the MTA explained that the East Side Access EIS contemplated many service changes, including on the Port Washington branch of the LIRR. (Note: FAA will evaluate that EIS to determine if additional analysis is needed.)
  - MTA can have LIRR provide the East Side Access EIS to FAA. (Note: EIS is available at [http://web.mta.info/capital/esa\\_docs/feis.htm](http://web.mta.info/capital/esa_docs/feis.htm))
- USEPA-
  - A cooperative agreement MOU can take a significant amount of time to develop. Informal commitment to deadlines is also important.
- NYCDPR-
  - Does FAA have a sense as to likely timing for the development of the alternatives for the EIS?
    - FAA responded that this would likely occur spring/summer of 2019, but it could be earlier.
- NYSDOT-
  - This type of project requires thinking outside of the box and sometimes doing things at different times than they usually are done. For example, wetlands delineation should happen now.
  - It is important to think not only about the permit issuance, but also about what the permitting agency actually needs to issue the permit. Therefore, ahead of



**LaGuardia Airport Access Improvement Project**  
**August 23, 2018 Interagency Meeting**  
**Attendees**

Agency	Name	Email
<b>FEDERAL</b>		
DOI	Andrew Raddant	[REDACTED]
FEMA	Andrew Martin	[REDACTED]
FHWA	Hans Anker	[REDACTED]
FHWA	John Formosa	[REDACTED]
FRA	Laura Shick	[REDACTED]
FTA	Donald Burns	[REDACTED]
NMFS	Jenna Pirrotta	[REDACTED]
NOAA/NMFS	Edith Carson	[REDACTED]
Office of the Secretary of Transportation	Danielle Rinsler	[REDACTED]
Office of the Secretary of Transportation	Andrew Brunner	[REDACTED]
USACE	Ronald Pinzon	[REDACTED]
USACE	Lisa Grudzinski	[REDACTED]
USCG	Chris Bisignano	[REDACTED]
USEPA	Lingard Knutson	[REDACTED]
USFWS	Kerri Dikun	[REDACTED]
FAA	Andrew Brooks	[REDACTED]
FAA	John Doyle	[REDACTED]
FAA	David Fish	[REDACTED]
FAA	Patricia Henn	[REDACTED]
FAA	Marie Jenet	[REDACTED]
FAA	Evelyn Martinez	[REDACTED]
FAA	David Sanchez	[REDACTED]
FAA	Andrew Teodorescu	[REDACTED]
FAA	Steve Urlass	[REDACTED]
FAA	Jean Wolfers-Lawrence	[REDACTED]
<b>STATE</b>		
MTA	William Wheeler	[REDACTED]
MTA	Roberta Pedersen	[REDACTED]
NY Office of the Governor	Kylah Hynes	[REDACTED]
NY Office of the Governor	Justin Zanetti	[REDACTED]
NYSDEC	Stephen Watts	[REDACTED]
NYSDOS	Matt Maraglio	[REDACTED]
NYSDOS	Jennifer Street	[REDACTED]

**LaGuardia Airport Access Improvement Project**  
**August 23, 2018 Interagency Meeting**  
**Attendees**

<b>Agency</b>	<b>Name</b>	<b>Email</b>
NYSDOT	Wahid Albert	[REDACTED]
NYSDOT	Susan Beaudoin	[REDACTED]
NYSDOT	Luis Calderon	[REDACTED]
NYSDOT	Kathleen Joy	[REDACTED]
NYSDOT	Norman Kee	[REDACTED]
NYSDOT	Janice A. McLachlan	[REDACTED]
NYSDOT	Craig Ruyle	[REDACTED]
NYSDOT	Richard Szeles	[REDACTED]
NYSHPO	Beth Cumming	[REDACTED]
NYSHPO	Daniel Mackay	[REDACTED]
PANYNJ	Patty Clark	[REDACTED]
PANYNJ	Michelle Cohen	[REDACTED]
PANYNJ	Matt DiScenna	[REDACTED]
PANYNJ	Marc Helman	[REDACTED]
PANYNJ	Jane Herndon	[REDACTED]
PANYNJ	Katie Lamond	[REDACTED]
PANYNJ	Einah Palaez	[REDACTED]
PANYNJ	Jessica Puliafico	[REDACTED]
PANYNJ	Elizabeth Rogak	[REDACTED]
PANYNJ	Lysa Scully	[REDACTED]
PANYNJ	Faith Tabafunda	[REDACTED]
PANYNJ	Lou Venech	[REDACTED]
<b>CITY</b>		
NYC Dept of City Planning	Kathi Ko	[REDACTED]
NYC Dept of City Planning	Jacob (Jack) Schmidt	[REDACTED]
NYCDEP	Terrell Esteen	[REDACTED]
NYCDEP	Guo Zhan Wu	[REDACTED]
NYCParks	Colleen Alderson	[REDACTED]
NYCParks	Nate Grove	[REDACTED]
NYCParks	Owen Wells	[REDACTED]
NYCDOT	Craig Chin	[REDACTED]
NYCDOT	Michele Samuelsen-Jaiswal	[REDACTED]
NYCDOT	William Ullom	[REDACTED]
NYCEDC	David Hopkins	[REDACTED]
NYC Office of the Mayor	Timothy Gallagher	[REDACTED]

time it is necessary to identify what the information needs are and to get that done early on so that the permit process can be routine and quick.

- National Oceanic and Atmospheric Administration/National Marine Fisheries Service-
  - Essential fish habitat assessment, as well as, endangered species work may be needed.

VIII. Presentation on formal cooperating agency requests and cooperative agreement (John Doyle and Andrew Teodorescu)

- See PowerPoint for key points

IX. Closing remarks (Marie Jenet)

- Letters will be sent to agencies regarding participation as a Cooperating or Participating agency
- Presentations and sign-in sheet will be sent to attendees

**From:** [DiScenna, Matthew](#)  
**To:** [Drew Brooks](#); [Jenet, Marie \(FAA\)](#); [REDACTED]  
**Cc:** [Lamond, Kathryn](#); [Clark, Patty](#); [Cohen, Michelle](#); [Puliafico, Jessica](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Herndon, Jane](#)  
**Subject:** AirTrain Planning Documents  
**Date:** Monday, September 17, 2018 7:08:32 PM

---

AirTrain Team,

We have completed our edits to the draft Alternatives Analysis Report and Ridership Report and Appendices and have uploaded them to the file transfer site for your review. In addition to uploading a clean version of the full Alternatives Analysis Report (Chapter 1 and Chapter 2 combined), we have also included track changes versions of Chapter 1 and Chapter 2 which show revisions made since the last draft was submitted on July 30<sup>th</sup>. We have also uploaded clean versions of the Ridership Report and Appendices (two separate files) along with track changes versions of each which show changes made since the last draft was submitted on May 16<sup>th</sup>.

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Thanks,  
Matt

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**From:** [REDACTED]  
**To:** DiScenna, Matthew; Jenet, Marie (FAA); [REDACTED]  
**Cc:** Lamond, Kathryn; Clark, Patty; Cohen, Michelle; Puliafico, Jessica; Tabafunda, Faith; Rogak, Elizabeth; Herndon, Jane  
**Subject:** RE: AirTrain Planning Documents  
**Date:** Tuesday, September 18, 2018 8:06:26 AM

---

Matt,

Thank you, we have received the documents. Is there any status on the revised RFP? We have a meeting scheduled at 1pm to discuss it; however, we have not been provided a revision as of yet. We believe today's meeting should be cancelled and rescheduled accordingly.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

---

**From:** DiScenna, Matthew <[REDACTED]>  
**Sent:** Monday, September 17, 2018 7:09 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
Teodorescu, Andrew P (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]>  
<[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]>  
Sanchez, David (FAA) <[REDACTED]> Henn, Patricia (FAA) <[REDACTED]>  
**Cc:** Lamond, Kathryn <[REDACTED]> Cohen, Michelle <[REDACTED]>  
<[REDACTED]> Puliafico, Jessica <[REDACTED]> Tabafunda, Faith <[REDACTED]>  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane <[REDACTED]>  
**Subject:** AirTrain Planning Documents

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**From:** [Lamond, Kathryn](#)  
**To:** [Tabafunda, Faith](#); [REDACTED]; [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Rogak, Elizabeth](#); [Jenet, Marie \(FAA\)](#); [Drew Brooks](#); [REDACTED]; [REDACTED]; [REDACTED]; [Herndon, Jane](#)  
**Cc:** [Summerville, James](#); [Papasavvas, Krystina](#); [REDACTED]; [Puliafico, Jessica](#); [REDACTED]  
**Subject:** LGA Access Improvement Project: Weekly Check-in

---

Please find a brief agenda for our use during the call:

1. NEPA Consultant Selection and Procurement Schedule
2. Pre-Scoping Activities



**From:** [Lamond, Kathryn](#)  
**To:** [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Jenet, Marie \(FAA\)](#); [Drew Brooks](#); [REDACTED]  
[Herndon, Jane](#); [REDACTED]  
**Cc:** [REDACTED] [Puliafico, Jessica](#); [REDACTED]  
**Subject:** LGA Access Improvement Project: Weekly Check-in

---

Please see the proposed agenda for our call:

1. Pre-scoping activities
2. Interview questions
3. Project funding

**From:** [Lamond, Kathryn](#)  
**To:** [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Jenet, Marie \(FAA\)](#); [Drew Brooks](#); [REDACTED]; [Herndon, Jane](#)  
**Cc:** [REDACTED]; [Puliafico, Jessica](#); [REDACTED]  
**Subject:** LGA Access Improvement Project: Weekly Check-in

---

Below please find a brief agenda for our call:

- 1) Consultant solicitation timing
- 2) MOU

**From:** [Lamond, Kathryn](#)  
**To:** [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); Rogak, Elizabeth; [Jenet, Marie \(FAA\)](#); [Drew Brooks](#); [REDACTED]; [Herndon, Jane](#); [Clark, Patty](#)  
**Cc:** [Puliafico, Jessica](#); [REDACTED]; [Summerville, James](#); [Papasavvas, Krystina](#); [REDACTED]  
**Subject:** LGA Access Improvement Project: Weekly Check-in

---

Below please find a brief agenda for our use during the call:

1. Pre-scoping Meetings
2. Interview Questions
3. Draft Agreement

**From:** [DiScenna, Matthew](#)  
**To:** [Drew Brooks](#); [Jenet, Marie \(FAA\)](#); [REDACTED]  
**Cc:** [Lamond, Kathryn](#); [Clark, Patty](#); [Cohen, Michelle](#); [Puliafico, Jessica](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Herndon, Jane](#)  
**Subject:** Re: AirTrain Planning Documents  
**Date:** Monday, October 08, 2018 10:22:09 PM

---

AirTrain Team -

Upon final review, we have made some minor updates to the AA and ridership reports since our September 17th update. The updated reports can be accessed from the AKRF extranet site in a folder dated October 5th.

We are making final edits to the additional study and are targeting midday tomorrow to post the study to the below folder. We will let you know as soon as it's posted.

We also expect to have an update on the timing of the RFP release by midday tomorrow and will keep you posted. We do expect the RFP to be issued this week.

Thanks,  
Matt

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[REDACTED] [email us](#).

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---

**From:** [REDACTED] <[REDACTED]>  
**Sent:** Tuesday, September 18, 2018 8:06:10 AM  
**To:** DiScenna, Matthew; Jenet, Marie (FAA); [REDACTED]  
[REDACTED]  
[REDACTED]  
**Cc:** Lamond, Kathryn; Clark, Patty; Cohen, Michelle; Puliafico, Jessica; Tabafunda, Faith; Rogak, Elizabeth; Herndon, Jane  
**Subject:** RE: AirTrain Planning Documents

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Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

---

**From:** DiScenna, Matthew <[REDACTED]>  
**Sent:** Monday, September 17, 2018 7:09 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
Teodorescu, Andrew P (FAA) <[REDACTED]> Doyle, John (FAA)  
<[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]> Wolfers-Lawrence, Jean  
(FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]> Henn,  
Patricia (FAA) <[REDACTED]>  
**Cc:** Lamond, Kathryn <[REDACTED]> Cohen, Michelle  
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**Cc:** [Summerville, James](#); [Papasavvas, Krystina](#); [Wolfers-Lawrence, Jean \(FAA\)](#); [Puliafico, Jessica](#); [REDACTED]  
**Subject:** LGA Access Improvement Project: Weekly Check-in

---

Below please find a brief agenda for our call:

- 1) Draft agreement
- 2) Pre-scoping meetings
- 3) Acceptance letter
- 4) Interview questions



**From:** [DiScenna, Matthew](#)  
**To:** [Drew Brooks](#); [Jenet, Marie \(FAA\)](#); [REDACTED]  
**Cc:** [Lamond, Kathryn](#); [Clark, Patty](#); [Cohen, Michelle](#); [Puliafico, Jessica](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Herndon, Jane](#)  
**Subject:** RE: AirTrain Planning Documents  
**Date:** Tuesday, October 09, 2018 6:11:52 PM

---

Good evening,

To follow up here, we have uploaded:

- 1) New York City and LGA Access Traffic Conditions: Current and Projected Assessment
- 2) A revised version of the Alternatives Report (combined Chapters 1 and 2) to include one minor update to the last sentence of Chapter 2
- 3) Revised Ridership Report Appendices to include one typo correction in the Table of Contents.

All are saved in a folder with today's date. Clean PDFs of each document have been uploaded.

The RFP is anticipated to go out Thursday morning.

Thanks,  
Matt

---

**From:** DiScenna, Matthew  
**Sent:** Monday, October 08, 2018 10:22 PM  
**To:** Drew Brooks <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
[REDACTED]  
[REDACTED]  
**Cc:** Lamond, Kathryn <[REDACTED]> Clark, Patty <[REDACTED]> Cohen, Michelle  
<[REDACTED]> Puliafico, Jessica <[REDACTED]> Tabafunda, Faith  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane  
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**Subject:** Re: AirTrain Planning Documents

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We are making final edits to the additional study and are targeting midday tomorrow to post the study to the below folder. We will let you know as soon as it's posted.

We also expect to have an update on the timing of the RFP release by midday tomorrow and

will keep you posted. We do expect the RFP to be issued this week.

Thanks,  
Matt

**AKRF WebFolders LogOn Instructions**

Below are instructions for securely sending/receiving large files for project via AKRF's Extranet:

Click on (or otherwise navigate to)



Login with credentials:

Username



Password:



[Please Note: Username and Password are cAsE sEnsltIve]

A window should appear where you can:

Select extranet files to transfer to your computer; or

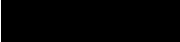
Select files on your computer to transfer to the extranet.

Notes:

As of 7/1/14: Files stored on AKRF's WebFolders system are available for thirty days only, based on the date they were uploaded.

WebFolders works best with the latest version of your web browser. If you are using an older web browser or a mobile phone , you may have trouble using the "full version" of the site: After a successful login, try the "View Lite Version" link at the bottom of the page.

If you are having trouble, contact your IT department. For password issues, contact AKRF's IT Help Desk



or [email us](#).

This site can also be reached from <https://www.akrf.com> (on the top menu, select "extranet" --> clients).

---

**From:** [Redacted] <[Redacted]>

**Sent:** Tuesday, September 18, 2018 8:06:10 AM

**To:** DiScenna, Matthew; Jenet, Marie (FAA); [Redacted]  
[Redacted]  
[Redacted]

**Cc:** Lamond, Kathryn; Clark, Patty; Cohen, Michelle; Puliafico, Jessica; Tabafunda, Faith; Rogak, Elizabeth; Herndon, Jane

**Subject:** RE: AirTrain Planning Documents

Matt,

Thank you, we have received the documents. Is there any status on the revised RFP? We have a meeting scheduled at 1pm to discuss it; however, we have not been provided a revision as of yet. We believe today's meeting should be cancelled and rescheduled accordingly.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

---

**From:** DiScenna, Matthew <[REDACTED]>  
**Sent:** Monday, September 17, 2018 7:09 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
Teodorescu, Andrew P (FAA) <[REDACTED]> Doyle, John (FAA)  
<[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]> Wolfers-Lawrence, Jean  
(FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]> Henn,  
Patricia (FAA) <[REDACTED]>  
**Cc:** Lamond, Kathryn <[REDACTED]> [REDACTED] Cohen, Michelle  
<[REDACTED]> Puliafico, Jessica <[REDACTED]> Tabafunda, Faith  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane  
<[REDACTED]>  
**Subject:** AirTrain Planning Documents

AirTrain Team,

We have completed our edits to the draft Alternatives Analysis Report and Ridership Report and Appendices and have uploaded them to the file transfer site for your review. In addition to uploading a clean version of the full Alternatives Analysis Report (Chapter 1 and Chapter 2 combined), we have also included track changes versions of Chapter 1 and Chapter 2 which show revisions made since the last draft was submitted on July 30<sup>th</sup>. We have also uploaded clean versions of the Ridership Report and Appendices (two separate files) along with track changes versions of each which show changes made since the last draft was submitted on May 16<sup>th</sup>.

Additionally, we have uploaded comment matrices for the Alternatives Analysis Report and Ridership Report with the Port Authority's responses to FAA's comments on the prior drafts.

These documents can be accessed through AKRF's Extranet site, in a folder dated September 17<sup>th</sup>. Instructions for accessing the documents from the file transfer site can be found at the end of the email.

If you have any questions or issues accessing the documents, please don't hesitate to be in touch.

Thanks,  
Matt

### **AKRF WebFolders LogOn Instructions**

Below are instructions for securely sending/receiving large files for project via AKRF's Extranet:

Click on (or otherwise navigate to): [REDACTED]

Login with credentials:

Username: [REDACTED]

Password: [REDACTED]

[Please Note: Username and Password are cAsE sEnstive]

A window should appear where you can:  
Select extranet files to transfer to your computer; or  
Select files on your computer to transfer to the extranet.

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If you are having trouble, contact your IT department. For password issues, contact AKRF's IT Help Desk [REDACTED] or [email us](mailto:).

This site can also be reached from <https://www.akrf.com> (on the top menu, select "extranet" --> clients).

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

**From:** [REDACTED]  
**To:** [DiScenna, Matthew](#); [Cohen, Michelle](#); [Lamond, Kathryn](#)  
**Cc:** [Jenet, Marie \(FAA\)](#); [REDACTED]  
**Subject:** Authorization for Travel: Meeting on December 5th  
**Date:** Tuesday, November 27, 2018 10:56:01 AM

---

Good Morning,

We will be having Ricondo staff travel in for an all-day meeting on the AirTrain EIS on Wednesday, December 5<sup>th</sup>. The purpose of the meeting is strategy discussions, scope development, schedule, and other foundational issues for standing up the EIS consultant support. I understand that the currently executed tasks include provisions requiring travel authorizations by the Port Authority. What information do we need to provide to enable Ricondo to travel next week?

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ

[REDACTED] (office)

[REDACTED] (cell)

[REDACTED]

---

**From:** [REDACTED] [[mailto:\[REDACTED\]](mailto:[REDACTED])]

**Sent:** Tuesday, November 27, 2018 10:56 AM

**To:** DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]>  
Lamond, Kathryn <[REDACTED]>

**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED]

**Subject:** Authorization for Travel: Meeting on December 5th

Good Morning,

We will be having Ricondo staff travel in for an all-day meeting on the AirTrain EIS on Wednesday, December 5<sup>th</sup>. The purpose of the meeting is strategy discussions, scope development, schedule, and other foundational issues for standing up the EIS consultant support. I understand that the currently executed tasks include provisions requiring travel authorizations by the Port Authority. What information do we need to provide to enable Ricondo to travel next week?

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

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**From:** [Summerville, James](#)  
**To:** [Cohen, Michelle](#)  
**Subject:** FW: LGA AirTrain Consultant Selection Interviews  
**Date:** Friday, October 12, 2018 1:47:29 PM  
**Attachments:** [addendum1\\_54523.pdf](#)

---

**From:** Summerville, James

**Sent:** Friday, October 12, 2018 1:47 PM

**To:** [REDACTED] <[REDACTED]>

**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] [REDACTED]

[REDACTED] DiScenna, Matthew <[REDACTED]> [REDACTED]

[REDACTED] <[REDACTED]> [REDACTED]

<[REDACTED]> [REDACTED] <[REDACTED]> [REDACTED]

<[REDACTED]> [REDACTED] Lamond, Kathryn <[REDACTED]>

Herndon, Jane <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Tabafunda, Faith

<[REDACTED]> Papasavvas, Krystina <[REDACTED]> Clark, Patty

<[REDACTED]>

**Subject:** RE: LGA AirTrain Consultant Selection Interviews

Andrew,

Keeping you and the FAA in the loop: today we issued Addendum 1 to the RFP (attached). The Addendum contains the information provided in your email below.

As a friendly reminder, please reply as soon as possible with your availability for a teleconference on the dates mentioned in my email below.

Thanks, James, [REDACTED]

---

**From:** Summerville, James

**Sent:** Thursday, October 11, 2018 4:26 PM

**To:** [REDACTED] <[REDACTED]>

**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] DiScenna, Matthew

<[REDACTED]> [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

Lamond, Kathryn <[REDACTED]> Herndon, Jane <[REDACTED]> Rogak,

Elizabeth <[REDACTED]> Tabafunda, Faith <[REDACTED]> Papasavvas, Krystina

<[REDACTED]> Clark, Patty <[REDACTED]>

**Subject:** RE: LGA AirTrain Consultant Selection Interviews

Andrew et al,

Thanks for the information in your email; it's very helpful. We'll issue an addendum conveying the information provided in your email. Also, as you might have noticed, I

already sent MS Outlook invites for three meeting dates: post-proposal committee meeting (11/8), interviews (11/14), and a placeholder on 11/19 in case 11/14 doesn't work for some unanticipated reason.

As a follow-up to today's teleconference, I've attached the proposed procurement/evaluation schedule (**first attachment**) for your review.

I've also attached an email to PA colleagues (**second attachment**). (I didn't include you and your colleagues at the FAA in the original distribution because we wanted to prevent confusion regarding my request to sign a non-disclosure agreement related to the procurement.) Fyi, you can find the complete RFP via the link in the attached email. Also, the email introduces the need for pre-proposal kick-off meeting (as discussed in today's teleconference). We're contemplating the following dates:

- October 15, 3-4 PM
- October 17, 1-2 PM
- October 26, 2-3 PM

Please reply as soon as possible with the FAA's availability during these dates/times. The kick-off meeting (really, teleconference) should last no longer than 30 minutes.

Thanks,

James Summerville, Sr. Proj. Contracts Specialist  
Port Authority of NY & NJ  
Procurement Dept.  
[REDACTED]

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Thursday, October 11, 2018 3:10 PM  
**To:** DiScenna, Matthew <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
Herndon, Jane <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Tabafunda, Faith  
<[REDACTED]> Summerville, James <[REDACTED]> Papasavvas, Krystina  
<[REDACTED]> Clark, Patty <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
**Subject:** LGA AirTrain Consultant Selection Interviews

Good Afternoon Everyone,

The FAA Selection Panel (myself, Marie, Jean, and Dave) will be available to conduct interviews of short listed firms on Wednesday, November 14<sup>th</sup>. When you issue a supplement to the solicitation, please include the following in some manner:



- Firms selected for the Short List for Interviews will be notified on or about November 8<sup>th</sup>
- Interviews will occur on November 14<sup>th</sup> at Federal Aviation Administration Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434.
- Interviews will be comprised of a 30 minute presentation followed by a 30 minute question and answer session.
- Firms participating in the interviews will be limited to four members of the consultant team, which will include and be lead by the proposed project manager and must be comprised of key project personnel that will be actively assigned to the project. A hard copy of any presentation materials can be submitted; however, no material supplementing the Statement of Qualifications will be accepted.

Additionally, we are available Monday, November 19<sup>th</sup> in the event of inclement weather or other need to change dates.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

October 12, 2018

**SUBJECT: REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (LGA) ACCESS IMPROVEMENT PROJECT (RFP# 54523)**

Dear Sir or Madam:

Pursuant to Section III (Selection Process) of the RFP, the Port Authority of New York and New Jersey (Authority) intends to invite select firms (the highest-rated proposers) for interviews during the second phase of the evaluation process. The Authority anticipates, but does not guarantee, that interviews with select proposers will be held on November 14, 2018, at Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434. Not every proposer will be guaranteed an invitation for an interview. However, all prospective proposers are encouraged to be available for interviews on November 14.

Interviews will consist of a thirty-minute presentation followed by a question-and-answer session of the same duration. Participating proposers will be allowed to bring up to four members of the proposing team, which shall be led by the proposed project manager. In addition to including the project manager, the proposing team should include key project personnel that will be actively assigned to the project. A hard copy of any presentation materials can be submitted on the day of the interview, however, no material supplementing the proposal provided in response to the RFP (due on November 1, 2018) will be accepted.

Should a proposer be invited to an interview on November 14, the proposer will be notified by the Authority on or around November 8, 2018.

If you have any questions, please contact Mr. James Summerville at [REDACTED] and Krystina Papasavvas at [REDACTED]

Sincerely,

David Gutiérrez  
Assistant Director  
Procurement Department

**From:** [Summerville, James](#)  
**To:** [Cohen, Michelle](#)  
**Subject:** FW: LGA AirTrain Consultant Selection Interviews  
**Date:** Friday, October 12, 2018 1:49:12 PM  
**Attachments:** [AirTrain LGA NEPA Procurement & Selection Schedule DRAFT 2018-10-11.pdf](#)  
[RFP 54523 Consulting services to help develop an EIS for the LGA Airtrain project.msg](#)

---

**From:** Summerville, James

**Sent:** Thursday, October 11, 2018 4:26 PM

**To:** [REDACTED] <[REDACTED]>

**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] DiScenna, Matthew

<[REDACTED]> [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

Lamond, Kathryn <[REDACTED]> Herndon, Jane <[REDACTED]> Rogak,

Elizabeth <[REDACTED]> Tabafunda, Faith <[REDACTED]> Papasavvas, Krystina

<[REDACTED]> Clark, Patty <[REDACTED]>

**Subject:** RE: LGA AirTrain Consultant Selection Interviews

Andrew et al,

Thanks for the information in your email; it's very helpful. We'll issue an addendum conveying the information provided in your email. Also, as you might have noticed, I already sent MS Outlook invites for three meeting dates: post-proposal committee meeting (11/8), interviews (11/14), and a placeholder on 11/19 in case 11/14 doesn't work for some unanticipated reason.

As a follow-up to today's teleconference, I've attached the proposed procurement/evaluation schedule (**first attachment**) for your review.

I've also attached an email to PA colleagues (**second attachment**). (I didn't include you and your colleagues at the FAA in the original distribution because we wanted to prevent confusion regarding my request to sign a non-disclosure agreement related to the procurement.) Fyi, you can find the complete RFP via the link in the attached email. Also, the email introduces the need for pre-proposal kick-off meeting (as discussed in today's teleconference). We're contemplating the following dates:

October 15, 3-4 PM

October 17, 1-2 PM

October 26, 2-3 PM

Please reply as soon as possible with the FAA's availability during these dates/times. The kick-off meeting (really, teleconference) should last no longer than 30 minutes.

Thanks,

James Summerville, Sr. Proj. Contracts Specialist  
Port Authority of NY & NJ  
Procurement Dept.

---

**From:** [redacted] [[mailto:\[redacted\]](#)]  
**Sent:** Thursday, October 11, 2018 3:10 PM  
**To:** DiScenna, Matthew <[redacted]> Lamond, Kathryn <[redacted]>  
Herndon, Jane <[redacted]> Rogak, Elizabeth <[redacted]> Tabafunda, Faith  
<[redacted]> Summerville, James <[redacted]> Papasavvas, Krystina  
<[redacted]> Clark, Patty <[redacted]>  
**Cc:** Jenet, Marie (FAA) <[redacted]> [redacted]  
[redacted] [redacted] [redacted]  
[redacted] [redacted] [redacted]  
**Subject:** LGA AirTrain Consultant Selection Interviews

Good Afternoon Everyone,

The FAA Selection Panel (myself, Marie, Jean, and Dave) will be available to conduct interviews of short listed firms on Wednesday, November 14<sup>th</sup>. When you issue a supplement to the solicitation, please include the following in some manner:

- Firms selected for the Short List for Interviews will be notified on or about November 8<sup>th</sup>
- Interviews will occur on November 14<sup>th</sup> at Federal Aviation Administration Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434.
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- Firms participating in the interviews will be limited to four members of the consultant team, which will include and be lead by the proposed project manager and must be comprised of key project personnel that will be actively assigned to the project. A hard copy of any presentation materials can be submitted; however, no material supplementing the Statement of Qualifications will be accepted.

Additionally, we are available Monday, November 19<sup>th</sup> in the event of inclement weather or other need to change dates.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office

1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

**Proposed NEPA Consultant Selection and Procurement Schedule- LGA Airport Access Improvement Project**

Date	Action
10/11/2018	Consultant solicitation issued
Week of 10/15/2018	PA provides draft Terms & Conditions to FAA for review
Week of 10/22/2018	FAA completes review of draft Terms & Conditions and provides comments to PA
11/1/2018	Statements of qualifications due
11/8/2018	Selection committee meeting (Phase 1 evaluation) and PA and FAA determine shortlist
11/9/2018	PA invites shortlisted firms for interviews
Week of 11/5/2018*	Finalize interview questions
Week of 11/12/2018*	Interviews (Phase 2 evaluation)
11/16/2018*	Selection made by FAA (Phase 2 evaluation) and Terms & Conditions provided to selected consultant
11/16/2018 - 12/10/2018*	FAA formulates scope of work with selected consultant
12/11/2018 - 12/17/2018	PA and FAA review of scope of work
12/18/2018	Finalize scope of work
12/19/2018 - 12/24/2018	Review pricing and negotiate contract
12/26/2018 - 12/31/2018	Contract execution/ Notice to Proceed for selected consultant
December 2018/January 2019	Notice of Intent issued

\*Dates subject to further input from the FAA

**From:** [REDACTED]  
**To:** [Lamond, Kathryn](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Herndon, Jane](#); [Summerville, James](#); [Papasavvas, Krystina](#)  
**Cc:** [Jenet, Marie \(FAA\)](#); [REDACTED]  
**Subject:** LGA AirTrain Consultant Selection: Interview Questions  
**Date:** Wednesday, October 17, 2018 1:14:17 PM  
**Attachments:** [LGA AirTrain Draft Interview Questions.doc](#)

---

Good Afternoon Everyone,

Attached are the proposed Interview Questions for the Consultant Selection Process. We will be able to discuss in more depth during tomorrow's call.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]





<p><b>Long Question:</b> The Executive Order implementing One Federal Decision targets a two-year schedule from issuance of NOI to ROD. The Port Authority has expressed a desire to accelerate the schedule further. Describe how your team would provide a thorough analysis of the project impacts in a legally defensible manner within the desired timeframe. Please discuss specific strategies you intend to implement.</p>	<p><b>Score: /10</b></p>
<p><b>Short Question:</b> What is the name of the team member that will oversee QA/QC? What specific plan will they implement?</p>	<p><b>Score: /2.5</b></p>

<p><b>Long Question:</b> Describe your individual and team experience on projects where the Proposed Action evolved during the course of analysis, either due to additional design being performed or alternative screening yielding unexpected results. How were changes to the Proposed Action managed in the context of the NEPA analysis to ensure compliance with the applicable laws and regulations? How did the changes affect project scope and schedule? What was the ultimate outcome?</p>	<p><b>Score: /10</b></p>
<p><b>Short Question:</b> If you could pick the cast of any TV Show or Movie, which would best represent your team and why?</p>	<p><b>Score: /2.5</b></p>

**Long Question:**  
Describe your individual and team experience working on projects involving multiple agencies that all had decisions relating to the proposed action that was under consideration. Discuss how communications and schedules were managed to ensure the various agency requirements were addressed in a timely fashion. What was the ultimate result of the project?

**Score: \_\_\_\_\_/10**

**Short Question:**  
What EIS or Major EA has your team worked on are you most proud of and why?

**Score:        /2.5**

**Long Question:**

Describe your team's experience on projects that have been the subject of focus from politicians, the media, and the public. How was the outreach strategy developed to address this focus? Please discuss how support and opposition to the project were specifically considered. How was the potential for future legal challenges factored into the development of the strategy?

Score: \_\_\_\_/10

**From:** [Papasavvas, Krystina](#)  
**To:** [Drew Brooks](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Herndon, Jane](#); [Summerville, James](#); [Lamond, Kathryn](#)  
**Cc:** [Jenet, Marie \(FAA\)](#); [REDACTED]  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions  
**Date:** Thursday, October 18, 2018 12:12:05 PM  
**Attachments:** [DRAFT Agreement 10 18 18 CLEAN.docx](#)

---

Good afternoon,

Thank you for your proposed Interview Questions for the Consultant Selection Process. As mentioned this morning on our call, we will discuss internally and get back to you.

For your review, I have attached the draft Agreement. Please review and provide any commentary. Also, please provide a list of the pre-NOI support tasks that would be incorporated into the budget for Paragraph 10A of the attached Agreement.

Thank you.

**Krystina Papasavvas**

Integrity, Compliance and Contract Review  
Port Authority of New York and New Jersey Procurement Department  
4 World Trade Center  
150 Greenwich Street, 21st Floor  
New York, NY 10007

T: [REDACTED]

F: [REDACTED]

email: [REDACTED]

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Wednesday, October 17, 2018 1:11 PM  
**To:** Lamond, Kathryn <[REDACTED]> Clark, Patty <[REDACTED]> DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane <[REDACTED]> Summerville, James <[REDACTED]> Papasavvas, Krystina <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
**Subject:** LGA AirTrain Consultant Selection: Interview Questions

Good Afternoon Everyone,

Attached are the proposed Interview Questions for the Consultant Selection Process. We will be able to discuss in more depth during tomorrow's call.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

**P.A. AGREEMENT # \*\*\*-18-\*\*\***

DATE

Lillian D. Valenti  
*Chief Procurement Officer*

FIRM  
ADDRESS  
CITY, ST ZIP

Attention: CONTACT, TITLE

SUBJECT: **PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL  
REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (“LGA”)  
ACCESS IMPROVEMENT PROJECT**

Dear CONTACT:

1. The Port Authority of New York and New Jersey (the "Authority") hereby offers to retain FIRM NAME (the “Consultant” or "you") to provide expert professional services as more fully set forth herein and in Attachment A, which is attached hereto and made a part hereof. Attachment A may be updated and modified throughout the performance of the Agreement, as agreed upon, in writing, by both parties.

This Agreement shall be signed by you and by the Authority’s Chief Procurement Officer. As used herein and hereafter, the "Director" means the Director of the Aviation Department of the Authority, or his/her duly authorized representatives.

For the purpose of administering this Agreement, the Director has designated DAR NAME, , to act as his duly authorized representative. The Project Manager for this project is NAME, tel. (\*\*\*)\*\*\*-\*\*\*\*, or e-mail address: [REDACTED].

2. Your services shall be performed as expeditiously as possible. Time is of the essence in the performance of all your services under this Agreement.

3. The Authority has agreed to retain you to perform consulting services for the Federal Aviation Administration (“FAA”) pursuant to the terms of the Memorandum of Understanding between the Authority and the FAA a copy of which is attached hereto (“FAA MOU”) and you shall take direction from, and be responsible to, the FAA, as Lead Agency, acting on behalf of the FAA in connection with the preparation of an Environmental Impact Statement (“EIS”) associated with the proposed LaGuardia Airport Access Improvement Project being undertaken by the Authority. To the extent of any conflict between the terms of this Agreement and the terms of the FAA MOU, the FAA MOU shall prevail.

4. In accordance with Attachment A, the Consultant shall submit, on behalf of itself and its approved subconsultants, any and all work performed in preparation of the EIS directly to the

FAA. The Consultant shall maintain a segregated copy of each record/document relating to the Project that is used by the FAA in its decision making process.

5. The Consultant shall submit bi-weekly written reports on the progress of its work to the FAA, with a concurrent copy to the Authority, unless otherwise directed by the FAA. At a minimum on a bi-weekly basis, joint meetings among the FAA, the Authority and the Consultant shall be held to facilitate the development and preparation of the EIS, in accordance with Attachment A. The Consultant and the Authority shall not meet absent FAA, without prior notification and approval of the FAA. The Consultant and any approved subconsultants shall provide the FAA with full cooperation in coordinating any public workshops, hearings, or meetings as required and directed by the FAA in connection with the Project.

6. Consultant, and any approved subconsultants, shall provide verification to the FAA that they have no financial interest in the outcome of the action the EIS will address, consistent with FAA Order 5050.4B, Paragraph 1003(d).

7. The Consultant shall be responsible for the costs associated with printing and publication of the draft and final copies of the EIS, as well as the publication of FAA-approved notices, stenographic and clerical services, preparation of graphics and visual aids associated with any public workshops, meetings and hearings, provided, however, such costs may be included on invoices to be paid by the Authority.

8. Consultant shall provide an estimated cost and staffing analysis for the performance of tasks set forth in Attachment A and shall promptly provide notice to the Authority if the cost and scope of the services to be provided hereunder materially changes. Although the Authority has agreed with the FAA that it will pay Consultant's fees and expenses, Consultant agrees that the fees submitted to the Authority will be reasonably related to the work performed and generally comparable to fees charged by prudent industry consultants performing like services. The expenses to be charged by Consultant will comply with FAA policy for consultant expenses (a copy of which is attached as Exhibit \_\_\_ ) and Section XX hereof.

9. Consultant shall submit its invoices for fees and expenses on a monthly basis and the Authority will have the reasonable ability to review the fees and expenses and confirm that the work generally comports with the scope identified in Section 4. The Authority shall not pay any invoice submitted unless it is confirmed for payment by a designated person at the FAA, such confirmation to be conveyed to Matthew DiScenna, Senior Program Manager, LaGuardia AirTrain, by electronic mail at [REDACTED] with a copy to Elizabeth Rogak of Port Authority Law Department at [REDACTED]. No approval or disapproval, or omission to approve or disapprove, however, shall relieve the Consultant of its responsibility under this Agreement to furnish the requested services as and when designated by the FAA and in accordance with professional standards.

10. A. For the initial tasks to be performed under this Agreement, in accordance with Attachment A (namely, development of the Plan of Study and certain pre-Notice of Intent support activities), you shall not continue to render services after the point at which the total amount to be paid to you hereunder, including reimbursable expenses, for those tasks reaches the amount of



**\*\*\*,\*\*\*.00 (\*\*\*\*\*)** unless you are specifically authorized in writing to so continue by the Director.

B. For the balance of the work to be performed under this Agreement, you shall not continue to render services after the point at which the total amount to be paid to you hereunder, including reimbursable expenses, reaches the amount agreed upon between the Authority, the FAA and the Consultant for the performance of the balance of the services, following acceptance of the Plan of Study, unless you are specifically authorized in writing to so continue by the Director. If no such authorization is issued, this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed. It is understood, however, that this limitation shall not be construed to entitle you to the above amount as a minimum compensation.

C. If any amendments to the Scope of Work (Plan of Study) require the expenditure of additional funds by the Authority, the Contractor shall notify FAA of such additional costs, with sufficient time to accommodate funding authorization and allocation and the capped amount in this Section 10 shall be deemed increased by that amount.

11. As full compensation for all your services and obligations in connection with this Agreement, (assuming approval by the FAA that work product or materials set forth in a submitted invoice have been performed or provided by the Consultant (and/or approved subconsultants), the Authority will pay you the total of the amounts computed under subparagraphs A, B, C, and D below, subject to the limits on compensation and provisions set forth above. Subject to the terms and conditions below, travel time is not reimbursable under subparagraphs A, and B hereunder.

A. An amount equal to the actual hourly billing rate billed by you for professional and technical personnel multiplied by the total number of hours actually spent by said personnel in the performance of services hereunder. No hour of services by an employee shall be compensable hereunder unless the employee is actually paid for such services at his usual salary rate. The hourly billing rate for each employee is the amount to be paid to you and is full compensation for all benefits, taxes, etc., paid by you. There shall be no change in the billing rates during the first year of the term of this Agreement and no additional compensation for overtime, weekend, or holiday work. Attached hereto is a schedule of names, titles, and corresponding hourly billing rates. Said schedule shall clearly indicate any of your employees proposed by you to perform the requested services that are former Authority employees. For compensation purposes under this Agreement, no said salary or amount shall exceed the salary or amount received by said personnel or rate customarily billed for a partner or principal as of the effective date of this Agreement unless the Director has been notified in advance, in writing, of the increased salary, rate or amount and approves the increase.

The Consultant shall verify that its employees, subconsultants, or subcontractors working under this Agreement are legally present and authorized to work in the United States, as per the federally required I-9 Program. Furthermore, upon request of the Authority, the Consultant shall furnish, or provide the Authority access to federal Form I-9 (Employment Eligibility Verification) for each individual hired by the Consultant, performing services hereunder. This includes citizens and noncitizens.

The Authority and the FAA will have the right of approval of all changes in personnel and increases in billing rates of personnel performing services under this Agreement. When requesting salary or billing rate adjustments for one or more of its personnel, the Consultant shall submit to the FAA, with a copy to the Authority, his/her name, title, current direct hourly rate or billing rate, proposed new direct hourly salary or billing rate, resulting percentage increase, effective date and reason for the requested change, setting forth in detail any increased cost to the Consultant of providing the services under this Agreement which has given rise to the request for increased salary. For adjustments submitted after the effective date of this Agreement, the Authority and the FAA will grant an increase only if the Consultant demonstrates compliance with all of the following conditions: that increases in salary, or partner's or principal's billing rate or amount, are in a) accordance with the program of periodic merit and cost of living increases normally administered by it, b) are warranted by increased costs of providing services under this Agreement, c) are based upon increases in salaries and billing rates which are generally applicable to all of Consultant's clients and d) are in accordance with the Authority's salary rate increase policy for the current year for Authority employees possessing comparable skills and experience.

Notwithstanding the above, the multiplier set forth in the first line of this subparagraph shall be applied only in the case of personnel other than partners or principals who are permanent employees.

B. Amounts actually paid to subconsultants hereunder who have been retained after the written approval by the FAA and the Authority of the subconsultant and the compensation to be paid the subconsultant. The Consultant shall submit a copy of the terms and conditions of the subconsultant's compensation (including multiplier, if applicable), as well as an estimate of the number of hours required by the subconsultant to perform his services, as part of any request for approval of the subconsultant.

C. Out-of-pocket expenses, approved in advance by the FAA and the Authority, necessarily and reasonably incurred and actually paid by you in the performance of your services hereunder. Out-of-pocket expenses are expenses that are unique to the performance of your services under this Agreement and generally contemplate the purchase of outside ancillary services, except that for the purpose of this Agreement, out-of-pocket expenses do include amounts for long distance telephone calls, rentals of equipment, travel and local transportation and meals and lodging on overnight trips.

Notwithstanding the above, the Authority will pay an amount computed as follows for the reproduction of submittal drawings, specifications and reports:

1) If the Consultant uses its own facilities to reproduce such documents, an amount computed in accordance with the billing rates the Consultant customarily charges for reproduction of such documents under agreements such as this, or

2) If the Consultant uses an outside vendor for the reproduction of such documents, the actual, necessary and reasonable amounts for the reproduction of such documents.

The Authority will not pay for expenses that are usually and customarily included as part of the Consultant's overhead. For the purposes of this Agreement out-of-pocket expenses do not include amounts for typing, utilization of computer systems, computer aided design and drafting (CADD), cameras, recording or measuring devices, flashlights and other small, portable equipment, safety

supplies, phones, telephone calls, electronic messaging including Fax, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.

When the Consultant uses its personal vehicle to provide services within the Port District, the Consultant will be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage Reimbursement Rate (as determined by the United States General Services Administration (GSA) – <http://www.gsa.gov/portal/content/100715>) per mile traveled by auto.

When the Consultant is asked to provide services outside the Port District, the actual cost of transportation as well as the cost for hotel accommodations and meals will be reimbursable hereunder when approved in advanced in writing by the Director. The cost for all meals and lodging on approved overnight trips is limited to the amounts established by the United States GSA for that locality.

GSA Domestic Rates: <http://www.gsa.gov/portal/category/21287>

You shall obtain the Director's written approval prior to making expenditures for out-of-pocket expenses in excess of one thousand dollars (\$1,000) per specific expenditure and for all overnight trips, which are reimbursable expenditures as set forth above. You shall substantiate all billings for out-of-pocket expenses in excess of twenty-five dollars (\$25) with receipted bills and shall provide said receipts with the appropriate billing.

D. As used herein:

"Port District" is a geographical area of about 1,500 square miles in the States of New York and New Jersey, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey and over 200 other municipalities, including all or part of seventeen counties, in the two States.

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

12. You shall keep, and shall cause any subconsultants under this Agreement to keep, daily records of the time spent in the performance of services hereunder by all persons whose salaries or amounts paid thereto will be the basis for compensation under this Agreement as well as records of the amounts of such salaries and amounts actually paid for the performance of such services and records and receipts of reimbursable expenditures hereunder and, notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services or expenses as are otherwise compensable hereunder. The Authority will have the right to audit all such records.

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

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

Should this Agreement be terminated in accordance with this Section 13, the Consultant shall, and shall cause its subconsultants to, upon request from the FAA, provide all documentation, reports, analyses and data to the FAA.

14. Aside from the FAA and as directed by the FAA in accordance with the FAA MOU, under no circumstances shall you or your subconsultants communicate in any way with any contractor, department, board, agency, commission or other organization or any person, whether governmental or private in connection with the services to be performed hereunder.

15. No certificate, payment (final or otherwise), acceptance of any work nor any other act or omission of the Authority or the Director or the FAA shall operate to release you from any obligations under or upon this Agreement, or to estop the Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Authority from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact or to prevent the recovery of any damages sustained by the Authority; provided, however, that the FAA shall have the sole right to determine whether the services hereunder have been performed in accordance with the scope described in **Section XX** and whether the services hereunder have been performed with requisite due care and professional responsibility.

16. The Authority and Consultant acknowledge that the FAA shall own title to and all intellectual property rights in and to all documents, reports, specifications, designs, developments, computations and other materials prepared, obtained or delivered under the terms of this Agreement (collectively, the "Deliverables"). The Authority acknowledges that the FAA may use, transfer, copy and distribute the Deliverables without restriction or limitation.

17. This Agreement being based upon your special qualifications for the services herein contemplated, any assignment, subletting or other transfer of this Agreement or any part hereof or of any moneys due or to become due hereunder without the express consent in writing of the Authority (and the FAA) shall be void and of no effect, provided, however, that you may sublet

services to subconsultants with the express consent in writing of the Director and the FAA. All persons to whom you sublet services, however, shall be deemed to be your agents and no subletting or approval thereof shall be deemed to release you from your obligations under this Agreement, to impose any obligation on the Authority or the FAA to such subconsultant or give the subconsultant any rights against the Authority or the FAA.

18. The Authority has a long standing practice of encouraging Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) to seek business opportunities with it, either directly or as subconsultants or subcontractors. "Minority business enterprise" or "MBE" means a business entity which is at least fifty-one percent (51%) owned by one (1) or more members of one (1) or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more members of one (1) or more minority groups; and whose management and daily business operations are controlled by one (1) or more such individuals who are citizens or permanent resident aliens. "Women-owned business enterprise" or "WBE" means a business which is at least fifty-one percent (51%) owned by one (1) or more women; or, in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned by one (1) or more women: and whose management and daily business operations are controlled by one (1) or more women who are citizens or permanent resident aliens.

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

- A. Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- B. Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
- C. Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;
- D. American Indian or Alaskan Native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

For this Agreement, the Director has set a targeted goal of twenty percent (20%) of the total Agreement price for qualified and certified MBEs and ten (10%) percent of the total Agreement price for qualified and certified WBEs.

To be "certified" a firm must be certified by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

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

Good faith efforts to include and facilitate participation by MBE/WBEs shall include, but not be limited to the following:

- A. Dividing the services and materials to be procured into smaller portions, where feasible.
- B. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBE/WBEs as may be appropriate.

- C. Soliciting services and materials from Port Authority certified MBE/WBE firms.
- D. Ensuring that provision is made to provide progress payments to MBE/WBEs in accordance with prompt payment provisions of the Agreement under which services are being provided, if applicable.
- E. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

The Authority has a list of certified MBE/WBE service firms which is available to you at <http://www.panynj.gov/business-opportunities/supplier-diversity.html>. The Consultant will be required to submit to the Authority's OBDCR for certification the names of MBE/WBE firms it proposes to use who are not on the list of certified MBE/WBE firms.

The Consultant must submit an MBE/WBE Participation Plan for each MBE/WBE subconsultant. Each Participation Plan shall contain, at a minimum, the following:

- Identification of the MBE/WBE: Provide the name and address of the MBE/WBE. If no MBE/WBEs are identified, describe the process for selecting participant firms in order to achieve the good-faith goals under this Agreement.
- Level of Participation: Indicate the dollar value and percentage of MBE/WBE participation expected to be achieved.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

The MBE/WBE subconsultant listed on each of the MBE/WBE Participation Plans must be certified by the Authority in order for the Consultant to receive credit toward the MBE/WBE goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/sd-mwsd-be-profile.html> to search for MBE/WBEs by a particular commodity or service. The Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to any of the MBE/WBE Participation Plans must be submitted via a Modified MBE/WBE Participation Plan to the Project Manager for review and approval by OBDCR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use Form PA3760D. The Consultant shall not make changes to any of its approved MBE/WBE Participation Plans or substitute MBE/WBE subconsultants or suppliers for those named in their approved plans without the Manager's prior written approval. Unauthorized changes or substitutions, including performing the work designated for a subconsultant with the Consultant's own forces, shall be a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored throughout the duration of the Agreement.

The Consultant shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subconsultant and supplier actually involved in the Agreement, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the

date and amount of each expenditure, and such other information that may assist the Project Manager in determining the Consultant's compliance with the foregoing provisions.

### **MBE/WBE Conditions of Participation**

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

1. **Commercially Useful Function:** An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Consultant and the MBE/WBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as an MBE/WBE, the Consultant shall receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.
2. **Work Force:** The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Contractor, other Subcontractors on the contract, or their Affiliates. This does not preclude the employment by the MBE/WBE of an individual that has been previously employed by another firm involved in the Contract, provided that the individual was independently recruited by the MBE/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.
3. **Supervision:** All Work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Consultant, other subconsultants on the agreement, or their Affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the Work.

### **Counting MBE/WBE Participation**

The value of the Work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. **Subconsultants:** One hundred percent (100%) of the value of the Work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such Work

includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Consultant, other subconsultants or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE subconsultant is itself an MBE/WBE. Work that an MBE/WBE subconsultants to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. Material Suppliers: Sixty percent (60%) of the expenditure to an MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. Broker's/Manufacturer's Representatives: One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves will not be counted.

4. Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces. Contact OBDCR at [REDACTED] for more information about requirements for such joint ventures.

19. The Consultant shall take all necessary and reasonable steps to ensure non-discrimination in the performance and administration of all aspects of this Agreement.

A. The Consultant agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Consultant from the solicitation period through the completion of the agreement. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

B. During the performance of this agreement, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:



1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Authority will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration

may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### C. Title VI List of Pertinent Nondiscrimination Authorities:

During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation- Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49

U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

20. The Authority has the responsibility of ensuring safe, reliable and secure transportation facilities, systems and projects to maintain the well-being and economic competitiveness of the region. Therefore, the Authority reserves the right to deny access to specific documents designed by it as “Critical Infrastructure Information”, unless, after consultation with the FAA, such information is deemed necessary for full and complete performance of the services hereunder. The Authority reserves the right to impose multiple layers of security requirements on the Consultant, its staff and subconsultants and their staffs, depending upon the level of security required, or make any amendments with respect to such requirements as determined by the Authority.

These security requirements may include but are not limited to the following:

- Execution of Non-Disclosure and Confidentiality Agreements and Acknowledgments

At the direction of the Authority, the Consultant shall be required to have its principals, staff and/or subconsultant(s) and their staff, execute Authority approved non-disclosure and confidentiality agreements.

- Consultant/Subconsultant identity checks and background screening

The Authority’s designated background screening provider may require inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff’s name and residence; screening of federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; access identification, to include some form of biometric security methodology such as fingerprint, facial or iris scanning.

The Consultant may be required to have its staff, and any subconsultant’s staff, material-men, visitors or others over whom the Consultant/subconsultant has control, authorize the Authority or its designee to perform background checks, and a personal identity verification check. Such authorization shall be in a form acceptable to the Authority. The Consultant and subconsultants

may also be required to use an organization designated by the Authority to perform the background checks.

Background screening is required when a person has an established need to know or has access to any one of the following types of information or physical locations:

- 1) Confidential Privileged Information
- 2) Confidential Information related to a security project and/or task
- 3) Secure Area of an Authority facility
- 4) Mission critical system

The Consultant shall perform background checks through the Authority's personnel assurance program provider. The Secure Worker Access Consortium (S.W.A.C.) is the only Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as Security Identification Display Area (SIDA), the federal regulatory requirements for personnel performing Work at aviation facilities.). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers is located at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at [REDACTED] [REDACTED] for more information and the latest pricing. The cost for said background checks for staff that pass and are granted a credential may be reimbursable to the Consultant (and its subconsultants) as an out-of-pocket expense as provided herein. Costs for background checks for staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

No person shall be permitted on or about the Authority construction sites or facilities (including rental spaces) without a facility-specific photo identification credential approved by the Authority. If the Authority requires facility-specific identification credentials for the Consultant and the subconsultant's staff, the Authority will supply such identification at no cost to the Consultant or its subconsultants. Such facility-specific identification credential shall remain the property of the Authority and shall be returned to the Authority at the completion or upon request prior to completion of the individual's assignment at the specific facility. It is the responsibility of the appropriate Consultant or subconsultant to immediately report to the Authority the loss of any staff member's individual facility-specific identification credential. The Consultant or subconsultant will be billed for the cost of the replacement identification credential. Consultant's and subconsultant's staff shall display Identification badges in a conspicuous and clearly visible manner, when entering, working or leaving an Authority construction site or facility.

Employees may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, unlaminated social security card for identity and SSN verification.

Where applicable, for sensitive security construction sites or facilities, successful completion of the application, screening and identity verification for all employees of the Consultant and

subconsultant shall be completed prior to being provided a Photo Identification credential by the personnel assurance program provider.

If any questions should arise as to when a Personnel Assurance Program background check is required, the Port Authority Manager or contract administrator should be contacted for assistance.

- Designated Secure Areas

Services under the Agreement may be required in designated secure areas, as the same may be designated by the Authority (“Secure Areas”). The Authority will require the observance of certain security procedures with respect to Secure Areas, which may include the escort to, at, and/or from said high security areas by security personnel. All personnel that require access to designated Secure Areas who are not under escort by an authorized individual will be required to undergo background screening and personal identity verification.

Forty-eight (48) hours prior to the proposed performance of any work in a Secure Area, the Consultant shall notify the Director. The Consultant shall conform to procedures as may be established by the Director from time to time and at any time for access to Secure Areas and the escorting of personnel hereunder. Prior to the start of any work, the Consultant shall request a description from the Project Manager of the Secure Areas that will be in effect on the commencement date(s) of the request services. The description of Secure Areas may be changed from time to time and at any time by the Project Manager during the term of the Agreement.

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained contractor security guards. However, this provision shall not relieve the Consultant of its responsibility to secure its equipment and work and that of its subconsultant/subcontractor’s and service suppliers at the Authority sites or facilities (including rental spaces). In addition, the Consultant, subconsultant, subcontractor or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video recordings or to make sketches on any other medium at any Authority sites or facilities (including any rental spaces), except when necessary to perform the Work under this Agreement, without prior written permission from the Authority, which shall not be unreasonably withheld in light of the services to be undertaken hereunder. Upon request, any photograph, digital image, video recording or sketch made of any Authority sites or facility shall be submitted to the Authority to determine compliance with this paragraph, which submission shall be conclusive and binding on the submitting entity.

- Compliance with the Port Authority Information Security Handbook

This Agreement may require access to Authority information considered Protected Information (“PI”) as defined in the Port Authority Information Security Handbook (“Handbook”), dated October, 2008, revised as of April 2, 2018, and as may be further amended. The Handbook and its requirements are hereby incorporated into this Agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or

solicitation it becomes necessary for the Consultant to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Authority or when released by the Authority to outside entities. The Handbook can be obtained at: <http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf>.

- Audits for Compliance with Security Requirements

The Authority may conduct random or scheduled examinations of business practices under this section in order to assess the extent of compliance with security requirements, PI procedures, protocols and practices, which may include, but not be limited to, verification of background check status, confirmation of completion of specified training, and/or a site visit to view material storage locations and protocols.

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

B. Protected Information shall mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, revised as of April 2, 2018)*, Confidential Information, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

C. The Consultant shall hold all such Protected Information in trust and confidence for the Authority, and agrees that the Consultant and the personnel provided by the Consultant hereunder shall not, during or after the termination or expiration of this Agreement, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under or in connection with the supplying of services contemplated by this Agreement; provided, however, the Consultant may provide information to the FAA to be held in confidence to the same extent as set forth in the FAA MOU. The Consultant and the personnel provided by the Consultant hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Agreement. The Consultant and the personnel provided by the Consultant hereunder shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder. The

Consultant shall promptly and fully inform the Director in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Consultant has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Agreement or coming to the Consultant's attention in connection with this Agreement.

D. Unless otherwise directed by the FAA, consistent with the FAA MOU, the Consultant shall not issue nor permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority or to the fact that goods have been, are being or will be provided to it and/or that services have been, are being or will be performed for it in connection with this Agreement, unless the Consultant first obtains the written approval of the Authority.

22. The Consultant assumes the following distinct and several risks to the extent they may arise from the negligent or willful intentional acts or omissions of the Consultant or its subconsultants/subcontractors in the performance of services hereunder (to the extent required by the FAA, the Consultant and any subconsultant will enter into a separate agreement with the FAA of similar import; if not such agreement is entered into, the FAA will be entitled to enforce this Section 22 against the Consultant and its subconsultants for its own damages or losses mutatis mutandis):

A. The risk of loss or damage to Authority property arising out of or in connection with the performance of services hereunder;

B. The risk or loss or damage to any property of the Consultant or its subconsultants/subcontractors arising out of or in connection with the performance of services hereunder;

C. The risk of claims, arising out of or in connection with the performance of services hereunder, whether made against the Consultant or its subconsultants/subcontractors or against the Authority, for loss or damage to any property of the Consultant's agents, employees, subcontractors, subconsultants, materialmen or others performing services hereunder;

D. The risk of claims, just or unjust, by third persons made against the Consultant or its subconsultants/subcontractors or the Authority on account of injuries (including wrongful death), loss or damage of any kind whatsoever arising in connection with the performance of services hereunder, including claims against the Consultant or its subconsultants/subcontractors or against the Authority for the payment of workers' compensation, whether such claims are made and whether such injuries, damage or loss are sustained at any time both before and after the completion of services hereunder.

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

Consultant shall cooperate in the defense of any suit against the FAA that relates to third party suits against the FAA related to this Agreement.

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

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

Except with respect to the FAA as specified herein, no third party rights are created by the Agreement, except to the extent that the Agreement specifically provides otherwise by use of the words "benefit" or "direct right of action".

Inasmuch as the Authority has agreed to indemnify the Cities of New York and Newark against claims of the types described in subparagraph D above made against said cities, the Consultant's obligation under subparagraph D above shall include claims by said cities against the Authority for such indemnification.

23. Pursuant to the Code of Ethics for Port Authority Vendors ("Code"), Consultants must execute a Compliance Certification, and provide it to the Authority, prior to beginning Work under this Agreement. This Compliance Certification, once executed, is a material and integral part of the Agreement. A copy of the Compliance Certification must be retained by the Consultant, unless and until the Authority indicates that the Certifications may be disposed of. Violations of the law or of the Code may subject a Vendor or a Vendor's Employees to civil or criminal penalties. In addition, in the case of violation of any provision of the law or the Code, following consultation with the FAA, the Authority may pursue any available remedy, including, but not limited to, determining that a Vendor is in material breach of its contract and/or that, in the future, the Authority will have no further commercial dealings with the Consultant; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein. The Code and the Compliance Certification (PA Form 4254) can be found at <https://www.panynj.gov/business-opportunities/become-vendor.html>.



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

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

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

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

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

- A. the prices in its proposal have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other consultant or with any competitor;
- B. the prices quoted in its proposal have not been and will not be knowingly disclosed directly or indirectly by the Consultant prior to the official opening of such proposal to any other consultant or to any competitor;

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

D. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated March 11, 2014, or as may be revised, (a copy of which is available upon request), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;

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

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

G. no person or organization has been retained, employed or designated on behalf of the Consultant to impact any Authority determination with respect to (i) the solicitation, evaluation or award of this Agreement; or (ii) the preparation of specifications or request for submissions in connection with this Agreement.

The certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information" shall be deemed to be made by the Consultant as follows:

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

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

Moreover, the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information", if made by a corporate Consultant, shall be deemed to have been authorized by the Board of Directors of the Consultant, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Consultant cannot make the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction,

Debarment Suspension, Disqualification and Disclosure of Other Information”, the Consultant shall so state and shall furnish with the signed proposal a signed statement which sets forth in detail the reasons therefor. If the Consultant is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph “25G.”, if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a “financial interest” in this Agreement, as described in the Procurement Disclosure Policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Authority). Such disclosure is to be updated, as necessary. As a result of such disclosure, the Authority shall take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Consultant may be able to make the certifications in this Section and the Section entitled “Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information” at the time the proposal is submitted, the Consultant shall immediately notify the Authority and the FAA in writing during the period of irrevocability of proposals and the term of the Agreement or any extension of such period, if Consultant is awarded the Agreement, of any change of circumstances which might under this clause make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Consultant with full knowledge that they would become a part of the records of the Authority and that the Authority and the FAA will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Consultant has falsely certified as to any material item in the foregoing certifications, has failed to immediately notify the Authority and the FAA of any change in circumstances which might make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure, or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine, after consultation with the FAA, that the Consultant is not a responsible Consultant with respect to its proposal on the Agreement or with respect to future proposals on Authority agreements and may exercise such other remedies as are provided to it by the Agreement with respect to these matters. In addition, Consultant is advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see, e.g., New York Penal Law, Section 175.30 et seq.). Consultants are also advised that the inability to make such certification will not in and of itself disqualify the Consultant and that in each instance the Authority will evaluate the reasons therefor provided by the Consultant.

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

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

Consultants are advised that the Authority has adopted a policy to the effect that in awarding its agreements it will honor any determination by an agency of the State of New York or of the State of New Jersey that a Consultant is not eligible to propose on or be awarded public agreements because the Consultant has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein.

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

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

## 27. CONSULTANT RESPONSIBILITY, SUSPENSION OF WORK AND TERMINATION

The Consultant agrees, if requested by the Authority, to present evidence of its continuing legal authority to do business in the States of New Jersey or New York, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Authority, after consultation with the FAA, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant must comply with the terms of the suspension order. Agreement activity may resume at such time as the Authority issues a written notice authorizing a resumption of performance under the Agreement.

Upon written notice to the Consultant, and an opportunity to be heard with appropriate Authority officials or staff, the Agreement may be terminated by the Authority at the Consultant's expense when the Consultant is determined by the Authority to be non-responsible. In such event, the Authority or its designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach, including recovery of costs from Consultant associated with such termination; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein.

#### 28. NO GIFTS, GRATUITIES, OFFERS OF EMPLOYMENT, ETC.

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

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Agreement or any other Authority agreement), etc., which might tend to obligate the Authority employee to the Consultant and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Agreement or any other Authority agreement. Where used herein, the term "Port Authority" or "Authority" shall be deemed to include all subsidiaries of the Authority.

The Consultant shall ensure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it or by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

#### 29. OBLIGATION TO REPORT

In the event that the Consultant becomes aware of the occurrence of any conduct that is prohibited by this section entitled "No Gifts, Gratuities, Offers of Employment, Etc.", or if the Consultant knows or should reasonably know that a principal, employee, or agent of the Consultant or of its subconsultants or subcontractors has committed a violation of federal, New York or New Jersey law addressing or governing anti-trust, public contracting, false claims, fraud, extortion, bribery, bid rigging, embezzlement, prevailing wage or minority, woman, small or disadvantaged business enterprises, it shall report such information to the Authority's Office of Inspector General within three (3) business days of obtaining such knowledge. (See "<http://www.panynj.gov/inspector-general>" for information about how to report information to the Office of Inspector General).

Failing to report such conduct may be grounds for finding of non-responsibility. The Consultant shall not take any Retaliatory Action against any of its employees for reporting such conduct.

In addition, during the term of this Agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated March 11, 2014, or as may be revised, (a copy of which is available upon request to the Office of the Secretary of the Authority).

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

### 30. CONFLICT OF INTEREST

During the term of this Agreement, the Consultant shall be in compliance with the rules and regulations promulgated by the FAA and found at 40 C.F.R. Part 1506.5(c). The FAA will administer its policy with respect to the Consultant and the services provided herein.

Notwithstanding anything to the contrary contained herein, the Consultant, and any approved subconsultants, shall be precluded from bidding on any future actions the EIS addresses until the approving FAA official issues a Record of Decision (ROD) based on the EIS.

### 31. INTEGRITY MONITOR

In the event that the Authority hires an Integrity Monitor in connection with the Work under this Agreement, the Consultant and any subcontractors shall cooperate fully with the Monitor and the Authority, which includes, but is not limited to, providing complete access to all personnel and records in any way related to the Work performed pursuant to this Agreement. Any failure to cooperate may result in the termination of this Agreement. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

### 32. RIGHT TO AUDIT

Notwithstanding anything to the contrary, the Authority, including its Inspector General, Audit Department and Integrity Monitor, and the FAA, or its designee(s) each shall have the right to audit all of the records of the Consultant with respect to the Work and the Agreement, including, without limitation, records pertaining to any compensation paid, payable, or to be paid under the Agreement. The Consultant shall not be entitled to any reimbursement or other compensation for costs associated with such audit, investigation, or certification. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

The Consultant agrees to pay for the cost of any audit or investigation conducted by the Authority or the FAA, in which any criminal activity, ethics violations, or professional misconduct by the Consultant or any of its employees, or subcontractors or any of its employees, are discovered. The Consultant shall further agree that should it fail or refuse to pay for any such audit or investigation, the Authority is authorized to deduct from any sum owing the Consultant an amount equal to the cost of such audit and the damages resulting therefrom. The determination of the value of any such costs and decision to withhold any such payments are at the sole discretion of the Authority (including its Inspector General) or, in the case of the FAA, of its supervising personnel.

### 33. DEFINITIONS

As used in sections 24 to 32 above, the following terms shall mean:

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

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations, the Port Authority of New York and New Jersey and its wholly owned subsidiaries and others.

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

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

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

Retaliatory Action - Any adverse action taken by, or at the direction of, the Contractor, against any of its employees for reporting any information as set forth in the clause entitled "Obligation to Report," above.

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

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

36. References herein to the Authority shall and shall be deemed to mean equally the Port Authority Trans Hudson Corporation (PATH).

37. Nothing in this Agreement is intended to constitute the creation of an agency relationship between the Authority and the Consultant or any other right for the Consultant to act as the representative of the Authority for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Consultant, in

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- PAGE 26 -

DATE

performing its services hereunder, is and shall be at all times an independent contractor and the officers, agents and employees of the Consultant shall not be or be deemed to be agents, servants, or employees or "special employees" of the Authority.

38. This Agreement shall be governed by and construed in accordance with the Laws of the State of New York without regard to conflict of laws principles.

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

Sincerely,

THE PORT AUTHORITY OF  
NEW YORK AND NEW JERSEY

\_\_\_\_\_  
Lillian D. Valenti  
Chief Procurement Officer

Date \_\_\_\_\_

The execution of this Agreement by the Consultant's duly authorized representative shall serve as a certification that no alterations have been made to this Agreement, and if any changes or alterations to this Agreement have been made by the Consultant without the Authority's prior written consent, such changes shall be void, non-binding and of no effect.

ACCEPTED:

FIRM NAME

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**From:** [REDACTED]  
**To:** [Papasavvas, Krystina](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Herndon, Jane](#); [Summerville, James](#); [Lamond, Kathryn](#)  
**Cc:** [Jenet, Marie \(FAA\)](#); [REDACTED]  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions  
**Date:** Wednesday, October 24, 2018 8:22:44 AM  
**Attachments:** [LGA AirTrain-Draft Interview Selection Letter.docx](#)  
[LGA AirTrain-Draft Non-Selection Letter.docx](#)  
[LGA AirTrain scope of tasks to NOI v3.docx](#)

---

Krystina,

Attached, please find two draft letters and our understanding of the pre-NOI tasks at this time. The two letters are for use following review of the proposals; one for short-listed firms and one for non-selected firms.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

---

**From:** Papasavvas, Krystina <[REDACTED]>  
**Sent:** Thursday, October 18, 2018 12:11 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> [REDACTED] DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane <[REDACTED]> Summerville, James <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]> Henn, Patricia (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Teodorescu, Andrew P (FAA) <[REDACTED]> Price, Laura E (FAA) <[REDACTED]>  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Good afternoon,

Thank you for your proposed Interview Questions for the Consultant Selection Process. As mentioned this morning on our call, we will discuss internally and get back to you.

For your review, I have attached the draft Agreement. Please review and provide any commentary. Also, please provide a list of the pre-NOI support tasks that would be incorporated into the budget for Paragraph 10A of the attached Agreement.

Thank you.

**Krystina Papasavvas**

Integrity, Compliance and Contract Review  
Port Authority of New York and New Jersey Procurement Department  
4 World Trade Center  
150 Greenwich Street, 21st Floor  
New York, NY 10007  
T: [REDACTED]  
F: [REDACTED]  
email: [REDACTED]

---

**From:** [REDACTED] [[mailto:\[REDACTED\]](#)]  
**Sent:** Wednesday, October 17, 2018 1:11 PM  
**To:** Lamond, Kathryn <[REDACTED]> Clark, Patty <[REDACTED]> DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane <[REDACTED]> Summerville, James <[REDACTED]> Papasavvas, Krystina <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
**Subject:** LGA AirTrain Consultant Selection: Interview Questions

Good Afternoon Everyone,

Attached are the proposed Interview Questions for the Consultant Selection Process. We will be able to discuss in more depth during tomorrow's call.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

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DATE

PROJECT PRINCIPAL  
COMPANY NAME  
COMPANY ADDRESS

Same Letter to  
ALL SHORT-LISTED FIRMS

**Re: Request for Proposals – Environmental Impact Statement  
LaGuardia Airport Access Improvement Project  
New York City, New York**

Dear NAME,

The LaGuardia Airport Access Improvement Project Environmental Impact Statement (EIS) Proposal Review Panel received and reviewed your qualifications to prepare an EIS for the subject project. We are pleased to inform you that the Review Panel has selected your team to be shortlisted and invited to interview for the project. The following provides the details of the upcoming interview process:

Date: Wednesday, November 14

Location: Federal Aviation Administration Eastern Region, 159-30 Rockaway Blvd., Jamaica, NY

Time: Firm 1: 8:30, Firm 2: 10:30, Firm 3: 1:00, Firm 4: 3:00

The Federal Aviation Administration (FAA) Selection Panel will conduct the interview. The Selection Panel is comprised of four FAA staff members that will have critical roles in the management of the project. One (or more) representatives from the Port Authority of New York and New Jersey (PANYNJ) will also be present in an observational capacity.

Each team is limited to 4 persons maximum to represent their team. It is required that the proposed Project Manager be present for the interview. The other three members representing the team at the interview must be from the list of key staff identified in your submitted proposal (as established by the RFP).

The Interview has been scheduled for 60 minutes. The time allocated has been broken into 30 minutes for each team to present their qualifications per the criteria below and 30 minutes has been reserved for questions and answers. The presentation should expand upon the material provided in your team's Statement of Qualifications and should emphasize the aspects of the project you feel are critical to the project's success. The scoring for the interviews will total 100 points and will be added to the 100 point score of the written proposals to determine the winning team. The scoring criteria are listed below:

Schedule	15 Points
Project Approach	15 Points
Unique Project Issues	10 Points
Past Experience on Similar Issues	10 Points

Questions and Answers                      50 Points  
Total Score                                      100 Points

We ask that each team arrive 20-30 minutes prior to their scheduled time to allow processing through security. Each team will be allowed ten minutes to set up the room. Some audio visual equipment will be available in the interview room. Please contact Andrew Brooks of the FAA at (718) 553-2511 to discuss your team's audio visual equipment needs.

When the team arrives at the FAA Eastern Region office, please have the security booth call (718) 553-3330 to arrange for an escort to the 5<sup>th</sup> floor Airports Conference Room.

We also like to remind each team that we cannot discuss the project until the selection is made so please do not contact either PANYNJ or FAA staff regarding aspects of the project other than the conditions discussed above.

Lastly, we sincerely appreciate your interest in this important project and we wish you good luck with the upcoming interviews.

Sincerely,

Huntley Lawrence,  
Director of Aviation

Commented [BA(1): PA to determine signature level

DATE

PROJECT PRINCIPAL  
COMPANY NAME  
COMPANY ADDRESS

Same Letter to  
ALL UNSELECTED FIRMS

**Re: Request for Proposals – Environmental Impact Statement  
LaGuardia Airport Access Improvement Project  
New York City, New York**

Dear NAME,

The LaGuardia Airport Access Improvement Project Environmental Impact Statement (EIS) Proposal Review Panel is in receipt of your statement of qualifications to prepare an Environmental Impact Statement for the LaGuardia Airport Access Improvement Project. The Review Panel has reviewed your submittal and while your credentials for your team are impressive, we unfortunately have to inform you that your team was not selected for an interview for this project.

We would like to thank you for your interest in LaGuardia Airport and wish you continued success.

Sincerely,

Huntley Lawrence,  
Director of Aviation

Commented [BA(1)]: PA to determine signature level

## **LaGuardia Airport Access Improvement Project**

### **Environmental Impact Statement**

#### **Major Tasks to be Completed Prior to Issuance of Notice of Intent**

**DISCLAIMER:** This non-exhaustive list of tasks is intended to outline the major goals and subtasks required to be completed prior to issuance of a Notice of Intent (NOI) for the LaGuardia Airport Access Improvement Project Environmental Impact Statement. It is being prepared to support the Port Authority of New York and New Jersey's Agreement for Performance of Expert Professional Environmental Review Services for the LaGuardia Airport Access Improvement Project, specifically section 10.A. This list represents the understanding of tasks necessary to issue the NOI of the Federal Aviation Administration staff as of October 2018 and is not intended to be representative of a full and complete list, recognizing that tasks may be added or deleted as analysis of the project continues.

#### **Task 1: Development of the Permitting Timetable/Agency Memorandum of Understanding**

Executive Order 13807 establishes that a Permitting Timetable will be developed for all projects meeting the qualifications under One Federal Decision. The Timetable must be established before the NOI can be issued. As part of this task, the consultant team will assist the FAA in working with Federal, State, and City agencies that have permits or other decisions that must be captured on the Timetable. They will work to coordinate meetings and assist in identification of tasks necessary for the respective agencies to proceed to permit issuance. Additionally, the consultant team will work with the FAA on schedule integration of all tasks in order to meet the requirement of permit issuance within 90 days of Record of Decision.

This task also provides for consultant team support in development of a Project-Specific Memorandum of Understanding (MOU) with the Cooperating, Participating, and Reviewing Agencies. The Project-Specific MOU will define how communication and coordination of review will occur for all agencies involved in the project. It will address the three concurrence points that are required to be established pursuant to Executive Order 13807 and the MOU implementing Executive Order 13807. At each concurrence point, Cooperating Agencies with permitting authority will need to agree that information provided up to that point is sufficient to move forward. The MOU implementing Executive Order 13807 contemplates concurrence points at the Purpose and Need, Alternatives to be Carried Forward, and the Preferred Alternative.

#### **Task 2: Pre-Scoping**

Under this task, the selected consultant team will assist the FAA in establishing meeting dates and locations for any outstanding Pre-Scoping Meetings following consultant selection. The FAA anticipates developing a Pre-Scoping Plan to identify targeted leadership and public groups within the potential Affected Environment for early engagement. This process will help with early identification of project issues and concerns and will help formulate a more robust scope for analysis early on in the EIS process. The FAA does not intend to have the selected consultant on board prior to initiating this task; however, the selected consultant will be expected to assist in coordination and facilitation of remaining tasks

immediately following kickoff. The consultant may be required to obtain meeting locations and travel to support this effort.

### **Task 3: Review and Verify Existing Studies/Clarify Project Elements**

In this task, the selected consultant will begin to form a library of planning studies related to the proposed project and the Affected Environment. It is expected that the Port Authority of New York and New Jersey will provide the FAA and the selected consultant access to all project-related documentation prepared to date. Additionally, past environmental analyses conducted in the area of the proposed project, including, but not limited to, the Environmental Analyses for the Central Terminal Building and Delta Terminal will be provided. The consultant team will simultaneously conduct a Literature Search for any additional documentation relevant to the proposed study area and potential alternatives. The consultant team will assist the FAA in reviewing the documentation provided to identify potential additional areas of study required prior to proceeding with the EIS. Additionally, the review process will assist in the determination of project elements. Together, these items will assist in the development of the EIS scope as part of the Plan of Study.

### **Task 4: Plan of Study/Schedule Development**

This task item establishes the Plan of Study for the EIS through issuance of the Record of Decision. It will involve development of task items through completion of the EIS and issuance of the ROD. Development of the scope will be based on the results of Task 3 as well as substantial ongoing discussions with the FAA, the Port Authority, and potentially Cooperating and Participating Agencies. It will also be informed by the Pre-Scoping effort identified in Task 2 and will include development of a Scoping Plan to be implemented immediately upon issuance of an NOI. A complete project schedule, identifying estimates of duration for task completion and the critical path of tasks necessary for the project to advance will be developed as part of the Plan of Study as well.

### **Task 5: Project Management**

This task item establishes the parameters for ongoing management of the EIS. Though it won't be completed prior to issuance of the NOI, it is necessary to lay the framework for the project from the beginning and provides for the necessary administrative functionality to support the ongoing efforts identified above. This task would incorporate meeting facilitation, agendas, meeting notes, establishing action item tracking, formalizing communication protocols and document formatting, setting up electronic file sharing, initiating the administrative file, and other assorted tasks to allow the consultant to assist the day-to-day management of the project.

**From:** [REDACTED]  
**To:** [Summerville, James](#)  
**Cc:** [Papasavvas, Krystina](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Herndon, Jane](#); [Lamond, Kathryn](#); [Jenet, Marie \(FAA\)](#); [REDACTED]; [Wolfers-Lawrence, Jean \(FAA\)](#); [REDACTED]  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions  
**Date:** Thursday, November 01, 2018 10:00:50 AM  
**Attachments:** [LGA AirTrain Draft Interview Questions v2.doc](#)

---

James,

Please see the attached proposed incorporation of the language requested.

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

---

**From:** Summerville, James <[REDACTED]>  
**Sent:** Friday, October 26, 2018 11:23 AM  
**To:** Brooks, Andrew (FAA) <[REDACTED]>  
**Cc:** Papasavvas, Krystina <[REDACTED]> [REDACTED] DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane <[REDACTED]> Summerville, James <[REDACTED]> Lamond, Kathryn <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]> Henn, Patricia (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Teodorescu, Andrew P (FAA) <[REDACTED]> Price, Laura E (FAA) <[REDACTED]>  
**Subject:** FW: LGA AirTrain Consultant Selection: Interview Questions

Andrew,

This email responds to the interview questions (emailed on 10/17) and the draft letters provided in your recent email dated 10/24. Please review our observations and provide feedback as soon as possible.

Thanks, James, [REDACTED]

**Interview Questions:**

See the comment and proposed additional language to the Long Question on page 2

There's a pattern to the Long and accompanying Short Questions until the last Long Question, which doesn't have an accompanying Short Question. Is that purposeful?



**Interview Invitation Letter:** The attachment includes some proposed edits and corresponding comments. In addition, one question: The letter conveys that, with respect to the interview, the PA's role is observatory. However, in a recent teleconference, I recall that the FAA expects the PA to participate (in some capacity) in scoring (or, really, pre-scoring). In other words, I recall that, after each interview, the FAA will solicit our feedback (orally and via unofficial scoring). Is that correct? Please clarify the FAA's expectations of the PA throughout the interview process.

**Decline letter:** Typically the PA does not issue "status" letters to any proposer until after authorization and execution of a contract resulting from an RFP. We'd prefer not to introduce a precedent here. Besides, Addendum 2 to the RFP, shared with the FAA on 10/12, conveyed expectations concerning the interviews; see the second attachment below. Via that Addendum, Proposers should realize that if they don't receive a formal invitation for an interview on or close to 11/8, we are not intending to interview them. Therefore, we feel that a formal non-selection letter (during the ongoing evaluation process) is unnecessary and we'd prefer not to introduce a precedent by issuing such a letter.

**From:** [redacted] [[mailto:\[redacted\]](mailto:[redacted])]  
**Sent:** Wednesday, October 24, 2018 8:20 AM  
**To:** Papasavvas, Krystina <[redacted]> Clark, Patty <[redacted]> DiScenna, Matthew <[redacted]> Cohen, Michelle <[redacted]> Tabafunda, Faith <[redacted]> Rogak, Elizabeth <[redacted]> Herndon, Jane <[redacted]> Summerville, James <[redacted]> Lamond, Kathryn <[redacted]>  
**Cc:** Jenet, Marie (FAA) <[redacted]> [redacted]  
[redacted]  
[redacted]  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Krystina,

Attached, please find two draft letters and our understanding of the pre-NOI tasks at this time. The two letters are for use following review of the proposals; one for short-listed firms and one for non-selected firms.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [redacted]

**From:** Papasavvas, Krystina <[REDACTED]>  
**Sent:** Thursday, October 18, 2018 12:11 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> [REDACTED] DiScenna, Matthew  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane  
<[REDACTED]> Summerville, James <[REDACTED]> Lamond, Kathryn  
<[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]>  
Sanchez, David (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]> Henn,  
Patricia (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]>  
<[REDACTED]>; Teodorescu, Andrew P (FAA) <[REDACTED]> Price, Laura E  
(FAA) <[REDACTED]>  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Good afternoon,

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For your review, I have attached the draft Agreement. Please review and provide any commentary. Also, please provide a list of the pre-NOI support tasks that would be incorporated into the budget for Paragraph 10A of the attached Agreement.

Thank you.

**Krystina Papasavvas**

Integrity, Compliance and Contract Review  
Port Authority of New York and New Jersey Procurement Department  
4 World Trade Center  
150 Greenwich Street, 21st Floor  
New York, NY 10007  
T: [REDACTED]  
F: [REDACTED]  
email: [REDACTED]

**From:** [REDACTED] [[mailto:\[REDACTED\]](#)]  
**Sent:** Wednesday, October 17, 2018 1:11 PM  
**To:** Lamond, Kathryn <[REDACTED]> Clark, Patty <[REDACTED]> DiScenna,  
Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane  
<[REDACTED]> Summerville, James <[REDACTED]> Papasavvas, Krystina  
<[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

**Subject:** LGA AirTrain Consultant Selection: Interview Questions

Good Afternoon Everyone,

Attached are the proposed Interview Questions for the Consultant Selection Process. We will be able to discuss in more depth during tomorrow's call.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

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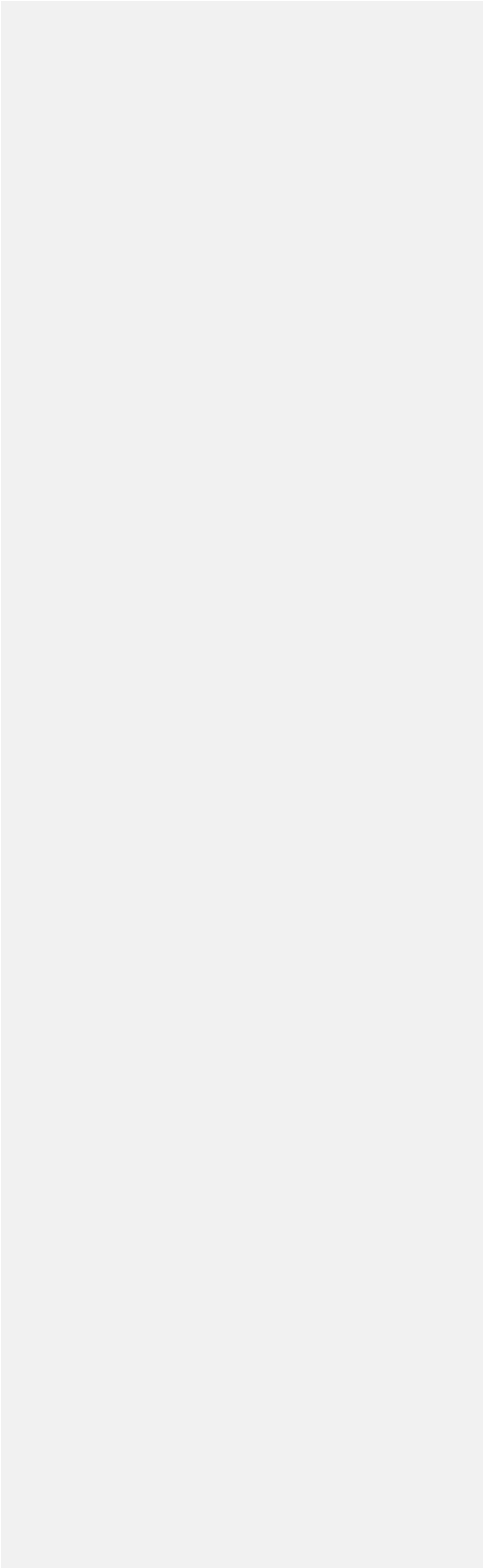
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Commented [SJ1]: See proposed addition to this question

<p><b>Long Question:</b> The Executive Order implementing One Federal Decision targets a two-year schedule from issuance of NOI to ROD. The Port Authority has expressed a desire to accelerate the schedule further. Describe how your team would provide a thorough analysis of the project impacts in a legally defensible manner within the desired timeframe, <u>with specific consideration to other project commitments that your team has</u>. Please discuss specific strategies you intend to implement.</p> <p><del>Furthermore, identify other project commitment during the expected time period for the preparation of the EIS and describe how your team plans to balance those commitments and ensure completion of the EIS analysis within the desired timeframe.</del></p>	<p>Score: ____/10</p>
<p><b>Short Question:</b> What is the name of the team member that will oversee QA/QC? What specific plan will they implement?</p>	<p>Score: /2.5</p>

<p><b>Long Question:</b> Describe your individual and team experience on projects where the Proposed Action evolved during the course of analysis, either due to additional design being performed or alternative screening yielding unexpected results. How were changes to the Proposed Action managed in the context of the NEPA analysis to ensure compliance with the applicable laws and regulations? How did the changes affect project scope and schedule? What was the ultimate outcome?</p>	<p>Score: ____/10</p>
<p><b>Short Question:</b> If you could pick the cast of any TV Show or Movie, which would best represent your team and why?</p>	<p>Score: ____/2.5</p>



<p><b>Long Question:</b> Describe your individual and team experience working on projects involving multiple agencies that all had decisions relating to the proposed action that was under consideration. Discuss how communications and schedules were managed to ensure the various agency requirements were addressed in a timely fashion. What was the ultimate result of the project?</p>	<p>Score: ____/10</p>
<p><b>Short Question:</b> What EIS or Major EA has your team worked on are you most proud of and why?</p>	<p>Score: ____/2.5</p>

**Long Question:**

Describe your team's experience on projects that have been the subject of focus from politicians, the media, and the public. How was the outreach strategy developed to address this focus? Please discuss how support and opposition to the project were specifically considered. How was the potential for future legal challenges factored into the development of the strategy?

Score: /10

Commented [SJ2]: Apparently this is the only "Long Question" without an accompanying "Short Question" Purposeful or oversight?

Commented [BA(3R2): Purposeful



**From:** [REDACTED]  
**To:** [Papasavvas, Krystina](#); [Drew Brooks](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Herndon, Jane](#); [Summerville, James](#); [Lamond, Kathryn](#)  
**Cc:** [Jenet, Marie \(FAA\)](#); [REDACTED]; [REDACTED]; [Wolfers-Lawrence, Jean \(FAA\)](#); [REDACTED]  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions  
**Date:** Friday, November 02, 2018 3:20:48 PM  
**Attachments:** [DRAFT Agreement FAA Comments.docx](#)

---

Krystina/All:

Attached please find the FAA's comments regarding the Draft Agreement. Please let us know if you have any questions.

Best,

Laura

---

**From:** Papasavvas, Krystina <[REDACTED]>  
**Sent:** Thursday, October 18, 2018 12:11 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> [REDACTED] DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane <[REDACTED]> Summerville, James <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]> Henn, Patricia (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]> [REDACTED] Teodorescu, Andrew P (FAA) <[REDACTED]> Price, Laura E (FAA) <[REDACTED]>  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

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Thank you.

**Krystina Papasavvas**  
Integrity, Compliance and Contract Review  
Port Authority of New York and New Jersey Procurement Department  
4 World Trade Center  
150 Greenwich Street, 21st Floor  
New York, NY 10007  
T: [REDACTED]

F: [REDACTED]  
email: [REDACTED]

---

**From:** [REDACTED] [[mailto:\[REDACTED\]](mailto:[REDACTED])]  
**Sent:** Wednesday, October 17, 2018 1:11 PM  
**To:** Lamond, Kathryn <[REDACTED]> Clark, Patty <[REDACTED]> DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane <[REDACTED]> Summerville, James <[REDACTED]> Papasavvas, Krystina <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
**Subject:** LGA AirTrain Consultant Selection: Interview Questions

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Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

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**THE PORT AUTHORITY OF NY & NJ**

**P.A. AGREEMENT # \*\*\*-18-\*\*\***

DATE

Lillian D. Valenti  
*Chief Procurement Officer*

FIRM

ADDRESS

CITY, ST ZIP

Attention: CONTACT, TITLE

**SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL  
REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (“LGA”)  
ACCESS IMPROVEMENT PROJECT**

Dear CONTACT:

1. The Port Authority of New York and New Jersey (the "Authority") hereby offers to retain FIRM NAME (the "Consultant" or "you") to provide expert professional services as more fully set forth herein and in Attachment A, which is attached hereto and made a part hereof. Attachment A may be updated and modified throughout the performance of the Agreement, as agreed upon, in writing, by both parties.

This Agreement shall be signed by you and by the Authority's Chief Procurement Officer. As used herein and hereafter, the "Director" means the Director of the Aviation Department of the Authority, or his/her duly authorized representatives.

For the purpose of administering this Agreement, the Director has designated DAR NAME, , to act as his duly authorized representative. The Project Manager for this project is NAME, tel. (\*\*\*)\*\*\_\*\_\*\*\*\*, or e-mail address: [REDACTED]

2. Your services shall be performed as expeditiously as possible. Time is of the essence in the performance of all your services under this Agreement.

3. The Authority has agreed to retain you to perform consulting services for the Federal Aviation Administration ("FAA") pursuant to the terms of the Memorandum of Understanding between the Authority and the FAA a copy of which is attached hereto ("FAA MOU") and you shall take direction from, and be responsible to, the FAA, as Lead Agency, acting on behalf of the FAA in connection with the preparation of an Environmental Impact Statement ("EIS") associated with the proposed LaGuardia Airport Access Improvement Project being undertaken by the Authority. To the extent of any conflict between the terms of this Agreement and the terms of the FAA MOU, the FAA MOU shall prevail.

4. In accordance with Attachment A, the Consultant shall submit, on behalf of itself and its approved subconsultants, any and all work performed in preparation of the EIS directly to the

4 World Trade Center  
150 Greenwich Street, 21<sup>st</sup> Floor  
New York, NY 10007

THE PORT AUTHORITY OF NY & NJ

FIRM NAME

- PAGE 2 -

DATE

FAA. The Consultant shall maintain a segregated copy of each record/document relating to the Project that is used by the FAA in its decision making process.

5. The Consultant shall submit bi-weekly written reports on the progress of its work to the FAA, with a concurrent copy to the Authority, unless otherwise directed by the FAA. At a minimum on a bi-weekly basis, joint meetings among the FAA, the Authority and the Consultant shall be held to facilitate the development and preparation of the EIS, in accordance with Attachment A. The Consultant and the Authority shall not meet absent FAA, without prior notification and approval of the FAA. The Consultant and any approved subconsultants shall provide the FAA with full cooperation in coordinating any public workshops, hearings, or meetings as required and directed by the FAA in connection with the Project.

Commented [PLE(1)]: The language regarding frequency of status calls should mirror Sec. III H of the MOU

6. Consultant, and any approved subconsultants, shall provide verification to the FAA that they have no financial interest in the outcome of the action the EIS will address, consistent with FAA Order 5050.4B, Paragraph 1003(d).

7. The Consultant shall be responsible for the costs associated with printing and publication of the draft and final copies of the EIS, as well as the publication of FAA-approved notices, stenographic and clerical services, preparation of graphics and visual aids associated with any public workshops, meetings and hearings, provided, however, such costs may be included on invoices to be paid by the Authority.

8. Consultant shall provide an estimated cost and staffing analysis for the performance of tasks set forth in Attachment A and shall promptly provide notice to the Authority if the cost and scope of the services to be provided hereunder materially changes. Although the Authority has agreed with the FAA that it will pay Consultant's fees and expenses, Consultant agrees that the fees submitted to the Authority will be reasonably related to the work performed and generally comparable to fees charged by prudent industry consultants performing like services. The expenses to be charged by Consultant will comply with FAA policy for consultant expenses (a copy of which is attached as Exhibit \_\_\_ ) and Section XX hereof.

Commented [TAP(2)]: Notice to PANYNJ and FAA?

Commented [PLE(3)]: John Doyle: What is this policy being referenced?

9. Consultant shall submit its invoices for fees and expenses on a monthly basis and the Authority will have the reasonable ability to review the fees and expenses and confirm that the work generally comports with the scope identified in Section 4. The Authority shall not pay any invoice submitted unless it is confirmed for payment by a designated person at the FAA, such confirmation to be conveyed to Matthew DiScenna, Senior Program Manager, LaGuardia AirTrain, by electronic mail at [REDACTED] with a copy to Elizabeth Rogak of Port Authority Law Department at [REDACTED]. No approval or disapproval, or omission to approve or disapprove, however, shall relieve the Consultant of its responsibility under this Agreement to furnish the requested services as and when designated by the FAA and in accordance with professional standards.

Commented [PLE(4)]: John Doyle: Delete "confirmed for payment" Revise to: "confirmed by a designated person at the FAA, as described in Paragraph C 2 of the MOU"

10. A. For the initial tasks to be performed under this Agreement, in accordance with Attachment A (namely, development of the Plan of Study and certain pre-Notice of Intent support activities), you shall not continue to render services after the point at which the total amount to be paid to you hereunder, including reimbursable expenses, for those tasks reaches the amount of

THE PORT AUTHORITY OF NY & NJ

FIRM NAME

- PAGE 3 -

DATE

\$\*\*\*,\*\*\*.00 (\*\*\*\*\*  
continue by the Director.

Commented [TAP(5)]: Please clarify how this amount will be set

B. For the balance of the work to be performed under this Agreement, you shall not continue to render services after the point at which the total amount to be paid to you hereunder, including reimbursable expenses, reaches the amount agreed upon between the Authority, the FAA and the Consultant for the performance of the balance of the services, following acceptance of the Plan of Study, unless you are specifically authorized in writing to so continue by the Director. If no such authorization is issued, this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed. It is understood, however, that this limitation shall not be construed to entitle you to the above amount as a minimum compensation.

Commented [PLE(6)]: John Doyle: Please omit the FAA from this paragraph The FAA does not "agree" to compensation amounts

C. If any amendments to the Scope of Work (Plan of Study) require the expenditure of additional funds by the Authority, the Contractor shall notify FAA of such additional costs, with sufficient time to accommodate funding authorization and allocation and the capped amount in this Section 10 shall be deemed increased by that amount.

Commented [PLE(7)]: Consultant?

11. As full compensation for all your services and obligations in connection with this Agreement, (assuming approval by the FAA that work product or materials set forth in a submitted invoice have been performed or provided by the Consultant (and/or approved subconsultants), the Authority will pay you the total of the amounts computed under subparagraphs A, B, C, and D below, subject to the limits on compensation and provisions set forth above. Subject to the terms and conditions below, travel time is not reimbursable under subparagraphs A, and B hereunder.

Commented [PLE(8)]: John Doyle: There is no close parentheses

Commented [PLE(9)]: John Doyle: Change to "confirmation"

A. An amount equal to the actual hourly billing rate billed by you for professional and technical personnel multiplied by the total number of hours actually spent by said personnel in the performance of services hereunder. No hour of services by an employee shall be compensable hereunder unless the employee is actually paid for such services at his usual salary rate. The hourly billing rate for each employee is the amount to be paid to you and is full compensation for all benefits, taxes, etc., paid by you. There shall be no change in the billing rates during the first year of the term of this Agreement and no additional compensation for overtime, weekend, or holiday work. Attached hereto is a schedule of names, titles, and corresponding hourly billing rates. Said schedule shall clearly indicate any of your employees proposed by you to perform the requested services that are former Authority employees. For compensation purposes under this Agreement, no said salary or amount shall exceed the salary or amount received by said personnel or rate customarily billed for a partner or principal as of the effective date of this Agreement unless the Director has been notified in advance, in writing, of the increased salary, rate or amount and approves the increase.

The Consultant shall verify that its employees, subconsultants, or subcontractors working under this Agreement are legally present and authorized to work in the United States, as per the federally required I-9 Program. Furthermore, upon request of the Authority, the Consultant shall furnish, or provide the Authority access to federal Form I-9 (Employment Eligibility Verification) for each individual hired by the Consultant, performing services hereunder. This includes citizens and noncitizens.

THE PORT AUTHORITY OF NY & NJ

FIRM NAME

- PAGE 4 -

DATE

The Authority and the FAA will have the right of approval of all changes in personnel and increases in billing rates of personnel performing services under this Agreement. When requesting salary or billing rate adjustments for one or more of its personnel, the Consultant shall submit to the FAA, with a copy to the Authority, his/her name, title, current direct hourly rate or billing rate, proposed new direct hourly salary or billing rate, resulting percentage increase, effective date and reason for the requested change, setting forth in detail any increased cost to the Consultant of providing the services under this Agreement which has given rise to the request for increased salary. For adjustments submitted after the effective date of this Agreement, the Authority and the FAA will grant an increase only if the Consultant demonstrates compliance with all of the following conditions: that increases in salary, or partner's or principal's billing rate or amount, are in a) accordance with the program of periodic merit and cost of living increases normally administered by it, b) are warranted by increased costs of providing services under this Agreement, c) are based upon increases in salaries and billing rates which are generally applicable to all of Consultant's clients and d) are in accordance with the Authority's salary rate increase policy for the current year for Authority employees possessing comparable skills and experience.

Commented [PLE(10)]: John Doyle: the FAA does not approve compensation amounts

Notwithstanding the above, the multiplier set forth in the first line of this subparagraph shall be applied only in the case of personnel other than partners or principals who are permanent employees.

Commented [PLE(11)]: John Doyle: same comment as above

B. Amounts actually paid to subconsultants hereunder who have been retained after the written approval by the FAA and the Authority of the subconsultant and the compensation to be paid the subconsultant. The Consultant shall submit a copy of the terms and conditions of the subconsultant's compensation (including multiplier, if applicable), as well as an estimate of the number of hours required by the subconsultant to perform his services, as part of any request for approval of the subconsultant.

C. Out-of-pocket expenses, approved in advance by the FAA and the Authority, necessarily and reasonably incurred and actually paid by you in the performance of your services hereunder. Out-of-pocket expenses are expenses that are unique to the performance of your services under this Agreement and generally contemplate the purchase of outside ancillary services, except that for the purpose of this Agreement, out-of-pocket expenses do include amounts for long distance telephone calls, rentals of equipment, travel and local transportation and meals and lodging on overnight trips.

Commented [PLE(12)]: John Doyle: FAA does not approve these expenses

Notwithstanding the above, the Authority will pay an amount computed as follows for the reproduction of submittal drawings, specifications and reports:

1) If the Consultant uses its own facilities to reproduce such documents, an amount computed in accordance with the billing rates the Consultant customarily charges for reproduction of such documents under agreements such as this, or

2) If the Consultant uses an outside vendor for the reproduction of such documents, the actual, necessary and reasonable amounts for the reproduction of such documents.

The Authority will not pay for expenses that are usually and customarily included as part of the Consultant's overhead. For the purposes of this Agreement out-of-pocket expenses do not include amounts for typing, utilization of computer systems, computer aided design and drafting (CADD), cameras, recording or measuring devices, flashlights and other small, portable equipment, safety

FIRM NAME

- PAGE 5 -

DATE

supplies, phones, telephone calls, electronic messaging including Fax, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.

When the Consultant uses its personal vehicle to provide services within the Port District, the Consultant will be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage Reimbursement Rate (as determined by the United States General Services Administration (GSA) – <http://www.gsa.gov/portal/content/100715>) per mile traveled by auto.

When the Consultant is asked to provide services outside the Port District, the actual cost of transportation as well as the cost for hotel accommodations and meals will be reimbursable hereunder when approved in advanced in writing by the Director. The cost for all meals and lodging on approved overnight trips is limited to the amounts established by the United States GSA for that locality.

GSA Domestic Rates: <http://www.gsa.gov/portal/category/21287>

You shall obtain the Director's written approval prior to making expenditures for out-of-pocket expenses in excess of one thousand dollars (\$1,000) per specific expenditure and for all overnight trips, which are reimbursable expenditures as set forth above. You shall substantiate all billings for out-of-pocket expenses in excess of twenty-five dollars (\$25) with receipted bills and shall provide said receipts with the appropriate billing.

D. As used herein:

"Port District" is a geographical area of about 1,500 square miles in the States of New York and New Jersey, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey and over 200 other municipalities, including all or part of seventeen counties, in the two States.

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

12. You shall keep, and shall cause any subconsultants under this Agreement to keep, daily records of the time spent in the performance of services hereunder by all persons whose salaries or amounts paid thereto will be the basis for compensation under this Agreement as well as records of the amounts of such salaries and amounts actually paid for the performance of such services and records and receipts of reimbursable expenditures hereunder and, notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services or expenses as are otherwise compensable hereunder. The Authority will have the right to audit all such records.

FIRM NAME

- PAGE 6 -

DATE

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

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

Should this Agreement be terminated in accordance with this Section 13, the Consultant shall, and shall cause its subconsultants to, upon request from the FAA, provide all documentation, reports, analyses and data to the FAA.

14. Aside from the FAA and as directed by the FAA in accordance with the FAA MOU, under no circumstances shall you or your subconsultants communicate in any way with any contractor, department, board, agency, commission or other organization or any person, whether governmental or private in connection with the services to be performed hereunder.

15. No certificate, payment (final or otherwise), acceptance of any work nor any other act or omission of the Authority or the Director or the FAA shall operate to release you from any obligations under or upon this Agreement, or to estop the Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Authority from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact or to prevent the recovery of any damages sustained by the Authority; provided, however, that the FAA shall have the sole right to determine whether the services hereunder have been performed in accordance with the scope described in **Section XX** and whether the services hereunder have been performed with requisite due care and professional responsibility.

16. The Authority and Consultant acknowledge that the FAA shall own title to and all intellectual property rights in and to all documents, reports, specifications, designs, developments, computations and other materials prepared, obtained or delivered under the terms of this Agreement (collectively, the "Deliverables"). The Authority acknowledges that the FAA may use, transfer, copy and distribute the Deliverables without restriction or limitation.

17. This Agreement being based upon your special qualifications for the services herein contemplated, any assignment, subletting or other transfer of this Agreement or any part hereof or of any moneys due or to become due hereunder without the express consent in writing of the Authority (and the FAA) shall be void and of no effect, provided, however, that you may sublet



services to subconsultants with the express consent in writing of the Director and the FAA. All persons to whom you sublet services, however, shall be deemed to be your agents and no subletting or approval thereof shall be deemed to release you from your obligations under this Agreement, to impose any obligation on the Authority or the FAA to such subconsultant or give the subconsultant any rights against the Authority or the FAA.

18. The Authority has a long standing practice of encouraging Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) to seek business opportunities with it, either directly or as subconsultants or subcontractors. "Minority business enterprise" or "MBE" means a business entity which is at least fifty-one percent (51%) owned by one (1) or more members of one (1) or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more members of one (1) or more minority groups; and whose management and daily business operations are controlled by one (1) or more such individuals who are citizens or permanent resident aliens. "Women-owned business enterprise" or "WBE" means a business which is at least fifty-one percent (51%) owned by one (1) or more women; or, in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned by one (1) or more women; and whose management and daily business operations are controlled by one (1) or more women who are citizens or permanent resident aliens.

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

- A. Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- B. Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
- C. Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;
- D. American Indian or Alaskan Native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

For this Agreement, the Director has set a targeted goal of twenty percent (20%) of the total Agreement price for qualified and certified MBEs and ten (10%) percent of the total Agreement price for qualified and certified WBEs.

To be "certified" a firm must be certified by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

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

Good faith efforts to include and facilitate participation by MBE/WBEs shall include, but not be limited to the following:

- A. Dividing the services and materials to be procured into smaller portions, where feasible.
- B. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBE/WBEs as may be appropriate.

C. Soliciting services and materials from Port Authority certified MBE/WBE firms.

D. Ensuring that provision is made to provide progress payments to MBE/WBEs in accordance with prompt payment provisions of the Agreement under which services are being provided, if applicable.

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

The Authority has a list of certified MBE/WBE service firms which is available to you at <http://www.panynj.gov/business-opportunities/supplier-diversity.html>. The Consultant will be required to submit to the Authority's OBDCR for certification the names of MBE/WBE firms it proposes to use who are not on the list of certified MBE/WBE firms.

The Consultant must submit an MBE/WBE Participation Plan for each MBE/WBE subconsultant. Each Participation Plan shall contain, at a minimum, the following:

- Identification of the MBE/WBE: Provide the name and address of the MBE/WBE. If no MBE/WBEs are identified, describe the process for selecting participant firms in order to achieve the good-faith goals under this Agreement.
- Level of Participation: Indicate the dollar value and percentage of MBE/WBE participation expected to be achieved.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

The MBE/WBE subconsultant listed on each of the MBE/WBE Participation Plans must be certified by the Authority in order for the Consultant to receive credit toward the MBE/WBE goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/sd-mwsdbe-profile.html> to search for MBE/WBEs by a particular commodity or service. The Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to any of the MBE/WBE Participation Plans must be submitted via a Modified MBE/WBE Participation Plan to the Project Manager for review and approval by OBDCR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use Form PA3760D. The Consultant shall not make changes to any of its approved MBE/WBE Participation Plans or substitute MBE/WBE subconsultants or suppliers for those named in their approved plans without the Manager's prior written approval. Unauthorized changes or substitutions, including performing the work designated for a subconsultant with the Consultant's own forces, shall be a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored throughout the duration of the Agreement.

The Consultant shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subconsultant and supplier actually involved in the Agreement, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the

date and amount of each expenditure, and such other information that may assist the Project Manager in determining the Consultant's compliance with the foregoing provisions.

**MBE/WBE Conditions of Participation**

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

1. Commercially Useful Function: An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Consultant and the MBE/WBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as an MBE/WBE, the Consultant shall receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

2. Work Force: The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Contractor, other Subcontractors on the contract, or their Affiliates. This does not preclude the employment by the MBE/WBE of an individual that has been previously employed by another firm involved in the Contract, provided that the individual was independently recruited by the MBE/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.

Commented [PLE(13): Consultant?

3. Supervision: All Work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Consultant, other subconsultants on the agreement, or their Affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the Work.

**Counting MBE/WBE Participation**

The value of the Work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. Subconsultants: One hundred percent (100%) of the value of the Work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such Work

includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Consultant, other subconsultants or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE subconsultant is itself an MBE/WBE. Work that an MBE/WBE subconsultants to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. Material Suppliers: Sixty percent (60%) of the expenditure to an MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. Broker's/Manufacturer's Representatives: One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves will not be counted.

4. Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces. Contact OBDCR at [REDACTED] for more information about requirements for such joint ventures.

19. The Consultant shall take all necessary and reasonable steps to ensure non-discrimination in the performance and administration of all aspects of this Agreement.

A. The Consultant agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Consultant from the solicitation period through the completion of the agreement. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

B. During the performance of this agreement, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

**THE PORT AUTHORITY OF NY & NJ**

FIRM NAME

- PAGE 11 -

DATE

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Authority will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration

Commented [PLE14]: Consultant? Same question regarding other uses of "contractor" elsewhere on this page

may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Commented [PLE(15)]: Should this say FAA?

C. Title VI List of Pertinent Nondiscrimination Authorities:

During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation- Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49

U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

20. The Authority has the responsibility of ensuring safe, reliable and secure transportation facilities, systems and projects to maintain the well-being and economic competitiveness of the region. Therefore, the Authority reserves the right to deny access to specific documents designed by it as “Critical Infrastructure Information”, unless, after consultation with the FAA, such information is deemed necessary for full and complete performance of the services hereunder. The Authority reserves the right to impose multiple layers of security requirements on the Consultant, its staff and subconsultants and their staffs, depending upon the level of security required, or make any amendments with respect to such requirements as determined by the Authority.

These security requirements may include but are not limited to the following:

- Execution of Non-Disclosure and Confidentiality Agreements and Acknowledgments  
At the direction of the Authority, the Consultant shall be required to have its principals, staff and/or subconsultant(s) and their staff, execute Authority approved non-disclosure and confidentiality agreements.
- Consultant/Subconsultant identity checks and background screening  
The Authority’s designated background screening provider may require inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff’s name and residence; screening of federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; access identification, to include some form of biometric security methodology such as fingerprint, facial or iris scanning.  
The Consultant may be required to have its staff, and any subconsultant’s staff, material-men, visitors or others over whom the Consultant/subconsultant has control, authorize the Authority or its designee to perform background checks, and a personal identity verification check. Such authorization shall be in a form acceptable to the Authority. The Consultant and subconsultants

may also be required to use an organization designated by the Authority to perform the background checks.

Background screening is required when a person has an established need to know or has access to any one of the following types of information or physical locations:

- 1) Confidential Privileged Information
- 2) Confidential Information related to a security project and/or task
- 3) Secure Area of an Authority facility
- 4) Mission critical system

The Consultant shall perform background checks through the Authority's personnel assurance program provider. The Secure Worker Access Consortium (S.W.A.C.) is the only Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as Security Identification Display Area (SIDA), the federal regulatory requirements for personnel performing Work at aviation facilities.). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers is located at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at [REDACTED] for more information and the latest pricing. The cost for said background checks for staff that pass and are granted a credential may be reimbursable to the Consultant (and its subconsultants) as an out-of-pocket expense as provided herein. Costs for background checks for staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

No person shall be permitted on or about the Authority construction sites or facilities (including rental spaces) without a facility-specific photo identification credential approved by the Authority. If the Authority requires facility-specific identification credentials for the Consultant and the subconsultant's staff, the Authority will supply such identification at no cost to the Consultant or its subconsultants. Such facility-specific identification credential shall remain the property of the Authority and shall be returned to the Authority at the completion or upon request prior to completion of the individual's assignment at the specific facility. It is the responsibility of the appropriate Consultant or subconsultant to immediately report to the Authority the loss of any staff member's individual facility-specific identification credential. The Consultant or subconsultant will be billed for the cost of the replacement identification credential. Consultant's and subconsultant's staff shall display Identification badges in a conspicuous and clearly visible manner, when entering, working or leaving an Authority construction site or facility.

Employees may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, unlaminated social security card for identity and SSN verification.

Where applicable, for sensitive security construction sites or facilities, successful completion of the application, screening and identity verification for all employees of the Consultant and



subconsultant shall be completed prior to being provided a Photo Identification credential by the personnel assurance program provider.

If any questions should arise as to when a Personnel Assurance Program background check is required, the Port Authority Manager or contract administrator should be contacted for assistance.

- Designated Secure Areas

Services under the Agreement may be required in designated secure areas, as the same may be designated by the Authority (“Secure Areas”). The Authority will require the observance of certain security procedures with respect to Secure Areas, which may include the escort to, at, and/or from said high security areas by security personnel. All personnel that require access to designated Secure Areas who are not under escort by an authorized individual will be required to undergo background screening and personal identity verification.

Forty-eight (48) hours prior to the proposed performance of any work in a Secure Area, the Consultant shall notify the Director. The Consultant shall conform to procedures as may be established by the Director from time to time and at any time for access to Secure Areas and the escorting of personnel hereunder. Prior to the start of any work, the Consultant shall request a description from the Project Manager of the Secure Areas that will be in effect on the commencement date(s) of the request services. The description of Secure Areas may be changed from time to time and at any time by the Project Manager during the term of the Agreement.

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained contractor security guards. However, this provision shall not relieve the Consultant of its responsibility to secure its equipment and work and that of its subconsultant/subcontractor’s and service suppliers at the Authority sites or facilities (including rental spaces). In addition, the Consultant, subconsultant, subcontractor or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video recordings or to make sketches on any other medium at any Authority sites or facilities (including any rental spaces), except when necessary to perform the Work under this Agreement, without prior written permission from the Authority, which shall not be unreasonably withheld in light of the services to be undertaken hereunder. Upon request, any photograph, digital image, video recording or sketch made of any Authority sites or facility shall be submitted to the Authority to determine compliance with this paragraph, which submission shall be conclusive and binding on the submitting entity.

- Compliance with the Port Authority Information Security Handbook

This Agreement may require access to Authority information considered Protected Information (“PI”) as defined in the Port Authority Information Security Handbook (“Handbook”), dated October, 2008, revised as of April 2, 2018, and as may be further amended. The Handbook and its requirements are hereby incorporated into this Agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or

solicitation it becomes necessary for the Consultant to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Authority or when released by the Authority to outside entities. The Handbook can be obtained at: <http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf>.

- Audits for Compliance with Security Requirements

The Authority may conduct random or scheduled examinations of business practices under this section in order to assess the extent of compliance with security requirements, PI procedures, protocols and practices, which may include, but not be limited to, verification of background check status, confirmation of completion of specified training, and/or a site visit to view material storage locations and protocols.

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

B. Protected Information shall mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, revised as of April 2, 2018)*, Confidential Information, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

C. The Consultant shall hold all such Protected Information in trust and confidence for the Authority, and agrees that the Consultant and the personnel provided by the Consultant hereunder shall not, during or after the termination or expiration of this Agreement, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under or in connection with the supplying of services contemplated by this Agreement; provided, however, the Consultant may provide information to the FAA to be held in confidence to the same extent as set forth in the FAA MOU. The Consultant and the personnel provided by the Consultant hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Agreement. The Consultant and the personnel provided by the Consultant hereunder shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder. The

THE PORT AUTHORITY OF NY & NJ

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- PAGE 17 -

DATE

Consultant shall promptly and fully inform the Director in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Consultant has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Agreement or coming to the Consultant's attention in connection with this Agreement.

D. Unless otherwise directed by the FAA, consistent with the FAA MOU, the Consultant shall not issue nor permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority or to the fact that goods have been, are being or will be provided to it and/or that services have been, are being or will be performed for it in connection with this Agreement, unless the Consultant first obtains the written approval of the Authority.

22. The Consultant assumes the following distinct and several risks to the extent they may arise from the negligent or willful intentional acts or omissions of the Consultant or its subconsultants/subcontractors in the performance of services hereunder (to the extent required by the FAA, the Consultant and any subconsultant will enter into a separate agreement with the FAA of similar import; if ~~not~~ such agreement is entered into, the FAA will be entitled to enforce this Section 22 against the Consultant and its subconsultants for its own damages or losses mutatis mutandis):

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A. The risk of loss or damage to Authority property arising out of or in connection with the performance of services hereunder;

B. The risk or loss or damage to any property of the Consultant or its subconsultants/subcontractors arising out of or in connection with the performance of services hereunder;

C. The risk of claims, arising out of or in connection with the performance of services hereunder, whether made against the Consultant or its subconsultants/subcontractors or against the Authority, for loss or damage to any property of the Consultant's agents, employees, subcontractors, subconsultants, materialmen or others performing services hereunder;

D. The risk of claims, just or unjust, by third persons made against the Consultant or its subconsultants/subcontractors or the Authority on account of injuries (including wrongful death), loss or damage of any kind whatsoever arising in connection with the performance of services hereunder, including claims against the Consultant or its subconsultants/subcontractors or against the Authority for the payment of workers' compensation, whether such claims are made and whether such injuries, damage or loss are sustained at any time both before and after the completion of services hereunder.

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

Consultant shall cooperate in the defense of any third party suit against the FAA that relates to ~~third party suits against the FAA related to~~ this Agreement.

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

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

Except with respect to the FAA as specified herein, no third party rights are created by the Agreement, except to the extent that the Agreement specifically provides otherwise by use of the words "benefit" or "direct right of action".

Inasmuch as the Authority has agreed to indemnify the Cities of New York and Newark against claims of the types described in subparagraph D above made against said cities, the Consultant's obligation under subparagraph D above shall include claims by said cities against the Authority for such indemnification.

23. Pursuant to the Code of Ethics for Port Authority Vendors ("Code"), Consultants must execute a Compliance Certification, and provide it to the Authority, prior to beginning Work under this Agreement. This Compliance Certification, once executed, is a material and integral part of the Agreement. A copy of the Compliance Certification must be retained by the Consultant, unless and until the Authority indicates that the Certifications may be disposed of. Violations of the law or of the Code may subject a Vendor or a Vendor's Employees to civil or criminal penalties. In addition, in the case of violation of any provision of the law or the Code, following consultation with the FAA, the Authority may pursue any available remedy, including, but not limited to, determining that a Vendor is in material breach of its contract and/or that, in the future, the Authority will have no further commercial dealings with the Consultant; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein. The Code and the Compliance Certification (PA Form 4254) can be found at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

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

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

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

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

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

- A. the prices in its proposal have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other consultant or with any competitor;
- B. the prices quoted in its proposal have not been and will not be knowingly disclosed directly or indirectly by the Consultant prior to the official opening of such proposal to any other consultant or to any competitor;

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

D. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated March 11, 2014, or as may be revised, (a copy of which is available upon request), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;

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

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

G. no person or organization has been retained, employed or designated on behalf of the Consultant to impact any Authority determination with respect to (i) the solicitation, evaluation or award of this Agreement; or (ii) the preparation of specifications or request for submissions in connection with this Agreement.

The certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information" shall be deemed to be made by the Consultant as follows:

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

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

Moreover, the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information", if made by a corporate Consultant, shall be deemed to have been authorized by the Board of Directors of the Consultant, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Consultant cannot make the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction,

Debarment Suspension, Disqualification and Disclosure of Other Information”, the Consultant shall so state and shall furnish with the signed proposal a signed statement which sets forth in detail the reasons therefor. If the Consultant is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph “25G.”, if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a “financial interest” in this Agreement, as described in the Procurement Disclosure Policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Authority). Such disclosure is to be updated, as necessary. As a result of such disclosure, the Authority shall take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Consultant may be able to make the certifications in this Section and the Section entitled “Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information” at the time the proposal is submitted, the Consultant shall immediately notify the Authority and the FAA in writing during the period of irrevocability of proposals and the term of the Agreement or any extension of such period, if Consultant is awarded the Agreement, of any change of circumstances which might under this clause make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Consultant with full knowledge that they would become a part of the records of the Authority and that the Authority and the FAA will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Consultant has falsely certified as to any material item in the foregoing certifications, has failed to immediately notify the Authority and the FAA of any change in circumstances which might make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure, or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine, after consultation with the FAA, that the Consultant is not a responsible Consultant with respect to its proposal on the Agreement or with respect to future proposals on Authority agreements and may exercise such other remedies as are provided to it by the Agreement with respect to these matters. In addition, Consultant is advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see, e.g., New York Penal Law, Section 175.30 et seq.). Consultants are also advised that the inability to make such certification will not in and of itself disqualify the Consultant and that in each instance the Authority will evaluate the reasons therefor provided by the Consultant.

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

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

Consultants are advised that the Authority has adopted a policy to the effect that in awarding its agreements it will honor any determination by an agency of the State of New York or of the State of New Jersey that a Consultant is not eligible to propose on or be awarded public agreements because the Consultant has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein.

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

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

**27. CONSULTANT RESPONSIBILITY, SUSPENSION OF WORK AND TERMINATION**

The Consultant agrees, if requested by the Authority, to present evidence of its continuing legal authority to do business in the States of New Jersey or New York, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Authority, after consultation with the FAA, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant must comply with the terms of the suspension order. Agreement activity may resume at such time as the Authority issues a written notice authorizing a resumption of performance under the Agreement.



Upon written notice to the Consultant, and an opportunity to be heard with appropriate Authority officials or staff, the Agreement may be terminated by the Authority at the Consultant's expense when the Consultant is determined by the Authority to be non-responsible. In such event, the Authority or its designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach, including recovery of costs from Consultant associated with such termination; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein.

#### 28. NO GIFTS, GRATUITIES, OFFERS OF EMPLOYMENT, ETC.

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

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Agreement or any other Authority agreement), etc., which might tend to obligate the Authority employee to the Consultant and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Agreement or any other Authority agreement. Where used herein, the term "Port Authority" or "Authority" shall be deemed to include all subsidiaries of the Authority.

The Consultant shall ensure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it or by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

#### 29. OBLIGATION TO REPORT

In the event that the Consultant becomes aware of the occurrence of any conduct that is prohibited by this section entitled "No Gifts, Gratuities, Offers of Employment, Etc.", or if the Consultant knows or should reasonably know that a principal, employee, or agent of the Consultant or of its subconsultants or subcontractors has committed a violation of federal, New York or New Jersey law addressing or governing anti-trust, public contracting, false claims, fraud, extortion, bribery, bid rigging, embezzlement, prevailing wage or minority, woman, small or disadvantaged business enterprises, it shall report such information to the Authority's Office of Inspector General within three (3) business days of obtaining such knowledge. (See "<http://www.panynj.gov/inspector-general>" for information about how to report information to the Office of Inspector General).

Failing to report such conduct may be grounds for finding of non-responsibility. The Consultant shall not take any Retaliatory Action against any of its employees for reporting such conduct.

In addition, during the term of this Agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated March 11, 2014, or as may be revised, (a copy of which is available upon request to the Office of the Secretary of the Authority).

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

### 30. CONFLICT OF INTEREST

During the term of this Agreement, the Consultant shall be in compliance with the rules and regulations promulgated by the FAA and found at 40 C.F.R. Part 1506.5(c). The FAA will administer its policy with respect to the Consultant and the services provided herein.

Notwithstanding anything to the contrary contained herein, the Consultant, and any approved subconsultants, shall be precluded from bidding on any future actions the EIS addresses until the approving FAA official issues a Record of Decision (ROD) based on the EIS.

### 31. INTEGRITY MONITOR

In the event that the Authority hires an Integrity Monitor in connection with the Work under this Agreement, the Consultant and any subcontractors shall cooperate fully with the Monitor and the Authority, which includes, but is not limited to, providing complete access to all personnel and records in any way related to the Work performed pursuant to this Agreement. Any failure to cooperate may result in the termination of this Agreement. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

### 32. RIGHT TO AUDIT

Notwithstanding anything to the contrary, the Authority, including its Inspector General, Audit Department and Integrity Monitor, and the FAA, or its designee(s) each shall have the right to audit all of the records of the Consultant with respect to the Work and the Agreement, including, without limitation, records pertaining to any compensation paid, payable, or to be paid under the Agreement. The Consultant shall not be entitled to any reimbursement or other compensation for costs associated with such audit, investigation, or certification. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

The Consultant agrees to pay for the cost of any audit or investigation conducted by the Authority or the FAA, in which any criminal activity, ethics violations, or professional misconduct by the Consultant or any of its employees, or subcontractors or any of its employees, are discovered. The Consultant shall further agree that should it fail or refuse to pay for any such audit or investigation, the Authority is authorized to deduct from any sum owing the Consultant an amount equal to the cost of such audit and the damages resulting therefrom. The determination of the value of any such costs and decision to withhold any such payments are at the sole discretion of the Authority (including its Inspector General) or, in the case of the FAA, of its supervising personnel.

Commented [PLE(17)]: John Doyle:  
FAA's regulations are not set forth at this citation. Rather, this is a CEQ regulation that instructs EIS contractors to be chosen solely by the lead agency (the FAA). Therefore, revise "and found at" to " , consistent with 40 C.F.R. 1506.5(c) "

### 33. DEFINITIONS

As used in sections 24 to 32 above, the following terms shall mean:

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

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations, the Port Authority of New York and New Jersey and its wholly owned subsidiaries and others.

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

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

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

Retaliatory Action - Any adverse action taken by, or at the direction of, the Contractor, against any of its employees for reporting any information as set forth in the clause entitled "Obligation to Report," above.

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

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

36. References herein to the Authority shall and shall be deemed to mean equally the Port Authority Trans Hudson Corporation (PATH).

37. Nothing in this Agreement is intended to constitute the creation of an agency relationship between the Authority and the Consultant or any other right for the Consultant to act as the representative of the Authority for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Consultant, in

**THE PORT AUTHORITY OF NY & NJ**

FIRM NAME

- PAGE 26 -

DATE

performing its services hereunder, is and shall be at all times an independent contractor and the officers, agents and employees of the Consultant shall not be or be deemed to be agents, servants, or employees or "special employees" of the Authority.

38. This Agreement shall be governed by and construed in accordance with the Laws of the State of New York without regard to conflict of laws principles.

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

Sincerely,

THE PORT AUTHORITY OF  
NEW YORK AND NEW JERSEY

\_\_\_\_\_  
Lillian D. Valenti  
Chief Procurement Officer

Date \_\_\_\_\_

The execution of this Agreement by the Consultant's duly authorized representative shall serve as a certification that no alterations have been made to this Agreement, and if any changes or alterations to this Agreement have been made by the Consultant without the Authority's prior written consent, such changes shall be void, non-binding and of no effect.

ACCEPTED:

FIRM NAME

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**From:** [REDACTED]  
**To:** [Summerville, James](#); [Papasavvas, Krystina](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Herndon, Jane](#); [Lamond, Kathryn](#); [Jenet, Marie \(FAA\)](#); [REDACTED]; [Wolfers-Lawrence, Jean \(FAA\)](#);  
[REDACTED]  
**Subject:** FW: LGA AirTrain Consultant Selection: Interview Questions  
**Date:** Wednesday, November 07, 2018 2:53:22 PM  
**Attachments:** [LGA AirTrain Draft Interview Questions v3.doc](#)

---

Based on our initial review of the proposal documents, we have made a change to the suggested list of interview questions.

Please see the attached file that swaps out the short question on QA/QC for a new question on handling conflict of interest.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

---

**From:** Brooks, Andrew (FAA)  
**Sent:** Thursday, November 01, 2018 9:58 AM  
**To:** 'Summerville, James' <[REDACTED]>  
**Cc:** Papasavvas, Krystina <[REDACTED]> [REDACTED] DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane <[REDACTED]> Lamond, Kathryn <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]> Henn, Patricia (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Teodorescu, Andrew P (FAA) <[REDACTED]> Price, Laura E (FAA) <[REDACTED]>  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

James,

Please see the attached proposed incorporation of the language requested.

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office

1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

---

**From:** Summerville, James <[REDACTED]>  
**Sent:** Friday, October 26, 2018 11:23 AM  
**To:** Brooks, Andrew (FAA) <[REDACTED]>  
**Cc:** Papasavvas, Krystina <[REDACTED]> [REDACTED] DiScenna, Matthew  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane  
<[REDACTED]> Summerville, James <[REDACTED]> Lamond, Kathryn  
<[REDACTED]> Jenet, Marie (FAA) <[REDACTED]> Martinez, Evelyn (FAA)  
<[REDACTED]> Sanchez, David (FAA) <[REDACTED]> Doyle, John (FAA)  
<[REDACTED]> Henn, Patricia (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA)  
<[REDACTED]> Teodorescu, Andrew P (FAA) <[REDACTED]>  
Price, Laura E (FAA) <[REDACTED]>  
**Subject:** FW: LGA AirTrain Consultant Selection: Interview Questions

Andrew,

This email responds to the interview questions (emailed on 10/17) and the draft letters provided in your recent email dated 10/24. Please review our observations and provide feedback as soon as possible.

Thanks, James, [REDACTED]

**Interview Questions:**

See the comment and proposed additional language to the Long Question on page 2  
There's a pattern to the Long and accompanying Short Questions until the last Long Question, which doesn't have an accompanying Short Question. Is that purposeful?

**Interview Invitation Letter:** The attachment includes some proposed edits and corresponding comments. In addition, one question: The letter conveys that, with respect to the interview, the PA's role is observatory. However, in a recent teleconference, I recall that the FAA expects the PA to participate (in some capacity) in scoring (or, really, pre-scoring). In other words, I recall that, after each interview, the FAA will solicit our feedback (orally and via unofficial scoring). Is that correct? Please clarify the FAA's expectations of the PA throughout the interview process.

**Decline letter:** Typically the PA does not issue "status" letters to any proposer until after authorization and execution of a contract resulting from an RFP. We'd prefer not to introduce a precedent here. Besides, Addendum 2 to the RFP, shared with the FAA on 10/12, conveyed expectations concerning the interviews; see the second attachment below. Via that Addendum, Proposers should realize that if they don't receive a formal invitation for an interview on or close to 11/8, we are not intending to interview them. Therefore, we feel that a formal non-selection letter (during the ongoing evaluation process) is unnecessary and we'd prefer not to introduce a precedent



Good afternoon,

Thank you for your proposed Interview Questions for the Consultant Selection Process. As mentioned this morning on our call, we will discuss internally and get back to you.

For your review, I have attached the draft Agreement. Please review and provide any commentary. Also, please provide a list of the pre-NOI support tasks that would be incorporated into the budget for Paragraph 10A of the attached Agreement.

Thank you.

**Krystina Papasavvas**  
Integrity, Compliance and Contract Review  
Port Authority of New York and New Jersey Procurement Department  
4 World Trade Center  
150 Greenwich Street, 21st Floor  
New York, NY 10007  
T: [REDACTED]  
email: [REDACTED]

**From:** [REDACTED] [[mailto:\[REDACTED\]](mailto:[REDACTED])]  
**Sent:** Wednesday, October 17, 2018 1:11 PM  
**To:** Lamond, Kathryn <[REDACTED]> Clark, Patty <[REDACTED]> DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane <[REDACTED]> Summerville, James <[REDACTED]> Papasavvas, Krystina <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
**Subject:** LGA AirTrain Consultant Selection: Interview Questions

Good Afternoon Everyone,

Attached are the proposed Interview Questions for the Consultant Selection Process. We will be able to discuss in more depth during tomorrow's call.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434



Phone: [REDACTED]

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

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



**Long Question:**

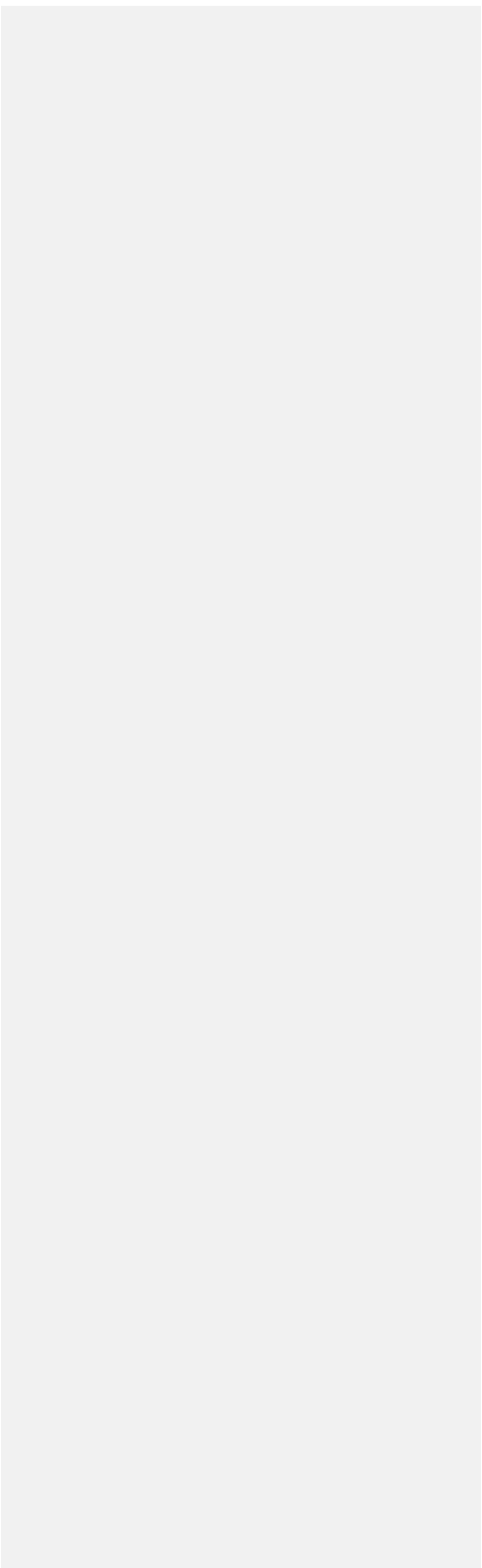
The Executive Order implementing One Federal Decision targets a two-year schedule from issuance of NOI to ROD. The Port Authority has expressed a desire to accelerate the schedule further. Describe how your team would provide a thorough analysis of the project impacts in a legally defensible manner within the desired timeframe, with specific consideration to other project commitments that your team has. Please discuss specific strategies you intend to implement.

~~Furthermore, identify other project commitments during the expected time period for the preparation of the EIS and describe how your team plans to balance those commitments and ensure completion of the EIS analysis within the desired timeframe.~~

Score: \_\_\_\_/10

Commented [SJ1]: See proposed addition to this question

<p><b>Short Question:</b>  <u>Per CEO Regs and FAA implementing orders, you and your subcontractors will have to sign a statement verifying that you have no financial or other interest in the outcome of the AirTrain EIS. What steps would you take to protect the independence and objectiveness of the EIS process if you retained a subcontractor that had previously worked with the project sponsor to formulate planning documents for the proposed project?</u>  <u>What is the name of the team member that will oversee QA/QC? What specific plan will they implement?</u></p>	<p>Score: ____/2.5</p>
<p><b>Long Question:</b>  Describe your individual and team experience on projects where the Proposed Action evolved during the course of analysis, either due to additional design being performed or alternative screening yielding unexpected results. How were changes to the Proposed Action managed in the context of the NEPA analysis to ensure compliance with the applicable laws and regulations? How did the changes affect project scope and schedule? What was the ultimate outcome?</p>	<p>Score: ____/10</p>



<p><b>Short Question:</b> If you could pick the cast of any TV Show or Movie, which would best represent your team and why?</p>	<p>Score: ____/2.5</p>
<p><b>Long Question:</b> Describe your individual and team experience working on projects involving multiple agencies that all had decisions relating to the proposed action that was under consideration. Discuss how communications and schedules were managed to ensure the various agency requirements were addressed in a timely fashion. What was the ultimate result of the project?</p>	<p>Score: ____/10</p>
<p><b>Short Question:</b> What EIS or Major EA has your team worked on are you most proud of and why?</p>	<p>Score: ____/2.5</p>

**Long Question:**

Describe your team's experience on projects that have been the subject of focus from politicians, the media, and the public. How was the outreach strategy developed to address this focus? Please discuss how support and opposition to the project were specifically considered. How was the potential for future legal challenges factored into the development of the strategy?

Score: /10

Commented [SJ2]: Apparently this is the only "Long Question" without an accompanying "Short Question" Purposeful or oversight?

Commented [BA(3R2): Purposeful

**From:** [Summerville, James](#)  
**To:** [Drew Brooks](#); [Papasavvas, Krystina](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Herndon, Jane](#); [Lamond, Kathryn](#); [Jenet, Marie \(FAA\)](#); [REDACTED]; [Wolfers-Lawrence, Jean \(FAA\)](#);  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions  
**Date:** Wednesday, November 07, 2018 2:56:53 PM

---

Thanks. Let's discuss briefly at the conclusion of tomorrow's meeting.

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Wednesday, November 07, 2018 2:50 PM  
**To:** Summerville, James <[REDACTED]> Papasavvas, Krystina  
<[REDACTED]> Clark, Patty <[REDACTED]> DiScenna, Matthew  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane  
<[REDACTED]> Lamond, Kathryn <[REDACTED]> Jenet, Marie (FAA)  
<[REDACTED]> [REDACTED] [REDACTED] [REDACTED]  
<[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]>  
[REDACTED] [REDACTED]  
**Subject:** FW: LGA AirTrain Consultant Selection: Interview Questions

Based on our initial review of the proposal documents, we have made a change to the suggested list of interview questions.

Please see the attached file that swaps out the short question on QA/QC for a new question on handling conflict of interest.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

---

**From:** Brooks, Andrew (FAA)  
**Sent:** Thursday, November 01, 2018 9:58 AM  
**To:** 'Summerville, James' <[REDACTED]>  
**Cc:** Papasavvas, Krystina <[REDACTED]> [REDACTED] DiScenna, Matthew  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane  
<[REDACTED]> Lamond, Kathryn <[REDACTED]> Jenet, Marie (FAA)  
<[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]> Sanchez, David (FAA)  
<[REDACTED]> Doyle, John (FAA) <[REDACTED]> Henn, Patricia (FAA)

<[REDACTED] Wolfers-Lawrence, Jean (FAA) <[REDACTED]  
Teodorescu, Andrew P (FAA) <[REDACTED] Price, Laura E (FAA)  
<[REDACTED]

**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

James,

Please see the attached proposed incorporation of the language requested.

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

---

**From:** Summerville, James <[REDACTED]  
**Sent:** Friday, October 26, 2018 11:23 AM  
**To:** Brooks, Andrew (FAA) <[REDACTED]  
**Cc:** Papasavvas, Krystina <[REDACTED] DiScenna, Matthew  
<[REDACTED] Cohen, Michelle <[REDACTED] Tabafunda, Faith  
<[REDACTED] Rogak, Elizabeth <[REDACTED] Herndon, Jane  
<[REDACTED] Summerville, James <[REDACTED] Lamond, Kathryn  
<[REDACTED] Jenet, Marie (FAA) <[REDACTED] Martinez, Evelyn (FAA)  
<[REDACTED] Sanchez, David (FAA) <[REDACTED] Doyle, John (FAA)  
<[REDACTED] Henn, Patricia (FAA) <[REDACTED] Wolfers-Lawrence, Jean (FAA)  
<[REDACTED] Teodorescu, Andrew P (FAA) <[REDACTED]  
Price, Laura E (FAA) <[REDACTED]  
**Subject:** FW: LGA AirTrain Consultant Selection: Interview Questions

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comments. In addition, one question: The letter conveys that, with respect to the interview, the PA's role is observatory. However, in a recent teleconference, I recall that the FAA expects the PA to participate (in some capacity) in scoring (or, really, pre-scoring). In other words, I recall that, after each interview, the FAA will solicit our feedback (orally and via unofficial scoring). Is that correct? Please clarify the FAA's expectations of the PA throughout the interview process.

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**From:** [redacted] [\[mailto:\[redacted\]\]](mailto:[redacted])  
**Sent:** Wednesday, October 24, 2018 8:20 AM  
**To:** Papasavvas, Krystina <[redacted]> Clark, Patty <[redacted]> DiScenna, Matthew <[redacted]> Cohen, Michelle <[redacted]> Tabafunda, Faith <[redacted]> Rogak, Elizabeth <[redacted]> Herndon, Jane <[redacted]> Summerville, James <[redacted]> Lamond, Kathryn <[redacted]>  
**Cc:** Jenet, Marie (FAA) <[redacted]> [redacted]  
[redacted]  
[redacted]  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Krystina,

Attached, please find two draft letters and our understanding of the pre-NOI tasks at this time. The two letters are for use following review of the proposals; one for short-listed firms and one for non-selected firms.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [redacted]

**From:** Papasavvas, Krystina <[redacted]>

**Sent:** Thursday, October 18, 2018 12:11 PM

**To:** Brooks, Andrew (FAA) <[REDACTED]> DiScenna, Matthew <[REDACTED]>  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]>  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane <[REDACTED]>  
<[REDACTED]> Summerville, James <[REDACTED]> Lamond, Kathryn <[REDACTED]>

**Cc:** Jenet, Marie (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]>  
Sanchez, David (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]> Henn, Patricia (FAA) <[REDACTED]>  
Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Teodorescu, Andrew P (FAA) <[REDACTED]> Price, Laura E (FAA) <[REDACTED]>

**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Good afternoon,

Thank you for your proposed Interview Questions for the Consultant Selection Process. As mentioned this morning on our call, we will discuss internally and get back to you.

For your review, I have attached the draft Agreement. Please review and provide any commentary. Also, please provide a list of the pre-NOI support tasks that would be incorporated into the budget for Paragraph 10A of the attached Agreement.

Thank you.

**Krystina Papasavvas**

Integrity, Compliance and Contract Review  
Port Authority of New York and New Jersey Procurement Department  
4 World Trade Center  
150 Greenwich Street, 21st Floor  
New York, NY 10007

T: [REDACTED]  
F: [REDACTED]  
email: [REDACTED]

**From:** [REDACTED] [\[mailto:\[REDACTED\]\]](mailto:[REDACTED])

**Sent:** Wednesday, October 17, 2018 1:11 PM

**To:** Lamond, Kathryn <[REDACTED]> Clark, Patty <[REDACTED]> DiScenna, Matthew <[REDACTED]>  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]>  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane <[REDACTED]>  
<[REDACTED]> Summerville, James <[REDACTED]> Papasavvas, Krystina <[REDACTED]>

**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]

**Subject:** LGA AirTrain Consultant Selection: Interview Questions

Good Afternoon Everyone,

Attached are the proposed Interview Questions for the Consultant Selection Process. We will be able to discuss in more depth during tomorrow's call.

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Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434

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**From:** [Summerville, James](#)  
**To:** [REDACTED] [Drew Brooks](#)  
**Cc:** [Jenet, Marie \(FAA\)](#); [REDACTED]; [REDACTED]; [REDACTED]; [Wolfers-Lawrence, Jean \(FAA\)](#); [Herndon, Jane](#); [Papasavvas, Krystina](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Lamond, Kathryn](#)  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions  
**Date:** Friday, November 09, 2018 9:40:10 AM  
**Attachments:** [Draft Agreement 11-9-18.docx](#)

---

Laura et al,

Thanks for your comments on the draft Agreement. The Port Authority has revised the document in response to FAA comments, reflected as track changes in the attached document.

Regarding FAA's comment to item 10A, which requests clarification on how the amount for the initial tasks is to be set, the Port Authority's NEPA Owner's Rep Consultant produced an estimate based on the list of pre-NOI tasks provided by FAA and arrived at an estimate of \$295,315. The Port Authority recommends adding \$204,685 of contingency to account for unanticipated delays in the process of developing the draft Plan of Study and to ensure that the Consultant remains funded for a total not-to-exceed amount of \$500,000. The Consultant would be required to submit to the FAA an estimate for Plan of Study development and pre-NOI activities, which would be subject to the FAA's and the PA's review and acceptance. The Consultant should not begin any such activities before receiving the FAA's written approval of such estimate. We have also added language (80% notification) to address the possibility of further unanticipated delays/issues that require a greater level of effort than \$500,000.

If you have any questions or would like to discuss further by conference call, please let us know. We'd like to distribute the draft copy of the Agreement to the selected Consultant as soon as possible after selection determination, which is anticipated on 11/14.

Thanks,

James Summerville, Sr. Projects Contracts Specialist  
Port Authority of NY & NJ  
Procurement Dept.  
[REDACTED]

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Friday, November 02, 2018 3:18 PM  
**To:** Papasavvas, Krystina <[REDACTED]> Drew Brooks <[REDACTED]>  
Clark, Patty <[REDACTED]> DiScenna, Matthew <[REDACTED]> Cohen, Michelle  
<[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Herndon, Jane <[REDACTED]> Summerville, James  
<[REDACTED]> Lamond, Kathryn <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] [REDACTED]

██████████ ██████████ Wolfers-Lawrence, Jean (FAA) ██████████ ██████████  
██████████ ██████████

**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Krystina/All:

Attached please find the FAA's comments regarding the Draft Agreement. Please let us know if you have any questions.

Best,

Laura

---

**From:** Papasavvas, Krystina <██████████>  
**Sent:** Thursday, October 18, 2018 12:11 PM  
**To:** Brooks, Andrew (FAA) <██████████> ██████████ DiScenna, Matthew  
<██████████> Cohen, Michelle <██████████> Tabafunda, Faith  
<██████████> Rogak, Elizabeth <██████████> Herndon, Jane  
<██████████> Summerville, James <██████████> Lamond, Kathryn  
<██████████>  
**Cc:** Jenet, Marie (FAA) <██████████> Martinez, Evelyn (FAA) <██████████>  
Sanchez, David (FAA) <██████████> Doyle, John (FAA) <██████████> Henn,  
Patricia (FAA) <██████████> Wolfers-Lawrence, Jean (FAA) <██████████>  
██████████ Teodorescu, Andrew P (FAA) <██████████> Price, Laura E  
(FAA) <██████████>  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Good afternoon,

Thank you for your proposed Interview Questions for the Consultant Selection Process. As mentioned this morning on our call, we will discuss internally and get back to you.

For your review, I have attached the draft Agreement. Please review and provide any commentary. Also, please provide a list of the pre-NOI support tasks that would be incorporated into the budget for Paragraph 10A of the attached Agreement.

Thank you.

**Krystina Papasavvas**  
Integrity, Compliance and Contract Review  
Port Authority of New York and New Jersey Procurement Department  
4 World Trade Center  
150 Greenwich Street, 21st Floor  
New York, NY 10007  
T: ██████████  
F: (██████████)  
email: ██████████

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**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Wednesday, October 17, 2018 1:11 PM  
**To:** Lamond, Kathryn <[REDACTED]> Clark, Patty <[REDACTED]> DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane <[REDACTED]> Summerville, James <[REDACTED]> Papasavvas, Krystina <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
**Subject:** LGA AirTrain Consultant Selection: Interview Questions

Good Afternoon Everyone,

Attached are the proposed Interview Questions for the Consultant Selection Process. We will be able to discuss in more depth during tomorrow's call.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

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

**THE PORT AUTHORITY OF NY & NJ**

**P.A. AGREEMENT # \*\*\*-18-\*\*\***

DATE

Lillian D. Valenti  
*Chief Procurement Officer*

FIRM

ADDRESS

CITY, ST ZIP

Attention: CONTACT, TITLE

**SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL  
REVIEW SERVICES FOR THE LAGUARDIA AIRPORT ("LGA")  
ACCESS IMPROVEMENT PROJECT**

Dear CONTACT:

1. The Port Authority of New York and New Jersey (the "Authority") hereby offers to retain FIRM NAME (the "Consultant" or "you") to provide expert professional services as more fully set forth herein and in Attachment A, which is attached hereto and made a part hereof. Attachment A may be updated and modified throughout the performance of the Agreement, as agreed upon, in writing, by both parties.

This Agreement shall be signed by you and by the Authority's Chief Procurement Officer. As used herein and hereafter, the "Director" means the Director of the Aviation Department of the Authority, or his/her duly authorized representatives.

For the purpose of administering this Agreement, the Director has designated DAR NAME, , to act as his duly authorized representative. The Project Manager for this project is NAME, tel. (\*\*\*)\*\*\_\*\_\*\*\*\*, or e-mail address: [REDACTED]

2. Your services shall be performed as expeditiously as possible. Time is of the essence in the performance of all your services under this Agreement.

3. The Authority has agreed to retain you to perform consulting services for the Federal Aviation Administration ("FAA") pursuant to the terms of the Memorandum of Understanding between the Authority and the FAA a copy of which is attached hereto ("FAA MOU") and you shall take direction from, and be responsible to, the FAA, as Lead Agency, acting on behalf of the FAA in connection with the preparation of an Environmental Impact Statement ("EIS") associated with the proposed LaGuardia Airport Access Improvement Project being undertaken by the Authority. To the extent of any conflict between the terms of this Agreement and the terms of the FAA MOU, the FAA MOU shall prevail.

4. In accordance with Attachment A, the Consultant shall submit, on behalf of itself and its approved subconsultants, any and all work performed in preparation of the EIS directly to the

4 World Trade Center  
150 Greenwich Street, 21<sup>st</sup> Floor  
New York, NY 10007

THE PORT AUTHORITY OF NY & NJ

FIRM NAME

- PAGE 2 -

DATE

FAA. The Consultant shall maintain a segregated copy of each record/document relating to the Project that is used by the FAA in its decision making process.

5. The Consultant shall submit bi-weekly written reports on the progress of its work to the FAA, with a concurrent copy to the Authority, unless otherwise directed by the FAA. At a minimum on a bi-weekly basis, joint meetings among the FAA, the Authority and the Consultant shall be held to facilitate the development and preparation of the EIS, in accordance with Attachment A. The Consultant and the Authority shall not meet absent FAA, without prior notification and approval of the FAA. The Consultant and any approved subconsultants shall provide the FAA with full cooperation in coordinating any public workshops, hearings, or meetings as required and directed by the FAA in connection with the Project.

Commented [PLE(1)]: The language regarding frequency of status calls should mirror Sec. III H of the MOU

Commented [RR2R1]: This is directly from the first sentence of III H; I'm not sure what else FAA would like included

6. Consultant, and any approved subconsultants, shall provide verification to the FAA that they have no financial interest in the outcome of the action the EIS will address, consistent with FAA Order 5050.4B, Paragraph 1003(d).

7. The Consultant shall be responsible for the costs associated with printing and publication of the draft and final copies of the EIS, as well as the publication of FAA-approved notices, stenographic and clerical services, preparation of graphics and visual aids associated with any public workshops, meetings and hearings, provided, however, such costs may be included on invoices to be paid by the Authority.

8. Consultant shall provide an estimated cost and staffing analysis for the performance of tasks set forth in Attachment A and shall promptly provide notice to the Authority and the FAA if the cost and scope of the services to be provided hereunder materially changes. Although the Authority has agreed with the FAA that it will pay Consultant's fees and expenses, Consultant agrees that the fees submitted to the Authority will be reasonably related to the work performed and generally comparable to fees charged by prudent industry consultants performing like services. The expenses to be charged by Consultant will comply with FAA policy for consultant expenses (a copy of which is attached as Exhibit ) and Section XXI hereof.

Commented [TAP(3)]: Notice to PANYNJ and FAA?

Commented [RR4R3]: Added FAA

9. Consultant shall submit its invoices for fees and expenses on a monthly basis and the Authority will have the reasonable ability to review the fees and expenses and confirm that the work generally comports with the scope identified in Section 4. The Authority shall not pay any invoice submitted unless it is confirmed for payment by a designated person at the FAA, as described in paragraph C.2 of the MOU, with such confirmation to be conveyed to Matthew DiScenna, Senior Program Manager, LaGuardia AirTrain, by electronic mail at [REDACTED] with a copy to Elizabeth Rogak of Port Authority Law Department at [REDACTED]. No approval or disapproval, or omission to approve or disapprove, however, shall relieve the Consultant of its responsibility under this Agreement to furnish the requested services as and when designated by the FAA and in accordance with professional standards.

Commented [PLE(5)]: John Doyle: Delete "confirmed for payment" Revise to: "confirmed by a designated person at the FAA, as described in Paragraph C 2 of the MOU"

Commented [RR6R5]: revised

10. A. For the initial tasks to be performed under this Agreement, in accordance with Attachment A (namely, development of the Plan of Study and certain pre-Notice of Intent support activities), you shall not continue to render services after the point at which the total amount to be paid to you hereunder, including reimbursable expenses and costs resulting from unanticipated



THE PORT AUTHORITY OF NY & NJ

FIRM NAME

- PAGE 3 -

DATE

delays, for those tasks reaches the amount of ~~\*\*\*\*,\*\*\*~~ \$500,000.00 (\*\*\*\*\*)(Five Hundred Thousand Dollars) unless you are specifically authorized in writing to so continue by the Director. The Consultant shall be required to submit to the FAA an estimate for these initial tasks, which would be subject to the review and acceptance of the FAA and the Authority. The Consultant shall not commence any such activities prior to receipt of written approval of such estimate from the FAA. There is no guarantee that performance of the work referenced in this paragraph shall reach this not-to-exceed amount, and this limitation shall not be construed to entitle you to the above amount as minimum compensation. The Consultant must notify the Authority upon expending 80% of authorized funds.

Commented [TAP(7)]: Please clarify how this amount will be set

Commented [CM8R7]: Please see explanation in transmittal email from the Port Authority

B. For the balance of the work to be performed under this Agreement, you shall not continue to render services after the point at which the total amount to be paid to you hereunder, including reimbursable expenses, reaches the amount agreed upon between the Authority, ~~the FAA and the~~ Consultant for the performance of the balance of the services, following acceptance of the Plan of Study, unless you are specifically authorized in writing to so continue by the Director. If no such authorization is issued, this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed. It is understood, however, that this limitation shall not be construed to entitle you to the above amount as a minimum compensation.

Commented [PLE(9)]: John Doyle: Please omit the FAA from this paragraph. The FAA does not "agree" to compensation amounts

Commented [RR10R9]: Revised

C. If any amendments to the Scope of Work (Plan of Study) require the expenditure of additional funds by the Authority, the ~~Contractor~~ Consultant shall notify FAA of such additional costs, with sufficient time to accommodate funding authorization and allocation and the capped amount in this Section 10 shall be deemed increased by that amount.

Commented [PLE(11)]: Consultant?

Commented [RR12R11]: Revised

11. As full compensation for all your services and obligations in connection with this Agreement, ~~(assuming approval~~ assuming confirmation by the FAA that work product or materials set forth in a submitted invoice have been performed or provided by the Consultant (and/or approved subconsultants)), the Authority will pay you the total of the amounts computed under subparagraphs A, B, C, and D below, subject to the limits on compensation and provisions set forth above. Subject to the terms and conditions below, travel time is not reimbursable under subparagraphs A, and B hereunder.

Commented [PLE(13)]: John Doyle: There is no close parentheses

Commented [RR14R13]: done

Commented [PLE(15)]: John Doyle: Change to "confirmation"

Commented [RR16R15]: revised

A. An amount equal to the actual hourly billing rate billed by you for professional and technical personnel multiplied by the total number of hours actually spent by said personnel in the performance of services hereunder. No hour of services by an employee shall be compensable hereunder unless the employee is actually paid for such services at his usual salary rate. The hourly billing rate for each employee is the amount to be paid to you and is full compensation for all benefits, taxes, etc., paid by you. There shall be no change in the billing rates during the first year of the term of this Agreement and no additional compensation for overtime, weekend, or holiday work. Attached hereto is a schedule of names, titles, and corresponding hourly billing rates. Said schedule shall clearly indicate any of your employees proposed by you to perform the requested services that are former Authority employees. For compensation purposes under this Agreement, no said salary or amount shall exceed the salary or amount received by said personnel or rate customarily billed for a partner or principal as of the effective date of this Agreement unless the

THE PORT AUTHORITY OF NY & NJ

FIRM NAME

- PAGE 4 -

DATE

Director has been notified in advance, in writing, of the increased salary, rate or amount and approves the increase.

The Consultant shall verify that its employees, subconsultants, or subcontractors working under this Agreement are legally present and authorized to work in the United States, as per the federally required I-9 Program. Furthermore, upon request of the Authority, the Consultant shall furnish, or provide the Authority access to federal Form I-9 (Employment Eligibility Verification) for each individual hired by the Consultant, performing services hereunder. This includes citizens and noncitizens.

The Authority ~~and the FAA~~ will have the right of approval of all changes in personnel and increases in billing rates of personnel performing services under this Agreement. When requesting salary or billing rate adjustments for one or more of its personnel, the Consultant shall submit to the FAA, with a copy to the Authority, his/her name, title, current direct hourly rate or billing rate, proposed new direct hourly salary or billing rate, resulting percentage increase, effective date and reason for the requested change, setting forth in detail any increased cost to the Consultant of providing the services under this Agreement which has given rise to the request for increased salary. For adjustments submitted after the effective date of this Agreement, the Authority ~~and the FAA~~ will grant an increase only if the Consultant demonstrates compliance with all of the following conditions: that increases in salary, or partner's or principal's billing rate or amount, are in a) accordance with the program of periodic merit and cost of living increases normally administered by it, b) are warranted by increased costs of providing services under this Agreement, c) are based upon increases in salaries and billing rates which are generally applicable to all of Consultant's clients and d) are in accordance with the Authority's salary rate increase policy for the current year for Authority employees possessing comparable skills and experience.

Commented [PLE(17)]: John Doyle: the FAA does not approve compensation amounts  
Commented [RR18R17]: Revised

Notwithstanding the above, the multiplier set forth in the first line of this subparagraph shall be applied only in the case of personnel other than partners or principals who are permanent employees.

B. Amounts actually paid to subconsultants hereunder who have been retained after the written approval by the FAA and the Authority of the subconsultant and the compensation to be paid the subconsultant. The Consultant shall submit a copy of the terms and conditions of the subconsultant's compensation (including multiplier, if applicable), as well as an estimate of the number of hours required by the subconsultant to perform his services, as part of any request for approval of the subconsultant.

Commented [PLE(19)]: John Doyle: same comment as above  
Commented [RR20R19]: Revised

C. Out-of-pocket expenses, approved in advance by ~~the FAA and~~ the Authority, necessarily and reasonably incurred and actually paid by you in the performance of your services hereunder. Out-of-pocket expenses are expenses that are unique to the performance of your services under this Agreement and generally contemplate the purchase of outside ancillary services, except that for the purpose of this Agreement, out-of-pocket expenses do include amounts for long distance telephone calls, rentals of equipment, travel and local transportation and meals and lodging on overnight trips.

Notwithstanding the above, the Authority will pay an amount computed as follows for the reproduction of submittal drawings, specifications and reports:

1) If the Consultant uses its own facilities to reproduce such documents, an amount computed in accordance with the billing rates the Consultant customarily charges for reproduction of such documents under agreements such as this, or

2) If the Consultant uses an outside vendor for the reproduction of such documents, the actual, necessary and reasonable amounts for the reproduction of such documents.

The Authority will not pay for expenses that are usually and customarily included as part of the Consultant's overhead. For the purposes of this Agreement out-of-pocket expenses do not include amounts for typing, utilization of computer systems, computer aided design and drafting (CADD), cameras, recording or measuring devices, flashlights and other small, portable equipment, safety supplies, phones, telephone calls, electronic messaging including Fax, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.

When the Consultant uses its personal vehicle to provide services within the Port District, the Consultant will be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage Reimbursement Rate (as determined by the United States General Services Administration (GSA) – <http://www.gsa.gov/portal/content/100715>) per mile traveled by auto.

When the Consultant is asked to provide services outside the Port District, the actual cost of transportation as well as the cost for hotel accommodations and meals will be reimbursable hereunder when approved in advanced in writing by the Director. The cost for all meals and lodging on approved overnight trips is limited to the amounts established by the United States GSA for that locality.

GSA Domestic Rates: <http://www.gsa.gov/portal/category/21287>

You shall obtain the Director's written approval prior to making expenditures for out-of-pocket expenses in excess of one thousand dollars (\$1,000) per specific expenditure and for all overnight trips, which are reimbursable expenditures as set forth above. You shall substantiate all billings for out-of-pocket expenses in excess of twenty-five dollars (\$25) with receipted bills and shall provide said receipts with the appropriate billing.

D. As used herein:

"Port District" is a geographical area of about 1,500 square miles in the States of New York and New Jersey, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey and over 200 other municipalities, including all or part of seventeen counties, in the two States.

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

stenographic, clerical or administrative functions. Such functions shall be deemed to be included in the multiplier referred to in Subparagraph A above.

12. You shall keep, and shall cause any subconsultants under this Agreement to keep, daily records of the time spent in the performance of services hereunder by all persons whose salaries or amounts paid thereto will be the basis for compensation under this Agreement as well as records of the amounts of such salaries and amounts actually paid for the performance of such services and records and receipts of reimbursable expenditures hereunder and, notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services or expenses as are otherwise compensable hereunder. The Authority will have the right to audit all such records.

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

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

Should this Agreement be terminated in accordance with this Section 13, the Consultant shall, and shall cause its subconsultants to, upon request from the FAA, provide all documentation, reports, analyses and data to the FAA.

14. Aside from the FAA and as directed by the FAA in accordance with the FAA MOU, under no circumstances shall you or your subconsultants communicate in any way with any contractor, department, board, agency, commission or other organization or any person, whether governmental or private in connection with the services to be performed hereunder.

15. No certificate, payment (final or otherwise), acceptance of any work nor any other act or omission of the Authority or the Director or the FAA shall operate to release you from any obligations under or upon this Agreement, or to estop the Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Authority from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact or to prevent the recovery of any damages sustained by the Authority; provided, however, that the FAA shall have the sole right to determine whether the services hereunder have been performed in accordance with the scope described in ~~Section XX~~ Attachment A and whether the services hereunder have been performed with requisite due care and professional responsibility.

16. The Authority and Consultant acknowledge that the FAA shall own title to and all intellectual property rights in and to all documents, reports, specifications, designs, developments, computations and other materials prepared, obtained or delivered under the terms of this Agreement (collectively, the "Deliverables"). The Authority acknowledges that the FAA may use, transfer, copy and distribute the Deliverables without restriction or limitation.

17. This Agreement being based upon your special qualifications for the services herein contemplated, any assignment, subletting or other transfer of this Agreement or any part hereof or of any moneys due or to become due hereunder without the express consent in writing of the Authority (and the FAA) shall be void and of no effect, provided, however, that you may sublet services to subconsultants with the express consent in writing of the Director and the FAA. All persons to whom you sublet services, however, shall be deemed to be your agents and no subletting or approval thereof shall be deemed to release you from your obligations under this Agreement, to impose any obligation on the Authority or the FAA to such subconsultant or give the subconsultant any rights against the Authority or the FAA.

18. The Authority has a long standing practice of encouraging Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) to seek business opportunities with it, either directly or as subconsultants or subcontractors. "Minority business enterprise" or "MBE" means a business entity which is at least fifty-one percent (51%) owned by one (1) or more members of one (1) or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more members of one (1) or more minority groups; and whose management and daily business operations are controlled by one (1) or more such individuals who are citizens or permanent resident aliens. "Women-owned business enterprise" or "WBE" means a business which is at least fifty-one percent (51%) owned by one (1) or more women; or, in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned by one (1) or more women: and whose management and daily business operations are controlled by one (1) or more women who are citizens or permanent resident aliens.

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

- A. Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- B. Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
- C. Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;
- D. American Indian or Alaskan Native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

For this Agreement, the Director has set a targeted goal of twenty percent (20%) of the total Agreement price for qualified and certified MBEs and ten (10%) percent of the total Agreement price for qualified and certified WBEs.

FIRM NAME

- PAGE 8 -

DATE

To be "certified" a firm must be certified by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

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

Good faith efforts to include and facilitate participation by MBE/WBEs shall include, but not be limited to the following:

- A. Dividing the services and materials to be procured into smaller portions, where feasible.
- B. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBE/WBEs as may be appropriate.
- C. Soliciting services and materials from Port Authority certified MBE/WBE firms.
- D. Ensuring that provision is made to provide progress payments to MBE/WBEs in accordance with prompt payment provisions of the Agreement under which services are being provided, if applicable.
- E. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

The Authority has a list of certified MBE/WBE service firms which is available to you at <http://www.panynj.gov/business-opportunities/supplier-diversity.html>. The Consultant will be required to submit to the Authority's OBDCR for certification the names of MBE/WBE firms it proposes to use who are not on the list of certified MBE/WBE firms.

The Consultant must submit an MBE/WBE Participation Plan for each MBE/WBE subconsultant. Each Participation Plan shall contain, at a minimum, the following:

- Identification of the MBE/WBE: Provide the name and address of the MBE/WBE. If no MBE/WBEs are identified, describe the process for selecting participant firms in order to achieve the good-faith goals under this Agreement.
- Level of Participation: Indicate the dollar value and percentage of MBE/WBE participation expected to be achieved.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

The MBE/WBE subconsultant listed on each of the MBE/WBE Participation Plans must be certified by the Authority in order for the Consultant to receive credit toward the MBE/WBE goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/sd-mwsdbe-profile.html> to search for MBE/WBEs by a particular commodity or service. The Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to any of the MBE/WBE Participation Plans must be submitted via a Modified MBE/WBE Participation Plan to the Project Manager for review and approval by OBDCR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use Form PA3760D. The Consultant shall not make changes to any of its approved MBE/WBE Participation Plans or substitute MBE/WBE subconsultants or suppliers for those named in their approved plans without the Manager's prior written approval. Unauthorized

changes or substitutions, including performing the work designated for a subconsultant with the Consultant's own forces, shall be a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored throughout the duration of the Agreement.

The Consultant shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subconsultant and supplier actually involved in the Agreement, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information that may assist the Project Manager in determining the Consultant's compliance with the foregoing provisions.

**MBE/WBE Conditions of Participation**

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

1. Commercially Useful Function: An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Consultant and the MBE/WBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as an MBE/WBE, the Consultant shall receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

2. Work Force: The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the ~~Contractor~~ Consultant, other Subcontractors on the contract, or their Affiliates. This does not preclude the employment by the MBE/WBE of an individual that has been previously employed by another firm involved in the ~~Contract~~ Agreement, provided that the individual was independently recruited by the MBE/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.

3. Supervision: All Work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Consultant, other subconsultants on the agreement, or their Affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the Work.

**Counting MBE/WBE Participation**

Commented [PLE(21)]: Consultant?

Commented [RR22R21]: revised

The value of the Work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. Subconsultants: One hundred percent (100%) of the value of the Work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such Work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Consultant, other subconsultants or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE subconsultant is itself an MBE/WBE. Work that an MBE/WBE subconsultants to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. Material Suppliers: Sixty percent (60%) of the expenditure to an MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. Broker's/Manufacturer's Representatives: One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves will not be counted.

4. Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces. Contact OBDCR at (201) 395-3958 for more information about requirements for such joint ventures.

19. The Consultant shall take all necessary and reasonable steps to ensure non-discrimination in the performance and administration of all aspects of this Agreement.

A. The Consultant agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.



THE PORT AUTHORITY OF NY & NJ

FIRM NAME

- PAGE 11 -

DATE

This provision binds the Consultant from the solicitation period through the completion of the agreement. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

B. During the performance of this agreement, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

1. Compliance with Regulations: The ~~contractor~~ Consultant (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this ~~contract~~ Agreement.
2. Non-discrimination: The ~~contractor~~ Consultant, with regard to the work performed by it during the ~~contract~~ Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants and subcontractors, including procurements of materials and leases of equipment. The ~~contractor~~ Consultant will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the ~~contract~~ Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the ~~contractor~~ Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the ~~contractor~~ Consultant of the ~~contractor's~~ Consultant's obligations under this ~~contract~~ Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports: The ~~contractor~~ Consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a ~~contractor~~ the Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the ~~contractor~~ Consultant will so certify to the Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a ~~contractor's~~ Consultant's noncompliance with the Non-discrimination provisions of this

Commented [PLE(23)]: Consultant? Same question regarding other uses of "contractor" elsewhere on this page

Commented [RR24R23]: This was pulled directly from what was provided by FAA but revised all "Contractor" references to "Consultant"; also changed all references to "contract" to "Agreement" for consistency

~~contract~~Agreement, the Authority will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the ~~contractor~~Consultant under the ~~contract~~Agreement until the ~~contractor~~Consultant complies; and/or
- b. Cancelling, terminating, or suspending a ~~contract~~the Agreement, in whole or in part.

6. Incorporation of Provisions: The ~~contractor~~Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The ~~contractor~~Consultant will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the ~~contractor~~Consultant becomes involved in, or is threatened with litigation by a subcontractor, ~~subconsultant~~ or supplier because of such direction, the ~~contractor~~Consultant may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the ~~contractor~~Consultant may request the United States to enter into the litigation to protect the interests of the United States.

Commented [PLE(25)]: Should this say FAA?

Commented [RR26R25]: This is the exact language as it appears in what was provided, but if FAA wants this change, please advise

C. Title VI List of Pertinent Nondiscrimination Authorities:

During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation- Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

20. The Authority has the responsibility of ensuring safe, reliable and secure transportation facilities, systems and projects to maintain the well-being and economic competitiveness of the region. Therefore, the Authority reserves the right to deny access to specific documents designed by it as "Critical Infrastructure Information", unless, after consultation with the FAA, such information is deemed necessary for full and complete performance of the services hereunder. The Authority reserves the right to impose multiple layers of security requirements on the Consultant, its staff and subconsultants and their staffs, depending upon the level of security required, or make any amendments with respect to such requirements as determined by the Authority.

These security requirements may include but are not limited to the following:

- Execution of Non-Disclosure and Confidentiality Agreements and Acknowledgments

At the direction of the Authority, the Consultant shall be required to have its principals, staff and/or subconsultant(s) and their staff, execute Authority approved non-disclosure and confidentiality agreements.

- Consultant/Subconsultant identity checks and background screening

The Authority's designated background screening provider may require inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff's name and residence; screening of federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; access identification, to include some form of biometric security methodology such as fingerprint, facial or iris scanning.

The Consultant may be required to have its staff, and any subconsultant's staff, material-men, visitors or others over whom the Consultant/subconsultant has control, authorize the Authority or its designee to perform background checks, and a personal identity verification check. Such authorization shall be in a form acceptable to the Authority. The Consultant and subconsultants may also be required to use an organization designated by the Authority to perform the background checks.

Background screening is required when a person has an established need to know or has access to any one of the following types of information or physical locations:

- 1) Confidential Privileged Information
- 2) Confidential Information related to a security project and/or task
- 3) Secure Area of an Authority facility
- 4) Mission critical system

The Consultant shall perform background checks through the Authority's personnel assurance program provider. The Secure Worker Access Consortium (S.W.A.C.) is the only Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as Security Identification Display Area (SIDA), the federal regulatory requirements for personnel performing Work at aviation facilities.). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers is located at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at (877) 522-7922 for more information and the latest pricing. The cost for said background checks for staff that pass and are granted a credential may be reimbursable to the Consultant (and its subconsultants) as an out-of-pocket expense as provided herein. Costs for background checks for staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

No person shall be permitted on or about the Authority construction sites or facilities (including rental spaces) without a facility-specific photo identification credential approved by the Authority. If the Authority requires facility-specific identification credentials for the Consultant and the subconsultant's staff, the Authority will supply such identification at no cost to the Consultant or its subconsultants. Such facility-specific identification credential

shall remain the property of the Authority and shall be returned to the Authority at the completion or upon request prior to completion of the individual's assignment at the specific facility. It is the responsibility of the appropriate Consultant or subconsultant to immediately report to the Authority the loss of any staff member's individual facility-specific identification credential. The Consultant or subconsultant will be billed for the cost of the replacement identification credential. Consultant's and subconsultant's staff shall display Identification badges in a conspicuous and clearly visible manner, when entering, working or leaving an Authority construction site or facility.

Employees may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, unlaminated social security card for identity and SSN verification.

Where applicable, for sensitive security construction sites or facilities, successful completion of the application, screening and identity verification for all employees of the Consultant and subconsultant shall be completed prior to being provided a Photo Identification credential by the personnel assurance program provider.

If any questions should arise as to when a Personnel Assurance Program background check is required, the Port Authority Manager or contract administrator should be contacted for assistance.

- Designated Secure Areas

Services under the Agreement may be required in designated secure areas, as the same may be designated by the Authority ("Secure Areas"). The Authority will require the observance of certain security procedures with respect to Secure Areas, which may include the escort to, at, and/or from said high security areas by security personnel. All personnel that require access to designated Secure Areas who are not under escort by an authorized individual will be required to undergo background screening and personal identity verification.

Forty-eight (48) hours prior to the proposed performance of any work in a Secure Area, the Consultant shall notify the Director. The Consultant shall conform to procedures as may be established by the Director from time to time and at any time for access to Secure Areas and the escorting of personnel hereunder. Prior to the start of any work, the Consultant shall request a description from the Project Manager of the Secure Areas that will be in effect on the commencement date(s) of the request services. The description of Secure Areas may be changed from time to time and at any time by the Project Manager during the term of the Agreement.

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained contractor security guards. However, this provision shall not relieve the Consultant of its responsibility to secure its equipment and work and that of its subconsultant/subcontractor's and service suppliers at the Authority sites or facilities (including rental spaces). In addition, the Consultant, subconsultant, subcontractor or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video

recordings or to make sketches on any other medium at any Authority sites or facilities (including any rental spaces), except when necessary to perform the Work under this Agreement, without prior written permission from the Authority, which shall not be unreasonably withheld in light of the services to be undertaken hereunder. Upon request, any photograph, digital image, video recording or sketch made of any Authority sites or facility shall be submitted to the Authority to determine compliance with this paragraph, which submission shall be conclusive and binding on the submitting entity.

- Compliance with the Port Authority Information Security Handbook

This Agreement may require access to Authority information considered Protected Information (“PI”) as defined in the Port Authority Information Security Handbook (“Handbook”), dated October, 2008, revised as of April 2, 2018, and as may be further amended. The Handbook and its requirements are hereby incorporated into this Agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Consultant to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Authority or when released by the Authority to outside entities. The Handbook can be obtained at: <http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf>.

- Audits for Compliance with Security Requirements

The Authority may conduct random or scheduled examinations of business practices under this section in order to assess the extent of compliance with security requirements, PI procedures, protocols and practices, which may include, but not be limited to, verification of background check status, confirmation of completion of specified training, and/or a site visit to view material storage locations and protocols.

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

B. Protected Information shall mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, revised as of April 2, 2018)*, Confidential Information, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

C. The Consultant shall hold all such Protected Information in trust and confidence for the Authority, and agrees that the Consultant and the personnel provided by the Consultant hereunder shall not, during or after the termination or expiration of this Agreement, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under or in connection with the supplying of services contemplated by this Agreement; provided, however, the Consultant may provide information to the FAA to be held in confidence to the same extent as set forth in the FAA MOU. The Consultant and the personnel provided by the Consultant hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Agreement. The Consultant and the personnel provided by the Consultant hereunder shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder. The Consultant shall promptly and fully inform the Director in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Consultant has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Agreement or coming to the Consultant's attention in connection with this Agreement.

D. Unless otherwise directed by the FAA, consistent with the FAA MOU, the Consultant shall not issue nor permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority or to the fact that goods have been, are being or will be provided to it and/or that services have been, are being or will be performed for it in connection with this Agreement, unless the Consultant first obtains the written approval of the Authority.

22. The Consultant assumes the following distinct and several risks to the extent they may arise from the negligent or willful intentional acts or omissions of the Consultant or its subconsultants/subcontractors in the performance of services hereunder (to the extent required by the FAA, the Consultant and any subconsultant will enter into a separate agreement with the FAA of similar import; if ~~not~~ such agreement is entered into, the FAA will be entitled to enforce this Section 22 against the Consultant and its subconsultants for its own damages or losses mutatis mutandis):

A. The risk of loss or damage to Authority property arising out of or in connection with the performance of services hereunder;

B. The risk or loss or damage to any property of the Consultant or its subconsultants/subcontractors arising out of or in connection with the performance of services hereunder;

C. The risk of claims, arising out of or in connection with the performance of services hereunder, whether made against the Consultant or its subconsultants/subcontractors or against the Authority, for loss or damage to any property of the Consultant's agents, employees, subcontractors, subconsultants, materialmen or others performing services hereunder;

D. The risk of claims, just or unjust, by third persons made against the Consultant or its subconsultants/subcontractors or the Authority on account of injuries (including wrongful death), loss or damage of any kind whatsoever arising in connection with the performance of services

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FIRM NAME

- PAGE 18 -

DATE

hereunder, including claims against the Consultant or its subconsultants/subcontractors or against the Authority for the payment of workers' compensation, whether such claims are made and whether such injuries, damage or loss are sustained at any time both before and after the completion of services hereunder.

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

Consultant shall cooperate in the defense of any third party suit against the FAA that relates to this Agreement.

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

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

Except with respect to the FAA as specified herein, no third party rights are created by the Agreement, except to the extent that the Agreement specifically provides otherwise by use of the words "benefit" or "direct right of action".

Inasmuch as the Authority has agreed to indemnify the Cities of New York and Newark against claims of the types described in subparagraph D above made against said cities, the Consultant's obligation under subparagraph D above shall include claims by said cities against the Authority for such indemnification.

23. Pursuant to the Code of Ethics for Port Authority Vendors ("Code"), Consultants must execute a Compliance Certification, and provide it to the Authority, prior to beginning Work under this Agreement. This Compliance Certification, once executed, is a material and integral part of the



Agreement. A copy of the Compliance Certification must be retained by the Consultant, unless and until the Authority indicates that the Certifications may be disposed of. Violations of the law or of the Code may subject a Vendor or a Vendor's Employees to civil or criminal penalties. In addition, in the case of violation of any provision of the law or the Code, following consultation with the FAA, the Authority may pursue any available remedy, including, but not limited to, determining that a Vendor is in material breach of its contract and/or that, in the future, the Authority will have no further commercial dealings with the Consultant; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein. The Code and the Compliance Certification (PA Form 4254) can be found at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

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

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

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

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

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

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

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

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

D. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated March 11, 2014, or as may be revised, (a copy of which is available upon request), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;

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

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

G. no person or organization has been retained, employed or designated on behalf of the Consultant to impact any Authority determination with respect to (i) the solicitation, evaluation or award of this Agreement; or (ii) the preparation of specifications or request for submissions in connection with this Agreement.

The certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information" shall be deemed to be made by the Consultant as follows:

FIRM NAME

- PAGE 21 -

DATE

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

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

Moreover, the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information", if made by a corporate Consultant, shall be deemed to have been authorized by the Board of Directors of the Consultant, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Consultant cannot make the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information", the Consultant shall so state and shall furnish with the signed proposal a signed statement which sets forth in detail the reasons therefor. If the Consultant is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph "25G.", if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a "financial interest" in this Agreement, as described in the Procurement Disclosure Policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Authority). Such disclosure is to be updated, as necessary. As a result of such disclosure, the Authority shall take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Consultant may be able to make the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information" at the time the proposal is submitted, the Consultant shall immediately notify the Authority and the FAA in writing during the period of irrevocability of proposals and the term of the Agreement or any extension of such period, if Consultant is awarded the Agreement, of any change of circumstances which might under this clause make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Consultant with full knowledge that they would become a part of the records of the Authority and that the Authority and the FAA will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Consultant has falsely certified as to any material item in the foregoing certifications, has failed to immediately notify the Authority and the FAA of any change in circumstances which might make it unable to

make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure, or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine, after consultation with the FAA, that the Consultant is not a responsible Consultant with respect to its proposal on the Agreement or with respect to future proposals on Authority agreements and may exercise such other remedies as are provided to it by the Agreement with respect to these matters. In addition, Consultant is advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see, e.g., New York Penal Law, Section 175.30 et seq.). Consultants are also advised that the inability to make such certification will not in and of itself disqualify the Consultant and that in each instance the Authority will evaluate the reasons therefor provided by the Consultant.

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

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

Consultants are advised that the Authority has adopted a policy to the effect that in awarding its agreements it will honor any determination by an agency of the State of New York or of the State of New Jersey that a Consultant is not eligible to propose on or be awarded public agreements because the Consultant has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein.

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

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

27. CONSULTANT RESPONSIBILITY, SUSPENSION OF WORK AND TERMINATION

The Consultant agrees, if requested by the Authority, to present evidence of its continuing legal authority to do business in the States of New Jersey or New York, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Authority, after consultation with the FAA, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant must comply with the terms of the suspension order. Agreement activity may resume at such time as the Authority issues a written notice authorizing a resumption of performance under the Agreement.

Upon written notice to the Consultant, and an opportunity to be heard with appropriate Authority officials or staff, the Agreement may be terminated by the Authority at the Consultant's expense when the Consultant is determined by the Authority to be non-responsible. In such event, the Authority or its designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach, including recovery of costs from Consultant associated with such termination; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein.

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

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

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Agreement or any other Authority agreement), etc., which might tend to obligate the Authority employee to the Consultant and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Agreement or any other Authority agreement. Where used herein, the term "Port Authority" or "Authority" shall be deemed to include all subsidiaries of the Authority.

The Consultant shall ensure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it or by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

29. OBLIGATION TO REPORT

In the event that the Consultant becomes aware of the occurrence of any conduct that is prohibited by this section entitled “No Gifts, Gratuities, Offers of Employment, Etc.”, or if the Consultant knows or should reasonably know that a principal, employee, or agent of the Consultant or of its subconsultants or subcontractors has committed a violation of federal, New York or New Jersey law addressing or governing anti-trust, public contracting, false claims, fraud, extortion, bribery, bid rigging, embezzlement, prevailing wage or minority, woman, small or disadvantaged business enterprises, it shall report such information to the Authority’s Office of Inspector General within three (3) business days of obtaining such knowledge. (See “<http://www.panynj.gov/inspector-general>” for information about how to report information to the Office of Inspector General). Failing to report such conduct may be grounds for finding of non-responsibility. The Consultant shall not take any Retaliatory Action against any of its employees for reporting such conduct.

In addition, during the term of this Agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated March 11, 2014, or as may be revised, (a copy of which is available upon request to the Office of the Secretary of the Authority).

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

30. CONFLICT OF INTEREST

During the term of this Agreement, the Consultant shall be ~~in compliance~~ in compliance with the rules and regulations promulgated by the FAA and ~~found at~~ consistent with 40 C.F.R. Part 1506.5(c). The FAA will administer its policy with respect to the Consultant and the services provided herein.

Notwithstanding anything to the contrary contained herein, the Consultant, and any approved subconsultants, shall be precluded from bidding on any future actions the EIS addresses until the approving FAA official issues a Record of Decision (ROD) based on the EIS.

31. INTEGRITY MONITOR

In the event that the Authority hires an Integrity Monitor in connection with the Work under this Agreement, the Consultant and any subcontractors shall cooperate fully with the Monitor and the Authority, which includes, but is not limited to, providing complete access to all personnel and records in any way related to the Work performed pursuant to this Agreement. Any failure to cooperate may result in the termination of this Agreement. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

32. RIGHT TO AUDIT

Notwithstanding anything to the contrary, the Authority, including its Inspector General, Audit Department and Integrity Monitor, and the FAA, or its designee(s) each shall have the right to audit all of the records of the Consultant with respect to the Work and the Agreement, including, without limitation, records pertaining to any compensation paid, payable, or to be paid under the Agreement. The Consultant shall not be entitled to any reimbursement or other compensation for

Commented [PLE(29)]: John Doyle: FAA’s regulations are not set forth at this citation. Rather, this is a CEQ regulation that instructs EIS contractors to be chosen solely by the lead agency (the FAA). Therefore, revise “and found at” to “ , consistent with 40 C.F.R. 1506.5(c) ”

Commented [RR30R29]: revised

costs associated with such audit, investigation, or certification. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

The Consultant agrees to pay for the cost of any audit or investigation conducted by the Authority or the FAA, in which any criminal activity, ethics violations, or professional misconduct by the Consultant or any of its employees, or subcontractors or any of its employees, are discovered. The Consultant shall further agree that should it fail or refuse to pay for any such audit or investigation, the Authority is authorized to deduct from any sum owing the Consultant an amount equal to the cost of such audit and the damages resulting therefrom. The determination of the value of any such costs and decision to withhold any such payments are at the sole discretion of the Authority (including its Inspector General) or, in the case of the FAA, of its supervising personnel.

### 33. DEFINITIONS

As used in sections 24 to 32 above, the following terms shall mean:

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

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations, the Port Authority of New York and New Jersey and its wholly owned subsidiaries and others.

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

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

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

Retaliatory Action - Any adverse action taken by, or at the direction of, the Contractor, against any of its employees for reporting any information as set forth in the clause entitled "Obligation to Report," above.

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

FIRM NAME

- PAGE 26 -

DATE

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

36. References herein to the Authority shall and shall be deemed to mean equally the Port Authority Trans Hudson Corporation (PATH).

37. Nothing in this Agreement is intended to constitute the creation of an agency relationship between the Authority and the Consultant or any other right for the Consultant to act as the representative of the Authority for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Consultant, in performing its services hereunder, is and shall be at all times an independent contractor and the officers, agents and employees of the Consultant shall not be or be deemed to be agents, servants, or employees or "special employees" of the Authority.

38. This Agreement shall be governed by and construed in accordance with the Laws of the State of New York without regard to conflict of laws principles.

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

Sincerely,

THE PORT AUTHORITY OF  
NEW YORK AND NEW JERSEY

\_\_\_\_\_  
Lillian D. Valenti  
Chief Procurement Officer

Date \_\_\_\_\_

The execution of this Agreement by the Consultant's duly authorized representative shall serve as a certification that no alterations have been made to this Agreement, and if any changes or alterations to this Agreement have been made by the Consultant without the Authority's prior written consent, such changes shall be void, non-binding and of no effect.

ACCEPTED:

FIRM NAME  
By: \_\_\_\_\_

Print Name: \_\_\_\_\_



**THE PORT AUTHORITY OF NY & NJ**

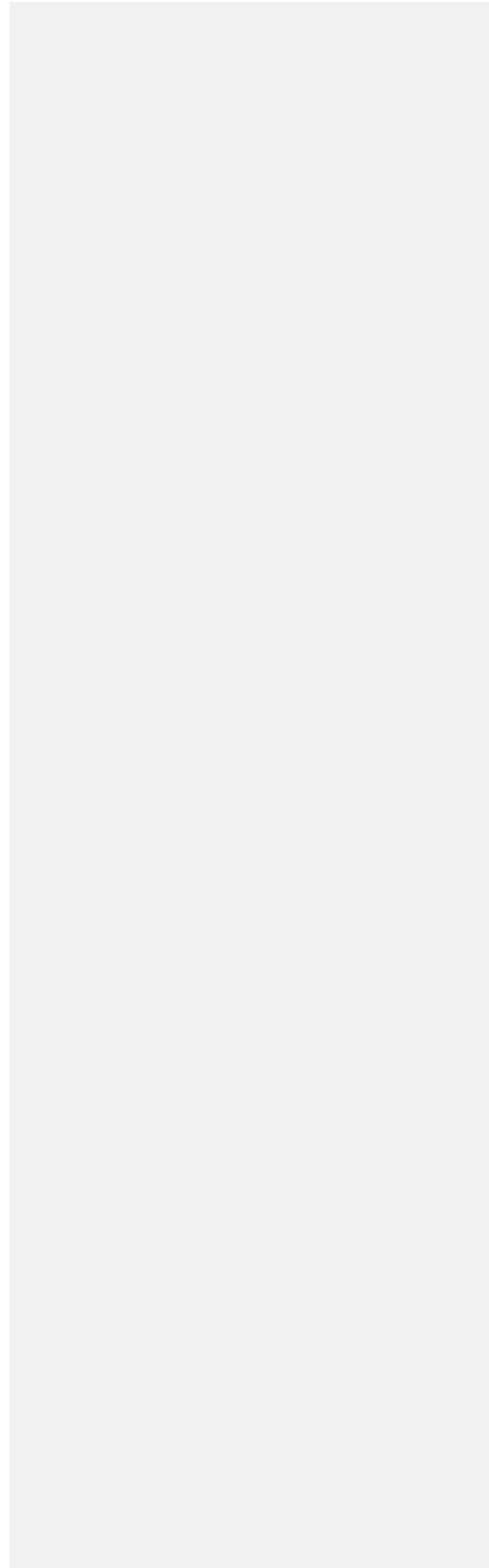
FIRM NAME

- PAGE 27 -

DATE

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**From:** [REDACTED]  
**To:** [Summerville, James](#); [REDACTED] [Drew Brooks](#)  
**Cc:** [Jenet, Marie \(FAA\)](#); [REDACTED] [Wolfers-Lawrence, Jean \(FAA\)](#); [Herndon, Jane](#); [REDACTED] [Papasavvas, Krystina](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Lamond, Kathryn](#)  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions  
**Date:** Thursday, November 15, 2018 8:53:05 AM  
**Attachments:** [Draft Agreement 11-9-18\\_reisedFAA11-15-18.docx](#)

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James,

Thank you for the opportunity to review the revised Draft Agreement. We had a few minor edits to section 10.a. The most recent edits are prefaced by "11/14:" and then the comment. We can discuss further on today's call or at a later time that works for you.

Thanks,  
John

John Doyle  
Attorney, Environmental Law Field Branch, AGC-630  
Office of the Chief Counsel  
Federal Aviation Administration  
1 Aviation Plaza  
Jamaica, NY 11434  
Tel: [REDACTED] 0  
Cell: [REDACTED]

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---

**From:** Summerville, James <[REDACTED]>  
**Sent:** Friday, November 09, 2018 9:38 AM  
**To:** Price, Laura E (FAA) <[REDACTED]> Brooks, Andrew (FAA) <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]>  
Sanchez, David (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]> Henn, Patricia (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]>  
[REDACTED] Herndon, Jane <[REDACTED]> Teodorescu, Andrew P (FAA) <[REDACTED]>  
[REDACTED] Papasavvas, Krystina <[REDACTED]>  
[REDACTED] DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]>  
[REDACTED] Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]>  
[REDACTED] Lamond, Kathryn <[REDACTED]>  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Laura et al,

Thanks for your comments on the draft Agreement. The Port Authority has revised the document in response to FAA comments, reflected as track changes in the attached document.

Regarding FAA's comment to item 10A, which requests clarification on how the amount for the initial tasks is to be set, the Port Authority's NEPA Owner's Rep Consultant produced an estimate based on the list of pre-NOI tasks provided by FAA and arrived at an estimate of \$295,315. The Port Authority recommends adding \$204,685 of contingency to account for unanticipated delays in the process of developing the draft Plan of Study and to ensure that the Consultant remains funded for a total not-to-exceed amount of \$500,000. The Consultant would be required to submit to the FAA an estimate for Plan of Study development and pre-NOI activities, which would be subject to the FAA's and the PA's review and acceptance. The Consultant should not begin any such activities before receiving the FAA's written approval of such estimate. We have also added language (80% notification) to address the possibility of further unanticipated delays/issues that require a greater level of effort than \$500,000.

If you have any questions or would like to discuss further by conference call, please let us know. We'd like to distribute the draft copy of the Agreement to the selected Consultant as soon as possible after selection determination, which is anticipated on 11/14.

Thanks,

James Summerville, Sr. Projects Contracts Specialist  
Port Authority of NY & NJ  
Procurement Dept.

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**From:** [redacted] [\[mailto:\[redacted\]\]](mailto:[redacted])  
**Sent:** Friday, November 02, 2018 3:18 PM  
**To:** Papasavvas, Krystina <[redacted]> Drew Brooks <[redacted]>  
Clark, Patty <[redacted]> DiScenna, Matthew <[redacted]> Cohen, Michelle  
<[redacted]> Tabafunda, Faith <[redacted]> Rogak, Elizabeth  
<[redacted]> Herndon, Jane <[redacted]> Summerville, James  
<[redacted]> Lamond, Kathryn <[redacted]>  
**Cc:** Jenet, Marie (FAA) <[redacted]> [redacted]  
[redacted] Wolfers-Lawrence, Jean (FAA) [redacted]  
[redacted] > [redacted]  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Krystina/All:

Attached please find the FAA's comments regarding the Draft Agreement. Please let us know if you have any questions.

Best,

Laura

---

**From:** Papasavvas, Krystina <[REDACTED]>  
**Sent:** Thursday, October 18, 2018 12:11 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> DiScenna, Matthew <[REDACTED]>  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]>  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane <[REDACTED]>  
<[REDACTED]> Summerville, James <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]>  
Sanchez, David (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]> Henn, Patricia (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]>  
<[REDACTED]>, Andrew P (FAA) <[REDACTED]> Price, Laura E (FAA) <[REDACTED]>  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Good afternoon,

Thank you for your proposed Interview Questions for the Consultant Selection Process. As mentioned this morning on our call, we will discuss internally and get back to you.

For your review, I have attached the draft Agreement. Please review and provide any commentary. Also, please provide a list of the pre-NOI support tasks that would be incorporated into the budget for Paragraph 10A of the attached Agreement.

Thank you.

**Krystina Papasavvas**  
Integrity, Compliance and Contract Review  
Port Authority of New York and New Jersey Procurement Department  
4 World Trade Center  
150 Greenwich Street, 21st Floor  
New York, NY 10007  
T: [REDACTED]  
F: [REDACTED]  
email: [REDACTED]

---

**From:** [REDACTED] [[mailto:\[REDACTED\]](#)]  
**Sent:** Wednesday, October 17, 2018 1:11 PM  
**To:** Lamond, Kathryn <[REDACTED]> Clark, Patty <[REDACTED]> DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]>  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane <[REDACTED]>  
<[REDACTED]> Summerville, James <[REDACTED]> Papasavvas, Krystina <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] [REDACTED]

[REDACTED]  
[REDACTED]  
**Subject:** LGA AirTrain Consultant Selection: Interview Questions

Good Afternoon Everyone,

Attached are the proposed Interview Questions for the Consultant Selection Process. We will be able to discuss in more depth during tomorrow's call.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

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

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

**THE PORT AUTHORITY OF NY & NJ**

**P.A. AGREEMENT # \*\*\*-18-\*\*\***

DATE

Lillian D. Valenti  
*Chief Procurement Officer*

FIRM

ADDRESS

CITY, ST ZIP

Attention: CONTACT, TITLE

**SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL  
REVIEW SERVICES FOR THE LAGUARDIA AIRPORT ("LGA")  
ACCESS IMPROVEMENT PROJECT**

Dear CONTACT:

1. The Port Authority of New York and New Jersey (the "Authority") hereby offers to retain FIRM NAME (the "Consultant" or "you") to provide expert professional services as more fully set forth herein and in Attachment A, which is attached hereto and made a part hereof. Attachment A may be updated and modified throughout the performance of the Agreement, as agreed upon, in writing, by both parties.

This Agreement shall be signed by you and by the Authority's Chief Procurement Officer. As used herein and hereafter, the "Director" means the Director of the Aviation Department of the Authority, or his/her duly authorized representatives.

For the purpose of administering this Agreement, the Director has designated DAR NAME, , to act as his duly authorized representative. The Project Manager for this project is NAME, tel. (\*\*\*)\*\*\_\*\_\*\*\*\*, or e-mail address: [REDACTED]

2. Your services shall be performed as expeditiously as possible. Time is of the essence in the performance of all your services under this Agreement.

3. The Authority has agreed to retain you to perform consulting services for the Federal Aviation Administration ("FAA") pursuant to the terms of the Memorandum of Understanding between the Authority and the FAA a copy of which is attached hereto ("FAA MOU") and you shall take direction from, and be responsible to, the FAA, as Lead Agency, acting on behalf of the FAA in connection with the preparation of an Environmental Impact Statement ("EIS") associated with the proposed LaGuardia Airport Access Improvement Project being undertaken by the Authority. To the extent of any conflict between the terms of this Agreement and the terms of the FAA MOU, the FAA MOU shall prevail.

4. In accordance with Attachment A, the Consultant shall submit, on behalf of itself and its approved subconsultants, any and all work performed in preparation of the EIS directly to the

4 World Trade Center  
150 Greenwich Street, 21<sup>st</sup> Floor  
New York, NY 10007

THE PORT AUTHORITY OF NY & NJ

FIRM NAME

- PAGE 2 -

DATE

FAA. The Consultant shall maintain a segregated copy of each record/document relating to the Project that is used by the FAA in its decision making process.

5. The Consultant shall submit bi-weekly written reports on the progress of its work to the FAA, with a concurrent copy to the Authority, unless otherwise directed by the FAA. At a minimum on a bi-weekly basis, joint meetings among the FAA, the Authority and the Consultant shall be held to facilitate the development and preparation of the EIS, in accordance with Attachment A. The Consultant and the Authority shall not meet absent FAA, without prior notification and approval of the FAA. The Consultant and any approved subconsultants shall provide the FAA with full cooperation in coordinating any public workshops, hearings, or meetings as required and directed by the FAA in connection with the Project.

Commented [PLE(1)]: The language regarding frequency of status calls should mirror Sec. III H of the MOU

Commented [RR2R1]: This is directly from the first sentence of III H; I'm not sure what else FAA would like included

6. Consultant, and any approved subconsultants, shall provide verification to the FAA that they have no financial interest in the outcome of the action the EIS will address, consistent with FAA Order 5050.4B, Paragraph 1003(d).

7. The Consultant shall be responsible for the costs associated with printing and publication of the draft and final copies of the EIS, as well as the publication of FAA-approved notices, stenographic and clerical services, preparation of graphics and visual aids associated with any public workshops, meetings and hearings, provided, however, such costs may be included on invoices to be paid by the Authority.

8. Consultant shall provide an estimated cost and staffing analysis for the performance of tasks set forth in Attachment A and shall promptly provide notice to the Authority and the FAA if the cost and scope of the services to be provided hereunder materially changes. Although the Authority has agreed with the FAA that it will pay Consultant's fees and expenses, Consultant agrees that the fees submitted to the Authority will be reasonably related to the work performed and generally comparable to fees charged by prudent industry consultants performing like services. The expenses to be charged by Consultant will comply with FAA policy for consultant expenses (a copy of which is attached as Exhibit ) and Section XXI hereof.

Commented [TAP(3)]: Notice to PANYNJ and FAA?

Commented [RR4R3]: Added FAA

9. Consultant shall submit its invoices for fees and expenses on a monthly basis and the Authority will have the reasonable ability to review the fees and expenses and confirm that the work generally comports with the scope identified in Section 4. The Authority shall not pay any invoice submitted unless it is confirmed for payment by a designated person at the FAA, as described in paragraph C.2 of the MOU, with such confirmation to be conveyed to Matthew DiScenna, Senior Program Manager, LaGuardia AirTrain, by electronic mail at [REDACTED] with a copy to Elizabeth Rogak of Port Authority Law Department at [REDACTED]. No approval or disapproval, or omission to approve or disapprove, however, shall relieve the Consultant of its responsibility under this Agreement to furnish the requested services as and when designated by the FAA and in accordance with professional standards.

Commented [PLE(5)]: John Doyle: Delete "confirmed for payment" Revise to: "confirmed by a designated person at the FAA, as described in Paragraph C 2 of the MOU"

Commented [RR6R5]: revised

10. A. For the initial tasks to be performed under this Agreement, in accordance with Attachment A (namely, development of the Plan of Study and certain pre-Notice of Intent support activities), you shall not continue to render services after the point at which the total amount to be paid to you hereunder, including reimbursable expenses and costs resulting from unanticipated

Commented [DJ(7)]: 11/14: Insert "prior to acceptance of the Plan of Study, in accordance"

THE PORT AUTHORITY OF NY & NJ

FIRM NAME

- PAGE 3 -

DATE

delays, for those tasks reaches the amount of ~~\*\*\*\*,\*\*\*~~ \$500,000.00 (\*\*\*\*\*)(Five Hundred Thousand Dollars) unless you are specifically authorized in writing to so continue by the Director. The Consultant shall be required to submit to the FAA an estimate for these initial tasks, which would be subject to the review and acceptance of the FAA and the Authority. The Consultant shall not commence any such activities prior to receipt of written approval of such estimate from the FAA. There is no guarantee that performance of the work referenced in this paragraph shall reach this not-to-exceed amount, and this limitation shall not be construed to entitle you to the above amount as minimum compensation. The Consultant must notify the Authority upon expending 80% of authorized funds.

Commented [TAP(8)]: Please clarify how this amount will be set

Commented [CM9R8]: Please see explanation in transmittal email from the Port Authority

Commented [DJ(10)]: Revise to "Authority"

Commented [DJ(11)]: 11/14: Revise to "review by the FAA and acceptance by the Authority"

Commented [DJ(12)]: 11/14: Revise to "the Authority"

Commented [DJ(13)]: 11/14: add "and receive written authorization from the Director prior to expending exceeding 100% of authorized funds"

Commented [PLE(14)]: John Doyle: Please omit the FAA from this paragraph. The FAA does not "agree" to compensation amounts

Commented [RR15R14]: Revised

B. For the balance of the work to be performed under this Agreement, you shall not continue to render services after the point at which the total amount to be paid to you hereunder, including reimbursable expenses, reaches the amount agreed upon between the Authority, the FAA and the Consultant for the performance of the balance of the services, following acceptance of the Plan of Study, unless you are specifically authorized in writing to so continue by the Director. If no such authorization is issued, this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed. It is understood, however, that this limitation shall not be construed to entitle you to the above amount as a minimum compensation.

C. If any amendments to the Scope of Work (Plan of Study) require the expenditure of additional funds by the Authority, the Contractor/Consultant shall notify FAA of such additional costs, with sufficient time to accommodate funding authorization and allocation and the capped amount in this Section 10 shall be deemed increased by that amount.

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11. As full compensation for all your services and obligations in connection with this Agreement, (assuming approval/assuming confirmation) by the FAA that work product or materials set forth in a submitted invoice have been performed or provided by the Consultant (and/or approved subconsultants), the Authority will pay you the total of the amounts computed under subparagraphs A, B, C, and D below, subject to the limits on compensation and provisions set forth above. Subject to the terms and conditions below, travel time is not reimbursable under subparagraphs A, and B hereunder.

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A. An amount equal to the actual hourly billing rate billed by you for professional and technical personnel multiplied by the total number of hours actually spent by said personnel in the performance of services hereunder. No hour of services by an employee shall be compensable hereunder unless the employee is actually paid for such services at his usual salary rate. The hourly billing rate for each employee is the amount to be paid to you and is full compensation for all benefits, taxes, etc., paid by you. There shall be no change in the billing rates during the first year of the term of this Agreement and no additional compensation for overtime, weekend, or holiday work. Attached hereto is a schedule of names, titles, and corresponding hourly billing rates. Said schedule shall clearly indicate any of your employees proposed by you to perform the requested services that are former Authority employees. For compensation purposes under this Agreement, no said salary or amount shall exceed the salary or amount received by said personnel or rate customarily billed for a partner or principal as of the effective date of this Agreement unless the



THE PORT AUTHORITY OF NY & NJ

FIRM NAME

- PAGE 4 -

DATE

Director has been notified in advance, in writing, of the increased salary, rate or amount and approves the increase.

The Consultant shall verify that its employees, subconsultants, or subcontractors working under this Agreement are legally present and authorized to work in the United States, as per the federally required I-9 Program. Furthermore, upon request of the Authority, the Consultant shall furnish, or provide the Authority access to federal Form I-9 (Employment Eligibility Verification) for each individual hired by the Consultant, performing services hereunder. This includes citizens and noncitizens.

The Authority ~~and the FAA~~ will have the right of approval of all changes in personnel and increases in billing rates of personnel performing services under this Agreement. When requesting salary or billing rate adjustments for one or more of its personnel, the Consultant shall submit to the FAA, with a copy to the Authority, his/her name, title, current direct hourly rate or billing rate, proposed new direct hourly salary or billing rate, resulting percentage increase, effective date and reason for the requested change, setting forth in detail any increased cost to the Consultant of providing the services under this Agreement which has given rise to the request for increased salary. For adjustments submitted after the effective date of this Agreement, the Authority ~~and the FAA~~ will grant an increase only if the Consultant demonstrates compliance with all of the following conditions: that increases in salary, or partner's or principal's billing rate or amount, are in a) accordance with the program of periodic merit and cost of living increases normally administered by it, b) are warranted by increased costs of providing services under this Agreement, c) are based upon increases in salaries and billing rates which are generally applicable to all of Consultant's clients and d) are in accordance with the Authority's salary rate increase policy for the current year for Authority employees possessing comparable skills and experience.

Notwithstanding the above, the multiplier set forth in the first line of this subparagraph shall be applied only in the case of personnel other than partners or principals who are permanent employees.

B. Amounts actually paid to subconsultants hereunder who have been retained after the written approval by the FAA and the Authority of the subconsultant and the compensation to be paid the subconsultant. The Consultant shall submit a copy of the terms and conditions of the subconsultant's compensation (including multiplier, if applicable), as well as an estimate of the number of hours required by the subconsultant to perform his services, as part of any request for approval of the subconsultant.

C. Out-of-pocket expenses, approved in advance by ~~the FAA and~~ the Authority, necessarily and reasonably incurred and actually paid by you in the performance of your services hereunder. Out-of-pocket expenses are expenses that are unique to the performance of your services under this Agreement and generally contemplate the purchase of outside ancillary services, except that for the purpose of this Agreement, out-of-pocket expenses do include amounts for long distance telephone calls, rentals of equipment, travel and local transportation and meals and lodging on overnight trips.

Notwithstanding the above, the Authority will pay an amount computed as follows for the reproduction of submittal drawings, specifications and reports:

Commented [PLE(22)]: John Doyle: the FAA does not approve compensation amounts

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Commented [RR25R24]: Revised

1) If the Consultant uses its own facilities to reproduce such documents, an amount computed in accordance with the billing rates the Consultant customarily charges for reproduction of such documents under agreements such as this, or

2) If the Consultant uses an outside vendor for the reproduction of such documents, the actual, necessary and reasonable amounts for the reproduction of such documents.

The Authority will not pay for expenses that are usually and customarily included as part of the Consultant's overhead. For the purposes of this Agreement out-of-pocket expenses do not include amounts for typing, utilization of computer systems, computer aided design and drafting (CADD), cameras, recording or measuring devices, flashlights and other small, portable equipment, safety supplies, phones, telephone calls, electronic messaging including Fax, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.

When the Consultant uses its personal vehicle to provide services within the Port District, the Consultant will be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage Reimbursement Rate (as determined by the United States General Services Administration (GSA) – <http://www.gsa.gov/portal/content/100715>) per mile traveled by auto.

When the Consultant is asked to provide services outside the Port District, the actual cost of transportation as well as the cost for hotel accommodations and meals will be reimbursable hereunder when approved in advanced in writing by the Director. The cost for all meals and lodging on approved overnight trips is limited to the amounts established by the United States GSA for that locality.

GSA Domestic Rates: <http://www.gsa.gov/portal/category/21287>

You shall obtain the Director's written approval prior to making expenditures for out-of-pocket expenses in excess of one thousand dollars (\$1,000) per specific expenditure and for all overnight trips, which are reimbursable expenditures as set forth above. You shall substantiate all billings for out-of-pocket expenses in excess of twenty-five dollars (\$25) with receipted bills and shall provide said receipts with the appropriate billing.

D. As used herein:

"Port District" is a geographical area of about 1,500 square miles in the States of New York and New Jersey, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey and over 200 other municipalities, including all or part of seventeen counties, in the two States.

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

stenographic, clerical or administrative functions. Such functions shall be deemed to be included in the multiplier referred to in Subparagraph A above.

12. You shall keep, and shall cause any subconsultants under this Agreement to keep, daily records of the time spent in the performance of services hereunder by all persons whose salaries or amounts paid thereto will be the basis for compensation under this Agreement as well as records of the amounts of such salaries and amounts actually paid for the performance of such services and records and receipts of reimbursable expenditures hereunder and, notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services or expenses as are otherwise compensable hereunder. The Authority will have the right to audit all such records.

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

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

Should this Agreement be terminated in accordance with this Section 13, the Consultant shall, and shall cause its subconsultants to, upon request from the FAA, provide all documentation, reports, analyses and data to the FAA.

14. Aside from the FAA and as directed by the FAA in accordance with the FAA MOU, under no circumstances shall you or your subconsultants communicate in any way with any contractor, department, board, agency, commission or other organization or any person, whether governmental or private in connection with the services to be performed hereunder.

15. No certificate, payment (final or otherwise), acceptance of any work nor any other act or omission of the Authority or the Director or the FAA shall operate to release you from any obligations under or upon this Agreement, or to estop the Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Authority from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact or to prevent the recovery of any damages sustained by the Authority; provided, however, that the FAA shall have the sole right to determine whether the services hereunder have been performed in accordance with the scope described in ~~Section XX~~ Attachment A and whether the services hereunder have been performed with requisite due care and professional responsibility.

16. The Authority and Consultant acknowledge that the FAA shall own title to and all intellectual property rights in and to all documents, reports, specifications, designs, developments, computations and other materials prepared, obtained or delivered under the terms of this Agreement (collectively, the "Deliverables"). The Authority acknowledges that the FAA may use, transfer, copy and distribute the Deliverables without restriction or limitation.

17. This Agreement being based upon your special qualifications for the services herein contemplated, any assignment, subletting or other transfer of this Agreement or any part hereof or of any moneys due or to become due hereunder without the express consent in writing of the Authority (and the FAA) shall be void and of no effect, provided, however, that you may sublet services to subconsultants with the express consent in writing of the Director and the FAA. All persons to whom you sublet services, however, shall be deemed to be your agents and no subletting or approval thereof shall be deemed to release you from your obligations under this Agreement, to impose any obligation on the Authority or the FAA to such subconsultant or give the subconsultant any rights against the Authority or the FAA.

18. The Authority has a long standing practice of encouraging Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) to seek business opportunities with it, either directly or as subconsultants or subcontractors. "Minority business enterprise" or "MBE" means a business entity which is at least fifty-one percent (51%) owned by one (1) or more members of one (1) or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more members of one (1) or more minority groups; and whose management and daily business operations are controlled by one (1) or more such individuals who are citizens or permanent resident aliens. "Women-owned business enterprise" or "WBE" means a business which is at least fifty-one percent (51%) owned by one (1) or more women; or, in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned by one (1) or more women: and whose management and daily business operations are controlled by one (1) or more women who are citizens or permanent resident aliens.

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

- A. Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- B. Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
- C. Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;
- D. American Indian or Alaskan Native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

For this Agreement, the Director has set a targeted goal of twenty percent (20%) of the total Agreement price for qualified and certified MBEs and ten (10%) percent of the total Agreement price for qualified and certified WBEs.

To be "certified" a firm must be certified by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

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

Good faith efforts to include and facilitate participation by MBE/WBEs shall include, but not be limited to the following:

- A. Dividing the services and materials to be procured into smaller portions, where feasible.
- B. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBE/WBEs as may be appropriate.
- C. Soliciting services and materials from Port Authority certified MBE/WBE firms.
- D. Ensuring that provision is made to provide progress payments to MBE/WBEs in accordance with prompt payment provisions of the Agreement under which services are being provided, if applicable.
- E. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

The Authority has a list of certified MBE/WBE service firms which is available to you at <http://www.panynj.gov/business-opportunities/supplier-diversity.html>. The Consultant will be required to submit to the Authority's OBDCR for certification the names of MBE/WBE firms it proposes to use who are not on the list of certified MBE/WBE firms.

The Consultant must submit an MBE/WBE Participation Plan for each MBE/WBE subconsultant. Each Participation Plan shall contain, at a minimum, the following:

- Identification of the MBE/WBE: Provide the name and address of the MBE/WBE. If no MBE/WBEs are identified, describe the process for selecting participant firms in order to achieve the good-faith goals under this Agreement.
- Level of Participation: Indicate the dollar value and percentage of MBE/WBE participation expected to be achieved.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

The MBE/WBE subconsultant listed on each of the MBE/WBE Participation Plans must be certified by the Authority in order for the Consultant to receive credit toward the MBE/WBE goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/sd-mwsdbe-profile.html> to search for MBE/WBEs by a particular commodity or service. The Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to any of the MBE/WBE Participation Plans must be submitted via a Modified MBE/WBE Participation Plan to the Project Manager for review and approval by OBDCR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use Form PA3760D. The Consultant shall not make changes to any of its approved MBE/WBE Participation Plans or substitute MBE/WBE subconsultants or suppliers for those named in their approved plans without the Manager's prior written approval. Unauthorized

changes or substitutions, including performing the work designated for a subconsultant with the Consultant's own forces, shall be a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored throughout the duration of the Agreement.

The Consultant shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subconsultant and supplier actually involved in the Agreement, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information that may assist the Project Manager in determining the Consultant's compliance with the foregoing provisions.

**MBE/WBE Conditions of Participation**

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

1. Commercially Useful Function: An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Consultant and the MBE/WBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as an MBE/WBE, the Consultant shall receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

2. Work Force: The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the ~~Contractor~~ Consultant, other Subcontractors on the contract, or their Affiliates. This does not preclude the employment by the MBE/WBE of an individual that has been previously employed by another firm involved in the ~~Contract~~ Agreement, provided that the individual was independently recruited by the MBE/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.

3. Supervision: All Work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Consultant, other subconsultants on the agreement, or their Affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the Work.

**Counting MBE/WBE Participation**

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The value of the Work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. Subconsultants: One hundred percent (100%) of the value of the Work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such Work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Consultant, other subconsultants or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE subconsultant is itself an MBE/WBE. Work that an MBE/WBE subconsultants to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. Material Suppliers: Sixty percent (60%) of the expenditure to an MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. Broker's/Manufacturer's Representatives: One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves will not be counted.

4. Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces. Contact OBDCR at (201) 395-3958 for more information about requirements for such joint ventures.

19. The Consultant shall take all necessary and reasonable steps to ensure non-discrimination in the performance and administration of all aspects of this Agreement.

A. The Consultant agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Consultant from the solicitation period through the completion of the agreement. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

B. During the performance of this agreement, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

1. Compliance with Regulations: The ~~contractor~~ Consultant (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this ~~contract~~ Agreement.
2. Non-discrimination: The ~~contractor~~ Consultant, with regard to the work performed by it during the ~~contract~~ Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants and subcontractors, including procurements of materials and leases of equipment. The ~~contractor~~ Consultant will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the ~~contract~~ Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the ~~contractor~~ Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the ~~contractor~~ Consultant of the ~~contractor's~~ Consultant's obligations under this ~~contract~~ Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports: The ~~contractor~~ Consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a ~~contractor~~ the Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the ~~contractor~~ Consultant will so certify to the Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a ~~contractor's~~ Consultant's noncompliance with the Non-discrimination provisions of this

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~~contract~~Agreement, the Authority will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the ~~contractor~~Consultant under the ~~contract~~Agreement until the ~~contractor~~Consultant complies; and/or
- b. Cancelling, terminating, or suspending a ~~contract~~the Agreement, in whole or in part.

6. Incorporation of Provisions: The ~~contractor~~Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The ~~contractor~~Consultant will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the ~~contractor~~Consultant becomes involved in, or is threatened with litigation by a subcontractor, ~~subconsultant~~ or supplier because of such direction, the ~~contractor~~Consultant may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the ~~contractor~~Consultant may request the United States to enter into the litigation to protect the interests of the United States.

Commented [PLE(30)]: Should this say FAA?

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C. Title VI List of Pertinent Nondiscrimination Authorities:

During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation- Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

20. The Authority has the responsibility of ensuring safe, reliable and secure transportation facilities, systems and projects to maintain the well-being and economic competitiveness of the region. Therefore, the Authority reserves the right to deny access to specific documents designed by it as "Critical Infrastructure Information", unless, after consultation with the FAA, such information is deemed necessary for full and complete performance of the services hereunder. The Authority reserves the right to impose multiple layers of security requirements on the Consultant, its staff and subconsultants and their staffs, depending upon the level of security required, or make any amendments with respect to such requirements as determined by the Authority.

These security requirements may include but are not limited to the following:

- Execution of Non-Disclosure and Confidentiality Agreements and Acknowledgments

At the direction of the Authority, the Consultant shall be required to have its principals, staff and/or subconsultant(s) and their staff, execute Authority approved non-disclosure and confidentiality agreements.

- Consultant/Subconsultant identity checks and background screening

The Authority's designated background screening provider may require inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff's name and residence; screening of federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; access identification, to include some form of biometric security methodology such as fingerprint, facial or iris scanning.

The Consultant may be required to have its staff, and any subconsultant's staff, material-men, visitors or others over whom the Consultant/subconsultant has control, authorize the Authority or its designee to perform background checks, and a personal identity verification check. Such authorization shall be in a form acceptable to the Authority. The Consultant and subconsultants may also be required to use an organization designated by the Authority to perform the background checks.

Background screening is required when a person has an established need to know or has access to any one of the following types of information or physical locations:

- 1) Confidential Privileged Information
- 2) Confidential Information related to a security project and/or task
- 3) Secure Area of an Authority facility
- 4) Mission critical system

The Consultant shall perform background checks through the Authority's personnel assurance program provider. The Secure Worker Access Consortium (S.W.A.C.) is the only Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as Security Identification Display Area (SIDA), the federal regulatory requirements for personnel performing Work at aviation facilities.). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers is located at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at [REDACTED] for more information and the latest pricing. The cost for said background checks for staff that pass and are granted a credential may be reimbursable to the Consultant (and its subconsultants) as an out-of-pocket expense as provided herein. Costs for background checks for staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

No person shall be permitted on or about the Authority construction sites or facilities (including rental spaces) without a facility-specific photo identification credential approved by the Authority. If the Authority requires facility-specific identification credentials for the Consultant and the subconsultant's staff, the Authority will supply such identification at no cost to the Consultant or its subconsultants. Such facility-specific identification credential

shall remain the property of the Authority and shall be returned to the Authority at the completion or upon request prior to completion of the individual's assignment at the specific facility. It is the responsibility of the appropriate Consultant or subconsultant to immediately report to the Authority the loss of any staff member's individual facility-specific identification credential. The Consultant or subconsultant will be billed for the cost of the replacement identification credential. Consultant's and subconsultant's staff shall display Identification badges in a conspicuous and clearly visible manner, when entering, working or leaving an Authority construction site or facility.

Employees may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, unlaminated social security card for identity and SSN verification.

Where applicable, for sensitive security construction sites or facilities, successful completion of the application, screening and identity verification for all employees of the Consultant and subconsultant shall be completed prior to being provided a Photo Identification credential by the personnel assurance program provider.

If any questions should arise as to when a Personnel Assurance Program background check is required, the Port Authority Manager or contract administrator should be contacted for assistance.

- Designated Secure Areas

Services under the Agreement may be required in designated secure areas, as the same may be designated by the Authority ("Secure Areas"). The Authority will require the observance of certain security procedures with respect to Secure Areas, which may include the escort to, at, and/or from said high security areas by security personnel. All personnel that require access to designated Secure Areas who are not under escort by an authorized individual will be required to undergo background screening and personal identity verification.

Forty-eight (48) hours prior to the proposed performance of any work in a Secure Area, the Consultant shall notify the Director. The Consultant shall conform to procedures as may be established by the Director from time to time and at any time for access to Secure Areas and the escorting of personnel hereunder. Prior to the start of any work, the Consultant shall request a description from the Project Manager of the Secure Areas that will be in effect on the commencement date(s) of the request services. The description of Secure Areas may be changed from time to time and at any time by the Project Manager during the term of the Agreement.

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained contractor security guards. However, this provision shall not relieve the Consultant of its responsibility to secure its equipment and work and that of its subconsultant/subcontractor's and service suppliers at the Authority sites or facilities (including rental spaces). In addition, the Consultant, subconsultant, subcontractor or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video

recordings or to make sketches on any other medium at any Authority sites or facilities (including any rental spaces), except when necessary to perform the Work under this Agreement, without prior written permission from the Authority, which shall not be unreasonably withheld in light of the services to be undertaken hereunder. Upon request, any photograph, digital image, video recording or sketch made of any Authority sites or facility shall be submitted to the Authority to determine compliance with this paragraph, which submission shall be conclusive and binding on the submitting entity.

- Compliance with the Port Authority Information Security Handbook

This Agreement may require access to Authority information considered Protected Information (“PI”) as defined in the Port Authority Information Security Handbook (“Handbook”), dated October, 2008, revised as of April 2, 2018, and as may be further amended. The Handbook and its requirements are hereby incorporated into this Agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Consultant to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Authority or when released by the Authority to outside entities. The Handbook can be obtained at: <http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf>.

- Audits for Compliance with Security Requirements

The Authority may conduct random or scheduled examinations of business practices under this section in order to assess the extent of compliance with security requirements, PI procedures, protocols and practices, which may include, but not be limited to, verification of background check status, confirmation of completion of specified training, and/or a site visit to view material storage locations and protocols.

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

B. Protected Information shall mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, revised as of April 2, 2018)*, Confidential Information, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

C. The Consultant shall hold all such Protected Information in trust and confidence for the Authority, and agrees that the Consultant and the personnel provided by the Consultant hereunder shall not, during or after the termination or expiration of this Agreement, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under or in connection with the supplying of services contemplated by this Agreement; provided, however, the Consultant may provide information to the FAA to be held in confidence to the same extent as set forth in the FAA MOU. The Consultant and the personnel provided by the Consultant hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Agreement. The Consultant and the personnel provided by the Consultant hereunder shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder. The Consultant shall promptly and fully inform the Director in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Consultant has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Agreement or coming to the Consultant's attention in connection with this Agreement.

D. Unless otherwise directed by the FAA, consistent with the FAA MOU, the Consultant shall not issue nor permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority or to the fact that goods have been, are being or will be provided to it and/or that services have been, are being or will be performed for it in connection with this Agreement, unless the Consultant first obtains the written approval of the Authority.

22. The Consultant assumes the following distinct and several risks to the extent they may arise from the negligent or willful intentional acts or omissions of the Consultant or its subconsultants/subcontractors in the performance of services hereunder (to the extent required by the FAA, the Consultant and any subconsultant will enter into a separate agreement with the FAA of similar import; if ~~not~~ such agreement is entered into, the FAA will be entitled to enforce this Section 22 against the Consultant and its subconsultants for its own damages or losses mutatis mutandis):

A. The risk of loss or damage to Authority property arising out of or in connection with the performance of services hereunder;

B. The risk or loss or damage to any property of the Consultant or its subconsultants/subcontractors arising out of or in connection with the performance of services hereunder;

C. The risk of claims, arising out of or in connection with the performance of services hereunder, whether made against the Consultant or its subconsultants/subcontractors or against the Authority, for loss or damage to any property of the Consultant's agents, employees, subcontractors, subconsultants, materialmen or others performing services hereunder;

D. The risk of claims, just or unjust, by third persons made against the Consultant or its subconsultants/subcontractors or the Authority on account of injuries (including wrongful death), loss or damage of any kind whatsoever arising in connection with the performance of services

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FIRM NAME

- PAGE 18 -

DATE

hereunder, including claims against the Consultant or its subconsultants/subcontractors or against the Authority for the payment of workers' compensation, whether such claims are made and whether such injuries, damage or loss are sustained at any time both before and after the completion of services hereunder.

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

Consultant shall cooperate in the defense of any third party suit against the FAA that relates to this Agreement.

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

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

Except with respect to the FAA as specified herein, no third party rights are created by the Agreement, except to the extent that the Agreement specifically provides otherwise by use of the words "benefit" or "direct right of action".

Inasmuch as the Authority has agreed to indemnify the Cities of New York and Newark against claims of the types described in subparagraph D above made against said cities, the Consultant's obligation under subparagraph D above shall include claims by said cities against the Authority for such indemnification.

23. Pursuant to the Code of Ethics for Port Authority Vendors ("Code"), Consultants must execute a Compliance Certification, and provide it to the Authority, prior to beginning Work under this Agreement. This Compliance Certification, once executed, is a material and integral part of the

Agreement. A copy of the Compliance Certification must be retained by the Consultant, unless and until the Authority indicates that the Certifications may be disposed of. Violations of the law or of the Code may subject a Vendor or a Vendor's Employees to civil or criminal penalties. In addition, in the case of violation of any provision of the law or the Code, following consultation with the FAA, the Authority may pursue any available remedy, including, but not limited to, determining that a Vendor is in material breach of its contract and/or that, in the future, the Authority will have no further commercial dealings with the Consultant; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein. The Code and the Compliance Certification (PA Form 4254) can be found at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

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

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

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



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

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

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

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

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

D. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated March 11, 2014, or as may be revised, (a copy of which is available upon request), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;

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

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

G. no person or organization has been retained, employed or designated on behalf of the Consultant to impact any Authority determination with respect to (i) the solicitation, evaluation or award of this Agreement; or (ii) the preparation of specifications or request for submissions in connection with this Agreement.

The certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information" shall be deemed to be made by the Consultant as follows:

FIRM NAME

- PAGE 21 -

DATE

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

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

Moreover, the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information", if made by a corporate Consultant, shall be deemed to have been authorized by the Board of Directors of the Consultant, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Consultant cannot make the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information", the Consultant shall so state and shall furnish with the signed proposal a signed statement which sets forth in detail the reasons therefor. If the Consultant is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph "25G.", if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a "financial interest" in this Agreement, as described in the Procurement Disclosure Policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Authority). Such disclosure is to be updated, as necessary. As a result of such disclosure, the Authority shall take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Consultant may be able to make the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information" at the time the proposal is submitted, the Consultant shall immediately notify the Authority and the FAA in writing during the period of irrevocability of proposals and the term of the Agreement or any extension of such period, if Consultant is awarded the Agreement, of any change of circumstances which might under this clause make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Consultant with full knowledge that they would become a part of the records of the Authority and that the Authority and the FAA will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Consultant has falsely certified as to any material item in the foregoing certifications, has failed to immediately notify the Authority and the FAA of any change in circumstances which might make it unable to

make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure, or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine, after consultation with the FAA, that the Consultant is not a responsible Consultant with respect to its proposal on the Agreement or with respect to future proposals on Authority agreements and may exercise such other remedies as are provided to it by the Agreement with respect to these matters. In addition, Consultant is advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see, e.g., New York Penal Law, Section 175.30 et seq.). Consultants are also advised that the inability to make such certification will not in and of itself disqualify the Consultant and that in each instance the Authority will evaluate the reasons therefor provided by the Consultant.

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

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

Consultants are advised that the Authority has adopted a policy to the effect that in awarding its agreements it will honor any determination by an agency of the State of New York or of the State of New Jersey that a Consultant is not eligible to propose on or be awarded public agreements because the Consultant has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein.

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

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

27. CONSULTANT RESPONSIBILITY, SUSPENSION OF WORK AND TERMINATION

The Consultant agrees, if requested by the Authority, to present evidence of its continuing legal authority to do business in the States of New Jersey or New York, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Authority, after consultation with the FAA, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant must comply with the terms of the suspension order. Agreement activity may resume at such time as the Authority issues a written notice authorizing a resumption of performance under the Agreement.

Upon written notice to the Consultant, and an opportunity to be heard with appropriate Authority officials or staff, the Agreement may be terminated by the Authority at the Consultant's expense when the Consultant is determined by the Authority to be non-responsible. In such event, the Authority or its designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach, including recovery of costs from Consultant associated with such termination; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein.

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

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

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Agreement or any other Authority agreement), etc., which might tend to obligate the Authority employee to the Consultant and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Agreement or any other Authority agreement. Where used herein, the term "Port Authority" or "Authority" shall be deemed to include all subsidiaries of the Authority.

The Consultant shall ensure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it or by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

29. OBLIGATION TO REPORT

In the event that the Consultant becomes aware of the occurrence of any conduct that is prohibited by this section entitled “No Gifts, Gratuities, Offers of Employment, Etc.”, or if the Consultant knows or should reasonably know that a principal, employee, or agent of the Consultant or of its subconsultants or subcontractors has committed a violation of federal, New York or New Jersey law addressing or governing anti-trust, public contracting, false claims, fraud, extortion, bribery, bid rigging, embezzlement, prevailing wage or minority, woman, small or disadvantaged business enterprises, it shall report such information to the Authority’s Office of Inspector General within three (3) business days of obtaining such knowledge. (See “<http://www.panynj.gov/inspector-general>” for information about how to report information to the Office of Inspector General). Failing to report such conduct may be grounds for finding of non-responsibility. The Consultant shall not take any Retaliatory Action against any of its employees for reporting such conduct.

In addition, during the term of this Agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated March 11, 2014, or as may be revised, (a copy of which is available upon request to the Office of the Secretary of the Authority).

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

30. CONFLICT OF INTEREST

During the term of this Agreement, the Consultant shall be ~~in compliance~~ in compliance with the rules and regulations promulgated by the FAA and ~~found at~~ consistent with 40 C.F.R. Part 1506.5(c). The FAA will administer its policy with respect to the Consultant and the services provided herein.

Notwithstanding anything to the contrary contained herein, the Consultant, and any approved subconsultants, shall be precluded from bidding on any future actions the EIS addresses until the approving FAA official issues a Record of Decision (ROD) based on the EIS.

31. INTEGRITY MONITOR

In the event that the Authority hires an Integrity Monitor in connection with the Work under this Agreement, the Consultant and any subcontractors shall cooperate fully with the Monitor and the Authority, which includes, but is not limited to, providing complete access to all personnel and records in any way related to the Work performed pursuant to this Agreement. Any failure to cooperate may result in the termination of this Agreement. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

32. RIGHT TO AUDIT

Notwithstanding anything to the contrary, the Authority, including its Inspector General, Audit Department and Integrity Monitor, and the FAA, or its designee(s) each shall have the right to audit all of the records of the Consultant with respect to the Work and the Agreement, including, without limitation, records pertaining to any compensation paid, payable, or to be paid under the Agreement. The Consultant shall not be entitled to any reimbursement or other compensation for

Commented [PLE(34)]: John Doyle: FAA’s regulations are not set forth at this citation. Rather, this is a CEQ regulation that instructs EIS contractors to be chosen solely by the lead agency (the FAA). Therefore, revise “and found at” to “ , consistent with 40 C.F.R. 1506.5(c) ”

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costs associated with such audit, investigation, or certification. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

The Consultant agrees to pay for the cost of any audit or investigation conducted by the Authority or the FAA, in which any criminal activity, ethics violations, or professional misconduct by the Consultant or any of its employees, or subcontractors or any of its employees, are discovered. The Consultant shall further agree that should it fail or refuse to pay for any such audit or investigation, the Authority is authorized to deduct from any sum owing the Consultant an amount equal to the cost of such audit and the damages resulting therefrom. The determination of the value of any such costs and decision to withhold any such payments are at the sole discretion of the Authority (including its Inspector General) or, in the case of the FAA, of its supervising personnel.

### 33. DEFINITIONS

As used in sections 24 to 32 above, the following terms shall mean:

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

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations, the Port Authority of New York and New Jersey and its wholly owned subsidiaries and others.

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

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

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

Retaliatory Action - Any adverse action taken by, or at the direction of, the Contractor, against any of its employees for reporting any information as set forth in the clause entitled "Obligation to Report," above.

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

FIRM NAME

- PAGE 26 -

DATE

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

36. References herein to the Authority shall and shall be deemed to mean equally the Port Authority Trans Hudson Corporation (PATH).

37. Nothing in this Agreement is intended to constitute the creation of an agency relationship between the Authority and the Consultant or any other right for the Consultant to act as the representative of the Authority for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Consultant, in performing its services hereunder, is and shall be at all times an independent contractor and the officers, agents and employees of the Consultant shall not be or be deemed to be agents, servants, or employees or "special employees" of the Authority.

38. This Agreement shall be governed by and construed in accordance with the Laws of the State of New York without regard to conflict of laws principles.

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

Sincerely,

THE PORT AUTHORITY OF  
NEW YORK AND NEW JERSEY

\_\_\_\_\_  
Lillian D. Valenti  
Chief Procurement Officer

Date \_\_\_\_\_

The execution of this Agreement by the Consultant's duly authorized representative shall serve as a certification that no alterations have been made to this Agreement, and if any changes or alterations to this Agreement have been made by the Consultant without the Authority's prior written consent, such changes shall be void, non-binding and of no effect.

ACCEPTED:

FIRM NAME  
By: \_\_\_\_\_

Print Name: \_\_\_\_\_

**THE PORT AUTHORITY OF NY & NJ**

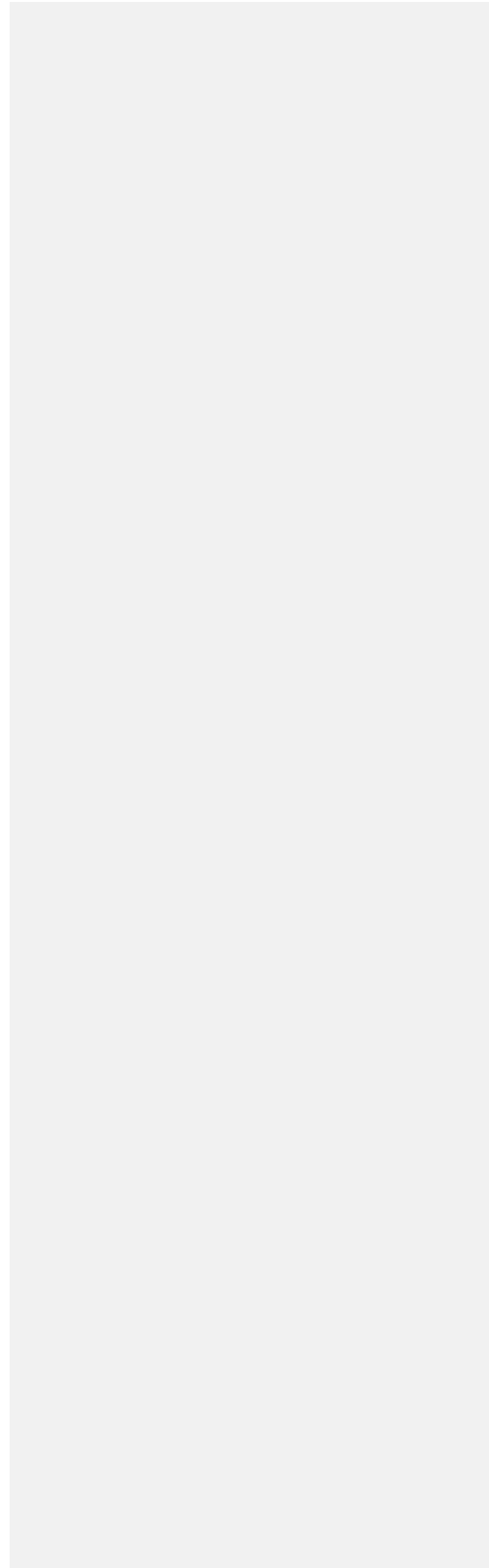
FIRM NAME

- PAGE 27 -

DATE

Title: \_\_\_\_\_

Date: \_\_\_\_\_





**From:** [Summerville, James](#)  
**To:** [REDACTED] [Drew Brooks](#)  
**Cc:** [Jenet, Marie \(FAA\)](#); [REDACTED]; [Wolfers-Lawrence, Jean \(FAA\)](#); [Herndon, Jane](#); [REDACTED]; [Papasavvas, Krystina](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Lamond, Kathryn](#)  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions  
**Date:** Thursday, November 15, 2018 8:58:33 AM

---

thanks

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Thursday, November 15, 2018 8:49 AM  
**To:** Summerville, James <[REDACTED]> [REDACTED] Drew Brooks  
<[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] [REDACTED]  
[REDACTED] Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Herndon, Jane <[REDACTED]> [REDACTED] Papasavvas, Krystina <[REDACTED]> Clark, Patty <[REDACTED]> DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

James,

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Thanks,  
John

John Doyle  
Attorney, Environmental Law Field Branch, AGC-630  
Office of the Chief Counsel  
Federal Aviation Administration  
1 Aviation Plaza  
Jamaica, NY 11434  
Tel: [REDACTED]  
Cell: [REDACTED]

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---

**From:** Summerville, James <[REDACTED]>  
**Sent:** Friday, November 09, 2018 9:38 AM  
**To:** Price, Laura E (FAA) <[REDACTED]> Brooks, Andrew (FAA) <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]>  
Sanchez, David (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]> Henn,  
Patricia (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]>  
[REDACTED] Herndon, Jane <[REDACTED]> Teodorescu, Andrew P (FAA)  
<[REDACTED]> Papasavvas, Krystina <[REDACTED]>  
[REDACTED] DiScenna, Matthew <[REDACTED]> Cohen, Michelle  
<[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Lamond, Kathryn <[REDACTED]>  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Laura et al,

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If you have any questions or would like to discuss further by conference call, please let us know. We'd like to distribute the draft copy of the Agreement to the selected Consultant as soon as possible after selection determination, which is anticipated on 11/14.

Thanks,

James Summerville, Sr. Projects Contracts Specialist  
Port Authority of NY & NJ  
Procurement Dept.  
[REDACTED]

---

**From:** [REDACTED] [\[mailto:\[REDACTED\]\]](mailto:[REDACTED])  
**Sent:** Friday, November 02, 2018 3:18 PM  
**To:** Papasavvas, Krystina <[REDACTED]> Drew Brooks <[REDACTED]>

Clark, Patty <[REDACTED]> DiScenna, Matthew <[REDACTED]> Cohen, Michelle  
<[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Herndon, Jane <[REDACTED]> Summerville, James  
<[REDACTED]> Lamond, Kathryn <[REDACTED]>

**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED]  
[REDACTED] Wolfers-Lawrence, Jean (FAA) [REDACTED]  
[REDACTED]

**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Krystina/All:

Attached please find the FAA's comments regarding the Draft Agreement. Please let us know if you have any questions.

Best,

Laura

---

**From:** Papasavvas, Krystina <[REDACTED]>  
**Sent:** Thursday, October 18, 2018 12:11 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> [REDACTED] DiScenna, Matthew  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane  
<[REDACTED]> Summerville, James <[REDACTED]> Lamond, Kathryn  
<[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]>  
Sanchez, David (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]> Henn,  
Patricia (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) [REDACTED]  
[REDACTED] Teodorescu, Andrew P (FAA) <[REDACTED]> Price, Laura E  
(FAA) <[REDACTED]>  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Good afternoon,

Thank you for your proposed Interview Questions for the Consultant Selection Process. As mentioned this morning on our call, we will discuss internally and get back to you.

For your review, I have attached the draft Agreement. Please review and provide any commentary. Also, please provide a list of the pre-NOI support tasks that would be incorporated into the budget for Paragraph 10A of the attached Agreement.

Thank you.

**Krystina Papasavvas**  
Integrity, Compliance and Contract Review  
Port Authority of New York and New Jersey Procurement Department  
4 World Trade Center

150 Greenwich Street, 21st Floor  
New York, NY 10007

T: [REDACTED]  
[REDACTED]

---

**From:** [REDACTED] [\[mailto:\[REDACTED\]\]](mailto:[REDACTED])  
**Sent:** Wednesday, October 17, 2018 1:11 PM  
**To:** Lamond, Kathryn <[REDACTED]> Clark, Patty <[REDACTED]> DiScenna,  
Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane  
<[REDACTED]> Summerville, James <[REDACTED]> Papasavvas, Krystina  
<[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
**Subject:** LGA AirTrain Consultant Selection: Interview Questions

Good Afternoon Everyone,

Attached are the proposed Interview Questions for the Consultant Selection Process. We will be able to discuss in more depth during tomorrow's call.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

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**From:** [REDACTED]  
**To:** [Summerville, James](#); [REDACTED] [Drew Brooks](#)  
**Cc:** [Jenet, Marie \(FAA\)](#); [REDACTED] [Wolfers-Lawrence, Jean \(FAA\)](#); [Herndon, Jane](#); [REDACTED] [Papasavvas, Krystina](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Lamond, Kathryn](#); [Resnick, Risa](#)  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions  
**Date:** Friday, November 16, 2018 2:21:56 PM  
**Attachments:** [Draft agreement redlined 11-16 RAR JD.DOCX](#)

---

James,

Thank you for sharing the revised draft agreement. I have one proposed revision to paragraph 10.B, which I believe is consistent with our prior discussions. Please let me know if you have any concerns or would like to discuss further.

John

John Doyle  
Attorney, Environmental Law Field Branch, AGC-630  
Office of the Chief Counsel  
Federal Aviation Administration  
1 Aviation Plaza  
Jamaica, NY 11434  
Tel: [REDACTED]  
Cell [REDACTED]

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---

**From:** Summerville, James <[REDACTED]>  
**Sent:** Friday, November 16, 2018 1:01 PM  
**To:** Doyle, John (FAA) <[REDACTED]> Price, Laura E (FAA) <[REDACTED]> Brooks, Andrew (FAA) <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]> Henn, Patricia (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Herndon, Jane <[REDACTED]> Teodorescu, Andrew P (FAA) <[REDACTED]> Papasavvas, Krystina <[REDACTED]> DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Lamond, Kathryn <[REDACTED]> Resnick, Risa <[REDACTED]>  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions  
**Importance:** High

John,

We tweaked the Agreement per the recent conversations, including today's. Please review the attachment, particularly Sections 10A and B and let us know asap if the attachment is fine to release to the Consultant.

Thanks, James [REDACTED]

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Thursday, November 15, 2018 8:49 AM  
**To:** Summerville, James <[REDACTED]> [REDACTED] Drew Brooks  
<[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] [REDACTED]  
[REDACTED] Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Herndon,  
Jane <[REDACTED]> [REDACTED] Papasavvas, Krystina  
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Attorney, Environmental Law Field Branch, AGC-630  
Office of the Chief Counsel  
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[REDACTED]

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< [REDACTED] Herndon, Jane < [REDACTED] Summerville, James  
< [REDACTED] Lamond, Kathryn < [REDACTED]  
**Cc:** Jenet, Marie (FAA) < [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] Wolfers-Lawrence, Jean (FAA) [REDACTED]  
[REDACTED] >; [REDACTED]

**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Krystina/All:

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Best,

Laura

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**Sent:** Thursday, October 18, 2018 12:11 PM  
**To:** Brooks, Andrew (FAA) < [REDACTED] > [REDACTED] DiScenna, Matthew  
< [REDACTED] > Cohen, Michelle < [REDACTED] > Tabafunda, Faith  
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Thank you.

**Krystina Papasavvas**  
Integrity, Compliance and Contract Review  
Port Authority of New York and New Jersey Procurement Department  
4 World Trade Center  
150 Greenwich Street, 21st Floor  
New York, NY 10007



T: [REDACTED]  
F: [REDACTED]  
email: [REDACTED]

---

**From:** [REDACTED] [[mailto:\[REDACTED\]](#)]  
**Sent:** Wednesday, October 17, 2018 1:11 PM  
**To:** Lamond, Kathryn <[REDACTED]> Clark, Patty <[REDACTED]> DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane <[REDACTED]> Summerville, James <[REDACTED]> Papasavvas, Krystina <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
**Subject:** LGA AirTrain Consultant Selection: Interview Questions

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Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

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**THE PORT AUTHORITY OF NY & NJ**

**P.A. AGREEMENT # \*\*\*-18-\*\*\***

DATE

Lillian D. Valenti  
*Chief Procurement Officer*

FIRM

ADDRESS

CITY, ST ZIP

Attention: CONTACT, TITLE

**SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL  
REVIEW SERVICES FOR THE LAGUARDIA AIRPORT ("LGA")  
ACCESS IMPROVEMENT PROJECT**

Dear CONTACT:

1. The Port Authority of New York and New Jersey (the "Authority") hereby offers to retain FIRM NAME (the "Consultant" or "you") to provide expert professional services as more fully set forth herein and in Attachment A, which is attached hereto and made a part hereof. Attachment A may be updated and modified throughout the performance of the Agreement, as agreed upon, in writing, by both parties.

This Agreement shall be signed by you and by the Authority's Chief Procurement Officer. As used herein and hereafter, the "Director" means the Director of the Aviation Department of the Authority, or his/her duly authorized representatives.

For the purpose of administering this Agreement, the Director has designated DAR NAME, , to act as his duly authorized representative. The Project Manager for this project is NAME, tel. (\*\*\*)\*\*\_\*\_\*\*\*\*, or e-mail address [REDACTED]

2. Your services shall be performed as expeditiously as possible. Time is of the essence in the performance of all your services under this Agreement.

3. The Authority has agreed to retain you to perform consulting services for the Federal Aviation Administration ("FAA") pursuant to the terms of the Memorandum of Understanding between the Authority and the FAA a copy of which is attached hereto ("FAA MOU") and you shall take direction from, and be responsible to, the FAA, as Lead Agency, acting on behalf of the FAA in connection with the preparation of an Environmental Impact Statement ("EIS") associated with the proposed LaGuardia Airport Access Improvement Project being undertaken by the Authority. To the extent of any conflict between the terms of this Agreement and the terms of the FAA MOU, the FAA MOU shall prevail.

4. In accordance with Attachment A, the Consultant shall submit, on behalf of itself and its approved subconsultants, any and all work performed in preparation of the EIS directly to the

4 World Trade Center  
150 Greenwich Street, 21<sup>st</sup> Floor  
New York, NY 10007

THE PORT AUTHORITY OF NY & NJ

FIRM NAME

- PAGE 2 -

DATE

FAA. The Consultant shall maintain a segregated copy of each record/document relating to the Project that is used by the FAA in its decision making process.

5. The Consultant shall submit bi-weekly written reports on the progress of its work to the FAA, with a concurrent copy to the Authority, unless otherwise directed by the FAA. At a minimum on a bi-weekly basis, joint meetings among the FAA, the Authority and the Consultant shall be held to facilitate the development and preparation of the EIS, in accordance with Attachment A. The Consultant and the Authority shall not meet absent FAA, without prior notification and approval of the FAA. The Consultant and any approved subconsultants shall provide the FAA with full cooperation in coordinating any public workshops, hearings, or meetings as required and directed by the FAA in connection with the Project.

6. Consultant, and any approved subconsultants, shall provide verification to the FAA that they have no financial interest in the outcome of the action the EIS will address, consistent with FAA Order 5050.4B, Paragraph 1003(d).

7. The Consultant shall be responsible for the costs associated with printing and publication of the draft and final copies of the EIS, as well as the publication of FAA-approved notices, stenographic and clerical services, preparation of graphics and visual aids associated with any public workshops, meetings and hearings, provided, however, such costs may be included on invoices to be paid by the Authority.

8. Consultant shall provide an estimated cost and staffing analysis for the performance of tasks set forth in Attachment A and shall promptly provide notice to the Authority and the FAA if the cost and scope of the services to be provided hereunder materially changes. Although the Authority has agreed with the FAA that it will pay Consultant's fees and expenses, Consultant agrees that the fees submitted to the Authority will be reasonably related to the work performed and generally comparable to fees charged by prudent industry consultants performing like services. The expenses to be charged by Consultant will comply with FAA policy for consultant expenses (a copy of which is attached as Exhibit —) and Section ~~XXI~~ hereof.

9. Consultant shall submit its invoices for fees and expenses on a monthly basis and the Authority will have the reasonable ability to review the fees and expenses and confirm that the work generally comports with the scope identified in Section 4. The Authority shall not pay any invoice submitted unless it is confirmed ~~for payment~~ by a designated person at the FAA, as described in paragraph C.2 of the MOU, with such confirmation to be conveyed to Matthew DiScenna, Senior Program Manager, LaGuardia AirTrain, by electronic mail at [REDACTED] with a copy to Elizabeth Rogak of Port Authority Law Department at [REDACTED]. No approval or disapproval, or omission to approve or disapprove, however, shall relieve the Consultant of its responsibility under this Agreement to furnish the requested services as and when designated by the FAA and in accordance with professional standards.

10. A. For the initial tasks to be performed under this Agreement prior to acceptance of the Plan of Study, in accordance with Attachment A (namely, development of the Plan of Study and certain pre-Notice of Intent support activities), you shall not continue to render services after the point at which the total amount to be paid to you hereunder, including reimbursable expenses

THE PORT AUTHORITY OF NY & NJ

FIRM NAME

- PAGE 3 -

DATE

and costs resulting from unanticipated delays, for those tasks reaches the amount of ~~\*\*\*,\*\*\*,\*\*\*\*\* 500,000.00 (\*\*\*\*\*)(Five Hundred Thousand Dollars)~~ unless you are specifically authorized in writing to so continue by the Director. ~~Any Uncompleted pre-NOI initial tasks commenced but not completed before the acceptance of the Plan of Study, may need to be completed and incorporated into the final Plan of Study, and any such work performed after the acceptance of the Plan of Study shall be paid in accordance with Section 10.B.~~

~~The Consultant shall be required to submit to the Authority ~~FAA~~ an estimate for ~~these~~ initial tasks, which would be subject to the review ~~by the FAA and~~ and acceptance by ~~of the FAA and~~ the Authority. The Consultant shall not commence any such activities prior to receipt of written approval of such estimate from the Authority ~~FAA~~. There is no guarantee that performance of the work referenced in this paragraph shall reach this not-to-exceed amount, and this limitation shall not be construed to entitle you to the above amount as minimum compensation. The Consultant must notify the Authority upon expending 80% of authorized funds and receive written authorization from the Director prior to expending amounts exceeding 100% of authorized funds. Following the approval of the Plan of Study by the FAA, the not to exceed amount shall be superseded by the total amount agreed upon between the Authority and the Consultant.~~

B. For the balance of the work to be performed under this Agreement, including any additional or incomplete pre-NOI work ~~following the approval of the Plan of Study by the FAA~~, you shall not continue to render services after the point at which the total amount to be paid to you hereunder, including reimbursable expenses, reaches the amount agreed upon between the Authority ~~the FAA~~ and the Consultant for the performance of the balance of the services, following acceptance of the Plan of Study, unless you are specifically authorized in writing to so continue by the Director. If no such authorization is issued, this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed. It is understood, however, that this limitation shall not be construed to entitle you to the above amount as a minimum compensation.

Commented [DJ(1): 11/16: Can we revise this clause as follows: "including the accepted Plan of Study (which may include incomplete tasks from Paragraph 10 A that are incorporated into the Plan of Study)"

C. If any amendments to the Scope of Work (Plan of Study) require the expenditure of additional funds by the Authority, the ~~Contractor~~ Consultant shall notify FAA of such additional costs, with sufficient time to accommodate funding authorization and allocation and the capped amount in this Section 10 shall be deemed increased by that amount.

11. As full compensation for all your services and obligations in connection with this Agreement, ~~(assuming approval~~ assuming confirmation by the FAA that work product or materials set forth in a submitted invoice have been performed or provided by the Consultant (and/or approved subconsultants);), the Authority will pay you the total of the amounts computed under subparagraphs A, B, C, and D below, subject to the limits on compensation and provisions set forth above. Subject to the terms and conditions below, travel time is not reimbursable under subparagraphs A, and B hereunder.

A. An amount equal to the actual hourly billing rate billed by you for professional and technical personnel multiplied by the total number of hours actually spent by said personnel in the performance of services hereunder. No hour of services by an employee shall be compensable hereunder unless the employee is actually paid for such services at his usual salary rate. The hourly

FIRM NAME

- PAGE 4 -

DATE

billing rate for each employee is the amount to be paid to you and is full compensation for all benefits, taxes, etc., paid by you. There shall be no change in the billing rates during the first year of the term of this Agreement and no additional compensation for overtime, weekend, or holiday work. Attached hereto is a schedule of names, titles, and corresponding hourly billing rates. Said schedule shall clearly indicate any of your employees proposed by you to perform the requested services that are former Authority employees. For compensation purposes under this Agreement, no said salary or amount shall exceed the salary or amount received by said personnel or rate customarily billed for a partner or principal as of the effective date of this Agreement unless the Director has been notified in advance, in writing, of the increased salary, rate or amount and approves the increase.

The Consultant shall verify that its employees, subconsultants, or subcontractors working under this Agreement are legally present and authorized to work in the United States, as per the federally required I-9 Program. Furthermore, upon request of the Authority, the Consultant shall furnish, or provide the Authority access to federal Form I-9 (Employment Eligibility Verification) for each individual hired by the Consultant, performing services hereunder. This includes citizens and noncitizens.

The Authority ~~and the FAA~~ will have the right of approval of all changes in personnel and increases in billing rates of personnel performing services under this Agreement. When requesting salary or billing rate adjustments for one or more of its personnel, the Consultant shall submit to the FAA, with a copy to the Authority, his/her name, title, current direct hourly rate or billing rate, proposed new direct hourly salary or billing rate, resulting percentage increase, effective date and reason for the requested change, setting forth in detail any increased cost to the Consultant of providing the services under this Agreement which has given rise to the request for increased salary. For adjustments submitted after the effective date of this Agreement, the Authority ~~and the FAA~~ will grant an increase only if the Consultant demonstrates compliance with all of the following conditions: that increases in salary, or partner's or principal's billing rate or amount, are in a) accordance with the program of periodic merit and cost of living increases normally administered by it, b) are warranted by increased costs of providing services under this Agreement, c) are based upon increases in salaries and billing rates which are generally applicable to all of Consultant's clients and d) are in accordance with the Authority's salary rate increase policy for the current year for Authority employees possessing comparable skills and experience.

Notwithstanding the above, the multiplier set forth in the first line of this subparagraph shall be applied only in the case of personnel other than partners or principals who are permanent employees.

B. Amounts actually paid to subconsultants hereunder who have been retained after the written approval by the FAA and the Authority of the subconsultant and the compensation to be paid the subconsultant. The Consultant shall submit a copy of the terms and conditions of the subconsultant's compensation (including multiplier, if applicable), as well as an estimate of the number of hours required by the subconsultant to perform his services, as part of any request for approval of the subconsultant.

C. Out-of-pocket expenses, approved in advance by ~~the FAA and~~ the Authority, necessarily and reasonably incurred and actually paid by you in the performance of your services hereunder. Out-of-pocket expenses are expenses that are unique to the performance of your services under

this Agreement and generally contemplate the purchase of outside ancillary services, except that for the purpose of this Agreement, out-of-pocket expenses do include amounts for long distance telephone calls, rentals of equipment, travel and local transportation and meals and lodging on overnight trips.

Notwithstanding the above, the Authority will pay an amount computed as follows for the reproduction of submittal drawings, specifications and reports:

1) If the Consultant uses its own facilities to reproduce such documents, an amount computed in accordance with the billing rates the Consultant customarily charges for reproduction of such documents under agreements such as this, or

2) If the Consultant uses an outside vendor for the reproduction of such documents, the actual, necessary and reasonable amounts for the reproduction of such documents.

The Authority will not pay for expenses that are usually and customarily included as part of the Consultant's overhead. For the purposes of this Agreement out-of-pocket expenses do not include amounts for typing, utilization of computer systems, computer aided design and drafting (CADD), cameras, recording or measuring devices, flashlights and other small, portable equipment, safety supplies, phones, telephone calls, electronic messaging including Fax, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.

When the Consultant uses its personal vehicle to provide services within the Port District, the Consultant will be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage Reimbursement Rate (as determined by the United States General Services Administration (GSA) – <http://www.gsa.gov/portal/content/100715>) per mile traveled by auto.

When the Consultant is asked to provide services outside the Port District, the actual cost of transportation as well as the cost for hotel accommodations and meals will be reimbursable hereunder when approved in advanced in writing by the Director. The cost for all meals and lodging on approved overnight trips is limited to the amounts established by the United States GSA for that locality.

GSA Domestic Rates: <http://www.gsa.gov/portal/category/21287>

You shall obtain the Director's written approval prior to making expenditures for out-of-pocket expenses in excess of one thousand dollars (\$1,000) per specific expenditure and for all overnight trips, which are reimbursable expenditures as set forth above. You shall substantiate all billings for out-of-pocket expenses in excess of twenty-five dollars (\$25) with receipted bills and shall provide said receipts with the appropriate billing.

D. As used herein:

"Port District" is a geographical area of about 1,500 square miles in the States of New York and New Jersey, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey and over 200 other municipalities, including all or part of seventeen counties, in the two States.

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

12. You shall keep, and shall cause any subconsultants under this Agreement to keep, daily records of the time spent in the performance of services hereunder by all persons whose salaries or amounts paid thereto will be the basis for compensation under this Agreement as well as records of the amounts of such salaries and amounts actually paid for the performance of such services and records and receipts of reimbursable expenditures hereunder and, notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services or expenses as are otherwise compensable hereunder. The Authority will have the right to audit all such records.

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

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

Should this Agreement be terminated in accordance with this Section 13, the Consultant shall, and shall cause it subconsultants to, upon request from the FAA, provide all documentation, reports, analyses and data to the FAA.

14. Aside from the FAA and as directed by the FAA in accordance with the FAA MOU, under no circumstances shall you or your subconsultants communicate in any way with any contractor, department, board, agency, commission or other organization or any person, whether governmental or private in connection with the services to be performed hereunder.

15. No certificate, payment (final or otherwise), acceptance of any work nor any other act or omission of the Authority or the Director or the FAA shall operate to release you from any



obligations under or upon this Agreement, or to estop the Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Authority from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact or to prevent the recovery of any damages sustained by the Authority; provided, however, that the FAA shall have the sole right to determine whether the services hereunder have been performed in accordance with the scope described in ~~Section XX~~ Attachment A and whether the services hereunder have been performed with requisite due care and professional responsibility.

16. The Authority and Consultant acknowledge that the FAA shall own title to and all intellectual property rights in and to all documents, reports, specifications, designs, developments, computations and other materials prepared, obtained or delivered under the terms of this Agreement (collectively, the "Deliverables"). The Authority acknowledges that the FAA may use, transfer, copy and distribute the Deliverables without restriction or limitation.

17. This Agreement being based upon your special qualifications for the services herein contemplated, any assignment, subletting or other transfer of this Agreement or any part hereof or of any moneys due or to become due hereunder without the express consent in writing of the Authority (and the FAA) shall be void and of no effect, provided, however, that you may sublet services to subconsultants with the express consent in writing of the Director and the FAA. All persons to whom you sublet services, however, shall be deemed to be your agents and no subletting or approval thereof shall be deemed to release you from your obligations under this Agreement, to impose any obligation on the Authority or the FAA to such subconsultant or give the subconsultant any rights against the Authority or the FAA.

18. The Authority has a long standing practice of encouraging Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) to seek business opportunities with it, either directly or as subconsultants or subcontractors. "Minority business enterprise" or "MBE" means a business entity which is at least fifty-one percent (51%) owned by one (1) or more members of one (1) or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more members of one (1) or more minority groups; and whose management and daily business operations are controlled by one (1) or more such individuals who are citizens or permanent resident aliens. "Women-owned business enterprise" or "WBE" means a business which is at least fifty-one percent (51%) owned by one (1) or more women; or, in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned by one (1) or more women: and whose management and daily business operations are controlled by one (1) or more women who are citizens or permanent resident aliens.

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

- A. Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- B. Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
- C. Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

FIRM NAME

- PAGE 8 -

DATE

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

For this Agreement, the Director has set a targeted goal of twenty percent (20%) of the total Agreement price for qualified and certified MBEs and ten (10%) percent of the total Agreement price for qualified and certified WBEs.

To be "certified" a firm must be certified by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

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

Good faith efforts to include and facilitate participation by MBE/WBEs shall include, but not be limited to the following:

- A. Dividing the services and materials to be procured into smaller portions, where feasible.
- B. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBE/WBEs as may be appropriate.
- C. Soliciting services and materials from Port Authority certified MBE/WBE firms.
- D. Ensuring that provision is made to provide progress payments to MBE/WBEs in accordance with prompt payment provisions of the Agreement under which services are being provided, if applicable.
- E. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

The Authority has a list of certified MBE/WBE service firms which is available to you at <http://www.panynj.gov/business-opportunities/supplier-diversity.html>. The Consultant will be required to submit to the Authority's OBDCR for certification the names of MBE/WBE firms it proposes to use who are not on the list of certified MBE/WBE firms.

The Consultant must submit an MBE/WBE Participation Plan for each MBE/WBE subconsultant. Each Participation Plan shall contain, at a minimum, the following:

- Identification of the MBE/WBE: Provide the name and address of the MBE/WBE. If no MBE/WBEs are identified, describe the process for selecting participant firms in order to achieve the good-faith goals under this Agreement.
- Level of Participation: Indicate the dollar value and percentage of MBE/WBE participation expected to be achieved.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

The MBE/WBE subconsultant listed on each of the MBE/WBE Participation Plans must be certified by the Authority in order for the Consultant to receive credit toward the MBE/WBE goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/sd-mwsd-be-profile.html> to search for MBE/WBEs by a particular commodity or service. The

FIRM NAME

- PAGE 9 -

DATE

Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to any of the MBE/WBE Participation Plans must be submitted via a Modified MBE/WBE Participation Plan to the Project Manager for review and approval by OBD CR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use Form PA3760D. The Consultant shall not make changes to any of its approved MBE/WBE Participation Plans or substitute MBE/WBE subconsultants or suppliers for those named in their approved plans without the Manager's prior written approval. Unauthorized changes or substitutions, including performing the work designated for a subconsultant with the Consultant's own forces, shall be a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored throughout the duration of the Agreement.

The Consultant shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subconsultant and supplier actually involved in the Agreement, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information that may assist the Project Manager in determining the Consultant's compliance with the foregoing provisions.

#### **MBE/WBE Conditions of Participation**

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

1. Commercially Useful Function: An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Consultant and the MBE/WBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as an MBE/WBE, the Consultant shall receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

2. Work Force: The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the ~~Contractor~~ Consultant, other Subcontractors on the contract, or their Affiliates. This does not preclude the employment by the MBE/WBE of an individual that has been previously employed by another firm involved in the ~~Contract~~ Agreement, provided that the individual was independently recruited by the MBE/WBE in accordance with

customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.

3. Supervision: All Work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Consultant, other subconsultants on the agreement, or their Affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the Work.

### **Counting MBE/WBE Participation**

The value of the Work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. Subconsultants: One hundred percent (100%) of the value of the Work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such Work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Consultant, other subconsultants or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE subconsultant is itself an MBE/WBE. Work that an MBE/WBE subconsultants to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. Material Suppliers: Sixty percent (60%) of the expenditure to an MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. Broker's/Manufacturer's Representatives: One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves will not be counted.

4. Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its

own forces. Contact OBDCR at (201) 395-3958 for more information about requirements for such joint ventures.

19. The Consultant shall take all necessary and reasonable steps to ensure non-discrimination in the performance and administration of all aspects of this Agreement.

A. The Consultant agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Consultant from the solicitation period through the completion of the agreement. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

B. During the performance of this agreement, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

1. Compliance with Regulations: The ~~contractor~~ Consultant (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this ~~contract~~ Agreement.
2. Non-discrimination: The ~~contractor~~ Consultant, with regard to the work performed by it during the ~~contract~~ Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants and subcontractors, including procurements of materials and leases of equipment. The ~~contractor~~ Consultant will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the ~~contract~~ Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the ~~contractor~~ Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the ~~contractor~~ Consultant of the ~~contractor's~~ Consultant's obligations under this ~~contract~~ Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports: The ~~contractor~~ Consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information,

and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of ~~a contractor~~ the Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the ~~contractor~~ Consultant will so certify to the Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a ~~contractor's~~ Consultant's noncompliance with the Non-discrimination provisions of this ~~contract~~ Agreement, the Authority will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the ~~contractor~~ Consultant under the ~~contract~~ Agreement until the ~~contractor~~ Consultant complies; and/or
  - b. Cancelling, terminating, or suspending ~~a contract~~ the Agreement, in whole or in part.
  
6. Incorporation of Provisions: The ~~contractor~~ Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The ~~contractor~~ Consultant will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the ~~contractor~~ Consultant becomes involved in, or is threatened with litigation by a subcontractor, subconsultant or supplier because of such direction, the ~~contractor~~ Consultant may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the ~~contractor~~ Consultant may request the United States to enter into the litigation to protect the interests of the United States.

Commented [PLE(2)]: Should this say FAA?

Commented [RR3R2]: This is the exact language as it appears in what was provided, but if FAA wants this change, please advise

C. Title VI List of Pertinent Nondiscrimination Authorities:

During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation- Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of

persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

20. The Authority has the responsibility of ensuring safe, reliable and secure transportation facilities, systems and projects to maintain the well-being and economic competitiveness of the

region. Therefore, the Authority reserves the right to deny access to specific documents designed by it as "Critical Infrastructure Information", unless, after consultation with the FAA, such information is deemed necessary for full and complete performance of the services hereunder. The Authority reserves the right to impose multiple layers of security requirements on the Consultant, its staff and subconsultants and their staffs, depending upon the level of security required, or make any amendments with respect to such requirements as determined by the Authority.

These security requirements may include but are not limited to the following:

- Execution of Non-Disclosure and Confidentiality Agreements and Acknowledgments

At the direction of the Authority, the Consultant shall be required to have its principals, staff and/or subconsultant(s) and their staff, execute Authority approved non-disclosure and confidentiality agreements.

- Consultant/Subconsultant identity checks and background screening

The Authority's designated background screening provider may require inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff's name and residence; screening of federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; access identification, to include some form of biometric security methodology such as fingerprint, facial or iris scanning.

The Consultant may be required to have its staff, and any subconsultant's staff, material-men, visitors or others over whom the Consultant/subconsultant has control, authorize the Authority or its designee to perform background checks, and a personal identity verification check. Such authorization shall be in a form acceptable to the Authority. The Consultant and subconsultants may also be required to use an organization designated by the Authority to perform the background checks.

Background screening is required when a person has an established need to know or has access to any one of the following types of information or physical locations:

- 1) Confidential Privileged Information
- 2) Confidential Information related to a security project and/or task
- 3) Secure Area of an Authority facility
- 4) Mission critical system

The Consultant shall perform background checks through the Authority's personnel assurance program provider. The Secure Worker Access Consortium (S.W.A.C.) is the only Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as Security Identification Display Area (SIDA), the federal regulatory requirements for personnel performing Work at aviation facilities.). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers is located at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at [REDACTED] for more information and the latest pricing. The cost for said background checks



for staff that pass and are granted a credential may be reimbursable to the Consultant (and its subconsultants) as an out-of-pocket expense as provided herein. Costs for background checks for staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

No person shall be permitted on or about the Authority construction sites or facilities (including rental spaces) without a facility-specific photo identification credential approved by the Authority. If the Authority requires facility-specific identification credentials for the Consultant and the subconsultant's staff, the Authority will supply such identification at no cost to the Consultant or its subconsultants. Such facility-specific identification credential shall remain the property of the Authority and shall be returned to the Authority at the completion or upon request prior to completion of the individual's assignment at the specific facility. It is the responsibility of the appropriate Consultant or subconsultant to immediately report to the Authority the loss of any staff member's individual facility-specific identification credential. The Consultant or subconsultant will be billed for the cost of the replacement identification credential. Consultant's and subconsultant's staff shall display Identification badges in a conspicuous and clearly visible manner, when entering, working or leaving an Authority construction site or facility.

Employees may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, unlaminated social security card for identity and SSN verification.

Where applicable, for sensitive security construction sites or facilities, successful completion of the application, screening and identity verification for all employees of the Consultant and subconsultant shall be completed prior to being provided a Photo Identification credential by the personnel assurance program provider.

If any questions should arise as to when a Personnel Assurance Program background check is required, the Port Authority Manager or contract administrator should be contacted for assistance.

- Designated Secure Areas

Services under the Agreement may be required in designated secure areas, as the same may be designated by the Authority ("Secure Areas"). The Authority will require the observance of certain security procedures with respect to Secure Areas, which may include the escort to, at, and/or from said high security areas by security personnel. All personnel that require access to designated Secure Areas who are not under escort by an authorized individual will be required to undergo background screening and personal identity verification.

Forty-eight (48) hours prior to the proposed performance of any work in a Secure Area, the Consultant shall notify the Director. The Consultant shall conform to procedures as may be established by the Director from time to time and at any time for access to Secure Areas and the escorting of personnel hereunder. Prior to the start of any work, the Consultant shall request a description from the Project Manager of the Secure Areas that will be in effect on the commencement date(s) of the request services. The description of Secure Areas may be changed from time to time and at any time by the Project Manager during the term of the

Agreement.

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained contractor security guards. However, this provision shall not relieve the Consultant of its responsibility to secure its equipment and work and that of its subconsultant/subcontractor's and service suppliers at the Authority sites or facilities (including rental spaces). In addition, the Consultant, subconsultant, subcontractor or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video recordings or to make sketches on any other medium at any Authority sites or facilities (including any rental spaces), except when necessary to perform the Work under this Agreement, without prior written permission from the Authority, which shall not be unreasonably withheld in light of the services to be undertaken hereunder. Upon request, any photograph, digital image, video recording or sketch made of any Authority sites or facility shall be submitted to the Authority to determine compliance with this paragraph, which submission shall be conclusive and binding on the submitting entity.

- Compliance with the Port Authority Information Security Handbook

This Agreement may require access to Authority information considered Protected Information ("PI") as defined in the Port Authority Information Security Handbook ("Handbook"), dated October, 2008, revised as of April 2, 2018, and as may be further amended. The Handbook and its requirements are hereby incorporated into this Agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Consultant to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Authority or when released by the Authority to outside entities. The Handbook can be obtained at: <http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf>.

- Audits for Compliance with Security Requirements

The Authority may conduct random or scheduled examinations of business practices under this section in order to assess the extent of compliance with security requirements, PI procedures, protocols and practices, which may include, but not be limited to, verification of background check status, confirmation of completion of specified training, and/or a site visit to view material storage locations and protocols.

21. A. As used herein, confidential information shall mean all information disclosed to the Consultant or the personnel provided by the Consultant hereunder which relates to the Authority's past, present, and future research, development and business activities including, but not limited to, software and documentation licensed to the Authority or proprietary to the Authority and all associated software, source code procedures and documentation. Confidential information shall also mean any other tangible or intangible information or materials including

but not limited to computer identification numbers, access codes, passwords, and reports obtained and/or used during the performance of the Consultant's Services under this Agreement.

B. Protected Information shall mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, revised as of April 2, 2018)*, Confidential Information, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

C. The Consultant shall hold all such Protected Information in trust and confidence for the Authority, and agrees that the Consultant and the personnel provided by the Consultant hereunder shall not, during or after the termination or expiration of this Agreement, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under or in connection with the supplying of services contemplated by this Agreement; provided, however, the Consultant may provide information to the FAA to be held in confidence to the same extent as set forth in the FAA MOU. The Consultant and the personnel provided by the Consultant hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Agreement. The Consultant and the personnel provided by the Consultant hereunder shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder. The Consultant shall promptly and fully inform the Director in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Consultant has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Agreement or coming to the Consultant's attention in connection with this Agreement.

D. Unless otherwise directed by the FAA, consistent with the FAA MOU, the Consultant shall not issue nor permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority or to the fact that goods have been, are being or will be provided to it and/or that services have been, are being or will be performed for it in connection with this Agreement, unless the Consultant first obtains the written approval of the Authority.

22. The Consultant assumes the following distinct and several risks to the extent they may arise from the negligent or willful intentional acts or omissions of the Consultant or its subconsultants/subcontractors in the performance of services hereunder (to the extent required by the FAA, the Consultant and any subconsultant will enter into a separate agreement with the FAA of similar import; if ~~no~~ such agreement is entered into, the FAA will be entitled to enforce this Section 22 against the Consultant and its subconsultants for its own damages or losses mutatis mutandis):

A. The risk of loss or damage to Authority property arising out of or in connection with the performance of services hereunder;

B. The risk or loss or damage to any property of the Consultant or its subconsultants/subcontractors arising out of or in connection with the performance of services hereunder;

C. The risk of claims, arising out of or in connection with the performance of services hereunder, whether made against the Consultant or its subconsultants/subcontractors or against the Authority, for loss or damage to any property of the Consultant's agents, employees, subcontractors, subconsultants, materialmen or others performing services hereunder;

D. The risk of claims, just or unjust, by third persons made against the Consultant or its subconsultants/subcontractors or the Authority on account of injuries (including wrongful death), loss or damage of any kind whatsoever arising in connection with the performance of services hereunder, including claims against the Consultant or its subconsultants/subcontractors or against the Authority for the payment of workers' compensation, whether such claims are made and whether such injuries, damage or loss are sustained at any time both before and after the completion of services hereunder.

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

Consultant shall cooperate in the defense of any third party suit against the FAA that relates to this Agreement.

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

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

Except with respect to the FAA as specified herein, no third party rights are created by the Agreement, except to the extent that the Agreement specifically provides otherwise by use of the words "benefit" or "direct right of action".

Inasmuch as the Authority has agreed to indemnify the Cities of New York and Newark against claims of the types described in subparagraph D above made against said cities, the Consultant's obligation under subparagraph D above shall include claims by said cities against the Authority for such indemnification.

23. Pursuant to the Code of Ethics for Port Authority Vendors ("Code"), Consultants must execute a Compliance Certification, and provide it to the Authority, prior to beginning Work under this Agreement. This Compliance Certification, once executed, is a material and integral part of the Agreement. A copy of the Compliance Certification must be retained by the Consultant, unless and until the Authority indicates that the Certifications may be disposed of. Violations of the law or of the Code may subject a Vendor or a Vendor's Employees to civil or criminal penalties. In addition, in the case of violation of any provision of the law or the Code, following consultation with the FAA, the Authority may pursue any available remedy, including, but not limited to, determining that a Vendor is in material breach of its contract and/or that, in the future, the Authority will have no further commercial dealings with the Consultant; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein. The Code and the Compliance Certification (PA Form 4254) can be found at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

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

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

- A. been indicted or convicted in any jurisdiction;
- B. been suspended, debarred, found not responsible or otherwise disqualified from entering into any agreement with any governmental agency or been denied a government contract for failure to meet standards related to the integrity of the Consultant;
- C. received a less than satisfactory rating on a public or government contract;
- D. had an agreement terminated by any governmental agency for breach of contract or for any cause based in whole or in part on an indictment or conviction;
- E. ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Proposal;
- F. had any business or professional license suspended or revoked or, within the five years prior to proposal opening, had any sanction imposed in excess of fifty thousand dollars (\$50,000)

as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;

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

H. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, including an inspector general of a governmental agency or public authority.

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

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

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

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

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

D. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated March 11, 2014, or as may be revised, (a copy of which is available upon request), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;

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

F. the Consultant has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a

private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Agreement; and

G. no person or organization has been retained, employed or designated on behalf of the Consultant to impact any Authority determination with respect to (i) the solicitation, evaluation or award of this Agreement; or (ii) the preparation of specifications or request for submissions in connection with this Agreement.

The certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information" shall be deemed to be made by the Consultant as follows:

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

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

Moreover, the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information", if made by a corporate Consultant, shall be deemed to have been authorized by the Board of Directors of the Consultant, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Consultant cannot make the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information", the Consultant shall so state and shall furnish with the signed proposal a signed statement which sets forth in detail the reasons therefor. If the Consultant is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph "25G.", if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a "financial interest" in this Agreement, as described in the Procurement Disclosure Policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Authority). Such disclosure is to be updated, as necessary. As a result of such disclosure, the Authority shall take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Consultant may be able to make the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information" at the

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

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

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

Consultants are advised that the Authority has adopted a policy to the effect that in awarding its agreements it will honor any determination by an agency of the State of New York or of the State of New Jersey that a Consultant is not eligible to propose on or be awarded public agreements because the Consultant has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein.

The policy permits a Consultant whose ineligibility has been so determined by an agency of the State of New York or of the State of New Jersey to submit a proposal on an Authority agreement



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

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

#### 27. CONSULTANT RESPONSIBILITY, SUSPENSION OF WORK AND TERMINATION

The Consultant agrees, if requested by the Authority, to present evidence of its continuing legal authority to do business in the States of New Jersey or New York, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Authority, after consultation with the FAA, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant must comply with the terms of the suspension order. Agreement activity may resume at such time as the Authority issues a written notice authorizing a resumption of performance under the Agreement.

Upon written notice to the Consultant, and an opportunity to be heard with appropriate Authority officials or staff, the Agreement may be terminated by the Authority at the Consultant's expense when the Consultant is determined by the Authority to be non-responsible. In such event, the Authority or its designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach, including recovery of costs from Consultant associated with such termination; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein.

#### 28. NO GIFTS, GRATUITIES, OFFERS OF EMPLOYMENT, ETC.

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

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Agreement or any other

Authority agreement), etc., which might tend to obligate the Authority employee to the Consultant and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Agreement or any other Authority agreement. Where used herein, the term "Port Authority" or "Authority" shall be deemed to include all subsidiaries of the Authority.

The Consultant shall ensure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it or by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

#### 29. OBLIGATION TO REPORT

In the event that the Consultant becomes aware of the occurrence of any conduct that is prohibited by this section entitled "No Gifts, Gratuities, Offers of Employment, Etc.", or if the Consultant knows or should reasonably know that a principal, employee, or agent of the Consultant or of its subconsultants or subcontractors has committed a violation of federal, New York or New Jersey law addressing or governing anti-trust, public contracting, false claims, fraud, extortion, bribery, bid rigging, embezzlement, prevailing wage or minority, woman, small or disadvantaged business enterprises, it shall report such information to the Authority's Office of Inspector General within three (3) business days of obtaining such knowledge. (See "<http://www.panynj.gov/inspector-general>") for information about how to report information to the Office of Inspector General). Failing to report such conduct may be grounds for finding of non-responsibility. The Consultant shall not take any Retaliatory Action against any of its employees for reporting such conduct.

In addition, during the term of this Agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated March 11, 2014, or as may be revised, (a copy of which is available upon request to the Office of the Secretary of the Authority).

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

#### 30. CONFLICT OF INTEREST

During the term of this Agreement, the Consultant shall be ~~in compliance~~ in compliance with the rules and regulations promulgated by the FAA and ~~found at~~ consistent with 40 C.F.R. Part 1506.5(c)-. The FAA will administer its policy with respect to the Consultant and the services provided herein.

Notwithstanding anything to the contrary contained herein, the Consultant, and any approved subconsultants, shall be precluded from bidding on any future actions the EIS addresses until the approving FAA official issues a Record of Decision (ROD) based on the EIS.

#### 31. INTEGRITY MONITOR

In the event that the Authority hires an Integrity Monitor in connection with the Work under this Agreement, the Consultant and any subcontractors shall cooperate fully with the Monitor and the

Authority, which includes, but is not limited to, providing complete access to all personnel and records in any way related to the Work performed pursuant to this Agreement. Any failure to cooperate may result in the termination of this Agreement. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

### 32. RIGHT TO AUDIT

Notwithstanding anything to the contrary, the Authority, including its Inspector General, Audit Department and Integrity Monitor, and the FAA, or its designee(s) each shall have the right to audit all of the records of the Consultant with respect to the Work and the Agreement, including, without limitation, records pertaining to any compensation paid, payable, or to be paid under the Agreement. The Consultant shall not be entitled to any reimbursement or other compensation for costs associated with such audit, investigation, or certification. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

The Consultant agrees to pay for the cost of any audit or investigation conducted by the Authority or the FAA, in which any criminal activity, ethics violations, or professional misconduct by the Consultant or any of its employees, or subcontractors or any of its employees, are discovered. The Consultant shall further agree that should it fail or refuse to pay for any such audit or investigation, the Authority is authorized to deduct from any sum owing the Consultant an amount equal to the cost of such audit and the damages resulting therefrom. The determination of the value of any such costs and decision to withhold any such payments are at the sole discretion of the Authority (including its Inspector General) or, in the case of the FAA, of its supervising personnel.

### 33. DEFINITIONS

As used in sections 24 to 32 above, the following terms shall mean:

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

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations, the Port Authority of New York and New Jersey and its wholly owned subsidiaries and others.

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

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

FIRM NAME

- PAGE 26 -

DATE

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

Retaliatory Action - Any adverse action taken by, or at the direction of, the Contractor, against any of its employees for reporting any information as set forth in the clause entitled "Obligation to Report," above.

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

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

36. References herein to the Authority shall and shall be deemed to mean equally the Port Authority Trans Hudson Corporation (PATH).

37. Nothing in this Agreement is intended to constitute the creation of an agency relationship between the Authority and the Consultant or any other right for the Consultant to act as the representative of the Authority for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Consultant, in performing its services hereunder, is and shall be at all times an independent contractor and the officers, agents and employees of the Consultant shall not be or be deemed to be agents, servants, or employees or "special employees" of the Authority.

38. This Agreement shall be governed by and construed in accordance with the Laws of the State of New York without regard to conflict of laws principles.

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

Sincerely,

THE PORT AUTHORITY OF  
NEW YORK AND NEW JERSEY

\_\_\_\_\_  
Lillian D. Valenti  
Chief Procurement Officer

Date \_\_\_\_\_

FIRM NAME

- PAGE 27 -

DATE

The execution of this Agreement by the Consultant's duly authorized representative shall serve as a certification that no alterations have been made to this Agreement, and if any changes or alterations to this Agreement have been made by the Consultant without the Authority's prior written consent, such changes shall be void, non-binding and of no effect.

ACCEPTED:

FIRM NAME

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**From:** [Summerville, James](#)  
**To:** [REDACTED] [Drew Brooks](#)  
**Cc:** [Jenet, Marie \(FAA\)](#); [REDACTED] [Wolfers-Lawrence, Jean \(FAA\)](#); [Herndon, Jane](#); [REDACTED] [Papasavvas, Krystina](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Lamond, Kathryn](#); [Resnick, Risa](#)  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions  
**Date:** Friday, November 16, 2018 1:01:05 PM  
**Attachments:** [Draft agreement redlined 11-16 RAR.DOCX](#)  
**Importance:** High

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John,

We tweaked the Agreement per the recent conversations, including today's. Please review the attachment, particularly Sections 10A and B and let us know asap if the attachment is fine to release to the Consultant.

Thanks, James, [REDACTED]

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Thursday, November 15, 2018 8:49 AM  
**To:** Summerville, James <[REDACTED]> [REDACTED] Drew Brooks  
<[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] [REDACTED]  
[REDACTED] Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Herndon, Jane <[REDACTED]> [REDACTED] Papasavvas, Krystina <[REDACTED]> Clark, Patty <[REDACTED]> DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

James,

Thank you for the opportunity to review the revised Draft Agreement. We had a few minor edits to section 10.a. The most recent edits are prefaced by "11/14:" and then the comment. We can discuss further on today's call or at a later time that works for you.

Thanks,  
John

John Doyle  
Attorney, Environmental Law Field Branch, AGC-630  
Office of the Chief Counsel  
Federal Aviation Administration  
1 Aviation Plaza  
Jamaica, NY 11434  
Tel: [REDACTED]  
Cell [REDACTED]

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---

**From:** Summerville, James <[REDACTED]>  
**Sent:** Friday, November 09, 2018 9:38 AM  
**To:** Price, Laura E (FAA) <[REDACTED]> Brooks, Andrew (FAA) <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]>  
Sanchez, David (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]> Henn,  
Patricia (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) [REDACTED], [REDACTED]  
[REDACTED] >; Herndon, Jane <[REDACTED]> Teodorescu, Andrew P (FAA)  
<[REDACTED]> Papasavvas, Krystina <[REDACTED]>  
[REDACTED] DiScenna, Matthew <[REDACTED]> Cohen, Michelle  
<[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Lamond, Kathryn <[REDACTED]>  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Laura et al,

Thanks for your comments on the draft Agreement. The Port Authority has revised the document in response to FAA comments, reflected as track changes in the attached document.

Regarding FAA's comment to item 10A, which requests clarification on how the amount for the initial tasks is to be set, the Port Authority's NEPA Owner's Rep Consultant produced an estimate based on the list of pre-NOI tasks provided by FAA and arrived at an estimate of \$295,315. The Port Authority recommends adding \$204,685 of contingency to account for unanticipated delays in the process of developing the draft Plan of Study and to ensure that the Consultant remains funded for a total not-to-exceed amount of \$500,000. The Consultant would be required to submit to the FAA an estimate for Plan of Study development and pre-NOI activities, which would be subject to the FAA's and the PA's review and acceptance. The Consultant should not begin any such activities before receiving the FAA's written approval of such estimate. We have also added language (80% notification) to address the possibility of further unanticipated delays/issues that require a greater level of effort than \$500,000.

If you have any questions or would like to discuss further by conference call, please let us know. We'd like to distribute the draft copy of the Agreement to the selected Consultant as soon as possible after selection determination, which is anticipated on 11/14.

Thanks,

James Summerville, Sr. Projects Contracts Specialist  
Port Authority of NY & NJ

Procurement Dept.

---

**From:** [redacted] [\[mailto:\[redacted\]\]](mailto:[redacted])  
**Sent:** Friday, November 02, 2018 3:18 PM  
**To:** Papasavvas, Krystina <[redacted]> Drew Brooks <[redacted]>  
Clark, Patty <[redacted]> DiScenna, Matthew <[redacted]> Cohen, Michelle  
<[redacted]> Tabafunda, Faith <[redacted]> Rogak, Elizabeth  
<[redacted]> Herndon, Jane <[redacted]> Summerville, James  
<[redacted]> Lamond, Kathryn <[redacted]>  
**Cc:** Jenet, Marie (FAA) <[redacted]> [redacted] [redacted]  
[redacted] [redacted] Wolfers-Lawrence, Jean (FAA) [redacted]  
[redacted] [redacted]  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Krystina/All:

Attached please find the FAA's comments regarding the Draft Agreement. Please let us know if you have any questions.

Best,

Laura

---

**From:** Papasavvas, Krystina <[redacted]>  
**Sent:** Thursday, October 18, 2018 12:11 PM  
**To:** Brooks, Andrew (FAA) <[redacted]> [redacted] DiScenna, Matthew  
<[redacted]> Cohen, Michelle <[redacted]> Tabafunda, Faith  
<[redacted]> Rogak, Elizabeth <[redacted]> Herndon, Jane  
<[redacted]> Summerville, James <[redacted]> Lamond, Kathryn  
<[redacted]>  
**Cc:** Jenet, Marie (FAA) <[redacted]> Martinez, Evelyn (FAA) <[redacted]>  
Sanchez, David (FAA) <[redacted]> Doyle, John (FAA) <[redacted]> Henn,  
Patricia (FAA) <[redacted]> Wolfers-Lawrence, Jean (FAA) [redacted]  
[redacted] Teodorescu, Andrew P (FAA) <[redacted]> Price, Laura E  
(FAA) <[redacted]>  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Good afternoon,

Thank you for your proposed Interview Questions for the Consultant Selection Process. As mentioned this morning on our call, we will discuss internally and get back to you.

For your review, I have attached the draft Agreement. Please review and provide any commentary. Also, please provide a list of the pre-NOI support tasks that would be incorporated into the budget



for Paragraph 10A of the attached Agreement.

Thank you.

**Krystina Papasavvas**

Integrity, Compliance and Contract Review  
Port Authority of New York and New Jersey Procurement Department  
4 World Trade Center  
150 Greenwich Street, 21st Floor  
New York, NY 10007

T: [REDACTED]

F: [REDACTED]

email: [REDACTED]

---

**From:** [REDACTED] [[mailto:\[REDACTED\]](#)]  
**Sent:** Wednesday, October 17, 2018 1:11 PM  
**To:** Lamond, Kathryn <[REDACTED]> Clark, Patty <[REDACTED]> DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane <[REDACTED]> Summerville, James <[REDACTED]> Papasavvas, Krystina <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED]  
[REDACTED]  
[REDACTED]  
**Subject:** LGA AirTrain Consultant Selection: Interview Questions

Good Afternoon Everyone,

Attached are the proposed Interview Questions for the Consultant Selection Process. We will be able to discuss in more depth during tomorrow's call.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

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YOU BELIEVE YOU HAVE RECEIVED THIS E-MAIL IN ERROR, PLEASE NOTIFY  
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WITH ANY ATTACHMENTS), AND DESTROY ANY PRINTOUTS.

**THE PORT AUTHORITY OF NY & NJ**

**P.A. AGREEMENT # \*\*\*-18-\*\*\***

DATE

Lillian D. Valenti  
*Chief Procurement Officer*

FIRM

ADDRESS

CITY, ST ZIP

Attention: CONTACT, TITLE

**SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL  
REVIEW SERVICES FOR THE LAGUARDIA AIRPORT ("LGA")  
ACCESS IMPROVEMENT PROJECT**

Dear CONTACT:

1. The Port Authority of New York and New Jersey (the "Authority") hereby offers to retain FIRM NAME (the "Consultant" or "you") to provide expert professional services as more fully set forth herein and in Attachment A, which is attached hereto and made a part hereof. Attachment A may be updated and modified throughout the performance of the Agreement, as agreed upon, in writing, by both parties.

This Agreement shall be signed by you and by the Authority's Chief Procurement Officer. As used herein and hereafter, the "Director" means the Director of the Aviation Department of the Authority, or his/her duly authorized representatives.

For the purpose of administering this Agreement, the Director has designated DAR NAME, , to act as his duly authorized representative. The Project Manager for this project is NAME, tel. (\*\*\*)\*\*\_\*\_\*\*\*\*, or e-mail address [REDACTED]

2. Your services shall be performed as expeditiously as possible. Time is of the essence in the performance of all your services under this Agreement.

3. The Authority has agreed to retain you to perform consulting services for the Federal Aviation Administration ("FAA") pursuant to the terms of the Memorandum of Understanding between the Authority and the FAA a copy of which is attached hereto ("FAA MOU") and you shall take direction from, and be responsible to, the FAA, as Lead Agency, acting on behalf of the FAA in connection with the preparation of an Environmental Impact Statement ("EIS") associated with the proposed LaGuardia Airport Access Improvement Project being undertaken by the Authority. To the extent of any conflict between the terms of this Agreement and the terms of the FAA MOU, the FAA MOU shall prevail.

4. In accordance with Attachment A, the Consultant shall submit, on behalf of itself and its approved subconsultants, any and all work performed in preparation of the EIS directly to the

4 World Trade Center  
150 Greenwich Street, 21<sup>st</sup> Floor  
New York, NY 10007

THE PORT AUTHORITY OF NY & NJ

FIRM NAME

- PAGE 2 -

DATE

FAA. The Consultant shall maintain a segregated copy of each record/document relating to the Project that is used by the FAA in its decision making process.

5. The Consultant shall submit bi-weekly written reports on the progress of its work to the FAA, with a concurrent copy to the Authority, unless otherwise directed by the FAA. At a minimum on a bi-weekly basis, joint meetings among the FAA, the Authority and the Consultant shall be held to facilitate the development and preparation of the EIS, in accordance with Attachment A. The Consultant and the Authority shall not meet absent FAA, without prior notification and approval of the FAA. The Consultant and any approved subconsultants shall provide the FAA with full cooperation in coordinating any public workshops, hearings, or meetings as required and directed by the FAA in connection with the Project.

6. Consultant, and any approved subconsultants, shall provide verification to the FAA that they have no financial interest in the outcome of the action the EIS will address, consistent with FAA Order 5050.4B, Paragraph 1003(d).

7. The Consultant shall be responsible for the costs associated with printing and publication of the draft and final copies of the EIS, as well as the publication of FAA-approved notices, stenographic and clerical services, preparation of graphics and visual aids associated with any public workshops, meetings and hearings, provided, however, such costs may be included on invoices to be paid by the Authority.

8. Consultant shall provide an estimated cost and staffing analysis for the performance of tasks set forth in Attachment A and shall promptly provide notice to the Authority and the FAA if the cost and scope of the services to be provided hereunder materially changes. Although the Authority has agreed with the FAA that it will pay Consultant's fees and expenses, Consultant agrees that the fees submitted to the Authority will be reasonably related to the work performed and generally comparable to fees charged by prudent industry consultants performing like services. The expenses to be charged by Consultant will comply with FAA policy for consultant expenses (a copy of which is attached as Exhibit —) and Section ~~XXI~~ hereof.

9. Consultant shall submit its invoices for fees and expenses on a monthly basis and the Authority will have the reasonable ability to review the fees and expenses and confirm that the work generally comports with the scope identified in Section 4. The Authority shall not pay any invoice submitted unless it is confirmed ~~for payment~~ by a designated person at the FAA, as described in paragraph C.2 of the MOU, with such confirmation to be conveyed to Matthew DiScenna, Senior Program Manager, LaGuardia AirTrain, by electronic mail at [REDACTED] with a copy to Elizabeth Rogak of Port Authority Law Department at [REDACTED]. No approval or disapproval, or omission to approve or disapprove, however, shall relieve the Consultant of its responsibility under this Agreement to furnish the requested services as and when designated by the FAA and in accordance with professional standards.

10. A. For the initial tasks to be performed under this Agreement prior to acceptance of the Plan of Study, in accordance with Attachment A (namely, development of the Plan of Study and certain pre-Notice of Intent support activities), you shall not continue to render services after the point at which the total amount to be paid to you hereunder, including reimbursable expenses

THE PORT AUTHORITY OF NY & NJ

FIRM NAME

- PAGE 3 -

DATE

and costs resulting from unanticipated delays, for those tasks reaches the amount of ~~\*\*\*\*\* \$\*\*\*\*\* 500,000.00 \*\*\*\*\* (\*\*\*\*\*)(Five Hundred Thousand Dollars)~~ unless you are specifically authorized in writing to so continue by the Director. ~~Any Uncompleted pre-NOI initial tasks commenced but not completed before the acceptance of the Plan of Study, may need to be completed and incorporated into the final Plan of Study, and any such work performed after the acceptance of the Plan of Study shall be paid in accordance with Section 10.B.:~~

~~The Consultant shall be required to submit to the Authority FAA an estimate for these initial tasks, which would be subject to the review by the FAA and acceptance by of the FAA and the Authority. The Consultant shall not commence any such activities prior to receipt of written approval of such estimate from the Authority FAA. There is no guarantee that performance of the work referenced in this paragraph shall reach this not-to-exceed amount, and this limitation shall not be construed to entitle you to the above amount as minimum compensation. The Consultant must notify the Authority upon expending 80% of authorized funds and receive written authorization from the Director prior to expending amounts exceeding 100% of authorized funds. Following the approval of the Plan of Study by the FAA, the not to exceed amount shall be superseded by the total amount agreed upon between the Authority and the Consultant.~~

B. For the balance of the work to be performed under this Agreement, including any additional or incomplete pre-NOI work ~~following the approval of the Plan of Study by the FAA,~~ you shall not continue to render services after the point at which the total amount to be paid to you hereunder, including reimbursable expenses, reaches the amount agreed upon between the Authority ~~, the FAA~~ and the Consultant for the performance of the balance of the services, following acceptance of the Plan of Study, unless you are specifically authorized in writing to so continue by the Director. If no such authorization is issued, this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed. It is understood, however, that this limitation shall not be construed to entitle you to the above amount as a minimum compensation.

C. If any amendments to the Scope of Work (Plan of Study) require the expenditure of additional funds by the Authority, the ~~Contractor~~ Consultant shall notify FAA of such additional costs, with sufficient time to accommodate funding authorization and allocation and the capped amount in this Section 10 shall be deemed increased by that amount.

11. As full compensation for all your services and obligations in connection with this Agreement, ~~(assuming approval~~ assuming confirmation by the FAA that work product or materials set forth in a submitted invoice have been performed or provided by the Consultant (and/or approved subconsultants~~);),~~ the Authority will pay you the total of the amounts computed under subparagraphs A, B, C, and D below, subject to the limits on compensation and provisions set forth above. Subject to the terms and conditions below, travel time is not reimbursable under subparagraphs A, and B hereunder.

A. An amount equal to the actual hourly billing rate billed by you for professional and technical personnel multiplied by the total number of hours actually spent by said personnel in the performance of services hereunder. No hour of services by an employee shall be compensable hereunder unless the employee is actually paid for such services at his usual salary rate. The hourly

FIRM NAME

- PAGE 4 -

DATE

billing rate for each employee is the amount to be paid to you and is full compensation for all benefits, taxes, etc., paid by you. There shall be no change in the billing rates during the first year of the term of this Agreement and no additional compensation for overtime, weekend, or holiday work. Attached hereto is a schedule of names, titles, and corresponding hourly billing rates. Said schedule shall clearly indicate any of your employees proposed by you to perform the requested services that are former Authority employees. For compensation purposes under this Agreement, no said salary or amount shall exceed the salary or amount received by said personnel or rate customarily billed for a partner or principal as of the effective date of this Agreement unless the Director has been notified in advance, in writing, of the increased salary, rate or amount and approves the increase.

The Consultant shall verify that its employees, subconsultants, or subcontractors working under this Agreement are legally present and authorized to work in the United States, as per the federally required I-9 Program. Furthermore, upon request of the Authority, the Consultant shall furnish, or provide the Authority access to federal Form I-9 (Employment Eligibility Verification) for each individual hired by the Consultant, performing services hereunder. This includes citizens and noncitizens.

The Authority ~~and the FAA~~ will have the right of approval of all changes in personnel and increases in billing rates of personnel performing services under this Agreement. When requesting salary or billing rate adjustments for one or more of its personnel, the Consultant shall submit to the FAA, with a copy to the Authority, his/her name, title, current direct hourly rate or billing rate, proposed new direct hourly salary or billing rate, resulting percentage increase, effective date and reason for the requested change, setting forth in detail any increased cost to the Consultant of providing the services under this Agreement which has given rise to the request for increased salary. For adjustments submitted after the effective date of this Agreement, the Authority ~~and the FAA~~ will grant an increase only if the Consultant demonstrates compliance with all of the following conditions: that increases in salary, or partner's or principal's billing rate or amount, are in a) accordance with the program of periodic merit and cost of living increases normally administered by it, b) are warranted by increased costs of providing services under this Agreement, c) are based upon increases in salaries and billing rates which are generally applicable to all of Consultant's clients and d) are in accordance with the Authority's salary rate increase policy for the current year for Authority employees possessing comparable skills and experience.

Notwithstanding the above, the multiplier set forth in the first line of this subparagraph shall be applied only in the case of personnel other than partners or principals who are permanent employees.

B. Amounts actually paid to subconsultants hereunder who have been retained after the written approval by the FAA and the Authority of the subconsultant and the compensation to be paid the subconsultant. The Consultant shall submit a copy of the terms and conditions of the subconsultant's compensation (including multiplier, if applicable), as well as an estimate of the number of hours required by the subconsultant to perform his services, as part of any request for approval of the subconsultant.

C. Out-of-pocket expenses, approved in advance by ~~the FAA and~~ the Authority, necessarily and reasonably incurred and actually paid by you in the performance of your services hereunder. Out-of-pocket expenses are expenses that are unique to the performance of your services under

this Agreement and generally contemplate the purchase of outside ancillary services, except that for the purpose of this Agreement, out-of-pocket expenses do include amounts for long distance telephone calls, rentals of equipment, travel and local transportation and meals and lodging on overnight trips.

Notwithstanding the above, the Authority will pay an amount computed as follows for the reproduction of submittal drawings, specifications and reports:

1) If the Consultant uses its own facilities to reproduce such documents, an amount computed in accordance with the billing rates the Consultant customarily charges for reproduction of such documents under agreements such as this, or

2) If the Consultant uses an outside vendor for the reproduction of such documents, the actual, necessary and reasonable amounts for the reproduction of such documents.

The Authority will not pay for expenses that are usually and customarily included as part of the Consultant's overhead. For the purposes of this Agreement out-of-pocket expenses do not include amounts for typing, utilization of computer systems, computer aided design and drafting (CADD), cameras, recording or measuring devices, flashlights and other small, portable equipment, safety supplies, phones, telephone calls, electronic messaging including Fax, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.

When the Consultant uses its personal vehicle to provide services within the Port District, the Consultant will be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage Reimbursement Rate (as determined by the United States General Services Administration (GSA) – <http://www.gsa.gov/portal/content/100715>) per mile traveled by auto.

When the Consultant is asked to provide services outside the Port District, the actual cost of transportation as well as the cost for hotel accommodations and meals will be reimbursable hereunder when approved in advanced in writing by the Director. The cost for all meals and lodging on approved overnight trips is limited to the amounts established by the United States GSA for that locality.

GSA Domestic Rates: <http://www.gsa.gov/portal/category/21287>

You shall obtain the Director's written approval prior to making expenditures for out-of-pocket expenses in excess of one thousand dollars (\$1,000) per specific expenditure and for all overnight trips, which are reimbursable expenditures as set forth above. You shall substantiate all billings for out-of-pocket expenses in excess of twenty-five dollars (\$25) with receipted bills and shall provide said receipts with the appropriate billing.

D. As used herein:

"Port District" is a geographical area of about 1,500 square miles in the States of New York and New Jersey, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey and over 200 other municipalities, including all or part of seventeen counties, in the two States.

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

12. You shall keep, and shall cause any subconsultants under this Agreement to keep, daily records of the time spent in the performance of services hereunder by all persons whose salaries or amounts paid thereto will be the basis for compensation under this Agreement as well as records of the amounts of such salaries and amounts actually paid for the performance of such services and records and receipts of reimbursable expenditures hereunder and, notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services or expenses as are otherwise compensable hereunder. The Authority will have the right to audit all such records.

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

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

Should this Agreement be terminated in accordance with this Section 13, the Consultant shall, and shall cause it subconsultants to, upon request from the FAA, provide all documentation, reports, analyses and data to the FAA.

14. Aside from the FAA and as directed by the FAA in accordance with the FAA MOU, under no circumstances shall you or your subconsultants communicate in any way with any contractor, department, board, agency, commission or other organization or any person, whether governmental or private in connection with the services to be performed hereunder.

15. No certificate, payment (final or otherwise), acceptance of any work nor any other act or omission of the Authority or the Director or the FAA shall operate to release you from any



obligations under or upon this Agreement, or to estop the Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Authority from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact or to prevent the recovery of any damages sustained by the Authority; provided, however, that the FAA shall have the sole right to determine whether the services hereunder have been performed in accordance with the scope described in ~~Section XX~~ Attachment A and whether the services hereunder have been performed with requisite due care and professional responsibility.

16. The Authority and Consultant acknowledge that the FAA shall own title to and all intellectual property rights in and to all documents, reports, specifications, designs, developments, computations and other materials prepared, obtained or delivered under the terms of this Agreement (collectively, the "Deliverables"). The Authority acknowledges that the FAA may use, transfer, copy and distribute the Deliverables without restriction or limitation.

17. This Agreement being based upon your special qualifications for the services herein contemplated, any assignment, subletting or other transfer of this Agreement or any part hereof or of any moneys due or to become due hereunder without the express consent in writing of the Authority (and the FAA) shall be void and of no effect, provided, however, that you may sublet services to subconsultants with the express consent in writing of the Director and the FAA. All persons to whom you sublet services, however, shall be deemed to be your agents and no subletting or approval thereof shall be deemed to release you from your obligations under this Agreement, to impose any obligation on the Authority or the FAA to such subconsultant or give the subconsultant any rights against the Authority or the FAA.

18. The Authority has a long standing practice of encouraging Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) to seek business opportunities with it, either directly or as subconsultants or subcontractors. "Minority business enterprise" or "MBE" means a business entity which is at least fifty-one percent (51%) owned by one (1) or more members of one (1) or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more members of one (1) or more minority groups; and whose management and daily business operations are controlled by one (1) or more such individuals who are citizens or permanent resident aliens. "Women-owned business enterprise" or "WBE" means a business which is at least fifty-one percent (51%) owned by one (1) or more women; or, in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned by one (1) or more women: and whose management and daily business operations are controlled by one (1) or more women who are citizens or permanent resident aliens.

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

- A. Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- B. Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
- C. Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

FIRM NAME

- PAGE 8 -

DATE

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

For this Agreement, the Director has set a targeted goal of twenty percent (20%) of the total Agreement price for qualified and certified MBEs and ten (10%) percent of the total Agreement price for qualified and certified WBEs.

To be "certified" a firm must be certified by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

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

Good faith efforts to include and facilitate participation by MBE/WBEs shall include, but not be limited to the following:

- A. Dividing the services and materials to be procured into smaller portions, where feasible.
- B. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBE/WBEs as may be appropriate.
- C. Soliciting services and materials from Port Authority certified MBE/WBE firms.
- D. Ensuring that provision is made to provide progress payments to MBE/WBEs in accordance with prompt payment provisions of the Agreement under which services are being provided, if applicable.
- E. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

The Authority has a list of certified MBE/WBE service firms which is available to you at <http://www.panynj.gov/business-opportunities/supplier-diversity.html>. The Consultant will be required to submit to the Authority's OBDCR for certification the names of MBE/WBE firms it proposes to use who are not on the list of certified MBE/WBE firms.

The Consultant must submit an MBE/WBE Participation Plan for each MBE/WBE subconsultant. Each Participation Plan shall contain, at a minimum, the following:

- Identification of the MBE/WBE: Provide the name and address of the MBE/WBE. If no MBE/WBEs are identified, describe the process for selecting participant firms in order to achieve the good-faith goals under this Agreement.
- Level of Participation: Indicate the dollar value and percentage of MBE/WBE participation expected to be achieved.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

The MBE/WBE subconsultant listed on each of the MBE/WBE Participation Plans must be certified by the Authority in order for the Consultant to receive credit toward the MBE/WBE goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/sd-mwsd-be-profile.html> to search for MBE/WBEs by a particular commodity or service. The

FIRM NAME

- PAGE 9 -

DATE

Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to any of the MBE/WBE Participation Plans must be submitted via a Modified MBE/WBE Participation Plan to the Project Manager for review and approval by OBD CR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use Form PA3760D. The Consultant shall not make changes to any of its approved MBE/WBE Participation Plans or substitute MBE/WBE subconsultants or suppliers for those named in their approved plans without the Manager's prior written approval. Unauthorized changes or substitutions, including performing the work designated for a subconsultant with the Consultant's own forces, shall be a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored throughout the duration of the Agreement.

The Consultant shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subconsultant and supplier actually involved in the Agreement, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information that may assist the Project Manager in determining the Consultant's compliance with the foregoing provisions.

**MBE/WBE Conditions of Participation**

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

1. Commercially Useful Function: An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Consultant and the MBE/WBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as an MBE/WBE, the Consultant shall receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

2. Work Force: The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the ~~Contractor~~ Consultant, other Subcontractors on the contract, or their Affiliates. This does not preclude the employment by the MBE/WBE of an individual that has been previously employed by another firm involved in the ~~Contract~~ Agreement, provided that the individual was independently recruited by the MBE/WBE in accordance with

customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.

3. Supervision: All Work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Consultant, other subconsultants on the agreement, or their Affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the Work.

### **Counting MBE/WBE Participation**

The value of the Work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. Subconsultants: One hundred percent (100%) of the value of the Work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such Work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Consultant, other subconsultants or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE subconsultant is itself an MBE/WBE. Work that an MBE/WBE subconsultants to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. Material Suppliers: Sixty percent (60%) of the expenditure to an MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. Broker's/Manufacturer's Representatives: One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves will not be counted.

4. Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its

own forces. Contact OBDCR at [REDACTED] for more information about requirements for such joint ventures.

19. The Consultant shall take all necessary and reasonable steps to ensure non-discrimination in the performance and administration of all aspects of this Agreement.

A. The Consultant agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Consultant from the solicitation period through the completion of the agreement. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

B. During the performance of this agreement, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

1. Compliance with Regulations: The ~~contractor~~ Consultant (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this ~~contract~~ Agreement.
2. Non-discrimination: The ~~contractor~~ Consultant, with regard to the work performed by it during the ~~contract~~ Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants and subcontractors, including procurements of materials and leases of equipment. The ~~contractor~~ Consultant will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the ~~contract~~ Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the ~~contractor~~ Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the ~~contractor~~ Consultant of the ~~contractor's~~ Consultant's obligations under this ~~contract~~ Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports: The ~~contractor~~ Consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information,

and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of ~~a contractor~~ the Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the ~~contractor~~ Consultant will so certify to the Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a ~~contractor's~~ Consultant's noncompliance with the Non-discrimination provisions of this ~~contract~~ Agreement, the Authority will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the ~~contractor~~ Consultant under the ~~contract~~ Agreement until the ~~contractor~~ Consultant complies; and/or
  - b. Cancelling, terminating, or suspending ~~a contract~~ the Agreement, in whole or in part.
  
6. Incorporation of Provisions: The ~~contractor~~ Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The ~~contractor~~ Consultant will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the ~~contractor~~ Consultant becomes involved in, or is threatened with litigation by a subcontractor, subconsultant or supplier because of such direction, the ~~contractor~~ Consultant may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the ~~contractor~~ Consultant may request the United States to enter into the litigation to protect the interests of the United States.

Commented [PLE1]: Should this say FAA?

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C. Title VI List of Pertinent Nondiscrimination Authorities:

During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation- Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of

persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

20. The Authority has the responsibility of ensuring safe, reliable and secure transportation facilities, systems and projects to maintain the well-being and economic competitiveness of the

region. Therefore, the Authority reserves the right to deny access to specific documents designed by it as "Critical Infrastructure Information", unless, after consultation with the FAA, such information is deemed necessary for full and complete performance of the services hereunder. The Authority reserves the right to impose multiple layers of security requirements on the Consultant, its staff and subconsultants and their staffs, depending upon the level of security required, or make any amendments with respect to such requirements as determined by the Authority.

These security requirements may include but are not limited to the following:

- Execution of Non-Disclosure and Confidentiality Agreements and Acknowledgments

At the direction of the Authority, the Consultant shall be required to have its principals, staff and/or subconsultant(s) and their staff, execute Authority approved non-disclosure and confidentiality agreements.

- Consultant/Subconsultant identity checks and background screening

The Authority's designated background screening provider may require inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff's name and residence; screening of federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; access identification, to include some form of biometric security methodology such as fingerprint, facial or iris scanning.

The Consultant may be required to have its staff, and any subconsultant's staff, material-men, visitors or others over whom the Consultant/subconsultant has control, authorize the Authority or its designee to perform background checks, and a personal identity verification check. Such authorization shall be in a form acceptable to the Authority. The Consultant and subconsultants may also be required to use an organization designated by the Authority to perform the background checks.

Background screening is required when a person has an established need to know or has access to any one of the following types of information or physical locations:

- 1) Confidential Privileged Information
- 2) Confidential Information related to a security project and/or task
- 3) Secure Area of an Authority facility
- 4) Mission critical system

The Consultant shall perform background checks through the Authority's personnel assurance program provider. The Secure Worker Access Consortium (S.W.A.C.) is the only Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as Security Identification Display Area (SIDA), the federal regulatory requirements for personnel performing Work at aviation facilities.). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers is located at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at [REDACTED] for more information and the latest pricing. The cost for said background checks



for staff that pass and are granted a credential may be reimbursable to the Consultant (and its subconsultants) as an out-of-pocket expense as provided herein. Costs for background checks for staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

No person shall be permitted on or about the Authority construction sites or facilities (including rental spaces) without a facility-specific photo identification credential approved by the Authority. If the Authority requires facility-specific identification credentials for the Consultant and the subconsultant's staff, the Authority will supply such identification at no cost to the Consultant or its subconsultants. Such facility-specific identification credential shall remain the property of the Authority and shall be returned to the Authority at the completion or upon request prior to completion of the individual's assignment at the specific facility. It is the responsibility of the appropriate Consultant or subconsultant to immediately report to the Authority the loss of any staff member's individual facility-specific identification credential. The Consultant or subconsultant will be billed for the cost of the replacement identification credential. Consultant's and subconsultant's staff shall display Identification badges in a conspicuous and clearly visible manner, when entering, working or leaving an Authority construction site or facility.

Employees may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, unlaminated social security card for identity and SSN verification.

Where applicable, for sensitive security construction sites or facilities, successful completion of the application, screening and identity verification for all employees of the Consultant and subconsultant shall be completed prior to being provided a Photo Identification credential by the personnel assurance program provider.

If any questions should arise as to when a Personnel Assurance Program background check is required, the Port Authority Manager or contract administrator should be contacted for assistance.

- Designated Secure Areas

Services under the Agreement may be required in designated secure areas, as the same may be designated by the Authority ("Secure Areas"). The Authority will require the observance of certain security procedures with respect to Secure Areas, which may include the escort to, at, and/or from said high security areas by security personnel. All personnel that require access to designated Secure Areas who are not under escort by an authorized individual will be required to undergo background screening and personal identity verification.

Forty-eight (48) hours prior to the proposed performance of any work in a Secure Area, the Consultant shall notify the Director. The Consultant shall conform to procedures as may be established by the Director from time to time and at any time for access to Secure Areas and the escorting of personnel hereunder. Prior to the start of any work, the Consultant shall request a description from the Project Manager of the Secure Areas that will be in effect on the commencement date(s) of the request services. The description of Secure Areas may be changed from time to time and at any time by the Project Manager during the term of the

Agreement.

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained contractor security guards. However, this provision shall not relieve the Consultant of its responsibility to secure its equipment and work and that of its subconsultant/subcontractor's and service suppliers at the Authority sites or facilities (including rental spaces). In addition, the Consultant, subconsultant, subcontractor or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video recordings or to make sketches on any other medium at any Authority sites or facilities (including any rental spaces), except when necessary to perform the Work under this Agreement, without prior written permission from the Authority, which shall not be unreasonably withheld in light of the services to be undertaken hereunder. Upon request, any photograph, digital image, video recording or sketch made of any Authority sites or facility shall be submitted to the Authority to determine compliance with this paragraph, which submission shall be conclusive and binding on the submitting entity.

- Compliance with the Port Authority Information Security Handbook

This Agreement may require access to Authority information considered Protected Information ("PI") as defined in the Port Authority Information Security Handbook ("Handbook"), dated October, 2008, revised as of April 2, 2018, and as may be further amended. The Handbook and its requirements are hereby incorporated into this Agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Consultant to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Authority or when released by the Authority to outside entities. The Handbook can be obtained at: <http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf>.

- Audits for Compliance with Security Requirements

The Authority may conduct random or scheduled examinations of business practices under this section in order to assess the extent of compliance with security requirements, PI procedures, protocols and practices, which may include, but not be limited to, verification of background check status, confirmation of completion of specified training, and/or a site visit to view material storage locations and protocols.

21. A. As used herein, confidential information shall mean all information disclosed to the Consultant or the personnel provided by the Consultant hereunder which relates to the Authority's past, present, and future research, development and business activities including, but not limited to, software and documentation licensed to the Authority or proprietary to the Authority and all associated software, source code procedures and documentation. Confidential information shall also mean any other tangible or intangible information or materials including

but not limited to computer identification numbers, access codes, passwords, and reports obtained and/or used during the performance of the Consultant's Services under this Agreement.

B. Protected Information shall mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, revised as of April 2, 2018)*, Confidential Information, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

C. The Consultant shall hold all such Protected Information in trust and confidence for the Authority, and agrees that the Consultant and the personnel provided by the Consultant hereunder shall not, during or after the termination or expiration of this Agreement, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under or in connection with the supplying of services contemplated by this Agreement; provided, however, the Consultant may provide information to the FAA to be held in confidence to the same extent as set forth in the FAA MOU. The Consultant and the personnel provided by the Consultant hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Agreement. The Consultant and the personnel provided by the Consultant hereunder shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder. The Consultant shall promptly and fully inform the Director in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Consultant has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Agreement or coming to the Consultant's attention in connection with this Agreement.

D. Unless otherwise directed by the FAA, consistent with the FAA MOU, the Consultant shall not issue nor permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority or to the fact that goods have been, are being or will be provided to it and/or that services have been, are being or will be performed for it in connection with this Agreement, unless the Consultant first obtains the written approval of the Authority.

22. The Consultant assumes the following distinct and several risks to the extent they may arise from the negligent or willful intentional acts or omissions of the Consultant or its subconsultants/subcontractors in the performance of services hereunder (to the extent required by the FAA, the Consultant and any subconsultant will enter into a separate agreement with the FAA of similar import; if ~~no~~ such agreement is entered into, the FAA will be entitled to enforce this Section 22 against the Consultant and its subconsultants for its own damages or losses mutatis mutandis):

A. The risk of loss or damage to Authority property arising out of or in connection with the performance of services hereunder;

B. The risk or loss or damage to any property of the Consultant or its subconsultants/subcontractors arising out of or in connection with the performance of services hereunder;

C. The risk of claims, arising out of or in connection with the performance of services hereunder, whether made against the Consultant or its subconsultants/subcontractors or against the Authority, for loss or damage to any property of the Consultant's agents, employees, subcontractors, subconsultants, materialmen or others performing services hereunder;

D. The risk of claims, just or unjust, by third persons made against the Consultant or its subconsultants/subcontractors or the Authority on account of injuries (including wrongful death), loss or damage of any kind whatsoever arising in connection with the performance of services hereunder, including claims against the Consultant or its subconsultants/subcontractors or against the Authority for the payment of workers' compensation, whether such claims are made and whether such injuries, damage or loss are sustained at any time both before and after the completion of services hereunder.

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

Consultant shall cooperate in the defense of any third party suit against the FAA that relates to this Agreement.

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

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

Except with respect to the FAA as specified herein, no third party rights are created by the Agreement, except to the extent that the Agreement specifically provides otherwise by use of the words "benefit" or "direct right of action".

Inasmuch as the Authority has agreed to indemnify the Cities of New York and Newark against claims of the types described in subparagraph D above made against said cities, the Consultant's obligation under subparagraph D above shall include claims by said cities against the Authority for such indemnification.

23. Pursuant to the Code of Ethics for Port Authority Vendors ("Code"), Consultants must execute a Compliance Certification, and provide it to the Authority, prior to beginning Work under this Agreement. This Compliance Certification, once executed, is a material and integral part of the Agreement. A copy of the Compliance Certification must be retained by the Consultant, unless and until the Authority indicates that the Certifications may be disposed of. Violations of the law or of the Code may subject a Vendor or a Vendor's Employees to civil or criminal penalties. In addition, in the case of violation of any provision of the law or the Code, following consultation with the FAA, the Authority may pursue any available remedy, including, but not limited to, determining that a Vendor is in material breach of its contract and/or that, in the future, the Authority will have no further commercial dealings with the Consultant; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein. The Code and the Compliance Certification (PA Form 4254) can be found at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

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

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

- A. been indicted or convicted in any jurisdiction;
- B. been suspended, debarred, found not responsible or otherwise disqualified from entering into any agreement with any governmental agency or been denied a government contract for failure to meet standards related to the integrity of the Consultant;
- C. received a less than satisfactory rating on a public or government contract;
- D. had an agreement terminated by any governmental agency for breach of contract or for any cause based in whole or in part on an indictment or conviction;
- E. ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Proposal;
- F. had any business or professional license suspended or revoked or, within the five years prior to proposal opening, had any sanction imposed in excess of fifty thousand dollars (\$50,000)

as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;

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

H. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, including an inspector general of a governmental agency or public authority.

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

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

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

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

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

D. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated March 11, 2014, or as may be revised, (a copy of which is available upon request), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;

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

F. the Consultant has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a

private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Agreement; and

G. no person or organization has been retained, employed or designated on behalf of the Consultant to impact any Authority determination with respect to (i) the solicitation, evaluation or award of this Agreement; or (ii) the preparation of specifications or request for submissions in connection with this Agreement.

The certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information" shall be deemed to be made by the Consultant as follows:

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

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

Moreover, the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information", if made by a corporate Consultant, shall be deemed to have been authorized by the Board of Directors of the Consultant, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Consultant cannot make the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information", the Consultant shall so state and shall furnish with the signed proposal a signed statement which sets forth in detail the reasons therefor. If the Consultant is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph "25G.", if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a "financial interest" in this Agreement, as described in the Procurement Disclosure Policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Authority). Such disclosure is to be updated, as necessary. As a result of such disclosure, the Authority shall take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Consultant may be able to make the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information" at the

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

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

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

Consultants are advised that the Authority has adopted a policy to the effect that in awarding its agreements it will honor any determination by an agency of the State of New York or of the State of New Jersey that a Consultant is not eligible to propose on or be awarded public agreements because the Consultant has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein.

The policy permits a Consultant whose ineligibility has been so determined by an agency of the State of New York or of the State of New Jersey to submit a proposal on an Authority agreement



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

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

**27. CONSULTANT RESPONSIBILITY, SUSPENSION OF WORK AND TERMINATION**

The Consultant agrees, if requested by the Authority, to present evidence of its continuing legal authority to do business in the States of New Jersey or New York, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Authority, after consultation with the FAA, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant must comply with the terms of the suspension order. Agreement activity may resume at such time as the Authority issues a written notice authorizing a resumption of performance under the Agreement.

Upon written notice to the Consultant, and an opportunity to be heard with appropriate Authority officials or staff, the Agreement may be terminated by the Authority at the Consultant's expense when the Consultant is determined by the Authority to be non-responsible. In such event, the Authority or its designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach, including recovery of costs from Consultant associated with such termination; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein.

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

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

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Agreement or any other

Authority agreement), etc., which might tend to obligate the Authority employee to the Consultant and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Agreement or any other Authority agreement. Where used herein, the term "Port Authority" or "Authority" shall be deemed to include all subsidiaries of the Authority.

The Consultant shall ensure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it or by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

#### 29. OBLIGATION TO REPORT

In the event that the Consultant becomes aware of the occurrence of any conduct that is prohibited by this section entitled "No Gifts, Gratuities, Offers of Employment, Etc.", or if the Consultant knows or should reasonably know that a principal, employee, or agent of the Consultant or of its subconsultants or subcontractors has committed a violation of federal, New York or New Jersey law addressing or governing anti-trust, public contracting, false claims, fraud, extortion, bribery, bid rigging, embezzlement, prevailing wage or minority, woman, small or disadvantaged business enterprises, it shall report such information to the Authority's Office of Inspector General within three (3) business days of obtaining such knowledge. (See "<http://www.panynj.gov/inspector-general>") for information about how to report information to the Office of Inspector General). Failing to report such conduct may be grounds for finding of non-responsibility. The Consultant shall not take any Retaliatory Action against any of its employees for reporting such conduct.

In addition, during the term of this Agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated March 11, 2014, or as may be revised, (a copy of which is available upon request to the Office of the Secretary of the Authority).

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

#### 30. CONFLICT OF INTEREST

During the term of this Agreement, the Consultant shall be ~~in compliance~~ in compliance with the rules and regulations promulgated by the FAA and ~~found at~~ consistent with 40 C.F.R. Part 1506.5(c)-. The FAA will administer its policy with respect to the Consultant and the services provided herein.

Notwithstanding anything to the contrary contained herein, the Consultant, and any approved subconsultants, shall be precluded from bidding on any future actions the EIS addresses until the approving FAA official issues a Record of Decision (ROD) based on the EIS.

#### 31. INTEGRITY MONITOR

In the event that the Authority hires an Integrity Monitor in connection with the Work under this Agreement, the Consultant and any subcontractors shall cooperate fully with the Monitor and the

Authority, which includes, but is not limited to, providing complete access to all personnel and records in any way related to the Work performed pursuant to this Agreement. Any failure to cooperate may result in the termination of this Agreement. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

### 32. RIGHT TO AUDIT

Notwithstanding anything to the contrary, the Authority, including its Inspector General, Audit Department and Integrity Monitor, and the FAA, or its designee(s) each shall have the right to audit all of the records of the Consultant with respect to the Work and the Agreement, including, without limitation, records pertaining to any compensation paid, payable, or to be paid under the Agreement. The Consultant shall not be entitled to any reimbursement or other compensation for costs associated with such audit, investigation, or certification. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

The Consultant agrees to pay for the cost of any audit or investigation conducted by the Authority or the FAA, in which any criminal activity, ethics violations, or professional misconduct by the Consultant or any of its employees, or subcontractors or any of its employees, are discovered. The Consultant shall further agree that should it fail or refuse to pay for any such audit or investigation, the Authority is authorized to deduct from any sum owing the Consultant an amount equal to the cost of such audit and the damages resulting therefrom. The determination of the value of any such costs and decision to withhold any such payments are at the sole discretion of the Authority (including its Inspector General) or, in the case of the FAA, of its supervising personnel.

### 33. DEFINITIONS

As used in sections 24 to 32 above, the following terms shall mean:

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

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations, the Port Authority of New York and New Jersey and its wholly owned subsidiaries and others.

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

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

FIRM NAME

- PAGE 26 -

DATE

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

Retaliatory Action - Any adverse action taken by, or at the direction of, the Contractor, against any of its employees for reporting any information as set forth in the clause entitled "Obligation to Report," above.

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

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

36. References herein to the Authority shall and shall be deemed to mean equally the Port Authority Trans Hudson Corporation (PATH).

37. Nothing in this Agreement is intended to constitute the creation of an agency relationship between the Authority and the Consultant or any other right for the Consultant to act as the representative of the Authority for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Consultant, in performing its services hereunder, is and shall be at all times an independent contractor and the officers, agents and employees of the Consultant shall not be or be deemed to be agents, servants, or employees or "special employees" of the Authority.

38. This Agreement shall be governed by and construed in accordance with the Laws of the State of New York without regard to conflict of laws principles.

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

Sincerely,

THE PORT AUTHORITY OF  
NEW YORK AND NEW JERSEY

\_\_\_\_\_  
Lillian D. Valenti  
Chief Procurement Officer

Date \_\_\_\_\_

FIRM NAME

- PAGE 27 -

DATE

The execution of this Agreement by the Consultant's duly authorized representative shall serve as a certification that no alterations have been made to this Agreement, and if any changes or alterations to this Agreement have been made by the Consultant without the Authority's prior written consent, such changes shall be void, non-binding and of no effect.

ACCEPTED:

FIRM NAME

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**From:** [Summerville, James](#)  
**To:** [REDACTED] [Drew Brooks](#)  
**Cc:** [Jenet, Marie \(FAA\)](#); [REDACTED] [Wolfers-Lawrence, Jean \(FAA\)](#); [Herndon, Jane](#); [REDACTED] [Papasavvas, Krystina](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Lamond, Kathryn](#); [Resnick, Risa](#)  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions  
**Date:** Friday, November 16, 2018 3:24:33 PM  
**Attachments:** [FINAL Draft agreement redlined 11-16 RAR JD.DOCX](#)  
[FINAL CLEAN DRAFT AGMT.DOCX](#)

---

John,

We accepted your most recent proposed change; attached are the final redline and clean versions. Based on recent discussions, we understand that this concludes our collective efforts to finalize the draft Agreement. Thank you so much for the FAA's efforts in reviewing and proposing edits to the Agreement. I plan to provide the draft Agreement to the Consultant this afternoon.

Thanks again, James [REDACTED]

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Friday, November 16, 2018 2:18 PM  
**To:** Summerville, James <[REDACTED]> [REDACTED] Drew Brooks  
<[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] [REDACTED]  
[REDACTED] Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Herndon,  
Jane <[REDACTED]> [REDACTED] Papasavvas, Krystina  
<[REDACTED]> Clark, Patty <[REDACTED]> DiScenna, Matthew  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Lamond, Kathryn  
<[REDACTED]> Resnick, Risa <[REDACTED]>  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

James,

Thank you for sharing the revised draft agreement. I have one proposed revision to paragraph 10.B, which I believe is consistent with our prior discussions. Please let me know if you have any concerns or would like to discuss further.

John

John Doyle  
Attorney, Environmental Law Field Branch, AGC-630  
Office of the Chief Counsel  
Federal Aviation Administration  
1 Aviation Plaza  
Jamaica, NY 11434  
Tel: [REDACTED]  
Cell: [REDACTED]

This communication might contain communications between attorney and client, communications that are part of the agency deliberative process, or attorney-work product, all of which are privileged and not subject to disclosure outside the agency or to the public. Please consult with the Office of the Chief Counsel before disclosing any information contained in the email. Information as message text or embedded within an attachment is attorney-client privileged information, attorney work product, and/or part of the agency's deliberative process. Do not redistribute, forward, or otherwise transmit this information without prior approval of the author.

---

**From:** Summerville, James <[REDACTED]>  
**Sent:** Friday, November 16, 2018 1:01 PM  
**To:** Doyle, John (FAA) <[REDACTED]> Price, Laura E (FAA) <[REDACTED]> Brooks, Andrew (FAA) <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]> Henn, Patricia (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Herndon, Jane <[REDACTED]> Teodorescu, Andrew P (FAA) <[REDACTED]> Papasavvas, Krystina <[REDACTED]> DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Lamond, Kathryn <[REDACTED]> Resnick, Risa <[REDACTED]>  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions  
**Importance:** High

John,

We tweaked the Agreement per the recent conversations, including today's. Please review the attachment, particularly Sections 10A and B and let us know asap if the attachment is fine to release to the Consultant.

Thanks, James, [REDACTED]

---

**From:** [REDACTED] [\[mailto:\[REDACTED\]\]](mailto:[REDACTED])  
**Sent:** Thursday, November 15, 2018 8:49 AM  
**To:** Summerville, James <[REDACTED]> [REDACTED] Drew Brooks <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] [REDACTED] [REDACTED] Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Herndon, Jane <[REDACTED]> [REDACTED] Papasavvas, Krystina <[REDACTED]> Clark, Patty <[REDACTED]> DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Lamond, Kathryn <[REDACTED]> [REDACTED]  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

James,

Thank you for the opportunity to review the revised Draft Agreement. We had a few minor edits to section 10.a. The most recent edits are prefaced by "11/14:" and then the comment. We can discuss further on today's call or at a later time that works for you.

Thanks,  
John

John Doyle  
Attorney, Environmental Law Field Branch, AGC-630  
Office of the Chief Counsel  
Federal Aviation Administration  
1 Aviation Plaza  
Jamaica, NY 11434  
Tel: [REDACTED]  
Cell: [REDACTED]

This communication might contain communications between attorney and client, communications that are part of the agency deliberative process, or attorney-work product, all of which are privileged and not subject to disclosure outside the agency or to the public. Please consult with the Office of the Chief Counsel before disclosing any information contained in the email. Information as message text or embedded within an attachment is attorney-client privileged information, attorney work product, and/or part of the agency's deliberative process. Do not redistribute, forward, or otherwise transmit this information without prior approval of the author.

---

**From:** Summerville, James <[REDACTED]>  
**Sent:** Friday, November 09, 2018 9:38 AM  
**To:** Price, Laura E (FAA) <[REDACTED]> Brooks, Andrew (FAA) <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]>  
Sanchez, David (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]> Henn,  
Patricia (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]>  
[REDACTED] Herndon, Jane <[REDACTED]> Teodorescu, Andrew P (FAA)  
<[REDACTED]> Papasavvas, Krystina <[REDACTED]>  
[REDACTED] DiScenna, Matthew <[REDACTED]> Cohen, Michelle  
<[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Lamond, Kathryn <[REDACTED]>  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Laura et al,

Thanks for your comments on the draft Agreement. The Port Authority has revised the document in response to FAA comments, reflected as track changes in the attached document.

Regarding FAA's comment to item 10A, which requests clarification on how the amount for the initial tasks is to be set, the Port Authority's NEPA Owner's Rep Consultant produced an estimate based on the list of pre-NOI tasks provided by FAA and arrived at an estimate of \$295,315. The Port Authority recommends adding \$204,685 of contingency to account for unanticipated delays in the process of developing the draft Plan of Study and to ensure that the Consultant remains funded for a total not-to-exceed amount of \$500,000. The Consultant would be required to submit to the FAA an



estimate for Plan of Study development and pre-NOI activities, which would be subject to the FAA's and the PA's review and acceptance. The Consultant should not begin any such activities before receiving the FAA's written approval of such estimate. We have also added language (80% notification) to address the possibility of further unanticipated delays/issues that require a greater level of effort than \$500,000.

If you have any questions or would like to discuss further by conference call, please let us know. We'd like to distribute the draft copy of the Agreement to the selected Consultant as soon as possible after selection determination, which is anticipated on 11/14.

Thanks,

James Summerville, Sr. Projects Contracts Specialist  
Port Authority of NY & NJ  
Procurement Dept.  
[REDACTED]

---

**From:** [REDACTED] [\[mailto:\[REDACTED\]\]](mailto:[REDACTED])  
**Sent:** Friday, November 02, 2018 3:18 PM  
**To:** Papasavvas, Krystina <[REDACTED]> Drew Brooks <[REDACTED]>  
Clark, Patty <[REDACTED]> DiScenna, Matthew <[REDACTED]> Cohen, Michelle  
<[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Herndon, Jane <[REDACTED]> Summerville, James  
<[REDACTED]> Lamond, Kathryn <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED]  
[REDACTED] Wolfers-Lawrence, Jean (FAA) [REDACTED]  
[REDACTED]  
**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Krystina/All:

Attached please find the FAA's comments regarding the Draft Agreement. Please let us know if you have any questions.

Best,

Laura

---

**From:** Papasavvas, Krystina <[REDACTED]>  
**Sent:** Thursday, October 18, 2018 12:11 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> DiScenna, Matthew  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane  
<[REDACTED]> Summerville, James <[REDACTED]> Lamond, Kathryn

<[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]>  
Sanchez, David (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]> Henn,  
Patricia (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]>  
[REDACTED] Teodorescu, Andrew P (FAA) <[REDACTED]> Price, Laura E  
(FAA) <[REDACTED]>

**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Good afternoon,

Thank you for your proposed Interview Questions for the Consultant Selection Process. As mentioned this morning on our call, we will discuss internally and get back to you.

For your review, I have attached the draft Agreement. Please review and provide any commentary. Also, please provide a list of the pre-NOI support tasks that would be incorporated into the budget for Paragraph 10A of the attached Agreement.

Thank you.

**Krystina Papasavvas**  
Integrity, Compliance and Contract Review  
Port Authority of New York and New Jersey Procurement Department  
4 World Trade Center  
150 Greenwich Street, 21st Floor  
New York, NY 10007  
T: [REDACTED]  
F: [REDACTED]  
email: [REDACTED]

---

**From:** [REDACTED] [[mailto:\[REDACTED\]](#)]  
**Sent:** Wednesday, October 17, 2018 1:11 PM  
**To:** Lamond, Kathryn <[REDACTED]> Clark, Patty <[REDACTED]> DiScenna,  
Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane  
<[REDACTED]> Summerville, James <[REDACTED]> Papasavvas, Krystina  
<[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

**Subject:** LGA AirTrain Consultant Selection: Interview Questions

Good Afternoon Everyone,

Attached are the proposed Interview Questions for the Consultant Selection Process. We will be able to discuss in more depth during tomorrow's call.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

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

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**THE PORT AUTHORITY OF NY & NJ**

**P.A. AGREEMENT # \*\*\*-18-\*\*\***

DATE

Lillian D. Valenti  
*Chief Procurement Officer*

FIRM

ADDRESS

CITY, ST ZIP

Attention: CONTACT, TITLE

**SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL  
REVIEW SERVICES FOR THE LAGUARDIA AIRPORT ("LGA")  
ACCESS IMPROVEMENT PROJECT**

Dear CONTACT:

1. The Port Authority of New York and New Jersey (the "Authority") hereby offers to retain FIRM NAME (the "Consultant" or "you") to provide expert professional services as more fully set forth herein and in Attachment A, which is attached hereto and made a part hereof. Attachment A may be updated and modified throughout the performance of the Agreement, as agreed upon, in writing, by both parties.

This Agreement shall be signed by you and by the Authority's Chief Procurement Officer. As used herein and hereafter, the "Director" means the Director of the Aviation Department of the Authority, or his/her duly authorized representatives.

For the purpose of administering this Agreement, the Director has designated DAR NAME, , to act as his duly authorized representative. The Project Manager for this project is NAME, tel. (\*\*\*)\*\*\_\*\_\*\*\*\*, or e-mail address: [REDACTED]

2. Your services shall be performed as expeditiously as possible. Time is of the essence in the performance of all your services under this Agreement.

3. The Authority has agreed to retain you to perform consulting services for the Federal Aviation Administration ("FAA") pursuant to the terms of the Memorandum of Understanding between the Authority and the FAA a copy of which is attached hereto ("FAA MOU") and you shall take direction from, and be responsible to, the FAA, as Lead Agency, acting on behalf of the FAA in connection with the preparation of an Environmental Impact Statement ("EIS") associated with the proposed LaGuardia Airport Access Improvement Project being undertaken by the Authority. To the extent of any conflict between the terms of this Agreement and the terms of the FAA MOU, the FAA MOU shall prevail.

4. In accordance with Attachment A, the Consultant shall submit, on behalf of itself and its approved subconsultants, any and all work performed in preparation of the EIS directly to the

4 World Trade Center  
150 Greenwich Street, 21<sup>st</sup> Floor  
New York, NY 10007

THE PORT AUTHORITY OF NY & NJ

FIRM NAME

- PAGE 2 -

DATE

FAA. The Consultant shall maintain a segregated copy of each record/document relating to the Project that is used by the FAA in its decision making process.

5. The Consultant shall submit bi-weekly written reports on the progress of its work to the FAA, with a concurrent copy to the Authority, unless otherwise directed by the FAA. At a minimum on a bi-weekly basis, joint meetings among the FAA, the Authority and the Consultant shall be held to facilitate the development and preparation of the EIS, in accordance with Attachment A. The Consultant and the Authority shall not meet absent FAA, without prior notification and approval of the FAA. The Consultant and any approved subconsultants shall provide the FAA with full cooperation in coordinating any public workshops, hearings, or meetings as required and directed by the FAA in connection with the Project.

6. Consultant, and any approved subconsultants, shall provide verification to the FAA that they have no financial interest in the outcome of the action the EIS will address, consistent with FAA Order 5050.4B, Paragraph 1003(d).

7. The Consultant shall be responsible for the costs associated with printing and publication of the draft and final copies of the EIS, as well as the publication of FAA-approved notices, stenographic and clerical services, preparation of graphics and visual aids associated with any public workshops, meetings and hearings, provided, however, such costs may be included on invoices to be paid by the Authority.

8. Consultant shall provide an estimated cost and staffing analysis for the performance of tasks set forth in Attachment A and shall promptly provide notice to the Authority and the FAA if the cost and scope of the services to be provided hereunder materially changes. Although the Authority has agreed with the FAA that it will pay Consultant's fees and expenses, Consultant agrees that the fees submitted to the Authority will be reasonably related to the work performed and generally comparable to fees charged by prudent industry consultants performing like services. The expenses to be charged by Consultant will comply with FAA policy for consultant expenses (a copy of which is attached as Exhibit —) and Section ~~XXI~~ hereof.

9. Consultant shall submit its invoices for fees and expenses on a monthly basis and the Authority will have the reasonable ability to review the fees and expenses and confirm that the work generally comports with the scope identified in Section 4. The Authority shall not pay any invoice submitted unless it is confirmed ~~for payment~~ by a designated person at the FAA, as described in paragraph C.2 of the MOU, with such confirmation to be conveyed to Matthew DiScenna, Senior Program Manager, LaGuardia AirTrain, by electronic mail at [REDACTED] with a copy to Elizabeth Rogak of Port Authority Law Department at [REDACTED]. No approval or disapproval, or omission to approve or disapprove, however, shall relieve the Consultant of its responsibility under this Agreement to furnish the requested services as and when designated by the FAA and in accordance with professional standards.

10. A. For the initial tasks to be performed under this Agreement prior to acceptance of the Plan of Study, in accordance with Attachment A (namely, development of the Plan of Study and certain pre-Notice of Intent support activities), you shall not continue to render services after the point at which the total amount to be paid to you hereunder, including reimbursable expenses

THE PORT AUTHORITY OF NY & NJ

FIRM NAME

- PAGE 3 -

DATE

and costs resulting from unanticipated delays, for those tasks reaches the amount of ~~\*\*\*\*\* \$\*\*\*\*\* 500,000.00 (\*\*\*\*\*)(Five Hundred Thousand Dollars)~~ unless you are specifically authorized in writing to so continue by the Director. ~~Any Uncompleted pre-NOI initial tasks commenced but not completed before the acceptance of the Plan of Study, may need to be completed and incorporated into the final Plan of Study, and any such work performed after the acceptance of the Plan of Study shall be paid in accordance with Section 10.B.:~~

~~The Consultant shall be required to submit to the Authority FAA an estimate for these initial tasks, which would be subject to the review by the FAA and acceptance by of the FAA and the Authority. The Consultant shall not commence any such activities prior to receipt of written approval of such estimate from the Authority FAA. There is no guarantee that performance of the work referenced in this paragraph shall reach this not-to-exceed amount, and this limitation shall not be construed to entitle you to the above amount as minimum compensation. The Consultant must notify the Authority upon expending 80% of authorized funds and receive written authorization from the Director prior to expending amounts exceeding 100% of authorized funds. Following the approval of the Plan of Study by the FAA, the not to exceed amount shall be superseded by the total amount agreed upon between the Authority and the Consultant.~~

B. For the balance of the work to be performed under this Agreement, including the accepted Plan of Study (which may include or incomplete tasks from paragraph 10.A. that are incorporated into the Plan of Study), you shall not continue to render services after the point at which the total amount to be paid to you hereunder, including reimbursable expenses, reaches the amount agreed upon between the Authority ~~, the FAA~~ and the Consultant for the performance of the balance of the services, following acceptance of the Plan of Study, unless you are specifically authorized in writing to so continue by the Director. If no such authorization is issued, this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed. It is understood, however, that this limitation shall not be construed to entitle you to the above amount as a minimum compensation.

C. If any amendments to the Scope of Work (Plan of Study) require the expenditure of additional funds by the Authority, the ~~Contractor-Consultant~~ shall notify FAA of such additional costs, with sufficient time to accommodate funding authorization and allocation and the capped amount in this Section 10 shall be deemed increased by that amount.

11. As full compensation for all your services and obligations in connection with this Agreement, ~~(assuming approval assuming confirmation~~ by the FAA that work product or materials set forth in a submitted invoice have been performed or provided by the Consultant (and/or approved subconsultants~~);~~), the Authority will pay you the total of the amounts computed under subparagraphs A, B, C, and D below, subject to the limits on compensation and provisions set forth above. Subject to the terms and conditions below, travel time is not reimbursable under subparagraphs A, and B hereunder.

A. An amount equal to the actual hourly billing rate billed by you for professional and technical personnel multiplied by the total number of hours actually spent by said personnel in the performance of services hereunder. No hour of services by an employee shall be compensable

FIRM NAME

- PAGE 4 -

DATE

hereunder unless the employee is actually paid for such services at his usual salary rate. The hourly billing rate for each employee is the amount to be paid to you and is full compensation for all benefits, taxes, etc., paid by you. There shall be no change in the billing rates during the first year of the term of this Agreement and no additional compensation for overtime, weekend, or holiday work. Attached hereto is a schedule of names, titles, and corresponding hourly billing rates. Said schedule shall clearly indicate any of your employees proposed by you to perform the requested services that are former Authority employees. For compensation purposes under this Agreement, no said salary or amount shall exceed the salary or amount received by said personnel or rate customarily billed for a partner or principal as of the effective date of this Agreement unless the Director has been notified in advance, in writing, of the increased salary, rate or amount and approves the increase.

The Consultant shall verify that its employees, subconsultants, or subcontractors working under this Agreement are legally present and authorized to work in the United States, as per the federally required I-9 Program. Furthermore, upon request of the Authority, the Consultant shall furnish, or provide the Authority access to federal Form I-9 (Employment Eligibility Verification) for each individual hired by the Consultant, performing services hereunder. This includes citizens and noncitizens.

The Authority ~~and the FAA~~ will have the right of approval of all changes in personnel and increases in billing rates of personnel performing services under this Agreement. When requesting salary or billing rate adjustments for one or more of its personnel, the Consultant shall submit to the FAA, with a copy to the Authority, his/her name, title, current direct hourly rate or billing rate, proposed new direct hourly salary or billing rate, resulting percentage increase, effective date and reason for the requested change, setting forth in detail any increased cost to the Consultant of providing the services under this Agreement which has given rise to the request for increased salary. For adjustments submitted after the effective date of this Agreement, the Authority ~~and the FAA~~ will grant an increase only if the Consultant demonstrates compliance with all of the following conditions: that increases in salary, or partner's or principal's billing rate or amount, are in a) accordance with the program of periodic merit and cost of living increases normally administered by it, b) are warranted by increased costs of providing services under this Agreement, c) are based upon increases in salaries and billing rates which are generally applicable to all of Consultant's clients and d) are in accordance with the Authority's salary rate increase policy for the current year for Authority employees possessing comparable skills and experience.

Notwithstanding the above, the multiplier set forth in the first line of this subparagraph shall be applied only in the case of personnel other than partners or principals who are permanent employees.

B. Amounts actually paid to subconsultants hereunder who have been retained after the written approval by the FAA and the Authority of the subconsultant and the compensation to be paid the subconsultant. The Consultant shall submit a copy of the terms and conditions of the subconsultant's compensation (including multiplier, if applicable), as well as an estimate of the number of hours required by the subconsultant to perform his services, as part of any request for approval of the subconsultant.

C. Out-of-pocket expenses, approved in advance by ~~the FAA and~~ the Authority, necessarily and reasonably incurred and actually paid by you in the performance of your services hereunder.

Out-of-pocket expenses are expenses that are unique to the performance of your services under this Agreement and generally contemplate the purchase of outside ancillary services, except that for the purpose of this Agreement, out-of-pocket expenses do include amounts for long distance telephone calls, rentals of equipment, travel and local transportation and meals and lodging on overnight trips.

Notwithstanding the above, the Authority will pay an amount computed as follows for the reproduction of submittal drawings, specifications and reports:

1) If the Consultant uses its own facilities to reproduce such documents, an amount computed in accordance with the billing rates the Consultant customarily charges for reproduction of such documents under agreements such as this, or

2) If the Consultant uses an outside vendor for the reproduction of such documents, the actual, necessary and reasonable amounts for the reproduction of such documents.

The Authority will not pay for expenses that are usually and customarily included as part of the Consultant's overhead. For the purposes of this Agreement out-of-pocket expenses do not include amounts for typing, utilization of computer systems, computer aided design and drafting (CADD), cameras, recording or measuring devices, flashlights and other small, portable equipment, safety supplies, phones, telephone calls, electronic messaging including Fax, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.

When the Consultant uses its personal vehicle to provide services within the Port District, the Consultant will be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage Reimbursement Rate (as determined by the United States General Services Administration (GSA) – <http://www.gsa.gov/portal/content/100715>) per mile traveled by auto.

When the Consultant is asked to provide services outside the Port District, the actual cost of transportation as well as the cost for hotel accommodations and meals will be reimbursable hereunder when approved in advanced in writing by the Director. The cost for all meals and lodging on approved overnight trips is limited to the amounts established by the United States GSA for that locality.

GSA Domestic Rates: <http://www.gsa.gov/portal/category/21287>

You shall obtain the Director's written approval prior to making expenditures for out-of-pocket expenses in excess of one thousand dollars (\$1,000) per specific expenditure and for all overnight trips, which are reimbursable expenditures as set forth above. You shall substantiate all billings for out-of-pocket expenses in excess of twenty-five dollars (\$25) with receipted bills and shall provide said receipts with the appropriate billing.

D. As used herein:

"Port District" is a geographical area of about 1,500 square miles in the States of New York and New Jersey, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey and over 200 other municipalities, including all or part of seventeen counties, in the two States.



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

12. You shall keep, and shall cause any subconsultants under this Agreement to keep, daily records of the time spent in the performance of services hereunder by all persons whose salaries or amounts paid thereto will be the basis for compensation under this Agreement as well as records of the amounts of such salaries and amounts actually paid for the performance of such services and records and receipts of reimbursable expenditures hereunder and, notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services or expenses as are otherwise compensable hereunder. The Authority will have the right to audit all such records.

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

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

Should this Agreement be terminated in accordance with this Section 13, the Consultant shall, and shall cause its subconsultants to, upon request from the FAA, provide all documentation, reports, analyses and data to the FAA.

14. Aside from the FAA and as directed by the FAA in accordance with the FAA MOU, under no circumstances shall you or your subconsultants communicate in any way with any contractor, department, board, agency, commission or other organization or any person, whether governmental or private in connection with the services to be performed hereunder.

15. No certificate, payment (final or otherwise), acceptance of any work nor any other act or omission of the Authority or the Director or the FAA shall operate to release you from any

obligations under or upon this Agreement, or to estop the Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Authority from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact or to prevent the recovery of any damages sustained by the Authority; provided, however, that the FAA shall have the sole right to determine whether the services hereunder have been performed in accordance with the scope described in ~~Section XX~~ Attachment A and whether the services hereunder have been performed with requisite due care and professional responsibility.

16. The Authority and Consultant acknowledge that the FAA shall own title to and all intellectual property rights in and to all documents, reports, specifications, designs, developments, computations and other materials prepared, obtained or delivered under the terms of this Agreement (collectively, the "Deliverables"). The Authority acknowledges that the FAA may use, transfer, copy and distribute the Deliverables without restriction or limitation.

17. This Agreement being based upon your special qualifications for the services herein contemplated, any assignment, subletting or other transfer of this Agreement or any part hereof or of any moneys due or to become due hereunder without the express consent in writing of the Authority (and the FAA) shall be void and of no effect, provided, however, that you may sublet services to subconsultants with the express consent in writing of the Director and the FAA. All persons to whom you sublet services, however, shall be deemed to be your agents and no subletting or approval thereof shall be deemed to release you from your obligations under this Agreement, to impose any obligation on the Authority or the FAA to such subconsultant or give the subconsultant any rights against the Authority or the FAA.

18. The Authority has a long standing practice of encouraging Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) to seek business opportunities with it, either directly or as subconsultants or subcontractors. "Minority business enterprise" or "MBE" means a business entity which is at least fifty-one percent (51%) owned by one (1) or more members of one (1) or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more members of one (1) or more minority groups; and whose management and daily business operations are controlled by one (1) or more such individuals who are citizens or permanent resident aliens. "Women-owned business enterprise" or "WBE" means a business which is at least fifty-one percent (51%) owned by one (1) or more women; or, in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned by one (1) or more women: and whose management and daily business operations are controlled by one (1) or more women who are citizens or permanent resident aliens.

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

- A. Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- B. Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
- C. Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

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

For this Agreement, the Director has set a targeted goal of twenty percent (20%) of the total Agreement price for qualified and certified MBEs and ten (10%) percent of the total Agreement price for qualified and certified WBEs.

To be "certified" a firm must be certified by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

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

Good faith efforts to include and facilitate participation by MBE/WBEs shall include, but not be limited to the following:

- A. Dividing the services and materials to be procured into smaller portions, where feasible.
- B. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBE/WBEs as may be appropriate.
- C. Soliciting services and materials from Port Authority certified MBE/WBE firms.
- D. Ensuring that provision is made to provide progress payments to MBE/WBEs in accordance with prompt payment provisions of the Agreement under which services are being provided, if applicable.
- E. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

The Authority has a list of certified MBE/WBE service firms which is available to you at <http://www.panynj.gov/business-opportunities/supplier-diversity.html>. The Consultant will be required to submit to the Authority's OBDCR for certification the names of MBE/WBE firms it proposes to use who are not on the list of certified MBE/WBE firms.

The Consultant must submit an MBE/WBE Participation Plan for each MBE/WBE subconsultant. Each Participation Plan shall contain, at a minimum, the following:

- Identification of the MBE/WBE: Provide the name and address of the MBE/WBE. If no MBE/WBEs are identified, describe the process for selecting participant firms in order to achieve the good-faith goals under this Agreement.
- Level of Participation: Indicate the dollar value and percentage of MBE/WBE participation expected to be achieved.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

The MBE/WBE subconsultant listed on each of the MBE/WBE Participation Plans must be certified by the Authority in order for the Consultant to receive credit toward the MBE/WBE goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/sd-mwsd-be-profile.html> to search for MBE/WBEs by a particular commodity or service. The

FIRM NAME

- PAGE 9 -

DATE

Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to any of the MBE/WBE Participation Plans must be submitted via a Modified MBE/WBE Participation Plan to the Project Manager for review and approval by OBD CR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use Form PA3760D. The Consultant shall not make changes to any of its approved MBE/WBE Participation Plans or substitute MBE/WBE subconsultants or suppliers for those named in their approved plans without the Manager's prior written approval. Unauthorized changes or substitutions, including performing the work designated for a subconsultant with the Consultant's own forces, shall be a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored throughout the duration of the Agreement.

The Consultant shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subconsultant and supplier actually involved in the Agreement, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information that may assist the Project Manager in determining the Consultant's compliance with the foregoing provisions.

#### **MBE/WBE Conditions of Participation**

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

1. Commercially Useful Function: An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Consultant and the MBE/WBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as an MBE/WBE, the Consultant shall receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

2. Work Force: The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the ~~Contractor~~ Consultant, other Subcontractors on the contract, or their Affiliates. This does not preclude the employment by the MBE/WBE of an individual that has been previously employed by another firm involved in the ~~Contract~~ Agreement, provided that the individual was independently recruited by the MBE/WBE in accordance with

customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.

3. Supervision: All Work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Consultant, other subconsultants on the agreement, or their Affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the Work.

### **Counting MBE/WBE Participation**

The value of the Work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. Subconsultants: One hundred percent (100%) of the value of the Work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such Work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Consultant, other subconsultants or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE subconsultant is itself an MBE/WBE. Work that an MBE/WBE subconsultants to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. Material Suppliers: Sixty percent (60%) of the expenditure to an MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. Broker's/Manufacturer's Representatives: One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves will not be counted.

4. Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its

own forces. Contact OBDCCR at [REDACTED] for more information about requirements for such joint ventures.

19. The Consultant shall take all necessary and reasonable steps to ensure non-discrimination in the performance and administration of all aspects of this Agreement.

A. The Consultant agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Consultant from the solicitation period through the completion of the agreement. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

B. During the performance of this agreement, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

1. Compliance with Regulations: The ~~contractor~~ Consultant (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this ~~contract~~ Agreement.
2. Non-discrimination: The ~~contractor~~ Consultant, with regard to the work performed by it during the ~~contract~~ Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants and subcontractors, including procurements of materials and leases of equipment. The ~~contractor~~ Consultant will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the ~~contract~~ Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the ~~contractor~~ Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the ~~contractor~~ Consultant of the ~~contractor's~~ Consultant's obligations under this ~~contract~~ Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports: The ~~contractor~~ Consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information,

and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of ~~a contractor~~ the Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the ~~contractor~~ Consultant will so certify to the Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a ~~contractor's~~ Consultant's noncompliance with the Non-discrimination provisions of this ~~contract~~ Agreement, the Authority will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the ~~contractor~~ Consultant under the ~~contract~~ Agreement until the ~~contractor~~ Consultant complies; and/or
  - b. Cancelling, terminating, or suspending ~~a contract~~ the Agreement, in whole or in part.
  
6. Incorporation of Provisions: The ~~contractor~~ Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The ~~contractor~~ Consultant will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the ~~contractor~~ Consultant becomes involved in, or is threatened with litigation by a subcontractor, subconsultant or supplier because of such direction, the ~~contractor~~ Consultant may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the ~~contractor~~ Consultant may request the United States to enter into the litigation to protect the interests of the United States.

Commented [PLE1]: Should this say FAA?

Commented [RR2R1]: This is the exact language as it appears in what was provided, but if FAA wants this change, please advise

C. Title VI List of Pertinent Nondiscrimination Authorities:

During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation- Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of

persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

20. The Authority has the responsibility of ensuring safe, reliable and secure transportation facilities, systems and projects to maintain the well-being and economic competitiveness of the



region. Therefore, the Authority reserves the right to deny access to specific documents designed by it as "Critical Infrastructure Information", unless, after consultation with the FAA, such information is deemed necessary for full and complete performance of the services hereunder. The Authority reserves the right to impose multiple layers of security requirements on the Consultant, its staff and subconsultants and their staffs, depending upon the level of security required, or make any amendments with respect to such requirements as determined by the Authority.

These security requirements may include but are not limited to the following:

- Execution of Non-Disclosure and Confidentiality Agreements and Acknowledgments

At the direction of the Authority, the Consultant shall be required to have its principals, staff and/or subconsultant(s) and their staff, execute Authority approved non-disclosure and confidentiality agreements.

- Consultant/Subconsultant identity checks and background screening

The Authority's designated background screening provider may require inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff's name and residence; screening of federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; access identification, to include some form of biometric security methodology such as fingerprint, facial or iris scanning.

The Consultant may be required to have its staff, and any subconsultant's staff, material-men, visitors or others over whom the Consultant/subconsultant has control, authorize the Authority or its designee to perform background checks, and a personal identity verification check. Such authorization shall be in a form acceptable to the Authority. The Consultant and subconsultants may also be required to use an organization designated by the Authority to perform the background checks.

Background screening is required when a person has an established need to know or has access to any one of the following types of information or physical locations:

- 1) Confidential Privileged Information
- 2) Confidential Information related to a security project and/or task
- 3) Secure Area of an Authority facility
- 4) Mission critical system

The Consultant shall perform background checks through the Authority's personnel assurance program provider. The Secure Worker Access Consortium (S.W.A.C.) is the only Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as Security Identification Display Area (SIDA), the federal regulatory requirements for personnel performing Work at aviation facilities.). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers is located at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at [REDACTED] for more information and the latest pricing. The cost for said background checks

for staff that pass and are granted a credential may be reimbursable to the Consultant (and its subconsultants) as an out-of-pocket expense as provided herein. Costs for background checks for staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

No person shall be permitted on or about the Authority construction sites or facilities (including rental spaces) without a facility-specific photo identification credential approved by the Authority. If the Authority requires facility-specific identification credentials for the Consultant and the subconsultant's staff, the Authority will supply such identification at no cost to the Consultant or its subconsultants. Such facility-specific identification credential shall remain the property of the Authority and shall be returned to the Authority at the completion or upon request prior to completion of the individual's assignment at the specific facility. It is the responsibility of the appropriate Consultant or subconsultant to immediately report to the Authority the loss of any staff member's individual facility-specific identification credential. The Consultant or subconsultant will be billed for the cost of the replacement identification credential. Consultant's and subconsultant's staff shall display Identification badges in a conspicuous and clearly visible manner, when entering, working or leaving an Authority construction site or facility.

Employees may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, unlaminated social security card for identity and SSN verification.

Where applicable, for sensitive security construction sites or facilities, successful completion of the application, screening and identity verification for all employees of the Consultant and subconsultant shall be completed prior to being provided a Photo Identification credential by the personnel assurance program provider.

If any questions should arise as to when a Personnel Assurance Program background check is required, the Port Authority Manager or contract administrator should be contacted for assistance.

- Designated Secure Areas

Services under the Agreement may be required in designated secure areas, as the same may be designated by the Authority ("Secure Areas"). The Authority will require the observance of certain security procedures with respect to Secure Areas, which may include the escort to, at, and/or from said high security areas by security personnel. All personnel that require access to designated Secure Areas who are not under escort by an authorized individual will be required to undergo background screening and personal identity verification.

Forty-eight (48) hours prior to the proposed performance of any work in a Secure Area, the Consultant shall notify the Director. The Consultant shall conform to procedures as may be established by the Director from time to time and at any time for access to Secure Areas and the escorting of personnel hereunder. Prior to the start of any work, the Consultant shall request a description from the Project Manager of the Secure Areas that will be in effect on the commencement date(s) of the request services. The description of Secure Areas may be changed from time to time and at any time by the Project Manager during the term of the

Agreement.

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained contractor security guards. However, this provision shall not relieve the Consultant of its responsibility to secure its equipment and work and that of its subconsultant/subcontractor's and service suppliers at the Authority sites or facilities (including rental spaces). In addition, the Consultant, subconsultant, subcontractor or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video recordings or to make sketches on any other medium at any Authority sites or facilities (including any rental spaces), except when necessary to perform the Work under this Agreement, without prior written permission from the Authority, which shall not be unreasonably withheld in light of the services to be undertaken hereunder. Upon request, any photograph, digital image, video recording or sketch made of any Authority sites or facility shall be submitted to the Authority to determine compliance with this paragraph, which submission shall be conclusive and binding on the submitting entity.

- Compliance with the Port Authority Information Security Handbook

This Agreement may require access to Authority information considered Protected Information ("PI") as defined in the Port Authority Information Security Handbook ("Handbook"), dated October, 2008, revised as of April 2, 2018, and as may be further amended. The Handbook and its requirements are hereby incorporated into this Agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Consultant to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Authority or when released by the Authority to outside entities. The Handbook can be obtained at: <http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf>.

- Audits for Compliance with Security Requirements

The Authority may conduct random or scheduled examinations of business practices under this section in order to assess the extent of compliance with security requirements, PI procedures, protocols and practices, which may include, but not be limited to, verification of background check status, confirmation of completion of specified training, and/or a site visit to view material storage locations and protocols.

21. A. As used herein, confidential information shall mean all information disclosed to the Consultant or the personnel provided by the Consultant hereunder which relates to the Authority's past, present, and future research, development and business activities including, but not limited to, software and documentation licensed to the Authority or proprietary to the Authority and all associated software, source code procedures and documentation. Confidential information shall also mean any other tangible or intangible information or materials including

but not limited to computer identification numbers, access codes, passwords, and reports obtained and/or used during the performance of the Consultant's Services under this Agreement.

B. Protected Information shall mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, revised as of April 2, 2018)*, Confidential Information, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

C. The Consultant shall hold all such Protected Information in trust and confidence for the Authority, and agrees that the Consultant and the personnel provided by the Consultant hereunder shall not, during or after the termination or expiration of this Agreement, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under or in connection with the supplying of services contemplated by this Agreement; provided, however, the Consultant may provide information to the FAA to be held in confidence to the same extent as set forth in the FAA MOU. The Consultant and the personnel provided by the Consultant hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Agreement. The Consultant and the personnel provided by the Consultant hereunder shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder. The Consultant shall promptly and fully inform the Director in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Consultant has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Agreement or coming to the Consultant's attention in connection with this Agreement.

D. Unless otherwise directed by the FAA, consistent with the FAA MOU, the Consultant shall not issue nor permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority or to the fact that goods have been, are being or will be provided to it and/or that services have been, are being or will be performed for it in connection with this Agreement, unless the Consultant first obtains the written approval of the Authority.

22. The Consultant assumes the following distinct and several risks to the extent they may arise from the negligent or willful intentional acts or omissions of the Consultant or its subconsultants/subcontractors in the performance of services hereunder (to the extent required by the FAA, the Consultant and any subconsultant will enter into a separate agreement with the FAA of similar import; if ~~no~~ such agreement is entered into, the FAA will be entitled to enforce this Section 22 against the Consultant and its subconsultants for its own damages or losses mutatis mutandis):

A. The risk of loss or damage to Authority property arising out of or in connection with the performance of services hereunder;

B. The risk or loss or damage to any property of the Consultant or its subconsultants/subcontractors arising out of or in connection with the performance of services hereunder;

C. The risk of claims, arising out of or in connection with the performance of services hereunder, whether made against the Consultant or its subconsultants/subcontractors or against the Authority, for loss or damage to any property of the Consultant's agents, employees, subcontractors, subconsultants, materialmen or others performing services hereunder;

D. The risk of claims, just or unjust, by third persons made against the Consultant or its subconsultants/subcontractors or the Authority on account of injuries (including wrongful death), loss or damage of any kind whatsoever arising in connection with the performance of services hereunder, including claims against the Consultant or its subconsultants/subcontractors or against the Authority for the payment of workers' compensation, whether such claims are made and whether such injuries, damage or loss are sustained at any time both before and after the completion of services hereunder.

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

Consultant shall cooperate in the defense of any third party suit against the FAA that relates to this Agreement.

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

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

Except with respect to the FAA as specified herein, no third party rights are created by the Agreement, except to the extent that the Agreement specifically provides otherwise by use of the words "benefit" or "direct right of action".

Inasmuch as the Authority has agreed to indemnify the Cities of New York and Newark against claims of the types described in subparagraph D above made against said cities, the Consultant's obligation under subparagraph D above shall include claims by said cities against the Authority for such indemnification.

23. Pursuant to the Code of Ethics for Port Authority Vendors ("Code"), Consultants must execute a Compliance Certification, and provide it to the Authority, prior to beginning Work under this Agreement. This Compliance Certification, once executed, is a material and integral part of the Agreement. A copy of the Compliance Certification must be retained by the Consultant, unless and until the Authority indicates that the Certifications may be disposed of. Violations of the law or of the Code may subject a Vendor or a Vendor's Employees to civil or criminal penalties. In addition, in the case of violation of any provision of the law or the Code, following consultation with the FAA, the Authority may pursue any available remedy, including, but not limited to, determining that a Vendor is in material breach of its contract and/or that, in the future, the Authority will have no further commercial dealings with the Consultant; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein. The Code and the Compliance Certification (PA Form 4254) can be found at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

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

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

- A. been indicted or convicted in any jurisdiction;
- B. been suspended, debarred, found not responsible or otherwise disqualified from entering into any agreement with any governmental agency or been denied a government contract for failure to meet standards related to the integrity of the Consultant;
- C. received a less than satisfactory rating on a public or government contract;
- D. had an agreement terminated by any governmental agency for breach of contract or for any cause based in whole or in part on an indictment or conviction;
- E. ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Proposal;
- F. had any business or professional license suspended or revoked or, within the five years prior to proposal opening, had any sanction imposed in excess of fifty thousand dollars (\$50,000)

as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;

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

H. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, including an inspector general of a governmental agency or public authority.

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

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

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

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

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

D. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated March 11, 2014, or as may be revised, (a copy of which is available upon request), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;

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

F. the Consultant has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a

private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Agreement; and

G. no person or organization has been retained, employed or designated on behalf of the Consultant to impact any Authority determination with respect to (i) the solicitation, evaluation or award of this Agreement; or (ii) the preparation of specifications or request for submissions in connection with this Agreement.

The certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information" shall be deemed to be made by the Consultant as follows:

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

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

Moreover, the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information", if made by a corporate Consultant, shall be deemed to have been authorized by the Board of Directors of the Consultant, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Consultant cannot make the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information", the Consultant shall so state and shall furnish with the signed proposal a signed statement which sets forth in detail the reasons therefor. If the Consultant is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph "25G.", if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a "financial interest" in this Agreement, as described in the Procurement Disclosure Policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Authority). Such disclosure is to be updated, as necessary. As a result of such disclosure, the Authority shall take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Consultant may be able to make the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information" at the



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

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

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

Consultants are advised that the Authority has adopted a policy to the effect that in awarding its agreements it will honor any determination by an agency of the State of New York or of the State of New Jersey that a Consultant is not eligible to propose on or be awarded public agreements because the Consultant has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein.

The policy permits a Consultant whose ineligibility has been so determined by an agency of the State of New York or of the State of New Jersey to submit a proposal on an Authority agreement

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

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

**27. CONSULTANT RESPONSIBILITY, SUSPENSION OF WORK AND TERMINATION**

The Consultant agrees, if requested by the Authority, to present evidence of its continuing legal authority to do business in the States of New Jersey or New York, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Authority, after consultation with the FAA, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant must comply with the terms of the suspension order. Agreement activity may resume at such time as the Authority issues a written notice authorizing a resumption of performance under the Agreement.

Upon written notice to the Consultant, and an opportunity to be heard with appropriate Authority officials or staff, the Agreement may be terminated by the Authority at the Consultant's expense when the Consultant is determined by the Authority to be non-responsible. In such event, the Authority or its designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach, including recovery of costs from Consultant associated with such termination; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein.

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

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

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Agreement or any other

Authority agreement), etc., which might tend to obligate the Authority employee to the Consultant and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Agreement or any other Authority agreement. Where used herein, the term "Port Authority" or "Authority" shall be deemed to include all subsidiaries of the Authority.

The Consultant shall ensure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it or by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

#### 29. OBLIGATION TO REPORT

In the event that the Consultant becomes aware of the occurrence of any conduct that is prohibited by this section entitled "No Gifts, Gratuities, Offers of Employment, Etc.", or if the Consultant knows or should reasonably know that a principal, employee, or agent of the Consultant or of its subconsultants or subcontractors has committed a violation of federal, New York or New Jersey law addressing or governing anti-trust, public contracting, false claims, fraud, extortion, bribery, bid rigging, embezzlement, prevailing wage or minority, woman, small or disadvantaged business enterprises, it shall report such information to the Authority's Office of Inspector General within three (3) business days of obtaining such knowledge. (See "<http://www.panynj.gov/inspector-general>") for information about how to report information to the Office of Inspector General). Failing to report such conduct may be grounds for finding of non-responsibility. The Consultant shall not take any Retaliatory Action against any of its employees for reporting such conduct.

In addition, during the term of this Agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated March 11, 2014, or as may be revised, (a copy of which is available upon request to the Office of the Secretary of the Authority).

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

#### 30. CONFLICT OF INTEREST

During the term of this Agreement, the Consultant shall be ~~in compliance~~ in compliance with the rules and regulations promulgated by the FAA and ~~found at~~ consistent with 40 C.F.R. Part 1506.5(c)-. The FAA will administer its policy with respect to the Consultant and the services provided herein.

Notwithstanding anything to the contrary contained herein, the Consultant, and any approved subconsultants, shall be precluded from bidding on any future actions the EIS addresses until the approving FAA official issues a Record of Decision (ROD) based on the EIS.

#### 31. INTEGRITY MONITOR

In the event that the Authority hires an Integrity Monitor in connection with the Work under this Agreement, the Consultant and any subcontractors shall cooperate fully with the Monitor and the

Authority, which includes, but is not limited to, providing complete access to all personnel and records in any way related to the Work performed pursuant to this Agreement. Any failure to cooperate may result in the termination of this Agreement. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

### 32. RIGHT TO AUDIT

Notwithstanding anything to the contrary, the Authority, including its Inspector General, Audit Department and Integrity Monitor, and the FAA, or its designee(s) each shall have the right to audit all of the records of the Consultant with respect to the Work and the Agreement, including, without limitation, records pertaining to any compensation paid, payable, or to be paid under the Agreement. The Consultant shall not be entitled to any reimbursement or other compensation for costs associated with such audit, investigation, or certification. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

The Consultant agrees to pay for the cost of any audit or investigation conducted by the Authority or the FAA, in which any criminal activity, ethics violations, or professional misconduct by the Consultant or any of its employees, or subcontractors or any of its employees, are discovered. The Consultant shall further agree that should it fail or refuse to pay for any such audit or investigation, the Authority is authorized to deduct from any sum owing the Consultant an amount equal to the cost of such audit and the damages resulting therefrom. The determination of the value of any such costs and decision to withhold any such payments are at the sole discretion of the Authority (including its Inspector General) or, in the case of the FAA, of its supervising personnel.

### 33. DEFINITIONS

As used in sections 24 to 32 above, the following terms shall mean:

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

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations, the Port Authority of New York and New Jersey and its wholly owned subsidiaries and others.

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

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

FIRM NAME

- PAGE 26 -

DATE

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

Retaliatory Action - Any adverse action taken by, or at the direction of, the Contractor, against any of its employees for reporting any information as set forth in the clause entitled "Obligation to Report," above.

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

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

36. References herein to the Authority shall and shall be deemed to mean equally the Port Authority Trans Hudson Corporation (PATH).

37. Nothing in this Agreement is intended to constitute the creation of an agency relationship between the Authority and the Consultant or any other right for the Consultant to act as the representative of the Authority for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Consultant, in performing its services hereunder, is and shall be at all times an independent contractor and the officers, agents and employees of the Consultant shall not be or be deemed to be agents, servants, or employees or "special employees" of the Authority.

38. This Agreement shall be governed by and construed in accordance with the Laws of the State of New York without regard to conflict of laws principles.

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

Sincerely,

THE PORT AUTHORITY OF  
NEW YORK AND NEW JERSEY

\_\_\_\_\_  
Lillian D. Valenti  
Chief Procurement Officer

Date \_\_\_\_\_

FIRM NAME

- PAGE 27 -

DATE

The execution of this Agreement by the Consultant's duly authorized representative shall serve as a certification that no alterations have been made to this Agreement, and if any changes or alterations to this Agreement have been made by the Consultant without the Authority's prior written consent, such changes shall be void, non-binding and of no effect.

ACCEPTED:

FIRM NAME

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**P.A. AGREEMENT # \*\*\*-18-\*\*\***

DATE

Lillian D. Valenti  
*Chief Procurement Officer*

FIRM  
ADDRESS  
CITY, ST ZIP

Attention: CONTACT, TITLE

**SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL  
REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (“LGA”)  
ACCESS IMPROVEMENT PROJECT**

Dear CONTACT:

1. The Port Authority of New York and New Jersey (the "Authority") hereby offers to retain FIRM NAME (the “Consultant” or "you") to provide expert professional services as more fully set forth herein and in Attachment A, which is attached hereto and made a part hereof. Attachment A may be updated and modified throughout the performance of the Agreement, as agreed upon, in writing, by both parties.

This Agreement shall be signed by you and by the Authority’s Chief Procurement Officer. As used herein and hereafter, the "Director" means the Director of the Aviation Department of the Authority, or his/her duly authorized representatives.

For the purpose of administering this Agreement, the Director has designated DAR NAME, , to act as his duly authorized representative. The Project Manager for this project is NAME, tel. (\*\*\*)\*\*\*-\*\*\*\*, or e-mail address: [REDACTED]

2. Your services shall be performed as expeditiously as possible. Time is of the essence in the performance of all your services under this Agreement.

3. The Authority has agreed to retain you to perform consulting services for the Federal Aviation Administration (“FAA”) pursuant to the terms of the Memorandum of Understanding between the Authority and the FAA a copy of which is attached hereto (“FAA MOU”) and you shall take direction from, and be responsible to, the FAA, as Lead Agency, acting on behalf of the FAA in connection with the preparation of an Environmental Impact Statement (“EIS”) associated with the proposed LaGuardia Airport Access Improvement Project being undertaken by the Authority. To the extent of any conflict between the terms of this Agreement and the terms of the FAA MOU, the FAA MOU shall prevail.

4. In accordance with Attachment A, the Consultant shall submit, on behalf of itself and its approved subconsultants, any and all work performed in preparation of the EIS directly to the FAA. The Consultant shall maintain a segregated copy of each record/document relating to the Project that is used by the FAA in its decision making process.

4 World Trade Center  
150 Greenwich Street, 21<sup>st</sup> Floor  
New York, NY 10007

5. The Consultant shall submit bi-weekly written reports on the progress of its work to the FAA, with a concurrent copy to the Authority, unless otherwise directed by the FAA. At a minimum on a bi-weekly basis, joint meetings among the FAA, the Authority and the Consultant shall be held to facilitate the development and preparation of the EIS, in accordance with Attachment A. The Consultant and the Authority shall not meet absent FAA, without prior notification and approval of the FAA. The Consultant and any approved subconsultants shall provide the FAA with full cooperation in coordinating any public workshops, hearings, or meetings as required and directed by the FAA in connection with the Project.

6. Consultant, and any approved subconsultants, shall provide verification to the FAA that they have no financial interest in the outcome of the action the EIS will address, consistent with FAA Order 5050.4B, Paragraph 1003(d).

7. The Consultant shall be responsible for the costs associated with printing and publication of the draft and final copies of the EIS, as well as the publication of FAA-approved notices, stenographic and clerical services, preparation of graphics and visual aids associated with any public workshops, meetings and hearings, provided, however, such costs may be included on invoices to be paid by the Authority.

8. Consultant shall provide an estimated cost and staffing analysis for the performance of tasks set forth in Attachment A and shall promptly provide notice to the Authority and the FAA if the cost and scope of the services to be provided hereunder materially changes. Although the Authority has agreed with the FAA that it will pay Consultant's fees and expenses, Consultant agrees that the fees submitted to the Authority will be reasonably related to the work performed and generally comparable to fees charged by prudent industry consultants performing like services. The expenses to be charged by Consultant will comply Section 11 hereof.

9. Consultant shall submit its invoices for fees and expenses on a monthly basis and the Authority will have the reasonable ability to review the fees and expenses and confirm that the work generally comports with the scope identified in Section 4. The Authority shall not pay any invoice submitted unless it is confirmed by a designated person at the FAA, as described in paragraph C.2 of the MOU, with such confirmation to be conveyed to Matthew DiScenna, Senior Program Manager, LaGuardia AirTrain, by electronic mail at [REDACTED] with a copy to Elizabeth Rogak of Port Authority Law Department at [REDACTED]. No approval or disapproval, or omission to approve or disapprove, however, shall relieve the Consultant of its responsibility under this Agreement to furnish the requested services as and when designated by the FAA and in accordance with professional standards.

10. A. For the initial tasks to be performed under this Agreement prior to acceptance of the Plan of Study, in accordance with Attachment A (namely, development of the Plan of Study and certain pre-Notice of Intent support activities), you shall not continue to render services after the point at which the total amount to be paid to you hereunder, including reimbursable expenses and costs resulting from unanticipated delays, for those tasks reaches the amount of \$\*\*\*,\*\*\* unless you are specifically authorized in writing to so continue by the Director. Any pre-NOI initial tasks commenced but not completed before the acceptance of the Plan of Study, may need to be



completed and incorporated into the final Plan of Study, and any such work performed after the acceptance of the Plan of Study shall be paid in accordance with Section 10.B.

The Consultant shall be required to submit to the Authority an estimate for these initial tasks, which would be subject to the review and acceptance by the Authority. The Consultant shall not commence any such activities prior to receipt of written approval of such estimate from the Authority. There is no guarantee that performance of the work referenced in this paragraph shall reach this not-to-exceed amount, and this limitation shall not be construed to entitle you to the above amount as minimum compensation. The Consultant must notify the Authority upon expending 80% of authorized funds and receive written authorization from the Director prior to expending amounts exceeding 100% of authorized funds.

B. For the balance of the work to be performed under this Agreement, including the accepted Plan of Study (which may include incomplete tasks from paragraph 10.A. that are incorporated into the Plan of Study), you shall not continue to render services after the point at which the total amount to be paid to you hereunder, including reimbursable expenses, reaches the amount agreed upon between the Authority and the Consultant for the performance of the balance of the services, following acceptance of the Plan of Study, unless you are specifically authorized in writing to so continue by the Director. If no such authorization is issued, this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed. It is understood, however, that this limitation shall not be construed to entitle you to the above amount as a minimum compensation.

C. If any amendments to the Scope of Work (Plan of Study) require the expenditure of additional funds by the Authority, the Consultant shall notify FAA of such additional costs, with sufficient time to accommodate funding authorization and allocation and the capped amount in this Section 10 shall be deemed increased by that amount.

11. As full compensation for all your services and obligations in connection with this Agreement, (assuming confirmation by the FAA that work product or materials set forth in a submitted invoice have been performed or provided by the Consultant (and/or approved subconsultants)), the Authority will pay you the total of the amounts computed under subparagraphs A, B, C, and D below, subject to the limits on compensation and provisions set forth above. Subject to the terms and conditions below, travel time is not reimbursable under subparagraphs A, and B hereunder.

A. An amount equal to the actual hourly billing rate billed by you for professional and technical personnel multiplied by the total number of hours actually spent by said personnel in the performance of services hereunder. No hour of services by an employee shall be compensable hereunder unless the employee is actually paid for such services at his usual salary rate. The hourly billing rate for each employee is the amount to be paid to you and is full compensation for all benefits, taxes, etc., paid by you. There shall be no change in the billing rates during the first year of the term of this Agreement and no additional compensation for overtime, weekend, or holiday work. Attached hereto is a schedule of names, titles, and corresponding hourly billing rates. Said schedule shall clearly indicate any of your employees proposed by you to perform the requested services that are former Authority employees. For compensation purposes under this Agreement,

FIRM NAME

- PAGE 4 -

DATE

no said salary or amount shall exceed the salary or amount received by said personnel or rate customarily billed for a partner or principal as of the effective date of this Agreement unless the Director has been notified in advance, in writing, of the increased salary, rate or amount and approves the increase.

The Consultant shall verify that its employees, subconsultants, or subcontractors working under this Agreement are legally present and authorized to work in the United States, as per the federally required I-9 Program. Furthermore, upon request of the Authority, the Consultant shall furnish, or provide the Authority access to federal Form I-9 (Employment Eligibility Verification) for each individual hired by the Consultant, performing services hereunder. This includes citizens and noncitizens.

The Authority will have the right of approval of all changes in personnel and increases in billing rates of personnel performing services under this Agreement. When requesting salary or billing rate adjustments for one or more of its personnel, the Consultant shall submit to the FAA, with a copy to the Authority, his/her name, title, current direct hourly rate or billing rate, proposed new direct hourly salary or billing rate, resulting percentage increase, effective date and reason for the requested change, setting forth in detail any increased cost to the Consultant of providing the services under this Agreement which has given rise to the request for increased salary. For adjustments submitted after the effective date of this Agreement, the Authority will grant an increase only if the Consultant demonstrates compliance with all of the following conditions: that increases in salary, or partner's or principal's billing rate or amount, are in a) accordance with the program of periodic merit and cost of living increases normally administered by it, b) are warranted by increased costs of providing services under this Agreement, c) are based upon increases in salaries and billing rates which are generally applicable to all of Consultant's clients and d) are in accordance with the Authority's salary rate increase policy for the current year for Authority employees possessing comparable skills and experience.

Notwithstanding the above, the multiplier set forth in the first line of this subparagraph shall be applied only in the case of personnel other than partners or principals who are permanent employees.

B. Amounts actually paid to subconsultants hereunder who have been retained after the written approval by the FAA and the Authority of the subconsultant and the compensation to be paid the subconsultant. The Consultant shall submit a copy of the terms and conditions of the subconsultant's compensation (including multiplier, if applicable), as well as an estimate of the number of hours required by the subconsultant to perform his services, as part of any request for approval of the subconsultant.

C. Out-of-pocket expenses, approved in advance by the Authority, necessarily and reasonably incurred and actually paid by you in the performance of your services hereunder. Out-of-pocket expenses are expenses that are unique to the performance of your services under this Agreement and generally contemplate the purchase of outside ancillary services, except that for the purpose of this Agreement, out-of-pocket expenses do include amounts for long distance telephone calls, rentals of equipment, travel and local transportation and meals and lodging on overnight trips.

Notwithstanding the above, the Authority will pay an amount computed as follows for the reproduction of submittal drawings, specifications and reports:

1) If the Consultant uses its own facilities to reproduce such documents, an amount computed in accordance with the billing rates the Consultant customarily charges for reproduction of such documents under agreements such as this, or

2) If the Consultant uses an outside vendor for the reproduction of such documents, the actual, necessary and reasonable amounts for the reproduction of such documents.

The Authority will not pay for expenses that are usually and customarily included as part of the Consultant's overhead. For the purposes of this Agreement out-of-pocket expenses do not include amounts for typing, utilization of computer systems, computer aided design and drafting (CADD), cameras, recording or measuring devices, flashlights and other small, portable equipment, safety supplies, phones, telephone calls, electronic messaging including Fax, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.

When the Consultant uses its personal vehicle to provide services within the Port District, the Consultant will be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage Reimbursement Rate (as determined by the United States General Services Administration (GSA) – <http://www.gsa.gov/portal/content/100715>) per mile traveled by auto.

When the Consultant is asked to provide services outside the Port District, the actual cost of transportation as well as the cost for hotel accommodations and meals will be reimbursable hereunder when approved in advanced in writing by the Director. The cost for all meals and lodging on approved overnight trips is limited to the amounts established by the United States GSA for that locality.

GSA Domestic Rates: <http://www.gsa.gov/portal/category/21287>

You shall obtain the Director's written approval prior to making expenditures for out-of-pocket expenses in excess of one thousand dollars (\$1,000) per specific expenditure and for all overnight trips, which are reimbursable expenditures as set forth above. You shall substantiate all billings for out-of-pocket expenses in excess of twenty-five dollars (\$25) with receipted bills and shall provide said receipts with the appropriate billing.

D. As used herein:

"Port District" is a geographical area of about 1,500 square miles in the States of New York and New Jersey, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey and over 200 other municipalities, including all or part of seventeen counties, in the two States.

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

FIRM NAME

- PAGE 6 -

DATE

stenographic, clerical or administrative functions. Such functions shall be deemed to be included in the multiplier referred to in Subparagraph A above.

12. You shall keep, and shall cause any subconsultants under this Agreement to keep, daily records of the time spent in the performance of services hereunder by all persons whose salaries or amounts paid thereto will be the basis for compensation under this Agreement as well as records of the amounts of such salaries and amounts actually paid for the performance of such services and records and receipts of reimbursable expenditures hereunder and, notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services or expenses as are otherwise compensable hereunder. The Authority will have the right to audit all such records.

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

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

Should this Agreement be terminated in accordance with this Section 13, the Consultant shall, and shall cause its subconsultants to, upon request from the FAA, provide all documentation, reports, analyses and data to the FAA.

14. Aside from the FAA and as directed by the FAA in accordance with the FAA MOU, under no circumstances shall you or your subconsultants communicate in any way with any contractor, department, board, agency, commission or other organization or any person, whether governmental or private in connection with the services to be performed hereunder.

15. No certificate, payment (final or otherwise), acceptance of any work nor any other act or omission of the Authority or the Director or the FAA shall operate to release you from any obligations under or upon this Agreement, or to estop the Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Authority from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact or to prevent the recovery of any damages sustained by the Authority; provided, however, that the FAA shall have the sole right to determine whether the services hereunder have been performed in accordance with the scope described in Attachment A and whether the services hereunder have been performed with requisite due care and professional responsibility.

16. The Authority and Consultant acknowledge that the FAA shall own title to and all intellectual property rights in and to all documents, reports, specifications, designs, developments, computations and other materials prepared, obtained or delivered under the terms of this Agreement (collectively, the "Deliverables"). The Authority acknowledges that the FAA may use, transfer, copy and distribute the Deliverables without restriction or limitation.

17. This Agreement being based upon your special qualifications for the services herein contemplated, any assignment, subletting or other transfer of this Agreement or any part hereof or of any moneys due or to become due hereunder without the express consent in writing of the Authority (and the FAA) shall be void and of no effect, provided, however, that you may sublet services to subconsultants with the express consent in writing of the Director and the FAA. All persons to whom you sublet services, however, shall be deemed to be your agents and no subletting or approval thereof shall be deemed to release you from your obligations under this Agreement, to impose any obligation on the Authority or the FAA to such subconsultant or give the subconsultant any rights against the Authority or the FAA.

18. The Authority has a long standing practice of encouraging Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) to seek business opportunities with it, either directly or as subconsultants or subcontractors. "Minority business enterprise" or "MBE" means a business entity which is at least fifty-one percent (51%) owned by one (1) or more members of one (1) or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more members of one (1) or more minority groups; and whose management and daily business operations are controlled by one (1) or more such individuals who are citizens or permanent resident aliens. "Women-owned business enterprise" or "WBE" means a business which is at least fifty-one percent (51%) owned by one (1) or more women; or, in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned by one (1) or more women: and whose management and daily business operations are controlled by one (1) or more women who are citizens or permanent resident aliens.

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

- A. Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- B. Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
- C. Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;
- D. American Indian or Alaskan Native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

For this Agreement, the Director has set a targeted goal of twenty percent (20%) of the total Agreement price for qualified and certified MBEs and ten (10%) percent of the total Agreement price for qualified and certified WBEs.

To be "certified" a firm must be certified by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

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

Good faith efforts to include and facilitate participation by MBE/WBEs shall include, but not be limited to the following:

- A. Dividing the services and materials to be procured into smaller portions, where feasible.
- B. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBE/WBEs as may be appropriate.
- C. Soliciting services and materials from Port Authority certified MBE/WBE firms.
- D. Ensuring that provision is made to provide progress payments to MBE/WBEs in accordance with prompt payment provisions of the Agreement under which services are being provided, if applicable.
- E. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

The Authority has a list of certified MBE/WBE service firms which is available to you at <http://www.panynj.gov/business-opportunities/supplier-diversity.html>. The Consultant will be required to submit to the Authority's OBDCR for certification the names of MBE/WBE firms it proposes to use who are not on the list of certified MBE/WBE firms.

The Consultant must submit an MBE/WBE Participation Plan for each MBE/WBE subconsultant. Each Participation Plan shall contain, at a minimum, the following:

- Identification of the MBE/WBE: Provide the name and address of the MBE/WBE. If no MBE/WBEs are identified, describe the process for selecting participant firms in order to achieve the good-faith goals under this Agreement.
- Level of Participation: Indicate the dollar value and percentage of MBE/WBE participation expected to be achieved.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

The MBE/WBE subconsultant listed on each of the MBE/WBE Participation Plans must be certified by the Authority in order for the Consultant to receive credit toward the MBE/WBE goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/sd-mwsdbe-profile.html> to search for MBE/WBEs by a particular commodity or service. The Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to any of the MBE/WBE Participation Plans must be submitted via a Modified MBE/WBE Participation Plan to the Project Manager for review and approval by OBDCR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use Form PA3760D. The Consultant shall not make changes to any of its approved MBE/WBE Participation Plans or substitute MBE/WBE subconsultants or suppliers for those named in their approved plans without the Manager's prior written approval. Unauthorized

changes or substitutions, including performing the work designated for a subconsultant with the Consultant's own forces, shall be a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored throughout the duration of the Agreement.

The Consultant shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subconsultant and supplier actually involved in the Agreement, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information that may assist the Project Manager in determining the Consultant's compliance with the foregoing provisions.

### **MBE/WBE Conditions of Participation**

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

1. Commercially Useful Function: An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Consultant and the MBE/WBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as an MBE/WBE, the Consultant shall receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

2. Work Force: The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Consultant, other Subcontractors on the contract, or their Affiliates. This does not preclude the employment by the MBE/WBE of an individual that has been previously employed by another firm involved in the Agreement, provided that the individual was independently recruited by the MBE/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.

3. Supervision: All Work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Consultant, other subconsultants on the agreement, or their Affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the Work.

### **Counting MBE/WBE Participation**

The value of the Work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. Subconsultants: One hundred percent (100%) of the value of the Work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such Work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Consultant, other subconsultants or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE subconsultant is itself an MBE/WBE. Work that an MBE/WBE subconsultants to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. Material Suppliers: Sixty percent (60%) of the expenditure to an MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. Broker's/Manufacturer's Representatives: One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves will not be counted.

4. Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces. Contact OBDCR at [REDACTED] for more information about requirements for such joint ventures.

19. The Consultant shall take all necessary and reasonable steps to ensure non-discrimination in the performance and administration of all aspects of this Agreement.

A. The Consultant agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.



This provision binds the Consultant from the solicitation period through the completion of the agreement. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

B. During the performance of this agreement, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

1. **Compliance with Regulations:** The Consultant (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Non-discrimination:** The Consultant, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants and subcontractors, including procurements of materials and leases of equipment. The Consultant will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Consultant of the Consultant's obligations under this Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The Consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant will so certify to the Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Consultant's noncompliance with the Non-discrimination provisions of this Agreement, the Authority will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Consultant under the Agreement until the Consultant complies; and/or
  - b. Cancelling, terminating, or suspending the Agreement, in whole or in part.
6. Incorporation of Provisions: The Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Consultant will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Consultant becomes involved in, or is threatened with litigation by a subcontractor, subconsultant or supplier because of such direction, the Consultant may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the Consultant may request the United States to enter into the litigation to protect the interests of the United States.

C. Title VI List of Pertinent Nondiscrimination Authorities:

During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation- Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or

activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

20. The Authority has the responsibility of ensuring safe, reliable and secure transportation facilities, systems and projects to maintain the well-being and economic competitiveness of the region. Therefore, the Authority reserves the right to deny access to specific documents designed by it as “Critical Infrastructure Information”, unless, after consultation with the FAA, such information is deemed necessary for full and complete performance of the services hereunder. The Authority reserves the right to impose multiple layers of security requirements on the Consultant, its staff and subconsultants and their staffs, depending upon the level of security required, or make any amendments with respect to such requirements as determined by the Authority.

These security requirements may include but are not limited to the following:

- Execution of Non-Disclosure and Confidentiality Agreements and Acknowledgments  
At the direction of the Authority, the Consultant shall be required to have its principals, staff and/or subconsultant(s) and their staff, execute Authority approved non-disclosure and confidentiality agreements.
- Consultant/Subconsultant identity checks and background screening

The Authority's designated background screening provider may require inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff's name and residence; screening of federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; access identification, to include some form of biometric security methodology such as fingerprint, facial or iris scanning.

The Consultant may be required to have its staff, and any subconsultant's staff, material-men, visitors or others over whom the Consultant/subconsultant has control, authorize the Authority or its designee to perform background checks, and a personal identity verification check. Such authorization shall be in a form acceptable to the Authority. The Consultant and subconsultants may also be required to use an organization designated by the Authority to perform the background checks.

Background screening is required when a person has an established need to know or has access to any one of the following types of information or physical locations:

- 1) Confidential Privileged Information
- 2) Confidential Information related to a security project and/or task
- 3) Secure Area of an Authority facility
- 4) Mission critical system

The Consultant shall perform background checks through the Authority's personnel assurance program provider. The Secure Worker Access Consortium (S.W.A.C.) is the only Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as Security Identification Display Area (SIDA), the federal regulatory requirements for personnel performing Work at aviation facilities.). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers is located at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at [REDACTED] [REDACTED] for more information and the latest pricing. The cost for said background checks for staff that pass and are granted a credential may be reimbursable to the Consultant (and its subconsultants) as an out-of-pocket expense as provided herein. Costs for background checks for staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

No person shall be permitted on or about the Authority construction sites or facilities (including rental spaces) without a facility-specific photo identification credential approved by the Authority. If the Authority requires facility-specific identification credentials for the Consultant and the subconsultant's staff, the Authority will supply such identification at no cost to the Consultant or its subconsultants. Such facility-specific identification credential shall remain the property of the Authority and shall be returned to the Authority at the completion or upon request prior to completion of the individual's assignment at the specific facility. It is the responsibility of the appropriate Consultant or subconsultant to immediately report to the Authority the loss of any staff member's individual facility-specific identification credential. The Consultant or subconsultant will be billed for the cost of the replacement

identification credential. Consultant's and subconsultant's staff shall display Identification badges in a conspicuous and clearly visible manner, when entering, working or leaving an Authority construction site or facility.

Employees may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, unlaminated social security card for identity and SSN verification.

Where applicable, for sensitive security construction sites or facilities, successful completion of the application, screening and identity verification for all employees of the Consultant and subconsultant shall be completed prior to being provided a Photo Identification credential by the personnel assurance program provider.

If any questions should arise as to when a Personnel Assurance Program background check is required, the Port Authority Manager or contract administrator should be contacted for assistance.

- Designated Secure Areas

Services under the Agreement may be required in designated secure areas, as the same may be designated by the Authority ("Secure Areas"). The Authority will require the observance of certain security procedures with respect to Secure Areas, which may include the escort to, at, and/or from said high security areas by security personnel. All personnel that require access to designated Secure Areas who are not under escort by an authorized individual will be required to undergo background screening and personal identity verification.

Forty-eight (48) hours prior to the proposed performance of any work in a Secure Area, the Consultant shall notify the Director. The Consultant shall conform to procedures as may be established by the Director from time to time and at any time for access to Secure Areas and the escorting of personnel hereunder. Prior to the start of any work, the Consultant shall request a description from the Project Manager of the Secure Areas that will be in effect on the commencement date(s) of the request services. The description of Secure Areas may be changed from time to time and at any time by the Project Manager during the term of the Agreement.

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained contractor security guards. However, this provision shall not relieve the Consultant of its responsibility to secure its equipment and work and that of its subconsultant/subcontractor's and service suppliers at the Authority sites or facilities (including rental spaces). In addition, the Consultant, subconsultant, subcontractor or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video recordings or to make sketches on any other medium at any Authority sites or facilities (including any rental spaces), except when necessary to perform the Work under this Agreement, without prior written permission from the Authority, which shall not be unreasonably withheld in light of the services to be undertaken hereunder. Upon request, any photograph, digital image, video recording or sketch made of any Authority sites or facility

shall be submitted to the Authority to determine compliance with this paragraph, which submission shall be conclusive and binding on the submitting entity.

- Compliance with the Port Authority Information Security Handbook

This Agreement may require access to Authority information considered Protected Information (“PI”) as defined in the Port Authority Information Security Handbook (“Handbook”), dated October, 2008, revised as of April 2, 2018, and as may be further amended. The Handbook and its requirements are hereby incorporated into this Agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Consultant to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Authority or when released by the Authority to outside entities. The Handbook can be obtained at: <http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf>.

- Audits for Compliance with Security Requirements

The Authority may conduct random or scheduled examinations of business practices under this section in order to assess the extent of compliance with security requirements, PI procedures, protocols and practices, which may include, but not be limited to, verification of background check status, confirmation of completion of specified training, and/or a site visit to view material storage locations and protocols.

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

B. Protected Information shall mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, revised as of April 2, 2018)*, Confidential Information, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

C. The Consultant shall hold all such Protected Information in trust and confidence for the Authority, and agrees that the Consultant and the personnel provided by the Consultant hereunder shall not, during or after the termination or expiration of this Agreement, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under

or in connection with the supplying of services contemplated by this Agreement; provided, however, the Consultant may provide information to the FAA to be held in confidence to the same extent as set forth in the FAA MOU. The Consultant and the personnel provided by the Consultant hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Agreement. The Consultant and the personnel provided by the Consultant hereunder shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder. The Consultant shall promptly and fully inform the Director in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Consultant has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Agreement or coming to the Consultant's attention in connection with this Agreement.

D. Unless otherwise directed by the FAA, consistent with the FAA MOU, the Consultant shall not issue nor permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority or to the fact that goods have been, are being or will be provided to it and/or that services have been, are being or will be performed for it in connection with this Agreement, unless the Consultant first obtains the written approval of the Authority.

22. The Consultant assumes the following distinct and several risks to the extent they may arise from the negligent or willful intentional acts or omissions of the Consultant or its subconsultants/subcontractors in the performance of services hereunder (to the extent required by the FAA, the Consultant and any subconsultant will enter into a separate agreement with the FAA of similar import; if no such agreement is entered into, the FAA will be entitled to enforce this Section 22 against the Consultant and its subconsultants for its own damages or losses mutatis mutandis):

A. The risk of loss or damage to Authority property arising out of or in connection with the performance of services hereunder;

B. The risk or loss or damage to any property of the Consultant or its subconsultants/subcontractors arising out of or in connection with the performance of services hereunder;

C. The risk of claims, arising out of or in connection with the performance of services hereunder, whether made against the Consultant or its subconsultants/subcontractors or against the Authority, for loss or damage to any property of the Consultant's agents, employees, subcontractors, subconsultants, materialmen or others performing services hereunder;

D. The risk of claims, just or unjust, by third persons made against the Consultant or its subconsultants/subcontractors or the Authority on account of injuries (including wrongful death), loss or damage of any kind whatsoever arising in connection with the performance of services hereunder, including claims against the Consultant or its subconsultants/subcontractors or against the Authority for the payment of workers' compensation, whether such claims are made and whether such injuries, damage or loss are sustained at any time both before and after the completion of services hereunder.

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- PAGE 18 -

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

Consultant shall cooperate in the defense of any third party suit against the FAA that relates to this Agreement.

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

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

Except with respect to the FAA as specified herein, no third party rights are created by the Agreement, except to the extent that the Agreement specifically provides otherwise by use of the words "benefit" or "direct right of action".

Inasmuch as the Authority has agreed to indemnify the Cities of New York and Newark against claims of the types described in subparagraph D above made against said cities, the Consultant's obligation under subparagraph D above shall include claims by said cities against the Authority for such indemnification.

23. Pursuant to the Code of Ethics for Port Authority Vendors ("Code"), Consultants must execute a Compliance Certification, and provide it to the Authority, prior to beginning Work under this Agreement. This Compliance Certification, once executed, is a material and integral part of the Agreement. A copy of the Compliance Certification must be retained by the Consultant, unless and until the Authority indicates that the Certifications may be disposed of. Violations of the law or of the Code may subject a Vendor or a Vendor's Employees to civil or criminal penalties. In addition, in the case of violation of any provision of the law or the Code, following consultation with the FAA, the Authority may pursue any available remedy, including, but not limited to,



determining that a Vendor is in material breach of its contract and/or that, in the future, the Authority will have no further commercial dealings with the Consultant; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein. The Code and the Compliance Certification (PA Form 4254) can be found at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

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

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

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

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

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

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

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

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

D. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated March 11, 2014, or as may be revised, (a copy of which is available upon request), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;

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

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

G. no person or organization has been retained, employed or designated on behalf of the Consultant to impact any Authority determination with respect to (i) the solicitation, evaluation or award of this Agreement; or (ii) the preparation of specifications or request for submissions in connection with this Agreement.

The certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information" shall be deemed to be made by the Consultant as follows:

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

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

Moreover, the certifications in this Section and the Section entitled “Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information”, if made by a corporate Consultant, shall be deemed to have been authorized by the Board of Directors of the Consultant, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Consultant cannot make the certifications in this Section and the Section entitled “Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information”, the Consultant shall so state and shall furnish with the signed proposal a signed statement which sets forth in detail the reasons therefor. If the Consultant is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph “25G.”, if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a “financial interest” in this Agreement, as described in the Procurement Disclosure Policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Authority). Such disclosure is to be updated, as necessary. As a result of such disclosure, the Authority shall take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Consultant may be able to make the certifications in this Section and the Section entitled “Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information” at the time the proposal is submitted, the Consultant shall immediately notify the Authority and the FAA in writing during the period of irrevocability of proposals and the term of the Agreement or any extension of such period, if Consultant is awarded the Agreement, of any change of circumstances which might under this clause make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Consultant with full knowledge that they would become a part of the records of the Authority and that the Authority and the FAA will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Consultant has falsely certified as to any material item in the foregoing certifications, has failed to immediately notify the Authority and the FAA of any change in circumstances which might make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure, or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine, after consultation with the FAA, that the Consultant is not a responsible Consultant with respect to its proposal on the Agreement or with respect to future proposals on Authority

agreements and may exercise such other remedies as are provided to it by the Agreement with respect to these matters. In addition, Consultant is advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see, e.g., New York Penal Law, Section 175.30 et seq.). Consultants are also advised that the inability to make such certification will not in and of itself disqualify the Consultant and that in each instance the Authority will evaluate the reasons therefor provided by the Consultant.

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

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

Consultants are advised that the Authority has adopted a policy to the effect that in awarding its agreements it will honor any determination by an agency of the State of New York or of the State of New Jersey that a Consultant is not eligible to propose on or be awarded public agreements because the Consultant has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein.

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

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

#### 27. CONSULTANT RESPONSIBILITY, SUSPENSION OF WORK AND TERMINATION

The Consultant agrees, if requested by the Authority, to present evidence of its continuing legal authority to do business in the States of New Jersey or New York, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Authority, after consultation with the FAA, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant must comply with the terms of the suspension order. Agreement activity may resume at such time as the Authority issues a written notice authorizing a resumption of performance under the Agreement.

Upon written notice to the Consultant, and an opportunity to be heard with appropriate Authority officials or staff, the Agreement may be terminated by the Authority at the Consultant's expense when the Consultant is determined by the Authority to be non-responsible. In such event, the Authority or its designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach, including recovery of costs from Consultant associated with such termination; provided however, that upon such determination to have no further dealings with the Consultant, the Consultant will, if so directed by the FAA, enter into a direct agreement with the FAA covering the services described herein and otherwise generally covering the same matters as set forth herein.

#### 28. NO GIFTS, GRATUITIES, OFFERS OF EMPLOYMENT, ETC.

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

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Agreement or any other Authority agreement), etc., which might tend to obligate the Authority employee to the Consultant and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Agreement or any other Authority agreement. Where used herein, the term "Port Authority" or "Authority" shall be deemed to include all subsidiaries of the Authority.

The Consultant shall ensure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it or by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

#### 29. OBLIGATION TO REPORT

In the event that the Consultant becomes aware of the occurrence of any conduct that is prohibited by this section entitled "No Gifts, Gratuities, Offers of Employment, Etc.", or if the Consultant knows or should reasonably know that a principal, employee, or agent of the Consultant or of its

subconsultants or subcontractors has committed a violation of federal, New York or New Jersey law addressing or governing anti-trust, public contracting, false claims, fraud, extortion, bribery, bid rigging, embezzlement, prevailing wage or minority, woman, small or disadvantaged business enterprises, it shall report such information to the Authority's Office of Inspector General within three (3) business days of obtaining such knowledge. (See "<http://www.panynj.gov/inspector-general>" for information about how to report information to the Office of Inspector General). Failing to report such conduct may be grounds for finding of non-responsibility. The Consultant shall not take any Retaliatory Action against any of its employees for reporting such conduct.

In addition, during the term of this Agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated March 11, 2014, or as may be revised, (a copy of which is available upon request to the Office of the Secretary of the Authority).

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

### 30. CONFLICT OF INTEREST

During the term of this Agreement, the Consultant shall be in compliance with the rules and regulations promulgated by the FAA and consistent with 40 C.F.R. Part 1506.5(c). The FAA will administer its policy with respect to the Consultant and the services provided herein.

Notwithstanding anything to the contrary contained herein, the Consultant, and any approved subconsultants, shall be precluded from bidding on any future actions the EIS addresses until the approving FAA official issues a Record of Decision (ROD) based on the EIS.

### 31. INTEGRITY MONITOR

In the event that the Authority hires an Integrity Monitor in connection with the Work under this Agreement, the Consultant and any subcontractors shall cooperate fully with the Monitor and the Authority, which includes, but is not limited to, providing complete access to all personnel and records in any way related to the Work performed pursuant to this Agreement. Any failure to cooperate may result in the termination of this Agreement. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

### 32. RIGHT TO AUDIT

Notwithstanding anything to the contrary, the Authority, including its Inspector General, Audit Department and Integrity Monitor, and the FAA, or its designee(s) each shall have the right to audit all of the records of the Consultant with respect to the Work and the Agreement, including, without limitation, records pertaining to any compensation paid, payable, or to be paid under the Agreement. The Consultant shall not be entitled to any reimbursement or other compensation for costs associated with such audit, investigation, or certification. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

The Consultant agrees to pay for the cost of any audit or investigation conducted by the Authority or the FAA, in which any criminal activity, ethics violations, or professional misconduct by the Consultant or any of its employees, or subcontractors or any of its employees, are discovered. The

Consultant shall further agree that should it fail or refuse to pay for any such audit or investigation, the Authority is authorized to deduct from any sum owing the Consultant an amount equal to the cost of such audit and the damages resulting therefrom. The determination of the value of any such costs and decision to withhold any such payments are at the sole discretion of the Authority (including its Inspector General) or, in the case of the FAA, of its supervising personnel.

### 33. DEFINITIONS

As used in sections 24 to 32 above, the following terms shall mean:

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

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations, the Port Authority of New York and New Jersey and its wholly owned subsidiaries and others.

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

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

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

Retaliatory Action - Any adverse action taken by, or at the direction of, the Contractor, against any of its employees for reporting any information as set forth in the clause entitled "Obligation to Report," above.

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

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

FIRM NAME

- PAGE 26 -

DATE

36. References herein to the Authority shall and shall be deemed to mean equally the Port Authority Trans Hudson Corporation (PATH).

37. Nothing in this Agreement is intended to constitute the creation of an agency relationship between the Authority and the Consultant or any other right for the Consultant to act as the representative of the Authority for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Consultant, in performing its services hereunder, is and shall be at all times an independent contractor and the officers, agents and employees of the Consultant shall not be or be deemed to be agents, servants, or employees or "special employees" of the Authority.

38. This Agreement shall be governed by and construed in accordance with the Laws of the State of New York without regard to conflict of laws principles.

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

Sincerely,

THE PORT AUTHORITY OF  
NEW YORK AND NEW JERSEY

\_\_\_\_\_  
Lillian D. Valenti  
Chief Procurement Officer

Date \_\_\_\_\_

The execution of this Agreement by the Consultant's duly authorized representative shall serve as a certification that no alterations have been made to this Agreement, and if any changes or alterations to this Agreement have been made by the Consultant without the Authority's prior written consent, such changes shall be void, non-binding and of no effect.

ACCEPTED:

FIRM NAME

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**From:** [Summerville, James](#)  
**To:** [Drew Brooks](#); [Vero, Anthony](#); [DeGraffe, Clarelle](#); [Herndon, Jane](#); [Venech, Lou](#); [DiScenna, Matthew](#); [Rogak, Elizabeth](#); [Tabafunda, Faith](#); [Papasavvas, Krystina](#); [Lamond, Kathryn](#); [Lafazia, Michael](#); [Cohen, Michelle](#); [Jenet, Marie \(FAA\)](#); [Wolfers-Lawrence, Jean \(FAA\)](#); [REDACTED] [Peters, Carl](#); [Henry, Portia](#)  
**Subject:** RE: LGA EIS-related RFP; Committee meeting, 11/8  
**Date:** Wednesday, November 07, 2018 3:01:02 PM

---

No problem. Feel free to forward the invite with the teleconference info to your colleagues.

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Wednesday, November 07, 2018 2:27 PM  
**To:** Summerville, James <[REDACTED]> Vero, Anthony <[REDACTED]>  
DeGraffe, Clarelle <[REDACTED]> Herndon, Jane <[REDACTED]> Venech, Lou  
<[REDACTED]> DiScenna, Matthew <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Tabafunda, Faith <[REDACTED]> Papasavvas, Krystina  
<[REDACTED]> Lamond, Kathryn <[REDACTED]> Lafazia, Michael  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Jenet, Marie (FAA)  
<[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]>  
[REDACTED] Peters, Carl <[REDACTED]> Henry, Portia <[REDACTED]>  
**Subject:** RE: LGA EIS-related RFP; Committee meeting, 11/8

James,

Since a call line has been established, is there objection to me forwarding it to our legal representation as well (John Doyle, Andrew Teodorescu, and Laura Price) so they may listen in? If there is none, I can forward the calendar invite.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

---

**From:** Summerville, James <[REDACTED]>  
**Sent:** Wednesday, November 07, 2018 1:15 PM  
**To:** Vero, Anthony <[REDACTED]> DeGraffe, Clarelle <[REDACTED]> Herndon, Jane  
<[REDACTED]> lvenech panynj.gov <[REDACTED]> DiScenna, Matthew  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Tabafunda, Faith  
<[REDACTED]> Papasavvas, Krystina <[REDACTED]> Lamond, Kathryn  
<[REDACTED]> Lafazia, Michael <[REDACTED]> Cohen, Michelle  
<[REDACTED]> Brooks, Andrew (FAA) <[REDACTED]> Jenet, Marie (FAA)  
<[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Sanchez,

David (FAA) <[REDACTED]> Peters, Carl <[REDACTED]> Henry, Portia  
<[REDACTED]>

**Subject:** RE: LGA EIS-related RFP; Committee meeting, 11/8

Everyone,

Just brief update:

Reference Checks: We received another response from one of Ricondo's references Please see attached:

The PA's Office of Business Diversity and Civil Rights (OBDCR) reviewed the MWBE plans submitted by each proposer. Attached below is a snapshot of the review. I'm unsure if OBDCR's representative will be able to attend tomorrow's meeting, hence the reason to submit it in this email.

I understand that certain **nonvoting** committee members might be unable to attend in person tomorrow. Thus my update to the MS Outlook invite with a teleconference number for use by such individuals. **All voters, however, must attend in person tomorrow.**

Thanks all, James, [REDACTED]

---

**From:** Summerville, James

**Sent:** Tuesday, November 06, 2018 3:57 PM

**To:** Vero, Anthony <[REDACTED]> DeGraffe, Clarelle <[REDACTED]> Herndon, Jane  
<[REDACTED]> Venech, Lou <[REDACTED]> DiScenna, Matthew  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Tabafunda, Faith  
<[REDACTED]> Papisavvas, Krystina <[REDACTED]> Lamond, Kathryn  
<[REDACTED]> Lafazia, Michael <[REDACTED]> Cohen, Michelle  
<[REDACTED]> [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] Peters, Carl <[REDACTED]> Henry, Portia  
<[REDACTED]>

**Subject:** LGA EIS-related RFP; Committee meeting, 11/8

**Importance:** High

**Everyone:** Sorry for the length of this email. It addresses the Committee as a whole and, toward the end, the voters. As a reminder, the voters and nonvoters for this phase of the evaluation are:

**Voters:** Anthony Vero; Clarelle DeGraffe; Jane Herndon; Lou Venech; Matt DiScenna; FAA (two members)

**Nonvoters:** Liz Rogak; Faith Tabafunda; Katie Lamond; Michael Lafazia; Michelle Cohen; Portia Henry; Carl Peters.

Just a friendly reminder that **we're meeting on Thursday, 11/8** at 4 WTC (Conference Rooms 25-5 and 25-6) for a discussion of our review of the proposals to the subject RFP. **The meeting will begin at 8:15.** (We shouldn't need the entire scheduled time). This is an **in-person** meeting culminating in official scoring; the scores will be added to the scores in Round 2 (Interviews on 11/14). The

combined scores should determine a recommended winner.

11/8's discussion is meant to be free and frank. All attendees – nonvoters and voters -- are encouraged to provide their opinions. The meeting should begin with a brief discussion of **overall impressions** and continue with a **proposal-by-proposal discussion**. The discussion should align with the evaluation criteria:

- Project Approach
- Project Experience
- Organization and Management
- References
- Description of Proposer/Team
- QA & QC

Each criterion is elaborated in the attachment:

<< File: evaluation criteria.pdf >>

Before we score (toward the end of the meeting), I'll ask the nonvoters to summarize their impressions to the voters. Afterward, the nonvoters will leave and the voters (with Procurement and the client project mgr for this procurement – M. Cohen) will remain to conclude the discussion and thereafter score.

One evaluation criterion is **references**. Procurement requested reference checks from the firms listed in each proposal (5 each). To date, Procurement received a total of 7 responses. For your review and consideration, I've attached the responses:

Ricondo references:

<< Message: RE: Port Authority of NY & NJ; RFP for Consulting Services >> << Message: RE: Port Authority of NY & NJ; RFP for Consulting Services; [REDACTED] << Message: RE: Port Authority of NY & NJ; RFP for Consulting Services >> << Message: RE: Port Authority of NY & NJ; RFP for Consulting Services >>

[REDACTED]

[REDACTED] Authority of NY & NJ; RFP for Consulting Services; [REDACTED] >> <<

Message: RE: Port Authority of NY & NJ; RFP for Consulting Services; [REDACTED]g >> <<


Message: FW: From Ed K. >>

If we receive more responses before Thursday, I'll forward them to you. Furthermore, I understand that some Committee members might have experience with the proposers. I'll ask them to convey their impressions during the meeting.

**Voters (Anthony, Crelle, Jane, Lou, Matt, Andrew, Marie):**

I've attached individual scoring sheets. Please bring them to the meeting on 11/8. You can pre-populate them with ratings (10 – 1, with 10 being the best), but in my experience, preliminary scores often change after a full Committee discussion. I'll have additional blank sheets at the meeting should your preliminary scores change.

<< File: 1st round scoring sheet - Vero.docx >> << File: 1st round scoring sheet - DeGraffe.docx >>  
<< File: 1st round scoring sheet - Herndon.docx >> << File: 1st round scoring sheet - Venech.docx >>  
<< File: 1st round scoring sheet - DiScenna.docx >> << File: 1st round scoring sheet - Brooks.docx >>  
<< File: 1st round scoring sheet - Jenet.docx >>

Thanks, James, 

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**From:** [Summerville, James](#)  
**To:** [Jenet, Marie \(FAA\)](#); [Drew Brooks](#); [Wolfers-Lawrence, Jean \(FAA\)](#); [REDACTED]  
**Cc:** [DiScenna, Matthew](#); [Rogak, Elizabeth](#); [Papasavvas, Krystina](#); [Tabafunda, Faith](#); [Lamond, Kathryn](#); [Cohen, Michelle](#)  
**Subject:** RE: November 14  
**Date:** Wednesday, November 07, 2018 3:23:30 PM  
**Attachments:** [Invitation letter.docx](#)

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Thanks. By the way, I've attached the revised Invitation letter (with a 10 AM start). I reverted to the names (FAA Selection Panel, etc.) originally proposed by the FAA.

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Wednesday, November 07, 2018 3:01 PM  
**To:** Summerville, James <[REDACTED]> Drew Brooks <[REDACTED]>  
Wolfers-Lawrence, Jean (FAA) <[REDACTED]> [REDACTED]  
**Cc:** DiScenna, Matthew <[REDACTED]> Rogak, Elizabeth <[REDACTED]>  
Papasavvas, Krystina <[REDACTED]> Tabafunda, Faith <[REDACTED]>  
Lamond, Kathryn <[REDACTED]> Cohen, Michelle <[REDACTED]>  
**Subject:** RE: November 14

James

Your suggested schedule looks fine. We will confirm tomorrow.

Marie

## Marie C. Jenet

Environmental Specialist  
Federal Aviation Administration  
New York Airports District Office  
159-30 Rockaway Blvd, Suite 111  
Jamaica, New York 11434

---

**From:** Summerville, James <[REDACTED]>  
**Sent:** Wednesday, November 07, 2018 2:50 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]>  
**Cc:** DiScenna, Matthew <[REDACTED]> Rogak, Elizabeth <[REDACTED]>  
Papasavvas, Krystina <[REDACTED]> Tabafunda, Faith <[REDACTED]>  
Lamond, Kathryn <[REDACTED]> Cohen, Michelle <[REDACTED]>  
**Subject:** RE: November 14

Thanks. Appreciate it. Fyi, since we'll likely send the invitation letters tomorrow, could we lock down

the schedule by tomorrow? My suggestion:

First interview: 10 to 11

Debrief: 11-12 (one hour if necessary)

Second interview: 1-2

Second debrief, final FAA scoring: 2- ?

---

**From:** [redacted] [[mailto:\[redacted\]](mailto:[redacted])]  
**Sent:** Wednesday, November 07, 2018 2:44 PM  
**To:** Summerville, James <[redacted]> Jenet, Marie (FAA) <[redacted]>  
Wolfers-Lawrence, Jean (FAA) <[redacted]> [redacted]  
**Cc:** DiScenna, Matthew <[redacted]> Rogak, Elizabeth <[redacted]>  
Papasavvas, Krystina <[redacted]> Tabafunda, Faith <[redacted]>  
Lamond, Kathryn <[redacted]> Cohen, Michelle <[redacted]>  
**Subject:** RE: November 14

James,

We have discussed internally and no longer have a concern with you and Krystina being present in the room during the interview process.

We have not decided on a start time yet, but I would presume that 10 or 10:30 would be the first interview time on the 14<sup>th</sup>.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [redacted]

---

**From:** Summerville, James <[redacted]>  
**Sent:** Friday, November 02, 2018 4:02 PM  
**To:** Brooks, Andrew (FAA) <[redacted]> Jenet, Marie (FAA) <[redacted]>  
Wolfers-Lawrence, Jean (FAA) <[redacted]> Sanchez, David (FAA) <[redacted]>  
**Cc:** DiScenna, Matthew <[redacted]> Rogak, Elizabeth <[redacted]>  
Papasavvas, Krystina <[redacted]> Tabafunda, Faith <[redacted]>  
Lamond, Kathryn <[redacted]> Cohen, Michelle <[redacted]>  
**Subject:** November 14

Andrew et al,

After our call, we – the PA – discussed among ourselves (and thereafter with our executive mgmt.) the best way to manage expectations per protocol. As mentioned during the call, it's protocol that the PA Procurement Dept. be physically present at all RFP- and evaluation-related meetings. We lead and administer the process, and attest to our executives that the process occurred according to expectations and protocol – hence the need for Procurement's attendance at the meetings. However, we understand the circumstances and thus offer this compromise: Krystina and I will attend on 11/14, but we won't be in the room when the interviews are ongoing. After each interview, after the proposer has left and before the next interview commences, KP and I will be in the room when the FAA and the PA (Matt, Michelle, Katie) debrief. KP and I won't contribute to the debrief, however. We'll be flies on the wall, so to speak. Please let us know if this works.

Second, now that we know the # of proposals, do you want to lock down the times for the interviews? Per the letter, the first interview would begin at 8:30, I think. But that schedule assumed four interviews. Since we have just two, and since many people have to commute via two modes of transportation, could we begin a bit later – say 10 to 11 for the first interview, then a debrief, then lunch, then the second interview (1-2), then debrief and final scoring by the FAA. (This is just my idea. We're open and flexible.)

Thanks, James, [REDACTED]

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November 8, 2018

PROJECT PRINCIPAL  
COMPANY NAME  
COMPANY ADDRESS

**Same Letter to**  
**ALL SHORT-LISTED FIRMS**

**Re: REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (LGA) ACCESS IMPROVEMENT PROJECT (RFP# 54523)**

Dear **NAME**,

The LaGuardia Airport Access Improvement Project Environmental Impact Statement (EIS) Proposal Review Panel received and reviewed your proposal to prepare an EIS for the subject Project. We are pleased to inform you that the Review Panel has selected your team to be shortlisted and invited to interview for the Project. The following provides the details of the upcoming interview process:

Date: Wednesday, November 14

Location: Federal Aviation Administration Eastern Region, 159-30 Rockaway Blvd., Jamaica, NY

Time: 10:00 AM

The Federal Aviation Administration (FAA) Selection Panel will conduct the interview. The Selection Panel consists of four FAA staff members that will have critical roles in the management of the project. One (or more) representatives from the Port Authority of New York and New Jersey (PANYNJ) will also be present in an observational capacity.

No more than four members of the proposing team shall attend the interview. The proposed Project Manager must be present for the interview; the other members of the team at the interview must be from the list of key staff identified in your submitted proposal (as established by the RFP).

The Interview has been scheduled for 60 minutes, with 30 minutes allocated for each team to present their qualifications per the criteria below and 30 minutes thereafter for questions and answers. The presentation should expand upon the material provided in your team's Statement of Qualifications and emphasize the aspects of the Project that are critical to the Project's



success. The scoring for the interviews will total 100 points and will be added to the 100-point score of the written proposals to determine the winning team. The scoring criteria are listed below:

Schedule	15 Points
Project Approach	15 Points
Unique Project Issues	10 Points
Past Experience on Similar Issues	10 Points
Questions and Answers	50 Points
Total Score	100 Points

Each team should arrive 20-30 minutes before their scheduled time to allow processing through security. Each team will be allowed ten minutes to set up the room. Some audio visual equipment will be available in the interview room. Please contact Andrew Brooks of the FAA at (718) 553-2511 to discuss your team's audio visual equipment needs.

When the team arrives at the FAA Eastern Region office, please have the security booth call (718) 553-3330 to arrange for an escort to the 5<sup>th</sup> floor Airports Conference Room.

We also like to remind each team that we cannot discuss the Project until the selection is made, so do not contact either Port Authority or FAA staff regarding aspects of the Project other than the conditions discussed above.

Regarding this letter and any aspect concerning the presentation, as conveyed herein, please contact both James Summerville ( [REDACTED] ) and Krystina Papasavvas ( [REDACTED] ) if you have questions.

Lastly, we appreciate your interest in this important Project and wish you good luck with the upcoming interviews.

Sincerely,

James Summerville, Sr. Proj. Contracts Specialist  
Port Authority of NY & NJ  
Procurement Department

**From:** [REDACTED]  
**To:** [Summerville, James](#); [Vero, Anthony](#); [DeGraffe, Clarelle](#); [Herndon, Jane](#); [Venech, Lou](#); [DiScenna, Matthew](#); [Rogak, Elizabeth](#); [Tabafunda, Faith](#); [Papasavvas, Krystina](#); [Lamond, Kathryn](#); [Lafazia, Michael](#); [Cohen, Michelle](#); [Jenet, Marie \(FAA\)](#); [Wolfers-Lawrence, Jean \(FAA\)](#); [REDACTED]; [Henry, Portia](#)  
**Cc:** [Peters, Carl](#)  
**Subject:** RE: LGA EIS RFP - internal proposal related discussion  
**Date:** Thursday, November 08, 2018 3:00:53 PM

---

James,

Thank you for hosting the meeting today. We ask that you provide the following request to both respondents:

Please update your references to remove FAA personnel and resubmit.

The means of resubmittal is at the discretion of the Port Authority. If this is done satisfactorily, both Marie and I can adjust our scoring of the references of both respondents to the mean.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

-----Original Appointment-----

**From:** Summerville, James <[REDACTED]>  
**Sent:** Thursday, October 11, 2018 3:52 PM  
**To:** Summerville, James; Vero, Anthony; DeGraffe, Clarelle; Herndon, Jane; [REDACTED]; DiScenna, Matthew; Rogak, Elizabeth; Tabafunda, Faith; Papasavvas, Krystina; Lamond, Kathryn; Lafazia, Michael; Cohen, Michelle; Brooks, Andrew (FAA); Jenet, Marie (FAA); Wolfers-Lawrence, Jean (FAA); Sanchez, David (FAA); Henry, Portia  
**Cc:** Peters, Carl  
**Subject:** LGA EIS RFP - internal proposal related discussion  
**When:** Thursday, November 08, 2018 8:15 AM-12:15 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** 4 WTC; 4WTC - CR 25-05; \*4WTC - CR 25-06

UPDATE: Some non-voting committee members will be out-of-town or unable to make it in person. In the event any nonvoter is unable to attend the meeting in person, please call [REDACTED], [REDACTED]

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UPDATE: because of schedules, I've moved the meeting to begin at 8:15. (We probably won't need the entire allotted time.)

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UPDATE: For this in-person meeting, we'll meet on the 25<sup>th</sup> floor of 4 WTC, in conference rooms 25-05 and 25-06.

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I'm reserving this day and time for a discussion about the forthcoming proposals to the LGA EIS RFP. This will be the first **post-proposal** committee meeting, which will include PA and FAA staff. Logistics (exact time – hopefully it won't take the fully allotted time – and exact location at 4 WTC will follow in an updated MS Outlook invite).

Thanks, James at the Port Authority, [REDACTED]

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**From:** [Summerville, James](#)  
**To:** [Jenet, Marie \(FAA\)](#)  
**Cc:** [Drew Brooks](#); [Vero, Anthony](#); [DeGraffe, Clarelle](#); [Herndon, Jane](#); [Venech, Lou](#); [DiScenna, Matthew](#); [Rogak, Elizabeth](#); [Tabafunda, Faith](#); [Papasavvas, Krystina](#); [Lamond, Kathryn](#); [Lafazia, Michael](#); [Cohen, Michelle](#); [Wolfers-Lawrence, Jean \(FAA\)](#); [REDACTED]; [Henry, Portia](#); [Peters, Carl](#)  
**Subject:** Re: LGA EIS RFP - internal proposal related discussion  
**Date:** Thursday, November 08, 2018 4:22:55 PM

---

Ok. Thanks

Sent from my iPhone

On Nov 8, 2018, at 4:20 PM, "[REDACTED]" <[REDACTED]> wrote:

Thanks James. I have all the names for Wednesday and will bring them to security. We are planning to send the interview questions tomorrow.

### Marie C. Jenet

Environmental Specialist  
Federal Aviation Administration  
New York Airports District Office  
159-30 Rockaway Blvd, Suite 111  
Jamaica, New York 11434

[REDACTED]  
[REDACTED]

---

**From:** Summerville, James <[REDACTED]>  
**Sent:** Thursday, November 08, 2018 4:16 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> Vero, Anthony <[REDACTED]> DeGraffe, Clarelle <[REDACTED]> Herndon, Jane <[REDACTED]> Venech [panynj.gov](mailto:panynj.gov) <[REDACTED]> DiScenna, Matthew <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Tabafunda, Faith <[REDACTED]> Papasavvas, Krystina <[REDACTED]> Lamond, Kathryn <[REDACTED]> Lafazia, Michael <[REDACTED]> Cohen, Michelle <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]> Henry, Portia <[REDACTED]>  
**Cc:** Peters, Carl <[REDACTED]>  
**Subject:** RE: LGA EIS RFP - internal proposal related discussion

**Andrew:** Thanks. Also, as soon as you have a chance, please provide an updated list of interview questions.

**Marie:** I requested the names of the planned attendees from each firm. I already received and forwarded them to you and Andrew (in a separate email).

**Everyone:** thanks again for a productive meeting today, and your time and effort in reviewing the proposals. Fyi only, I've attached post-meeting correspondence to each proposer. The correspondence includes the letters of invitation and the proposer-specific questions and requests for clarification.

The interviews will be on 11/14, with [REDACTED] starting at 9:30 and [REDACTED] at 1:00 PM. Each interview will be 90 minutes, with 30 minutes for the presentation and 60 for the Q&A. As a reminder, not every Committee member will be at the interview. **The attendees will be Procurement (Krystina and me), Matt DiScenna, Michelle Cohen, Katie Lamond, and FAA personnel.**

I'll return to the Committee (by email) after a recommendation has been made by the FAA, and request your review of internal documentation summarizing the process and evaluation (e.g. the Committee Recommendation Memo). Have a good rest of the week and holiday weekend.

Thanks again, James, [REDACTED]

---

**From:** [REDACTED] [[mailto:\[REDACTED\]](mailto:[REDACTED])]  
**Sent:** Thursday, November 08, 2018 3:01 PM  
**To:** Summerville, James <[REDACTED]> Vero, Anthony <[REDACTED]>  
<[REDACTED]> DeGraffe, Clarelle <[REDACTED]> Herndon, Jane <[REDACTED]>  
<[REDACTED]> Venech, Lou <[REDACTED]> DiScenna, Matthew <[REDACTED]>  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Tabafunda, Faith <[REDACTED]>  
<[REDACTED]> Papasavvas, Krystina <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
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**Cc:** Peters, Carl <[REDACTED]>  
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Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

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**Sent:** Thursday, October 11, 2018 3:52 PM  
**To:** Summerville, James; Vero, Anthony; DeGraffe, Clarelle; Herndon, Jane; [REDACTED]  
[REDACTED] DiScenna, Matthew; Rogak, Elizabeth; Tabafunda, Faith; Papasavvas,  
Krystina; Lamond, Kathryn; Lafazia, Michael; Cohen, Michelle; Brooks, Andrew (FAA);  
Jenet, Marie (FAA); Wolfers-Lawrence, Jean (FAA); Sanchez, David (FAA); Henry, Portia  
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Thanks, James at the Port Authority, [REDACTED]

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**Cc:** [Peters, Carl](#)  
**Subject:** RE: LGA EIS RFP - internal proposal related discussion  
**Date:** Thursday, November 08, 2018 3:02:04 PM

---

Will do. thanks

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Thursday, November 08, 2018 3:01 PM  
**To:** Summerville, James <[REDACTED]> Vero, Anthony <[REDACTED]>  
DeGraffe, Clarelle <[REDACTED]> Herndon, Jane <[REDACTED]> Venech, Lou  
<[REDACTED]> DiScenna, Matthew <[REDACTED]> Rogak, Elizabeth  
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Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

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**To:** Summerville, James; Vero, Anthony; DeGraffe, Clarelle; Herndon, Jane; lvenechnpanynj.gov;



DiScenna, Matthew; Rogak, Elizabeth; Tabafunda, Faith; Pappasavvas, Krystina; Lamond, Kathryn; Lafazia, Michael; Cohen, Michelle; Brooks, Andrew (FAA); Jenet, Marie (FAA); Wolfers-Lawrence, Jean (FAA); Sanchez, David (FAA); Henry, Portia

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**Cc:** [Peters, Carl](#)  
**Subject:** RE: LGA EIS RFP - internal proposal related discussion  
**Date:** Friday, November 09, 2018 7:43:19 AM  
**Attachments:** [LGA AirTrain Draft Interview Questions v3.doc](#)

---

James,

Apologies, I thought we had agreed to work of the set of questions distributed Wednesday (attached for reference). We had the note already to add a question about management of teams across different offices, firms, and locations and the request to reconsider removing the QA/QC question.

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

---

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**Sent:** Thursday, November 08, 2018 4:16 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> Vero, Anthony <[REDACTED]>  
DeGraffe, Clarelle <[REDACTED]> Herndon, Jane <[REDACTED]> Ivenech  
panynj.gov <[REDACTED]> DiScenna, Matthew <[REDACTED]> Rogak, Elizabeth  
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**Sent:** Thursday, November 08, 2018 3:01 PM  
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Phone: [REDACTED]

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**To:** Summerville, James; Vero, Anthony; DeGraffe, Clarelle; Herndon, Jane; [REDACTED]; DiScenna, Matthew; Rogak, Elizabeth; Tabafunda, Faith; Papasavvas, Krystina; Lamond, Kathryn; Lafazia, Michael; Cohen, Michelle; Brooks, Andrew (FAA); Jenet, Marie (FAA); Wolfers-Lawrence, Jean (FAA); Sanchez, David (FAA); Henry, Portia  
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**Long Question:**

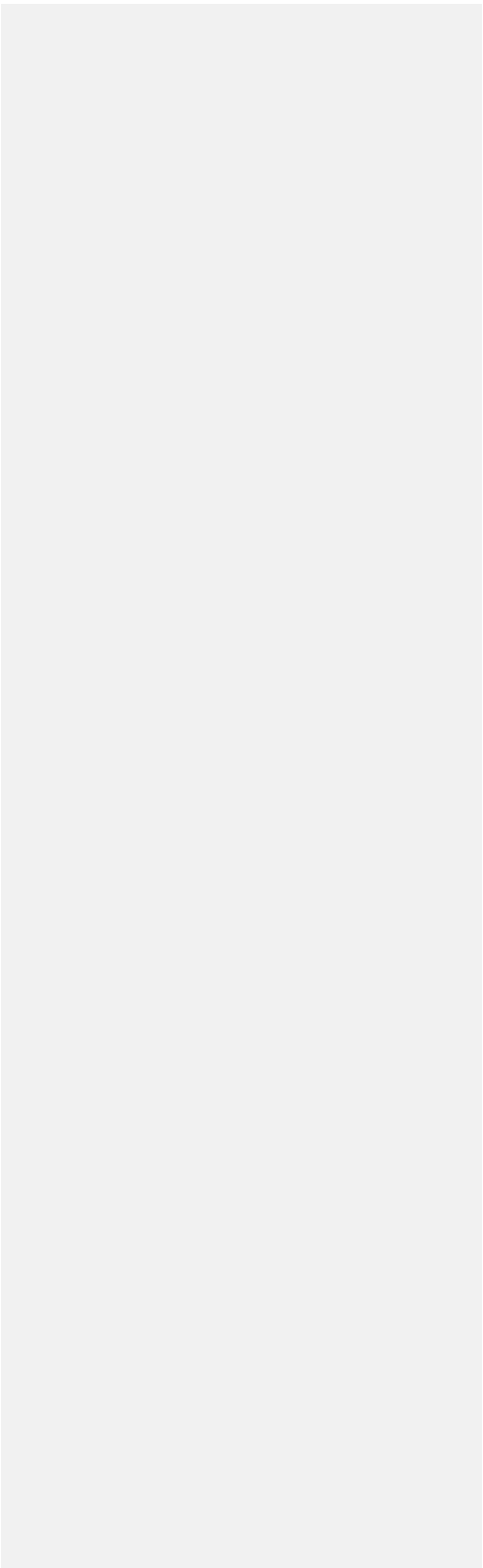
The Executive Order implementing One Federal Decision targets a two-year schedule from issuance of NOI to ROD. The Port Authority has expressed a desire to accelerate the schedule further. Describe how your team would provide a thorough analysis of the project impacts in a legally defensible manner within the desired timeframe, with specific consideration to other project commitments that your team has. Please discuss specific strategies you intend to implement.

Furthermore, identify other project commitments during the expected time period for the preparation of the EIS and describe how your team plans to balance those commitments and ensure completion of the EIS analysis within the desired timeframe.

Score: \_\_\_\_/10

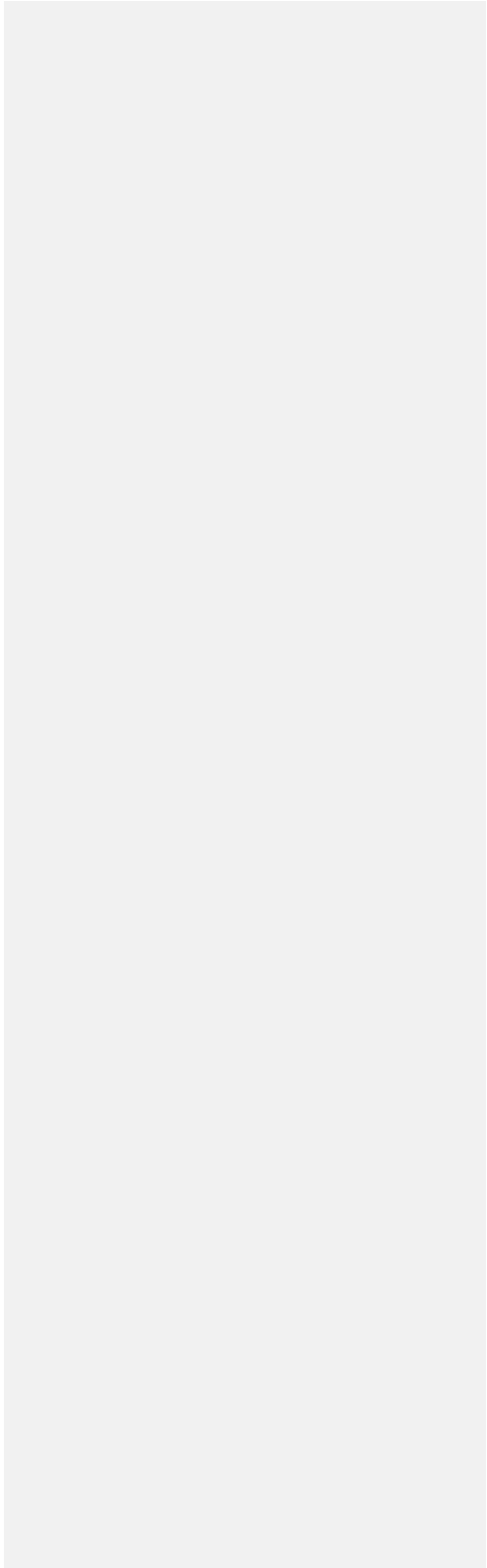
Commented [S11]: See proposed addition to this question

<p><b>Short Question:</b>  <u>Per CEO Regs and FAA implementing orders, you and your subcontractors will have to sign a statement verifying that you have no financial or other interest in the outcome of the AirTrain EIS. What steps would you take to protect the independence and objectiveness of the EIS process if you retained a subcontractor that had previously worked with the project sponsor to formulate planning documents for the proposed project?</u>  <u>What is the name of the team member that will oversee QA/QC? What specific plan will they implement?</u></p>	<p>Score: ____/2.5</p>
<p><b>Long Question:</b>  Describe your individual and team experience on projects where the Proposed Action evolved during the course of analysis, either due to additional design being performed or alternative screening yielding unexpected results. How were changes to the Proposed Action managed in the context of the NEPA analysis to ensure compliance with the applicable laws and regulations? How did the changes affect project scope and schedule? What was the ultimate outcome?</p>	<p>Score: ____/10</p>





<p><b>Short Question:</b> If you could pick the cast of any TV Show or Movie, which would best represent your team and why?</p>	<p>Score: ____/2.5</p>
<p><b>Long Question:</b> Describe your individual and team experience working on projects involving multiple agencies that all had decisions relating to the proposed action that was under consideration. Discuss how communications and schedules were managed to ensure the various agency requirements were addressed in a timely fashion. What was the ultimate result of the project?</p>	<p>Score: ____/10</p>
<p><b>Short Question:</b> What EIS or Major EA has your team worked on are you most proud of and why?</p>	<p>Score: ____/2.5</p>



**Long Question:**

Describe your team's experience on projects that have been the subject of focus from politicians, the media, and the public. How was the outreach strategy developed to address this focus? Please discuss how support and opposition to the project were specifically considered. How was the potential for future legal challenges factored into the development of the strategy?

Score:      /10

**Commented [SJ2]:** Apparently this is the only "Long Question" without an accompanying "Short Question" Purposeful or oversight?

**Commented [BA(3R2):** Purposeful

**From:** [Summerville, James](#)  
**To:** [Drew Brooks](#); [Jenet, Marie \(FAA\)](#); [Wolfers-Lawrence, Jean \(FAA\)](#); [REDACTED]  
**Cc:** [DiScenna, Matthew](#); [Papasavvas, Krystina](#); [Lamond, Kathryn](#); [Cohen, Michelle](#)  
**Subject:** RE: LGA EIS RFP - internal proposal related discussion  
**Date:** Friday, November 09, 2018 11:08:00 AM

---

Andrew,

Regarding the interview questions, we offer the following additional questions: *What is your plan for managing various proposed team members based in different geographic locations in order to produce a cohesive and timely work product? What specific QA/QC plan will your team implement and how will you account for subconsultant teams under the QA/QC plan?*

We'll leave it up the FAA to determine:

- If the two questions should be in one additional question (long and short or just long) or
- If they can be incorporated into the existing questions.

If it's the former, does that necessitate any change to the scoring matrix mentioned in the letter or interview matrix? If that latter, we assume that there will be no change to the matrix.

Let us know your thoughts and as soon as you have a chance provide a revised list of interview questions.

Thanks, James, [REDACTED]

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Friday, November 09, 2018 7:40 AM  
**To:** Summerville, James <[REDACTED]> Vero, Anthony <[REDACTED]>  
DeGraffe, Clarelle <[REDACTED]> Herndon, Jane <[REDACTED]> Venech, Lou  
<[REDACTED]> DiScenna, Matthew <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Tabafunda, Faith <[REDACTED]> Papasavvas, Krystina  
<[REDACTED]> Lamond, Kathryn <[REDACTED]> Lafazia, Michael  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Jenet, Marie (FAA)  
<[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]>  
[REDACTED] Henry, Portia <[REDACTED]>  
**Cc:** Peters, Carl <[REDACTED]>  
**Subject:** RE: LGA EIS RFP - internal proposal related discussion

James,

Apologies, I thought we had agreed to work off the set of questions distributed Wednesday (attached for reference). We had the note already to add a question about management of teams across

different offices, firms, and locations and the request to reconsider removing the QA/QC question.

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

---

**From:** Summerville, James <[REDACTED]>  
**Sent:** Thursday, November 08, 2018 4:16 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> Vero, Anthony <[REDACTED]>  
DeGraffe, Clarelle <[REDACTED]> Herndon, Jane <[REDACTED]>  
[REDACTED] DiScenna, Matthew <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Tabafunda, Faith <[REDACTED]> Papasavvas, Krystina  
<[REDACTED]> Lamond, Kathryn <[REDACTED]> Lafazia, Michael  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Jenet, Marie (FAA)  
<[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Sanchez,  
David (FAA) <[REDACTED]> Henry, Portia <[REDACTED]>  
**Cc:** Peters, Carl <[REDACTED]>  
**Subject:** RE: LGA EIS RFP - internal proposal related discussion

**Andrew:** Thanks. Also, as soon as you have a chance, please provide an updated list of interview questions.

**Marie:** I requested the names of the planned attendees from each firm. I already received and forwarded them to you and Andrew (in a separate email).

**Everyone:** thanks again for a productive meeting today, and your time and effort in reviewing the proposals. Fyi only, I've attached post-meeting correspondence to each proposer. The correspondence includes the letters of invitation and the proposer-specific questions and requests for clarification.

The interviews will be on 11/14, with [REDACTED] starting at 9:30 and [REDACTED] at 1:00 PM. Each interview will be 90 minutes, with 30 minutes for the presentation and 60 for the Q&A. As a reminder, not every Committee member will be at the interview. **The attendees will be Procurement (Krystina and me), Matt DiScenna, Michelle Cohen, Katie Lamond, and FAA personnel.**

I'll return to the Committee (by email) after a recommendation has been made by the FAA, and request your review of internal documentation summarizing the process and evaluation (e.g. the Committee Recommendation Memo). Have a good rest of the week and holiday weekend.

Thanks again, James, [REDACTED]

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Thursday, November 08, 2018 3:01 PM  
**To:** Summerville, James <[REDACTED]> Vero, Anthony <[REDACTED]>  
DeGraffe, Clarelle <[REDACTED]> Herndon, Jane <[REDACTED]> Venech, Lou  
<[REDACTED]> DiScenna, Matthew <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Tabafunda, Faith <[REDACTED]> Papasavvas, Krystina  
<[REDACTED]> Lamond, Kathryn <[REDACTED]> Lafazia, Michael  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Jenet, Marie (FAA)  
<[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]>  
<[REDACTED]> Henry, Portia <[REDACTED]>  
**Cc:** Peters, Carl <[REDACTED]>  
**Subject:** RE: LGA EIS RFP - internal proposal related discussion

James,

Thank you for hosting the meeting today. We ask that you provide the following request to both respondents:

Please update your references to remove FAA personnel and resubmit.

The means of resubmittal is at the discretion of the Port Authority. If this is done satisfactorily, both Marie and I can adjust our scoring of the references of both respondents to the mean.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

-----Original Appointment-----

**From:** Summerville, James <[REDACTED]>  
**Sent:** Thursday, October 11, 2018 3:52 PM  
**To:** Summerville, James; Vero, Anthony; DeGraffe, Clarelle; Herndon, Jane; lvenech panynj.gov; DiScenna, Matthew; Rogak, Elizabeth; Tabafunda, Faith; Papasavvas, Krystina; Lamond, Kathryn; Lafazia, Michael; Cohen, Michelle; Brooks, Andrew (FAA); Jenet, Marie (FAA); Wolfers-Lawrence, Jean (FAA); Sanchez, David (FAA); Henry, Portia  
**Cc:** Peters, Carl  
**Subject:** LGA EIS RFP - internal proposal related discussion  
**When:** Thursday, November 08, 2018 8:15 AM-12:15 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** 4 WTC; 4WTC - CR 25-05; \*4WTC - CR 25-06

UPDATE: Some non-voting committee members will be out-of-town or unable to make it in person. In the event any nonvoter is unable to attend the meeting in person, please call [REDACTED], [REDACTED]

-----

UPDATE: because of schedules, I've moved the meeting to begin at 8:15. (We probably won't need the entire allotted time.)

-----

UPDATE: For this in-person meeting, we'll meet on the 25<sup>th</sup> floor of 4 WTC, in conference rooms 25-05 and 25-06.

-----

Everyone,

I'm reserving this day and time for a discussion about the forthcoming proposals to the LGA EIS RFP. This will be the first **post-proposal** committee meeting, which will include PA and FAA staff. Logistics (exact time – hopefully it won't take the fully allotted time – and exact location at 4 WTC will follow in an updated MS Outlook invite).

Thanks, James at the Port Authority, [REDACTED]

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

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

**From:** [DiScenna, Matthew](#)  
**To:** [Jenet, Marie \(FAA\)](#); [Drew Brooks](#); [REDACTED]  
**Cc:** [Lamond, Kathryn](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Clark, Patty](#); [Herndon, Jane](#)  
**Subject:** Pre-Scoping Follow Up  
**Date:** Wednesday, October 24, 2018 9:39:14 AM

---

Marie and Andrew,

To follow up on our last discussion regarding the pre-scoping meetings, we have the following updates:

Below is a list of suggested stakeholders to invite to a pre-scoping meeting intended for the leadership of each group (our recommended approach). The group is representative of the stakeholders who have been the most engaged on our proposed project and/or are key airport community members.

We suggest that the meeting be held in early December at either LGA Hangar 7 or the Bulova Corporate Center, near LGA.

- Association for a Better New York
- Community Board 1
- Community Board 3
- Ditmars Blvd. Block Association
- East Elmhurst Corona Civic Association
- Guardians of Flushing Bay
- Hotel Association of New York City
- Long Island City Partnership
- New York Building Congress
- Queens Chamber of Commerce
- Queens Economic Development Corporation
- Regional Plan Association
- Riverkeeper
- Rudin Center for Transportation Policy and Management
- United Community Civic Association
- Vaughn College

Regarding the requested follow up on possible alternative approaches (full community board and committee meetings):

- 1) To schedule a joint airport/transportation committee meeting for the community boards, a month lead time is ideal but two weeks normally works.
- 2) To add an item to the agenda for a full board meeting for the community boards, at least a one month lead time is needed.
- 3) The following are the schedules for full board meetings of CB1 and CB3 for November and December:

- a. CB1
  - i. 11/20
  - ii. 12/18
- b. CB3
  - i. 11/15
  - ii. 12/20

Please let us know if you have any questions. We can discuss further on tomorrow's conference call.

Thanks,  
Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ

[REDACTED] (office)

[REDACTED] (cell)

[REDACTED]



**From:** [Summerville, James](#)  
**To:** [Vero, Anthony](#); [DeGraffe, Clarelle](#); [Herndon, Jane](#); [Venech, Lou](#); [DiScenna, Matthew](#); [Rogak, Elizabeth](#); [Tabafunda, Faith](#); [Papasavvas, Krystina](#); [Lamond, Kathryn](#); [Lafazia, Michael](#); [Cohen, Michelle](#); [Drew Brooks](#); [Jenet, Marie \(FAA\)](#); [Wolfers-Lawrence, Jean \(FAA\)](#); [REDACTED]  
**Subject:** Proposals to RFP 54523: LGA EIS  
**Date:** Thursday, November 01, 2018 3:08:18 PM

---

Everyone,

Fyi, we received proposals from:

- [REDACTED]  
[REDACTED]

Both proposals have been uploaded into Sharepoint, and you should be able to access them. As soon as you have a chance today, please confirm your ability to locate and open the proposals via Sharepoint. Also contact me and Krystina if you have questions.

Thanks again for your efforts in reviewing the proposals. See you on 11/8.

Thanks, James, [REDACTED]

**From:** [REDACTED]  
**To:** [Summerville, James](#); [Papasavvas, Krystina](#); [DiScenna, Matthew](#); [Lamond, Kathryn](#); [Cohen, Michelle](#)  
**Cc:** [Jenet, Marie \(FAA\)](#); [REDACTED]; [Wolfers-Lawrence, Jean \(FAA\)](#); [REDACTED]  
**Subject:** Consultant Selection  
**Date:** Wednesday, November 14, 2018 6:01:24 PM

---

Good Afternoon Everyone,

We need to keep discussing tomorrow so we will provide an update as soon as we can. We appreciate your patience.

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

**From:** [Summerville, James](#)  
**To:** [Drew Brooks](#)  
**Cc:** [Papasavvas, Krystina](#); [DiScenna, Matthew](#); [Lamond, Kathryn](#); [Cohen, Michelle](#); [Jenet, Marie \(FAA\)](#); [REDACTED] [Wolfers-Lawrence, Jean \(FAA\)](#); [REDACTED]  
**Subject:** Re: Consultant Selection  
**Date:** Wednesday, November 14, 2018 6:19:13 PM

---

Ok.

Sent from my iPhone

On Nov 14, 2018, at 6:01 PM, [REDACTED] <[REDACTED]> wrote:

Good Afternoon Everyone,

We need to keep discussing tomorrow so we will provide an update as soon as we can.  
We appreciate your patience.

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

**From:** [REDACTED]  
**To:** [Summerville, James](#); [Papasavvas, Krystina](#); [DiScenna, Matthew](#); [Lamond, Kathryn](#); [Cohen, Michelle](#)  
**Cc:** [Jenet, Marie \(FAA\)](#); [REDACTED]; [Wolfers-Lawrence, Jean \(FAA\)](#); [REDACTED]  
**Subject:** Consultant Selection Ranking  
**Date:** Thursday, November 15, 2018 10:18:33 AM  
**Attachments:** [Scoring Matrix.xlsx](#)

---

Good Morning,

The FAA Selection Panel has reviewed all of the material provided and determined a ranking of qualified teams to prepare the EIS for the LGA Airport Access Improvement Project. Our ranking of the qualified firms is:

[REDACTED]  
[REDACTED]

We have attached the matrix used to score the firms. Please notify the top firm of their selection and begin the procurement process for their services. This includes notifying them that the FAA will be in contact to establish a call with the Port Authority the week of November 26<sup>th</sup>, followed by a potential in-person team meeting the week of December 4<sup>th</sup> (procurement process- and schedule-dependent). These discussions will serve to guide the development of the project scope that will then form the basis of fee negotiations with the Port Authority. Fee negotiations should proceed in accordance with FAA Advisory Circular 150/5100-14E, "Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects."

Please note that I referenced the meeting the week of December 4th as the "Kick-Off Meeting" but it is premature to call it the Kick-Off Meeting as that should follow full scope execution.

To summarize for clarity's sake, the process should proceed as follows:

- 1) Port Authority notify firm
- 2) Scope development begins, supported by call the week of 11/26 and potential meeting week of 12/4
- 3) Scope is finalized (target is 3 weeks)
- 4) Fee Negotiations commence
- 5) Fee is agreed upon
- 6) Kick-off Meeting

As always, I am available if you have any questions,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

Scores, interview, 11-14-18

Firms	Presentation 25%	Interview 25%
[Redacted]	[Redacted]	[Redacted]
<b>Presentation</b>	Andrew Brooks	Marie Jenet
[Redacted]	[Redacted]	[Redacted]
<b>Question 1</b>	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
<b>Question 2</b>	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
<b>Question 3</b>	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
<b>Question 4</b>	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
<b>Question 5</b>	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
<b>Question 6</b>	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
<b>Question 7</b>	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
<b>Question 8</b>	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
<b>Question 9</b>	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]

Question 10

[Redacted]

[Redacted]

[Redacted]

---

Dave Sanchez	Jean Wolfers-Lawrence	Average
8	8	8.00
7	7	6.75
		Average
9	9	9.00
7	7	7.00
		Average
2.5	2.5	2.50
2.5	2.5	2.50
		Average
9	9	9.00
7	7	6.50
		Average
1.5	2.5	2.00
2.5	2.5	2.50
		Average
10	10	10.00
6	6	5.75
		Average
9	8	8.50
8	8	8.00
		Average
1	1	1.25
2	2	2.00
		Average
7	8	7.25
7	7	7.25
		Average
2	2	2.00
1	1	1.00

7  
8

7  
8

Average  
7.00  
7.75



**Proposals 50%**

34.13

40.13

**Total**

**75.02**

**74.95**

---

**From:** [REDACTED]  
**To:** [Summerville, James](#); [Papasavvas, Krystina](#); [Cohen, Michelle](#); [DiScenna, Matthew](#); [Lamond, Kathryn](#)  
**Cc:** [Jenet, Marie \(FAA\)](#); [REDACTED]; [Wolfers-Lawrence, Jean \(FAA\)](#); [REDACTED]  
**Subject:** Norfolk Selection Letter  
**Date:** Thursday, November 15, 2018 9:29:20 AM  
**Attachments:** [Norfolk EIS Selection Letter.pdf](#)

---

James,

Attached is the letter the Norfolk Airport Authority sent to the consultants following our interview process. I wanted to send it for your use as a guide.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]



**NORFOLK AIRPORT AUTHORITY®**

Norfolk International Airport / 2200 Norview Avenue / Norfolk, Virginia 23518-5807

December 9, 2013

Mr. Leo Pierre Roy, Principal  
Vanasse Hangen Brustlin, Inc.  
4500 Main Street, Suite 400  
Virginia Beach, VA 23462

**RE: Request for Qualifications - Environmental Impact Statement  
Norfolk International Airport  
Norfolk, Virginia**

Dear Mr. Roy:

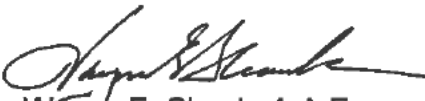
The Norfolk Airport Authority (NAA) is pleased to inform you that Vanasse Hangen Brustlin, Inc. was ranked as the number one firm to prepare an Environmental Impact Statement (Phase I). This ranking was developed by the selection committee of FAA staff formed especially for this project. The final rankings by this committee are as follows:

1. Vanasse Hangen Brustlin, Inc.
2. Landrum and Brown
3. HNTB
4. URS
5. Baker

NAA and FAA staff will be in touch shortly to arrange an initial scoping session with your firm at the Norfolk International Airport after the Holidays. Once a draft scope of work has been developed to the satisfaction of the FAA, we will attempt to negotiate an agreeable fee for the project in accordance with FAA Advisory Circular 150/5100-14D "Architectural, Engineering, and Planning Services for Airport Projects". If the Norfolk Airport Authority is unable to reach satisfactory terms for the scope and fee for the preparation of the Phase I EIS per the guidance in the FAA AC 105/5100-14D, we will terminate negotiations with the top ranked firm and begin negotiations with the next highest ranked firm.

Again, congratulations on your firm's selection and we look forward to the successful fee negotiation and development of the scope of work for the Phase I Environmental Impact Statement for the Norfolk International Airport.

Sincerely,

  
Wayne E. Shank, A.A.E.  
Executive Director

WES/jpj

pc: Robert S. Bowen, Deputy Executive Director  
Andrew Brooks, AEA-610  
Frank Smigelski, APP-400  
Marcus Brundage, WADO  
Jeff Breeden, WADO

**From:** [Summerville, James](#)  
**To:** [Drew Brooks](#)  
**Cc:** [Cohen, Michelle](#); [DiScenna, Matthew](#); [Papasavvas, Krystina](#)  
**Subject:** scoring  
**Date:** Thursday, November 15, 2018 1:02:47 PM

---

Andrew,

We have a question. Could you call me as soon as possible at [REDACTED]

Thanks, James

**From:** [Summerville, James](#)  
**To:** [Drew Brooks](#); [Papasavvas, Krystina](#); [Cohen, Michelle](#); [DiScenna, Matthew](#); [Lamond, Kathryn](#)  
**Cc:** [Jenet, Marie \(FAA\)](#); [REDACTED]; [Wolfers-Lawrence, Jean \(FAA\)](#); [REDACTED]  
**Subject:** RE: Norfolk Selection Letter  
**Date:** Thursday, November 15, 2018 9:35:21 AM

---

Thanks. Appreciate it. Do the references – specifically, FAA Advisory Circular 150/5100 14D – remain the same for the letter from us to the firm?

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Thursday, November 15, 2018 9:27 AM  
**To:** Summerville, James <[REDACTED]> Papasavvas, Krystina  
<[REDACTED]> Cohen, Michelle <[REDACTED]> DiScenna, Matthew  
<[REDACTED]> Lamond, Kathryn <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] Wolfers-Lawrence, Jean (FAA) <[REDACTED]> [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
**Subject:** Norfolk Selection Letter

James,

Attached is the letter the Norfolk Airport Authority sent to the consultants following our interview process. I wanted to send it for your use as a guide.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

**From:** [Lamond, Kathryn](#)  
**To:** [Rogak, Elizabeth](#); Clark, Patty; [DiScenna, Matthew](#); [Cohen, Michelle](#); Tabafunda, Faith; [Jenet, Marie \(FAA\)](#); [Drew Brooks](#); [REDACTED]; [Herndon, Jane](#)  
**Cc:** [Wolfers-Lawrence, Jean \(FAA\)](#); [Puliafico, Jessica](#); [REDACTED]; [REDACTED]  
**Subject:** LGA Access Improvement Project: Weekly Check-in

---

Below please find a brief agenda for our call this morning:

- 1) Agreement/Terms and Conditions
- 2) Contract Award Timing and Consultant Kickoff
- 3) Upcoming Document Submittals
- 4) Pre-scoping Meetings
- 5) Interagency Coordination Updates

**From:** [DiScenna, Matthew](#)  
**To:** [Drew Brooks](#); [Jenet, Marie \(FAA\)](#)  
**Cc:** [REDACTED]; [Wolfers-Lawrence, Jean \(FAA\)](#); [REDACTED]; [Rogak, Elizabeth](#); [Tabafunda, Faith](#); [Cohen, Michelle](#); [Clark, Patty](#); [Lamond, Kathryn](#); [Herndon, Jane](#); [Papasavvas, Krystina](#); [Summerville, James](#)  
**Subject:** Draft Pre-NOI Work Order - FOR REVIEW  
**Date:** Friday, November 16, 2018 5:39:29 PM  
**Attachments:** [LGA Access Improvement - EIS - Work Order 1 - draft.docx](#)  
[LGA AirTrain scope of tasks to NOI v3.docx](#)

---

Andrew/Marie,

Attached is the draft initial work order for the Consultant, based off of the list of tasks that you sent to us several weeks ago (also attached for reference).

We made no changes to your scope items. We added an introductory paragraph that includes your caveat language stating that there may be additional unanticipated tasks. I updated the month for that item from October to November.

Please review and provide your concurrence by 1pm Monday so that we can send to the Consultant before end of day Monday. Feel free to give me a call on Monday with any questions on this.

Since we are still pre-contract execution, James will transmit the work order to the Consultant and request the attachment referenced in the draft work order for staffing and pricing.

Thanks,  
Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ

[REDACTED] (office)

[REDACTED] (cell)

[REDACTED]

**PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT ACCESS IMPROVEMENT PROJECT**

**Consultant: Ricondo & Associations**

**Date Prepared: 11/19/2018**

**Work Order #1: Tasks Prior to Issuance of Notice of Intent**

**Budget: XXXX**

**Description of Work:**

This work order hereby releases XXXX in authorized contract funds. A subsequent work order(s) will be issued to allow for full completion of the project scope. The Consultant shall notify the Authority when 80% of the funds released through this work order have been utilized. As an attachment to this work order, the Consultant shall establish and submit its budget for the tasks included hereunder. The budget should be itemized by task, and convey the staff members who will perform the work, the hourly rates for such positions and the estimated hours required from each staff member.

This work order shall provide initial services to advance individual elements to be completed prior to issuance of a Notice of Intent (NOI) for the LaGuardia Airport Access Improvement Project Environmental Impact Statement. All tasks hereunder may require further refinement and/or development based on review and input from the Authority.

This work order represents the understanding of tasks necessary to issue the NOI of the Federal Aviation Administration staff as of November 2018 and is not intended to be representative of a full and complete list, recognizing that tasks may be added or deleted as analysis of the project continues.

Tasks under this Work Order #1 shall include the following:

**Task 1: Development of the Permitting Timetable/Agency Memorandum of Understanding**

Executive Order 13807 establishes that a Permitting Timetable will be developed for all projects meeting the qualifications under One Federal Decision. The Timetable must be established before the NOI can be issued. As part of this task, the consultant team will assist the FAA in working with Federal, State, and City agencies that have permits or other decisions that must be captured on the Timetable. They will work to coordinate meetings and assist in identification of tasks necessary for the respective agencies to proceed to permit issuance. Additionally, the consultant team will work with the FAA on schedule integration of all tasks in order to meet the requirement of permit issuance within 90 days of Record of Decision.

This task also provides for consultant team support in development of a Project-Specific Memorandum of Understanding (MOU) with the Cooperating, Participating, and Reviewing Agencies. The Project-Specific MOU will define how communication and coordination of review will occur for all agencies involved in the project. It will address the three concurrence points that are required to be established pursuant to Executive Order 13807 and the MOU implementing Executive Order 13807. At each concurrence point, Cooperating Agencies with



permitting authority will need to agree that information provided up to that point is sufficient to move forward. The MOU implementing Executive Order 13807 contemplates concurrence points at the Purpose and Need, Alternatives to be Carried Forward, and the Preferred Alternative.

## **Task 2: Pre-Scoping**

Under this task, the selected consultant team will assist the FAA in establishing meeting dates and locations for any outstanding Pre-Scoping Meetings following consultant selection. The FAA anticipates developing a Pre-Scoping Plan to identify targeted leadership and public groups within the potential Affected Environment for early engagement. This process will help with early identification of project issues and concerns and will help formulate a more robust scope for analysis early on in the EIS process. The FAA does not intend to have the selected consultant on board prior to initiating this task; however, the selected consultant will be expected to assist in coordination and facilitation of remaining tasks immediately following kickoff. The consultant may be required to obtain meeting locations and travel to support this effort.

## **Task 3: Review and Verify Existing Studies/Clarify Project Elements**

In this task, the selected consultant will begin to form a library of planning studies related to the proposed project and the Affected Environment. It is expected that the Port Authority of New York and New Jersey will provide the FAA and the selected consultant access to all project-related documentation prepared to date. Additionally, past environmental analyses conducted in the area of the proposed project, including, but not limited to, the Environmental Analyses for the Central Terminal Building and Delta Terminal will be provided. The consultant team will simultaneously conduct a Literature Search for any additional documentation relevant to the proposed study area and potential alternatives. The consultant team will assist the FAA in reviewing the documentation provided to identify potential additional areas of study required prior to proceeding with the EIS. Additionally, the review process will assist in the determination of project elements. Together, these items will assist in the development of the EIS scope as part of the Plan of Study.

## **Task 4: Plan of Study/Schedule Development**

This task item establishes the Plan of Study for the EIS through issuance of the Record of Decision. It will involve development of task items through completion of the EIS and issuance of the ROD. Development of the scope will be based on the results of Task 3 as well as substantial ongoing discussions with the FAA, the Port Authority, and potentially Cooperating and Participating Agencies. It will also be informed by the Pre-Scoping effort identified in Task 2 and will include development of a Scoping Plan to be implemented immediately upon issuance of an NOI. A complete project schedule, identifying estimates of duration for task completion and the critical path of tasks necessary for the project to advance will be developed as part of the Plan of Study as well.

## **Task 5: Project Management**

This task item establishes the parameters for ongoing management of the EIS. Though it won't be completed prior to issuance of the NOI, it is necessary to lay the framework for the project from the beginning and provides for the necessary administrative functionality to support the ongoing efforts identified above. This task would incorporate meeting facilitation, agendas, meeting notes, establishing action item tracking, formalizing communication protocols and document formatting, setting up electronic file sharing, initiating the administrative file, and other assorted tasks to allow the consultant to assist the day-to-day management of the project.

THE PORT AUTHORITY OF  
NEW YORK AND NEW JERSEY

---

Matthew DiScenna  
Senior Program Manager, LaGuardia AirTrain  
Aviation Department

ACCEPTED:

RICONDO & ASSOCIATES, INC.

---

John C. Williams  
Senior Vice President

## **LaGuardia Airport Access Improvement Project**

### **Environmental Impact Statement**

#### **Major Tasks to be Completed Prior to Issuance of Notice of Intent**

**DISCLAIMER:** This non-exhaustive list of tasks is intended to outline the major goals and subtasks required to be completed prior to issuance of a Notice of Intent (NOI) for the LaGuardia Airport Access Improvement Project Environmental Impact Statement. It is being prepared to support the Port Authority of New York and New Jersey's Agreement for Performance of Expert Professional Environmental Review Services for the LaGuardia Airport Access Improvement Project, specifically section 10.A. This list represents the understanding of tasks necessary to issue the NOI of the Federal Aviation Administration staff as of October 2018 and is not intended to be representative of a full and complete list, recognizing that tasks may be added or deleted as analysis of the project continues.

#### **Task 1: Development of the Permitting Timetable/Agency Memorandum of Understanding**

Executive Order 13807 establishes that a Permitting Timetable will be developed for all projects meeting the qualifications under One Federal Decision. The Timetable must be established before the NOI can be issued. As part of this task, the consultant team will assist the FAA in working with Federal, State, and City agencies that have permits or other decisions that must be captured on the Timetable. They will work to coordinate meetings and assist in identification of tasks necessary for the respective agencies to proceed to permit issuance. Additionally, the consultant team will work with the FAA on schedule integration of all tasks in order to meet the requirement of permit issuance within 90 days of Record of Decision.

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**From:** [REDACTED]  
**To:** [DiScenna, Matthew](#)  
**Cc:** [Jenet, Marie \(FAA\)](#); [REDACTED]; [Wolfers-Lawrence, Jean \(FAA\)](#); [REDACTED]; [Rogak, Elizabeth](#); [Tabafunda, Faith](#); [Cohen, Michelle](#); [Clark, Patty](#); [Lamond, Kathryn](#); [Herndon, Jane](#); [Papasavvas, Krystina](#); [Summerville, James](#)  
**Subject:** RE: Draft Pre-NOI Work Order - FOR REVIEW  
**Date:** Monday, November 19, 2018 11:24:38 AM

---

Matt,

Edits are forthcoming.

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

---

**From:** DiScenna, Matthew <[REDACTED]>  
**Sent:** Monday, November 19, 2018 10:57 AM  
**To:** Brooks, Andrew (FAA) <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]>  
Teodorescu, Andrew P (FAA) <[REDACTED]> Price, Laura E (FAA)  
<[REDACTED]> Sanchez, David (FAA) <[REDACTED]> Henn, Patricia (FAA)  
<[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]>  
Martinez, Evelyn (FAA) <[REDACTED]> Rogak, Elizabeth <[REDACTED]>  
Tabafunda, Faith <[REDACTED]> Cohen, Michelle <[REDACTED]>  
[REDACTED] Lamond, Kathryn <[REDACTED]> Herndon, Jane  
<[REDACTED]> Papasavvas, Krystina <[REDACTED]> Summerville, James  
<[REDACTED]>  
**Subject:** Re: Draft Pre-NOI Work Order - FOR REVIEW

Andrew,

Yes, they have been notified.

Are you ok with the draft work order or do you plan to submit any edits today?

Thanks,  
Matt

On Nov 19, 2018, at 10:51 AM, "[REDACTED]" <[REDACTED]> wrote:

Matt,

Has Ricondo been notified of their selection yet? We wanted to reach out to John Williams and Steve Culberson to discuss logistics for a potential call next week, but wanted to make sure that they were informed of their selection first.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

---

**From:** DiScenna, Matthew <[REDACTED]>  
**Sent:** Friday, November 16, 2018 5:38 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
**Cc:** Doyle, John (FAA) <[REDACTED]> Teodorescu, Andrew P (FAA) <[REDACTED]> Price, Laura E (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]> Henn, Patricia (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Tabafunda, Faith <[REDACTED]> Cohen, Michelle <[REDACTED]> Lamond, Kathryn <[REDACTED]> Herndon, Jane <[REDACTED]> Papasavvas, Krystina <[REDACTED]> Summerville, James <[REDACTED]>  
**Subject:** Draft Pre-NOI Work Order - FOR REVIEW

Andrew/Marie,

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We made no changes to your scope items. We added an introductory paragraph that includes your caveat language stating that there may be additional unanticipated tasks. I updated the month for that item from October to November.

Please review and provide your concurrence by 1pm Monday so that we can send to the Consultant before end of day Monday. Feel free to give me a call on Monday with any questions on this.

Since we are still pre-contract execution, James will transmit the work order to the Consultant and request the attachment referenced in the draft work order for staffing

and pricing.

Thanks,  
Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ

[REDACTED] (office)

[REDACTED] (cell)

[REDACTED]

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

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**From:** [REDACTED]  
**To:** [DiScenna, Matthew](#); [Jenet, Marie \(FAA\)](#)  
**Cc:** [REDACTED]; [Wolfers-Lawrence, Jean \(FAA\)](#); [Rogak, Elizabeth](#); [Tabafunda, Faith](#); [Cohen, Michelle](#); [Clark, Patty](#); [Lamond, Kathryn](#); [Herndon, Jane](#); [Papasavvas, Krystina](#); [Summerville, James](#)  
**Subject:** RE: Draft Pre-NOI Work Order - FOR REVIEW  
**Date:** Monday, November 19, 2018 12:51:40 PM  
**Attachments:** [LGA Access Improvement - EIS - Work Order 1 - draft FAA Comments.docx](#)

---

Matt,

Our minor comments are attached.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

---

**From:** DiScenna, Matthew <[REDACTED]>  
**Sent:** Friday, November 16, 2018 5:38 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]>; Jenet, Marie (FAA) <[REDACTED]>  
**Cc:** Doyle, John (FAA) <[REDACTED]>; Teodorescu, Andrew P (FAA) <[REDACTED]>; Price, Laura E (FAA) <[REDACTED]>; Sanchez, David (FAA) <[REDACTED]>; Henn, Patricia (FAA) <[REDACTED]>; Wolfers-Lawrence, Jean (FAA) <[REDACTED]>; Martinez, Evelyn (FAA) <[REDACTED]>; Rogak, Elizabeth <[REDACTED]>; Tabafunda, Faith <[REDACTED]>; Cohen, Michelle <[REDACTED]>; Lamond, Kathryn <[REDACTED]>; Herndon, Jane <[REDACTED]>; Papasavvas, Krystina <[REDACTED]>; Summerville, James <[REDACTED]>  
**Subject:** Draft Pre-NOI Work Order - FOR REVIEW

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Thanks,  
Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ  
[REDACTED] (office)  
[REDACTED] (cell)  
[REDACTED]

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**PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT ACCESS IMPROVEMENT PROJECT**

**Consultant: Ricondo & Associates**

**Date Prepared: 11/19/2018**

**Work Order #1: Tasks Prior to Issuance of Notice of Intent**

**Budget: XXXX**

**Description of Work:**

This work order hereby releases XXXX in authorized contract funds. A subsequent work order(s) will be issued to allow for full completion of the Plan of Study~~project scope~~. Incomplete items on this list may be incorporated into the full Plan of Study, and once the Plan of Study is completed, it will supersede this work order. The Consultant shall notify the Authority when 80% of the funds released through this work order have been utilized. As an attachment to this work order, the Consultant shall establish and submit its budget for the tasks included hereunder. The budget should be itemized by task, and convey the staff members who will perform the work, the hourly rates for such positions and the estimated hours required from each staff member.

This work order shall provide initial services to advance individual elements to be completed prior to issuance of a Notice of Intent (NOI) for the LaGuardia Airport Access Improvement Project Environmental Impact Statement. All tasks hereunder may require further refinement and/or development based on review and input from the Authority.

This work order represents the current understanding by FAA staff of tasks necessary to issue the NOI ~~of the Federal Aviation Administration staff as of November 2018~~ and is not intended to be representative of a full and complete list, recognizing that tasks may be added, ~~or~~ deleted, or revised as analysis of the project continues.

Tasks under this Work Order #1 shall include the following:

**Task 1: Development of the Permitting Timetable/Agency Memorandum of Understanding**

Executive Order 13807 establishes that a Permitting Timetable will be developed for all projects meeting the qualifications under One Federal Decision. The Timetable must be established before the NOI can be issued. As part of this task, the consultant team will assist the FAA in working with Federal, State, and City agencies that have permits or other decisions that must be captured on the Timetable. They will work to coordinate meetings and assist in identification of tasks necessary for the respective agencies to proceed to permit issuance. Additionally, the consultant team will work with the FAA on schedule integration of all tasks in order to meet the requirement of permit issuance within 90 days of Record of Decision.

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Under this task, the selected consultant team will assist the FAA in establishing meeting dates and locations for any outstanding Pre-Scoping Meetings following consultant selection. The FAA anticipates developing a Pre-Scoping Plan to identify targeted leadership and public groups with ~~in~~ an interest in the potential Affected Environment for early engagement. This process will help with early identification of project issues and concerns and will help formulate a more robust scope for analysis early on in the EIS process. The FAA ~~does not~~ has commenced this task prior to selection of a consultant; ~~intend to have the selected consultant on board prior to initiating this task;~~ however, the selected consultant will be expected to assist in coordination and facilitation of remaining tasks immediately following kickoff. The consultant may be required to obtain meeting locations and travel to support this effort.

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THE PORT AUTHORITY OF  
NEW YORK AND NEW JERSEY

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Matthew DiScenna  
Senior Program Manager, LaGuardia AirTrain  
Aviation Department

ACCEPTED:

RICONDO & ASSOCIATES, INC.

---

John C. Williams  
Senior Vice President

**From:** [DiScenna, Matthew](#)  
**To:** [Drew Brooks](#); [Jenet, Marie \(FAA\)](#); [Summerville, James](#)  
**Cc:** [REDACTED]; [Wolfers-Lawrence, Jean \(FAA\)](#); [REDACTED]; [Rogak, Elizabeth](#); [Tabafunda, Faith](#); [Cohen, Michelle](#); [Clark, Patty](#); [Lamond, Kathryn](#); [Herndon, Jane](#); [Papasavvas, Krystina](#)  
**Subject:** RE: Draft Pre-NOI Work Order - FOR REVIEW  
**Date:** Monday, November 19, 2018 1:03:18 PM  
**Attachments:** [LGA Access Improvement - EIS - Work Order 1.docx](#)

---

Thanks Andrew. We accepted all changes. Here is the clean version that James will send to Ricondo. We also made a small edit to the consultant name at the top (previously said Ricondo [Associations](#)).

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Monday, November 19, 2018 12:49 PM  
**To:** DiScenna, Matthew <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
**Cc:** [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED] Wolfers-Lawrence, Jean (FAA) <[REDACTED]> [REDACTED]; [REDACTED]; [REDACTED] Rogak, Elizabeth <[REDACTED]> Tabafunda, Faith <[REDACTED]> Cohen, Michelle <[REDACTED]> Clark, Patty <[REDACTED]> Lamond, Kathryn <[REDACTED]> Herndon, Jane <[REDACTED]> Papasavvas, Krystina <[REDACTED]> Summerville, James <[REDACTED]>  
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Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
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Phone: [REDACTED]

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**Sent:** Friday, November 16, 2018 5:38 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
**Cc:** Doyle, John (FAA) <[REDACTED]> Teodorescu, Andrew P (FAA) <[REDACTED]> Price, Laura E (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]> Henn, Patricia (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]>

Rogak, Elizabeth <[REDACTED]> Tabafunda, Faith <[REDACTED]> Cohen,  
Michelle <[REDACTED]> [REDACTED] Lamond, Kathryn <[REDACTED]>  
Herndon, Jane <[REDACTED]> Papasavvas, Krystina <[REDACTED]>  
Summerville, James <[REDACTED]>

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Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ

[REDACTED] (office)

[REDACTED] (cell)

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THE PORT AUTHORITY OF  
NEW YORK AND NEW JERSEY

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Matthew DiScenna  
Senior Program Manager, LaGuardia AirTrain  
Aviation Department

ACCEPTED:

RICONDO & ASSOCIATES, INC.

---

John C. Williams  
Senior Vice President

**From:** [REDACTED]  
**To:** [Summerville, James](#); [DiScenna, Matthew](#); [Jenet, Marie \(FAA\)](#)  
**Cc:** [REDACTED]; [Wolfers-Lawrence, Jean \(FAA\)](#); [REDACTED]; [Rogak, Elizabeth](#); [Tabafunda, Faith](#); [Cohen, Michelle](#); [Clark, Patty](#); [Lamond, Kathryn](#); [Herndon, Jane](#); [Papasavvas, Krystina](#); [Resnick, Risa](#)  
**Subject:** RE: Draft Pre-NOI Work Order - FOR REVIEW  
**Date:** Wednesday, November 21, 2018 8:06:28 AM

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James and Krystina,

On behalf of my colleagues at the FAA, thank you for all of your efforts getting this project going. It certainly has been an interesting and challenging path, but I am certain that we would not be where we are without your contributions and keeping us focused.

I wish you and your families a Happy Thanksgiving as well.

Until next time (JFK ☺),

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

---

**From:** Summerville, James <[REDACTED]>  
**Sent:** Tuesday, November 20, 2018 3:35 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> DiScenna, Matthew <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
**Cc:** Doyle, John (FAA) <[REDACTED]> Teodorescu, Andrew P (FAA) <[REDACTED]> Price, Laura E (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]> Henn, Patricia (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Tabafunda, Faith <[REDACTED]> Cohen, Michelle <[REDACTED]> Lamond, Kathryn <[REDACTED]> Herndon, Jane <[REDACTED]> Papasavvas, Krystina <[REDACTED]> Resnick, Risa <[REDACTED]>  
**Subject:** RE: Draft Pre-NOI Work Order - FOR REVIEW

Andrew, Marie et al.

Fyi, The agreement between Ricondo and the Port Authority was fully executed today; Ricondo has a copy of it. This marks the end of my involvement (for now); Port Authority Procurement will re-engage for fee negotiations after the development of the Plan of Study. Therefore, Procurement (myself and Krystina) does not need to be invited to the forthcoming teleconference and in-person meeting.

Thanks for the FAA's help and efforts.

Happy Thanksgiving,

James Summerville, Sr. Proj. Contracts Specialist  
Port Authority of NY & NJ  
Procurement Dept.  
[REDACTED]

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**From:** [REDACTED] [[mailto:\[REDACTED\]](mailto:[REDACTED])]  
**Sent:** Monday, November 19, 2018 12:49 PM  
**To:** DiScenna, Matthew <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
**Cc:** [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] Wolfers-Lawrence, Jean (FAA) [REDACTED]  
[REDACTED] [REDACTED] Rogak, Elizabeth <[REDACTED]> Tabafunda,  
Faith <[REDACTED]> Cohen, Michelle <[REDACTED]> Clark, Patty  
<[REDACTED]> Lamond, Kathryn <[REDACTED]> Herndon, Jane  
<[REDACTED]> Papasavvas, Krystina <[REDACTED]> Summerville, James  
<[REDACTED]>  
**Subject:** RE: Draft Pre-NOI Work Order - FOR REVIEW

Matt,

Our minor comments are attached.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

---

**From:** DiScenna, Matthew <[REDACTED]>  
**Sent:** Friday, November 16, 2018 5:38 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]>  
**Cc:** Doyle, John (FAA) <[REDACTED]> Teodorescu, Andrew P (FAA)  
<[REDACTED]> Price, Laura E (FAA) <[REDACTED]> Sanchez, David  
(FAA) <[REDACTED]> Henn, Patricia (FAA) <[REDACTED]> Wolfers-Lawrence,  
Jean (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]>  
Rogak, Elizabeth <[REDACTED]> Tabafunda, Faith <[REDACTED]> Cohen,  
Michelle <[REDACTED]> [REDACTED] Lamond, Kathryn <[REDACTED]>

Herndon, Jane <[REDACTED]> Papasavvas, Krystina <[REDACTED]>  
Summerville, James <[REDACTED]>

**Subject:** Draft Pre-NOI Work Order - FOR REVIEW

Andrew/Marie,

Attached is the draft initial work order for the Consultant, based off of the list of tasks that you sent to us several weeks ago (also attached for reference).

We made no changes to your scope items. We added an introductory paragraph that includes your caveat language stating that there may be additional unanticipated tasks. I updated the month for that item from October to November.

Please review and provide your concurrence by 1pm Monday so that we can send to the Consultant before end of day Monday. Feel free to give me a call on Monday with any questions on this.

Since we are still pre-contract execution, James will transmit the work order to the Consultant and request the attachment referenced in the draft work order for staffing and pricing.

Thanks,  
Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ

[REDACTED] (office)

[REDACTED] (cell)

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

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

**From:** [Lamond, Kathryn](#)  
**To:** [Marie Jenet](#); [Drew Brooks](#); [REDACTED]  
**Cc:** [DiScenna, Matthew](#); [Cohen, Michelle](#); [Clark, Patty](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Herndon, Jane](#)  
**Subject:** LGA AirTrain Draft MOU  
**Date:** Monday, May 21, 2018 3:05:41 PM  
**Attachments:** [DRAFT PANYNJ MOU - PA comments \(05.21.18\).CLEAN.DOCX](#)  
[DRAFT PANYNJ MOU - PA comments \(05.21.18\) redline.docx](#)

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Good afternoon,

Attached for your review, please find clean and redlined versions of the revised draft MOU. Please note that once we have developed a final draft, we will still have to provide our PA executing management the opportunity to review.

Please let us know if you think it would be helpful to set up a call/meeting to discuss any questions or comments. We can discuss next steps during our call on Thursday.

Thanks,  
Katie

Kathryn Lamond, P.E.  
Environmental and Sustainability Specialist  
PANYNJ - Aviation Department  
4 World Trade Center, 150 Greenwich St.  
New York, NY 10007  
[REDACTED] (office)  
[REDACTED] (cell)

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION**

**AND**

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**I. INTRODUCTION AND PURPOSE**

- A. This Memorandum of Understanding ("MOU") provides a framework in which the United States Department of Transportation (the "DOT"), Federal Aviation Administration (the "FAA"), an executive agency of the United States, organized and existing under the laws of the United States, having its principal office at 800 Independence Avenue, S.W., Washington, D.C., 20591, will prepare an Environmental Impact Statement (the "EIS") for the LaGuardia Airport ("LGA") LGA Access Improvement Project (the "Project") being proposed by The Port Authority of New York and New Jersey an interstate compact agency created by Compact between the States of New York and New Jersey, with the consent of the Congress of the United States having its principal office at Four World Trade Center, 150 Greenwich Street, New York, NY10007 (the "Port Authority" or "Sponsor"). The MOU describes the relationship of the above named parties in preparing the EIS. Subject to completion of the EIS, the FAA will issue a determination regarding the Project that will be set forth in a Record of Decision.
- B. As lead agency, the FAA has selected an independent contractor (the "Contractor") to prepare the EIS. The Sponsor shall be the party responsible to engage and retain the Contractor with funds provided by the Sponsor.
- C. The EIS and any related documents shall comply with the provisions of the National Environmental Policy Act of 1969 ("NEPA") and Council on Environmental Quality ("CEQ"), DOT, and FAA environmental regulations and guidance, as well as all applicable local, state and Federal laws, as appropriate.
- D. It is the purpose of this MOU to establish an understanding between the Sponsor and the FAA regarding the responsibilities of the parties and the conditions and procedures to be followed in the development and preparation of the EIS.
- E. The parties that enter into this agreement intend that development and preparation of the EIS, as articulated in this MOU, will satisfy the pertinent environmental

requirements of the FAA and any Cooperating Agencies (as that term is defined in 40 CFR § 1501.6 and 1508.5) that may have jurisdiction over the Project.

## **II. GENERAL PROVISIONS**

- A. As the lead agency, the FAA will be responsible to ensure compliance with all the requirements of NEPA (42 U.S.C. 4321 et seq.), CEQ Regulations (40 C.F.R. Parts 1500-1508), appropriate DOT and FAA environmental orders, and the FAA acknowledges that the Sponsor will be responsible for coordinating with state and local entities for their respective compliance with applicable state and local laws. The FAA shall ensure that all pertinent environmental issues and impacts reasonable alternatives and their impacts cumulative impacts and mitigation/conditions are treated in the EIS, and shall be responsible for the scope and content of the EIS.
- B. The Sponsor will engage and retain the Contractor, selected by the FAA, for the preparation of the EIS. The Contractor, with the approval of the FAA and Sponsor, may employ such other contractors and experts (collectively referred to as "Subcontractors"), as are required for the adequate development and preparation of the EIS.
- C. As approved by the FAA, the Contractor will provide, through its staff or by Subcontractor, the expertise, staffing, and technical capabilities required for the preparation of the EIS. The FAA will direct the scope of the EIS and will independently evaluate all information, environmental data and analyses submitted by the Contractor, the Sponsor or others, and revise or cause additional study and analyses to be performed as necessary.
- D. The Contracts between the Sponsor and Contractor and between the Contractor and Subcontractors (collectively the "Contract") shall be consistent with the provisions of this MOU and shall specifically incorporate those provisions articulated herein that address the conduct of the Contractor. Before starting EIS preparation, the Contractor and Subcontractors shall provide verification to FAA that they have no financial interest in the outcome of the action of the EIS will address, consistent with FAA Order 5050.4B, Paragraph 1003(d). The Contractor and Subcontractors working on the EIS may not bid on any future actions the EIS addresses until the approving FAA official issues a Record of Decision based on the EIS. This prohibition does not prevent the Sponsor from selecting the EIS Contractor or Subcontractors for later development actions, should they be approved. However, that selection must occur after free and open competition and there can be no implied or suggested guarantee that the Sponsor would favorably consider the EIS Contractor or Subcontractors. Further, the Sponsor shall ensure that the Contract shall specifically limit any remedies available to the Contractor and any Subcontractors, so as to affirmatively relieve the United States of America, the FAA, and any officer, agent or employee of same, from any liability

arising out of the performance or termination of the contract for preparation of the EIS, or out of this MOU.

1. Prior to beginning work on the Project, the Contractor and any Subcontractors shall sign a "Disclosure Statement" provided by the FAA per the requirements of FAA Order 5050.4B, Paragraph 1003(d), specifying they have no financial or other interest in the outcome of the project.
  2. The FAA shall evaluate the Disclosure Statement prior to its approval.
- E. The Sponsor shall facilitate the coordination of effort and the exchange of information related to the planning, design, and construction of the Project, as these activities relate to the preparation of the EIS among and between the Contractor and its Subcontractors, the FAA and other federal, state or local entities as appropriate. The Sponsor shall make all reasonable efforts to assist and cooperate with the FAA's directions to the Contractor and Subcontractors to ensure the satisfactory and timely performance of the duties of the Contractor and Subcontractors as specified in this MOU.
- F. The Sponsor and FAA shall:
1. Appoint such full-time (as more fully defined in Paragraph E below) representatives from their respective agencies as necessary to accomplish the coordination necessary for the satisfactory preparation of the EIS. Notice to any such representative shall constitute notice to that party.
  2. Review substantive work products under the Contract(s) for the EIS as the FAA deems necessary, consistent with Article III of this MOU.
  3. Have their respective representatives attend meetings with other Federal, state, regional, and local agencies for the purpose of increasing communications and receiving comments, as the same may be necessary, desirable, or required by law in preparation of the EIS.
- G. All costs incurred in connection with the employment of the Contractor and any and all Subcontractors, or other persons retained or employed by the Sponsor, shall be the sole responsibility of the Sponsor, except in the event this MOU is terminated in accordance with Section IV below. To the extent authorized by law, the Sponsor agrees to hold harmless and indemnify the FAA, its officers, agents, and employees, with respect to any and all judgments or settlements arising from claims, demands, causes of action, and the like ("Claims"), in connection with the Sponsor's employment of the Contractor and any and all Subcontractors which may arise from the termination or performance of the Contract or any other services, or purchase of materials utilized for the development and preparation of the EIS, or from termination of this MOU, except for Claims that arise out of the gross negligence or willful misconduct of the FAA, its officers, agents and



employees. This indemnification by the Sponsor does not extend to administrative or legal costs of the FAA, including suits by third parties (other than the Contractor or its Subcontractors) against the FAA, involving the legality or adequacy of the FAA's compliance with NEPA and other laws and regulations, to the extent of the FAA's liabilities on those issues. The Sponsor shall cooperate and shall require as a term and condition of the Contract that the Contractor cooperates in defense of any such suit. Notwithstanding anything to the contrary in this Agreement, nothing shall be construed to waive the applications of statutory provisions, immunities and limitations available under the Federal Tort Claims Act, (28 U.S.C. Sections 2671, et. seq.) or any other governmental immunity act, as the same may be amended from time to time, with respect to, and in defense of, any claim or claims asserted by any person or entity. The FAA agrees that the Sponsor may satisfy the indemnification requirements set forth above by means of a self-insurance program.

H. The FAA will assign, upon execution of this MOU and through completion of the final EIS document, at a minimum one of the following: an environmental manager, attorney, and support staff; each on a full-time basis. The FAA will receive funding for the direct and indirect costs associated with the employment of the personal assigned pursuant to this Agreement, in accordance with the existing funding agreement between the Sponsor and the FAA, dated as of [\_\_\_\_\_], for the funds required to satisfy the above obligations. It is the intention of the parties that these personnel shall be used to expedite preparation of the EIS contemplated by this Agreement. In addition, the FAA, during the development of the EIS, shall provide office space to the Contractor and Subcontractors within the Regional Office so as to facilitate communication and work on the EIS. For the purposes of this Agreement, full-time shall mean availability at a minimum (5) five days a week, between the hours of 9 am and 5 pm eastern standard time, subject to vacation schedules, Federal holidays and sick leave.

### **III. PROCEDURES**

- A. Under the direction of the FAA, the Contractor shall develop and submit a plan of study to the FAA for the EIS for approval. The "Plan of Study" shall mean a plan that includes detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated man-hours required for completion of each aspect, the schedule for performing each aspect and a description of the internal and external review procedures to assure quality control. Also, the Plan of Study shall include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the environmental data and analyses and the development and preparation of the EIS. The Plan of Study should also identify procedures for retention of all data and sources used in the development of the EIS for eventual consolidation into the Administrative Record

- B. Upon receipt, the FAA will forward the draft Plan of Study to the Sponsor for review and comment. After receiving comments from the Sponsor, and the scoping process conducted pursuant to 40 C.F.R. Sec. 1501.7, the FAA will finalize and approve the Plan of Study. The Sponsor acknowledges that any such draft is subject to the change based on the scoping process. The Plan of Study and this MOU will serve as the basis for the Contractor's development and preparation of the EIS.
- C. 1. The Plan of Study may be amended by the FAA from time to time as the work of the Contractor or its Subcontractors proceeds, but any amendments or changes which require the expenditure of additional funds by the Sponsor must be agreed to by the Sponsor. The Sponsor will be notified and consulted prior to any significant amendments or modifications to the Plan of Study that require the expenditure of additional funds or modification to the proposed schedule for completion of the EIS. Payments by the Sponsor will be made and are subject to the availability of funds authorized by the Sponsor's Board of Commissioners.
2. The Sponsor will pay Contractor and Subcontractors invoices only upon receipt from a responsible officer of the FAA a certification that the work or materials set forth on a submitted invoice has been performed or provided by the Contractors and Subcontractors. Any invoices submitted for payment shall only include amounts for project work that has already been performed by the date on which such invoice is submitted for payment. The Sponsor may deny payment for any portion of any invoice that is not supported by the certification described above or for work not actually performed.
- D. As each portion of any draft of sections of the EIS and, unless otherwise directed by the FAA, any and all work performed by the Contractor and its Subcontractors in preparation of the EIS shall be submitted directly to the FAA, and upon request of the Sponsor the FAA, to the Sponsor. The Sponsor may communicate with the Contractor and its Subcontractors during the development of the EIS, but no prior review or discussion of data or analyses developed by the Contractor or Subcontractor as related to the EIS before being submitted to the FAA shall be afforded the Sponsor. In no case will the Sponsor discuss, review, modify, or edit the Contractor's work or the work of its Subcontractors prior to submission to the FAA, or be provided the opportunity to do so. All suggestions for modifications or changes to such sections recommended by the Sponsor or the Sponsor's representative shall only be made to the FAA in accordance with Paragraph F below.
- E. The FAA reserves the right to review periodically and modify the work of the Contractor to ensure that requirements under NEPA and other applicable laws and regulations are satisfied. The Contractor shall submit weekly written reports on the progress of its work to the FAA, with a concurrent copy to the Sponsor. This report shall describe the present status of each aspect of the work, any problems

encountered, and recommendations for modifications to the Plan of Study and any changes in personnel, methodology or schedules for completion.

- F. As each portion of any draft or final document is completed, the FAA shall review each portion and those tasks completed thereunder and, after consultation with the Sponsor, shall approve, modify, comment thereon and/or direct further work with regard to such portion or tasks as necessary; the foregoing FAA review will be a concurrent review by all applicable offices/divisions/departments of the agency, including but not limited to the Office of the Regional Counsel (or Office of the Chief Counsel, as appropriate), to avoid unnecessary delay. Said directions and/or comments shall be made by the FAA in a manner so as to ensure expeditious completion of the EIS, and the Contractor shall ensure incorporation of such comments into any editorial changes to the satisfaction of the FAA. Prior to approval, the FAA will forward final drafts to the Sponsor for review and comment. Comments from the Sponsor shall be sent to the FAA. The Contractor will only make modifications as the FAA directs regarding these comments. After the aforementioned consultation, final drafts of any documents will require FAA approval.
- G. If requested, the Contractor will provide the FAA access to and review of all procedures and underlying data used by the Contractor in developing submitted sections of the EIS, including, but not limited to, field reports, Subcontractor reports, and interviews with concerned private and public parties, whether or not such information may be contained in a draft or final EIS. Upon request by the Sponsor, the FAA will promptly provide the Sponsor with access to all of the aforementioned procedures and underlying data. Such information provided by the FAA shall be governed by paragraph III.U in this MOU.
- H. To facilitate the development and preparation of the EIS, joint meetings among the FAA, Sponsor, and Contractor may be held on a weekly basis but no less frequently than bi-weekly. However, the FAA reserves the right to work directly with the Contractor for purposes of assuring objectivity in preparing reports and/or for assuring expeditious communications. The Contractor will notify the FAA and Sponsor of any substantive meetings that are scheduled with other agencies and of their purpose and will provide an opportunity for the parties to attend if desired. No meeting will be held between the Contractor and Sponsor without prior notification to and approval of the FAA. A summary of all matters relating to EIS discussions in any meetings or communications between the Contractor and a party hereto without the participation of the other said party will be included in each formal weekly report submitted by the Contractor to the FAA and Sponsor. The FAA and the Sponsor each reserve the right to consult directly with other Federal, state, and local officials and agencies during the preparation of the EIS to assure the Sponsor's compliance with all applicable laws and regulations.
- I. The Sponsor and FAA each acknowledge that the Contractor and its Subcontractors scope of services includes assisting the FAA with any public

workshops, hearings, or meetings as required and directed by the FAA to foster public familiarity and participation with respect to the assessment of impacts related to the Project.

- J. At such time as the FAA, after consultation with the Sponsor, has approved the Draft EIS developed and prepared by the Contractor and its Subcontractors, the Contractor shall print the quantity of Draft EIS copies as specified by the FAA and submit same to the FAA. The FAA shall direct the Contractor to submit the appropriate number of copies of the Draft EIS to the Sponsor.
- K. Upon the anticipated completion of the Draft EIS, the FAA, with the Contractor's assistance, shall be responsible for organizing and conducting any public hearings.
- L. The FAA will receive all comments during the Draft EIS public review and comment period. This period (at least 45 days) will be initiated when the Environmental Protection Agency (EPA) publishes the "Draft EIS Notice of Availability" in the Federal Register.
- M. At the close of the Draft EIS public review and comment period, the FAA shall promptly provide the Sponsor and the Contractor with all comments received, and shall identify the issues and comments submitted which will require response in the Final EIS. The FAA will direct those issues and comments to the Contractor for preparation of proposed responses, and shall furnish the Sponsor with such identification of issues and comments that require response in the Final EIS. The FAA shall direct the Contractor to furnish proposed responses concurrently to the FAA and Sponsor for review and comment. The Sponsor shall provide any comments to the FAA. The FAA, with appropriate advice and consultation with the Sponsor, shall modify the proposed responses as it deems necessary.
- N. After receipt of comments and preparation of responses, the FAA, after appropriate advice and consultation, may direct the Contractor to make changes to the text of the Draft EIS as necessary.
- Q. At such time as the FAA has approved the Final EIS, the Contractor shall print the contracted quantity of Final EIS. The FAA shall submit an appropriate number of copies of the Final EIS to the Sponsor.
- R. The FAA will receive all comments on the Final EIS during the mandatory "hold period". This period (at least 30 days) will be initiated when the EPA publishes the "Final EIS Notice of Availability" in the Federal Register.
- S. In accordance with Executive Order 13807: Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, the FAA and Contractor shall take all reasonable steps to ensure expeditious preparation and issuance of the Draft and Final EIS.

- T. The FAA, with assistance from the Contractor, will expeditiously prepare and issue the FAA Record of Decision, after publication of the “Final EIS Notice of Availability,” and will make it available to the public; if permitted by applicable law, and determined by the FAA as appropriate shall issue the ROD contemporaneously with the Final EIS.
- U. Information developed under this MOU is disclosable to the public to the extent required by law. The FAA will maintain the confidentiality of, and will not release or allow access to, any information, documents or materials which in its opinion are validly designated as confidential by the Sponsor or Contractor and which contain trade secrets, proprietary data, or commercial or financial information or falls within an existing federal exemption. In any instance where the FAA proposes to release to the public or allow access to any information, documents or materials, created in the development and preparation of the EIS or which the Sponsor or Contractor has designated as confidential, it shall notify the Sponsor or Contractor of its intention to do so, at least five (5) business days prior to such release or grant of access. In addition, the Sponsor or Contractor has the opportunity to either (i) appeal the decision in accordance with applicable regulations on such release or access prior to any such release or access or (ii) seek a protective order. (See FAA Order 1270.1)
- V. The Contractor will maintain a segregated copy of each record/document relating to the project that is used by the FAA in their decision making process. This will form the basis for the FAA's administrative record of the EIS. The Consultant shall be responsible for managing the administrative project file and, upon completion of the work, will be responsible for submitting a completed administrative record for the project to the FAA and the Sponsor, in accordance with FAA policy and guidance.
- W. All work prepared under this MOU shall be delivered to the FAA and the Sponsor in printed format and searchable .pdf files along with components associated with each item, such as data files, text files, image files, spreadsheets, graphs, and tables.

#### **IV. CESSATION AND TERMINATION**

- A. Any of the parties to this MOU may withdraw from the terms of this MOU for good cause upon 30 days written notice to the other party. During this period, the parties will actively attempt to resolve any disagreement.
- B. In the event of a termination of this MOU, and if the FAA determines that preparation of an EIS by the FAA is still required, it is agreed as follows:

1. The FAA shall have access to all documentation, reports, analyses and data by the Contractor and Subcontractors with confidentiality governed by paragraph III.T.
2. The FAA shall assume the responsibility for preparing the EIS. The Sponsor shall no longer be responsible for the payment of costs associated with preparation of the EIS under the terminated MOU, apart from costs already incurred and required under the Sponsor's contract with the Contractor. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations which might require payment.
3. Liability for termination shall be in accordance with paragraph II.G. of this MOU.

#### **VI. NO RIGHTS FOR NON-PARTIES**

This Agreement does not create any right or benefit enforceable by law or equity of any person who is not a party to this Agreement against the Sponsor or FAA. No rights or privileges are created or intended to be created by this MOU in anyone not a signatory of this MOU.

#### **VII. MODIFICATION**

This MOU represents the entire agreement and may be modified by the parties hereto only by written agreement by all the parties.

#### **VIII. AUTHORITY TO EXECUTE**

The representative of each party signing this Agreement warrants that he/she is duly authorized to do so.

#### **IX. COUNTERPARTS**

A photocopy or PDF copy of this Agreement shall have the same force and effect as an original of this Agreement.

#### **X. NOTICES**

Notices and other communications under this Agreement shall be in writing and shall be directed as follows, or to such other address as the party receiving such notice or communication shall have previously specified by notice to the other party sending such notice:

If to the Sponsor:

Title:  
The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 18<sup>th</sup> Floor  
New York, New York 10007

with a copy to:

General Counsel  
The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 18<sup>th</sup> Floor  
New York, New York 10007

If to the FAA:

[FAA to provide contact]  
[Title]  
Federal Aviation Administration  
1 Aviation Plaza, Suite [ ]  
Jamaica, New York 11434

with a copy to:

[FAA to provide contact]  
[Title]  
Federal Aviation Administration  
800 Independence Ave., S.W.,  
Washington, D.C., 20591

#### **XI. NO PERSONAL LIABILITY**

No Commissioner, director, officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

**XII. SIGNATORIES**

**United States Federal Aviation Administration**

\_\_\_\_\_  
**[SIGNATORY AND TITLE]**

\_\_\_\_\_  
**DATE**

**The Port Authority of New York and New Jersey**

\_\_\_\_\_  
**[SIGNATORY AND TITLE]**

\_\_\_\_\_  
**DATE**

Port Authority Use Only:	
Approval as to Terms	Approval as to Form



PA Comments (05.21.18)

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE UNITED STATES DEPARTMENT OF TRANSPORTATION**  
**FEDERAL AVIATION ADMINISTRATION**  
**AND**  
**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**I. INTRODUCTION AND PURPOSE**

- A. This Memorandum of Understanding ("MOU") provides a framework in which the United States Department of Transportation (the "DOT"), Federal Aviation Administration (the "FAA"), an executive agency of the United States, organized and existing under the laws of the United States, having its principal office at 800 Independence Avenue, S.W., Washington, D.C., 20591, will prepare an Environmental Impact Statement (the "EIS") for the LaGuardia Airport ("LGA") LGA Access Improvement Project (the "Project") being proposed by The Port Authority of New York and New Jersey an interstate compact agency created by Compact between the States of New York and New Jersey, with the consent of the Congress of the United States having its principal office at Four World Trade Center, 150 Greenwich Street, New York, NY10007 (the "Port Authority" or "Sponsor"). The MOU describes the relationship of the above named parties in preparing the EIS. Subject to completion of the EIS, the FAA will issue a determination regarding the Project that will be set forth in a Record of Decision.
- B. As lead agency, the FAA has selected an independent contractor (the "Contractor") to prepare the EIS. The Sponsor shall be the party responsible to engage and retain the Contractor with funds provided by the Sponsor.
- C. The EIS and any related documents shall comply with the provisions of the National Environmental Policy Act of 1969 ("NEPA") and Council on Environmental Quality ("CEQ"), DOT, and FAA environmental regulations and guidance, as well as all applicable local, state and Federal laws, as appropriate.
- D. It is the purpose of this MOU to establish an understanding between the Sponsor and the FAA regarding the responsibilities of the parties and the conditions and procedures to be followed in the development and preparation of the EIS.
- E. The parties that enter into this agreement intend that development and preparation of the EIS, as articulated in this MOU, will satisfy the pertinent environmental

requirements of the FAA and any Cooperating Agencies (as that term is defined in 40 CFR § 1501.6 and 1508.5) that may have jurisdiction over the Project.

## II. GENERAL PROVISIONS

A. As the lead agency, the FAA will be responsible to ensure compliance with all the requirements of NEPA (42 U.S.C. 4321 et seq.), CEQ Regulations (40 C.F.R. Parts 1500-1508), appropriate DOT and FAA environmental orders, and the FAA acknowledges that the Sponsor will be responsible for coordinating with state and local entities for their respective compliance with applicable state and local laws, including the New York State Environmental Quality Review Act (ECL §§ 8-0101 et seq.) ("SEQRA") and implementing regulations (6 NYCRR Part 617). The FAA shall ensure that all pertinent environmental issues and impacts reasonable alternatives and their impacts cumulative impacts and mitigation/conditions are treated in the EIS, and shall be responsible for the scope and content of the EIS.

B. The Sponsor will engage and retain the Contractor, selected by the FAA, for the preparation of the EIS. The Contractor, with the approval of the FAA and Sponsor, may employ such other contractors and experts (collectively referred to as "Subcontractors"), as are required for the adequate development and preparation of the EIS.

~~C.~~ As approved by the FAA, the Contractor will provide, through its staff or by Subcontractor, the expertise, staffing, and technical capabilities required for the preparation of the EIS. The FAA will direct the scope of the EIS and will independently evaluate all information, environmental data and analyses submitted by the Contractor, the Sponsor or others, and revise or cause additional study and analyses to be performed as necessary.

~~D.C.~~

~~E.D.~~ The Contracts between the Sponsor and Contractor and between the Contractor and Subcontractors (collectively the "Contract") shall be consistent with the provisions of this MOU and shall specifically incorporate those provisions articulated herein that address the conduct of the Contractor. Before starting EIS preparation, the Contractor and Subcontractors shall provide verification to FAA that they have no financial interest in the outcome of the action of the EIS will address, consistent with FAA Order 5050.4B, Paragraph 1003(d). The Contractor and Subcontractors working on the EIS may not bid on any future actions the EIS addresses until the approving FAA official issues a Record of Decision based on the EIS. This prohibition does not prevent the Sponsor from selecting the EIS Contractor or Subcontractors for later development actions, should they be approved. However, that selection must occur after free and open competition and there can be no implied or suggested guarantee that the Sponsor would favorably consider the EIS Contractor or Subcontractors. Further, the Sponsor shall ensure that the Contract shall specifically limit any remedies available to the Contractor and any Subcontractors, so as to affirmatively

Commented [FAA1]: Can the Port please explain why this needs to be included? If the Port is subject to SEQRA, is the Port suggesting that this be a combined NEPA EIS and SEQRA EIS?

Commented [CM2R1]: To the extent that SEQRA is required, the Port Authority will provide any necessary documents to FAA to incorporate. The Port Authority will need to be in communication with local entities for coordination.

relieve the United States of America, the FAA, and any officer, agent or employee of same, from any liability arising out of the performance or termination of the contract for preparation of the EIS, or out of this MOU.

1. Prior to beginning work on the Project, the Contractor and any Subcontractors shall sign a "Disclosure Statement" provided by the FAA per the requirements of FAA Order 5050.4B, Paragraph 1003(d), specifying they have no financial or other interest in the outcome of the project.
2. The FAA shall evaluate the Disclosure Statement prior to its approval.

E. The Sponsor shall facilitate the coordination of effort and the exchange of information related to the planning, design, and construction of the Project, as these activities relate to the preparation of the EIS among and between the Contractor and its Subcontractors, the FAA and other federal, state or local entities as appropriate. The Sponsor shall make all reasonable efforts to assist and cooperate with the FAA's directions to the Contractor and Subcontractors to ~~as~~ ensure the satisfactory and timely performance of the duties of the Contractor and Subcontractors as specified in this MOU.

Commented [FAA3]: We do not agree with this edit. As lead agency, it is FAA's role to determine the exchange of information.

Commented [CM4R3]: With respect to coordination with other entities, it is necessary for the Port Authority to have the ability to coordinate on the planning and design front for permitting etc.

F. The Sponsor and FAA shall:

1. Appoint such full-time (as more fully defined in Paragraph E below) representatives from their respective agencies as necessary to accomplish the coordination necessary for the satisfactory preparation of the EIS. Notice to any such representative shall constitute notice to that party.
2. Review substantive work products under the Contract(s) for the EIS as the FAA deems necessary, consistent with Article III of this MOU.
3. Have their respective representatives attend meetings with other Federal, state, regional, and local agencies for the purpose of increasing communications and receiving comments, as the same may be necessary, desirable, or required by law in preparation of the EIS.

~~G. G.~~ All costs incurred in connection with the employment of the Contractor and any and all Subcontractors, or other persons retained or employed by the Sponsor, shall be the sole responsibility of the Sponsor, except in the event this MOU is terminated in accordance with Section IV below. To the extent authorized by law. ~~F~~ The Sponsor agrees to hold harmless and indemnify the FAA, its officers, agents, and employees, with respect to any and all judgments or settlements arising from claims, demands, causes of action, and the like ("Claims"), in connection with the Sponsor's employment of the Contractor and any and all Subcontractors which may arise from the termination or performance of the Contract or any other services, or purchase of materials utilized for the development and preparation of the EIS, or from termination of this

MOU, except for Claims that arise out of the gross negligence or willful misconduct of the FAA, its officers, agents and employees. This indemnification by the Sponsor does not extend to administrative or legal costs of the FAA, including suits by third parties (other than the Contractor or its Subcontractors) against the FAA, involving the legality or adequacy of the FAA's compliance with NEPA and other laws and regulations, to the extent of the FAA's liabilities on those issues. The Sponsor shall cooperate and shall ~~ensure~~ require as a term and condition of the Contract that the Contractor cooperates in defense of any such suit. Notwithstanding anything to the contrary in this Agreement, nothing shall be construed to waive the applications of statutory provisions, immunities and limitations available under the Federal Tort Claims Act, (28 U.S.C. Sections 2671, et. seq.) or any other governmental immunity act, as the same may be amended from time to time, with respect to, and in defense of, any claim or claims asserted by any person or entity. The FAA agrees that the Sponsor may satisfy the indemnification requirements set forth above by means of a self-insurance program.

H. The FAA will assign, upon execution of this MOU and through completion of the final EIS document, at a minimum one of the following: an environmental manager, attorney, and support staff, each on a full-time basis. The FAA will receive funding for the direct and indirect costs ~~associated~~ associated with the employment of the personal assigned pursuant to this Agreement, in accordance with the existing funding agreement between the Sponsor and the FAA, dated as of [ ], for the funds required to satisfy the above obligations. It is the intention of the parties that these personnel shall be used to expedite preparation of the EIS contemplated by this Agreement. In addition, the FAA, during the development of the EIS, shall provide office space to the Contractor and Subcontractors within the Regional Office so as to facilitate communication and work on the EIS. For the purposes of this Agreement, full-time shall mean availability at a minimum (5) five days a week, between the hours of 9 am and 5 pm eastern standard time, subject to vacation schedules, Federal holidays and sick leave.

### III. PROCEDURES

- A. Under the direction of the FAA, the Contractor shall develop and submit a plan of study to the FAA for the EIS for approval. The "Plan of Study" shall mean a plan that includes detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated man-hours required for completion of each aspect, the schedule for performing each aspect and a description of the internal and external review procedures to assure quality control. Also, the Plan of Study shall include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the environmental data and analyses and the development and

preparation of the EIS. The Plan of Study should also identify procedures for retention of all data and sources used in the development of the EIS for eventual consolidation into the Administrative Record. ~~In developing the Plan of Study, the Contractor may consider and use/utilize as appropriate any relevant submissions made by the Sponsor, or the Sponsor's representative which submissions shall be made concurrently directly to the FAA and Contractor.~~

B. ~~Upon receipt,~~ the FAA will forward the draft Plan of Study to the Sponsor for review and comment. After receiving comments from the Sponsor, and the scoping process conducted pursuant to 40 C.F.R. Sec. 1501.7, the FAA will finalize and approve the Plan of Study. The Sponsor acknowledges that any such draft is subject to the change based on the scoping process. The Plan of Study and this MOU ~~shall establish the scope of work required of~~ will serve as the basis for ~~the Contractor's~~ in the development and preparation of the EIS.

C. 1. The Plan of Study may be amended by the FAA from time to time as the work of the Contractor or its Subcontractors proceeds, but any amendments or changes which require the expenditure of additional funds by the Sponsor must be agreed to by the Sponsor. The Sponsor will be notified and consulted prior to any ~~significant~~ significant amendments or modifications to the Plan of Study that require the expenditure of additional funds or modification to the proposed schedule for completion of the EIS. Payments by the Sponsor will be made and are subject to the availability of funds authorized by the Sponsor's Board of Commissioners.

2. The Sponsor will pay Contractor and Subcontractors invoices only upon receipt from a responsible officer of the FAA a certification that the work or materials set forth on a submitted invoice has been performed or provided by the Contractors and Subcontractors. Any invoices submitted for payment shall only include amounts for project work that has already been performed by the date on which such invoice is submitted for payment. The Sponsor may deny payment for any portion of any invoice that is not supported by the certification described above or for work not actually performed.

D. ~~Unless~~ As each portion of any draft of sections of the EIS and, unless otherwise directed by the FAA, any and all work performed by the Contractor and its Subcontractors in preparation of the EIS shall be submitted directly to the FAA, ~~and upon request of the FAA~~ Sponsor the FAA, to the Sponsor. The Sponsor may communicate with the Contractor and its Subcontractors during the development of the EIS, but no prior review or discussion of data or analyses developed by the Contractor or Subcontractor as related to the EIS before being submitted to the FAA shall be afforded the Sponsor. In no case will the Sponsor discuss, review, modify, or edit the Contractor's work or the work of its Subcontractors prior to submission to the FAA, or be provided the opportunity to do so. All suggestions for modifications or changes to such sections recommended by the Sponsor or the Sponsor's representative shall only be made to the FAA. in accordance with Paragraph F below.

Commented [FAA5]: This doesn't seem appropriate at Plan of Study phase, more so during initial data gathering concurrent to development of Plan of Study. Data should not be considered until FAA reviews, or directs the review, of the submissions. If this is supposed to mean that the plan of study should include a task that evaluates sponsor info, that would be acceptable.

Commented [CM6R5]: Revised language to address comment.

Commented [FAA7]: This could cause a workflow issue. Minor scope changes are routine. Significant changes with cost implications are typically of concern to the Sponsor.

Commented [CM8R7]: Revised to add "significant" back into the text.

Commented [CM9]: The Port Authority requires the ability to validate expenditure of funds, especially since the FAA will control and direct the Contractor and Subcontractors day-to-day work.

Commented [FAA10]: We do not agree with this edit. FAA needs to have the ability to direct the speed/frequency with which portions of the document are submitted.

Commented [CM11R10]: The language states "unless otherwise directed by the FAA."

Commented [FAA12]: We do not agree with all the edits in this section. FAA, as the lead federal agency, needs to maintain control of the process. Regularly scheduled meetings (bi-monthly/monthly) will facilitate these discussions. The Sponsor should not be having discussions directly with the Contractor without FAA present.

Commented [CM13R12]: It is necessary for the Port Authority to have the ability to coordinate with other entities.

E. The FAA reserves the right to review periodically and modify the work of the Contractor to ensure that requirements under NEPA and other applicable laws and regulations are satisfied. The Contractor shall submit ~~monthly~~weekly written reports on the progress of its work to the FAA, with a concurrent copy to the Sponsor. This report shall describe the present status of each aspect of the work, any problems encountered, and recommendations for modifications to the Plan of Study and any changes in personnel, methodology or schedules for completion.

F. As each portion of any draft or final document is completed, the FAA shall review each portion and those tasks completed thereunder and, after consultation with the Sponsor, shall approve, modify, comment thereon and/or direct further work with regard to such portion or tasks as necessary. the foregoing FAA review will be a concurrent review by all applicable offices/divisions/departments of the agency, including but not limited to the Office of the Regional Counsel (or Office of the Chief Counsel, as appropriate), to avoid unnecessary delay. Said directions and/or comments shall be made by the FAA in a manner so as to ensure expeditious completion of the EIS, and the Contractor shall ensure incorporation of such comments into any editorial changes to the satisfaction of the FAA. ~~Final drafts of any documents will require FAA approval.~~ Prior to approval, the FAA will forward final drafts to the Sponsor for review and comment. Comments from the Sponsor shall be sent to the FAA. The Contractor will only make modifications as the FAA directs regarding these comments. After the aforementioned consultation, final drafts of any documents will require FAA approval.

G. If requested, the Contractor will provide the FAA access to and review of all procedures and underlying data used by the Contractor in developing submitted sections of the EIS, including, but not limited to, field reports, Subcontractor reports, and interviews with concerned private and public parties, whether or not such information may be contained in a draft or final EIS. ~~The~~Upon request by the Sponsor, the FAA will also have promptly provide the Sponsor with access to such all of the aforementioned procedures and underlying data. Such ~~access information provided~~ by the FAA ~~and Sponsor~~ shall be governed by paragraph III. ~~FU~~ in this MOU.

~~H.~~ To facilitate the development and preparation of the EIS, joint meetings among the FAA, Sponsor, and Contractor ~~shall~~may be held on a weekly basis but no less frequently than bi-weekly. However, the FAA reserves the right to work directly with the Contractor for purposes of assuring objectivity in preparing reports and/or for assuring expeditious communications. The Contractor will notify the FAA and Sponsor of any substantive meetings that are scheduled with other agencies and of their purpose and will provide an opportunity for the parties to attend if desired. No meeting will be held between the Contractor ~~or~~and Sponsor without prior notification to and approval of the FAA. A summary of all matters relating to EIS discussions in any meetings or communications between the Contractor and a party hereto without the participation of the other said party will be included in each

Commented [FAA14]: We do not agree with the edits in this section. This is not appropriate for an MOU. FAA will avoid unnecessary delay to the extent it can, however, external factors can influence our workload.

Commented [CM15R14]: Assume this comment is no longer applicable due to Executive Order 13807: Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects

Commented [FAA16]: Same as above. It is FAA's role to decide on information sharing.

Commented [CM17R16]: As previously drafted, the Sponsor had access to the documentation. As modified, this provides for a process to obtain that information.

Commented [FAA18]: Prefer "may"

Commented [CM19R18]: Text has been revised.

Commented [FAA20]: We disagree with this edit. The purpose of this section is FAA/Sponsor coordination, not combined coordination with other agencies.

Commented [CM21R20]: The Port Authority needs to be able to coordinate and review data and materials pertinent to the EIS with state and local entities during this process. As drafted, it reserves to the Sponsor that ability.

formal ~~monthly~~ weekly report submitted by the Contractor to the FAA and Sponsor. The FAA ~~reserves and the Sponsor each reserve~~ the right to consult directly with other Federal, state, and local officials and agencies during the preparation of the EIS to assure the Sponsor's compliance with ~~NEPA and other~~ all applicable laws and regulations.

H.

- I. The Sponsor ~~shall~~ and FAA each acknowledge that ~~assure the full cooperation of~~ the Contractor and its Subcontractors scope of services includes assisting the FAA with ~~respect to participating in~~ any public workshops, hearings, or meetings as required and directed by the FAA to foster public familiarity and participation with respect to the assessment of impacts related to the Project.
- J. At such time as the FAA, after consultation with the Sponsor, has approved the Draft EIS developed and prepared by the Contractor and its Subcontractors, the Contractor shall print the ~~contracted~~ quantity of Draft EIS copies as specified by the FAA and submit same to the FAA. The FAA shall direct the Contractor to submit the appropriate number of copies of the Draft EIS to the Sponsor. ~~The FAA shall submit an appropriate number of copies of the Draft EIS to and the Sponsor.~~
- K. The Contractor shall be responsible for the costs associated with the printing and publication of the draft and final copies of the EIS. The Contractor shall be responsible for all costs associated with the publication of FAA-approved notices announcing public workshops, meetings, hearings, and the like. The Contractor shall also be responsible for costs of stenographic and clerical services, preparation of graphics and visual aids associated with any public workshops, meetings, and hearings.
- L. In all instances involving questions as to the content or relevance of the environmental data and analyses, and evaluations and wording prepared by the Contractor during the EIS process, the FAA, with appropriate advice and consultation ~~when it deems necessary, will with the Sponsor, shall~~ make the final determination on the inclusion, deletion or modification of the same in the Draft or Final EIS. The FAA shall provide the Sponsor with the opportunity to review and comment on such the environmental data and analyses, at minimum to identify errors, omissions omissions and to ensure that both the Federal and State or local documentation are to the extent feasible consistent. [Note to FAA: this language is consistent with the language in Paragraph O below.]
- M. Upon the anticipated completion of the Draft EIS, the FAA, with the Contractor's assistance, shall be responsible for organizing and conducting any public hearings.
- N. The FAA will receive all comments during the Draft EIS public review and comment period. This period (at least 45 days) will be initiated when the Environmental Protection Agency (EPA) publishes the "Draft EIS Notice of Availability" in the Federal Register.

Commented [FAA22]: We disagree with this edit. FAA must be able to demonstrate ownership of the process. May need to find alternate language if the Port is subject to SEQRA and coordination under SEQRA is needed.

Commented [CM23R22]: See comment response above. This would ensure that the Port Authority is able to move forward programmatically with coordination on federal, state, and local levels.

Commented [FAA24]: We disagree with this edit. FAA has to transmit to show ownership.

Commented [CM25R24]: Text revised to specify that only at the direction of the FAA would the Contractor submit copies to the Sponsor.

Commented [FAA26]: We disagree with this edit. FAA does not consult with the sponsor prior to taking all actions. This language is only consistent with the Port modifications to Paragraph O, which we disagree with.

Commented [CM27R26]: Text revised to remove with appropriate advice and consultation "with the Sponsor"

O. At the close of the Draft EIS public review and comment period, the FAA shall promptly provide the Sponsor and the Contractor with all comments received, and shall identify the issues and comments submitted which will require response in the Final EIS. The FAA will direct those issues and comments to the Contractor for preparation of proposed responses, and shall furnish the Sponsor with copies such identification of all issues and comments received that require response in the Final EIS. The FAA shall direct the Contractor will to furnish proposed responses concurrently to the FAA and Sponsor for review and comment. The ~~FAA will share the proposed responses with the Sponsor for additional review and comment with proposed changes back~~ Sponsor shall provide any comments to the FAA. The FAA, with appropriate advice and consultation with the Sponsor, shall modify the proposed responses as it deems necessary.

Commented [FAA28]: Same as above. These revisions undermine the FAA's independence in controlling the process.

Commented [CM29R28]: As modified, the FAA directs information sharing and the right to accept or reject Sponsor comments.

P. After receipt of comments and preparation of responses, the FAA, after appropriate advice and consultation, may direct the Contractor to make changes to the text of the Draft EIS as necessary.

Q. At such time as the FAA has approved the Final EIS, the Contractor shall print the contracted quantity of Final EIS. The FAA shall submit an appropriate number of copies of the Final EIS to the Sponsor.

R. The FAA will receive all comments on the Final EIS during the mandatory "hold period". This period (at least 30 days) will be initiated when the EPA publishes the "Final EIS Notice of Availability" in the Federal Register.

~~R.S.~~ To the extent permitted by applicable law, in accordance with Executive Order 13807: Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, both the FAA and Contractor shall take all reasonable steps to ensure expeditious preparation and issuance of the Draft and Final EIS.

Commented [FAA30]: Recommend deleting between "To the extent" and "both."

Commented [CM31R30]: Please see modifications. Text revised to reference Executive Order 13807 and to delete "To the extent" and "both."

~~S.T.~~ ~~S.~~ The FAA, with assistance from the Contractor, will expeditiously prepare and issue the FAA Record of Decision, after publication of the "Final EIS Notice of Availability," and will make it available to the public; if permitted by applicable law, and determined by the FAA as appropriate shall issue the ROD contemporaneously with the Final EIS. ~~[Note to FAA please see proposed edit]~~

Commented [FAA32]: We disagree with this edit.

Commented [CM33R32]: Please see proposed edit. Text revised to include "and determined by the FAA as appropriate..."

~~T.U.~~ ~~T.~~ Information developed under this MOU is disclosable to the public to the extent required by law. The FAA will maintain the confidentiality of, and will not release or allow access to, any information, documents or materials which in its opinion are validly designated as confidential by the Sponsor or Contractor and which contain trade secrets, proprietary data, or commercial or financial information or falls within an existing federal exemption. In any instance where the FAA proposes to release to the public or allow access to any information, documents



or materials, created in the development and preparation of the EIS or which the Sponsor or Contractor has designated as confidential, it shall notify the Sponsor or Contractor of its intention to do so, at least five (5) business days prior to such release or grant of access. ~~In addition, and provide~~ the Sponsor or Contractor has the opportunity to either (i) appeal the decision in accordance with applicable regulations on such release or access prior to any such release or access or (ii) seek a protective order. (See FAA Order 1270.1)

Commented [CM34]: Appeal process to be discussed.

V. ~~U.~~ The Contractor will maintain a segregated copy of each record/document relating to the project that is used by the FAA in their decision making process. This will form the basis for the FAA's administrative record of the EIS. The Consultant shall be responsible for managing the administrative project file and, upon completion of the work, will be responsible for submitting a completed administrative record for the project to the FAA and the Sponsor, in accordance with FAA policy and guidance.

W. All work prepared under this MOU shall be delivered to the FAA and the Sponsor in printed format and searchable .pdf files along with components associated with each item, such as data files, text files, image files, spreadsheets, graphs, and tables.

#### IV. CESSATION AND TERMINATION

A. Any of the parties to this MOU may withdraw from the terms of this MOU for good cause upon 30 days written notice to the other party. During this period, the parties will actively attempt to resolve any disagreement.

B. In the event of a termination of this MOU, and if the FAA determines that preparation of an EIS by the FAA is still required, it is agreed as follows:

1. The FAA shall have access to all documentation, reports, analyses and data by the Contractor and Subcontractors with confidentiality governed by paragraph III.T.

— The FAA shall assume the responsibility for preparing the EIS. The Sponsor shall no longer be responsible for the payment of costs associated with preparation of the EIS under the terminated MOU, apart from costs already incurred and required under the Sponsor's contract with the Contractor. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations which might require payment.

2.

3. Liability for termination shall be in accordance with paragraph II.G. of this MOU.

**VI. NO RIGHTS FOR NON-PARTIES**

This Agreement does not create any right or benefit enforceable by law or equity of any person who is not a party to this Agreement against the Sponsor or FAA. No rights or privileges are created or intended to be created by this MOU in anyone not a signatory of this MOU.

**VII. MODIFICATION**

This MOU represents the entire agreement and may be modified by the parties hereto only by written agreement by all the parties.

**VIII. AUTHORITY TO EXECUTE**

The ~~representative~~representative of each party signing this Agreement warrants that he/she is duly authorized to do so.

**IX. COUNTERPARTS**

A photocopy or PDF copy of this Agreement shall have the same force and effect as an original of this Agreement.

**X. NOTICES**

Notices and other communications under this Agreement shall be in writing and shall be directed as follows, or to such other address as the party receiving such notice or communication shall have previously specified by notice to the other party sending such notice:

If to the Sponsor:

Title:  
The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 18<sup>th</sup> Floor  
New York, New York 10007

with a copy to:

General Counsel  
The Port Authority of New York and New Jersey

Four World Trade Center  
150 Greenwich Street, 18<sup>th</sup> Floor  
New York, New York 10007

If to the FAA:

[FAA to provide contact]  
[Title]  
Federal Aviation Administration  
1 Aviation Plaza, Suite [ ]  
Jamaica, New York 11434

with a copy to:

[FAA to provide contact]  
[Title]  
Federal Aviation Administration  
800 Independence Ave., S.W.,  
Washington, D.C., 20591

**XI. NO PERSONAL LIABILITY**

No Commissioner, director, officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

**XII. SIGNATORIES**

United States Federal Aviation Administration

\_\_\_\_\_  
[SIGNATORY AND TITLE]

\_\_\_\_\_  
DATE

The Port Authority of New York and New Jersey

\_\_\_\_\_  
[SIGNATORY AND TITLE]                      DATE \_\_\_\_\_

<u>Port Authority Use Only:</u>	
<u>Approval as to Terms</u>	<u>Approval as to Form</u>

DRAFT



**From:**

**To:**

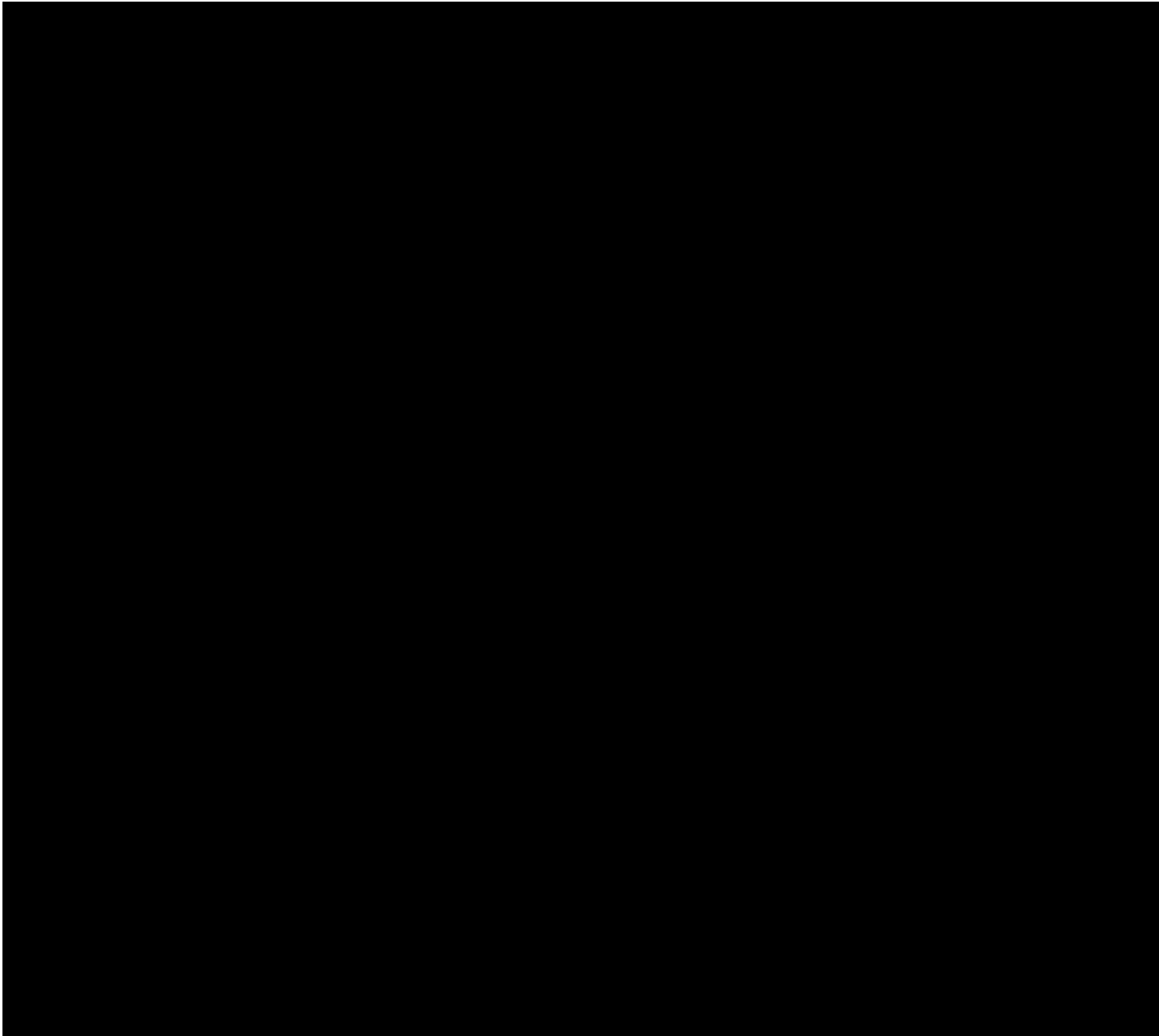
**Cc:**

**Subject:**

**Date:**

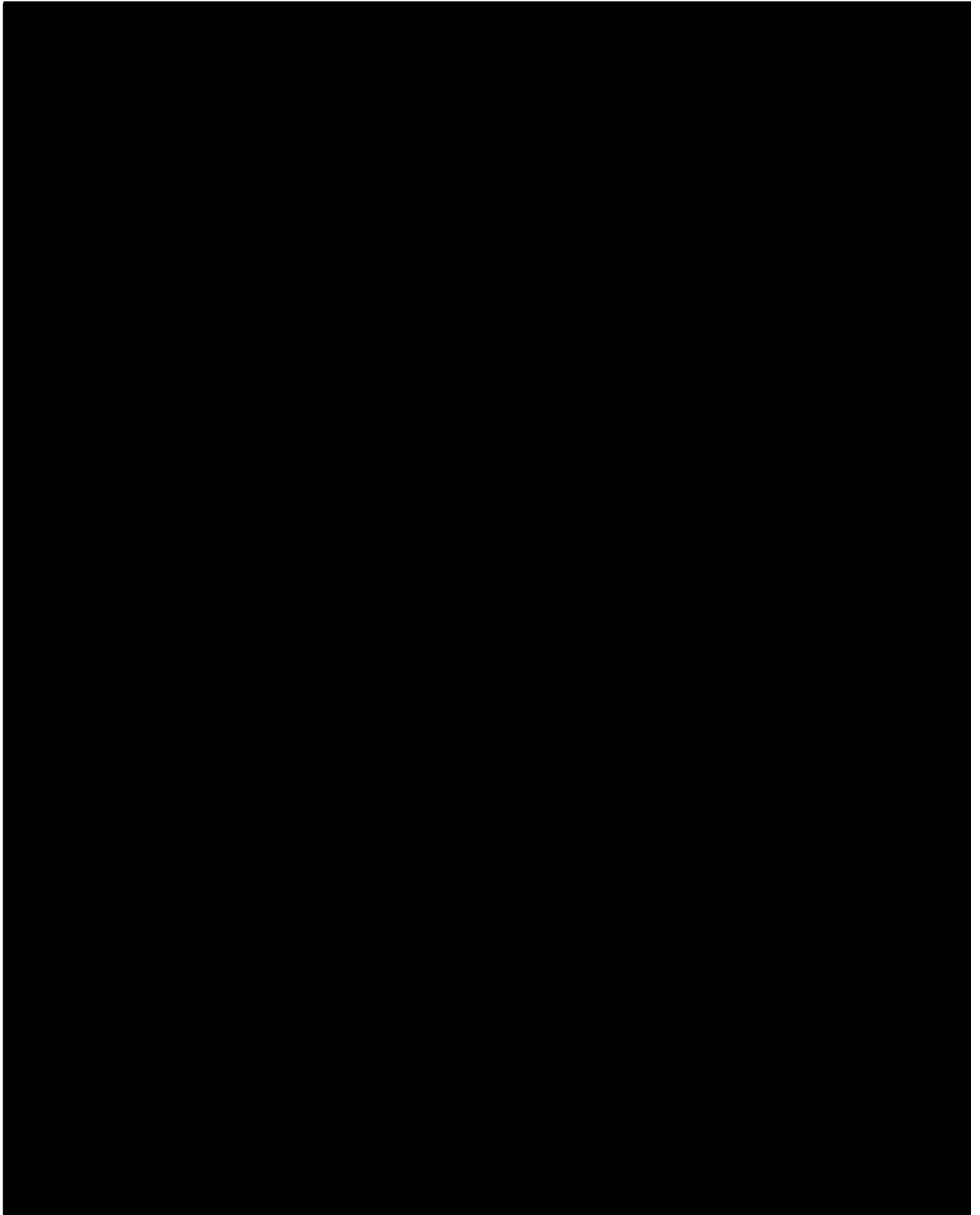
**Attachments:**

Friday, November 09, 2018 5:02:05 PM



Port Authority of New York and New Jersey

RFP#54523 Environmental Review Services for the LaGuardia Airport Access Improvement Project



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

political landscape of the PANYNJ, and acted as communications counsel to Landrum & Brown



[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

**4. In your proposal, please update your references to remove FAA personnel. You don't have to resubmit your proposal. Rather, your reply to this email affirming that 'the FAA references are hereby removed' from your proposal will suffice.**

The FAA references are hereby removed.

MBE/WBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT PA 3760C/3-16

Instructions: Submit one MBE/WBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT form for each MBE/WBE firm used on this Contract. To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows: Bidder/Proposer/Respondent - can used interchangeably and mean any Contractor, Consultant, Supplier, or Vendor who submits a response to this solicitation.

RFP NUMBER AND TITLE: RFP#54523 Request for Proposals for the Performance of Expert Environmental Review Services for the LGA Access Improvement Project

PROPOSER: VHB Engineering, Surveying, Landscape Architecture and Geology, P.C.

Name of Firm: VHB Engineering, Surveying, Landscape Architecture and Geology, P.C.

Telephone: [Redacted]

Address: One Penn Plaza, Suite 715, New York, NY 10118

Telephone: [Redacted]

Email Address: [Redacted]

MBE/WBE: Name of Firm: Haas Media, LLC

Telephone: [Redacted]

Address: 267 3rd Street, Jersey City, NJ 07302

Description of work to be performed by MBE/WBE: Public Outreach

Calculation (supply only): The Proposer is committed to utilizing the above-named MBE/WBE for the work described above. The estimated dollar value of this work is \$ TBD

or 2 % of the total contract amount of \$ [Redacted]. The anticipated start date is [Redacted] and the anticipated completion date is [Redacted]

AFFIRMATION of MBE/WBE

The above-named MBE/WBE affirms that it will perform the portion of the Contract for the estimated dollar value as stated above.

By: Ken Haas Signature of Principal or Officer of MBE/WBE - Print Name and Title Date: 11/8/2018

I Jim Dowling (print name), an officer of VHB Engineering, Surveying, Landscape Architecture and Geology (company name), certify that I have read the PA 3760C MBE/WBE Participation Plan and Affirmation Statement and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible Bidders/Proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

Signature of Proposer: Ken Haas Title: Project Manager Date: November 9, 2018

Please Note: Only 60% of the expenditure to a MBE/WBE material supplier will be counted toward the MBE/WBE goal. Please show calculation above. Example: \$100,000 x 60% = \$60,000 estimated MBE/WBE dollar value of work. Plan cannot be accepted without calculation.

Officer of Proposer must have ACKNOWLEDGEMENT BY NOTARY PUBLIC completed on the reverse side.

ACKNOWLEDGEMENT BY NOTARY PUBLIC

MBE/WBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT (reverse)  
PA3760C

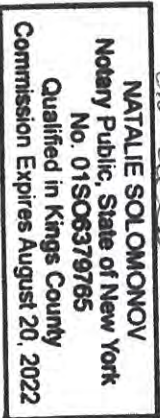
STATE OF New York )  
COUNTY OF New York )

S.S.:

On the 9 day of November in the year 2018, before me, the above undersigned, personally appeared James D. King, the Project Manager of Kings County Health Department, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity.

Name of Notary (print)  
Natalie Solomonov  
(Affix Notary Stamp Here)

My Commission Expires 8/20/2022



Natalie Solomonov  
(Notary Signature)

11/8/2018  
(Date)

MBE/WBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT

PA 3760C/3-16

Instructions: Submit one MBE/WBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT form for each MBE/WBE firm used on this Contract. To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows: Bidder/Proposer/Respondent - can used interchangeably and mean any Contractor, Consultant, Supplier, or Vendor who submits a response to this solicitation.

RFP NUMBER AND TITLE: RFP#54523 Request for Proposals for the Performance of Expert Environmental Review Services for the LGA Access Improvement Project

PROPOSER:

Name of Firm: VHB Engineering, Surveying, Landscape Architecture and Geology, P.C.

Address: One Penn Plaza, Suite 715, New York, NY 10118

Telephone:

Email Address:

MBE/WBE:

Name of Firm: Fitzgerald & Halliday, Inc.

Address: 416 Asylum Street, Hartford, CT 06103

Telephone:

Description of work to be performed by MBE/WBE: Public Outreach, Environmental Services

Calculation (supply only):

The Proposer is committed to utilizing the above-named MBE/WBE for the work described above. The estimated dollar value of this work is \$ TBD or 10 % of the total contract amount of \$ TBD. The anticipated start date is TBD and the anticipated completion date is TBD

AFFIRMATION of MBE/WBE

The above-named MBE/WBE affirms that it will perform the portion of the Contract for the estimated dollar value as stated above.

By: Sandra H. Nafis, Director of Finance & Benefits Date: 11/9/18

Signature of Principal or Officer of MBE/WBE - Print Name and Title

1 Jim Dowling VHB Engineering, Surveying,

(print name), an officer of Landscape Architecture and Geology (company name), certify that I have read the PA 3760C MBE/WBE Participation Plan and Affirmation Statement and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible Bidders/Proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

Signature of Proposer: James P. Dowling Title: Project Manager Date: November 9, 2018

Please Note: Only 60% of the expenditure to a MBE/WBE material supplier will be counted toward the MBE/WBE goal. Please show calculation above. Example: \$100,000 x 60% = \$60,000 estimated MBE/WBE dollar value of work. Plan cannot be accepted without calculation.

Officer of Proposer must have ACKNOWLEDGEMENT BY NOTARY PUBLIC completed on the reverse side.

ACKNOWLEDGEMENT BY NOTARY PUBLIC

PA3760C  
MBE/WBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT (reverse)

STATE OF New York )  
COUNTY OF New York )

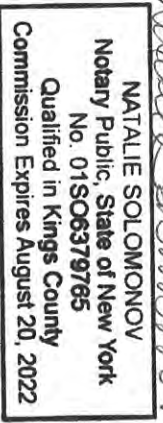
S.S.:

On the 9 day of November in the year 2018, before me, the above undersigned, personally appeared James Devlin, the ~~parent~~ father of James Devlin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity.

Name of Notary (print)  
Natalie Solomon  
(Affix Notary Stamp Here)

Natalie Solomon

My Commission Expires 8/20/2022



(Notary Signature)

11/9/2018  
(Date)

**MBE/WBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT** PA 3760C/3-16

Instructions: Submit one MBE/WBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT form for each MBE/WBE firm used on this Contract. To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows: Bidder/Proposer/Respondent - can used interchangeably and mean any Contractor, Consultant, Supplier, or Vendor who submits a response to this solicitation.

**RFP NUMBER AND TITLE:** RFP#54523 Request for Proposals for the Performance of Expert Environmental Review Services for the LGA Access Improvement Project

**PROPOSER:**

Name of Firm: VHB Engineering, Surveying, Landscape Architecture and Geology, P.C.

Address: One Penn Plaza, Suite 715, New York, NY 10118

Email Address: [REDACTED]

MBE/WBE: KS Engineers, PC

Name of Firm: 494 Broad Street, 4th Floor, Newark, NJ 07102

Description of work to be performed by MBE/WBE:

Calculation (supply only):

The Proposer is committed to utilizing the above-named MBE/WBE for the work described above. The estimated dollar value of this work is \$ TBD or 14 % of the total contract amount of \$           . The anticipated start date is            and the anticipated completion date is           

**AFFIRMATION of MBE/WBE**

The above-named MBE/WBE affirms that it will perform the portion of the Contract for the estimated dollar value as stated above.

By:  Kamal Shahid, P.E., President

Signature of Principal or Officer of MBE/WBE - Print Name and Title  
VHB Engineering, Surveying,

I Jim Dowling (print name), an officer of VHB Engineering, Surveying, Landscape Architecture and Geology (company name), certify that I have read the PA 3760C MBE/WBE Participation Plan and Affirmation Statement and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible Bidders/Proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

Signature of Proposer 

Title Project Manager Date November 9, 2018

Please Note: Only 60% of the expenditure to a MBE/WBE material supplier will be counted toward the MBE/WBE goal. Please show calculation above. Example: \$100,000 x 60% = \$60,000 estimated MBE/WBE dollar value of work. Plan cannot be accepted without calculation.

**Officer of Proposer must have ACKNOWLEDGEMENT BY NOTARY PUBLIC completed on the reverse side.**

ACKNOWLEDGEMENT BY NOTARY PUBLIC

PA3760C

MBE/WBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT (reverse)

STATE OF New York  
COUNTY OF New York

S.S.:

On the 9 day of November in the year 2014 before me, the above undersigned, personally appeared Tamas Davling the Project Manager of Envision Solar Valley 448 Englewood Rd, Suite 200, Valley Forge, PA 19381, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity.

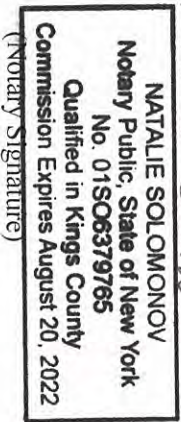
Name of Notary (print)

Natalia Solomonov

(Affix Notary Stamp Here)

Natalia Solomonov

My Commission Expires 8/20/2022



(Notary Signature)

11/9/2014  
(Date)



**MBE/WBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT**

PA 3760C/3-16

Instructions: Submit one MBE/WBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT form for each MBE/WBE firm used on this Contract. To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows: Bidder/Proposer/Respondent – can used interchangeably and mean any Contractor, Consultant, Supplier, or Vendor who submits a response to this solicitation.

**RFP NUMBER AND TITLE:** RFP#54523 Request for Proposals for the Performance of Expert Environmental Review Services for the LGA Access Improvement Project

**PROPOSER:**

Name of Firm: VHB Engineering, Surveying, Landscape Architecture and Geology, P.C.

Address: One Penn Plaza, Suite 715, New York, NY 10118

Telephone

Email Address: [REDACTED]

**MBE/WBE:**

Name of Firm: Traffic Data Bank, LLC

Address: 716 South Sixth Avenue, Mount Vernon, New York 10550

Telephone

Description of work to be performed by MBE/WBE: Traffic services

Calculation (supply only):

The Proposer is committed to utilizing the above-named MBE/WBE for the work described above. The estimated dollar value of this work is \$ TBD  
or  
2 % of the total contract amount of \$ . The anticipated start date is and the anticipated completion date is

**AFFIRMATION of MBE/WBE**

The above-named MBE/WBE affirms that it will perform the portion of the Contract for the estimated dollar value as stated above.

By: [Signature]

Date: 11/9/18

Signature of Principal or Officer of MBE/WBE – Print Name and Title

VHB Engineering, Surveying,

1 Jim Dowling

(print name), an officer of Landscape Architecture and Geology (company name), certify that I have read the PA 3760C MBE/WBE

Participation Plan and Affirmation Statement and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible Bidders/Proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

Signature of Proposer

[Signature] Title Project Manager

Date November 9, 2018

Please Note: Only 60% of the expenditure to a MBE/WBE material supplier will be counted toward the MBE/WBE goal. Please show calculation above. Example: \$100,000 x 60% = \$60,000 estimated MBE/WBE dollar value of work. Plan cannot be accepted without calculation.

Officer of Proposer must have ACKNOWLEDGEMENT BY NOTARY PUBLIC completed on the reverse side.

ACKNOWLEDGEMENT BY NOTARY PUBLIC

PA3760C  
MBE/WBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT (reverse)

STATE OF New York )  
COUNTY OF New York )

S.S.:

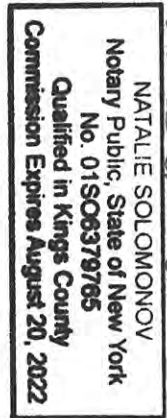
On the 9 day of November in the year 2018, before me, the above undersigned, personally appeared James Devlin, the Project Manager, of the Empire State University, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity.

Name of Notary (print)

Natalie Solomonov

(Affix Notary Stamp Here)

Natalie Solomonov



(Notary Signature)

(Date)

My Commission Expires 8/20/2022

11/9/2018

THE PORT AUTHORITY OF NY & NJ

OFFICE OF BUSINESS DIVERSITY AND CIVIL RIGHTS

MBE/WBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT

PA 3760C/3-16

Instructions: Submit one MBE/WBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT form for each MBE/WBE firm used on this Contract. To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows: Bidder/Proposer/Respondent - can used interchangeably and mean any Contractor, Consultant, Supplier, or Vendor who submits a response to this solicitation.

RFP NUMBER AND TITLE: RFP#54523 Request for Proposals for the Performance of Expert Environmental Review Services for the LGA Access Improvement Project

PROPOSER:

Name of Firm: VHB Engineering, Surveying, Landscape Architecture and Geology, P.C.

Address: One Penn Plaza, Suite 715, New York, NY 10118

Email Address: [Redacted]

Certification in Progress

Name of Firm: Fleming Lee Shue

Address: 158 W 29th STREET NEW YORK, NY 10001

Description of work to be performed by MBE/WBE: PERMITTING, ENVIRONMENTAL REVIEW

Calculation (supply only):

The Proposer is committed to utilizing the above-named MBE/WBE for the work described above. The estimated dollar value of this work is \$ TBD or 2 % of the total contract amount of \$ . The anticipated start date is and the anticipated completion date is

AFFIRMATION of MBE/WBE

The above-named MBE/WBE affirms that it will perform the portion of the Contract for the estimated dollar value as stated above.

By: Arnold F. Fleming PRESIDENT Date: 11/9/18

Signature of Principal or Officer of MBE/WBE - Print Name and Title VHB Engineering, Surveying,

I Jim Dowling (print name), an officer of Landscape Architecture and Geology (company name), certify that I have read the PA 3760C MBE/WBE Participation Plan and Affirmation Statement and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible Bidders/Proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

Signature of Proposer [Signature] Title Project Manager Date November 9, 2018

Please Note: Only 60% of the expenditure to a MBE/WBE material supplier will be counted toward the MBE/WBE goal. Please show calculation above. Example: \$100,000 x 60% = \$60,000 estimated MBE/WBE dollar value of work. Plan cannot be accepted without calculation.

Officer of Proposer must have ACKNOWLEDGEMENT BY NOTARY PUBLIC completed on the reverse side.



**From:** [REDACTED]  
**To:** [Summerville, James](#); [Lamond, Kathryn](#); [DiScenna, Matthew](#); [Clark, Patty](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Cohen, Michelle](#); [Papasavvas, Krystina](#); [Herndon, Jane](#)  
**Cc:** [REDACTED]; [Drew Brooks](#); [REDACTED]; [REDACTED]; [REDACTED]  
**Subject:** LGA Access Improvements MOU - FAA comments 6/13/2018  
**Date:** Wednesday, June 13, 2018 2:14:07 PM  
**Attachments:** [2018-06-13 DRAFT PANYNJ MOU - FAA comments.docx](#)

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Attached are FAA's comments to the Port's 5/21/18 revisions to the MOU for discussion during tomorrow's call

## Marie C. Jenet

Environmental Specialist  
Federal Aviation Administration  
New York Airports District Office  
159-30 Rockaway Blvd, Suite 111  
Jamaica, New York 11434

[REDACTED]  
[REDACTED]

PA Comments (05.21.18)

FAA Comments (June 2018)

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION**

**AND**

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**I. INTRODUCTION AND PURPOSE**

- A. This Memorandum of Understanding ("MOU") provides a framework in which the United States Department of Transportation (the "DOT"), Federal Aviation Administration (the "FAA"), an executive agency of the United States, organized and existing under the laws of the United States, having its principal office at 800 Independence Avenue, S.W., Washington, D.C., 20591, will prepare an Environmental Impact Statement (the "EIS") for the LaGuardia Airport ("LGA") LGA Access Improvement Project (the "Project") being proposed by The Port Authority of New York and New Jersey an interstate compact agency created by Compact between the States of New York and New Jersey, with the consent of the Congress of the United States having its principal office at Four World Trade Center, 150 Greenwich Street, New York, NY10007 (the "Port Authority" or "Sponsor"). The MOU describes the relationship of the above named parties in preparing the EIS. Subject to completion of the EIS, the FAA will issue a determination regarding the Project that will be set forth in a Record of Decision.
- B. As lead agency, the FAA has selected an independent contractor (the "Contractor") to prepare the EIS. The Sponsor shall be the party responsible to engage and retain the Contractor with funds provided by the Sponsor.
- C. The EIS and any related documents shall comply with the provisions of the National Environmental Policy Act of 1969 ("NEPA") and Council on Environmental Quality ("CEQ"), DOT, and FAA environmental regulations and guidance, as well as all applicable local, state and Federal laws, as appropriate.
- D. It is the purpose of this MOU to establish an understanding between the Sponsor and the FAA regarding the responsibilities of the parties and the conditions and procedures to be followed in the development and preparation of the EIS.
- E. The parties that enter into this agreement intend that development and preparation of the EIS, as articulated in this MOU, will satisfy the pertinent environmental

requirements of the FAA and any Cooperating Agencies (as that term is defined in 40 CFR § 1501.6 and 1508.5) that may have jurisdiction over the Project.

## II. GENERAL PROVISIONS

A. As the lead agency, the FAA will be responsible to ensure compliance with all the requirements of NEPA (42 U.S.C. 4321 et seq.), CEQ Regulations (40 C.F.R. Parts 1500-1508), appropriate DOT and FAA environmental orders, ~~and the FAA acknowledges that the Sponsor will be responsible for coordinating with state and local entities for their respective compliance with applicable state and local laws, including the New York State Environmental Quality Review Act (ECL §§ 8 0101 et seq.) ("SEQRA") and implementing regulations (6 NYCRR Part 617).~~ The FAA shall ensure that all pertinent environmental issues and impacts reasonable alternatives and their impacts cumulative impacts and mitigation/conditions are treated in the EIS, and shall be responsible for the scope and content of the EIS. ~~The FAA acknowledges that the Sponsor will be responsible for coordinating with state and local entities for their respective compliance with applicable state and local laws. The Sponsor agrees to invite the FAA to participate in all meetings held with state and local entities pursuant to any non-NEPA requirements.~~

Commented [FAA1]: Can the Port please explain why this needs to be included? If the Port is subject to SEQRA, is the Port suggesting that this be a combined NEPA EIS and SEQRA EIS?

Commented [CM2R1]: To the extent that SEQRA is required, the Port Authority will provide any necessary documents to FAA to incorporate. The Port Authority will need to be in communication with local entities for coordination.

Commented [FAA3]: 6/13: We believe this revised text is consistent with our 5/31 telcon.

B. The Sponsor will engage and retain the Contractor, selected by the FAA, for the preparation of the EIS. The Contractor, with the approval of the FAA and Sponsor, may employ such other contractors and experts (collectively referred to as "Subcontractors"), as are required for the adequate development and preparation of the EIS.

~~C.~~ As approved by the FAA, the Contractor will provide, through its staff or by Subcontractor, the expertise, staffing, and technical capabilities required for the preparation of the EIS. The FAA will direct the scope of the EIS and will independently evaluate all information, environmental data and analyses submitted by the Contractor, the Sponsor or others, and revise or cause additional study and analyses to be performed as necessary.

~~D.C.~~

~~E.D.~~ The Contracts between the Sponsor and Contractor and between the Contractor and Subcontractors (collectively the "Contract") shall be consistent with the provisions of this MOU and shall specifically incorporate those provisions articulated herein that address the conduct of the Contractor. Before starting EIS preparation, the Contractor and Subcontractors shall provide verification to FAA that they have no financial interest in the outcome of the action of the EIS will address, consistent with FAA Order 5050.4B, Paragraph 1003(d). The Contractor and Subcontractors working on the EIS may not bid on any future actions the EIS addresses until the approving FAA official issues a Record of Decision based on the EIS. This prohibition does not prevent the Sponsor from selecting the EIS Contractor or Subcontractors for later development actions, should they be approved. However, that selection must occur after free and open

competition and there can be no implied or suggested guarantee that the Sponsor would favorably consider the EIS Contractor or Subcontractors. Further, the Sponsor shall ensure that the Contract shall specifically limit any remedies available to the Contractor and any Subcontractors, so as to affirmatively relieve the United States of America, the FAA, and any officer, agent or employee of same, from any liability arising out of the performance or termination of the contract for preparation of the EIS, or out of this MOU.

1. Prior to beginning work on the Project, the Contractor and any Subcontractors shall sign a "Disclosure Statement" provided by the FAA per the requirements of FAA Order 5050.4B, Paragraph 1003(d), specifying they have no financial or other interest in the outcome of the project.
2. The FAA shall evaluate the Disclosure Statement prior to its approval.

E. The Sponsor shall facilitate the coordination of effort and the exchange of information related to the planning, design, and construction of the Project, as these activities relate to the preparation of the EIS among and between the Contractor and its Subcontractors, ~~and the FAA, and other federal, state or local entities as appropriate.~~ and the FAA, and other federal, state or local entities as appropriate. The Sponsor shall make all reasonable efforts to assist and cooperate with the FAA's directions to the Contractor and Subcontractors and to ensure the satisfactory and timely performance of the duties of the Contractor and Subcontractors as specified in this MOU.

F. The Sponsor and FAA shall:

1. Appoint such ~~full time (as more fully defined in Paragraph E below)~~ representatives from their respective agencies as necessary to accomplish the coordination necessary for the satisfactory and expeditious preparation of the EIS. Notice to any such representative shall constitute notice to that party.
2. Review substantive work products under the Contract(s) for the EIS as the FAA deems necessary, consistent with Article III of this MOU.
3. Have their respective representatives attend meetings with other Federal, state, regional, and local agencies for the purpose of increasing communications and receiving comments, as the same may be necessary, desirable, or required by law in preparation of the EIS.

~~G. G.~~ G. G. All costs incurred in connection with the employment of the Contractor and any and all Subcontractors, or other persons retained or employed by the Sponsor, shall be the sole responsibility of the Sponsor, ~~except in the event this MOU is terminated in accordance with Section IV below.~~ To the extent authorized by law, ~~the~~ the Sponsor agrees to hold harmless and indemnify the FAA, its officers, agents, and employees, with respect to any and all judgments or settlements arising from claims, demands, causes of action, and the like

Commented [FAA4]: We do not agree with this edit. As lead agency, it is FAA's role to determine the exchange of information.

Commented [CM5R4]: With respect to coordination with other entities, it is necessary for the Port Authority to have the ability to coordinate on the planning and design front for permitting etc.

Commented [FAA6]: 6/13: Please delete this language. As the lead federal agency, the FAA is responsible for coordination throughout the NEPA process (which is the subject of the MOU).

Commented [FAA7]: 6/13: We are generally ok with this addition, but see addition of "and."

Commented [FAA8]: 6/13: We believe a general commitment is more appropriate for this document.

Commented [FAA9]: 6/13: Please delete this language. The MOU already limits termination to instances where there is good cause. See Section IV.

Commented [FAA10]: 6/13: Why is this language being included? Please provide verification that the Sponsor has the authority to hold harmless and indemnify the FAA for the claims described in the paragraph below.



“Claims”), in connection with the Sponsor's employment of the Contractor and any and all Subcontractors which may arise from the termination or performance of the Contract or any other services, or purchase of materials utilized for the development and preparation of the EIS, or from termination of this MOU, except for Claims that arise out of the gross negligence or willful misconduct of the FAA, its officers, agents and employees. This indemnification by the Sponsor does not extend to administrative or legal costs of the FAA, including suits by third parties (other than the Contractor or its Subcontractors) against the FAA, involving the legality or adequacy of the FAA's compliance with NEPA and other laws and regulations, to the extent of the FAA's liabilities on those issues. The Sponsor shall cooperate and shall ensure require as a term and condition of the Contract and enforce that condition that the Contractor cooperates in defense of any such suit. Notwithstanding anything to the contrary in this Agreement, nothing shall be construed to waive the applications of statutory provisions, immunities and limitations available under the Federal Tort Claims Act, (28 U.S.C. Sections 2671, et. seq.) or any other governmental immunity act, as the same may be amended from time to time, with respect to, and in defense of, any claim or claims asserted by any person or entity. The FAA agrees that the Sponsor may satisfy the indemnification requirements set forth above by means of a self-insurance program.

Commented [FAA11]: 6/13: Why is this condition being proposed? What concern is the Port attempting to address?

Commented [FAA12]: 6/13: Ok.

Commented [FAA13]: 6/13: Ok.

~~H. The FAA will assign, upon execution of this MOU and through completion of the final EIS document, at a minimum one of the following: an environmental manager, attorney, and support staff, each on a full time basis. The FAA will receive funding for the direct and indirect costs associated with the employment of the personnel assigned pursuant to this Agreement, in accordance with the existing funding agreement between the Sponsor and the FAA, dated as of [ ]. for the funds required to satisfy the above obligations. It is the intention of the parties that these personnel shall be used to expedite preparation of the EIS contemplated by this Agreement. In addition, the FAA, during the development of the EIS, shall provide office space to the Contractor and Subcontractors within the Regional Office so as to facilitate communication and work on the EIS. For the purposes of this Agreement, full time shall mean availability at a minimum (5) five days a week, between the hours of 9 am and 5 pm eastern standard time, subject to vacation schedules, Federal holidays and sick leave.~~

Commented [FAA14]: 6/13: We do not think this level of specificity is appropriate for this document. Furthermore, we believe both parties are capable of independently managing their staff and workload as needed to complete their respective missions and meet their obligations. Please see paragraph I for a generalized commitment to provide staffing necessary to promote an expedited NEPA review process.

I. Both parties will assign the appropriate staff and management necessary to promote the expeditious development and preparation and review of the EIS.

Commented [FAA15]: 6/13: To the extent the Port has additional requests (beyond what is already in the reimbursable agreements) for documentation of how Port-funded staff are spending their time, please make that request outside of this document.

### III. PROCEDURES

- A. Under the direction of the FAA, the Contractor shall develop and submit a plan of study to the FAA for the EIS for approval. The “Plan of Study” shall mean a plan that includes detailed descriptions of all work to be performed, the

methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated man-hours required for completion of each aspect, the schedule for performing each aspect and a description of the internal and external review procedures to assure quality control. Also, the Plan of Study shall include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the environmental data and analyses and the development and preparation of the EIS. The Plan of Study should also identify procedures for retention of all data and sources used in the development of the EIS for eventual consolidation into the Administrative Record. ~~In developing the Plan of Study, the Contractor may consider and use/utilize as appropriate any relevant submissions made by the Sponsor, or the Sponsor's representative which submissions shall be made concurrently directly to the FAA and Contractor.~~

B. ~~Upon receipt,~~ The FAA will forward the draft Plan of Study to the Sponsor for review and comment. After receiving comments from the Sponsor, and the scoping process conducted pursuant to 40 C.F.R. Sec. 1501.7, the FAA will finalize and approve the Plan of Study. ~~The Sponsor acknowledges that any such draft is subject to the change based on the scoping process.~~ The Plan of Study and this MOU ~~shall establish the scope of work required of~~ will serve as the basis for the Contractor's ~~in the~~ development and preparation of the EIS.

~~C. 1.~~ The Plan of Study may be amended by the FAA from time to time as the work of the Contractor or its Subcontractors proceeds, but any amendments or changes which require the expenditure of additional funds by the Sponsor must be agreed to by the Sponsor. The Sponsor will be notified and consulted prior to any ~~significant~~ ~~significant~~ amendments or modifications to the Plan of Study ~~that require the expenditure of additional funds or modification to the proposed schedule for completion of the EIS.~~ ~~Payments by the Sponsor will be made and are subject to the availability of funds authorized by the Sponsor's Board of Commissioners.~~

~~C. 2.~~ The Sponsor will pay Contractor and Subcontractors invoices only upon receipt from an ~~responsible officer of the~~ FAA project manager ~~a certification~~ confirming that the work product or materials set forth on a submitted invoice has been performed or provided by the Contractors and Subcontractors. Any invoices submitted for payment shall only include amounts for project work that has already been performed by the date on which such invoice is submitted for payment. The FAA cannot confirm the number of hours worked on the invoice. The Sponsor may deny payment for any portion of any invoice that is not supported by the confirmation ~~certification~~ described above or for work not actually performed.

D. ~~Unless~~ As each portion of any draft of sections of the EIS and, ~~unless~~ otherwise directed by the FAA, any and all work performed by the Contractor and its Subcontractors in preparation of the EIS shall be submitted directly to the FAA, and upon request of the ~~FAA~~ Sponsor, the FAA, to the Sponsor. The Sponsor

Commented [FAA16]: This doesn't seem appropriate at Plan of Study phase, more so during initial data gathering concurrent to development of Plan of Study. Data should not be considered until FAA reviews, or directs the review, of the submissions. If this is supposed to mean that the plan of study should include a task that evaluates sponsor info, that would be acceptable.

Commented [CM17R16]: Revised language to address comment.

Commented [FAA18]: 6/13: We do not agree to this language. We have agreed to work expeditiously but there are times when we will need to first review submissions before forwarding to the Sponsor.

Commented [FAA19]: Prefer previous language

Commented [FAA20]: This could cause a workflow issue. Minor scope changes are routine. Significant changes with cost implications are typically of concern to the Sponsor.

Commented [CM21R20]: Revised to add "significant" back into the text.

Commented [FAA22]: 6/13: The FAA agrees to notify the sponsor of significant amendments but we do not know which amendments will lead the contractor to request additional funds

Commented [FAA23]: 6/13: This language would be more appropriate in the contract with the Sponsor.

Commented [FAA24]: 6/13: We can confirm work product/completed tasks, but not hours worked. We also object to providing a certification.

Commented [CM25]: The Port Authority requires the ability to validate expenditure of funds, especially since the FAA will control and direct the Contractor and Subcontractors day-to-day work.

Commented [FAA26]: We do not agree with this edit. FAA needs to have the ability to direct the speed/frequency with which portions of the document are submitted.

Commented [CM27R26]: The language states "unless otherwise directed by the FAA."

Commented [FAA28]: 6/13: The intent of this revised language is unclear. We prefer the original language.

Commented [FAA29]: Confusing. Level of detail for contract not MOU

may communicate with the Contractor and its Subcontractors during the development of the EIS, but no prior review or discussion of data or analyses developed by the Contractor or Subcontractor as related to the EIS ~~before being submitted to the FAA~~ shall be afforded the Sponsor. In no case will the Sponsor discuss, review, modify, or edit the Contractor's work or the work of its Subcontractors prior to submission to the FAA, or be provided the opportunity to do so. All suggestions for modifications or changes to such sections recommended by the Sponsor ~~or the Sponsor's representative~~ shall only be made to the FAA in accordance with Paragraph F below.

E. The FAA reserves the right to review periodically and modify the work of the Contractor to ensure that requirements under NEPA and other applicable laws and regulations are satisfied. The Contractor shall submit ~~monthly~~ bi-weekly written reports on the progress of its work to the FAA, with a concurrent copy to the Sponsor. This report shall describe the present status of each aspect of the work, any problems encountered, and recommendations for modifications to the Plan of Study and any changes in personnel, methodology or schedules for completion.

F. As each portion of any draft or final document is completed, the FAA shall review each portion and those tasks completed thereunder and, after consultation with the Sponsor, shall approve, modify, comment thereon and/or direct further work with regard to such portion or tasks as necessary. ~~the foregoing FAA review will be a concurrent review by all applicable offices/divisions/departments of the agency, including but not limited to the Office of the Regional Counsel (or Office of the Chief Counsel, as appropriate), to avoid unnecessary delay. The FAA review will be coordinated in accordance with the principles outlined in Executive Order 13807 and FAA Orders 1050.1F and 5050.4B. The FAA will utilize concurrent reviews as it determines to be appropriate.~~ Said directions and/or comments shall be made by the FAA in a manner so as to ensure ~~promote~~ expeditious completion of the EIS, and the Contractor shall ensure incorporation of such comments into any editorial changes to the satisfaction of the FAA. ~~Final drafts of any documents will require FAA approval.~~ Prior to approval, the FAA will forward final drafts to the Sponsor for review and comment. Comments from the Sponsor shall be sent to the FAA. The Contractor will only make modifications as the FAA directs regarding these comments. After the aforementioned consultation, final drafts of any documents will require FAA approval.

G. If requested, the Contractor will provide the FAA access to and review of all procedures and underlying data used by the Contractor in developing submitted sections of the EIS, including, but not limited to, field reports, Subcontractor reports, and interviews with concerned private and public parties, whether or not such information may be contained in a draft or final EIS. ~~The~~ Upon request by the Sponsor, the FAA will also have ~~promptly provide the Sponsor with~~ access to such all of the aforementioned procedures and underlying data. Such ~~access~~ information provided by the FAA ~~and Sponsor~~ shall be governed by paragraph III. ~~TU~~ in this MOU.

Commented [FAA30]: We do not agree with all the edits in this section. FAA, as the lead federal agency, needs to maintain control of the process. Regularly scheduled meetings (bi-monthly/monthly) will facilitate these discussions. The Sponsor should not be having discussions directly with the Contractor without FAA present.

Commented [CM31R30]: It is necessary for the Port Authority to have the ability to coordinate with other entities.

Commented [FAA32]: 6/13: We agreed to bi-weekly on the 5/31 call.

Commented [FAA33]: 6/13: See proposed revised language, consistent with our 5/31 call.

Commented [FAA34]: We do not agree with the edits in this section. This is not appropriate for an MOU. FAA will avoid unnecessary delay to the extent it can, however, external factors can influence our workload.

Commented [CM35R34]: Assume this comment is no longer applicable due to Executive Order 13807: Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects

Commented [FAA36]: Same as above. It is FAA's role to decide on information sharing.

Commented [CM37R36]: As previously drafted, the Sponsor had access to the documentation. As modified, this provides for a process to obtain that information.

H. To facilitate the development and preparation of the EIS, joint meetings among the FAA, Sponsor, and Contractor ~~shall be held as needed~~ ~~shall~~ ~~may be held on a weekly basis but no less frequently than bi-weekly~~. However, the FAA reserves the right to work directly with the Contractor for purposes of assuring objectivity in preparing reports and/or for assuring expeditious communications. The Contractor will notify the FAA and Sponsor of any substantive meetings that are scheduled ~~with other agencies~~ and of their purpose and will provide an opportunity for the parties to attend if desired. No meeting will be held between the Contractor ~~or~~ and Sponsor without prior notification to and approval of the FAA. A summary of all matters relating to EIS discussions in any meetings or communications between the Contractor and a party hereto without the participation of the other said party will be included in each formal ~~monthly~~ weekly report submitted by the Contractor to the FAA and Sponsor. ~~The FAA reserves and the Sponsor each reserve~~ the right to consult directly with other Federal, state, and local officials and agencies during the preparation of the EIS to assure ~~the Sponsor's compliance with NEPA and other all~~ applicable laws and regulations.

H.

I. The Sponsor ~~shall~~ and FAA ~~each acknowledge that~~ ~~assure the full cooperation of~~ the Contractor and its Subcontractors ~~scope of services includes assisting the FAA with respect to participating in~~ any public workshops, hearings, or meetings as required ~~and directed~~ by the FAA to foster public familiarity and participation with respect to the assessment of impacts related to the Project.

J. At such time as the FAA, after consultation with the Sponsor, has approved the Draft EIS developed and prepared by the Contractor and its Subcontractors, the Contractor shall print the ~~contracted~~ quantity of Draft EIS copies as specified by the FAA and submit same to the FAA. ~~The FAA shall direct the Contractor to submit the appropriate number of copies of the Draft EIS to the Sponsor. The FAA shall submit an appropriate number of copies of the Draft EIS to and the Sponsor.~~

K. The Contractor shall be responsible for the costs associated with the printing and publication of the draft and final copies of the EIS. The Contractor shall be responsible for all costs associated with the publication of FAA-approved notices announcing public workshops, meetings, hearings, and the like. The Contractor shall also be responsible for costs of stenographic and clerical services, preparation of graphics and visual aids associated with any public workshops, meetings, and hearings.

L. In all instances involving questions as to the content or relevance of the environmental data and analyses, and evaluations and wording prepared by the Contractor during the EIS process, the FAA, with appropriate advice and consultation ~~when it deems necessary, will with the Sponsor, shall~~ make the final determination on the inclusion, deletion or modification of the same in the Draft or Final EIS. The FAA shall provide the Sponsor with the opportunity to review

Commented [FAA38]: 6/13: The FAA has been and remains committed to meet as frequently as needed to support the project, but that should be determined as we proceed.

Commented [FAA39]: Prefer "may"

Commented [CM40R39]: Text has been revised.

Commented [FAA41]: We disagree with this edit. The purpose of this section is FAA/Sponsor coordination, not combined coordination with other agencies.

Commented [CM42R41]: The Port Authority needs to be able to coordinate and review data and materials pertinent to the EIS with state and local entities during this process. As drafted, it reserves to the Sponsor that ability.

Commented [FAA43]: 6/13: As discussed above, the Port has the right to coordinate its additional obligations but it has committed to invite the FAA to attend.

Commented [FAA44]: 6/13: As discussed on the 5/31 call we prefer bi-weekly or monthly.

Commented [FAA45]: We disagree with this edit. FAA must be able to demonstrate ownership of the process. May need to find alternate language if the Port is subject to SEQRA and coordination under SEQRA is needed.

Commented [CM46R45]: See comment response above. This would ensure that the Port Authority is able to move forward programmatically with coordination on federal, state, and local levels.

Commented [FAA47]: This has already been resolved above, please go back to original language.

Commented [FAA48]: Doesn't need to be specified

Commented [FAA49]: 6/13: This can be deleted and saved for the contract

Commented [FAA50]: We disagree with this edit. FAA has to transmit to show ownership.

Commented [CM51R50]: Text revised to specify that only at the direction of the FAA would the Contractor submit copies to the Sponsor.

and comment on such the environmental data and analyses, at minimum to identify errors, omissions and to ensure that both the Federal and State or local documentation are to the extent feasible consistent. [Note to FAA: this language is consistent with the language in Paragraph O below.]

- M. Upon the anticipated completion of the Draft EIS, the FAA, with the Contractor's assistance, shall be responsible for organizing and conducting any public hearings.
- N. The FAA will receive all comments during the Draft EIS public review and comment period. This period (at least 45 days) will be initiated when the Environmental Protection Agency (EPA) publishes the "Draft EIS Notice of Availability" in the Federal Register.
- O. At the close of the Draft EIS public review and comment period, the FAA shall promptly provide the Sponsor and the Contractor with all comments received, and shall identify the issues and comments submitted which will require response in the Final EIS. The FAA will direct those issues and comments to the Contractor for preparation of proposed responses, and shall furnish the Sponsor with copies such identification of all issues and comments received that require response in the Final EIS. The FAA shall direct the Contractor will to furnish proposed responses concurrently to the FAA and Sponsor for review and comment. The FAA will share the proposed responses with the Sponsor for additional review and comment with proposed changes back Sponsor shall provide any comments to the FAA. The FAA, with appropriate advice and consultation with the Sponsor, shall modify the proposed responses as it deems necessary.
- P. After receipt of comments and preparation of responses, the FAA, after appropriate advice and consultation, may direct the Contractor to make changes to the text of the Draft EIS as necessary.
- Q. At such time as the FAA has approved the Final EIS, the Contractor shall print the contracted quantity of Final EIS. The FAA shall submit an appropriate number of copies of the Final EIS to the Sponsor.
- R. The FAA will receive all comments on the Final EIS during the mandatory "hold period". This period (at least 30 days) will be initiated when the EPA publishes the "Final EIS Notice of Availability" in the Federal Register.
- ~~R.S. To the extent permitted by applicable law, in accordance with Executive Order 13807: Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, both the FAA and Contractor, and Sponsor shall take all reasonable steps to ensure expeditious preparation and issuance of the Draft and Final EIS.~~

**Commented [FAA52]:** We disagree with this edit. FAA does not consult with the sponsor prior to taking all actions. This language is only consistent with the Port modifications to Paragraph O, which we disagree with.

**Commented [CM53R52]:** Text revised to remove with appropriate advice and consultation "with the Sponsor"

**Commented [FAA54]:** 6/13 – Delete, this is an FAA discretionary decision

**Commented [FAA55]:** 6/13: We object to these changes. The FAA has the discretion to screen the initial responses provided by the sponsor and consult with the sponsor as it deems necessary. Please revert to original language.

**Commented [FAA56]:** Same as above. These revisions undermine the FAA's independence in controlling the process.

**Commented [CM57R56]:** As modified, the FAA directs information sharing and the right to accept or reject Sponsor comments.

**Commented [FAA58]:** 6/13: This was already cited above.

**Commented [FAA59]:** Recommend deleting between "To the extent" and "both."

**Commented [CM60R59]:** Please see modifications. Text revised to reference Executive Order 13807 and to delete "To the extent" and "both."

~~S.T.~~ ~~S.~~ The FAA, with assistance from the Contractor, will expeditiously prepare and issue the FAA Record of Decision, after publication of the "Final EIS Notice of Availability," and will make it available to the public, if permitted by applicable law, and determined by the FAA as appropriate shall issue the ROD contemporaneously with the Final EIS. ~~[Note to FAA please see proposed edit]~~

Commented [FAA61]: We disagree with this edit.

~~T.U.~~ ~~T.~~ Information developed under this MOU is disclosable to the public to the extent required by law. The FAA will maintain the confidentiality of, and will not release or allow access to, any information, documents or materials which in its opinion are validly designated as confidential by the Sponsor or Contractor and which contain trade secrets, proprietary data, or commercial or financial information or falls within any other applicable existing federal exemption. In any instance where the FAA proposes to release to the public or allow access to any information, documents or materials, created in the development and preparation of the EIS or which the Sponsor or Contractor has designated as confidential, it shall notify the Sponsor or Contractor of its intention to do so, at least five (5) business days prior to such release or grant of access. In addition, and provide the Sponsor or Contractor has the opportunity to either (i) appeal the decision in accordance with applicable regulations on such release or access prior to any such release or access or (ii) seek a protective order. (See FAA Order 1270.1)

Commented [CM62R61]: Please see proposed edit. Text revised to include "and determined by the FAA as appropriate..."

Commented [FAA63]: 6/13: The FAA already retains this discretion and it does not need to be put in this MOU. Please revert to original language.

Commented [FAA64]: 6/13: Proposed revision

~~V.~~ ~~U.~~ The Contractor will maintain a segregated copy of each record/document relating to the project that is used by the FAA in their decision making process. This will form the basis for the FAA's administrative record of the EIS. The Consultant shall be responsible for managing the administrative project file and, upon completion of the work, will be responsible for submitting a completed administrative record for the project to the FAA, and the Sponsor, in accordance with FAA policy and guidance.

Commented [CM65]: Appeal process to be discussed.

Commented [FAA66]: 6/13: We need additional time to consider internally these proposed changes.

~~W.~~ All work prepared under this MOU in the preparation and development of the EIS shall be delivered to the FAA and the Sponsor in printed format and searchable .pdf files along with components associated with each item, such as data files, text files, image files, spreadsheets, graphs, and tables.

Commented [FAA67]: 6/13: This is the FAA s administrative record

Commented [FAA68]: 6/13: The FAA will share with the Sponsor as appropriate and in accordance with the terms above.

#### IV. CESSATION AND TERMINATION

- A. Any of the parties to this MOU may withdraw from the terms of this MOU for good cause upon 30 days written notice to the other party. During this period, the parties will actively attempt to resolve any disagreement.
- B. In the event of a termination of this MOU, and if the FAA determines that preparation of an EIS by the FAA is still required, it is agreed as follows:

1. The FAA shall have access to all documentation, reports, analyses and data by the Contractor and Subcontractors with confidentiality governed by paragraph III.T.

—The FAA shall assume the responsibility for preparing the EIS. The Sponsor shall no longer be responsible for the payment of costs associated with preparation of the EIS under the terminated MOU, apart from costs already incurred and required under the Sponsor's contract with the Contractor. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations which might require payment.

2.

3. Liability for termination shall be in accordance with paragraph II.G. of this MOU.

#### **VI. NO RIGHTS FOR NON-PARTIES**

This Agreement does not create any right or benefit enforceable by law or equity of any person who is not a party to this Agreement against the Sponsor or FAA. No rights or privileges are created or intended to be created by this MOU in anyone not a signatory of this MOU.

#### **VII. MODIFICATION**

This MOU represents the entire agreement and may be modified by the parties hereto only by written agreement by all the parties.

#### **VIII. AUTHORITY TO EXECUTE**

The ~~representative~~ representative of each party signing this Agreement warrants that he/she is duly authorized to do so.

#### **IX. COUNTERPARTS**

A photocopy or PDF copy of this Agreement shall have the same force and effect as an original of this Agreement.

#### **X. NOTICES**

Notices and other communications under this Agreement shall be in writing and shall be directed as follows, or to such other address as the party receiving such notice or communication shall have previously specified by notice to the other party sending such notice:

If to the Sponsor:

Title:  
The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 18<sup>th</sup> Floor  
New York, New York 10007

with a copy to:

General Counsel  
The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 18<sup>th</sup> Floor  
New York, New York 10007

If to the FAA:

[FAA to provide contact]  
[Title]  
Federal Aviation Administration  
1 Aviation Plaza, Suite [ ]  
Jamaica, New York 11434

with a copy to:

[FAA to provide contact]  
[Title]  
Federal Aviation Administration  
800 Independence Ave., S.W.,  
Washington, D.C., 20591

#### **XI. NO PERSONAL LIABILITY**

No Commissioner, director, officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.



**XII. SIGNATORIES**

**United States Federal Aviation Administration**

\_\_\_\_\_  
[SIGNATORY AND TITLE] DATE \_\_\_\_\_

**The Port Authority of New York and New Jersey**

\_\_\_\_\_  
[SIGNATORY AND TITLE] DATE \_\_\_\_\_

Port Authority Use Only:	
Approval as to Terms	Approval as to Form



**From:** [Summerville, James](#)  
**To:** [Lamond, Kathryn](#); [DiScenna, Matthew](#); [Clark, Patty](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Cohen, Michelle](#); [REDACTED] [Drew Brooks](#); [REDACTED] [Papasavvas, Krystina](#)  
**Subject:** RE: LGA Airtrain MOU  
**Date:** Tuesday, June 12, 2018 2:26:35 PM  
**Attachments:** [Attachment A Draft 2018-03-08 PA Responses to FAA Comments Updated 2018-....docx](#)  
[RFP Letter Draft 2018-03-08 PA Responses to FAA Comments Updated 2018-06-....docx](#)

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Everyone,

In addition to resolving open items on the draft MOU, we would like to address the outstanding items in the latest version of the RFP (attached). Ideally, by the time the RFP is ready to be issued, we would like to have an RFP that has already been accepted by both the FAA and the Port Authority. If we can't resolve all open items in the RFP on Thursday, let's discuss a plan for resolving them in the near future, so we will have a ready-to-be-issued RFP when the 'green light' appears.

Therefore, in addition to the MOU, attached for discussion during our conference call scheduled for Thursday 6/14 are the most current drafts of the RFP Letter and Attachment A, which the Port Authority intends to include in the publicly advertised solicitation for the third party consultant to assist the FAA with the preparation of an EIS for the LaGuardia Airport Access Improvement Project. These documents are overall the same as the track changes versions we last discussed on March 8th, but include minor changes and updates to our responses to comments.

Please note that we should also discuss language in the RFP Letter describing the availability of planning documents for review by potential proposers in a reading room.

Thank you and we look forward to discussing this further on Thursday 6/14.

Thanks,

James Summerville, Sr. Projects Contracts Specialist  
Port Authority of NY & NJ  
Procurement Dept.  
[REDACTED]

-----Original Appointment-----

**From:** Lamond, Kathryn  
**Sent:** Monday, June 11, 2018 2:44 PM  
**To:** Lamond, Kathryn; DiScenna, Matthew; Clark, Patty; Tabafunda, Faith; Rogak, Elizabeth; Cohen, Michelle; [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
**Cc:** Summerville, James; Papasavvas, Krystina  
**Subject:** FW: LGA Airtrain MOU  
**When:** Thursday, June 14, 2018 8:30 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** [REDACTED] participant code: [REDACTED] Host (Katie): [REDACTED]

-----Original Appointment-----

**From:** Lamond, Kathryn

**Sent:** Friday, June 01, 2018 11:05 AM

**To:** Lamond, Kathryn; DiScenna, Matthew; Clark, Patty; Tabafunda, Faith; Rogak, Elizabeth; Cohen, Michelle; [REDACTED] [REDACTED] [REDACTED]

**Subject:** LGA Airtrain MOU

**When:** Thursday, June 14, 2018 8:30 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).

**Where:** [REDACTED] participant code: [REDACTED] Host (Katie): [REDACTED]

This call is a follow-up to our 5/31 discussion on the draft MOU.

ATTACHMENT A

PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (“LGA”) ACCESS IMPROVEMENT PROJECT

I. **BACKGROUND**

*General:*

For background with respect to The Port Authority of New York and New Jersey (the “Authority” or “Sponsor”) see [www.panynj.gov](http://www.panynj.gov). Additionally, the most recent electronic version of the Authority’s Annual Report is available at <http://www.panynj.gov/corporate-information/annual-reports.html>.

*Project Description:*

The Authority is proposing to construct a new automated people mover (“APM”) AirTrain system to provide a fast, convenient, and reliable transit alternative for air passenger and employee access to LaGuardia Airport (“LGA” or the “Airport”). This proposed project, herein referred to as the LaGuardia Airport Access Improvement Project (the “Project”), is to provide a direct connection between the Airport and Metropolitan Transportation Authority’s (“MTA”) Long Island Rail Road (“LIRR”) and New York City Transit (“NYCT”) stations. Further, the LaGuardia Airport Access Improvement Project shall provide a connection to employee parking and not preclude the potential future expansion of support facilities beyond the existing airport boundary, such as a consolidated rental car facility and/or additional airport parking. The Federal actions associated with the Authority’s proposed Project are decisions by the Federal Aviation Administration (“FAA”) on an updated Airport Layout Plan (“ALP”) and for the use of Passenger Facility Charge (“PFC”) funding, should the Authority pursue imposing and using PFC funding for the proposed Project.

The Authority’s preferred alternative is for an elevated AirTrain to operate between the Airport and a transfer station at Willets Point. The proposed AirTrain system would include two on-airport stations and a terminus station at Willets Point providing connections to the Mets-Willets Point stations of the LIRR Port Washington Branch and the NYCT Flushing No. 7 subway line. In addition to providing a connection to the LIRR and NYCT stations at the Willets Point terminus station, the proposed AirTrain would serve as an on-airport transit system that would facilitate transfers between airline terminals and provide connections to employee parking and potential future passenger ~~and employee~~ parking and a consolidated rental car facility. The proposed AirTrain system would provide access to LGA’s primary passenger terminals and must not preclude a future extension to the Marine Air Terminal. The proposed Project includes associated facilities and infrastructure (stations, guideway, maintenance/control facility, etc.) as well as the systems (vehicles, train control, power distribution system, etc.) for the AirTrain.

The Authority’s goal is to complete the proposed Project and commence passenger service as close as possible to the ~~completion of Terminal B and several key landside components of Terminal C~~ end of 2022, when other major redevelopment at LGA, both of which will projects

Commented [FAA1]: The requested ALP change needs to be submitted as soon as possible. The submittal of the ALP is the trigger for the start of the NEPA review

Commented [CM2R1]: As discussed, ALP change update is in progress. It will be submitted along with the Alternatives Analysis or sooner

Commented [FAA3]: We understand from our 3/5/18 call that it is the intent of the PANYNJ to have a schedule for submittal of the planning information to us in the very near future. This information is needed not only for FAA use, but also for use by the potential bidders in developing their proposals. As discussed on the above referenced call, we have concerns regarding the amount of information being provided on which the consultants can base a response. The planning information is a critical component needed to achieve a quality product as well as the schedule goal.

Commented [CM4R3]: The Port Authority submitted a proposed schedule on 5/16 along with initial planning documents submittal. Updates to the schedule are in progress, as discussed

are expected to be completed ~~by, in order to minimize the end of 2022, duration of construction-related disruptions to customers.~~ As such, the Authority is seeking to accelerate the environmental review schedule for the proposed Project, with the goal of the FAA completing the issuance of a Record of Decision (“ROD”) and completing the National Environmental Policy Act (“NEPA”) review ~~within as early as 12-month period~~ months from the Notice of Intent (“NOI”) for services hereunder to enable construction of the proposed Project to begin in 2019. This ~~hypothetical-proposed~~ timeframe may be impacted by a number of factors, including concurrent environmental review by other Federal, state, and ~~state~~ local agencies. The Consultant shall comply with the processes and procedures outlined in Executive Order ~~13604 on Improving Performance of Federal~~ 13807: Establishing Discipline and Accountability in the Environmental Review and Permitting ~~and Review of Process for Infrastructure Projects, signed on August 15, 2017.~~ —such as facilitation of efficient collaboration and communication with agencies involved with the environmental review and permitting for the proposed Project.

*General Description of Consultant Services:*

The Authority is seeking a Consultant to provide professional services to assist the FAA in preparing an Environmental Impact Statement (“EIS”) to assess and disclose the potential environmental impacts of the construction and operation of the Authority’s proposed Project and reasonable alternatives in a manner that complies with all applicable federal, state and local environmental laws and regulations. The FAA is the lead Federal agency for preparing the EIS in accordance with the requirements of NEPA (42 U.S.C. 4321 et. seq.), the Council on Environmental Quality (“CEQ”) regulations (40 C.F.R. Parts 1500-1508), and appropriate U.S. Department of Transportation and FAA environmental orders. As stated above, the Federal actions associated with the Authority’s proposed Project include but are not limited to a decision by FAA on an updated ALP, and should the Authority pursue imposing and using PFC funding for its proposed Project, a decision by FAA regarding use of such PFC funds.

The Consultant shall be responsible to the FAA for the preparation of an EIS associated with the Authority’s proposed Project. The FAA shall direct the services provided by the Consultant hereunder. The Consultant shall serve as the independent third party assisting the FAA with conducting the EIS process in an efficient and cost-effective manner, while maintaining a high degree of accuracy and validity in the production of all EIS deliverables.

Preliminary planning work is being conducted by the Authority. The documentation for the Authority’s planning efforts will be provided ~~by the Authority to the FAA. This documentation will be provided~~ to the Consultant at the discretion of ~~the~~ FAA.

**II. SCOPE OF SERVICES**

Prior to agreement execution, and within ~~ten (10) calendar~~ fifteen (15) business days of notice of selection, the Consultant should develop and submit a detailed scope of work for the entire assignment, ~~in order to meet the Authority’s goal for the expeditious completion of the EIS.~~ The detailed scope of work is hereinafter referred to as the Plan of Study, which is subject to

Commented [FAA5]: Rework this language to focus on the stress of construction and customer disruption rather than specifically mentioning the Terminals

Commented [CM6R5]: Revised language to focus on minimizing construction related disruptions

Commented [FAA7]: Recommend changing to “as early as 12 months from the Notice of Intent”

Commented [CM8R7]: Revised accordingly

Commented [CM9]: Minor edit

Commented [CM10]: Added reference to local agencies

Commented [FAA11]: It is EO 13807 Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects Please reference properly, including the date the order was issued The second EO is related to ‘high priority infrastructure projects,’ thus far this project has not been designated as such Please remove EO 13604

Commented [CM12R11]: Revised accordingly

Commented [FAA13]: This language implies that the Port Authority will be providing documentation directly to the consultant, which should occur through the FAA This is potentially misleading, as a prospective firm may believe the FAA already has preliminary information that could be requested by the consultant Recommend adding a qualifier. For example: “Once the Authority’s planning information is shared with the FAA, documentation will be provided ”

Commented [CM14R13]: Revised to clarify that the Authority will provide these documents to FAA directly Included a separate sentence which states that FAA will then provide this documentation to the Consultant, at FAA’s discretion

DRAFT AND DELIBERATIVE

FAA approval. The draft Plan of Study shall be accepted by the FAA prior to contract award and subsequent issuance of the NOI. ~~The~~ It is the Authority's goal that the NOI shall be issued no later than ~~May 24, the end of the fourth quarter of 2018.~~ The Plan of Study will include detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated person-hours required for completion of each aspect, the schedule for performing each aspect, and a description of the internal and external review procedures to assure quality control. The Plan of Study will also include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the planning and environmental data and analyses and the development and preparation of the EIS. Finally, the Plan of Study must comply with all applicable regulations and must include such additional analytical requirements as provided by the FAA prior to completion. In addition, in producing or revising the Plan of Study, the Consultant may consider as appropriate any relevant submissions made by the Authority or its representative to the FAA. The Plan of Study, as accepted by the FAA, shall amend and restate the entirety of this section, Section II. Scope of Services.

The EIS is to be accomplished in accordance with FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, Order 5050.4B, *NEPA Implementing Instructions for Airport Actions*, and associated Desk References (or the current version at time of contract award) and special purpose laws. Specific environmental issues to be included in the EIS may include, but are not limited to:

- a) Air Quality
- b) Biological Resources
- c) Climate
- d) Coastal Resources
- e) Department of Transportation Act, Section 4(f)
- f) Farmlands
- g) Hazardous Materials, Solid Waste, and Pollution Prevention
- h) Historical, Architectural, Archaeological, and Cultural Resources
- i) Land Use
- j) Natural Resources and Energy Supply
- k) Noise and Noise Compatible Land Use
- l) Socioeconomic, Environmental Justice, and Children's Environmental Health and Safety Risks
- m) Visual Effects
- n) Water Resources (Wetlands, Floodplains, Surface Waters, Groundwater, Wild and Scenic Rivers)
- o) Cumulative Impacts
- p) Irreversible and Irretrievable Commitment of Resources

The individual scope of these studies may be modified by the needs and requirements of the FAA designated cooperating agencies.

**Commented [FAA15]:** To reiterate a comment made on previous versions of this document, we continue to have concerns about the development of a robust project approach within the two weeks provided for response to solicitation and the establishment of a viable scope within the 10 days allotted

The preparation of a draft Plan of Study, and the FAA's approval of that Plan, is preconditioned on the availability of and access to planning information. Heretofore we have not received any planning information, nor have we been told when it will be provided. Neither the FAA nor the contractor can bind itself to dates or timelines until planning information is provided.

**Commented [CM16]:** Extended time period to 15 business days, doubling the total amount of time for the consultant submittal, and added text referring to Port Authority's goal

Port Authority submitted initial planning documents and a proposed schedule for the subsequent planning document submittals on 5/16

**Commented [FAA17]:** Remove. It is not appropriate to prescribe a date here in a PANYNJ document when the issuance of the NOI is a federal role. Additionally, this level of schedule detail is not appropriate for inclusion in an RFP.

**Commented [CM18R17]:** Revised to refer to Port Authority goal and extended to end of Q4 2018

**Commented [FAA19]:** Reference to planning/justification data should be included here as well

**Commented [CM20R19]:** Added reference to planning data

**Commented [FAA21]:** Edit

**Commented [CM22R21]:** Accepted edit

**Commented [FAA23]:** Edit

**Commented [CM24R23]:** Accepted edit

## DRAFT AND DELIBERATIVE

It is anticipated that the scope of work resulting from the Plan of Study may require the Consultant to perform the following services, at minimum:

1. Facilitate and conduct meetings necessary for the preparation and development of the EIS.
2. Provide project management duties, including but not limited to preparing reports, updating the Plan of Study as necessary, taking meeting minutes, coordinating activities between all stakeholders, schedule monitoring, preparing presentation materials, creating and maintaining the project file, ~~administrative record~~ assisting in the identification and compilation of the administrative record in the event of any potential legal proceedings associated with the environmental review or final agency actions or decisions, and assistance throughout any potential legal proceedings, etc.
3. Review project-related documents necessary for the development of the EIS, including planning documents provided to the FAA by the Authority or its representative. The Consultant shall review and independently evaluate the materials prepared by the Authority or its representative and shall complete the EIS documentation as required.
4. Assist the FAA to fulfill its lead Federal agency role and enhance effective NEPA scoping to ensure early in the process that the EIS addresses key issues of concern to agencies and the public.
5. Develop the Purpose and Need Statement, to provide the parameters for defining a reasonable range of alternatives and to be utilized for the comparative evaluation of alternatives to the Sponsor's proposed Project. The Purpose should outline the goals and objectives that the Sponsor's proposed Project should achieve, and the Need should provide the data to support the Purpose.
6. Prepare an alternatives analysis addressing a range of reasonable alternatives to the Sponsor's proposed Project. It is expected that the "No Action" and the Sponsor's proposed Project will be alternatives. The Consultant will identify other potential alternatives and conduct a screening of alternatives, as appropriate.
7. Describe existing environmental resources and conditions that the Sponsor's proposed Project, reasonable alternatives, and No Action may affect.
8. Describe impacts and environmental consequences of the Sponsor's proposed Project and reasonable alternatives that were previously identified for further evaluation, including the No Action alternative.
9. Prepare draft and final versions of the EIS, including the preparation of draft chapters and preliminary draft EIS and preliminary final EIS. It is anticipated that the draft and final version should include the following elements, at minimum:
  - a. Cover Page

**Commented [FAA25]:** Recommend expanding: "assisting in the identification and compilation of the administrative record in the event of litigation and assistance throughout the litigation"

**Commented [CM26R25]:** Revised language to include reference to potential legal proceedings associated with the environmental review or final agency actions or decisions



## DRAFT AND DELIBERATIVE

- b. Executive Summary
  - c. Table of Contents
  - d. Purpose and Need
  - e. Alternatives
  - f. Affected Environment
  - g. Environmental Consequences
  - h. Mitigation
  - i. List of Preparers
  - j. List of Agencies, Organizations, and Persons to Whom Copies of the Statement are Sent
  - k. Index
  - l. Appendices (if any)
  - m. Comments
  - n. Footnotes
10. Solicit and facilitate public and stakeholder involvement on behalf of FAA throughout the EIS process in accordance with NEPA and relevant special purpose laws.
  11. Ensure that the EIS documentation includes relevant information required for future permitting applications and processes, as required.
  12. Assist the FAA in the preparation of a draft ROD.

All work prepared under this Agreement shall be delivered to the FAA in printed format and searchable .pdf files along with components associated with each item, such as data files, text files, image files, spreadsheets, graphs, and tables. These products, where applicable, will be compatible with and incorporated into the Airports Geographic Information System ("AGIS") managed by the FAA (as applicable). While performing work under this Agreement, the Consultant shall be responsible for managing the administrative project file and, upon completion of the work, will be responsible for submitting a completed administrative record for the project to the FAA, in accordance with FAA policy and guidance.

### **III. PERIOD OF PERFORMANCE**

The period of performance (through completion of the final EIS) of the services is not to exceed that which is to be directed by the FAA as the lead Federal agency for services hereunder. The work will be performed in accordance with FAA's procedures for assessing environmental impacts including FAA Orders 1050.1F and 5050.4B (or the current version(s) at time of agreement award). While it is conceivable that issues raised during the public comment process could affect the time of performance, the Consultant should assume that the FAA will grant any extensions of time for performance only for the most extraordinary circumstances. The Period of Performance establishes the expected outer limit for project development.

Commented [FAA27]: Edit

Commented [CM28R27]: Accepted edit

### **IV. LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE**

DRAFT AND DELIBERATIVE

**A. Commercial Liability Insurance:**

1) The Consultant(s), and all of its/their Sub-consultants shall take out, maintain, and pay the premiums on **Commercial General Liability Insurance** for the life of the Agreement and such Insurance and shall be written on an ISO occurrence form CG 00 01 0413 or its equivalent covering the obligations assumed by the Consultant(s) under this Agreement, including, but not limited to, Premises-Operations, Products and Completed Operations, Broad form property damage, personal and advertising injury and Independent Contractor's coverages, with contractual liability language covering the obligations assumed by the Consultant(s) with insurance covering against claims for injuries to persons or damages to property which may arise from or in connection with products and materials supplied to the Agency in limits of not less than **\$10,000,000** combined single limit per occurrence and in the annual aggregate. If vehicles are to be used to carry out the performance of this Agreement, then the Consultant(s) shall also take out, maintain and pay the premiums on **Automobile Liability Insurance** covering all owned, non-owned and hired autos in not less than **\$5,000,000** combined single limit per accident for bodily injury and property damage. **(Only if Applicable)**

The insurance shall be written on an occurrence basis, as distinguished from a "claims made" basis, and shall not include any exclusions for "action over claims" (insured vs. insured) and minimally arranged to provide and encompass at least the following coverages:

- Contractual Liability to cover liability assumed under the Agreement;
- Independent Contractor's Coverage;
- Premises-Operations, Products and Completed Operations Liability Insurance;
- The insurance coverage (including primary, excess and/or umbrella) hereinafter afforded by the Consultant(s) and Sub-consultant(s) shall be primary insurance and non-contributory with respect to the additional insureds;
- Excess/umbrella policies shall "follow form" to the underlying policies;
- Excess/umbrella policies shall have a liberalization clause with drop down provision;
- To the extent any coverage the Consultant(s) and Sub-consultant(s) obtains and/or maintains under this Agreement contains "Other Insurance" language or provisions shall not be applicable to the additional insureds or to any insurance coverage maintained by the additional insureds;
- All insurance policies shall include a waiver of subrogation, as allowed by law, in favor of the additional insureds;
- Defense costs must be outside of policy limits. Eroding limits policies are not permitted;
- In the event the Consultant(s) and/or its Sub-consultant(s) obtains and/or maintains broader coverage and/or insurance in an amount greater than the minimum limits required under this Agreement, then the full limits of that insurance coverage will be available to respond to any claims asserted against the additional insureds that arises out of or is in any way connected with this Agreement;
- Additional insureds coverage shall not be restricted to vicarious liability unless required by controlling law;

In addition, the liability policy(ies) shall be written on a form at least as broad as ISO Form CG 20 10 10 01 (for ongoing operations work) together with ISO Form CG 20 37 10 01 (for

DRAFT AND DELIBERATIVE

completed operations work) or their equivalent and endorses to name “The Port Authority of New York and New Jersey, and its related entities, their Commissioners, Directors, Superintendents, officers, partners, employees, agents, their affiliates, successors or assigns”, in addition to: **The Federal Aviation Administration**, The City of New York, for all operations at John F. Kennedy and LaGuardia Airports; Port Authority Trans-Hudson Corporation, for operations at PATH; AFCO AvPorts Management LLC, for operations at Teterboro Airport; AFCO AvPorts Management LLC and NY State Dept. of Transportation , for operations at Stewart Int’l Airport, Trends Urban Renewal for operations at PATC and Silverstein Properties Inc.; The Port Authority of New York and New Jersey; Silverstein 2/3/4 WTC Redevelopment LLC; WTC Redevelopment LLC; World Trade Center Properties LLC; 4 World Trade Center LLC; Net Lessees 'Association of the World Trade Center; WTC Management and Development LLC; Silverstein WTC Mgmt. Co. LLC. Silverstein WTC Mgmt. Co II LLC; Silverstein WTC Properties LLC; Silverstein WTC Management and Development LLC; Silverstein WTC LLC.; WTC Investors LLC.; 4 WTC Holdings LLC; WTC Investors Management and Development LLC; World Trade Center Holdco LLC; 4 WTC Mezz LLC. for operations at the World Trade Center Site as “Insured” (as defined in the policy or in an additional insured endorsement amending the policy’s “Who Is An Insured” language as the particular policy may provide) on its liabilities policies with respect to liability arising out of work or operations performed by or on behalf of the Consultant(s) including, but not limited to, materials, parts or equipment furnished in connection with such work or operations. The “Insured” shall be afforded coverage and defense as broad as if they are the first named insured and regardless of whether they are otherwise identified as additional insureds under the liability policies, including but not limited to premises-operations, products-completed operations of the Commercial General Liability Policy. Such additional insureds status shall be provided regardless of privity of contract between parties. The liability policy(ies) and certificate of insurance shall contain cross-liability language providing severability of interests so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds shall not reduce or void coverage to the other insureds. The Consultant(s) is/are responsible for all deductibles or losses not covered by commercially procured insurance. Any portion of the coverage to be provided under a Self-Insured Retention (SIR) of the Consultant(s) is/are subject to the review and approval of the General Manager, Risk Financing. Furthermore, any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim.

Any self-insured retention shall cover any liability imposed upon the Consultant(s) and any and all subsidiaries with respect to all operations and obligations assumed by the Consultant(s) and any and all subsidiaries. The undersigned represents that such program provides the Additional Insureds (as defined in the Agreement) with all rights, immunities and protections that would be provided by traditional independent insurance required under the Agreement, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies pursuant to the terms of the Agreement.

If any of the Work is to be done on or at Port Authority facilities by the Sub-consultants and, if the Consultant(s) requires its Sub-consultant(s) to procure and maintain such insurance in the name of the Consultant(s), then such insurance as is required herein shall include and cover the additional insureds and it must have insurance limits not lower than those set forth by the Port Authority herein, along with all the insurance requirements in this “Insurance” section.

DRAFT AND DELIBERATIVE

Further, it is the Consultant's responsibility to maintain, enforce and ensure that the type of coverages and all limits maintained by it and any of all Sub-consultants are accurate, adequate and in compliance with the Port Authority requirement. All certificates of insurance shall be turned over to the Port Authority prior to the start of work, and upon completion of the Agreement.

*The Consultant, its Sub-consultant(s) and its insurer(s) shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.*

**2) Workers' Compensation Insurance:**

The Consultant(s) and its/their Sub-consultant(s) shall take out, maintain and pay premiums on Workers' Compensation Insurance in accordance with the requirements of law in the state(s) where work will take place, and Employer's Liability Insurance with limits of not less than **\$1,000,000** each accident. Such policy shall include a waiver of subrogation endorsement in the benefit of the additional insureds.

**3) Additional Coverages:** The Consultant(s) shall have the policy endorsed "**Only when required by the Director**" for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) Any/all activities performed airside must, at all times, be performed while under security escort as approved in advance, and in writing by the Project Manager. If the services of the Consultant(s), as directed by the Authority, require the performance of services airside, the Commercial General Liability and Automobile Liability coverage limits stipulated in subparagraph 1, above, shall be increased to an amount not less than \$25,000,000 per occurrence as provided herein.
- b) Endorsement to eliminate any exclusions applying to the explosion, collapse, and underground property damage (XCU) hazards.
- c) Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
- d) Coverage for work within fifty (50) feet of railroad.

**4) Additional Coverages:** The Consultant(s) shall have the policy endorsed "**Only when required by the Director**" for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

DRAFT AND DELIBERATIVE

- a) United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.
- b) Coverage B Endorsement - Maritime (Masters or Members of the Crew of Vessels), in limits of not less than \$1,000,000 per occurrence.
- c) Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$1,000,000 per occurrence.

**5) Professional Liability Insurance:**

The Consultant(s) shall take out, maintain and pay premiums on Professional Liability Insurance in limits of not less than **\$10,000,000** each occurrence, covering acts, errors, mistakes, and omissions arising out of the work or services performed by Consultant(s), or any person employed by Consultant(s). All endorsements and exclusions shall be evidenced on the certificate of insurance. The coverage shall be written on an occurrence basis or may be written on a claims made basis with a minimum of a three-year reporting/discovery period.

Each policy above shall contain an endorsement that the policy may not be canceled, terminated or modified without thirty (30) days' prior written notice to the Project Manager, at the location where the work will take place with a copy to the General Manager, Risk Financing.

The Port Authority may, at any time during the term of this Agreement, change or modify the limits and coverages of insurance. Should the modification or change result in an additional premium, the General Manager, Risk Financing for the Port Authority may consider such cost as an out-of-pocket expense.

Within five (5) days after award of this Agreement and prior to the start of work at the site, the Consultant(s) must submit an original certificate of insurance, to the Project Manager and Exigis email: [REDACTED] at the location where the work will take place. This certificate of insurance MUST show evidence of the above insurance policy(ies), including, but not limited to, the title of this Agreement, the P. A. Agreement number, the notice of cancellation provisions, prior to the start of work. The Consultant(s) is/are also responsible for maintaining and conforming to all insurance requirements from the additional insureds and their successors and assigns. The General Manager, Risk Financing must approve the certificate(s) of insurance before any work can begin. Upon request of the General Manager, Risk Financing/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.

Renewal certificates of insurance or policies shall be delivered to the Authority's Project Manager, and upon request from the additional insureds, their successors or assigns at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Financing must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Authority, the Consultant(s) shall promptly obtain a new and satisfactory certificate and policy and provide same to the Port Authority.

If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then, the Consultant(s) and all Sub-consultants

DRAFT AND DELIBERATIVE

shall suspend performance of the Agreement at the premises until a satisfactory insurance policy(ies) and certificate of insurance is provided to and approved by Risk Financing, unless the Facility or Project Manager directs the Consultant(s), in writing, to continue to performing work under the Agreement. If the Agreement is so suspended, no extension of time shall be due on account thereof.

Failure by the Consultant(s) to meet any of the insurance requirements, including the requirement that the Port Authority be afforded the full extent of the insurance obtained under this Agreement without limitation, shall be deemed a material breach of Agreement and may be a basis for termination of this Agreement by the Port Authority.

The requirements for insurance procured by the Consultant(s) shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Consultant(s) under this Agreement. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Consultant against the obligations imposed on them by law or by this or any other Agreement.

All insurance coverage shall be provided by the Consultant(s) and/or by or for any of its/their Sub-consultant(s) at no additional expense to the Port Authority and its related entities. A copy of this "Insurance" section shall be given to your insurance agent and Sub-consultant(s) and shall form a part of the covered Agreement for insurance purposes in furtherance of the insurance requirements of this Agreement.

\*\*\*\*

THE PORT AUTHORITY OF NY & NJ

DATE

SUBJECT: REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (LGA) ACCESS IMPROVEMENT PROJECT (RFP# \*\*\*\*\*)

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the Authority) is seeking proposals in response to this Request for Proposals (RFP) for a Consultant to provide the subject services. The services will require the preparation of an Environmental Impact Statement (EIS) for the LGA Access Improvement Project (the "Project"). The Authority's goal is to complete the proposed Project and commence passenger service as close as possible to the completion of Terminal B and several key landside components of Terminal C end of 2022, when other major redevelopment at LGA, both of which will projects are expected to be completed by, in order to minimize the end of 2022 duration of construction-related disruptions to customers. Therefore, the Authority is committed to supporting the completion of the EIS within 12 months of the Notice of Intent ("NOI") to enable construction of the proposed Project to begin in 2019. As such, both the Authority, as the Airport Sponsor, and the Federal Aviation Administration ("FAA") will work together to facilitate the expeditious preparation of the EIS. The Authority is issuing this RFP, and both the Authority and FAA will participate in the process to evaluate proposals. The roles of the Authority and FAA in the evaluation process are set forth below in Section III. Selection Process. The selected firm (the "Consultant") will work directly with the FAA for the performance of the services that will culminate in the development of the EIS. The Authority and the Consultant will negotiate and enter into an agreement ("Agreement") resulting from this RFP, for the performance of the Consultant's services on behalf of the FAA. The Authority will be responsible for overall contract administration and payment for the Consultant's services as accepted by the FAA, while the Consultant reports to the FAA for direction on the development of the EIS.

Commented [FAA1]: Rework this language to focus on the stress of construction and customer disruption rather than specifically mentioning the Terminals  
Commented [CM2R1]: Revised language accordingly

The general scope of services to be performed by the Consultant is set forth in Attachment A. In accordance with Section IV below, within ten (10) calendar days of notice of selection, and prior to Agreement execution and to meet the Authority's goal for the expeditious completion of the EIS, a detailed scope of work should be drafted by the selected Consultant and provided to the FAA for review, within fifteen (15) business days of notice of selection, and prior to Agreement execution. This detailed scope of work shall serve as a Plan of Study for the assignment. The draft Plan of Study must be accepted by the FAA prior to contract award and subsequent issuance of the FAA's NOI to conduct an EIS. It is the Authority's goal that the NOI shall be issued by the FAA no later than May 24, the end of the fourth quarter of 2018.

Commented [FAA3]: Ten days is not a reasonable timeframe to develop a quality document. Time will be needed to review the planning information when it becomes available since it will be used in developing the Plan of Study. Additionally, the FAA is responsible for setting the scope and a time limit of this nature will restrict our ability to develop this aspect of the project. We recommend phrasing this in the context of Port Authority targets for schedule  
Commented [CM4R3]: Extended time period to 15 business days, doubling the total amount of time for the consultant submittal, and added text referring to the Port Authority's goal

I. PROPOSAL FORMAT REQUIREMENTS:

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

Commented [FAA5]: Remove It is not appropriate to prescribe a date here in a PANYNJ document when the issuance of the NOI is a federal role  
Commented [CM6R5]: Revised to state that it is the Port Authority's goal to have the NOI issued within this timeframe, and extended to end of Q4 2018. Additionally, clarified that FAA will issue the NOI

## DRAFT AND DELIBERATIVE

- A. To be acceptable, this Proposal shall be no more than **20** single sided pages or **10** double sided pages, using 12 point or greater font size, not including resumes. Each resume shall be a maximum of two-pages single-sided or one-page double-sided, using 12 point or greater font size. The page limit pertains only to Numbers 4 through 9 (excluding resumes requested in Number 6) in Section II, below. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with "Your Firm Name", and **RFP Number \*\*\*\*\*** clearly indicated on the cover.
- B. Separate each section of the Proposal with a tab divider that is labeled in accordance with the letter of the requirements specified below in Section II.
- C. All proposals must be delivered in sealed envelopes and/or packages. Address the Proposal to: The Port Authority of New York and New Jersey, 4 World Trade Center, 21<sup>st</sup> Floor, New York, NY 10007, Attention: RFP Custodian.

~~D.~~ You shall submit the Technical Proposal as follows:

~~D.~~ In in one envelope, ~~the Technical Proposal, one~~

One (1) reproducible original hard copy containing original signatures along with twenty (20) compact disc copies of your ~~technical~~ Technical proposal-Proposal for review. USB Flash Drives will not be accepted. In case of conflict, the reproducible original of the ~~technical~~ Technical proposal-Proposal shall take precedence over material on the CDs.

The Technical Proposal shall include all information requested in the "Technical Proposal" subsection of Section II hereof. **No pricing-related information shall be provided in the original and CD copies of the Technical Proposal.**

~~0. In a separately sealed envelope, the Pricing Information: one (1) reproducible original hard copy containing original signatures along with five (5) compact disc copies of your pricing information for review. This envelope shall contain only the information requested under the "Pricing Information" subsection of Section II hereof.~~

~~E.~~ In each submission to the Authority, including any return address label, information on the compact disc and information on the reproducible original and copies of the proposal, the Proposer shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure to comply with this requirement may lead to delays in contract award and contract payments, which shall be the responsibility of the Proposer.

~~G.~~ Your Proposal should be forwarded in sufficient time so that the Authority receives it **no later than 2:00 p m. on <DATE>**. The outermost cover of your submittal must be labeled to include the RFP Number and title as indicated in the "Subject" above. The Authority assumes no responsibility for delays caused by any delivery services.

If your Proposal is to be hand-delivered, note that only individuals with proper identification (e.g. photo identification) will be permitted access to the Authority's offices. Individuals without proper identification will be turned away and their packages not accepted.

Commented [FAA7]: FAA's position is this should be a qualifications based selection only. Cost is not a factor in the selection process

Commented [CM8R7]: Removed request for pricing information



## **DRAFT AND DELIBERATIVE**

There is extensive security at the World Trade Center Site. You must present a valid government-issued photo ID to enter 4 WTC. Individuals without packages or carrying small packages, envelopes or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All packages, envelopes and boxes may be subject to additional security screening. There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited. Express carrier deliveries by commercial vehicles will only be made via vendors approved by Silverstein Properties, the WTC Property Manager, through the Vehicle Security Center (VSC). Please note that use of the U.S. Mail does not guarantee delivery to Authority offices by the below listed due date for submittals. Proposers using the U.S. Mail are advised to allow sufficient delivery time to ensure timely receipt of their proposals. Presently, UPS is the only delivery vendor with approved recurring delivery times. UPS makes deliveries to 4 WTC around 9:30 a.m. each day. Please plan your submission accordingly. As additional express carriers may be approved by Silverstein Properties and scheduled for recurring delivery times with the VSC, this information may be updated. Under certain circumstances, a solicitation may allow for a commercial vehicle to be approved to make a delivery in accordance with the VSC procedures. If applicable, the specific solicitation document will include that information. The Port Authority assumes no responsibility for delays, including, but not limited to, delays caused by any delivery services, building access procedures, or security requirements.

### **II. SUBMISSION REQUIREMENTS:**

To respond to this RFP, provide the following information:

#### **A. TECHNICAL PROPOSAL:**

1. In the front of your Technical Proposal, a copy of Attachment B (Agreement on Terms of Discussion) signed by an officer of your company. If proposing as a joint venture, each member of the joint venture must sign a copy of Attachment B.
2. Complete a copy of Attachment C (Company Profile).
3. Transmittal Letter
  - a. Include a statement indicating whether the Consultant is proposing as a single entity, or as a joint venture.
  - b. If a joint venture which has not been established as a distinct legal entity (a common-law joint venture) submits a proposal, all participants in the joint venture shall be bound jointly and severally and each participant shall execute the proposal. If a single entity proposer cannot demonstrate that it meets all of the referenced qualifications, then the single entity proposer may, with others, form a joint venture and request that the joint venture be deemed to be the Proposer (i.e. members of the joint venture may meet the qualification requirement collectively).
  - c. If the Proposer is a joint venture, the joint venture's Proposal shall contain an executed teaming agreement or, alternatively, if the entities making up the joint venture proposer have not executed a teaming agreement, the joint venture's proposal shall contain a summary of key terms of the anticipated agreement. If the

## DRAFT AND DELIBERATIVE

joint venture proposer is a consortium, partnership or any other form of a joint venture, or an association that is not a legal entity, the proposal shall include a letter signed by each member indicating a willingness to accept joint and several liability until the point at which a corporation, limited liability company or other form of legal entity is formed for the purposes of undertaking the Agreement.

4. Project Approach/Schedule: Demonstrate a thorough understanding of the FAA EIS process. Identify methodologies and approaches that would be utilized to analyze and resolve environmental issues. Describe the proposed public scoping and public hearing process, work products, detailed project schedule, along with the responsibilities of each of the proposed staff/team members and subconsultants and their anticipated percentage of each individual's time working on the project. ~~Propose~~ In order to meet the Authority's goal for the expeditious completion of the EIS, propose an approach to enable the expeditious development a draft Plan of Study within ~~ten (10) calendar~~ fifteen (15) business days of notice of selection and provide any assumptions related to producing an EIS within twelve (12) months of an NOI. To achieve the 12-month schedule, include a description of the proposed process for 1) efficient coordination with FAA, the Authority, subconsultant work efforts, other federal, state and local agencies and the general public; 2) expediting the development of EIS documentation 3) facilitating accelerated completion of comment review, responses and associated revisions. For example, developing a detailed timeline for development of the EIS and an approach for gaining commitment from all necessary stakeholders to adhere to the timeline; initiating the Draft EIS documentation in parallel with preparation for public scoping, as appropriate; and streamlining comment collection from necessary stakeholders through roundtable reviews.

A description of the team's understanding of any unique issues associated with the preparation of an EIS at LGA should be included. Describe procedures to be followed to adhere to the Authority's goal of completion of the issuance by the FAA of a Record of Decision ("ROD") and completion of the National Environmental Policy Act ("NEPA") review within a 12-month period from the Notice of Intent ("NOI"). In addition, if the Proposer proposes an alternate schedule (exceeding the aforementioned twelve months), the Proposer shall provide its rationale for the longer schedule, its assumptions to producing an EIS within the longer proposed period, and a description of procedures to be followed to adhere to the alternate schedule.

5. Project Experience: Provide summaries of experience for past projects by prime consultant and team members (if applicable) that demonstrate experience and ability to undertake and complete an EIS specifically for airport projects and transit systems similar to the proposed project. Do not include projects for which key project personnel are no longer employed by the firm. List the names of key employees with each project. Projects for which individuals gained experience during previous employment should be indicated in this section.

For each qualifying project, include the following information in tabular form: project name, location, client, total contract amount, principal-in-charge, day-to-day technical project manager, key design staff, original estimated schedule and actual schedule of completion (defined for an EIS as Notice of Intent to Record of Decision and for an EA

Commented [FAA9]: Same as above – ten days is not a reasonable timeframe

Commented [CM10R9]: Extended time period to 15 business days, doubling the total amount of time for the consultant submittal, and added text referring to the Port Authority's goal

## DRAFT AND DELIBERATIVE

as Notice to Proceed to acceptance of the Final EA) client reference (name, position and phone number) and brief narrative description of the project.

6. Organization and Management: Provide an organizational chart and narrative description of the administrative structure proposed for managing this project. Outline major responsibilities and areas of expertise.

The overall project manager and key staff members (both prime firm and subconsultants) must be identified and resumes provided. The project manager is considered to be the single most important Consultant asset, and is expected to maintain responsibility and availability for the project through completion of the EIS required by the scope of services (Attachment A).

Provide a list of projects that the proposed project manager is responsible for and expected completion dates. Resumes of firm principals are not required unless they are proposed as active, integral members of the Consultant team. Principals should, however, be listed on the organizational diagram in relation to the Consultant team. This section should also include the location of each firm and key staff members.

In addition, if the proposal includes a prime firm and subconsultants, demonstration of relevant past working experience as a team is desired. The relevance of past working experience will be prioritized based on the following: 1) experience on FAA-directed environmental projects; 2) experience on other airport projects not directed by the FAA; 3) experience on environmental projects for other modes under the umbrella of the Department of Transportation; 4) experience on environmental projects for other Federal agencies; and 5) experience with expedited completion of environmental projects

7. References: provide a total of five (5) references of similar projects. For each reference include contact name, title, project name and location, mailing address, phone number, fax number and e-mail address.
8. Description of Proposer/Team: Provide a general description of the Proposer, including services offered, number of employees, office location, years in business, etc. Indicate aviation and rail-related EIS and EA work to which the firm is currently committed. Include similar descriptions for each subconsultant.
9. QA/QC: Describe quality assurance and quality control procedures. Demonstrate experience in successfully implementing quality control programs on comparable projects.
10. See Appendix A to this RFP letter for the MBE/WBE Subcontracting Provisions.
11. Provide a complete list of your firm's affiliates.
12. If the Proposer or any employee, agent or subcontractor of the Proposer may have, or may give the appearance of a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict. The Authority reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any

## DRAFT AND DELIBERATIVE

source could create, or give the appearance of, a conflict of interest. The Authority's determination regarding any question(s) of conflict of interest shall be final.

Proposer is required to disclose all work performed at LaGuardia Airport for a period of three (3) years prior to the date of submission. Proposer shall include work performed by all affiliates, and provide, to the extent applicable, start and end dates of each engagement, the name of the stakeholder or entity for which the Proposer performed work, and a short description of the nature of the work or project.

Proposers are further advised that under this Agreement, firms must provide, written notice to the Port Authority of any existing or potential conflict of interest the firm(s) may have in the performance of Services under this Agreement.

Furthermore, Proposers should ensure that they are familiar with FAA regulations and policy on conflicts of interest of EIS consultants. Pursuant to 40 C.F.R. Part 1506.5(c), the selected Consultant and any subconsultants performing the work shall certify that they have not entered into and will not enter into during the lifetime of the EIS preparation any agreement affording the Consultant and any subconsultants with any direct or indirect financial interest in the planning, design, construction or operation of the project that is the subject of the EIS except the preparation of the EIS. Prior to beginning work on the EIS, the Consultant and any subconsultants shall sign a "Disclosure Statement" per the requirements of 40 C.F.R. 1506.5(c) and FAA Orders 1050.1F and 5050.4B, specifying they have no financial or other interest in the outcome of the project.

13. **Code of Ethics for Port Authority Vendors:** The Proposer's attention is directed to the Port Authority's "Code of Ethics for Port Authority Vendors." Vendors must certify in writing that they will comply with every aspect of this Code. The Proposer should submit an executed Compliance Certification with their Proposal. The Compliance Certification, once executed, will be a material and integral part of any Agreement resulting from this solicitation. The Code of Ethics and the Compliance Certification can be found on the Authority's website at <https://www.panynj.gov/business-opportunities/become-vendor.html>.
14. The selected Consultant(s) shall comply with the requirements of the Agreement. The scope of tasks to be performed by you is summarized in Attachment A and will be detailed in the Plan of Study, which will be attached to and incorporated in the final Agreement and will amend and restate Section II. Scope of Services of Attachment A.

~~**B. PRICING INFORMATION:** In a separately sealed envelope marked "Pricing Information," include all proposed pricing related information (e.g. billing rates and multipliers) for the Proposer (prime consultant) and proposed subconsultants. Compensation for premium pay (i.e. holidays, shift differentials, regular days, weekends and night work or union required payments) must be included and detailed.~~

Commented [FAA11]: FAA does not allow for consideration of cost in a qualifications based selection

Commented [CM12R11]: Removed request for pricing information

## DRAFT AND DELIBERATIVE

### III. SELECTION PROCESS:

The qualifications based selection shall take into consideration the technical criteria conveyed in this section (listed in order of importance). After consideration of these factors, the Authority may enter into negotiations with the firm(s) deemed best qualified, in terms of the forgoing Technical Proposal criteria, to perform the required services.

The Authority will review proposals to determine if they satisfy the requirements of this RFP, including adherence to the RFP's specified format and the provision of all required documentation. Proposals will then be reviewed according to a two-phased evaluation process. The **first phase of the evaluation process** will involve Authority and FAA staff, and will include a detailed review and evaluation of the proposals according to the following criteria:

1. Project Approach/Schedule;
2. Project Experience;
3. Organization and Management;
4. References;
5. Description of Proposer/Team;
6. QA/QC;

Only those proposals receiving the highest scores in the first phase of the evaluation process will be evaluated in the **second phase of the evaluation process**.

The **second phase of the evaluation** will involve staff from the Authority and FAA. Only FAA staff will score proposers in the second phase of the evaluation. The second phase of the evaluation commences with interviews of the highest-rated proposers from the first phase of evaluation. The interviews will consist of presentations by the highest-rated proposers, followed by a question and answer session led by FAA staff. After the last interview, FAA staff will score the interviews and add the interview scores to the first phase scores, and recommend that the Port Authority retain the proposer that received the highest combined score for the performance of the agreement resulting from this RFP. A notice of selection will be transmitted to the selected Proposer, prior to execution of the Agreement.

The following is the anticipated schedule for the selection process:

<del>March 5, 2018</del> XX	Request for proposals advertised
<del>March 26, 2018</del> XX	Proposals due to the Authority
<del>April 9, 2018</del> XX	Selection Committee holds interviews with select firms
<del>April 10, 2018</del> XX	Selected firm is notified and commences draft Plan of Study with FAA
<del>May 1, 2018</del> XX	Contract award

Commented [FAA13]: Update Increase time to develop Plan of Study

Commented [CM14R13]: Dates to be updated based on further discussions on schedule

### IV. POST-SELECTION PROCESS (prior to agreement execution):

## DRAFT AND DELIBERATIVE

~~Within ten (10) calendar days of notice of selection, and prior to agreement execution~~ In order to meet the Authority's goal for the expeditious completion of the EIS, a detailed scope of work and cost proposal for all work to be performed under the agreement resulting from this RFP should be drafted by the selected Consultant and provided to the FAA-- within fifteen (15) business days of notice of selection, and prior to agreement execution. The Authority will compensate the Consultant for its efforts in developing the detailed scope of work at the rates provided in the Consultant's ~~Pricing Information~~ cost proposal, as accepted by the Authority.

Commented [CM15]: Added to include a reference to a request for a cost proposal once the detailed scope of work is developed

Commented [FAA16]: Same as above

Commented [CM17R16]: Extended time period to 15 business days, doubling the total amount of time for the consultant submittal, and added text referring to the Port Authority's goal

After this detailed scope of work has been finalized and accepted by the FAA, it shall serve as the Plan of Study for the assignment. The Authority will then negotiate a cost proposal with the Consultant for the services to be provided in accordance with the Plan of Study. ~~The basis for negotiations shall be the billing rates/multipliers provided in the Consultant's Pricing Information. During price negotiations, the Authority will not entertain requests from the Consultant to increase the billing rates and multipliers submitted within its original pricing information.~~

### V. ADDITIONAL INFORMATION:

If your firm is selected for performance of the subject services, the agreement you will be asked to sign will include clauses entitled "Certification of No Investigation (Criminal Or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure Of Other Information" And "Non-Collusive Proposing, And Code Of Ethics Certification; Certification Of No Solicitation Based On Commission, Percentage, Brokerage, Contingent Or Other Fees." By submitting a proposal, the Consultant shall be deemed to have made the certifications contained therein unless said Consultant submits a statement with its proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your proposal clearly marked "CERTIFICATION STATEMENT."

Rejection of a proposal shall be only by either (a) a notice in writing specifically stating that the proposal is not accepted, signed by an authorized representative of the Authority and provided to the Proposer, or (b) omission of the Authority to accept the proposal within 180 days after the Proposal Due Date. No other act of the Authority, its Commissioners, officers, agents, representatives or employees shall constitute rejection of a proposal.

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

Prior to commencing any work associated with this Project, the selected consultant and any subconsultants shall submit a Disclosure Statement.

## DRAFT AND DELIBERATIVE

Proposers are also advised that additional vendor information, including but not limited to forms, documents and other related information, may be found on the Authority website at [www.panynj.gov](http://www.panynj.gov) or <http://www.panynj.gov/business-opportunities/become-vendor.html>.

After a review of all proposals received, the Authority will forward two (2) copies of the Agreement and Attachment A thereto to the selected firm(s), which shall sign and return both copies. Signature shall be by a corporate officer. The return of one copy executed by the Authority will effectuate the Agreement.

Should you have any questions, please contact James Summerville, Solicitation Manager [REDACTED] and Krystina Papasavvas [REDACTED]. All such correspondence must have your name, title, company, mailing address, telephone number, and state "RFP \*\*\*\*\*" in the subject line. **The Authority must receive all questions no later than 4:00 P.M. EST four (4) working days after the RFP issuance date.** Neither Mr. Summerville nor Ms. Papasavvas, nor any other employee of the Authority is authorized to interpret the provisions of this RFP or accompanying documents or give additional information as to their requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned and such writing shall form a part of this RFP, or the accompanying documents, as appropriate. For RFP updates and Addenda, if any, Proposers are encouraged to access, and monitor, the Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html>. You should, therefore, monitor the advertisement on said website, as appropriate, to ensure you are aware of changes, if any.

Proposal preparation costs are not reimbursable by the Authority. The Authority shall have no obligation to a firm except under a duly authorized agreement executed by the Authority.

No rights accrue to any Proposer except under a duly authorized agreement for performance of the specified services.

The Authority reserves the right, in its sole and absolute discretion, to reject all proposals, to undertake discussions and modifications with one or more Consultants, to waive defects in proposals, and to proceed with that Proposal or modified Proposal, if any, which in its judgment will, under all the circumstances, best serve the public interest.

Sincerely,

David Gutiérrez, CPPO  
Assistant Director  
Procurement Department

Attachments

## DRAFT AND DELIBERATIVE

### APPENDIX A – MBE/WBE SUBCONTRACTING PROVISIONS

For this Agreement, the Consultant shall use good faith efforts to achieve participation equivalent to twenty percent (20%) of the total Agreement price for Authority certified MBEs and ten percent (10%) of the total Agreement price for Authority certified WBEs. Submit details on how you intend to meet these goals. A listing of certified MBE/WBE firms is available at <http://www.panynj.gov/business-opportunities/sd-mini-profile.html>.

The Proposer shall include its MBE/WBE Participation Plan (Form PA 3760C) with its Proposal, to be reviewed and approved by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

The MBE/WBE Plan submitted by the Proposer to the Authority shall contain, at a minimum, the following:

- Identification of MBE/WBEs: Provide the names and addresses of all MBE/WBEs included in the Plan. If none are identified, describe the process for selecting participant firms in order to achieve the good faith goals under this Contract.
- Level of Participation: Indicate the percentage of MBE/WBE participation expected to be achieved with the arrangement described in the Plan.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

All MBE/WBE subconsultants listed on the MBE/WBE Participation Plan must be certified by the Authority in order for the Consultant to receive credit toward the MBE/WBE goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/supplier-diversity.html> to search for MBE/WBEs by a particular commodity or service. The Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to the MBE/WBE Participation Plan must be submitted via a modified MBE/WBE Participation Plan to the Manager for review and approval by OBDCR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use form PA3760D. The Consultant shall not make changes to its approved MBE/WBE Participation Plan or substitute MBE/WBE subconsultants or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performance of work designated for a subconsultant by the Consultant's own forces, shall be deemed a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored by the Authority throughout the duration of the Agreement.

The Consultant shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments in the form of the MBE/WBE Participation Report, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subconsultant and supplier actually involved in the Agreement, a description of the work performed and/or the product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information as it may assist the Project Manager in determining the Consultant's compliance with the foregoing provisions.



## **DRAFT AND DELIBERATIVE**

### **MBE/WBE Conditions of Participation**

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

1. **Commercially Useful Function:** An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Consultant and the MBE/WBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as a MBE/WBE, the Consultant will receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.
2. **Work Force:** The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Contractor, other Subcontractors on the Contract, or their Affiliates. This does not preclude the employment by the MBE/WBE of an individual that has been previously employed by another firm involved in the Contract, provided that the individual was independently recruited by the MBE/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.
3. **Supervision:** All Work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Consultant, other subconsultants on the agreement, or their Affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the Work.

### **Counting MBE/WBE Participation**

The value of the Work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. **Subconsultants:** One hundred percent (100%) of the value of the Work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such Work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Consultant, other subconsultants or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE

## DRAFT AND DELIBERATIVE

subconsultant is itself a MBE/WBE. Work that a MBE/WBE subcontracts to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. Material Suppliers: Sixty percent (60%) of the expenditure to a MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. Broker's/Manufacturer's Representatives: One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees or commissions customarily allowed for similar services. The costs of materials and supplies themselves will not be counted.

4. Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces. Contact OBDCCR at (201) 395-3958 for more information about requirements for such joint ventures.

**From:** [Lamond, Kathryn](#)  
**To:** [REDACTED] [Drew Brooks](#); [REDACTED]  
**Cc:** [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Clark, Patty](#)  
**Subject:** LGA Airtrain - Revised MOU  
**Date:** Friday, June 22, 2018 11:31:02 AM  
**Attachments:** [2018-06-21 DRAFT PANYNJ MOU - PA Comments.docx](#)

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All,

Attached please find the draft MOU, containing PANYNJ responses to the FAA comments dated 6/13/18. Please let us know if you have any additional comments or questions.

Thanks and have a great weekend!  
Katie

Kathryn Lamond, P.E.  
Environmental and Sustainability Specialist  
PANYNJ - Aviation Department  
4 World Trade Center, 150 Greenwich St.  
New York, NY 10007

[REDACTED]

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE UNITED STATES DEPARTMENT OF TRANSPORTATION**  
**FEDERAL AVIATION ADMINISTRATION**  
**AND**  
**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**I. INTRODUCTION AND PURPOSE**

- A. This Memorandum of Understanding ("MOU") provides a framework in which the United States Department of Transportation (the "DOT"), Federal Aviation Administration (the "FAA"), an executive agency of the United States, organized and existing under the laws of the United States, having its principal office at 800 Independence Avenue, S.W., Washington, D.C., 20591, will prepare an Environmental Impact Statement (the "EIS") for the LaGuardia Airport ("LGA") LGA Access Improvement Project (the "Project") being proposed by The Port Authority of New York and New Jersey an interstate compact agency created by Compact between the States of New York and New Jersey, with the consent of the Congress of the United States having its principal office at Four World Trade Center, 150 Greenwich Street, New York, NY10007 (the "Port Authority" or "Sponsor"). The MOU describes the relationship of the above named parties in preparing the EIS. Subject to completion of the EIS, the FAA will issue a determination regarding the Project that will be set forth in a Record of Decision.
- B. As lead agency, the FAA has selected an independent contractor (the "Contractor") to prepare the EIS. The Sponsor shall be the party responsible to engage and retain the Contractor with funds provided by the Sponsor.
- C. The EIS and any related documents shall comply with the provisions of the National Environmental Policy Act of 1969 ("NEPA") and Council on Environmental Quality ("CEQ"), DOT, and FAA environmental regulations and guidance, as well as all applicable local, state and Federal laws, as appropriate.
- D. It is the purpose of this MOU to establish an understanding between the Sponsor and the FAA regarding the responsibilities of the parties and the conditions and procedures to be followed in the development and preparation of the EIS.
- E. The parties that enter into this agreement intend that development and preparation of the EIS, as articulated in this MOU, will satisfy the pertinent environmental

requirements of the FAA and any Cooperating Agencies (as that term is defined in 40 CFR § 1501.6 and 1508.5) that may have jurisdiction over the Project.

## II. GENERAL PROVISIONS

A. As the lead agency, the FAA will be responsible to ensure compliance with all the requirements of NEPA (42 U.S.C. 4321 et seq.), CEQ Regulations (40 C.F.R. Parts 1500-1508), appropriate DOT and FAA environmental orders. The FAA shall ensure that all pertinent environmental issues and impacts reasonable alternatives and their impacts cumulative impacts and mitigation/conditions are treated in the EIS, and shall be responsible for the scope and content of the EIS. The FAA acknowledges that the Sponsor will be responsible for coordinating with state and local entities for such state and local entities their respective compliance with applicable state and local laws, including New York State Environmental Quality Review Act ("SEQRA"), and applicable implementing regulations. The Sponsor agrees to invite the FAA to participate in all meetings held with state and local entities wherein discussion would serve to support the EIS and the purpose of which is to ensure that environmental data and analysis related to the EIS comply with the requirements of applicable state and local laws pursuant to any non-NEPA requirements.

B. The Sponsor will engage and retain the Contractor, selected by the FAA, for the preparation of the EIS. The Contractor, with the approval of the FAA and Sponsor, may employ such other contractors and experts (collectively referred to as "Subcontractors"), as are required for the adequate development and preparation of the EIS.

~~C.~~ As approved by the FAA, the Contractor will provide, through its staff or by Subcontractor, the expertise, staffing, and technical capabilities required for the preparation of the EIS. The FAA will direct the scope of the EIS and will independently evaluate all information, environmental data and analyses submitted by the Contractor, the Sponsor or others, and revise or cause additional study and analyses to be performed as necessary.

~~D.C.~~

~~E.D.~~ The Contracts between the Sponsor and Contractor and between the Contractor and Subcontractors (collectively the "Contract") shall be consistent with the provisions of this MOU and shall specifically incorporate those provisions articulated herein that address the conduct of the Contractor. Before starting EIS preparation, the Contractor and Subcontractors shall provide verification to FAA that they have no financial interest in the outcome of the action of the EIS will address, consistent with FAA Order 5050.4B, Paragraph 1003(d). The Contractor and Subcontractors working on the EIS may not bid on any future actions the EIS addresses until the approving FAA official issues a Record of Decision based on the EIS. This prohibition does not prevent the Sponsor from selecting the EIS Contractor or Subcontractors for later development actions,

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Commented [TF2R1]: (6.19) please see proposed modification to language to reflect type of coordination anticipated

should they be approved. However, that selection must occur after free and open competition and there can be no implied or suggested guarantee that the Sponsor would favorably consider the EIS Contractor or Subcontractors. Further, the Sponsor shall ensure that the Contract shall specifically limit any remedies available to the Contractor and any Subcontractors, so as to affirmatively relieve the United States of America, the FAA, and any officer, agent or employee of same, from any liability arising out of the performance or termination of the contract for preparation of the EIS, or out of this MOU.

1. Prior to beginning work on the Project, the Contractor and any Subcontractors shall sign a "Disclosure Statement" provided by the FAA per the requirements of FAA Order 5050.4B, Paragraph 1003(d), specifying they have no financial or other interest in the outcome of the project.
2. The FAA shall evaluate the Disclosure Statement prior to its approval.

E. The Sponsor shall facilitate the coordination of effort and the exchange of information related to the planning, design, and construction of the Project, as these activities relate to the preparation of the EIS among and between the Contractor and its Subcontractors, and the FAA, and other federal, state or local entities as appropriate. The Sponsor shall make all reasonable efforts to assist and cooperate with the FAA's directions to the Contractor and Subcontractors and to support the FAA's efforts to ~~as~~ ensure the satisfactory and timely performance of the duties of the Contractor and Subcontractors as specified in this MOU.

F. The Sponsor and FAA shall:

1. Appoint such representatives from their respective agencies as necessary to accomplish the coordination necessary for the satisfactory and expeditious preparation of the EIS. Notice to any such representative shall constitute notice to that party.
2. Review substantive work products under the Contract(s) for the EIS as the FAA deems necessary, consistent with Article III of this MOU.
3. Have their respective representatives attend meetings with other Federal, state, regional, and local agencies for the purpose of increasing communications and receiving comments, as the same may be necessary, desirable, or required by law in preparation of the EIS.

G. All costs incurred in connection with the employment of the Contractor and any and all Subcontractors, or other persons retained or employed by the Sponsor, shall be the sole responsibility of the Sponsor, except in the event this MOU is terminated in accordance with Section IV below. To the extent authorized by law, ~~T~~he Sponsor agrees to hold harmless and indemnify the FAA, its officers,

Commented [FAA3]: 6/13: Please delete this language. As the lead federal agency, the FAA is responsible for coordination throughout the NEPA process (which is the subject of the MOU).

Commented [TF4R3]: (6.19) as drafted this reflects the Sponsors role to facilitate rather than direct, which is retained by the FAA.

Commented [FAA5]: 6/13: We are generally ok with this addition, but see addition of "and."

Commented [TF6R5]: (6.19) please see proposed modification, the FAA directs the Contractor and the PA can agree to support that direction.

Commented [FAA7]: 6/13: We believe a general commitment is more appropriate for this document.

Commented [TF8R7]: (6.19) Ok

Commented [FAA9]: 6/13: Please delete this language. The MOU already limits termination to instances where there is good cause. See Section IV.

Commented [TF10R9]: (6.19) This is a cross reference to provision which states that the Sponsor would no longer be liable for the costs.

Commented [FAA11]: 6/13: Why is this language being included? Please provide verification that the Sponsor has the authority to hold harmless and indemnify the FAA for the claims described in the paragraph below.

Commented [TF12R11]: (6.19) as dicussed during 13 June call- under FAA internal review

agents, and employees, with respect to any and all judgments or settlements arising from claims, demands, causes of action, and the like ("Claims"), in connection with the Sponsor's employment of the Contractor and any and all Subcontractors which may arise from the termination or performance of the Contract or any other services, or purchase of materials utilized for the development and preparation of the EIS, or from termination of this MOU, except for Claims that arise out of the gross negligence or willful misconduct of the FAA, its officers, agents and employees. This indemnification by the Sponsor does not extend to administrative or legal costs of the FAA, including suits by third parties (other than the Contractor or its Subcontractors) against the FAA, involving the legality or adequacy of the FAA's compliance with NEPA and other laws and regulations, to the extent of the FAA's liabilities on those issues. The Sponsor shall cooperate and shall ensure, require as a term and condition of the Contract and enforce that condition that the Contractor cooperates in defense of any such suit. Notwithstanding anything to the contrary in this Agreement, nothing shall be construed to waive the applications of statutory provisions, immunities and limitations available under the Federal Tort Claims Act, (28 U.S.C. Sections 2671, et. seq.) or any other governmental immunity act, as the same may be amended from time to time, with respect to, and in defense of, any claim or claims asserted by any person or entity. The FAA agrees that the Sponsor may satisfy the indemnification requirements set forth above by means of a self-insurance program.

Commented [FAA13]: 6/13: Why is this condition being proposed? What concern is the Port attempting to address?

Commented [TF14]: (6.19) it is not clear what is meant by enforce, as FAA will be responsible for directing the Contractor.

Commented [FAA15]: 6/13: Ok.

~~The FAA will assign, upon execution of this MOU and through completion of the final EIS document, at a minimum one of the following: an environmental manager, attorney, and support staff, each on a full-time basis. The FAA will receive funding for the direct and indirect costs associated with the employment of the personnel assigned pursuant to this Agreement, in accordance with the existing funding agreement between the Sponsor and the FAA, dated as of [\_\_\_\_], for the funds required to satisfy the above obligations. It is the intention of the parties that these personnel shall be used to expedite preparation of the EIS contemplated by this Agreement. In addition, the FAA, during the development of the EIS, shall provide office space to the Contractor and Subcontractors within the Regional Office so as to facilitate late communication and work on the EIS. For the purposes of this Agreement, full-time shall mean availability at a minimum (5) five days a week, between the hours of 9 am and 5 pm eastern standard time, subject to vacation schedules, Federal holidays and sick leave.~~

Commented [FAA16]: 6/13: We do not think this level of specificity is appropriate for this document. Furthermore, we believe both parties are capable of independently managing their staff and workload as needed to complete their respective missions and meet their obligations. Please see paragraph I for a generalized commitment to provide staffing necessary to promote an expedited NEPA review process.

Commented [TF17R16]: (6.19) please see proposed edits to the language provided

Commented [FAA18]: 6/13: To the extent the Port has additional requests (beyond what is already in the reimbursable agreements) for documentation of how Port-funded staff are spending their time, please make that request outside of this document.

Commented [TF19R18]: (6.19) please see proposed edits below.

H. Both parties will assign the appropriate staff and management personnel dedicated necessary to promote the expeditious development and preparation, and review and completion of the EIS. It is the intention of both parties to ensure that such dedicated staff is available as appropriate to complete the EIS process in accordance with Executive Order 13807 entitled Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects ("EO 13807"). Further both parties agree that any actions

taken to effectuate this MOU will be done promptly and in all instances in a manner consistent with the principles set forth in E.O. 13807.

### III. PROCEDURES

A. Under the direction of the FAA, the Contractor shall develop and submit a plan of study to the FAA for the EIS for approval. The "Plan of Study" shall mean a plan that includes detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated man-hours required for completion of each aspect, the schedule for performing each aspect and a description of the internal and external review procedures to assure quality control. Also, the Plan of Study shall include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the environmental data and analyses and the development and preparation of the EIS. The Plan of Study should also identify procedures for retention of all data and sources used in the development of the EIS for eventual consolidation into the Administrative Record. In developing the Plan of Study, the Contractor may consider and use as appropriate any relevant submissions made by the Sponsor, or the Sponsor's representative which submissions shall be made directly to the FAA.

A.B. Upon completion of its review, ~~the~~ FAA will forward the draft Plan of Study to the Sponsor for review and comment. After receiving comments from the Sponsor, and the scoping process conducted pursuant to 40 C.F.R. Sec. 1501.7, the FAA will finalize and approve the Plan of Study. The Sponsor acknowledges that any such draft is subject to the change based on the scoping process. The Plan of Study and this MOU will serve as the basis for the Contractor's development and preparation of the EIS.

~~B.1.~~ The Plan of Study may be amended by the FAA from time to time as the work of the Contractor or its Subcontractors proceeds, but any amendments or changes which require the expenditure of additional funds by the Sponsor must be agreed to by the Sponsor. The Contractor will notify the FAA and the FAA will notify ~~The Sponsor will be notified and consulted with the Sponsor~~ prior to any significant amendments or modifications to the Plan of Study that require the expenditure of additional funds or modification to the proposed schedule for completion of the EIS. Payments by the Sponsor will be made and are subject to the availability of funds authorized by the Sponsor's Board of Commissioners.

C. 2. The Sponsor will pay Contractor and Subcontractors invoices only upon receipt from an FAA project manager confirming that the work product or materials set forth on a submitted invoice has been performed or provided by the Contractors and Subcontractors. Any invoices submitted for payment shall only include amounts for project work that has already been performed by the date on which such invoice is submitted for payment. The FAA cannot confirm the number of

Commented [FAA20]: 6/13: We do not agree to this language. We have agreed to work expeditiously but there are times when we will need to first review submissions before forwarding to the Sponsor.

Commented [TF21R20]: (6.19) see proposed modification.

Commented [FAA22]: 6/13: The FAA agrees to notify the sponsor of significant amendments but we do not know which amendments will lead the contractor to request additional funds

Commented [TF23R22]: (6.19) See modified language reflecting Contractor notification to FAA and FAA to Sponsor

Commented [FAA24]: 6/13: This language would be more appropriate in the contract with the Sponsor.

Commented [TF25R24]: (6.19) As the MOU sets the relationship between FAA, Sponsor and Contractor it is important to be included in the MOU.



hours worked on the invoice. The Sponsor may deny payment for any portion of any invoice that is not supported by the confirmation described above or for work not actually performed.

D. ~~As each portion of any draft of sections of the EIS and, unless otherwise directed by the FAA, any and all work performed by the Contractor and its Subcontractors in preparation of the EIS shall be submitted directly to the FAA, provided that after the FAA has had an opportunity to review, Sponsor may request such material and upon the FAA direction, the Contractor or Subcontractors may submit such work, data or analysis to the Sponsor, and upon request of the FAA Sponsor the FAA, to the Sponsor.~~ The Sponsor may communicate with the Contractor and its Subcontractors during the development of the EIS, but no prior review or discussion of data or analyses developed by the Contractor or Subcontractor as related to the EIS shall be afforded the Sponsor until the Contractor or Subcontractor submits such data or analyses to the FAA. In no case will the Sponsor discuss, review, modify, or edit the Contractor's work or the work of its Subcontractors prior to submission to the FAA, or be provided the opportunity to do so. All suggestions for modifications or changes to such sections recommended by the Sponsor or the Sponsor's representative shall only be made to the FAA, in accordance with Paragraph F below.

E. The FAA reserves the right to review periodically and modify the work of the Contractor to ensure that requirements under NEPA and other applicable laws and regulations are satisfied. The Contractor shall submit bi-weekly written reports on the progress of its work to the FAA, with a concurrent copy to the Sponsor. This report shall describe the present status of each aspect of the work, any problems encountered, and recommendations for modifications to the Plan of Study and any changes in personnel, methodology or schedules for completion.

F. As each portion of any draft or final document is completed, the FAA shall review each portion and those tasks completed thereunder and, after consultation with the Sponsor, shall approve, modify, comment thereon and/or direct further work with regard to such portion or tasks as necessary. ~~The FAA review will be coordinated in accordance with the principles outlined in Executive Order 13807 EO 13807 and all other applicable orders including but not limited to FAA Orders 1050.1F and 5050.4B. The FAA will utilize concurrent reviews as it determines to be appropriate consistent with the guidance provided by EO 13807.~~ Said directions and/or comments shall be made by the FAA in a manner so as to promote expeditious completion of the EIS, and the Contractor shall ensure incorporation of such comments into any editorial changes to the satisfaction of the FAA. Prior to approval, the FAA will forward final drafts to the Sponsor for review and comment. Comments from the Sponsor shall be sent to the FAA. The Contractor will only make modifications as the FAA directs regarding these comments. After the aforementioned consultation, final drafts of any documents will require FAA approval.

Commented [FAA26]: 6/13: We can confirm work product/completed tasks, but not hours worked. We also object to providing a certification.

Commented [TF27R26]: (6.19) Ok.

Commented [FAA28]: 6/13: The intent of this revised language is unclear. We prefer the original language.

Commented [TF29R28]: (6.19) Proposed language is intended to provide mechanism for material to go to Sponsor as directed by the FAA

Commented [FAA30]: Confusing. Level of detail for contract not MOU

Commented [FAA31]: 6/13: See proposed revised language, consistent with our 5/31 call.

Commented [TF32R31]: (6.19) Please minor edits to the proposed language.

G. If requested, the Contractor will provide the FAA access to and review of all procedures and underlying data used by the Contractor in developing submitted sections of the EIS, including, but not limited to, field reports, Subcontractor reports, and interviews with concerned private and public parties, whether or not such information may be contained in a draft or final EIS. Upon request by the Sponsor, the FAA will provide the Sponsor with access to all of the aforementioned procedures and underlying data. Such information provided by the FAA to the Sponsor shall be governed by paragraph III.U in this MOU.

H. To facilitate the development and preparation of the EIS, joint meetings among the FAA, Sponsor, and Contractor shall be held ~~as at a minimum on a bi-weekly basis, provided that, both parties agree to meet weekly, as appropriate to facilitate the timely coordination and the exchange of information.~~ However, the FAA reserves the right to work directly with the Contractor for purposes of assuring objectivity in preparing reports and/or for assuring expeditious communications. The Contractor will notify the FAA and Sponsor of any substantive meetings that are scheduled ~~with other agencies~~ and of their purpose and will provide an opportunity for the parties to attend if desired. No meeting will be held between the Contractor ~~or~~ and Sponsor without prior notification to and approval of the FAA. A summary of all matters relating to EIS discussions in any meetings or communications between the Contractor and a party hereto without the participation of the other said party will be included in each formal-bi-weekly report submitted by the Contractor to the FAA and Sponsor. The FAA ~~and the Sponsor~~ each reserve the right to consult directly with other Federal, state, and local officials and agencies during the preparation of the EIS to assure ~~the Sponsor's~~ compliance with ~~NEPA and other all~~ applicable laws and regulations.

I. The Sponsor and FAA each acknowledge that the Contractor and its Subcontractors' with any public workshops, hearings, or meetings as required and directed by the FAA to foster public familiarity and participation with respect to the assessment of impacts related to the Project.

J. At such time as the FAA, after consultation with the Sponsor, has approved the Draft EIS developed and prepared by the Contractor and its Subcontractors, the Contractor shall print the quantity of Draft EIS copies as specified by the FAA and submit same to the FAA. ~~Promptly after receipt from the Contractor copies of the Draft EIS, the FAA shall provide a courtesy copy of the Draft EIS to the Sponsor. The FAA shall submit an appropriate number of copies of the Draft EIS to and the Sponsor.~~

K. The Contractor shall be responsible for the costs associated with the printing and publication of the draft and final copies of the EIS. The Contractor shall be responsible for all costs associated with the publication of FAA-approved notices announcing public workshops, meetings, hearings, and the like. The Contractor shall also be

Commented [FAA33]: 6/13: The FAA has been and remains committed to meet as frequently as needed to support the project, but that should be determined as we proceed.

Commented [FAA34]: 6/13: As discussed above, the Port has the right to coordinate its additional obligations but it has committed to invite the FAA to attend.

Commented [TF35R34]: (6.19) agreed as set forth above in I. A. however PA should be notified of substantive meetings with other agencies which is what this provision addresses.

Commented [FAA36]: This has already been resolved above, please go back to original language.

Commented [TF37R36]: (6.19) As drafted we believe this is consistent with the above language concerning state and local law compliance. Please identify particular concern.

Commented [FAA38]: We disagree with this edit. FAA has to transmit to show ownership.

Commented [CM39R38]: Text revised to specify that only at the direction of the FAA would the Contractor submit copies to the Sponsor.

Commented [TF40R38]: (6.19) Modified to reflect transmission by the FAA of the Draft EIS to the Sponsor.

responsible for costs of stenographic and clerical services, preparation of graphics and visual aids associated with any public workshops, meetings, and hearings.

- L. In all instances involving questions as to the content or relevance of the environmental data and analyses, and evaluations and wording prepared by the Contractor during the EIS process, the FAA, with appropriate advice and consultation ~~when it deems necessary, will~~ with the Sponsor shall make the final determination on the inclusion, deletion or modification of the same in the Draft or Final EIS. The FAA shall provide the Sponsor with the opportunity to review and comment on such the environmental data and analyses, at minimum to identify errors, or omissions and to ensure that both the Federal and State or local documentation are to the extent feasibly consistent.
- M. Upon the anticipated completion of the Draft EIS, the FAA, with the Contractor's assistance, shall be responsible for organizing and conducting any public hearings.
- N. The FAA will receive all comments during the Draft EIS public review and comment period. This period (at least 45 days) will be initiated when the Environmental Protection Agency (EPA) publishes the "Draft EIS Notice of Availability" in the Federal Register.
- O. At the close of the Draft EIS public review and comment period, the FAA shall ~~promptly provide the Sponsor and the Contractor with all comments received, and shall~~ identify the issues and comments submitted which will require response in the Final EIS. The FAA will direct those issues and comments to the Contractor for preparation of proposed responses, and shall furnish the Sponsor with ~~copies~~ of comments ~~received that require response in the Final EIS~~. The FAA shall direct the Contractor will to furnish proposed responses to the FAA and Sponsor for review and comment. The Sponsor shall provide any comments to the FAA. The FAA, may elect after with appropriate advice and consultation with the Sponsor, shall to modify the proposed responses as it deems necessary.
- P. After receipt of comments and preparation of responses, the FAA, after appropriate advice and consultation, may direct the Contractor to make changes to the text of the Draft EIS as necessary.
- Q. At such time as the FAA has approved the Final EIS, the Contractor shall print the contracted quantity of Final EIS. The FAA shall submit an appropriate number of copies of the Final EIS to the Sponsor.
- R. The FAA will receive all comments on the Final EIS during the mandatory "hold period". This period (at least 30 days) will be initiated when the EPA publishes the "Final EIS Notice of Availability" in the Federal Register.

Commented [FAA41]: 6/13 - Delete, this is an FAA discretionary decision

Commented [TF42R41]: (6.19) As the Sponsor is responsible for ensuring compliance with applicable state and local requirements we are looking for a mechanism to ensure consistency.

Commented [FAA43]: 6/13: We object to these changes. The FAA has the discretion to screen the initial responses provided by the sponsor and consult with the sponsor as it deems necessary. Please revert to original language.

Commented [TF44R43]: (6.19) As drafted the FAA retains the discretion to accept or reject Sponsor comments.

~~P.S.~~ The FAA, and Contractor, and Sponsor shall take all reasonable steps to ensure expeditious preparation and issuance of the Draft and Final EIS in all instances in a manner consistent with the principles set forth in E.O. 13807.

Commented [TF45]: (6.19) please see reference to EO.

~~W.T.~~ ~~S.~~ The FAA, with assistance from the Contractor, will expeditiously prepare and issue the FAA Record of Decision, after publication of the "Final EIS Notice of Availability," and will make it available to the public: if permitted by applicable law, and determined by the FAA as appropriate shall issue the ROD contemporaneously with the Final EIS.

Commented [FAA46]: 6/13: The FAA already retains this discretion and it does not need to be put in this MOU. Please revert to original language.

~~F.U.~~ ~~F.~~ Information developed under this MOU is disclosable to the public to the extent required by law. The FAA will maintain the confidentiality of, and will not release or allow access to, any information, documents or materials which in its opinion are validly designated as confidential by the Sponsor or Contractor and which contain trade secrets, proprietary data, or commercial or financial information or falls within any other applicable existing federal exemption. In any instance where the FAA proposes to release to the public or allow access to any information, documents or materials created in the development and preparation of the EIS or which the Sponsor or Contractor has designated as confidential, it shall notify the Sponsor or Contractor of its intention to do so, at least five (5) business days prior to such release or grant of access. In addition, ~~and provide~~ the Sponsor or Contractor has the opportunity to either (i) appeal the decision in accordance with applicable regulations on such release or access prior to any such release or access or (ii) seek a protective order. (See FAA Order 1270.1)

Commented [TF47R46]: (6.19) since this is a potential option and does not bind the FAA to do so, we would request that it be included in the MOU

Commented [FAA48]: 6/13: Proposed revision

~~V.~~ ~~U.~~ The Contractor will maintain a segregated copy of each record/document relating to the project that is used by the FAA in their decision making process. This will form the basis for the FAA's administrative record of the EIS. The Consultant shall be responsible for managing the administrative project file and, upon completion of the work, will be responsible for submitting two copies of the completed administrative record for the project to the FAA, and the Sponsor, in accordance with FAA policy and guidance. The FAA will promptly after receipt provide one copy of the completed administrative record for the project to the Sponsor.

Commented [CM49]: Appeal process to be discussed.

Commented [FAA50]: 6/13: We need additional time to consider internally these proposed changes.

Commented [TF51R50]: 6.19 noted internally review is ongoing

~~W.~~ All work prepared under this MOU in the preparation and development of the EIS shall be delivered to the FAA and the Sponsor in printed format and searchable .pdf files along with components associated with each item, such as data files, text files, image files, spreadsheets, graphs, and tables. Whenever the Contractor is directed by the FAA to provide materials or work prepared under this MOU to the Sponsor, the Contractor will deliver it to the Sponsor in format set forth in the preceding sentence.

Commented [FAA52]: 6/13: This is the FAA s administrative record

Commented [TF53R52]: 6.19 Agreed, the provision allows for the FAA to give the Sponsor the copy

Commented [FAA54]: 6/13: The FAA will share with the Sponsor as appropriate and in accordance with the terms above.

Commented [TF55R54]: See modification clarifies that any sharing of materials has to be directed by the FAA

#### IV. CESSATION AND TERMINATION

A. Any of the parties to this MOU may withdraw from the terms of this MOU for good cause upon 30 days written notice to the other party. During this period, the parties will actively attempt to resolve any disagreement.

B. In the event of a termination of this MOU, and if the FAA determines that preparation of an EIS by the FAA is still required, it is agreed as follows:

1. The FAA shall have access to all documentation, reports, analyses and data by the Contractor and Subcontractors with confidentiality governed by paragraph III.T.

~~2.~~ The FAA shall assume the responsibility for preparing the EIS. The Sponsor shall no longer be responsible for the payment of costs associated with preparation of the EIS under the terminated MOU, apart from costs already incurred and required under the Sponsor's contract with the Contractor. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations which might require payment.

~~3.2.~~

~~4.3.~~ Liability for termination shall be in accordance with paragraph II.G. of this MOU.

#### VI. NO RIGHTS FOR NON-PARTIES

This Agreement does not create any right or benefit enforceable by law or equity of any person who is not a party to this Agreement against the Sponsor or FAA. No rights or privileges are created or intended to be created by this MOU in anyone not a signatory of this MOU.

#### VII. MODIFICATION

This MOU represents the entire agreement and may be modified by the parties hereto only by written agreement by all the parties.

#### VIII. AUTHORITY TO EXECUTE

The ~~representative~~representative of each party signing this Agreement warrants that he/she is duly authorized to do so.

#### IX. COUNTERPARTS

A photocopy or PDF copy of this Agreement shall have the same force and effect as an original of this Agreement.

**X. NOTICES**

Notices and other communications under this Agreement shall be in writing and shall be directed as follows, or to such other address as the party receiving such notice or communication shall have previously specified by notice to the other party sending such notice:

If to the Sponsor:

Title: Director of Aviation  
The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 18<sup>th</sup> Floor  
New York, New York 10007

with a copy to:

General Counsel  
The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 18<sup>th</sup> Floor  
New York, New York 10007

If to the FAA:

[FAA to provide contact]  
[Title]  
Federal Aviation Administration  
1 Aviation Plaza, Suite [ ]  
Jamaica, New York 11434

with a copy to:

[FAA to provide contact]  
[Title]  
Federal Aviation Administration  
800 Independence Ave., S.W.,  
Washington, D.C., 20591

**XI. NO PERSONAL LIABILITY**







**From:** [REDACTED]  
**To:** [Lamond, Kathryn](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Drew Brooks](#); [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [Herndon, Jane](#)  
**Cc:** [Summerville, James](#); [Papasavvas, Krystina](#); [Resnick, Risa](#); [Felix, Thomas](#); [REDACTED]; [Puliafico, Jessica](#); [REDACTED]  
**Subject:** RE: LGA Access Improvement Project  
**Date:** Tuesday, July 03, 2018 3:25:43 PM  
**Attachments:** [2018-06-26 Major Tasks to be Completed Prior to Issuance of NOI.docx](#)

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In light of last week's press activity and project interest at high levels, we would also like to discuss the tasks that need to be accomplished before the issuance of the NOI. I have attached a draft of those tasks and would like for all of us to start thinking about setting target dates for completion of these tasks.

## Marie C. Jenet

Environmental Specialist  
Federal Aviation Administration  
New York Airports District Office  
159-30 Rockaway Blvd, Suite 111  
Jamaica, New York 11434  
[REDACTED]  
[REDACTED]

-----Original Appointment-----

**From:** Lamond, Kathryn <[REDACTED]>  
**Sent:** Tuesday, July 03, 2018 2:24 PM  
**To:** [REDACTED] DiScenna, Matthew; Cohen, Michelle; Tabafunda, Faith; Rogak, Elizabeth; Jenet, Marie (FAA); Brooks, Andrew (FAA); Martinez, Evelyn (FAA); Sanchez, David (FAA); McCarthy, Mary M (FAA); Doyle, John (FAA); Henn, Patricia (FAA); Herndon, Jane  
**Cc:** Summerville, James; Papasavvas, Krystina; Resnick, Risa; Felix, Thomas; Wolfers-Lawrence, Jean (FAA); Puliafico, Jessica; Teodorescu, Andrew P (FAA)  
**Subject:** LGA Access Improvement Project  
**When:** Thursday, July 05, 2018 9:00 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** call-in #: [REDACTED] Code: [REDACTED] Host (Katie): [REDACTED]

Below please find a brief agenda for our call:

- 1) Selection and Procurement Process Open Items
- 2) ALP Drawing Submittal
- 3) Submittal of Additional Preliminary Environmental Analyses

I hope you all have a happy and safe July 4<sup>th</sup>!

Thanks,

Katie

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

## Major Tasks to be Completed Prior to Issuance of NOI

- Port submit planning documents to FAA for review (Scheduled for partial submittal in July)  
These should include:
  - Proposed update to the ALP (The ALP change is the federal action that triggers NEPA)
  - Purpose and need for the project (partial draft submitted 5/16/18)
  - Forecasts of demand (including ridership/usage studies) (draft submitted 5/16/18)
  - Analysis of alternatives considered and rationale for selection of a preferred alternative, if one is identified (preliminary approach submitted 5/16/18)
  - Preliminary engineering analysis and design details (including up to 30% project design) of the preferred alternative
  - Anticipated construction schedule

- Port meet with ATO to identify potential issues with NAVAIDS, Line of Site, etc (scheduled for July)
- FAA and PA enter into MOU (currently under negotiation)

Note: Planning information above needs to be complete at this point in order to proceed with any of the below

- PA issue Request for Proposals (currently under negotiation)
- FAA conducts consultant selection
- FAA and PA hold preliminary briefing/meeting with potential cooperating and participating agencies. Critical at this meeting is the presentation of the proposed project and discussions to identify other authorizations and approvals needed by these agencies and how to best approach and achieve 'one federal decision'(OFD). EO 13807 sets forth the framework for OFD, the 'MOU for Major Infrastructure Projects' signed by 12 federal agencies, implements the targets and policy directives in the EO. The information from this meeting is essential to ensure the work scope is inclusive of the work needed to address the needs of all the agencies. This meeting would also serve to identify the appropriate level of decisionmakers and responsible staff points of contact.
- Develop permitting timetables with concurrence points and key milestones  
The OFD MOU states that during prescoping, or as soon as practicable, the lead agency, in consultation with the cooperating agencies and the project sponsor, may develop a preliminary project plan that will establish how agencies will work together to process the environmental review and authorization decisions for the project.  
This includes:
  - A Permitting Timetable;
  - A project-specific framework for all agencies' reviews, analyses and decisions;
  - Specific areas of responsibilities and roles of all involved agencies;
  - Identification of the significant issues and concerns that affect the environmental review and authorizations needed for the project;

- A stakeholder, public and tribal outreach and engagement plan;
- Requirements for complete applications for respective authorizations, and an identification of the earliest possible stage when the application could be submitted;
- Procedures for integration of environmental review and authorization processes with the goal of meeting milestones in the Permitting Timetable; and
- Potential avoidance, minimization, and mitigation strategies.

The Permitting Timetable would be developed as soon as practicable after the project is sufficiently advanced to allow the determination of relevant milestones and before publication of an NOI

- FAA conduct pre-scoping outreach to existing public groups (e.g.,LGA Part 150 Roundtable)
- FAA develop Scope of Work
- FAA Issue Notice of Intent to Prepare an Environmental Impact Statement

**From:** [Lamond, Kathryn](#)  
**To:** [Drew Brooks](#)  
**Cc:** [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Cohen, Michelle](#); [Clark, Patty](#); [Puliafico, Jessica](#); [REDACTED]  
[REDACTED] [Jenet, Marie \(FAA\)](#); [REDACTED] [Herndon, Jane](#); [DiScenna, Matthew](#)  
**Subject:** RE: LGA AirTrain Follow Ups  
**Date:** Monday, July 23, 2018 10:48:18 AM  
**Attachments:** [Interagency Points of Contact 07202018.xlsx](#)  
[2018-06-26 Major Tasks to be Completed Prior to Issuance of NOI\\_DRAFT-PA....docx](#)

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Good morning Andrew,

Attached please find a list of our initial contacts at the various agencies. The contacts may change once the agencies are further engaged in the project. We are also working on getting you the appropriate contact at the Governor's Office for the submittal of your letter. We should have the contact for you early this week.

Also attached, please find our comments on the Pre-NOI activities list. Please let us know if you have any questions.

We are still working through the latest version of the MOU. We will provide an updated version as soon as possible.

Thanks,  
Katie

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**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Monday, July 23, 2018 10:27 AM  
**To:** DiScenna, Matthew <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
**Cc:** Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Cohen, Michelle <[REDACTED]> Clark, Patty <[REDACTED]> Puliafico, Jessica <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]> [REDACTED]  
[REDACTED]  
**Subject:** RE: LGA AirTrain Follow Ups

Good Morning Matt and Katie,

As a follow up to last week's call on the LGA Access Improvement Project, we were hoping you could provide us the POCs for the Regional, State, and City Agencies below. Additionally, we'd like to request any response to the latest version of the MOU as soon as you can provide it.

Thanks,

Andrew Brooks  
Environmental Program Manager

Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

---

**From:** DiScenna, Matthew <[REDACTED]>  
**Sent:** Thursday, June 28, 2018 11:30 AM  
**To:** Jenet, Marie (FAA) <[REDACTED]> Brooks, Andrew (FAA) <[REDACTED]>  
Doyle, John (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]>  
[REDACTED] Teodorescu, Andrew P (FAA) <[REDACTED]> Henn, Patricia  
(FAA) <[REDACTED]> McCarthy, Mary M (FAA) <[REDACTED]> Sanchez,  
David (FAA) <[REDACTED]>  
**Cc:** Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Cohen,  
Michelle <[REDACTED]> [REDACTED] Lamond, Kathryn <[REDACTED]>  
Puliafico, Jessica <[REDACTED]>  
**Subject:** LGA AirTrain Follow Ups

All,

As a follow up to last week's call, we would like to confirm that we are ok with you sharing our draft ridership report with FTA. Please go ahead and solicit their input.

As requested, below is a comprehensive list of all agencies that we have coordinated with to date on the project. It's unlikely that all of these entities will be cooperating agencies as part of the NEPA process, though some will be. We're happy to discuss that further in advance of the initial interagency coordination meeting.

Federal

Federal Aviation Administration  
DOT Office of the Secretary/Build America Bureau

Regional

New York Metropolitan Transportation Council

New York State

Department of Transportation  
Metropolitan Transportation Authority

- Long Island Rail Road
- New York City Transit

-

New York City

Department of City Planning  
Department of Parks and Recreation  
Department of Transportation

Department of Environmental Protection  
Economic Development Corporation  
Law Department  
Mayor's Office

Please be in touch with any questions or additional information requests on these topics.

Regards,  
Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ

[REDACTED] (office)

[REDACTED] (cell)

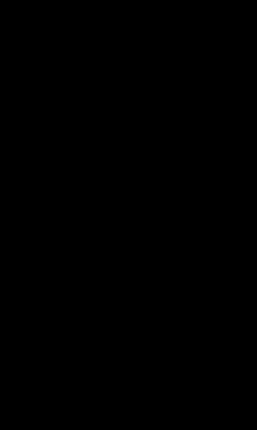
[REDACTED]

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

LGA Access Improvement Project  
Preliminary List of State and Local Agency Contacts

<b>Agency</b>	<b>POC</b>	<b>Name</b>
<b>New York State</b>		
Department of Transportation	ENV/MOU	Norman Kee
MTA	ENV/MOU	Bill Wheeler
Department of Environmental Conservation	ENV	Stephen Watts
	MOU	Steve Zahn
Department of State, Coastal Zone Resiliency	ENV	Jennifer Street
	MOU	Matthew Maraglio
<b>New York City</b>		
Mayor's Office of Environmental Coordination	ENV/MOU	Hilary Semel
Department of Transportation	ENV	Naim Rasheed
Department of City Planning	ENV	Jack Schmidt
Department of Environmental Protection	ENV	Nick Barbaro



Title	Phone Number
Assistant Counsel	
Director of Special Project Development and Planning	
Regional Permit Administrator - NYSDEC Region 2	
Regional Administrator - NYSDEC Region 2	
Coastal Resources Specialist	
Coastal Resources Specialist	
Director	
Senior Director, Traffic Engineering and Planning	
Director, Transportation Planning	
Director, Capital Programing BWSO	

**Major Tasks to be Completed Prior to Issuance of NOI**

Task/Action	PA Comments
<ul style="list-style-type: none"> <li>● Port submit planning documents to FAA for review (Scheduled for partial submittal in July)</li> </ul>	
<ul style="list-style-type: none"> <li>○ These should include:</li> </ul>	
<ul style="list-style-type: none"> <li>○ Proposed update to the ALP (The ALP change is the federal action that triggers NEPA)</li> </ul>	
<ul style="list-style-type: none"> <li>○ Purpose and need for the project (partial draft submitted 5/16/18)</li> </ul>	
<ul style="list-style-type: none"> <li>○ Forecasts of demand (including ridership/usage studies) (draft submitted 5/16/18)</li> </ul>	
<ul style="list-style-type: none"> <li>○ Analysis of alternatives considered and rationale for selection of a preferred alternative, if one is identified (preliminary approach submitted 5/16/18)</li> </ul>	
<ul style="list-style-type: none"> <li>○ Preliminary engineering analysis and design details (including up to 30% project design) of the preferred alternative</li> </ul>	PA intends to submit a concept design package for preferred alignment in advance of development of scope of work with the selected consultant
<ul style="list-style-type: none"> <li>○ Anticipated construction schedule</li> </ul>	PA will provide construction staging and phasing for the preferred alignment in advance of development of scope of work with the selected consultant
<ul style="list-style-type: none"> <li>● Port meet with ATO to identify potential issues with NAVAIDS, Line of Site, etc (scheduled for July)</li> </ul>	
<ul style="list-style-type: none"> <li>● FAA and PA enter into MOU (currently under negotiation)</li> </ul>	
Note: Planning information above needs to be complete at this point in order to proceed with any of the below	
<ul style="list-style-type: none"> <li>● PA issue Request for Proposals (currently under negotiation)</li> </ul>	
<ul style="list-style-type: none"> <li>● FAA conducts consultant selection</li> </ul>	
<ul style="list-style-type: none"> <li>● FAA and PA hold preliminary briefing/meeting with potential cooperating and participating agencies. Critical at this meeting is the presentation of the proposed project and discussions to <u>identify other authorizations and approvals needed by these agencies</u> and how to best approach and achieve ‘one federal decision’(OFD). EO 13807 sets forth the framework for OFD, the ‘MOU for Major Infrastructure Projects’ signed by 12 federal agencies, implements the targets and policy directives in the EO. The information from this meeting is essential to ensure the work scope is inclusive of the work needed to addresses the needs of all the agencies. This meeting would also serve to identify the appropriate level of decisionmakers and responsible staff points of contact.</li> </ul>	If deemed appropriate, the PA can provide a preliminary list of anticipated permits and approvals to FAA in advance of the interagency coordination meeting
<ul style="list-style-type: none"> <li>● Develop permitting timetables with concurrence points and key milestones</li> </ul>	

<p>The OFD MOU states that during prescoping, or as soon as practicable, the lead agency, in consultation with the cooperating agencies and the project sponsor, may develop a preliminary project plan that will establish how agencies will work together to process the environmental review and authorization decisions for the project.</p>	<p>PA is available to support these efforts in any way deemed appropriate</p>
<p>This includes:</p>	
<ul style="list-style-type: none"> <li>• A Permitting Timetable;</li> </ul>	
<ul style="list-style-type: none"> <li>• A project-specific framework for all agencies’ reviews, analyses and decisions;</li> </ul>	
<ul style="list-style-type: none"> <li>• Specific areas of responsibilities and roles of all involved agencies;</li> </ul>	
<ul style="list-style-type: none"> <li>• Identification of the significant issues and concerns that affect the environmental review and</li> </ul>	
<p>authorizations needed for the project;</p>	
<ul style="list-style-type: none"> <li>• A stakeholder, public and tribal outreach and engagement plan;</li> </ul>	
<ul style="list-style-type: none"> <li>• Requirements for complete applications for respective authorizations, and an identification of</li> </ul>	
<p>the earliest possible stage when the application could be submitted;</p>	
<ul style="list-style-type: none"> <li>• Procedures for integration of environmental review and authorization processes with the goal</li> </ul>	
<p>of meeting milestones in the Permitting Timetable; and</p>	
<ul style="list-style-type: none"> <li>• Potential avoidance, minimization, and mitigation strategies.</li> </ul>	
<p><u>The Permitting Timetable would be developed as soon as practicable after the project is sufficiently advanced to allow the determination of relevant milestones and before publication of an NOI</u></p>	
<ul style="list-style-type: none"> <li>• FAA conduct pre-scoping outreach to existing public groups (e.g.,LGA Part 150 Roundtable)</li> </ul>	<p>PA recommends further discussion on this topic to determine the best approach</p>
<ul style="list-style-type: none"> <li>• FAA develop Scope of Work</li> </ul>	<p>PA will provide any necessary support for this process</p>
<ul style="list-style-type: none"> <li>• FAA Issue Notice of Intent to Prepare an Environmental Impact Statement</li> </ul>	



**From:** [DiScenna, Matthew](#)  
**To:** [Drew Brooks](#); [Jenet, Marie \(FAA\)](#); [REDACTED]  
**Cc:** [Clark, Patty](#); [Lamond, Kathryn](#); [Cohen, Michelle](#); [Puliafico, Jessica](#); [Herndon, Jane](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#)  
**Subject:** LGA AirTrain - Preliminary List of Potential Permits and Approvals  
**Date:** Thursday, August 02, 2018 6:21:32 PM  
**Attachments:** [AirTrain LGA Federal Agencies Potential Involvement 2018-08-02.pdf](#)  
[AirTrain LGA State and City Agencies Potential Involvement 2018-08-02.pdf](#)

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AirTrain Team,

Attached are two preliminary lists of potential consultations, permits and approvals that may be required as part of the environmental review process. There is one list for federal and one for state/local.

Please be in touch with us if you have any questions.

Regards,  
Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ  
[REDACTED] (office)  
[REDACTED] (cell)  
[REDACTED]

**LGA Airport Access Improvement Project –  
Potential Federal Consultations, Permits, and Other Approvals**

<b>Federal Consultations, Permits, and Other Approvals<sup>1</sup></b>	<b>Agencies</b>
NEPA	Federal Aviation Administration
General Conformity Applicability Analysis and, if required, General Conformity Determination	Federal Aviation Administration
CFR Part 158 – Passenger Facility Charges	Federal Aviation Administration
CFR Part 77 – Objects Affecting Navigable Airspace	Federal Aviation Administration
Airport Layout Plan Approval	Federal Aviation Administration
Section 106 of the National Historic Preservation Act	Federal Aviation Administration (in consultation with SHPO and applicable Tribes); Advisory Council on Historic Preservation
Uniform Relocation Assistance and Real Property Acquisition Policies Act* <sup>2</sup>	Federal Aviation Administration
Title VI of the Civil Rights Act of 1964 and Executive Order 12898 Environmental Justice*	Federal Aviation Administration
Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks*	Federal Aviation Administration
Approval for the Use and Occupancy of Air Rights over Federal-Aid Highway	Federal Highway Administration
Transit Noise and Vibration Impact Assessment Guidance	Federal Transit Administration
Essential Fish Habitat under the Endangered Species Act Magnuson-Stevens Fishery Conservation and Management Act Endangered Species Act Migratory Bird Treaty Act	National Marine Fisheries Service; U.S. Fish and Wildlife Service
Transportation Conformity Review	New York Metropolitan Transportation Council (in other locations, the process for project-level reviews includes Federal Highway Administration and U.S. Environmental Protection Agency)
Section 404 – Clean Water Act Section 10 – Rivers and Harbors Act Section 401 – Water Quality Certification	U.S. Army Corps of Engineers; U.S. Environmental Protection Agency; National Marine Fisheries Service; U.S. Fish and Wildlife Service
CWA Section 402 National Pollution Elimination Discharge Permit for construction and operation	U.S. Army Corps of Engineers; U.S. Environmental Protection Agency
Coastal Zone Management Act	Delegated by National Oceanic and Atmospheric Administration to the New York City Department of Environmental Protection
Bridge Act and/or in water navigation channel work or disruption	U.S. Coast Guard

<b>Federal Consultations, Permits, and Other Approvals<sup>1</sup></b>	<b>Agencies</b>
Section 4(f) of the U.S. Department of Transportation Act	Federal Aviation Administration, with involvement from U.S. Department of the Interior
Section 309 of the Clean Air Act regarding adequacy and the acceptability of the environmental impacts of the proposed action	U.S. Environmental Protection Agency
Noise Control Act	U.S. Environmental Protection Agency

\* Asterisk denotes process rather than permit or approval.

Notes:

- 1- This list is intended to identify potential federal consultations, permits, and approvals that may be required as part of the environmental review for the LGA Airport Access Improvement Project. The applicability of the items listed in the table are dependent on alignment and related issues.
- 2- The Port Authority is of the opinion that the Uniform Relocation Assistance and Real Property Acquisition Policies Act is not applicable to the proposed project as currently contemplated.

**LGA Airport Access Improvement Project-****Potential State and City Consultations, Permits, and Other Approvals**

<b>Agencies</b>	<b>State and City Consultations, Permits, and Other Approvals<sup>1</sup></b>
New York State Department of Transportation (NYSDOT)	<ul style="list-style-type: none"> <li>• Approval for roadway/roadside modifications</li> <li>• Approval for stormwater system modifications on roadways</li> </ul>
New York State Office of Parks, Recreation and Historic Preservation (State Historic Preservation Office)	<ul style="list-style-type: none"> <li>• Section 106 of National Historic Preservation Act (compliance with Section 106 constitutes compliance with the New York State Historic Preservation Act)</li> </ul>
New York State Department of Environmental Conservation (NYSDEC)	<ul style="list-style-type: none"> <li>• Water Quality Certification (6NYCRR Part 608)</li> <li>• Tidal Wetlands Permit (6NYCRR Part 661)</li> <li>• Protection of Waters Permit (6NYCRR Part 608)</li> <li>• Water quality certification for the federal Section 401 Permit</li> <li>• Coastal Erosion Hazard Area Permit (6NYCRR Part 505)</li> <li>• Flood Hazard Areas Permit (ECL Article 36; 6NYCRR Part 500)</li> <li>• State Environmental Quality Review Act (SEQRA) findings</li> <li>• State Pollutant Discharge Elimination System (SPDES) Permit for stormwater from construction activity</li> </ul>
New York State Department of State	<ul style="list-style-type: none"> <li>• Coastal zone consistency determination for activities within the coastal zone for federal permits</li> </ul>
New York State Office of General Services	<ul style="list-style-type: none"> <li>• License to occupy State-owned underwater lands</li> <li>• Disposition of State-owned land, if any</li> </ul>
Metropolitan Transportation Authority (MTA)	<ul style="list-style-type: none"> <li>• Disposition of property</li> <li>• Review of construction plans</li> <li>• Review of modifications to stations, if any</li> <li>• Coordination regarding service changes</li> </ul>
New York City Department of Parks and Recreation (NYC Parks)	<ul style="list-style-type: none"> <li>• Issuance of Construction and Forestry Permits, with an agreement on restitution (for tree removal)</li> <li>• Review of Passerelle design and plans</li> <li>• Coordination on U.S. DOT Section 4(f)</li> </ul>
New York City Department of Environmental Protection (NYCDEP)	<ul style="list-style-type: none"> <li>• Review of air quality analyses</li> <li>• Review of noise analyses</li> <li>• Review of hazardous materials assessment</li> </ul>
New York City Department of Transportation (NYCDOT)	<ul style="list-style-type: none"> <li>• Review of traffic analysis (operations and construction)</li> </ul>
Mayor's Office of Environmental Coordination	<ul style="list-style-type: none"> <li>• Lead coordinating agency for City discretionary actions and CEQR</li> </ul>

## Notes:

- 1- This list is intended to identify potential State and City consultations, permits, and approvals that may be required as part of the environmental review for the LGA Airport Access Improvement Project. The applicability of the items listed in the table are dependent on alignment and related issues.



**From:** [REDACTED]  
**To:** [DiScenna, Matthew](#); [Lamond, Kathryn](#); [Herndon, Jane](#); [Clark, Patty](#); [Rogak, Elizabeth](#); [Tabafunda, Faith](#)  
**Cc:** [Jenet, Marie \(FAA\)](#); [REDACTED]; [REDACTED]; [REDACTED]; [Cohen, Michelle](#); [Puliafico, Jessica](#)  
**Subject:** FW: Presentation for Thursday's Meeting  
**Date:** Wednesday, August 22, 2018 4:51:19 PM  
**Attachments:** [Final Agency Presentation 8-23-2018.pptx](#)

---

Matt,

The final version of our presentation is attached.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

---

**From:** Brooks, Andrew (FAA)  
**Sent:** Wednesday, August 22, 2018 1:24 PM  
**To:** 'DiScenna, Matthew' <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
Herndon, Jane <[REDACTED]> [REDACTED] Rogak, Elizabeth  
<[REDACTED]> Tabafunda, Faith <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]>  
Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Doyle, John (FAA)  
<[REDACTED]> Teodorescu, Andrew P (FAA) <[REDACTED]> Martinez,  
Evelyn (FAA) <[REDACTED]> Henn, Patricia (FAA) <[REDACTED]> Cohen,  
Michelle <[REDACTED]> Puliafico, Jessica <[REDACTED]>  
**Subject:** RE: Presentation for Thursday's Meeting

Matt,

Thanks for sending this along. We are finishing up the last edits on our end and will send it when it is done.

On a side note, I think we need to leave the presentations separate. We have branding standards that we need to have for all of our slides, so we would need to modify your slides with our footers if we were to integrate them. Additionally, when I started to merge the two, there were minor formatting issues with the page numbers on your presentation. Let me know if you are ok with leaving them separate moving forward.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

---

**From:** DiScenna, Matthew <[REDACTED]>  
**Sent:** Wednesday, August 22, 2018 12:27 PM  
**To:** Brooks, Andrew (FAA) <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
Herndon, Jane <[REDACTED]> [REDACTED] Rogak, Elizabeth  
<[REDACTED]> Tabafunda, Faith <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]>  
Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Doyle, John (FAA)  
<[REDACTED]> Teodorescu, Andrew P (FAA) <[REDACTED]> Martinez,  
Evelyn (FAA) <[REDACTED]> Henn, Patricia (FAA) <[REDACTED]> Cohen,  
Michelle <[REDACTED]> Puliafico, Jessica <[REDACTED]>  
**Subject:** RE: Presentation for Thursday's Meeting

Andrew and team –

Here is our updated presentation, we made some small changes based on your feedback this morning. We removed old slide 2 and made a small addition to the “Progress to Date” slide (new slide 2).

Thanks,  
Matt

---

**From:** DiScenna, Matthew  
**Sent:** Tuesday, August 21, 2018 7:21 PM  
**To:** [REDACTED] <[REDACTED]> Lamond, Kathryn  
<[REDACTED]> Herndon, Jane <[REDACTED]> Clark, Patty  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Tabafunda, Faith  
<[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] Cohen, Michelle <[REDACTED]> Puliafico, Jessica  
<[REDACTED]>  
**Subject:** RE: Presentation for Thursday's Meeting

Thank you, Andrew. We are reviewing and will let you know if we have any questions during our call tomorrow morning.

The Port Authority's project overview presentation for Thursday is attached here. Please be in touch with any questions.

Thanks,  
Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ  
[REDACTED] (office)  
[REDACTED] (cell)  
[REDACTED]

---

**From:** [REDACTED] [[mailto:\[REDACTED\]](mailto:[REDACTED])]  
**Sent:** Tuesday, August 21, 2018 7:25 AM  
**To:** DiScenna, Matthew <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
Herndon, Jane <[REDACTED]> Clark, Patty <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Tabafunda, Faith <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]  
**Subject:** Presentation for Thursday's Meeting

Good Morning,

Attached for courtesy review is the presentation for Thursday's Meeting. Please let us know if you have any questions as soon as you are able.

Additionally, please provide a copy of the presentation you will be giving regarding the project. It will be necessary to incorporate that presentation into the project administrative file, so we would appreciate having a copy as soon as you are able to share it.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434

Phone: [REDACTED]

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

# LaGuardia Airport Access Improvement Project: Interagency Meeting

Presented by: Federal Aviation Administration  
Project Team

Date: August 23, 2018



Federal Aviation  
Administration



# Welcome

- **Steve Urlass, FAA Eastern Region Airports Division Director**
- **Rick Cotton, Port Authority of New York and New Jersey Executive Director**



# Introductions

- **Federal Aviation Administration Project Team**
- **Port Authority of New York and New Jersey Project Team**
- **Agency Representatives**



# Roles and Responsibilities

- **Federal Aviation Administration (FAA)**
  - Conducts environmental analysis; coordination with federal, state, and local agencies; and public outreach
  - Ensures compliance with applicable environmental laws and regulations
  - Prepares EIS documentation
  - Approves or disapproves documents and federal actions
  - Prepares Record of Decision
  - Project to be developed under auspices One Federal Decision Memorandum of Understanding for all federal actions





# Roles and Responsibilities

- **Port Authority of New York and New Jersey (PANYNJ)**
  - Leases and Operates LaGuardia Airport (LGA)
  - Sponsor of the Proposed LGA Access Improvement Project
  - Provides planning, design, and other information to assist the FAA in carrying out its responsibilities with EIS preparation

## **THE PORT AUTHORITY OF NEW YORK & NEW JERSEY**



# Roles and Responsibilities

- **Federal, State, and Local Agencies**

- Determine Cooperating and Participating Agency Status
- Provide Input into development of Permitting Timetable
- Ensure EIS and Record of Decision address necessary requirements



# Regulatory Background

- **EIS for LaGuardia Access Improvement Project will be developed subject to NEPA, CEQ Regulations, and FAA Orders 1050.1F and 5050.4B**
- **FAA is the Lead Federal Agency for the EIS because the Federal Actions sought fall under FAA jurisdiction. They are:**
  - Approval of a change to the Airport Layout Plan (ALP) for LaGuardia to depict the proposed project
  - (Potential) Approval of a request to Impose and Use Passenger Facility Charges to finance the proposed development



# One Federal Decision

- **Framework established by Executive Order 13807, *Establishing Discipline and Accountability in the Environmental Review Process for Infrastructure Projects***
- **One Federal Decision covers Major Infrastructure Projects. These are projects where:**
  - Lead Federal agency has determined that it will prepare an environmental impact statement (EIS)
  - Multiple authorizations by Federal agencies will be required to proceed with construction
  - Project sponsor has identified the reasonable availability of funds sufficient to complete the project.



# One Federal Decision MOU

- **Memorandum of Understanding Implementing One Federal Decision (effective March 21, 2018)**
  - Establishes cooperative relationship among federal agencies
  - Develop permitting timetable that includes all federally required authorizations for the project
  - All individual agency decisions should be incorporated in one Record of Decision (ROD)
  - Two year average timeframe from Notice of Intent to ROD
  - All permits issued within 90 days of the ROD
  - Sets forth a dispute resolution process
  - Identifies exceptions



# One Federal Decision- Agency Obligations

- **Actively participate in environmental reviews and authorization processes for major infrastructure projects and communicate with one another as well as applicants and sponsors in an effective and structured manner that starts early and continues throughout the review process**
- **Conduct concurrent reviews with respect to the environmental review and authorization decisions**



# One Federal Decision- Agency Obligations

- **Work together to meet milestones established on the permitting timetable**
- **Commit to process enhancements - agencies will work individually & collectively to:**
  - remove impediments to OFD
  - implement best practices
  - develop & implement programmatic agreements



# One Federal Decision- FAA Strategies

- **FAA is implementing the One Federal Decision framework through strategies building on best practices and lessons learned from past experience**
- **To achieve the two-year goal, we are targeting aspects of the permitting and NEPA review process that have caused delays in prior EIS projects**
  - Pre-scoping with Agencies and Public
  - Concurrence points at Purpose and Need, Alternatives, and identification of Preferred Alternative
  - Monitoring schedules via the Permitting Dashboard
- **Will develop project-specific Cooperative Agreement with other agencies**





# Proposed LGA Access Improvement Project

**The Port Authority of New York and New Jersey will present the project to be reviewed.**

**Presentation is by Matt DiScenna, Program Manager for the LaGuardia Access Improvement Project**



# Discussion Topics

**Facilitator:**

**Marie Jenet, New York Airports District Office, FAA**

- 1. Questions on the Proposed Project**
- 2. Identification of Resource Issues for Scope Development**



# Discussion Topics

**Facilitator:**

**Jean Wolfers-Lawrence, Airport Planning and Environmental Division,  
FAA Headquarters**

**3. Permits Needed and Pre-Scoping Procedures**

**4. Permitting Dashboard**



# Permitting Timetable

- **Mutually agreed upon between FAA and Cooperating/Participating Agencies and in consultation with the Sponsor.**
- **Three formal concurrence points:**
  - Purpose and Need
  - Alternatives
  - Preferred Alternative
- **Other milestones as appropriate for the permit or authorization (i.e. sponsor submission of Section 404 Individual Permit Application).**



# Permitting Timetable

- **OMB and CEQ recommended schedule:**
  - NOI to DEIS = 14 months
  - Formal public comment to FEIS = 8 months
  - FEIS to ROD = 2 months
  - Note: FAA recognizes the Port Authority's goal to accelerate the above schedule.
- **Pre-scoping activities**
  - Identify Cooperating and Participating Agencies
  - Identify permits and authorizations needed
  - Develop and agree to a Permitting Timetable
  - All prior to NOI



# Permitting Dashboard

- **EO 13604 – Improving Performance of Federal Permitting and Review of Infrastructure Projects (May 2012)**
- **FAST Act requires an online, publically accessible website to publish the status of NEPA and permitting for all projects requiring an EA or EIS.**
- **DOT memo**
- **EO 13807 – Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure (Aug 2017)**
- **OFD Memo (April 2018)**



# Permitting Dashboard

The screenshot shows a web browser window with the URL <https://www.permits.performance.gov>. The page header includes the text "PERMITTING DASHBOARD" and "FEDERAL INFRASTRUCTURE PROJECTS". A search bar with the placeholder "Search the site" and a "GO" button is located in the top right. A navigation menu below the header contains links for "About", "Projects", "Resources & Tools", and "Map". The main content area features a large banner image of a train in a tunnel. Below the banner is the heading "The Permitting Dashboard" and a sub-heading: "A website that provides transparency for the environmental review and authorization process for infrastructure projects to increase predictability for project sponsors and promote government accountability in the review process".

The page is divided into three columns of content:

- PROJECT MAP:** The map below depicts all Federal infrastructure projects tracked on the Permitting Dashboard. For an interactive version of this map that features project classification overlays and individual project details, please click here or select 'Map' from the navigation bar.
- BECOME A FAST-41 COVERED PROJECT:** Infrastructure project sponsors interested in the benefits of Title 41 of the Fixing America's Surface Transportation Act ("FAST-41") are encouraged to select: "Becoming a FAST-41 Covered Project"
- NEWS:** **PERMITTING COUNCIL REDUCES SCHEDULE FOR PROPOSED PROJECT BY ALMOST TWO YEARS**  
**April 19, 2018**  
The Federal Permitting Improvement Steering Council (FPISC)

A "Submit Feedback >" button is located in the bottom right corner of the content area. The Windows taskbar at the bottom shows various application icons and the system clock indicating 10:22 AM on 8/17/2018.



# Discussion Topics

**Facilitator:**

**Andrew Brooks, Eastern Region Airports Division, FAA**

**5. Identification of Analytical Needs**

**6. Timeframes and Schedule Goals**





# Cooperative Agreement

- **Based on today's discussion and follow-up, FAA will proceed to identify Cooperating and Participating Agencies**
- **Formal Invitations will be issued in the next few weeks including requests to designate a point of contact for representation**
- **Cooperating and Participating Agencies would be party to a Project Cooperative Agreement under One Federal Decision**



# Cooperative Agreement Contents

- **Commitments of resources on behalf of reviewing agencies**
- **Commitment to concurrent reviews**
- **Timeframes for review periods**
- **Coordination protocols including:**
  - Data sharing
  - Identification of analytical needs to support One Federal Decision
  - Pre-Application processes for applicable permitting actions
  - Dispute Resolution Procedures



# Closing Remarks

- **Future Meetings**

- Targeting next meeting for mid-Fall to discuss Cooperative Agreement and additional project info.
- Formal Agency Scoping Meeting will also be held following issuance of Notice of Intent
- Will work to establish recurring meetings on monthly or bi-monthly basis to support coordination of all agencies

- **Final points of discussion or questions?**



**From:**

**To:**

[REDACTED]

[Drew Brooks;](#)

[DiScenna, Matthew; Clark, Patty; Lamond,](#)

[Kathryn](#)

**Cc:**

[REDACTED]

[TRO-  
Puliafico, Jessica; Herndon, Jane;](#)

[Helman, Marc; Cohen, Michelle; Scully, Lysa; Tabafunda, Faith](#)

**Subject:**

LaGuardia Airport Access Improvement Project - Interagency Meeting

**Attachments:**

[AirTrain LGA Federal Agencies Potential Involvement 2018-08-02.pdf](#)

[2018-08-09 FINAL INVITE LETTER.docx](#)

[AirTrain LGA State and City Agencies Potential Involvement 2018-08-02.pdf](#)

[AirTrain LGA Alignment ROW Aerial DRAFT 2018-07-27.pdf](#)

[Invited Agencies.docx](#)

[Security Requirements.docx](#)

[2018-08-23 Final Agenda.docx](#)

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FINAL AGENDA IS ATTACHED

We are finalizing arrangements for the upcoming Interagency Meeting for the LaGuardia Airport Access Improvement Project.

If you haven't already responded, please reply as soon as possible.

The meeting begins promptly at 10am. Please arrive 15-20 minutes early to allow time for security clearance.

I am reattaching the items that were sent in the invitation email on 8/9 for your convenience. (Seven Attachments)

Please do not hesitate to call or email if you have any questions.

Thank you

Marie C. Jenet

Environmental Specialist  
Federal Aviation Administration  
New York Airports District Office  
159-30 Rockaway Blvd, Suite 111  
Jamaica, New York 11434

[REDACTED] <mailto:[REDACTED]>

**LGA Airport Access Improvement Project –  
Potential Federal Consultations, Permits, and Other Approvals**

<b>Federal Consultations, Permits, and Other Approvals<sup>1</sup></b>	<b>Agencies</b>
NEPA	Federal Aviation Administration
General Conformity Applicability Analysis and, if required, General Conformity Determination	Federal Aviation Administration
CFR Part 158 – Passenger Facility Charges	Federal Aviation Administration
CFR Part 77 – Objects Affecting Navigable Airspace	Federal Aviation Administration
Airport Layout Plan Approval	Federal Aviation Administration
Section 106 of the National Historic Preservation Act	Federal Aviation Administration (in consultation with SHPO and applicable Tribes); Advisory Council on Historic Preservation
Uniform Relocation Assistance and Real Property Acquisition Policies Act* <sup>2</sup>	Federal Aviation Administration
Title VI of the Civil Rights Act of 1964 and Executive Order 12898 Environmental Justice*	Federal Aviation Administration
Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks*	Federal Aviation Administration
Approval for the Use and Occupancy of Air Rights over Federal-Aid Highway	Federal Highway Administration
Transit Noise and Vibration Impact Assessment Guidance	Federal Transit Administration
Essential Fish Habitat under the Endangered Species Act Magnuson-Stevens Fishery Conservation and Management Act Endangered Species Act Migratory Bird Treaty Act	National Marine Fisheries Service; U.S. Fish and Wildlife Service
Transportation Conformity Review	New York Metropolitan Transportation Council (in other locations, the process for project-level reviews includes Federal Highway Administration and U.S. Environmental Protection Agency)
Section 404 – Clean Water Act Section 10 – Rivers and Harbors Act Section 401 – Water Quality Certification	U.S. Army Corps of Engineers; U.S. Environmental Protection Agency; National Marine Fisheries Service; U.S. Fish and Wildlife Service
CWA Section 402 National Pollution Elimination Discharge Permit for construction and operation	U.S. Army Corps of Engineers; U.S. Environmental Protection Agency
Coastal Zone Management Act	Delegated by National Oceanic and Atmospheric Administration to the New York City Department of Environmental Protection
Bridge Act and/or in water navigation channel work or disruption	U.S. Coast Guard

<b>Federal Consultations, Permits, and Other Approvals<sup>1</sup></b>	<b>Agencies</b>
Section 4(f) of the U.S. Department of Transportation Act	Federal Aviation Administration, with involvement from U.S. Department of the Interior
Section 309 of the Clean Air Act regarding adequacy and the acceptability of the environmental impacts of the proposed action	U.S. Environmental Protection Agency
Noise Control Act	U.S. Environmental Protection Agency

\* Asterisk denotes process rather than permit or approval.

Notes:

- 1- This list is intended to identify potential federal consultations, permits, and approvals that may be required as part of the environmental review for the LGA Airport Access Improvement Project. The applicability of the items listed in the table are dependent on alignment and related issues.
- 2- The Port Authority is of the opinion that the Uniform Relocation Assistance and Real Property Acquisition Policies Act is not applicable to the proposed project as currently contemplated.



U. S. Department  
of Transportation

Eastern Region, Airports Division

1 Aviation Plaza, Room 516  
Jamaica, New York 11434-4809

**Federal Aviation  
Administration**

August 9, 2018

Re: LaGuardia Airport Access Improvement Project Interagency Meeting

Dear XXXXX,

We are inviting you to participate in an interagency meeting to discuss the Port Authority of New York and New Jersey's (Port Authority) proposal for the LaGuardia Airport Access Improvement Project. The meeting is scheduled for Thursday August 23, 2018, 10:00 am -1:00 pm at the offices of the Port Authority at 4 World Trade Center (150 Greenwich Street), 23<sup>rd</sup> floor, New York, NY.

The Port Authority is proposing to construct and operate a new automated people mover AirTrain system to provide a reliable transit alternative for air passenger and employee access to LGA. The proposed project would provide a direct connection between LGA and the Metropolitan Transportation Authority's Long Island Rail Road (LIRR) and New York City Transit (NYCT) stations. The current preferred alternative is for an elevated AirTrain between LGA and a transfer station at Willets Point, New York (see attached map). It would include two on-airport stations with a terminus station at Willets Point providing connections to the Mets-Willets Point stations of the LIRR Port Washington Branch and the NYCT Flushing No. 7 subway line. The proposed AirTrain would also serve as an on-airport transit system that would facilitate transfers between airline terminals and provide connections to employee parking, potential future passenger parking, and a consolidated rental car facility. The Port Authority has a goal of completing the proposed project in 2022 and commencing passenger service in 2023.

We anticipate that the proposed project would be a major infrastructure project, requiring a number of approvals by the Federal Aviation Administration (FAA) and other Federal agencies. The FAA intends to prepare an Environmental Impact Statement (EIS) to comply with the provisions of the National Environmental Policy Act and Council on Environmental Quality, United States Department of Transportation, and FAA environmental regulations and guidance. As most of the approvals involve the FAA, we are assuming the role as the lead federal agency.

As part of the preparation of the EIS, and under the direction of Executive Order 13807, and the Memorandum for One Federal Decision, the FAA would like to engage with Federal, State, and local agencies early on in the process to determine the scope of analysis, to identify potentially required approvals and permits, and to facilitate review of the proposed project. Because of the accelerated timeline for environmental review proposed by the Office of the Governor of the State of New York for

this project, the FAA is requesting your participation in the aforementioned interagency meeting. This meeting is in advance of formal interagency scoping that would occur after the issuance of a formal Notice of Intent to prepare an EIS.

We recognize your agency as having special expertise and/or a potential authorization or permitting role for the proposed AirTrain. As such, your early participation is critical. Based on conversations with your staff, \_\_\_\_\_ has been identified as an appropriate representative for your agency. If you determine that your agency has an authorization or permit associated with implementation of the proposed project, we expect this representative to be an integral part of the process and should plan to attend meetings, assist in obtaining information relevant to the environmental analysis, and facilitate agency reviews and decision-making.

If you would like to add to or change this point of contact, please let us know. We would also appreciate your notifying us of your intention to participate in the August 23, 2018 meeting as soon as possible. I am attaching a draft meeting agenda and logistical information. Please have your staff contact Marie Jenet \_\_\_\_\_ or \_\_\_\_\_ to let us know of any changes/additions and your participation in the August 23 meeting.

Please also note, that to gain entry into 4 World Trade Center, building security requires a Government Issued photo ID and pre-reporting of the names of the individuals attending. Please provide the names of attendees directly to Kathryn Lamond at \_\_\_\_\_ no later than August 21, 2018 in order to be added to the security access list. If you do not provide an attendees' name, security is not able to grant access.

We look forward to meeting with you.

Sincerely,

Steven M. Urlass  
Director  
Airports Division

cc: FAA AirTrain Team  
PANYNJ AirTrain Team

Attachments: Alignment Aerial View (draft)  
Agenda (draft)  
Security Information and Directions  
List of Invited Agencies  
List of Potential Approvals and Permits (draft)



PRELIMINARY DRAFT  
LGA AIRPORT ACCESS  
IMPROVEMENT PROJECT  
ROW  
27 July 2018



SOUTH EXPANSION OF  
EAST PARKING GARAGE

TRACTION  
POWER  
SUBSTATION

EAST STATION

GRAND CENTRAL PARKWAY

CENTRAL HALL  
STATION

27TH AVE

31ST DR

GRAND CENTRAL PARKWAY

TRACTION  
POWER  
SUBSTATION

AIRTRAIN  
SUBSTATION

OMSF

126TH STREET

PARKING LOT  
ENTRANCE/EXIT

EMPLOYEE  
PARKING  
OPTIONS

WILLETS  
POINT  
STATION

TRACTION  
POWER  
SUBSTATION

PICK UP/ DROP  
OFF AREA

VERTICAL  
CIRCULATION  
FROM LIRR

**LGA Airport Access Improvement Project-****Potential State and City Consultations, Permits, and Other Approvals**

<b>Agencies</b>	<b>State and City Consultations, Permits, and Other Approvals<sup>1</sup></b>
New York State Department of Transportation (NYSDOT)	<ul style="list-style-type: none"> <li>• Approval for roadway/roadside modifications</li> <li>• Approval for stormwater system modifications on roadways</li> </ul>
New York State Office of Parks, Recreation and Historic Preservation (State Historic Preservation Office)	<ul style="list-style-type: none"> <li>• Section 106 of National Historic Preservation Act (compliance with Section 106 constitutes compliance with the New York State Historic Preservation Act)</li> </ul>
New York State Department of Environmental Conservation (NYSDEC)	<ul style="list-style-type: none"> <li>• Water Quality Certification (6NYCRR Part 608)</li> <li>• Tidal Wetlands Permit (6NYCRR Part 661)</li> <li>• Protection of Waters Permit (6NYCRR Part 608)</li> <li>• Water quality certification for the federal Section 401 Permit</li> <li>• Coastal Erosion Hazard Area Permit (6NYCRR Part 505)</li> <li>• Flood Hazard Areas Permit (ECL Article 36; 6NYCRR Part 500)</li> <li>• State Environmental Quality Review Act (SEQRA) findings</li> <li>• State Pollutant Discharge Elimination System (SPDES) Permit for stormwater from construction activity</li> </ul>
New York State Department of State	<ul style="list-style-type: none"> <li>• Coastal zone consistency determination for activities within the coastal zone for federal permits</li> </ul>
New York State Office of General Services	<ul style="list-style-type: none"> <li>• License to occupy State-owned underwater lands</li> <li>• Disposition of State-owned land, if any</li> </ul>
Metropolitan Transportation Authority (MTA)	<ul style="list-style-type: none"> <li>• Disposition of property</li> <li>• Review of construction plans</li> <li>• Review of modifications to stations, if any</li> <li>• Coordination regarding service changes</li> </ul>
New York City Department of Parks and Recreation (NYC Parks)	<ul style="list-style-type: none"> <li>• Issuance of Construction and Forestry Permits, with an agreement on restitution (for tree removal)</li> <li>• Review of Passerelle design and plans</li> <li>• Coordination on U.S. DOT Section 4(f)</li> </ul>
New York City Department of Environmental Protection (NYCDEP)	<ul style="list-style-type: none"> <li>• Review of air quality analyses</li> <li>• Review of noise analyses</li> <li>• Review of hazardous materials assessment</li> </ul>
New York City Department of Transportation (NYC DOT)	<ul style="list-style-type: none"> <li>• Review of traffic analysis (operations and construction)</li> </ul>
Mayor's Office of Environmental Coordination	<ul style="list-style-type: none"> <li>• Lead coordinating agency for City discretionary actions and CEQR</li> </ul>

## Notes:

- 1- This list is intended to identify potential State and City consultations, permits, and approvals that may be required as part of the environmental review for the LGA Airport Access Improvement Project. The applicability of the items listed in the table are dependent on alignment and related issues.

## **Invited Agencies**

### Federal

Federal Emergency Management Agency  
Federal Highways Administration  
Federal Railroad Administration  
Federal Transit Administration  
National Marine Fisheries Service  
National Parks Service  
US Army Corps of Engineers  
US Coast Guard  
US Department of the Interior  
US Environmental Protection Agency  
US Fish and Wildlife Service

### State

Metropolitan Transportation Authority (Including Long Island Rail Road and New York City Transit)  
New York State Department of Environmental Conservation  
New York State Department of State  
New York State Department of Transportation  
New York State Office of Historic Preservation  
Office of the Governor of the State of New York

### Local

New York City Department of Environmental Protection  
New York City Department of City Planning  
Office of the Mayor of New York City

## Security Requirements

The meeting will be held in the Board Room on the 23rd floor of 4 World Trade Center (150 Greenwich Street NY, NY 10007). Please arrive at the building at least fifteen minutes early to allow time to go through security clearance on the ground floor. You will need to bring a Government Issued ID to be allowed access up to the Board Room. Please provide attendee names to Kathryn Lamond ( [REDACTED] ) no later than August 21st, 2018 in order to be added to the security access list. If you do not provide the names of all attendees, they will not be permitted to access the 23rd floor.

## Directions

Parking near 4 WTC is extremely limited, therefore public transportation via one of the following options is the easiest way access the building:

### Transportation Options

#### By subway

- A, C, J, M, Z, 2, 3, 4 or 5 - Fulton Street
- E - World Trade Center station
- R - Cortland Street station
- 1 to Rector Street

#### By bus

- M1 or M6 to Church and Vesey Streets

#### By PATH

- Newark-World Trade Center or Hoboken-World Trade Center lines to the World Trade Center station.

LaGuardia Airport Access Improvement Project  
Interagency Meeting  
Thursday August 23<sup>rd</sup>, 2018  
10:00 am – 1:00 pm  
Port Authority of NY and NJ Offices  
4 World Trade Center (150 Greenwich Street)  
23<sup>rd</sup> Floor – Board Room

**Agenda**

- |          |  |
|----------|--|
| 10:00 am | Welcome and Introductions  |
| 10:15 am | Roles and Responsibilities   |
| 10:30 am | Regulatory Background, One Federal Decision  |
| 10:45 am | Presentation of the Proposed Project   |
| 11:15 am | Discussion - Questions on the Proposed Project<br>Identification of Resource Issues for Scope Development  |
| 11:30 am | Break - Light Refreshments will be served  |
| 11:45 am | Discussion - Potential Permits Needed and Pre-Scoping Procedures<br>Permitting Timetable<br>Permitting Dashboard for Federal Infrastructure Projects |
| 12:00 pm | Discussion – Identification of Analytical Needs<br>Timeframes and Schedule Goals   |
| 12:30 pm | Formal Cooperating Agency Requests and Cooperative Agreement   |
| 12:50 pm | Future Meetings, Additional Questions/Discussion   |
| 1:00 pm  | Adjourn  |

**From:** [Papasavvas, Krystina](#)  
**To:** [Drew Brooks](#); [Summerville, James](#); [Lamond, Kathryn](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Jenet, Marie \(FAA\)](#); [REDACTED]; [Herndon, Jane](#)  
**Cc:** [REDACTED]; [Puliafico, Jessica](#); [REDACTED]; [Resnick, Risa](#)  
**Subject:** LGA Access Improvement Project  
**Date:** Thursday, September 27, 2018 2:49:39 PM  
**Attachments:** [Advertisement - kp 9.26.docx](#)

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Andrew, Marie, et. al.

Attached is the updated advertisement for the LGA AirTrain EIS Consultant procurement based on further review. Updates are represented in track-change mode for your ease of review.

Please review the document and let us know if you have any comments.

Thank you.

**Krystina Papasavvas**

Integrity, Compliance and Contract Review  
Port Authority of New York and New Jersey Procurement Department  
4 World Trade Center  
150 Greenwich Street, 21st Floor  
New York, NY 10007

T: [REDACTED]

F: [REDACTED]

email: [REDACTED]

## THE PORT AUTHORITY OF NY & NJ

### REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (LGA) ACCESS IMPROVEMENT PROJECT (RFP# 54523)

The Port Authority of New York and New Jersey is seeking to identify firms interested in responding to a Request for Proposals (RFP) for the Performance of Expert Professional Environmental Review Services for the LaGuardia Airport Access Improvement Project. The successful firm will work with, and be responsible to, the Federal Aviation Administration, in preparing an Environmental Impact Statement to assess and disclose the potential environmental impacts associated with the construction and operation of a proposed AirTrain at LaGuardia Airport.

RFP #54523 may be obtained online at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html?tabnum=6>. Addenda to the RFP, if any, will be posted at this site. Monitor the advertisement on the web site to ensure your awareness of any changes.

If you have any technical problems accessing the documents online, email us at [REDACTED] or call us at [REDACTED] for assistance. Your email should include the RFP number, your firm name, email address, contact person, mailing address, and phone number.

It is currently anticipated that proposals shall be due by **2:00 PM** on **October XX, 2018** or as otherwise indicated in the document. Proposals must have the RFP Number and full legal firm name clearly indicated on the outside package.

Send Proposal(s) to: The Port Authority of New York and New Jersey, Procurement Department, 4 WTC, 150 Greenwich Street, 21st Floor, New York, NY 10007, Attention: RFP/Proposal Custodian. \*\*SEE RFP DOCUMENT FOR SPECIFIC DELIVERY INSTRUCTIONS\*\*

A VALID PHOTO ID IS REQUIRED TO GAIN ACCESS INTO THE BUILDING, IF YOU ARE HAND DELIVERING YOUR PROPOSAL.

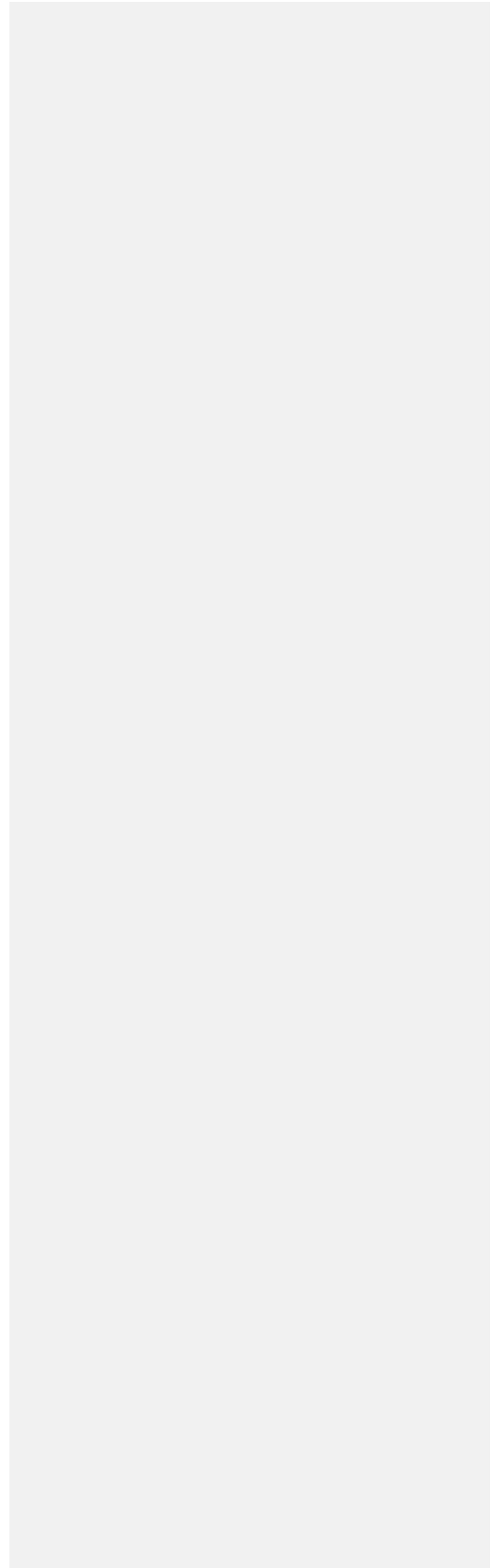
The Port Authority of New York and New Jersey, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all proposers that it will affirmatively ensure that in any agreement entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

Commented [PK1]: My best guess is that it goes in the ad I checked the federal contract provisions doc and it doesn't give much guidance to location. To be safe, I suggest including it in the other FAA contract clauses we plan to attach to the Agreement

#### **PLEASE PUBLISH IN THE FOLLOWING:**

Newark Star Ledger

Bergen Record  
ENR – Electronic  
NYSCR  
NJ State Contractor





**From:** [Cohen, Michelle](#)  
**To:** [Cohen, Michelle](#)  
**Subject:** FW: Executed LGA-Air Train Access MOU  
**Date:** Tuesday, October 23, 2018 8:46:40 AM  
**Attachments:** [PANYNJ FAA MOU LGA Airtrain Signed Copy.pdf](#)

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**From:** [REDACTED] [\[mailto:\[REDACTED\]\]](#)  
**Sent:** Monday, October 22, 2018 3:59 PM  
**To:** Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]>  
**Cc:** [REDACTED]  
**Subject:** Executed LGA-Air Train Access MOU

Good afternoon Faith & Liz,

Attached is a .pdf copy of the countersigned Air Train Access MOU. Please note that we had a minor correction on the Section X. Notices page and the FAA signature page (pgs. 11 & 12, respectively) to change "Steve Urlass" to "Steven M. Urlass". I'll send both pages as hardcopies in the mail and will provide tracking information tomorrow.

Thanks,

Andrew

Andrew Teodorescu  
Attorney, Environmental Law Branch, AGC-620  
Office of the Chief Counsel  
Federal Aviation Administration  
1 Aviation Plaza  
Jamaica, NY 11434  
Tel: [REDACTED]  
Cell [REDACTED]

This communication might contain communications between attorney and client, communications that are part of the agency deliberative process, or attorney-work product, all of which are privileged and not subject to disclosure outside the agency or to the public. Please consult with the Office of the Chief Counsel before disclosing any information contained in the email. Information as message text or embedded within an attachment is attorney-client privileged information, attorney work product, and/or part of the agency's deliberative process. Do not redistribute, forward, or otherwise transmit this information without prior approval of the author.

**Execution Copy**

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION**

**AND**

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**I. INTRODUCTION AND PURPOSE**

- A. This Memorandum of Understanding ("MOU") provides a framework in which the United States Department of Transportation (the "DOT"), Federal Aviation Administration (the "FAA"), an executive agency of the United States, organized and existing under the laws of the United States, having its principal office at 800 Independence Avenue, S.W., Washington, D.C., 20591, will prepare an Environmental Impact Statement (the "EIS") for the LaGuardia Airport ("LGA") Access Improvement Project (the "Project") proposed by The Port Authority of New York and New Jersey (the "Port Authority" or "Sponsor"), a body corporate and politic created by a Compact between the States of New York and New Jersey, with the consent of the Congress of the United States, having its principal office at Four World Trade Center, 150 Greenwich Street, New York, NY, 10007. The MOU describes the relationship of the above named parties in preparing the EIS. Subject to completion of the EIS, the FAA will issue a determination regarding the Project that will be set forth in a Record of Decision.
- B. As lead agency, the FAA will select an independent contractor (the "Contractor") to prepare the EIS. The Sponsor shall be the party responsible to engage and retain the Contractor with funds provided by the Sponsor.
- C. The EIS and any related documents shall comply with the provisions of the National Environmental Policy Act of 1969 ("NEPA") and Council on Environmental Quality ("CEQ"), DOT, and FAA environmental regulations and guidance, as well as all applicable local, state and Federal laws, as appropriate.
- D. It is the purpose of this MOU to establish an understanding between the Sponsor and the FAA regarding the responsibilities of the parties and the conditions and procedures to be followed in the development and preparation of the EIS.
- E. The parties that enter into this agreement intend that development and preparation of the EIS, as articulated in this MOU, will satisfy the pertinent environmental requirements of the FAA and any Cooperating Agencies (as that term is defined in

40 CFR § 1501.6 and 1508.5) that may have jurisdiction over the Project, including Executive Order 13807 entitled Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects ("EO 13807").

## **II. GENERAL PROVISIONS**

- A. As the lead agency, the FAA will be responsible to ensure compliance with all the requirements of NEPA (42 U.S.C. § 4321 et seq.), CEQ Regulations (40 C.F.R. Parts 1500-1508), and appropriate DOT and FAA environmental orders. The FAA shall ensure that all reasonable alternatives and their impacts, cumulative impacts, and mitigation/conditions are analyzed in the EIS, and shall be responsible for the scope and content of the EIS. The FAA acknowledges that the Sponsor will be responsible for coordinating with such state and local entities as necessary for respective compliance with applicable state and local laws. The Sponsor agrees to invite the FAA to participate in meetings held with state and local entities wherein discussion would serve to support the EIS and to ensure that environmental data and analysis related to the EIS comply with the requirements of applicable state and local laws.
- B. The Sponsor will engage and retain the Contractor, selected by the FAA, for the preparation of the EIS. The Contractor, with the approval of the FAA and Sponsor, may employ such other contractors and experts (collectively referred to as "Subcontractors"), as are required for the adequate development and preparation of the EIS.
- C. As approved by the FAA, the Contractor will provide, through its staff or by Subcontractor, the expertise, staffing, and technical capabilities required for the preparation of the EIS. The FAA will direct the scope of the EIS and will independently evaluate all information, environmental data and analyses submitted by the Contractor and revise or cause additional study and analyses to be performed as necessary.
- D. The Contracts between the Sponsor and Contractor and between the Contractor and Subcontractors (collectively the "Contract") shall be consistent with the provisions of this MOU and shall specifically incorporate those provisions articulated herein that address the conduct of the Contractor. Before starting EIS preparation, the Contractor and Subcontractors shall provide verification to FAA that they have no financial interest in the outcome of the action the EIS will address, consistent with FAA Order 5050.4B, Paragraph 1003(d). The Contractor and Subcontractors working on the EIS may not bid on any future actions the EIS addresses until the approving FAA official issues a Record of Decision based on the EIS. This prohibition does not prevent the Sponsor from selecting the EIS Contractor or Subcontractors for later development actions, should they be approved. However, that selection must occur after free and open competition and there can be no implied or suggested guarantee that the Sponsor would favorably

consider the EIS Contractor or Subcontractors. Further, the Sponsor shall ensure that the Contract shall specifically limit any remedies available to the Contractor and any Subcontractors, so as to affirmatively relieve the United States of America, the FAA, and any officer, agent or employee of same, from any liability arising out of the performance or termination of the contract for preparation of the EIS, or out of this MOU.

1. Prior to beginning work on the Project, the Contractor and any Subcontractors shall sign a "Disclosure Statement" provided by the FAA per the requirements of FAA Order 5050.4B, Paragraph 1003(d), specifying they have no financial or other interest in the outcome of the project.
2. The FAA shall evaluate the Disclosure Statement prior to its approval.

E. The Sponsor shall facilitate the coordination of effort and the exchange of information related to the planning, design, and construction of the Project, as these activities relate to the preparation of the EIS. In development of the EIS, the Contractor may consider and use as appropriate any relevant submissions made by the Sponsor, or the Sponsor's representative. However, all materials prepared by the Sponsor must first be submitted directly to the FAA and whether they are transmitted to the Contractor will be determined at the FAA's discretion. Furthermore, the Sponsor may communicate directly with the Contractor and its Subcontractors on matters related to invoices for the EIS and non-related projects. For all other EIS related communications between the Sponsor, the Contractor and its Subcontractors prior approval shall be obtained from FAA. The Sponsor shall make all reasonable efforts to assist and cooperate with the FAA's directions to the Contractor and Subcontractors and to support the FAA's efforts to ensure the satisfactory and timely performance of the duties of the Contractor and Subcontractors as specified in this MOU.

F. The Sponsor and FAA shall:

1. Appoint such representatives from their respective agencies as necessary to accomplish the coordination necessary for the satisfactory and expeditious preparation of the EIS. Notice to any such representative shall constitute notice to that party.
2. Review substantive work products under the Contract(s) for the EIS as the FAA deems necessary, consistent with Article III of this MOU.
3. Have their respective representatives attend meetings with other Federal, state, regional, and local agencies for the purpose of increasing communications and receiving comments, as the same may be necessary, desirable, or required by law in preparation of the EIS.

- G. All costs incurred in connection with the employment of the Contractor and any and all Subcontractors, or other persons retained or employed by the Sponsor, shall be the sole responsibility of the Sponsor, except as limited by paragraph (B)(2) of Section IV below. To the extent authorized by law, the Sponsor agrees to hold harmless and indemnify the FAA, its officers, agents, and employees, with respect to any and all judgments or settlements arising from claims, demands, causes of action, and the like ("Claims"), in connection with the Sponsor's employment of the Contractor and any and all Subcontractors thereof, which may arise from the termination or performance of the Contract or any other services or purchase of materials utilized for the development and preparation of the EIS, or from termination of this MOU, except for Claims that arise out of the gross negligence or willful misconduct of the FAA, its officers, agents and employees. This indemnification by the Sponsor does not extend to administrative or legal costs of the FAA, including suits by third parties (other than suits by the Contractor or its Subcontractors) against the FAA, involving the legality or adequacy of the FAA's compliance with NEPA and other laws and regulations, to the extent of the FAA's liabilities on those issues. The Sponsor shall cooperate and shall require as a term and condition of the Contract and enforce the Contract condition that the Contractor cooperates in defense of any such suit against FAA described in the preceding sentence. Notwithstanding anything to the contrary in this Agreement, nothing shall be construed to waive the applications of statutory provisions, immunities and limitations available under the Federal Tort Claims Act, (28 U.S.C. Sections 2671, et. seq.) or any other governmental immunity act, as the same may be amended from time to time, with respect to, and in defense of, any claim or claims asserted by any person or entity. The FAA agrees that the Sponsor may satisfy the indemnification requirements set forth above by means of a self-insurance program.
- H. Both parties will assign the appropriate staff and management personnel dedicated to the expeditious development, preparation, review, and completion of the EIS. It is the intention of both parties to ensure that such dedicated staff are made available as appropriate to complete the EIS process in accordance with EO 13807. Further both parties agree that any actions taken to effectuate this MOU will be done promptly and in all instances in a manner consistent with the principles set forth in EO 13807.

### **III. PROCEDURES**

- A. Under the direction of the FAA, the Contractor shall develop and submit a plan of study to the FAA for the EIS for approval. The "Plan of Study" shall mean a plan that includes detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated man-hours required for completion of each aspect, the schedule for performing each aspect and a description of the internal and external review procedures to assure quality

control. Also, the Plan of Study shall include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the environmental data and analyses and the development and preparation of the EIS. The Plan of Study should also identify procedures for retention of all data and sources used in the development of the EIS for eventual consolidation into the project record. In developing the Plan of Study, the Contractor may consider and use as appropriate any relevant submissions made by the Sponsor, or the Sponsor's representative. However, submissions from the Sponsor must first be made directly to the FAA and whether they are transmitted to the Contractor will be determined at the FAA's discretion.

B. Upon completion of its review, the FAA will forward the draft Plan of Study to the Sponsor for review and comment. After receiving comments from the Sponsor, and the scoping process conducted pursuant to 40 C.F.R. Sec. 1501.7, the FAA will finalize and approve the Plan of Study. The Sponsor acknowledges that the Plan of Study is subject to change based on the scoping process. The Plan of Study and this MOU will serve as the basis for the Contractor's development and preparation of the EIS.

C.

1. The Plan of Study may be amended by the FAA from time to time as the work of the Contractor or its Subcontractors proceeds, but any amendments or changes which require the expenditure of additional funds by the Sponsor must be agreed to by the Sponsor. If any amendments to the Plan of Study require the expenditure of additional funds by the Sponsor, the Contractor shall be obligated to notify the FAA and the Sponsor of such additional costs, with sufficient time to accommodate funding authorization and allocation. After notification from the Contractor, the FAA will consult with the Sponsor prior to the FAA authorizing and the Contractor undertaking any significant amendments or modifications to the Plan of Study that require the expenditure of additional funds or modification to the proposed schedule for completion of the EIS. Payments by the Sponsor will be made and are subject to the availability of funds authorized by the Sponsor's Board of Commissioners.

2. The Sponsor will pay Contractor and Subcontractors invoices only upon receipt from an FAA project manager confirming that the work product or materials set forth on a submitted invoice has been performed or provided by the Contractor and Subcontractors. Any invoices submitted for payment shall only include amounts for project work that has already been performed by the date on which such invoice is submitted for payment. The FAA cannot confirm the number of hours worked on the invoice but shall cooperate with any independent audit of contract performance. The Sponsor may deny payment for any portion of any invoice that is not supported by the confirmation described above or for work not actually performed.

- D. Any and all work performed by the Contractor and its Subcontractors in preparation of the EIS shall be submitted directly to the FAA. After the FAA has had an opportunity to review, the Sponsor may request such material and, if the FAA so directs, the Contractor or Subcontractors shall submit such work, data or analysis to the Sponsor. No prior review or discussion of data or analyses developed by the Contractor or Subcontractor as related to the EIS shall be afforded the Sponsor until the Contractor or Subcontractor submits such data or analyses to the FAA and the FAA authorizes disclosure to the Sponsor. In no case will the Sponsor discuss, review, modify, or edit the Contractor's work or the work of its Subcontractors prior to submission to the FAA, or be provided the opportunity to do so. All suggestions for modifications or changes to such sections recommended by the Sponsor or the Sponsor's representative shall only be made to the FAA in accordance with Paragraph F below. The Port Authority acknowledges that any such documents shared with the FAA will no longer be protected from disclosure based on the deliberative process privilege, however the FAA will consider whether other exemptions and privileges to withhold documents may still exist and be applicable.
- E. The FAA reserves the right to review periodically and modify the work of the Contractor to ensure that requirements under NEPA and other applicable laws and regulations are satisfied. The Contractor shall submit bi-weekly written reports on the progress of its work to the FAA, with a concurrent copy to the Sponsor. This report shall describe the present status of each aspect of the work, any problems encountered, and recommendations for modifications to the Plan of Study and any changes in personnel, methodology or schedules for completion.
- F. As each portion of any draft or final document is completed, the FAA shall review each portion and those tasks completed thereunder and, after consultation with the Sponsor, shall approve, modify, comment thereon and/or direct further work with regard to such portion or tasks as necessary. The FAA review will be coordinated in accordance with the principles outlined in EO 13807 and all other applicable orders including but not limited to FAA Orders 1050.1F and 5050.4B. The FAA will utilize concurrent reviews as it determines to be appropriate consistent with the guidance provided by EO 13807. Said directions and/or comments shall be made by the FAA in a manner so as to promote expeditious completion of the EIS. The Contractor shall ensure incorporation of such comments into any editorial changes to the satisfaction of the FAA. Prior to approval, the FAA will forward final drafts to the Sponsor for review and comment. Comments from the Sponsor shall be sent to the FAA. The Contractor will only make modifications as the FAA directs regarding these comments. After the aforementioned consultation, final drafts of any documents will require FAA approval.
- G. If requested, the Contractor will provide the FAA access to and review of all procedures and underlying data used by the Contractor in developing submitted sections of the EIS, including, but not limited to, field reports, Subcontractor reports, and interviews with concerned private and public

parties, whether or not such information may be contained in a draft or final EIS. Upon request by the Sponsor, the FAA will provide the Sponsor with access to all of the aforementioned procedures and underlying data. Such information provided by the FAA to the Sponsor shall be governed by paragraph III.T in this MOU.

- H. To facilitate the development and preparation of the EIS, joint meetings among the FAA, Sponsor, and Contractor shall be held at a minimum on a bi-weekly basis, as appropriate to facilitate the timely coordination and the exchange of information. However, the FAA reserves the right to work directly with the Contractor for purposes of assuring objectivity in preparing reports and/or for assuring expeditious communications. The Contractor will notify the FAA and Sponsor of any substantive meetings that are scheduled with other agencies and of their purpose and will provide an opportunity for the parties to attend if desired. No meeting will be held between the Contractor and Sponsor without prior notification to and approval of the FAA. A summary of all matters relating to EIS discussions in any meetings or communications between the Contractor and a party hereto without the participation of the other said party will be included in each formal bi-weekly report submitted by the Contractor to the FAA and Sponsor. The FAA reserves the right to consult directly with other Federal, state, and local officials and agencies during the preparation of the EIS to assure the Sponsor's compliance with all applicable laws and regulations. The Sponsor recognizes that FAA is the lead agency for preparation of the EIS and the FAA must be given an opportunity to attend all meetings that discuss or could impact the EIS, including meetings related to permits listed in the permitting timetable that will be established pursuant to EO 13807. The FAA acknowledges that independent of the above referenced EIS related meetings and coordination commitments the Sponsor also has an ongoing right to consult with state and local officials on other matters in connection with LGA and unrelated to the EIS. In the event that the EIS is discussed in the above referenced consultations, the Sponsor will make best efforts to cease EIS related discussions until notifying the FAA and providing the FAA an opportunity to participate, as contemplated in this paragraph.
- I. The Sponsor and FAA each acknowledge that the Contractor and its Subcontractors shall provide the FAA with full cooperation in coordinating any public workshops, hearings, or meetings as required and directed by the FAA to foster public familiarity and participation with respect to the assessment of impacts related to the Project.
- J. At such time as the FAA, after consultation with the Sponsor, has approved the Draft EIS developed and prepared by the Contractor and its Subcontractors, the Contractor shall print the quantity of Draft EIS copies as specified by the FAA and submit same to the FAA. Promptly after receipt from the Contractor copies of the Draft EIS, the FAA shall provide a courtesy copy of the Draft EIS to the Sponsor.



- K. The Contractor shall be responsible for the costs associated with the printing and publication of the draft and final copies of the EIS. The Contractor shall be responsible for all costs associated with the publication of FAA-approved notices announcing public workshops, meetings, hearings, and the like. The Contractor shall also be responsible for costs of stenographic and clerical services, and preparation of graphics and visual aids associated with any public workshops, meetings, and hearings.
- L. In all instances involving questions as to the content or relevance of the environmental data and analyses, and evaluations and wording prepared by the Contractor during the EIS process, the FAA, with appropriate advice and consultation shall make the final determination on the inclusion, deletion or modification of the same in the Draft or Final EIS. After its initial review, the FAA shall provide the Sponsor with the opportunity to review and comment on such environmental data, analyses, evaluations, and wording prepared by the Contractor that is proposed for inclusion in the Draft or Final EIS, at minimum to identify errors, or omissions and to ensure that both the Federal and State or local documentation are, to the extent feasible, consistent. After the aforementioned consultation, the inclusion of any environmental data and analyses and evaluations and wording will require FAA approval.
- M. Upon the anticipated completion of the Draft EIS, the FAA, with the Contractor's assistance, shall be responsible for organizing and conducting any public hearings.
- N. The FAA will receive all comments during the Draft EIS public review and comment period. This period (at least 45 days) will be initiated when the Environmental Protection Agency (EPA) publishes the "Draft EIS Notice of Availability" in the Federal Register.
- O. At the close of the Draft EIS public review and comment period, the FAA shall identify the issues and comments submitted which will require response in the Final EIS. The FAA will direct those issues and comments to the Contractor for preparation of proposed responses, and shall furnish the Sponsor with copies of comments received. The FAA shall direct the Contractor to furnish proposed responses to the FAA and, if the FAA so directs, to the Sponsor for review and comment. The Sponsor shall provide any comments to the FAA. The FAA may elect after appropriate advice and consultation with the Sponsor to modify the proposed responses as it deems necessary, with the FAA making the final determination on the inclusion, deletion or modification of the same in the Draft EIS.
- P. After receipt of comments and preparation of responses, the FAA, after appropriate advice and consultation, may direct the Contractor to make changes to the text of the Draft EIS as necessary.

- Q. At such time as the FAA has approved the Final EIS, the Contractor shall print the contracted quantity of the Final EIS. The FAA shall submit an appropriate number of copies of the Final EIS to the Sponsor.
- R. The FAA will receive all comments on the Final EIS during the mandatory "hold period". This period (at least 30 days) will be initiated when the EPA publishes the "Final EIS Notice of Availability" in the Federal Register.
- S. The FAA, with assistance from the Contractor, will expeditiously prepare and issue the FAA Record of Decision, upon or after publication of the "Final EIS Notice of Availability," and will make it available to the public, if permitted by applicable law, and determined by the FAA as appropriate, contemporaneously with the Final EIS.
- T. Information developed under this MOU is disclosable to the public to the extent required by law. The FAA will maintain the confidentiality of, and will not release or allow access to, any information, documents or materials which in its opinion are validly designated as confidential by the Sponsor or Contractor and which contain trade secrets, proprietary data, or commercial or financial information or falls within any other applicable federal exemption. In any instance where the FAA intends to release to the public or allow access to any information, documents, or materials, submitted to the FAA by the Sponsor in the development and preparation of the EIS, the FAA shall notify the Sponsor of its intention to release or allow access at least seven (7) business days prior to such release or grant of access. In addition, the Sponsor or Contractor has the opportunity to either (i) appeal the decision in accordance with applicable regulations on such release or access prior to any such release or access or (ii) seek a protective order. (See FAA Order 1270.1) This notification process shall reciprocally apply in the event the Sponsor intends to release to the public or allow access to any information, documents, or materials created by the FAA or the Contractor in the development and preparation of the EIS and shared with the Sponsor. The FAA similarly shall reserve the right to either (i) appeal the decision in accordance with applicable regulations on such release or access prior to any such release or access or (ii) seek a protective order in accordance with FAA Order 1270.1.
- U. The Contractor will maintain a segregated copy of each record/document relating to the project that is used by the FAA in their decision making process. This will form the basis for the FAA's administrative record of the EIS. The Consultant shall be responsible for managing the project's records and, if an administrative record must be prepared in response to litigation, the FAA will provide the Sponsor with an index of the project record. Once the contents of the administrative record have been determined, the Contractor will be responsible for submitting two copies of the completed administrative record for the project to the FAA, in accordance with FAA policy and guidance. The FAA will provide one copy of the completed administrative record for the project to the Sponsor.

- V. All work prepared in the preparation and development of the EIS shall be delivered to the FAA in printed format and searchable .pdf files along with components associated with each item, such as data files, text files, image files, spreadsheets, graphs, and tables. Whenever the Contractor is directed by the FAA to provide materials or work prepared under this MOU to the Sponsor, the Contractor will deliver it to the Sponsor in format set forth in the preceding sentence.

#### **IV. CESSATION AND TERMINATION**

- A. Any of the parties to this MOU may withdraw from the terms of this MOU for good cause upon 30 days written notice to the other party. During this period, the parties will actively attempt to resolve any disagreement.
- B. In the event of a termination of this MOU, and if the FAA determines that preparation of an EIS by the FAA is still required, it is agreed as follows:
  - 1. The FAA shall have access to all documentation, reports, analyses and data by the Contractor and Subcontractors with confidentiality governed by paragraph III.T.
  - 2. The FAA shall assume the responsibility for preparing the EIS. The Sponsor shall no longer be responsible for the payment of costs associated with preparation of the EIS under the terminated MOU, apart from costs already incurred and required under the Sponsor's contract with the Contractor. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations which might require payment.
  - 3. Liability for termination shall be in accordance with paragraph II.G. of this MOU.

#### **VI. NO RIGHTS FOR NON-PARTIES**

This Agreement does not create any right or benefit enforceable by law or equity of any person who is not a party to this Agreement against the Sponsor or FAA. No rights or privileges are created or intended to be created by this MOU in anyone not a signatory of this MOU.

#### **VII. MODIFICATION**

This MOU represents the entire agreement and may be modified by the parties hereto only by written agreement by all the parties.

**VIII. AUTHORITY TO EXECUTE**

The representative of each party signing this Agreement warrants that he/she is duly authorized to do so.

**IX. COUNTERPARTS**

A photocopy or PDF copy of this Agreement shall have the same force and effect as an original of this Agreement.

**X. NOTICES**

Notices and other communications under this Agreement shall be in writing and shall be directed as follows, or to such other address as the party receiving such notice or communication shall have previously specified by notice to the other party sending such notice:

If to the Sponsor:

Title: Director of Aviation  
The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 18<sup>th</sup> Floor  
New York, New York 10007

with a copy to:

General Counsel  
The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 23rd Floor  
New York, New York 10007

If to the FAA:

Steven M. Urlass  
Director  
Federal Aviation Administration  
Eastern Region  
Airports Division  
1 Aviation Plaza  
Jamaica, New York 11434

with a copy to:

Mary M. McCarthy  
Regional Counsel  
Federal Aviation Administration  
Eastern Region  
Office of the Regional Counsel

1 Aviation Plaza  
Jamaica, NY 11434

**XI. NO PERSONAL LIABILITY**

No Commissioner, director, officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

**XII. SIGNATORIES**

**United States Federal Aviation Administration**



\_\_\_\_\_  
**Steven M. Urlass, Director**  
**Airports Division, Eastern Region**


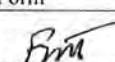
*10/22/18*

\_\_\_\_\_  
**DATE**

The Port Authority of New York and New Jersey

  
\_\_\_\_\_  
Huntley Lawrence, Director  
Aviation

10/18/12  
\_\_\_\_\_  
DATE

Port Authority Use Only:	
Approval as to Terms	Approval as to Form
	

**From:** [DiScenna, Matthew](#)  
**To:** [Drew Brooks](#); [Jenet, Marie \(FAA\)](#)  
**Cc:** [REDACTED]; [Wolfers-Lawrence, Jean \(FAA\)](#); [Rogak, Elizabeth](#); [Lamond, Kathryn](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Clark, Patty](#); [Herndon, Jane](#)  
**Subject:** Draft Permits, Approvals, and Determinations Table  
**Date:** Wednesday, November 28, 2018 2:02:43 PM  
**Attachments:** [AirTrain LGA Potential Permits Approvals Determinations 2018-11-28.pdf](#)  
[AirTrain LGA Potential Permits Approvals Determinations 2018-11-28.xlsx](#)

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Andrew/Marie,

As mentioned on our last conference call, the Port Authority has compiled a list of potential permits, approvals, and determinations that may be required for the Port Authority's preferred alternative. Attached is a pdf and excel version of this list for your consideration and use at your discretion.

If you have any questions, we can discuss on tomorrow's conference call.

Thank you,  
Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ  
[REDACTED] (office)  
[REDACTED] (cell)  
[REDACTED]

11/28/18

## Potential Permits, Approvals, and Determinations - LaGuardia Airport Access Improvement Project

Permits, Approvals, and Determinations	Approving Agency	Regulatory Authority	Materials Prepared and Timing	Initial Application Submitted	Completed Application Submitted/Interim Deadlines	Completion Date/Date of Issuance
Approval of the Airport Layout Plan (ALP)	FAA	ARP SOP 2.00	<b>ALP Drawings</b> Preliminary review prior to DEIS Inclusion in DEIS, FEIS, and ROD			
FAA funding approval (impose and use PFC)	FAA	49 USC 40117, 14 CFR 158	No materials would need to be prepared before the NEPA process, but approval would enable the PANYNJ to impose and use PFCs if needed			
CFR Part 77 – Objects Affecting Navigable Airspace	FAA	Title 14 of the Code of Federal Regulations (14 CFR) Part 77	<b>FAA Form 7460-1 - Notice of Proposed Construction or Alteration</b> Before construction			
Environmental Justice	FAA	EO 11898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations	<b>Consultation / Concurrence</b> Review of DEIS and FEIS by EPA <b>Environmental Justice Findings</b> FAA findings in ROD			
Floodplains Determination	FAA	Executive Order 11988 of 1977; USDOT Order 5650-2, "Floodplain Management and Protection," April 23, 1979	<b>Floodplains Finding</b> Draft in DEIS and Final in FEIS / ROD			
Wetlands Finding, if applicable	FAA	Executive Order 11990 of 1977; USDOT Order 5660.1A, "Preservation of the Nation's Wetlands," August 24, 1978; 6 NYCRR Part 661	<b>Wetlands Finding</b> Draft in DEIS and Final in FEIS / ROD			
Section 4(f) Finding pursuant to Section 4(f) of the USDOT Act	FAA	49 USC § 303; 23 CFR § 774	<b>Section 4(f) Evaluation</b> Draft Section 4(f) Evaluation in DEIS SHPO and/or NYC Parks Consultation on Draft Section 4(f) Evaluation (if needed) DOI review of Draft Section 4(f) Evaluation during DEIS public review (if needed) Final Section 4(f) Evaluation in FEIS FAA makes finding in ROD			
Section 106 Effect Finding pursuant to the National Historic Preservation Act	FAA	16 USC § 470A; 36 CFR Part 800	<b>Executive Memorandum of Agreement / Programmatic Agreement</b> Prepare letter notifying agencies of a federal undertaking and describing Area of Potential Effects (APE) SHPO / FAA review and approve APE Prepare Determination of Eligibility/Finding of Effects Report (DOE / FOE) SHPO, DOI, FAA review and approve DOE / FOE Report Prepare Draft Memorandum of Agreement / Programmatic Agreement (MOA / PA) Publish DOE / FOE and MOA / PA in DEIS Execute MOA / PA prior to FEIS			
Conformity Determination	USEPA	Clean Air Act (Section 176(c)(4))	General Conformity and Transportation Conformity may both need to be considered <b>General Conformity Applicability Analysis</b> in the DEIS			
Clean Air Act	USEPA	Clean Air Act (Section 309)	<b>Consultation / Concurrence</b> Review of DEIS, ranging of the DEIS, and review of the FEIS by USEPA			
Endangered Species Act	USFWS NOAA-NMFS	16 U.S.C. § 1531 et seq.	<b>Biological Evaluation and Biological Opinion</b> Biological Evaluation in appendix to DEIS USFWS / NOAA-NMFS consultation during public review of DEIS FAA makes finding in ROD			
Migratory Bird Treaty Act	USFWS	16 U.S.C. §§ 703–712	<b>Consultation</b> USFWS consultation during public review of DEIS			
Magnuson-Stevens Fishery Conservation and Management Act	NOAA-NMFS	16 USC §§ 1801 to 1883	<b>Essential Fish Habitat (EFH) Assessment</b> EFH Assessment in appendix of DEIS USFWS / NOAA-NMFS consultation during public review of DEIS FAA makes finding in ROD			
Flood Hazard Areas Permit, if applicable	NYSDEC	ECL Article 36; 6 NYCRR Part 502	<b>Floodplain Development Permit</b> , however, based on PANYNJ's consultant experience these permits are required for private development and not for public authority projects			
Protection of Waters / Freshwater Wetlands Permit / Tidal Wetlands Permit*	NYSDEC	ECL Article 15 Permit ECL Article 24 Permit ECL Article 25 Permit	<b>Permit</b> Permit application may precede ROD			
New York State Endangered and Threatened Species, Species of Concern	NYSDEC	ECL Article 1, Title 5 § 11-0535; 6 NYCRR Part 182	<b>Biological Evaluation</b> Biological Evaluation in appendix to DEIS NYSDEC consultation during public review of DEIS			
Section 401 Water Quality Certification pursuant to the Clean Water Act	NYSDEC	33 USC §§ 1251-1387, 33 CFR 320-330, and 6 NYCRR Part 608	<b>Certification</b> Certification application may precede ROD			
State Pollutant Discharge Elimination System (SPDES) Permit, National Pollutant Discharge Elimination System (NPDES) delegated permit	NYSDEC	Involves more than 1 acre of construction State Pollutant Discharge Elimination System (ECL Article 3, Title 3; Article 15; Article 17, Titles 3, 5, 7, and 8; Article 21; Article 70, Title 1; Article 71, Title 19; 6 NYCRR Part 750) Section 402 - National Pollution Discharge Elimination System	<b>Permit</b> Permit application may precede ROD			
Coastal Zone Management Act	NYSDOS with input from NYCDCP	6 NYCRR Part 505	<b>Coastal Assessment Form</b> Include Coastal Assessment Form for DEIS Seek NYSDOS / NYCDCP approval of form during public review of DEIS FAA makes a finding in the FEIS/ROD, as necessary			

This list assumes implementation of the PANYNJ's Preferred Alternative, Alignment 4, and all permits, approvals, and determinations are not necessarily for all alternatives to be considered.

\*Tidal wetlands permit may be required for work within the wetlands adjacent area.



11/28/18

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Coastal Zone Management Act	NYSDOS with input from NYCDCP	6 NYCRR Part 505	<b>Coastal Assessment Form</b> Include Coastal Assessment Form for DEIS Seek NYSDOS / NYCDCP approval of form during public review of DEIS FAA makes a finding in the FEIS/ROD, as necessary			

This list assumes implementation of the PANYNJ's Preferred Alternative, Alignment 4, and all permits, approvals, and determinations are not necessarily for all alternatives to be considered.

\*Tidal wetlands permit may be required for work within the wetlands adjacent area.

**From:** [Lamond, Kathryn](#)  
**To:** [REDACTED]  
**Cc:** [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Clark, Patty](#)  
**Subject:** LGA Airtrain - Revised MOU  
**Date:** Friday, June 22, 2018 11:30:00 AM  
**Attachments:** [2018-06-21 DRAFT PANYNJ MOU - PA Comments.docx](#)

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All,

Attached please find the draft MOU, containing PANYNJ responses to the FAA comments dated 6/13/18. Please let us know if you have any additional comments or questions.

Thanks and have a great weekend!

Katie

Kathryn Lamond, P.E.

Environmental and Sustainability Specialist

PANYNJ - Aviation Department

4 World Trade Center, 150 Greenwich St.

New York, NY 10007

[REDACTED] (office)

[REDACTED] (cell)

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE UNITED STATES DEPARTMENT OF TRANSPORTATION**  
**FEDERAL AVIATION ADMINISTRATION**  
**AND**  
**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**I. INTRODUCTION AND PURPOSE**

- A. This Memorandum of Understanding ("MOU") provides a framework in which the United States Department of Transportation (the "DOT"), Federal Aviation Administration (the "FAA"), an executive agency of the United States, organized and existing under the laws of the United States, having its principal office at 800 Independence Avenue, S.W., Washington, D.C., 20591, will prepare an Environmental Impact Statement (the "EIS") for the LaGuardia Airport ("LGA") LGA Access Improvement Project (the "Project") being proposed by The Port Authority of New York and New Jersey an interstate compact agency created by Compact between the States of New York and New Jersey, with the consent of the Congress of the United States having its principal office at Four World Trade Center, 150 Greenwich Street, New York, NY10007 (the "Port Authority" or "Sponsor"). The MOU describes the relationship of the above named parties in preparing the EIS. Subject to completion of the EIS, the FAA will issue a determination regarding the Project that will be set forth in a Record of Decision.
- B. As lead agency, the FAA has selected an independent contractor (the "Contractor") to prepare the EIS. The Sponsor shall be the party responsible to engage and retain the Contractor with funds provided by the Sponsor.
- C. The EIS and any related documents shall comply with the provisions of the National Environmental Policy Act of 1969 ("NEPA") and Council on Environmental Quality ("CEQ"), DOT, and FAA environmental regulations and guidance, as well as all applicable local, state and Federal laws, as appropriate.
- D. It is the purpose of this MOU to establish an understanding between the Sponsor and the FAA regarding the responsibilities of the parties and the conditions and procedures to be followed in the development and preparation of the EIS.
- E. The parties that enter into this agreement intend that development and preparation of the EIS, as articulated in this MOU, will satisfy the pertinent environmental

requirements of the FAA and any Cooperating Agencies (as that term is defined in 40 CFR § 1501.6 and 1508.5) that may have jurisdiction over the Project.

## II. GENERAL PROVISIONS

A. As the lead agency, the FAA will be responsible to ensure compliance with all the requirements of NEPA (42 U.S.C. 4321 et seq.), CEQ Regulations (40 C.F.R. Parts 1500-1508), appropriate DOT and FAA environmental orders. The FAA shall ensure that all pertinent environmental issues and impacts reasonable alternatives and their impacts cumulative impacts and mitigation/conditions are treated in the EIS, and shall be responsible for the scope and content of the EIS. The FAA acknowledges that the Sponsor will be responsible for coordinating with state and local entities for such state and local entities their respective compliance with applicable state and local laws, including New York State Environmental Quality Review Act ("SEQRA"), and applicable implementing regulations. The Sponsor agrees to invite the FAA to participate in all meetings held with state and local entities wherein discussion would serve to support the EIS and the purpose of which is to ensure that environmental data and analysis related to the EIS comply with the requirements of applicable state and local laws pursuant to any non-NEPA requirements.

B. The Sponsor will engage and retain the Contractor, selected by the FAA, for the preparation of the EIS. The Contractor, with the approval of the FAA and Sponsor, may employ such other contractors and experts (collectively referred to as "Subcontractors"), as are required for the adequate development and preparation of the EIS.

~~C.~~ As approved by the FAA, the Contractor will provide, through its staff or by Subcontractor, the expertise, staffing, and technical capabilities required for the preparation of the EIS. The FAA will direct the scope of the EIS and will independently evaluate all information, environmental data and analyses submitted by the Contractor, the Sponsor or others, and revise or cause additional study and analyses to be performed as necessary.

~~D.C.~~

~~E.D.~~ The Contracts between the Sponsor and Contractor and between the Contractor and Subcontractors (collectively the "Contract") shall be consistent with the provisions of this MOU and shall specifically incorporate those provisions articulated herein that address the conduct of the Contractor. Before starting EIS preparation, the Contractor and Subcontractors shall provide verification to FAA that they have no financial interest in the outcome of the action of the EIS will address, consistent with FAA Order 5050.4B, Paragraph 1003(d). The Contractor and Subcontractors working on the EIS may not bid on any future actions the EIS addresses until the approving FAA official issues a Record of Decision based on the EIS. This prohibition does not prevent the Sponsor from selecting the EIS Contractor or Subcontractors for later development actions,

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Commented [FAA1]: 6/13: We believe this revised text is consistent with our 5/31 telcon.

Commented [TF2R1]: (6.19) please see proposed modification to language to reflect type of coordination anticipated

should they be approved. However, that selection must occur after free and open competition and there can be no implied or suggested guarantee that the Sponsor would favorably consider the EIS Contractor or Subcontractors. Further, the Sponsor shall ensure that the Contract shall specifically limit any remedies available to the Contractor and any Subcontractors, so as to affirmatively relieve the United States of America, the FAA, and any officer, agent or employee of same, from any liability arising out of the performance or termination of the contract for preparation of the EIS, or out of this MOU.

1. Prior to beginning work on the Project, the Contractor and any Subcontractors shall sign a "Disclosure Statement" provided by the FAA per the requirements of FAA Order 5050.4B, Paragraph 1003(d), specifying they have no financial or other interest in the outcome of the project.
2. The FAA shall evaluate the Disclosure Statement prior to its approval.

E. The Sponsor shall facilitate the coordination of effort and the exchange of information related to the planning, design, and construction of the Project, as these activities relate to the preparation of the EIS among and between the Contractor and its Subcontractors, and the FAA, and other federal, state or local entities as appropriate. The Sponsor shall make all reasonable efforts to assist and cooperate with the FAA's directions to the Contractor and Subcontractors and to support the FAA's efforts to ~~as~~ ensure the satisfactory and timely performance of the duties of the Contractor and Subcontractors as specified in this MOU.

F. The Sponsor and FAA shall:

1. Appoint such representatives from their respective agencies as necessary to accomplish the coordination necessary for the satisfactory and expeditious preparation of the EIS. Notice to any such representative shall constitute notice to that party.
2. Review substantive work products under the Contract(s) for the EIS as the FAA deems necessary, consistent with Article III of this MOU.
3. Have their respective representatives attend meetings with other Federal, state, regional, and local agencies for the purpose of increasing communications and receiving comments, as the same may be necessary, desirable, or required by law in preparation of the EIS.

G. All costs incurred in connection with the employment of the Contractor and any and all Subcontractors, or other persons retained or employed by the Sponsor, shall be the sole responsibility of the Sponsor, except in the event this MOU is terminated in accordance with Section IV below. To the extent authorized by law, ~~T~~he Sponsor agrees to hold harmless and indemnify the FAA, its officers,

Commented [FAA3]: 6/13: Please delete this language. As the lead federal agency, the FAA is responsible for coordination throughout the NEPA process (which is the subject of the MOU).

Commented [TF4R3]: (6.19) as drafted this reflects the Sponsors role to facilitate rather than direct, which is retained by the FAA.

Commented [FAA5]: 6/13: We are generally ok with this addition, but see addition of "and."

Commented [TF6R5]: (6.19) please see proposed modification, the FAA directs the Contractor and the PA can agree to support that direction.

Commented [FAA7]: 6/13: We believe a general commitment is more appropriate for this document.

Commented [TF8R7]: (6.19) Ok

Commented [FAA9]: 6/13: Please delete this language. The MOU already limits termination to instances where there is good cause. See Section IV.

Commented [TF10R9]: (6.19) This is a cross reference to provision which states that the Sponsor would no longer be liable for the costs.

Commented [FAA11]: 6/13: Why is this language being included? Please provide verification that the Sponsor has the authority to hold harmless and indemnify the FAA for the claims described in the paragraph below.

Commented [TF12R11]: (6.19) as dicussed during 13 June call- under FAA internal review

agents, and employees, with respect to any and all judgments or settlements arising from claims, demands, causes of action, and the like ("Claims"), in connection with the Sponsor's employment of the Contractor and any and all Subcontractors which may arise from the termination or performance of the Contract or any other services, or purchase of materials utilized for the development and preparation of the EIS, or from termination of this MOU, except for Claims that arise out of the gross negligence or willful misconduct of the FAA, its officers, agents and employees. This indemnification by the Sponsor does not extend to administrative or legal costs of the FAA, including suits by third parties (other than the Contractor or its Subcontractors) against the FAA, involving the legality or adequacy of the FAA's compliance with NEPA and other laws and regulations, to the extent of the FAA's liabilities on those issues. The Sponsor shall cooperate and shall ensure, require as a term and condition of the Contract and enforce that condition that the Contractor cooperates in defense of any such suit. Notwithstanding anything to the contrary in this Agreement, nothing shall be construed to waive the applications of statutory provisions, immunities and limitations available under the Federal Tort Claims Act, (28 U.S.C. Sections 2671, et. seq.) or any other governmental immunity act, as the same may be amended from time to time, with respect to, and in defense of, any claim or claims asserted by any person or entity. The FAA agrees that the Sponsor may satisfy the indemnification requirements set forth above by means of a self-insurance program.

Commented [FAA13]: 6/13: Why is this condition being proposed? What concern is the Port attempting to address?

Commented [TF14]: (6.19) it is not clear what is meant by enforce, as FAA will be responsible for directing the Contractor.

Commented [FAA15]: 6/13: Ok.

~~The FAA will assign, upon execution of this MOU and through completion of the final EIS document, at a minimum one of the following: an environmental manager, attorney, and support staff, each on a full-time basis. The FAA will receive funding for the direct and indirect costs associated with the employment of the personnel assigned pursuant to this Agreement, in accordance with the existing funding agreement between the Sponsor and the FAA, dated as of [\_\_\_\_], for the funds required to satisfy the above obligations. It is the intention of the parties that these personnel shall be used to expedite preparation of the EIS contemplated by this Agreement. In addition, the FAA, during the development of the EIS, shall provide office space to the Contractor and Subcontractors within the Regional Office so as to facilitate late communication and work on the EIS. For the purposes of this Agreement, full-time shall mean availability at a minimum (5) five days a week, between the hours of 9 am and 5 pm eastern standard time, subject to vacation schedules, Federal holidays and sick leave.~~

Commented [FAA16]: 6/13: We do not think this level of specificity is appropriate for this document. Furthermore, we believe both parties are capable of independently managing their staff and workload as needed to complete their respective missions and meet their obligations. Please see paragraph I for a generalized commitment to provide staffing necessary to promote an expedited NEPA review process.

Commented [TF17R16]: (6.19) please see proposed edits to the language provided

Commented [FAA18]: 6/13: To the extent the Port has additional requests (beyond what is already in the reimbursable agreements) for documentation of how Port-funded staff are spending their time, please make that request outside of this document.

Commented [TF19R18]: (6.19) please see proposed edits below.

H. Both parties will assign the appropriate staff and management personnel dedicated necessary to promote the expeditious development and preparation, and review and completion of the EIS. It is the intention of both parties to ensure that such dedicated staff is available as appropriate to complete the EIS process in accordance with Executive Order 13807 entitled Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects ("EO 13807"). Further both parties agree that any actions

taken to effectuate this MOU will be done promptly and in all instances in a manner consistent with the principles set forth in E.O. 13807.

### III. PROCEDURES

A. Under the direction of the FAA, the Contractor shall develop and submit a plan of study to the FAA for the EIS for approval. The "Plan of Study" shall mean a plan that includes detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated man-hours required for completion of each aspect, the schedule for performing each aspect and a description of the internal and external review procedures to assure quality control. Also, the Plan of Study shall include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the environmental data and analyses and the development and preparation of the EIS. The Plan of Study should also identify procedures for retention of all data and sources used in the development of the EIS for eventual consolidation into the Administrative Record. In developing the Plan of Study, the Contractor may consider and use as appropriate any relevant submissions made by the Sponsor, or the Sponsor's representative which submissions shall be made directly to the FAA.

A.B. Upon completion of its review, ~~the~~ FAA will forward the draft Plan of Study to the Sponsor for review and comment. After receiving comments from the Sponsor, and the scoping process conducted pursuant to 40 C.F.R. Sec. 1501.7, the FAA will finalize and approve the Plan of Study. The Sponsor acknowledges that any such draft is subject to the change based on the scoping process. The Plan of Study and this MOU will serve as the basis for the Contractor's development and preparation of the EIS.

~~B.1.~~ The Plan of Study may be amended by the FAA from time to time as the work of the Contractor or its Subcontractors proceeds, but any amendments or changes which require the expenditure of additional funds by the Sponsor must be agreed to by the Sponsor. The Contractor will notify the FAA and the FAA will notify ~~The Sponsor will be notified and consulted with the Sponsor~~ prior to any significant amendments or modifications to the Plan of Study that require the expenditure of additional funds or modification to the proposed schedule for completion of the EIS. Payments by the Sponsor will be made and are subject to the availability of funds authorized by the Sponsor's Board of Commissioners.

C. 2. The Sponsor will pay Contractor and Subcontractors invoices only upon receipt from an FAA project manager confirming that the work product or materials set forth on a submitted invoice has been performed or provided by the Contractors and Subcontractors. Any invoices submitted for payment shall only include amounts for project work that has already been performed by the date on which such invoice is submitted for payment. The FAA cannot confirm the number of

Commented [FAA20]: 6/13: We do not agree to this language. We have agreed to work expeditiously but there are times when we will need to first review submissions before forwarding to the Sponsor.

Commented [TF21R20]: (6.19) see proposed modification.

Commented [FAA22]: 6/13: The FAA agrees to notify the sponsor of significant amendments but we do not know which amendments will lead the contractor to request additional funds

Commented [TF23R22]: (6.19) See modified language reflecting Contractor notification to FAA and FAA to Sponsor

Commented [FAA24]: 6/13: This language would be more appropriate in the contract with the Sponsor.

Commented [TF25R24]: (6.19) As the MOU sets the relationship between FAA, Sponsor and Contractor it is important to be included in the MOU.

hours worked on the invoice. The Sponsor may deny payment for any portion of any invoice that is not supported by the confirmation described above or for work not actually performed.

D. ~~As each portion of any draft of sections of the EIS and, unless otherwise directed by the FAA, any and all work performed by the Contractor and its Subcontractors in preparation of the EIS shall be submitted directly to the FAA, provided that after the FAA has had an opportunity to review, Sponsor may request such material and upon the FAA direction, the Contractor or Subcontractors may submit such work, data or analysis to the Sponsor, and upon request of the FAA Sponsor the FAA, to the Sponsor.~~ The Sponsor may communicate with the Contractor and its Subcontractors during the development of the EIS, but no prior review or discussion of data or analyses developed by the Contractor or Subcontractor as related to the EIS shall be afforded the Sponsor until the Contractor or Subcontractor submits such data or analyses to the FAA. In no case will the Sponsor discuss, review, modify, or edit the Contractor's work or the work of its Subcontractors prior to submission to the FAA, or be provided the opportunity to do so. All suggestions for modifications or changes to such sections recommended by the Sponsor or the Sponsor's representative shall only be made to the FAA, in accordance with Paragraph F below.

E. The FAA reserves the right to review periodically and modify the work of the Contractor to ensure that requirements under NEPA and other applicable laws and regulations are satisfied. The Contractor shall submit bi-weekly written reports on the progress of its work to the FAA, with a concurrent copy to the Sponsor. This report shall describe the present status of each aspect of the work, any problems encountered, and recommendations for modifications to the Plan of Study and any changes in personnel, methodology or schedules for completion.

F. As each portion of any draft or final document is completed, the FAA shall review each portion and those tasks completed thereunder and, after consultation with the Sponsor, shall approve, modify, comment thereon and/or direct further work with regard to such portion or tasks as necessary. ~~The FAA review will be coordinated in accordance with the principles outlined in Executive Order 13807 EO 13807 and all other applicable orders including but not limited to FAA Orders 1050.1F and 5050.4B. The FAA will utilize concurrent reviews as it determines to be appropriate consistent with the guidance provided by EO 13807.~~ Said directions and/or comments shall be made by the FAA in a manner so as to promote expeditious completion of the EIS, and the Contractor shall ensure incorporation of such comments into any editorial changes to the satisfaction of the FAA. Prior to approval, the FAA will forward final drafts to the Sponsor for review and comment. Comments from the Sponsor shall be sent to the FAA. The Contractor will only make modifications as the FAA directs regarding these comments. After the aforementioned consultation, final drafts of any documents will require FAA approval.

Commented [FAA26]: 6/13: We can confirm work product/completed tasks, but not hours worked. We also object to providing a certification.

Commented [TF27R26]: (6.19) Ok.

Commented [FAA28]: 6/13: The intent of this revised language is unclear. We prefer the original language.

Commented [TF29R28]: (6.19) Proposed language is intended to provide mechanism for material to go to Sponsor as directed by the FAA

Commented [FAA30]: Confusing. Level of detail for contract not MOU

Commented [FAA31]: 6/13: See proposed revised language, consistent with our 5/31 call.

Commented [TF32R31]: (6.19) Please minor edits to the proposed language.



G. If requested, the Contractor will provide the FAA access to and review of all procedures and underlying data used by the Contractor in developing submitted sections of the EIS, including, but not limited to, field reports, Subcontractor reports, and interviews with concerned private and public parties, whether or not such information may be contained in a draft or final EIS. Upon request by the Sponsor, the FAA will provide the Sponsor with access to all of the aforementioned procedures and underlying data. Such information provided by the FAA to the Sponsor shall be governed by paragraph III.U in this MOU.

H. To facilitate the development and preparation of the EIS, joint meetings among the FAA, Sponsor, and Contractor shall be held ~~as~~ at a minimum on a bi-weekly basis, provided that, both parties agree to meet weekly, as appropriate to facilitate the timely coordination and the exchange of information. However, the FAA reserves the right to work directly with the Contractor for purposes of assuring objectivity in preparing reports and/or for assuring expeditious communications. The Contractor will notify the FAA and Sponsor of any substantive meetings that are scheduled ~~with other agencies~~ and of their purpose and will provide an opportunity for the parties to attend if desired. No meeting will be held between the Contractor ~~or~~ and Sponsor without prior notification to and approval of the FAA. A summary of all matters relating to EIS discussions in any meetings or communications between the Contractor and a party hereto without the participation of the other said party will be included in each formal-bi-weekly report submitted by the Contractor to the FAA and Sponsor. The FAA ~~and the Sponsor~~ each reserve the right to consult directly with other Federal, state, and local officials and agencies during the preparation of the EIS to assure the Sponsor's compliance with NEPA and other all applicable laws and regulations.

I. The Sponsor and FAA each acknowledge that the Contractor and its Subcontractors' with any public workshops, hearings, or meetings as required and directed by the FAA to foster public familiarity and participation with respect to the assessment of impacts related to the Project.

J. At such time as the FAA, after consultation with the Sponsor, has approved the Draft EIS developed and prepared by the Contractor and its Subcontractors, the Contractor shall print the quantity of Draft EIS copies as specified by the FAA and submit same to the FAA. Promptly after receipt from the Contractor copies of the Draft EIS, the FAA shall provide a courtesy copy of the Draft EIS to the Sponsor. ~~The FAA shall submit an appropriate number of copies of the Draft EIS to and the Sponsor.~~

K. The Contractor shall be responsible for the costs associated with the printing and publication of the draft and final copies of the EIS. The Contractor shall be responsible for all costs associated with the publication of FAA-approved notices announcing public workshops, meetings, hearings, and the like. The Contractor shall also be

Commented [FAA33]: 6/13: The FAA has been and remains committed to meet as frequently as needed to support the project, but that should be determined as we proceed.

Commented [FAA34]: 6/13: As discussed above, the Port has the right to coordinate its additional obligations but it has committed to invite the FAA to attend.

Commented [TF35R34]: (6.19) agreed as set forth above in I. A. however PA should be notified of substantive meetings with other agencies which is what this provision addresses.

Commented [FAA36]: This has already been resolved above, please go back to original language.

Commented [TF37R36]: (6.19) As drafted we believe this is consistent with the above language concerning state and local law compliance. Please identify particular concern.

Commented [FAA38]: We disagree with this edit. FAA has to transmit to show ownership.

Commented [CM39R38]: Text revised to specify that only at the direction of the FAA would the Contractor submit copies to the Sponsor.

Commented [TF40R38]: (6.19) Modified to reflect transmission by the FAA of the Draft EIS to the Sponsor.

responsible for costs of stenographic and clerical services, preparation of graphics and visual aids associated with any public workshops, meetings, and hearings.

- L. In all instances involving questions as to the content or relevance of the environmental data and analyses, and evaluations and wording prepared by the Contractor during the EIS process, the FAA, with appropriate advice and consultation ~~when it deems necessary, will~~ with the Sponsor shall make the final determination on the inclusion, deletion or modification of the same in the Draft or Final EIS. The FAA shall provide the Sponsor with the opportunity to review and comment on such the environmental data and analyses, at minimum to identify errors, or omissions and to ensure that both the Federal and State or local documentation are to the extent feasibly consistent.
- M. Upon the anticipated completion of the Draft EIS, the FAA, with the Contractor's assistance, shall be responsible for organizing and conducting any public hearings.
- N. The FAA will receive all comments during the Draft EIS public review and comment period. This period (at least 45 days) will be initiated when the Environmental Protection Agency (EPA) publishes the "Draft EIS Notice of Availability" in the Federal Register.
- O. At the close of the Draft EIS public review and comment period, the FAA shall ~~promptly provide the Sponsor and the Contractor with all comments received, and shall~~ identify the issues and comments submitted which will require response in the Final EIS. The FAA will direct those issues and comments to the Contractor for preparation of proposed responses, and shall furnish the Sponsor with ~~copies~~ of comments ~~received that require response in the Final EIS~~. The FAA shall direct the Contractor will to furnish proposed responses to the FAA and Sponsor for review and comment. The Sponsor shall provide any comments to the FAA. The FAA, may elect after with appropriate advice and consultation with the Sponsor, shall to modify the proposed responses as it deems necessary.
- P. After receipt of comments and preparation of responses, the FAA, after appropriate advice and consultation, may direct the Contractor to make changes to the text of the Draft EIS as necessary.
- Q. At such time as the FAA has approved the Final EIS, the Contractor shall print the contracted quantity of Final EIS. The FAA shall submit an appropriate number of copies of the Final EIS to the Sponsor.
- R. The FAA will receive all comments on the Final EIS during the mandatory "hold period". This period (at least 30 days) will be initiated when the EPA publishes the "Final EIS Notice of Availability" in the Federal Register.

Commented [FAA41]: 6/13 - Delete, this is an FAA discretionary decision

Commented [TF42R41]: (6.19) As the Sponsor is responsible for ensuring compliance with applicable state and local requirements we are looking for a mechanism to ensure consistency.

Commented [FAA43]: 6/13: We object to these changes. The FAA has the discretion to screen the initial responses provided by the sponsor and consult with the sponsor as it deems necessary. Please revert to original language.

Commented [TF44R43]: (6.19) As drafted the FAA retains the discretion to accept or reject Sponsor comments.

R.S. ~~The FAA, and Contractor, and Sponsor shall take all reasonable steps to ensure expeditious preparation and issuance of the Draft and Final EIS in all instances in a manner consistent with the principles set forth in E.O. 13807.~~

Commented [TF45]: (6.19) please see reference to EO.

WT. ~~S.~~ The FAA, with assistance from the Contractor, will expeditiously prepare and issue the FAA Record of Decision, after publication of the "Final EIS Notice of Availability," and will make it available to the public if permitted by applicable law, and determined by the FAA as appropriate shall issue the ROD contemporaneously with the Final EIS.

Commented [FAA46]: 6/13: The FAA already retains this discretion and it does not need to be put in this MOU. Please revert to original language.

F.U. ~~F.~~ Information developed under this MOU is disclosable to the public to the extent required by law. The FAA will maintain the confidentiality of, and will not release or allow access to, any information, documents or materials which in its opinion are validly designated as confidential by the Sponsor or Contractor and which contain trade secrets, proprietary data, or commercial or financial information or falls within any other applicable existing federal exemption. In any instance where the FAA proposes to release to the public or allow access to any information, documents or materials created in the development and preparation of the EIS or which the Sponsor or Contractor has designated as confidential, it shall notify the Sponsor or Contractor of its intention to do so at least five (5) business days prior to such release or grant of access. In addition, ~~and provide~~ the Sponsor or Contractor has the opportunity to either (i) appeal the decision in accordance with applicable regulations on such release or access prior to any such release or access or (ii) seek a protective order. (See FAA Order 1270.1)

Commented [TF47R46]: (6.19) since this is a potential option and does not bind the FAA to do so, we would request that it be included in the MOU

Commented [FAA48]: 6/13: Proposed revision

V. ~~U.~~ The Contractor will maintain a segregated copy of each record/document relating to the project that is used by the FAA in their decision making process. This will form the basis for the FAA's administrative record of the EIS. The Consultant shall be responsible for managing the administrative project file and, upon completion of the work, will be responsible for submitting two copies of the completed administrative record for the project to the FAA and the Sponsor, in accordance with FAA policy and guidance. The FAA will promptly after receipt provide one copy of the completed administrative record for the project to the Sponsor.

Commented [CM49]: Appeal process to be discussed.

Commented [FAA50]: 6/13: We need additional time to consider internally these proposed changes.

Commented [TF51R50]: 6.19 noted internally review is ongoing

W. All work prepared under this MOU in the preparation and development of the EIS shall be delivered to the FAA and the Sponsor in printed format and searchable .pdf files along with components associated with each item, such as data files, text files, image files, spreadsheets, graphs, and tables. Whenever the Contractor is directed by the FAA to provide materials or work prepared under this MOU to the Sponsor, the Contractor will deliver it to the Sponsor in format set forth in the preceding sentence.

Commented [FAA52]: 6/13: This is the FAA s administrative record

Commented [TF53R52]: 6.19 Agreed, the provision allows for the FAA to give the Sponsor the copy

Commented [FAA54]: 6/13: The FAA will share with the Sponsor as appropriate and in accordance with the terms above.

Commented [TF55R54]: See modification clarifies that any sharing of materials has to be directed by the FAA

#### IV. CESSATION AND TERMINATION

A. Any of the parties to this MOU may withdraw from the terms of this MOU for good cause upon 30 days written notice to the other party. During this period, the parties will actively attempt to resolve any disagreement.

B. In the event of a termination of this MOU, and if the FAA determines that preparation of an EIS by the FAA is still required, it is agreed as follows:

1. The FAA shall have access to all documentation, reports, analyses and data by the Contractor and Subcontractors with confidentiality governed by paragraph III.T.

~~2.~~ The FAA shall assume the responsibility for preparing the EIS. The Sponsor shall no longer be responsible for the payment of costs associated with preparation of the EIS under the terminated MOU, apart from costs already incurred and required under the Sponsor's contract with the Contractor. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations which might require payment.

~~3.2.~~

~~4.3.~~ Liability for termination shall be in accordance with paragraph II.G. of this MOU.

#### VI. NO RIGHTS FOR NON-PARTIES

This Agreement does not create any right or benefit enforceable by law or equity of any person who is not a party to this Agreement against the Sponsor or FAA. No rights or privileges are created or intended to be created by this MOU in anyone not a signatory of this MOU.

#### VII. MODIFICATION

This MOU represents the entire agreement and may be modified by the parties hereto only by written agreement by all the parties.

#### VIII. AUTHORITY TO EXECUTE

The ~~representative~~representative of each party signing this Agreement warrants that he/she is duly authorized to do so.

#### IX. COUNTERPARTS

A photocopy or PDF copy of this Agreement shall have the same force and effect as an original of this Agreement.

**X. NOTICES**

Notices and other communications under this Agreement shall be in writing and shall be directed as follows, or to such other address as the party receiving such notice or communication shall have previously specified by notice to the other party sending such notice:

If to the Sponsor:

Title: Director of Aviation  
The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 18<sup>th</sup> Floor  
New York, New York 10007

with a copy to:

General Counsel  
The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 18<sup>th</sup> Floor  
New York, New York 10007

If to the FAA:

[FAA to provide contact]  
[Title]  
Federal Aviation Administration  
1 Aviation Plaza, Suite [ ]  
Jamaica, New York 11434

with a copy to:

[FAA to provide contact]  
[Title]  
Federal Aviation Administration  
800 Independence Ave., S.W.,  
Washington, D.C., 20591

**XI. NO PERSONAL LIABILITY**





**From:** [Lamond, Kathryn](#)  
**To:** [Marie Jenet](#); [Drew Brooks](#); [REDACTED]  
**Cc:** [DiScenna, Matthew](#); [Cohen, Michelle](#); [Clark, Patty](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Herndon, Jane](#)  
**Subject:** LGA AirTrain Draft MOU  
**Date:** Monday, May 21, 2018 3:05:00 PM  
**Attachments:** [DRAFT PANYNJ MOU - PA comments \(05.21.18\).CLEAN.DOCX](#)  
[DRAFT PANYNJ MOU - PA comments \(05.21.18\) redline.docx](#)

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Good afternoon,

Attached for your review, please find clean and redlined versions of the revised draft MOU. Please note that once we have developed a final draft, we will still have to provide our PA executing management the opportunity to review.

Please let us know if you think it would be helpful to set up a call/meeting to discuss any questions or comments. We can discuss next steps during our call on Thursday.

Thanks,

Katie

Kathryn Lamond, P.E.

Environmental and Sustainability Specialist

PANYNJ - Aviation Department

4 World Trade Center, 150 Greenwich St.

New York, NY 10007

[REDACTED] (office)

[REDACTED] (cell)



**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION**

**AND**

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**I. INTRODUCTION AND PURPOSE**

- A. This Memorandum of Understanding ("MOU") provides a framework in which the United States Department of Transportation (the "DOT"), Federal Aviation Administration (the "FAA"), an executive agency of the United States, organized and existing under the laws of the United States, having its principal office at 800 Independence Avenue, S.W., Washington, D.C., 20591, will prepare an Environmental Impact Statement (the "EIS") for the LaGuardia Airport ("LGA") LGA Access Improvement Project (the "Project") being proposed by The Port Authority of New York and New Jersey an interstate compact agency created by Compact between the States of New York and New Jersey, with the consent of the Congress of the United States having its principal office at Four World Trade Center, 150 Greenwich Street, New York, NY10007 (the "Port Authority" or "Sponsor"). The MOU describes the relationship of the above named parties in preparing the EIS. Subject to completion of the EIS, the FAA will issue a determination regarding the Project that will be set forth in a Record of Decision.
- B. As lead agency, the FAA has selected an independent contractor (the "Contractor") to prepare the EIS. The Sponsor shall be the party responsible to engage and retain the Contractor with funds provided by the Sponsor.
- C. The EIS and any related documents shall comply with the provisions of the National Environmental Policy Act of 1969 ("NEPA") and Council on Environmental Quality ("CEQ"), DOT, and FAA environmental regulations and guidance, as well as all applicable local, state and Federal laws, as appropriate.
- D. It is the purpose of this MOU to establish an understanding between the Sponsor and the FAA regarding the responsibilities of the parties and the conditions and procedures to be followed in the development and preparation of the EIS.
- E. The parties that enter into this agreement intend that development and preparation of the EIS, as articulated in this MOU, will satisfy the pertinent environmental

requirements of the FAA and any Cooperating Agencies (as that term is defined in 40 CFR § 1501.6 and 1508.5) that may have jurisdiction over the Project.

## **II. GENERAL PROVISIONS**

- A. As the lead agency, the FAA will be responsible to ensure compliance with all the requirements of NEPA (42 U.S.C. 4321 et seq.), CEQ Regulations (40 C.F.R. Parts 1500-1508), appropriate DOT and FAA environmental orders, and the FAA acknowledges that the Sponsor will be responsible for coordinating with state and local entities for their respective compliance with applicable state and local laws. The FAA shall ensure that all pertinent environmental issues and impacts reasonable alternatives and their impacts cumulative impacts and mitigation/conditions are treated in the EIS, and shall be responsible for the scope and content of the EIS.
- B. The Sponsor will engage and retain the Contractor, selected by the FAA, for the preparation of the EIS. The Contractor, with the approval of the FAA and Sponsor, may employ such other contractors and experts (collectively referred to as "Subcontractors"), as are required for the adequate development and preparation of the EIS.
- C. As approved by the FAA, the Contractor will provide, through its staff or by Subcontractor, the expertise, staffing, and technical capabilities required for the preparation of the EIS. The FAA will direct the scope of the EIS and will independently evaluate all information, environmental data and analyses submitted by the Contractor, the Sponsor or others, and revise or cause additional study and analyses to be performed as necessary.
- D. The Contracts between the Sponsor and Contractor and between the Contractor and Subcontractors (collectively the "Contract") shall be consistent with the provisions of this MOU and shall specifically incorporate those provisions articulated herein that address the conduct of the Contractor. Before starting EIS preparation, the Contractor and Subcontractors shall provide verification to FAA that they have no financial interest in the outcome of the action of the EIS will address, consistent with FAA Order 5050.4B, Paragraph 1003(d). The Contractor and Subcontractors working on the EIS may not bid on any future actions the EIS addresses until the approving FAA official issues a Record of Decision based on the EIS. This prohibition does not prevent the Sponsor from selecting the EIS Contractor or Subcontractors for later development actions, should they be approved. However, that selection must occur after free and open competition and there can be no implied or suggested guarantee that the Sponsor would favorably consider the EIS Contractor or Subcontractors. Further, the Sponsor shall ensure that the Contract shall specifically limit any remedies available to the Contractor and any Subcontractors, so as to affirmatively relieve the United States of America, the FAA, and any officer, agent or employee of same, from any liability

arising out of the performance or termination of the contract for preparation of the EIS, or out of this MOU.

1. Prior to beginning work on the Project, the Contractor and any Subcontractors shall sign a "Disclosure Statement" provided by the FAA per the requirements of FAA Order 5050.4B, Paragraph 1003(d), specifying they have no financial or other interest in the outcome of the project.
  2. The FAA shall evaluate the Disclosure Statement prior to its approval.
- E. The Sponsor shall facilitate the coordination of effort and the exchange of information related to the planning, design, and construction of the Project, as these activities relate to the preparation of the EIS among and between the Contractor and its Subcontractors, the FAA and other federal, state or local entities as appropriate. The Sponsor shall make all reasonable efforts to assist and cooperate with the FAA's directions to the Contractor and Subcontractors to ensure the satisfactory and timely performance of the duties of the Contractor and Subcontractors as specified in this MOU.
- F. The Sponsor and FAA shall:
1. Appoint such full-time (as more fully defined in Paragraph E below) representatives from their respective agencies as necessary to accomplish the coordination necessary for the satisfactory preparation of the EIS. Notice to any such representative shall constitute notice to that party.
  2. Review substantive work products under the Contract(s) for the EIS as the FAA deems necessary, consistent with Article III of this MOU.
  3. Have their respective representatives attend meetings with other Federal, state, regional, and local agencies for the purpose of increasing communications and receiving comments, as the same may be necessary, desirable, or required by law in preparation of the EIS.
- G. All costs incurred in connection with the employment of the Contractor and any and all Subcontractors, or other persons retained or employed by the Sponsor, shall be the sole responsibility of the Sponsor, except in the event this MOU is terminated in accordance with Section IV below. To the extent authorized by law, the Sponsor agrees to hold harmless and indemnify the FAA, its officers, agents, and employees, with respect to any and all judgments or settlements arising from claims, demands, causes of action, and the like ("Claims"), in connection with the Sponsor's employment of the Contractor and any and all Subcontractors which may arise from the termination or performance of the Contract or any other services, or purchase of materials utilized for the development and preparation of the EIS, or from termination of this MOU, except for Claims that arise out of the gross negligence or willful misconduct of the FAA, its officers, agents and

employees. This indemnification by the Sponsor does not extend to administrative or legal costs of the FAA, including suits by third parties (other than the Contractor or its Subcontractors) against the FAA, involving the legality or adequacy of the FAA's compliance with NEPA and other laws and regulations, to the extent of the FAA's liabilities on those issues. The Sponsor shall cooperate and shall require as a term and condition of the Contract that the Contractor cooperates in defense of any such suit. Notwithstanding anything to the contrary in this Agreement, nothing shall be construed to waive the applications of statutory provisions, immunities and limitations available under the Federal Tort Claims Act, (28 U.S.C. Sections 2671, et. seq.) or any other governmental immunity act, as the same may be amended from time to time, with respect to, and in defense of, any claim or claims asserted by any person or entity. The FAA agrees that the Sponsor may satisfy the indemnification requirements set forth above by means of a self-insurance program.

H. The FAA will assign, upon execution of this MOU and through completion of the final EIS document, at a minimum one of the following: an environmental manager, attorney, and support staff; each on a full-time basis. The FAA will receive funding for the direct and indirect costs associated with the employment of the personal assigned pursuant to this Agreement, in accordance with the existing funding agreement between the Sponsor and the FAA, dated as of [\_\_\_\_\_], for the funds required to satisfy the above obligations. It is the intention of the parties that these personnel shall be used to expedite preparation of the EIS contemplated by this Agreement. In addition, the FAA, during the development of the EIS, shall provide office space to the Contractor and Subcontractors within the Regional Office so as to facilitate communication and work on the EIS. For the purposes of this Agreement, full-time shall mean availability at a minimum (5) five days a week, between the hours of 9 am and 5 pm eastern standard time, subject to vacation schedules, Federal holidays and sick leave.

### **III. PROCEDURES**

- A. Under the direction of the FAA, the Contractor shall develop and submit a plan of study to the FAA for the EIS for approval. The "Plan of Study" shall mean a plan that includes detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated man-hours required for completion of each aspect, the schedule for performing each aspect and a description of the internal and external review procedures to assure quality control. Also, the Plan of Study shall include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the environmental data and analyses and the development and preparation of the EIS. The Plan of Study should also identify procedures for retention of all data and sources used in the development of the EIS for eventual consolidation into the Administrative Record

- B. Upon receipt, the FAA will forward the draft Plan of Study to the Sponsor for review and comment. After receiving comments from the Sponsor, and the scoping process conducted pursuant to 40 C.F.R. Sec. 1501.7, the FAA will finalize and approve the Plan of Study. The Sponsor acknowledges that any such draft is subject to the change based on the scoping process. The Plan of Study and this MOU will serve as the basis for the Contractor's development and preparation of the EIS.
- C. 1. The Plan of Study may be amended by the FAA from time to time as the work of the Contractor or its Subcontractors proceeds, but any amendments or changes which require the expenditure of additional funds by the Sponsor must be agreed to by the Sponsor. The Sponsor will be notified and consulted prior to any significant amendments or modifications to the Plan of Study that require the expenditure of additional funds or modification to the proposed schedule for completion of the EIS. Payments by the Sponsor will be made and are subject to the availability of funds authorized by the Sponsor's Board of Commissioners.
2. The Sponsor will pay Contractor and Subcontractors invoices only upon receipt from a responsible officer of the FAA a certification that the work or materials set forth on a submitted invoice has been performed or provided by the Contractors and Subcontractors. Any invoices submitted for payment shall only include amounts for project work that has already been performed by the date on which such invoice is submitted for payment. The Sponsor may deny payment for any portion of any invoice that is not supported by the certification described above or for work not actually performed.
- D. As each portion of any draft of sections of the EIS and, unless otherwise directed by the FAA, any and all work performed by the Contractor and its Subcontractors in preparation of the EIS shall be submitted directly to the FAA, and upon request of the Sponsor the FAA, to the Sponsor. The Sponsor may communicate with the Contractor and its Subcontractors during the development of the EIS, but no prior review or discussion of data or analyses developed by the Contractor or Subcontractor as related to the EIS before being submitted to the FAA shall be afforded the Sponsor. In no case will the Sponsor discuss, review, modify, or edit the Contractor's work or the work of its Subcontractors prior to submission to the FAA, or be provided the opportunity to do so. All suggestions for modifications or changes to such sections recommended by the Sponsor or the Sponsor's representative shall only be made to the FAA in accordance with Paragraph F below.
- E. The FAA reserves the right to review periodically and modify the work of the Contractor to ensure that requirements under NEPA and other applicable laws and regulations are satisfied. The Contractor shall submit weekly written reports on the progress of its work to the FAA, with a concurrent copy to the Sponsor. This report shall describe the present status of each aspect of the work, any problems

encountered, and recommendations for modifications to the Plan of Study and any changes in personnel, methodology or schedules for completion.

- F. As each portion of any draft or final document is completed, the FAA shall review each portion and those tasks completed thereunder and, after consultation with the Sponsor, shall approve, modify, comment thereon and/or direct further work with regard to such portion or tasks as necessary; the foregoing FAA review will be a concurrent review by all applicable offices/divisions/departments of the agency, including but not limited to the Office of the Regional Counsel (or Office of the Chief Counsel, as appropriate), to avoid unnecessary delay. Said directions and/or comments shall be made by the FAA in a manner so as to ensure expeditious completion of the EIS, and the Contractor shall ensure incorporation of such comments into any editorial changes to the satisfaction of the FAA. Prior to approval, the FAA will forward final drafts to the Sponsor for review and comment. Comments from the Sponsor shall be sent to the FAA. The Contractor will only make modifications as the FAA directs regarding these comments. After the aforementioned consultation, final drafts of any documents will require FAA approval.
- G. If requested, the Contractor will provide the FAA access to and review of all procedures and underlying data used by the Contractor in developing submitted sections of the EIS, including, but not limited to, field reports, Subcontractor reports, and interviews with concerned private and public parties, whether or not such information may be contained in a draft or final EIS. Upon request by the Sponsor, the FAA will promptly provide the Sponsor with access to all of the aforementioned procedures and underlying data. Such information provided by the FAA shall be governed by paragraph III.U in this MOU.
- H. To facilitate the development and preparation of the EIS, joint meetings among the FAA, Sponsor, and Contractor may be held on a weekly basis but no less frequently than bi-weekly. However, the FAA reserves the right to work directly with the Contractor for purposes of assuring objectivity in preparing reports and/or for assuring expeditious communications. The Contractor will notify the FAA and Sponsor of any substantive meetings that are scheduled with other agencies and of their purpose and will provide an opportunity for the parties to attend if desired. No meeting will be held between the Contractor and Sponsor without prior notification to and approval of the FAA. A summary of all matters relating to EIS discussions in any meetings or communications between the Contractor and a party hereto without the participation of the other said party will be included in each formal weekly report submitted by the Contractor to the FAA and Sponsor. The FAA and the Sponsor each reserve the right to consult directly with other Federal, state, and local officials and agencies during the preparation of the EIS to assure the Sponsor's compliance with all applicable laws and regulations.
- I. The Sponsor and FAA each acknowledge that the Contractor and its Subcontractors scope of services includes assisting the FAA with any public

workshops, hearings, or meetings as required and directed by the FAA to foster public familiarity and participation with respect to the assessment of impacts related to the Project.

- J. At such time as the FAA, after consultation with the Sponsor, has approved the Draft EIS developed and prepared by the Contractor and its Subcontractors, the Contractor shall print the quantity of Draft EIS copies as specified by the FAA and submit same to the FAA. The FAA shall direct the Contractor to submit the appropriate number of copies of the Draft EIS to the Sponsor.
- K. Upon the anticipated completion of the Draft EIS, the FAA, with the Contractor's assistance, shall be responsible for organizing and conducting any public hearings.
- L. The FAA will receive all comments during the Draft EIS public review and comment period. This period (at least 45 days) will be initiated when the Environmental Protection Agency (EPA) publishes the "Draft EIS Notice of Availability" in the Federal Register.
- M. At the close of the Draft EIS public review and comment period, the FAA shall promptly provide the Sponsor and the Contractor with all comments received, and shall identify the issues and comments submitted which will require response in the Final EIS. The FAA will direct those issues and comments to the Contractor for preparation of proposed responses, and shall furnish the Sponsor with such identification of issues and comments that require response in the Final EIS. The FAA shall direct the Contractor to furnish proposed responses concurrently to the FAA and Sponsor for review and comment. The Sponsor shall provide any comments to the FAA. The FAA, with appropriate advice and consultation with the Sponsor, shall modify the proposed responses as it deems necessary.
- N. After receipt of comments and preparation of responses, the FAA, after appropriate advice and consultation, may direct the Contractor to make changes to the text of the Draft EIS as necessary.
- Q. At such time as the FAA has approved the Final EIS, the Contractor shall print the contracted quantity of Final EIS. The FAA shall submit an appropriate number of copies of the Final EIS to the Sponsor.
- R. The FAA will receive all comments on the Final EIS during the mandatory "hold period". This period (at least 30 days) will be initiated when the EPA publishes the "Final EIS Notice of Availability" in the Federal Register.
- S. In accordance with Executive Order 13807: Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, the FAA and Contractor shall take all reasonable steps to ensure expeditious preparation and issuance of the Draft and Final EIS.

- T. The FAA, with assistance from the Contractor, will expeditiously prepare and issue the FAA Record of Decision, after publication of the “Final EIS Notice of Availability,” and will make it available to the public; if permitted by applicable law, and determined by the FAA as appropriate shall issue the ROD contemporaneously with the Final EIS.
- U. Information developed under this MOU is disclosable to the public to the extent required by law. The FAA will maintain the confidentiality of, and will not release or allow access to, any information, documents or materials which in its opinion are validly designated as confidential by the Sponsor or Contractor and which contain trade secrets, proprietary data, or commercial or financial information or falls within an existing federal exemption. In any instance where the FAA proposes to release to the public or allow access to any information, documents or materials, created in the development and preparation of the EIS or which the Sponsor or Contractor has designated as confidential, it shall notify the Sponsor or Contractor of its intention to do so, at least five (5) business days prior to such release or grant of access. In addition, the Sponsor or Contractor has the opportunity to either (i) appeal the decision in accordance with applicable regulations on such release or access prior to any such release or access or (ii) seek a protective order. (See FAA Order 1270.1)
- V. The Contractor will maintain a segregated copy of each record/document relating to the project that is used by the FAA in their decision making process. This will form the basis for the FAA's administrative record of the EIS. The Consultant shall be responsible for managing the administrative project file and, upon completion of the work, will be responsible for submitting a completed administrative record for the project to the FAA and the Sponsor, in accordance with FAA policy and guidance.
- W. All work prepared under this MOU shall be delivered to the FAA and the Sponsor in printed format and searchable .pdf files along with components associated with each item, such as data files, text files, image files, spreadsheets, graphs, and tables.

#### **IV. CESSATION AND TERMINATION**

- A. Any of the parties to this MOU may withdraw from the terms of this MOU for good cause upon 30 days written notice to the other party. During this period, the parties will actively attempt to resolve any disagreement.
- B. In the event of a termination of this MOU, and if the FAA determines that preparation of an EIS by the FAA is still required, it is agreed as follows:



1. The FAA shall have access to all documentation, reports, analyses and data by the Contractor and Subcontractors with confidentiality governed by paragraph III.T.
2. The FAA shall assume the responsibility for preparing the EIS. The Sponsor shall no longer be responsible for the payment of costs associated with preparation of the EIS under the terminated MOU, apart from costs already incurred and required under the Sponsor's contract with the Contractor. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations which might require payment.
3. Liability for termination shall be in accordance with paragraph II.G. of this MOU.

#### **VI. NO RIGHTS FOR NON-PARTIES**

This Agreement does not create any right or benefit enforceable by law or equity of any person who is not a party to this Agreement against the Sponsor or FAA. No rights or privileges are created or intended to be created by this MOU in anyone not a signatory of this MOU.

#### **VII. MODIFICATION**

This MOU represents the entire agreement and may be modified by the parties hereto only by written agreement by all the parties.

#### **VIII. AUTHORITY TO EXECUTE**

The representative of each party signing this Agreement warrants that he/she is duly authorized to do so.

#### **IX. COUNTERPARTS**

A photocopy or PDF copy of this Agreement shall have the same force and effect as an original of this Agreement.

#### **X. NOTICES**

Notices and other communications under this Agreement shall be in writing and shall be directed as follows, or to such other address as the party receiving such notice or communication shall have previously specified by notice to the other party sending such notice:

If to the Sponsor:

Title:  
The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 18<sup>th</sup> Floor  
New York, New York 10007

with a copy to:

General Counsel  
The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 18<sup>th</sup> Floor  
New York, New York 10007

If to the FAA:

[FAA to provide contact]  
[Title]  
Federal Aviation Administration  
1 Aviation Plaza, Suite [ ]  
Jamaica, New York 11434

with a copy to:

[FAA to provide contact]  
[Title]  
Federal Aviation Administration  
800 Independence Ave., S.W.,  
Washington, D.C., 20591

#### **XI. NO PERSONAL LIABILITY**

No Commissioner, director, officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

**XII. SIGNATORIES**

**United States Federal Aviation Administration**

\_\_\_\_\_  
[SIGNATORY AND TITLE] DATE \_\_\_\_\_

**The Port Authority of New York and New Jersey**

\_\_\_\_\_  
\_\_\_\_\_  
[SIGNATORY AND TITLE] DATE \_\_\_\_\_

Port Authority Use Only:	
Approval as to Terms	Approval as to Form



PA Comments (05.21.18)

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE UNITED STATES DEPARTMENT OF TRANSPORTATION**  
**FEDERAL AVIATION ADMINISTRATION**  
**AND**  
**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**I. INTRODUCTION AND PURPOSE**

- A. This Memorandum of Understanding ("MOU") provides a framework in which the United States Department of Transportation (the "DOT"), Federal Aviation Administration (the "FAA"), an executive agency of the United States, organized and existing under the laws of the United States, having its principal office at 800 Independence Avenue, S.W., Washington, D.C., 20591, will prepare an Environmental Impact Statement (the "EIS") for the LaGuardia Airport ("LGA") LGA Access Improvement Project (the "Project") being proposed by The Port Authority of New York and New Jersey an interstate compact agency created by Compact between the States of New York and New Jersey, with the consent of the Congress of the United States having its principal office at Four World Trade Center, 150 Greenwich Street, New York, NY10007 (the "Port Authority" or "Sponsor"). The MOU describes the relationship of the above named parties in preparing the EIS. Subject to completion of the EIS, the FAA will issue a determination regarding the Project that will be set forth in a Record of Decision.
- B. As lead agency, the FAA has selected an independent contractor (the "Contractor") to prepare the EIS. The Sponsor shall be the party responsible to engage and retain the Contractor with funds provided by the Sponsor.
- C. The EIS and any related documents shall comply with the provisions of the National Environmental Policy Act of 1969 ("NEPA") and Council on Environmental Quality ("CEQ"), DOT, and FAA environmental regulations and guidance, as well as all applicable local, state and Federal laws, as appropriate.
- D. It is the purpose of this MOU to establish an understanding between the Sponsor and the FAA regarding the responsibilities of the parties and the conditions and procedures to be followed in the development and preparation of the EIS.
- E. The parties that enter into this agreement intend that development and preparation of the EIS, as articulated in this MOU, will satisfy the pertinent environmental

requirements of the FAA and any Cooperating Agencies (as that term is defined in 40 CFR § 1501.6 and 1508.5) that may have jurisdiction over the Project.

## II. GENERAL PROVISIONS

A. As the lead agency, the FAA will be responsible to ensure compliance with all the requirements of NEPA (42 U.S.C. 4321 et seq.), CEQ Regulations (40 C.F.R. Parts 1500-1508), appropriate DOT and FAA environmental orders, and the FAA acknowledges that the Sponsor will be responsible for coordinating with state and local entities for their respective compliance with applicable state and local laws, including the New York State Environmental Quality Review Act (ECL §§ 8-0101 et seq.) ("SEQRA") and implementing regulations (6 NYCRR Part 617). The FAA shall ensure that all pertinent environmental issues and impacts reasonable alternatives and their impacts cumulative impacts and mitigation/conditions are treated in the EIS, and shall be responsible for the scope and content of the EIS.

B. The Sponsor will engage and retain the Contractor, selected by the FAA, for the preparation of the EIS. The Contractor, with the approval of the FAA and Sponsor, may employ such other contractors and experts (collectively referred to as "Subcontractors"), as are required for the adequate development and preparation of the EIS.

~~C.~~ As approved by the FAA, the Contractor will provide, through its staff or by Subcontractor, the expertise, staffing, and technical capabilities required for the preparation of the EIS. The FAA will direct the scope of the EIS and will independently evaluate all information, environmental data and analyses submitted by the Contractor, the Sponsor or others, and revise or cause additional study and analyses to be performed as necessary.

~~D.C.~~

~~E.D.~~ The Contracts between the Sponsor and Contractor and between the Contractor and Subcontractors (collectively the "Contract") shall be consistent with the provisions of this MOU and shall specifically incorporate those provisions articulated herein that address the conduct of the Contractor. Before starting EIS preparation, the Contractor and Subcontractors shall provide verification to FAA that they have no financial interest in the outcome of the action of the EIS will address, consistent with FAA Order 5050.4B, Paragraph 1003(d). The Contractor and Subcontractors working on the EIS may not bid on any future actions the EIS addresses until the approving FAA official issues a Record of Decision based on the EIS. This prohibition does not prevent the Sponsor from selecting the EIS Contractor or Subcontractors for later development actions, should they be approved. However, that selection must occur after free and open competition and there can be no implied or suggested guarantee that the Sponsor would favorably consider the EIS Contractor or Subcontractors. Further, the Sponsor shall ensure that the Contract shall specifically limit any remedies available to the Contractor and any Subcontractors, so as to affirmatively

Commented [FAA1]: Can the Port please explain why this needs to be included? If the Port is subject to SEQRA, is the Port suggesting that this be a combined NEPA EIS and SEQRA EIS?

Commented [CM2R1]: To the extent that SEQRA is required, the Port Authority will provide any necessary documents to FAA to incorporate. The Port Authority will need to be in communication with local entities for coordination.

relieve the United States of America, the FAA, and any officer, agent or employee of same, from any liability arising out of the performance or termination of the contract for preparation of the EIS, or out of this MOU.

1. Prior to beginning work on the Project, the Contractor and any Subcontractors shall sign a "Disclosure Statement" provided by the FAA per the requirements of FAA Order 5050.4B, Paragraph 1003(d), specifying they have no financial or other interest in the outcome of the project.
2. The FAA shall evaluate the Disclosure Statement prior to its approval.

E. The Sponsor shall facilitate the coordination of effort and the exchange of information related to the planning, design, and construction of the Project, as these activities relate to the preparation of the EIS among and between the Contractor and its Subcontractors, the FAA and other federal, state or local entities as appropriate. The Sponsor shall make all reasonable efforts to assist and cooperate with the FAA's directions to the Contractor and Subcontractors to ~~as~~ ensure the satisfactory and timely performance of the duties of the Contractor and Subcontractors as specified in this MOU.

Commented [FAA3]: We do not agree with this edit. As lead agency, it is FAA's role to determine the exchange of information.

Commented [CM4R3]: With respect to coordination with other entities, it is necessary for the Port Authority to have the ability to coordinate on the planning and design front for permitting etc.

F. The Sponsor and FAA shall:

1. Appoint such full-time (as more fully defined in Paragraph E below) representatives from their respective agencies as necessary to accomplish the coordination necessary for the satisfactory preparation of the EIS. Notice to any such representative shall constitute notice to that party.
2. Review substantive work products under the Contract(s) for the EIS as the FAA deems necessary, consistent with Article III of this MOU.
3. Have their respective representatives attend meetings with other Federal, state, regional, and local agencies for the purpose of increasing communications and receiving comments, as the same may be necessary, desirable, or required by law in preparation of the EIS.

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MOU, except for Claims that arise out of the gross negligence or willful misconduct of the FAA, its officers, agents and employees. This indemnification by the Sponsor does not extend to administrative or legal costs of the FAA, including suits by third parties (other than the Contractor or its Subcontractors) against the FAA, involving the legality or adequacy of the FAA's compliance with NEPA and other laws and regulations, to the extent of the FAA's liabilities on those issues. The Sponsor shall cooperate and shall ~~ensure~~ require as a term and condition of the Contract that the Contractor cooperates in defense of any such suit. Notwithstanding anything to the contrary in this Agreement, nothing shall be construed to waive the applications of statutory provisions, immunities and limitations available under the Federal Tort Claims Act, (28 U.S.C. Sections 2671, et. seq.) or any other governmental immunity act, as the same may be amended from time to time, with respect to, and in defense of, any claim or claims asserted by any person or entity. The FAA agrees that the Sponsor may satisfy the indemnification requirements set forth above by means of a self-insurance program.

H. The FAA will assign, upon execution of this MOU and through completion of the final EIS document, at a minimum one of the following: an environmental manager, attorney, and support staff, each on a full-time basis. The FAA will receive funding for the direct and indirect costs ~~associated~~ associated with the employment of the personal assigned pursuant to this Agreement, in accordance with the existing funding agreement between the Sponsor and the FAA, dated as of [ ], for the funds required to satisfy the above obligations. It is the intention of the parties that these personnel shall be used to expedite preparation of the EIS contemplated by this Agreement. In addition, the FAA, during the development of the EIS, shall provide office space to the Contractor and Subcontractors within the Regional Office so as to facilitate communication and work on the EIS. For the purposes of this Agreement, full-time shall mean availability at a minimum (5) five days a week, between the hours of 9 am and 5 pm eastern standard time, subject to vacation schedules, Federal holidays and sick leave.

### III. PROCEDURES

- A. Under the direction of the FAA, the Contractor shall develop and submit a plan of study to the FAA for the EIS for approval. The "Plan of Study" shall mean a plan that includes detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated man-hours required for completion of each aspect, the schedule for performing each aspect and a description of the internal and external review procedures to assure quality control. Also, the Plan of Study shall include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the environmental data and analyses and the development and



preparation of the EIS. The Plan of Study should also identify procedures for retention of all data and sources used in the development of the EIS for eventual consolidation into the Administrative Record. ~~In developing the Plan of Study, the Contractor may consider and use/utilize as appropriate any relevant submissions made by the Sponsor, or the Sponsor's representative which submissions shall be made concurrently directly to the FAA and Contractor.~~

B. ~~Upon receipt,~~ the FAA will forward the draft Plan of Study to the Sponsor for review and comment. After receiving comments from the Sponsor, and the scoping process conducted pursuant to 40 C.F.R. Sec. 1501.7, the FAA will finalize and approve the Plan of Study. The Sponsor acknowledges that any such draft is subject to the change based on the scoping process. The Plan of Study and this MOU ~~shall establish the scope of work required of~~ will serve as the basis for ~~the Contractor's~~ in the development and preparation of the EIS.

C. 1. The Plan of Study may be amended by the FAA from time to time as the work of the Contractor or its Subcontractors proceeds, but any amendments or changes which require the expenditure of additional funds by the Sponsor must be agreed to by the Sponsor. The Sponsor will be notified and consulted prior to any ~~significant~~ significant amendments or modifications to the Plan of Study that require the expenditure of additional funds or modification to the proposed schedule for completion of the EIS. Payments by the Sponsor will be made and are subject to the availability of funds authorized by the Sponsor's Board of Commissioners.

2. The Sponsor will pay Contractor and Subcontractors invoices only upon receipt from a responsible officer of the FAA a certification that the work or materials set forth on a submitted invoice has been performed or provided by the Contractors and Subcontractors. Any invoices submitted for payment shall only include amounts for project work that has already been performed by the date on which such invoice is submitted for payment. The Sponsor may deny payment for any portion of any invoice that is not supported by the certification described above or for work not actually performed.

D. ~~Unless~~ As each portion of any draft of sections of the EIS and, unless otherwise directed by the FAA, any and all work performed by the Contractor and its Subcontractors in preparation of the EIS shall be submitted directly to the FAA, ~~and upon request of the FAA~~ Sponsor the FAA, to the Sponsor. The Sponsor may communicate with the Contractor and its Subcontractors during the development of the EIS, but no prior review or discussion of data or analyses developed by the Contractor or Subcontractor as related to the EIS before being submitted to the FAA shall be afforded the Sponsor. In no case will the Sponsor discuss, review, modify, or edit the Contractor's work or the work of its Subcontractors prior to submission to the FAA, or be provided the opportunity to do so. All suggestions for modifications or changes to such sections recommended by the Sponsor or the Sponsor's representative shall only be made to the FAA. in accordance with Paragraph F below.

Commented [FAA5]: This doesn't seem appropriate at Plan of Study phase, more so during initial data gathering concurrent to development of Plan of Study. Data should not be considered until FAA reviews, or directs the review, of the submissions. If this is supposed to mean that the plan of study should include a task that evaluates sponsor info, that would be acceptable.

Commented [CM6R5]: Revised language to address comment.

Commented [FAA7]: This could cause a workflow issue. Minor scope changes are routine. Significant changes with cost implications are typically of concern to the Sponsor.

Commented [CM8R7]: Revised to add "significant" back into the text.

Commented [CM9]: The Port Authority requires the ability to validate expenditure of funds, especially since the FAA will control and direct the Contractor and Subcontractors day-to-day work.

Commented [FAA10]: We do not agree with this edit. FAA needs to have the ability to direct the speed/frequency with which portions of the document are submitted.

Commented [CM11R10]: The language states "unless otherwise directed by the FAA."

Commented [FAA12]: We do not agree with all the edits in this section. FAA, as the lead federal agency, needs to maintain control of the process. Regularly scheduled meetings (bi-monthly/monthly) will facilitate these discussions. The Sponsor should not be having discussions directly with the Contractor without FAA present.

Commented [CM13R12]: It is necessary for the Port Authority to have the ability to coordinate with other entities.

E. The FAA reserves the right to review periodically and modify the work of the Contractor to ensure that requirements under NEPA and other applicable laws and regulations are satisfied. The Contractor shall submit ~~monthly~~weekly written reports on the progress of its work to the FAA, with a concurrent copy to the Sponsor. This report shall describe the present status of each aspect of the work, any problems encountered, and recommendations for modifications to the Plan of Study and any changes in personnel, methodology or schedules for completion.

F. As each portion of any draft or final document is completed, the FAA shall review each portion and those tasks completed thereunder and, after consultation with the Sponsor, shall approve, modify, comment thereon and/or direct further work with regard to such portion or tasks as necessary. the foregoing FAA review will be a concurrent review by all applicable offices/divisions/departments of the agency, including but not limited to the Office of the Regional Counsel (or Office of the Chief Counsel, as appropriate), to avoid unnecessary delay. Said directions and/or comments shall be made by the FAA in a manner so as to ensure expeditious completion of the EIS, and the Contractor shall ensure incorporation of such comments into any editorial changes to the satisfaction of the FAA. ~~Final drafts of any documents will require FAA approval.~~ Prior to approval, the FAA will forward final drafts to the Sponsor for review and comment. Comments from the Sponsor shall be sent to the FAA. The Contractor will only make modifications as the FAA directs regarding these comments. After the aforementioned consultation, final drafts of any documents will require FAA approval.

G. If requested, the Contractor will provide the FAA access to and review of all procedures and underlying data used by the Contractor in developing submitted sections of the EIS, including, but not limited to, field reports, Subcontractor reports, and interviews with concerned private and public parties, whether or not such information may be contained in a draft or final EIS. Upon request by the Sponsor, the FAA will also have promptly provide the Sponsor with access to such all of the aforementioned procedures and underlying data. Such access information provided by the FAA ~~and Sponsor~~ shall be governed by paragraph III.F.U in this MOU.

~~H.~~ To facilitate the development and preparation of the EIS, joint meetings among the FAA, Sponsor, and Contractor shall may be held on a weekly basis but no less frequently than bi-weekly. However, the FAA reserves the right to work directly with the Contractor for purposes of assuring objectivity in preparing reports and/or for assuring expeditious communications. The Contractor will notify the FAA and Sponsor of any substantive meetings that are scheduled with other agencies and of their purpose and will provide an opportunity for the parties to attend if desired. No meeting will be held between the Contractor ~~or~~ and Sponsor without prior notification to and approval of the FAA. A summary of all matters relating to EIS discussions in any meetings or communications between the Contractor and a party hereto without the participation of the other said party will be included in each

Commented [FAA14]: We do not agree with the edits in this section. This is not appropriate for an MOU. FAA will avoid unnecessary delay to the extent it can, however, external factors can influence our workload.

Commented [CM15R14]: Assume this comment is no longer applicable due to Executive Order 13807: Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects

Commented [FAA16]: Same as above. It is FAA's role to decide on information sharing.

Commented [CM17R16]: As previously drafted, the Sponsor had access to the documentation. As modified, this provides for a process to obtain that information.

Commented [FAA18]: Prefer "may"

Commented [CM19R18]: Text has been revised.

Commented [FAA20]: We disagree with this edit. The purpose of this section is FAA/Sponsor coordination, not combined coordination with other agencies.

Commented [CM21R20]: The Port Authority needs to be able to coordinate and review data and materials pertinent to the EIS with state and local entities during this process. As drafted, it reserves to the Sponsor that ability.

formal ~~monthly~~ weekly report submitted by the Contractor to the FAA and Sponsor. The FAA ~~reserves and the Sponsor each reserve~~ the right to consult directly with other Federal, state, and local officials and agencies during the preparation of the EIS to assure the Sponsor's compliance with ~~NEPA and other~~ all applicable laws and regulations.

H.

- I. The Sponsor ~~shall~~ and FAA each acknowledge that ~~assure the full cooperation of~~ the Contractor and its Subcontractors scope of services includes assisting the FAA with ~~respect to participating in~~ any public workshops, hearings, or meetings as required and directed by the FAA to foster public familiarity and participation with respect to the assessment of impacts related to the Project.
- J. At such time as the FAA, after consultation with the Sponsor, has approved the Draft EIS developed and prepared by the Contractor and its Subcontractors, the Contractor shall print the ~~contracted~~ quantity of Draft EIS copies as specified by the FAA and submit same to the FAA. The FAA shall direct the Contractor to submit the appropriate number of copies of the Draft EIS to the Sponsor. ~~The FAA shall submit an appropriate number of copies of the Draft EIS to and the Sponsor.~~
- K. The Contractor shall be responsible for the costs associated with the printing and publication of the draft and final copies of the EIS. The Contractor shall be responsible for all costs associated with the publication of FAA-approved notices announcing public workshops, meetings, hearings, and the like. The Contractor shall also be responsible for costs of stenographic and clerical services, preparation of graphics and visual aids associated with any public workshops, meetings, and hearings.
- L. In all instances involving questions as to the content or relevance of the environmental data and analyses, and evaluations and wording prepared by the Contractor during the EIS process, the FAA, with appropriate advice and consultation ~~when it deems necessary, will with the Sponsor, shall~~ make the final determination on the inclusion, deletion or modification of the same in the Draft or Final EIS. The FAA shall provide the Sponsor with the opportunity to review and comment on such the environmental data and analyses, at minimum to identify errors, omissions omissions and to ensure that both the Federal and State or local documentation are to the extent feasible consistent. [Note to FAA: this language is consistent with the language in Paragraph O below.]
- M. Upon the anticipated completion of the Draft EIS, the FAA, with the Contractor's assistance, shall be responsible for organizing and conducting any public hearings.
- N. The FAA will receive all comments during the Draft EIS public review and comment period. This period (at least 45 days) will be initiated when the Environmental Protection Agency (EPA) publishes the "Draft EIS Notice of Availability" in the Federal Register.

Commented [FAA22]: We disagree with this edit. FAA must be able to demonstrate ownership of the process. May need to find alternate language if the Port is subject to SEQRA and coordination under SEQRA is needed.

Commented [CM23R22]: See comment response above. This would ensure that the Port Authority is able to move forward programmatically with coordination on federal, state, and local levels.

Commented [FAA24]: We disagree with this edit. FAA has to transmit to show ownership.

Commented [CM25R24]: Text revised to specify that only at the direction of the FAA would the Contractor submit copies to the Sponsor.

Commented [FAA26]: We disagree with this edit. FAA does not consult with the sponsor prior to taking all actions. This language is only consistent with the Port modifications to Paragraph O, which we disagree with.

Commented [CM27R26]: Text revised to remove with appropriate advice and consultation "with the Sponsor"

O. At the close of the Draft EIS public review and comment period, the FAA shall promptly provide the Sponsor and the Contractor with all comments received, and shall identify the issues and comments submitted which will require response in the Final EIS. The FAA will direct those issues and comments to the Contractor for preparation of proposed responses, and shall furnish the Sponsor with copies such identification of all issues and comments received that require response in the Final EIS. The FAA shall direct the Contractor will to furnish proposed responses concurrently to the FAA and Sponsor for review and comment. The ~~FAA will share the proposed responses with the Sponsor for additional review and comment with proposed changes back~~ Sponsor shall provide any comments to the FAA. The FAA, with appropriate advice and consultation with the Sponsor, shall modify the proposed responses as it deems necessary.

Commented [FAA28]: Same as above. These revisions undermine the FAA's independence in controlling the process.

Commented [CM29R28]: As modified, the FAA directs information sharing and the right to accept or reject Sponsor comments.

P. After receipt of comments and preparation of responses, the FAA, after appropriate advice and consultation, may direct the Contractor to make changes to the text of the Draft EIS as necessary.

Q. At such time as the FAA has approved the Final EIS, the Contractor shall print the contracted quantity of Final EIS. The FAA shall submit an appropriate number of copies of the Final EIS to the Sponsor.

R. The FAA will receive all comments on the Final EIS during the mandatory "hold period". This period (at least 30 days) will be initiated when the EPA publishes the "Final EIS Notice of Availability" in the Federal Register.

~~R.S.~~ To the extent permitted by applicable law, in accordance with Executive Order 13807: Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, both the FAA and Contractor shall take all reasonable steps to ensure expeditious preparation and issuance of the Draft and Final EIS.

Commented [FAA30]: Recommend deleting between "To the extent" and "both."

Commented [CM31R30]: Please see modifications. Text revised to reference Executive Order 13807 and to delete "To the extent" and "both."

~~S.T.~~ ~~S.~~ The FAA, with assistance from the Contractor, will expeditiously prepare and issue the FAA Record of Decision after publication of the "Final EIS Notice of Availability," and will make it available to the public; if permitted by applicable law, and determined by the FAA as appropriate shall issue the ROD contemporaneously with the Final EIS. ~~[Note to FAA please see proposed edit]~~

Commented [FAA32]: We disagree with this edit.

Commented [CM33R32]: Please see proposed edit. Text revised to include "and determined by the FAA as appropriate..."

~~T.U.~~ ~~T.~~ Information developed under this MOU is disclosable to the public to the extent required by law. The FAA will maintain the confidentiality of, and will not release or allow access to, any information, documents or materials which in its opinion are validly designated as confidential by the Sponsor or Contractor and which contain trade secrets, proprietary data, or commercial or financial information or falls within an existing federal exemption. In any instance where the FAA proposes to release to the public or allow access to any information, documents

or materials, created in the development and preparation of the EIS or which the Sponsor or Contractor has designated as confidential, it shall notify the Sponsor or Contractor of its intention to do so, at least five (5) business days prior to such release or grant of access. ~~In addition, and provide~~ the Sponsor or Contractor has the opportunity to either (i) appeal the decision in accordance with applicable regulations on such release or access prior to any such release or access or (ii) seek a protective order. (See FAA Order 1270.1)

Commented [CM34]: Appeal process to be discussed.

V. ~~U.~~ The Contractor will maintain a segregated copy of each record/document relating to the project that is used by the FAA in their decision making process. This will form the basis for the FAA's administrative record of the EIS. The Consultant shall be responsible for managing the administrative project file and, upon completion of the work, will be responsible for submitting a completed administrative record for the project to the FAA and the Sponsor, in accordance with FAA policy and guidance.

W. All work prepared under this MOU shall be delivered to the FAA and the Sponsor in printed format and searchable .pdf files along with components associated with each item, such as data files, text files, image files, spreadsheets, graphs, and tables.

#### IV. CESSATION AND TERMINATION

A. Any of the parties to this MOU may withdraw from the terms of this MOU for good cause upon 30 days written notice to the other party. During this period, the parties will actively attempt to resolve any disagreement.

B. In the event of a termination of this MOU, and if the FAA determines that preparation of an EIS by the FAA is still required, it is agreed as follows:

1. The FAA shall have access to all documentation, reports, analyses and data by the Contractor and Subcontractors with confidentiality governed by paragraph III.T.

— The FAA shall assume the responsibility for preparing the EIS. The Sponsor shall no longer be responsible for the payment of costs associated with preparation of the EIS under the terminated MOU, apart from costs already incurred and required under the Sponsor's contract with the Contractor. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations which might require payment.

2.

3. Liability for termination shall be in accordance with paragraph II.G. of this MOU.

**VI. NO RIGHTS FOR NON-PARTIES**

This Agreement does not create any right or benefit enforceable by law or equity of any person who is not a party to this Agreement against the Sponsor or FAA. No rights or privileges are created or intended to be created by this MOU in anyone not a signatory of this MOU.

**VII. MODIFICATION**

This MOU represents the entire agreement and may be modified by the parties hereto only by written agreement by all the parties.

**VIII. AUTHORITY TO EXECUTE**

The ~~representative~~representative of each party signing this Agreement warrants that he/she is duly authorized to do so.

**IX. COUNTERPARTS**

A photocopy or PDF copy of this Agreement shall have the same force and effect as an original of this Agreement.

**X. NOTICES**

Notices and other communications under this Agreement shall be in writing and shall be directed as follows, or to such other address as the party receiving such notice or communication shall have previously specified by notice to the other party sending such notice:

If to the Sponsor:

Title:  
The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 18<sup>th</sup> Floor  
New York, New York 10007

with a copy to:

General Counsel  
The Port Authority of New York and New Jersey

Four World Trade Center  
150 Greenwich Street, 18<sup>th</sup> Floor  
New York, New York 10007

If to the FAA:

[FAA to provide contact]  
[Title]  
Federal Aviation Administration  
1 Aviation Plaza, Suite [ ]  
Jamaica, New York 11434

with a copy to:

[FAA to provide contact]  
[Title]  
Federal Aviation Administration  
800 Independence Ave., S.W.,  
Washington, D.C., 20591

**XI. NO PERSONAL LIABILITY**

No Commissioner, director, officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

**XII. SIGNATORIES**

United States Federal Aviation Administration

\_\_\_\_\_  
[SIGNATORY AND TITLE]

\_\_\_\_\_  
DATE

The Port Authority of New York and New Jersey

\_\_\_\_\_  
[SIGNATORY AND TITLE]                      DATE \_\_\_\_\_

<u>Port Authority Use Only:</u>	
<u>Approval as to Terms</u>	<u>Approval as to Form</u>

DRAFT





**From:** [Lamond, Kathryn](#)  
**To:** [REDACTED] [Summerville, James](#); [DiScenna, Matthew](#); [Clark, Patty](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Cohen, Michelle](#); [Papasavvas, Krystina](#); [Herndon, Jane](#)  
**Cc:** [REDACTED] [Drew Brooks](#); [REDACTED]  
**Subject:** RE: LGA Access Improvements MOU - FAA comments 6/13/2018  
**Date:** Wednesday, June 13, 2018 2:44:00 PM

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Marie,  
Thank you for sending these in advance of our call.  
Talk to you all tomorrow!  
Thanks again,  
Katie

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**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Wednesday, June 13, 2018 2:11 PM  
**To:** Summerville, James <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
DiScenna, Matthew <[REDACTED]> Clark, Patty <[REDACTED]> Tabafunda, Faith  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Cohen, Michelle  
<[REDACTED]> Papasavvas, Krystina <[REDACTED]> Herndon, Jane  
<[REDACTED]>  
**Cc:** [REDACTED] Drew Brooks <[REDACTED]>  
[REDACTED]  
[REDACTED]

**Subject:** LGA Access Improvements MOU - FAA comments 6/13/2018  
Attached are FAA's comments to the Port's 5/21/18 revisions to the MOU for discussion during tomorrow's call

**Marie C. Jenet**  
Environmental Specialist  
Federal Aviation Administration  
New York Airports District Office  
159-30 Rockaway Blvd, Suite 111  
Jamaica, New York 11434

[REDACTED]  
[REDACTED]

**From:** [REDACTED]  
**To:** [Tabafunda, Faith](#); [DiScenna, Matthew](#); [Clark, Patty](#); [Rogak, Elizabeth](#); [Lamond, Kathryn](#); [Herndon, Jane](#)  
**Cc:** [REDACTED]; [Drew Brooks](#); [REDACTED]  
**Subject:** RE: LGA Air Train Environmental follow-up  
**Date:** Tuesday, December 19, 2017 12:21:45 PM  
**Attachments:** [2017-12-18 draft PANYNJ MOU - combined FAA comments.docx](#)

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Attached are our responses to your proposed edits on the draft MOU.

The primary issues are the roles and responsibilities of FAA as lead federal agency, especially with regard to our independence in controlling the process, ownership of the process, and directing information sharing.

We would be happy to meet with you to discuss these issues in early January, perhaps on one of the same days as a scheduled Port ACIP meeting, so that we can reach agreement on the MOU.

Thank you

Marie C. Jenet

Environmental Specialist  
Federal Aviation Administration  
New York Airports District Office  
159-30 Rockaway Blvd, Suite 111  
Jamaica, New York 11434

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**From:** Tabafunda, Faith [mailto:[REDACTED]]  
**Sent:** Friday, December 01, 2017 1:28 PM  
**To:** Jenet, Marie (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]>  
Brooks, Andrew (FAA) <[REDACTED]> Sanchez, David (FAA) <[REDACTED]>  
McCarthy, Mary M (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]>  
Henn, Patricia (FAA) <[REDACTED]>  
**Cc:** DiScenna, Matthew <[REDACTED]> [REDACTED] Rogak, Elizabeth  
<[REDACTED]> Lamond, Kathryn <[REDACTED]> Herndon, Jane  
<[REDACTED]>

**Subject:** RE: LGA Air Train Environmental follow-up  
As promised, attached is draft MOU both clean with our proposed edits and notes and a DV Compare showing our changes to the last draft you circulated.  
Feel free to give me reach out to me with any questions.

Thank you,

Faith  
Faith Tabafunda  
Attorney | Law Department  
The Port Authority of New York and New Jersey  
4 World Trade Center  
150 Greenwich Street, Fl 25  
New York, New York 10007

[REDACTED] | [REDACTED]



MEMORANDUM OF UNDERSTANDING

BETWEEN

THE UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION

AND

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

I. INTRODUCTION AND PURPOSE

- A. This Memorandum of Understanding ("MOU") provides a framework in which the United States Department of Transportation (the "DOT"), Federal Aviation Administration (the "FAA"), an executive agency of the United States, organized and existing under the laws of the United States, having its principal office at 800 Independence Avenue, S.W., Washington, D.C., 20591, will prepare an Environmental Impact Statement (the "EIS") for the LaGuardia (~~LGA~~) Airport ("LGA") AirTrain Project (the "Project") being proposed by ~~the~~The Port Authority of New York and New Jersey ~~an interstate compact agency created by Compact between the States of New York and New Jersey, with the consent of the Congress of the United States having its principal office at Four World Trade Center, 150 Greenwich Street, New York, NY10007~~ (the "PANYNJ" or "Sponsor"). The MOU describes the relationship of the above named parties in preparing the EIS. Subject to completion of the EIS, the FAA will issue a determination regarding the Project that will be set forth in a Record of Decision.
- B. As lead agency, the FAA has selected an independent contractor (the "Contractor") to prepare the EIS. The ~~PANYNJ~~ ("Sponsor") shall be the party responsible to engage and retain the Contractor with funds provided by the Sponsor. [\*Note to FAA-Assuming this will be signed after the Contractor is selected, why not identify the Contractor?]
- C. The EIS and any related documents shall comply with the provisions of the National Environmental Policy Act of 1969 ("NEPA") and Council on Environmental Quality ("CEQ"), DOT, and FAA environmental regulations and guidance, as well as all applicable local, state and Federal laws, as appropriate.
- D. It is the purpose of this MOU to establish an understanding between the Sponsor and the FAA regarding the responsibilities of the parties and the conditions and procedures to be followed in the development and preparation of the EIS.
- E. The parties that enter into this agreement intend that development and preparation of the EIS, as articulated in this MOU, will satisfy the pertinent environmental requirements of the FAA and any Cooperating Agencies (as that term is defined in

Commented [FAA1]: The MOU should be signed prior to contractor selection. It is important to have the roles defined prior to contractor selection especially since the MOU also clearly states that FAA selects the contractor

40 CFR § 1501.6 and 1508.5 that may have ~~connected Federal Actions~~ jurisdiction over the Project.

## II. GENERAL PROVISIONS

- A. As the lead agency, the FAA will be responsible to ensure compliance with all the requirements of NEPA (42 U.S.C. 4321 et seq.), CEQ Regulations (40 C.F.R. Parts 1500-1508), ~~and~~ appropriate DOT and FAA environmental orders, and applicable state and local laws, including the New York State Environmental Quality Review Act (ECL §§ 8-0101, et seq.) ("SEQRA") and implementing regulations (6 NYCRR Part 617). The FAA shall ensure that all pertinent environmental issues and impacts, ~~reasonable alternatives and their impacts, as well as,~~ cumulative impacts and mitigation/conditions are treated in the EIS, and shall be responsible for the scope and content of the EIS.
- B. The Sponsor will engage and retain the Contractor, selected by the FAA, for the preparation of the EIS. The Contractor, with the approval of the FAA and Sponsor, may employ such other contractors and experts (collectively referred to as "Subcontractors"), as are required for the adequate development and preparation of the EIS.
- C. As approved by the FAA, the Contractor will provide, through its staff or by Subcontractor, the expertise, staffing, and technical capabilities required for the preparation of the EIS. The FAA will direct the scope of the EIS and will independently evaluate all information, environmental data and analyses submitted by the Contractor, the Sponsor or others, and revise or cause additional study and analyses to be performed as necessary.
- D. The Contracts between the Sponsor and Contractor and between the Contractor and Subcontractors (collectively the "Contract") shall be consistent with the provisions of this MOU and shall specifically incorporate those provisions articulated herein that address the conduct of the Contractor. ~~Before starting EIS preparation, the Contractor and Subcontractors shall provide verification to FAA that they have no financial interest in the outcome of the action of the EIS will address, consistent with FAA Order 5050.4B, Paragraph 1003(d).~~ The Contractor and Subcontractors working on the EIS may not bid on any future actions the EIS addresses until the approving FAA official issues a Record of Decision based on the EIS. This prohibition does not prevent the Sponsor from selecting the EIS Contractor or Subcontractors for later development actions, should they be approved. However, that selection must occur after free and open competition and there can be no implied or suggested guarantee that the Sponsor would favorably consider the EIS Contractor or Subcontractors. Further, the Sponsor shall ensure that the Contract shall specifically limit any remedies available to the Contractor and any Subcontractors, so as to affirmatively relieve the United States of America, the FAA, and any officer, agent or employee of same, from any liability

Commented [FAA2]: Can the Port please explain why this needs to be included? If the Port is subject to SEQRA, is the Port suggesting that this be a combined NEPA EIS and SEQRA EIS?

Commented [FAA3]: This language needs to remain

arising out of the performance or termination of the contract for preparation of the EIS, or out of this MOU.

1. Prior to beginning work on being engaged for the EIS Project, the Contractor and any Subcontractors shall sign a "Disclosure Statement" provided by the FAA per the requirements of FAA Order 5050.4B, Paragraph 1003(d), specifying they have no financial or other interest in the outcome of the project. [Note to FAA shouldn't this occur prior being engaged?]

Commented [FAA4]: This should be "beginning work on" as it has to occur post-engagement. This can't be required prior to engagement as the contractor may ultimately not be selected due to negotiations on price and now has excluded themselves from other work. The process is contract signed, then disclosure statement provided. Project should also be defined.

2. The FAA shall evaluate the Disclosure Statement prior to its approval.

E. The Sponsor shall facilitate the coordination of effort and the exchange of information related to the planning, design, and construction of the Project, as these activities relate to the preparation of the EIS among and between the Contractor and its Subcontractors ~~and~~ the FAA and other federal, state or local entities as appropriate. The Sponsor shall make all reasonable efforts to assure the satisfactory and timely performance of the duties of the Contractor and Subcontractors as specified in this MOU.

Commented [FAA5]: We do not agree with this edit. As lead agency, it is FAA's role to determine the exchange of information.

F. The Sponsor and FAA shall:

1. Appoint such representatives as necessary to accomplish the coordination necessary for the satisfactory preparation of the EIS. Notice to any such representative shall constitute notice to that party.
2. Review substantive work products under the Contract(s) for the EIS as the FAA deems necessary, consistent with Article III of this MOU.
3. Have their respective representatives attend meetings with other Federal, state, regional, and local agencies for the purpose of increasing communications and receiving comments, as the same may be necessary, desirable, or required by law in preparation of the EIS.

G. All costs incurred in connection with the employment of the Contractor and any and all Subcontractors, or other persons retained or employed by the Sponsor, shall be the sole responsibility of the Sponsor. The Sponsor agrees to hold harmless and indemnify the FAA, its officers, agents, and employees, with respect to any and all judgments or settlements arising from claims, demands, causes of action, and the like, in connection with the Sponsor's employment of the Contractor and any and all Subcontractors which may arise from the termination or performance of the Contract or any other services, or purchase of materials utilized for the development and preparation of the EIS, or from termination of this MOU. This indemnification by the Sponsor does not extend to administrative or legal costs of the FAA, including suits by third parties (other than the Contractor or its Subcontractors) against the FAA, involving the legality or adequacy of the FAA's compliance with NEPA and other laws and regulations, to the extent of the

FAA's liabilities on those issues. The Sponsor shall cooperate and shall ensure that the Contractor cooperates in defense of any such suit. Notwithstanding anything to the contrary in this Agreement, nothing shall be construed to waive the applications of statutory provisions, immunities and limitations available under the Federal Tort Claims Act, (28 U.S.C. Sections 2671, et. seq.) or any other governmental immunity act, as the same may be amended from time to time, with respect to, and in defense of, any claim or claims asserted by any person or entity.

### III. PROCEDURES

- A. Under the direction of the FAA, the Contractor shall develop and submit a ~~Plan~~plan of ~~Study~~study to the FAA for the EIS for approval. The "Plan of Study" shall ~~include~~mean a plan that includes detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated man-hours required for completion of each aspect, the schedule for performing each aspect and a description of the internal and external review procedures to assure quality control. Also, the Plan of Study shall include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the environmental data and analyses and the development and preparation of the EIS. The Plan of Study should also identify procedures for retention of all data and sources used in the development of the EIS for eventual consolidation into the Administrative Record. In developing the Plan of Study, the Contractor may consider and use~~utilize~~ as appropriate any relevant submissions made by the Sponsor, which submissions shall be made concurrently to the FAA and Contractor.
- B. The FAA will forward the Plan of Study to the Sponsor for review and comment. After receiving comments from the Sponsor, and the scoping process conducted pursuant to 40 C.F.R. Sec. 1501.7, the FAA will finalize and approve the Plan of Study. The Plan of Study and this MOU shall establish the scope of work required of the Contractor in the development and preparation of the EIS. [Note to FAA- Is it possible to have the plan of study completed prior to the scoping to be amended as needed?]
- C. The Plan of Study may be amended by the FAA from time to time as the work of the Contractor or its Subcontractors proceeds, but any amendments or changes which require the expenditure of additional funds by the Sponsor must be agreed to by the Sponsor. The Sponsor will be notified and consulted prior to any ~~significant~~ amendments or modifications to the Plan of Study.
- D. ~~Unless~~As each portion of any draft of sections of the EIS and, unless otherwise directed by the FAA, any and all work performed by the Contractor and its Subcontractors in preparation of the EIS shall be submitted directly to the FAA, ~~and upon request of the FAA, with a concurrent copy~~ to the Sponsor. The Sponsor may communicate with the Contractor and its Subcontractors during the

**Commented [FAA6]:** This doesn't seem appropriate at Plan of Study phase, more so during initial data gathering concurrent to development of Plan of Study. Data should not be considered until FAA reviews, or directs the review, of the submissions. If this is supposed to mean that the plan of study should include a task that evaluates sponsor info, that would be acceptable.

**Commented [FAA7]:** Completing the plan prior to scoping does not allow for public input. Scoping allows public input into the plan itself.

**Commented [FAA8]:** This could cause a workflow issue. Minor scope changes are routine. Significant changes with cost implications are typically of concern to the Sponsor.

**Commented [FAA9]:** We do not agree with this edit. FAA needs to have the ability to direct the speed/frequency with which portions of the document are submitted.

**Commented [FAA10]:** We do not agree with this edit. FAA needs to receive and review the document prior to sharing it. Bear in mind the FOIA implications of sharing preliminary work products.



development of the EIS, but no prior review ~~or discussion of data or analyses of drafts of sections of the EIS~~ developed by the Contractor or Subcontractor as related to the EIS shall be afforded the Sponsor. In no case will the Sponsor ~~discuss, review, modify,~~ or edit the Contractor's work or the work of its Subcontractors prior to submission to the FAA, ~~or be provided the opportunity to do so~~. All suggestions for modifications or changes to such sections recommended by the Sponsor shall only be made to the FAA, in accordance with Paragraph F below. [Note to FAA: this section has been slightly clarified to allow discussions between the entities but not edits, etc. of the documents prior to submission of EIS sections to the FAA. These clarifications are consistent with Paragraph H below, and fully preserve the integrity of the process and independence of the Contractor.]

E. The FAA reserves the right to review periodically and modify the work of the Contractor to ensure that requirements under NEPA, the Plan of Study and other applicable laws and regulations are satisfied. The Contractor shall submit monthly written reports on the progress of its work to the FAA, with a concurrent copy to the ~~sponsor~~ Sponsor. This report shall describe the present status of each aspect of the work, any problems encountered, and recommendations for modifications to the Plan of Study and any changes in personnel, methodology or schedules for completion.

F. As each portion of any ~~draft or~~ final document is completed, the FAA shall review each portion and those tasks completed thereunder and, after consultation with the Sponsor, shall approve, modify, comment thereon and/or direct further work with regard to such portion or tasks as necessary; the foregoing FAA review will be a concurrent review by all applicable offices/divisions/departments of the agency, including but not limited to the Office of the Regional Counsel (or Office of the Chief Counsel, as appropriate), to avoid unnecessary delay. Said directions and/or comments shall be made by the FAA in a ~~timely~~ manner so as to ensure expeditious completion of the EIS, and the Contractor shall ensure incorporation of such comments into any editorial changes to the satisfaction of the FAA. ~~Final drafts of any documents will require FAA approval.~~ Prior to approval, the FAA will forward final drafts to the Sponsor for review and comment. Comments from the Sponsor shall be sent to the FAA. The Contractor will only make modifications as the FAA directs regarding these comments. After the aforementioned consultation, final drafts of any documents will require FAA approval.

G. If requested, the Contractor will provide the FAA access to and review of all procedures and underlying data used by the Contractor in developing submitted sections of the EIS, including, but not limited to, field reports, Subcontractor reports, and interviews with concerned private and public parties, whether or not such information may be contained in a draft or final EIS. The Upon request by the Sponsor, the FAA will also have promptly provide the Sponsor with access to such all of the aforementioned procedures and underlying

Commented [FAA11]: We do not agree with all the edits in this section. FAA, as the lead federal agency, needs to maintain control of the process. Regularly scheduled meetings (bi-monthly/monthly) will facilitate these discussions. The Sponsor should not be having discussions directly with the Contractor without FAA present.

Commented [FAA12]: We do not agree with this edit. The Plan of Study does not satisfy a regulatory requirement.

Commented [FAA13]: Draft should remain. We will be reviewing drafts and having comments.

Commented [FAA14]: We do not agree with the edits in this section. This is not appropriate for an MOU. FAA will avoid unnecessary delay to the extent it can, however, external factors can influence our workload.

data. Such ~~access~~ information provided by the FAA ~~and Sponsor~~ shall be governed by paragraph III. ~~F.U~~ in this MOU.

Commented [FAA15]: Same as above. It is FAA's role to decide on information sharing.

H. To facilitate the development and preparation of the EIS, joint meetings among the FAA, Sponsor, and Contractor ~~may shall~~ be held. However, the FAA reserves the right to work directly with the Contractor for purposes of assuring objectivity in preparing reports and/or for assuring expeditious communications. The Contractor will notify the FAA and Sponsor of any substantive meetings that are scheduled with other agencies and of their purpose and will provide an opportunity for the parties to attend if desired. No meeting will be held between the Contractor ~~or and~~ Sponsor without prior notification to and approval of the FAA. A summary of all matters relating to EIS discussions in any meetings or communications between the Contractor and a party hereto without the participation of the other said party will be included in each formal monthly report submitted by the Contractor to the FAA and Sponsor. The FAA ~~reserves and the Sponsor each reserve~~ the right to consult directly with other Federal, state, and local officials and agencies during the preparation of the EIS to assure compliance with NEPA and other applicable laws and regulations.

Commented [FAA16]: Prefer "may"

Commented [FAA17]: We disagree with this edit. The purpose of this section is FAA/Sponsor coordination, not combined coordination with other agencies.

Commented [FAA18]: We disagree with this edit. FAA must be able to demonstrate ownership of the process. May need to find alternate language if the Port is subject to SEQRA and coordination under SEQRA is needed.

I. The Sponsor shall assure the full cooperation of the Contractor and its Subcontractors with respect to participating in any public workshops, hearings, or meetings as required by the FAA to foster public familiarity and participation with respect to the assessment of impacts related to the Project.

J. At such time as the FAA, after consultation with the Sponsor, has approved the Draft EIS developed and prepared by the Contractor and its Subcontractors, the Contractor shall print the ~~contracted~~ quantity of Draft EIS copies as specified by the FAA and submit same to the FAA. ~~The FAA shall submit an appropriate number of copies of the Draft EIS to and~~ the Sponsor.

Commented [FAA19]: We disagree with this edit. FAA has to transmit to show ownership.

K. The Contractor shall be responsible for the costs associated with the printing and publication of the draft and final copies of the EIS. The Contractor shall be responsible for all costs associated with the publication of FAA-approved notices announcing public workshops, meetings, hearings, and the like. The Contractor shall also be responsible for costs of stenographic and clerical services, preparation of graphics and visual aids associated with any public workshops, meetings, and hearings.

L. In all instances involving questions as to the content or relevance of the environmental data and analyses, and evaluations and wording prepared by the Contractor during the EIS process, the FAA, with appropriate advice and consultation ~~when it deems necessary, will~~ with the Sponsor, shall make the final determination on the inclusion, deletion or modification of the same in the Draft or Final EIS. [Note to FAA: this language is consistent with the language in Paragraph O below.]

Commented [FAA20]: We disagree with this edit. FAA does not consult with the sponsor prior to taking all actions. This language is only consistent with the Port modifications to Paragraph O, which we disagree with.

- M. Upon the anticipated completion of the Draft EIS, the FAA, with the Contractor's assistance, shall be responsible for organizing and conducting any public hearings.
- N. The FAA will receive all comments during the Draft EIS public review and comment period. This period (at least 45 days) will be initiated when the Environmental Protection Agency (EPA) publishes the "Draft EIS Notice of Availability" in the Federal Register.
- O. At the close of the Draft EIS public review and comment period, the FAA shall promptly provide the Sponsor and the Contractor with all comments received, and shall identify the issues and comments submitted which will require response in the Final EIS. The FAA will direct those issues and comments to the Contractor for preparation of proposed responses, and shall furnish the Sponsor with copies such identification of ~~all issues and~~ comments received that require response in the Final EIS. The Contractor will furnish proposed responses concurrently to the FAA and Sponsor for review and comment. ~~The FAA will share the proposed responses with the Sponsor for additional review and comment with proposed changes back~~ Sponsor shall provide any comments to the FAA. The FAA, with appropriate advice and consultation with the Sponsor, shall modify the proposed responses as it deems necessary.
- P. After receipt of comments and preparation of responses, the FAA, after appropriate advice and consultation, may direct the Contractor to make changes to the text of the Draft EIS as necessary.
- Q. At such time as the FAA has approved the Final EIS, the Contractor shall print the contracted quantity of Final EIS. The FAA shall submit an appropriate number of copies of the Final EIS to the Sponsor.
- R. The FAA will receive all comments on the Final EIS during the mandatory "hold period". This period (at least 30 days) will be initiated when the EPA publishes the "Final EIS Notice of Availability" in the Federal Register.
- S. To the extent permitted by applicable law, both the FAA and Contractor shall take all reasonable steps to ensure expeditious preparation and issuance of the Draft and Final EIS.
- T. ~~S-~~ The FAA, with assistance from the Contractor, will expeditiously prepare and issue the FAA Record of Decision after publication of the "Final EIS Notice of Availability," and will make it available to the public if permitted by applicable law, the FAA shall issue the ROD contemporaneously with the Final EIS.
- U. ~~T-~~ Information developed under this MOU is disclosable to the public to the extent required by law. The FAA will maintain the confidentiality of, and will not release or allow access to, any information, documents or materials which in its

Commented [FAA21]: Same as above. These revisions undermine the FAA's independence in controlling the process.

Commented [FAA22]: Recommend deleting between "To the extent" and "both."

Commented [FAA23]: We disagree with this edit.

opinion are validly designated as confidential by the Sponsor or Contractor and which contain trade secrets, proprietary data, or commercial or financial information. ~~Information developed under this MOU is disclosable to the public to the extent required by law.~~ In any instance where the FAA proposes to release to the public or allow access to any information, documents or materials which the Sponsor or Contractor has designated as confidential, it shall notify the Sponsor or Contractor of its intention to do so and provide the Sponsor or Contractor the opportunity to appeal the decision in accordance with applicable regulations on such release or access prior to any such release or access. [\(See FAA Order 1270.1, Paragraph 35\(a\)\(4\).\)](#)

Commented [FAA24]: This cite should be changed to FAA Order 1270.1A.

- V. ~~U.~~ The Contractor will maintain a segregated copy of each record/document relating to the project that is used by the FAA in their decision making process. This will form the basis for the FAA's administrative record of the EIS.

#### IV. CESSATION AND TERMINATION

- A. Any of the parties to this MOU may withdraw from the terms of this MOU for good cause upon 30 days written notice to the other party. During this period, the parties will actively attempt to resolve any disagreement.
- B. In the event of a termination of this MOU, and if the FAA determines that preparation of an EIS by the FAA is still required, it is agreed as follows:
1. The FAA shall have access to all documentation, reports, analyses and data by the Contractor and Subcontractors with confidentiality governed by paragraph III.T.
  2. The FAA shall assume the responsibility for preparing the EIS. The Sponsor shall no longer be responsible for the payment of costs associated with preparation of the EIS under the terminated MOU, apart from costs already incurred and required under the Sponsor's contract with the Contractor.
  3. Liability for termination shall be in accordance with paragraph II.G. of this MOU.

#### VI. NO RIGHTS FOR NON-PARTIES

[This Agreement does not create any right or benefit enforceable by law or equity of any person who is not a party to this Agreement against the Sponsor or FAA.](#) No rights or privileges are created or intended to be created by this MOU in anyone not a signatory of this MOU.

#### VII. MODIFICATION

This MOU represents the entire agreement and may be modified by the parties hereto only by written agreement by all the parties.

**VIII. AUTHORITY TO EXECUTE**

The representative of each party signing this Agreement warrants that he/she is duly authorized to do so.

**IX. COUNTERPARTS**

A photocopy or PDF copy of this Agreement shall have the same force and effect as an original of this Agreement.

**X NOTICES**

Notices and other communications under this Agreement shall be in writing and shall be directed as follows, or to such other address as the party receiving such notice or communication shall have previously specified by notice to the other party sending such notice:

If to the Sponsor:

Title:  
The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 18<sup>th</sup> Floor  
New York, New York 10007

with a copy to:

General Counsel  
The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 18<sup>th</sup> Floor  
New York, New York 10007

If to the FAA:

[FAA to provide contact]  
[Title]  
Federal Aviation Administration  
1 Aviation Plaza, Suite [ ]

Jamaica, New York 11434

with a copy to:

[FAA to provide contact]

[Title]

Federal Aviation Administration

800 Independence Ave., S.W.,

Washington, D.C., 20591

**XI. NO PERSONAL LIABILITY**

No Commissioner, director, officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

**XII. SIGNATORIES**

**United States Federal Aviation Administration**

\_\_\_\_\_  
**[FAA SIGNATORY AND TITLE]**

\_\_\_\_\_  
**DATE**

**The Port Authority of New York and New Jersey**

\_\_\_\_\_  
**[PANYNJ SIGNATORY AND TITLE]**

\_\_\_\_\_  
**DATE**

Port Authority Use Only

<u>Approval as to Terms</u>	<u>Approval as to Form</u>

Document comparison by Workshare Compare on Friday, December 01, 2017  
1:23:00 PM

Input:	
Document 1 ID	file:///U:\Tabafunda, F\Airports\LGA\Proposed Airtrain Willets Point\FAA MOU\FAA Draft MOU (11.3.17)\Draft PANYNJ MOU v2.docx
Description	Draft PANYNJ MOU v2
Document 2 ID	file:///U:\Tabafunda, F\Airports\LGA\Proposed Airtrain Willets Point\FAA MOU\CLEAN Draft PANYNJ FAA MOU LGA Air Train (11.29.17).docx
Description	(CLEAN) Draft PANYNJ FAA MOU LGA Air Train (11.29.17)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
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Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	119
Deletions	51
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	174



**From:** [Lamond, Kathryn](#)  
**To:** [REDACTED] [Papasavvas, Krystina](#); [Summerville, James](#)  
**Cc:** [Drew Brooks](#); [REDACTED]; [REDACTED]; [Clark, Patty](#); [DiScenna, Matthew](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Cohen, Michelle](#)  
**Subject:** RE: LGA Airtrain / Access Improvement Project - FAA comments on Port Authority RFQ Documents  
**Date:** Monday, February 12, 2018 11:48:00 AM  
**Attachments:** [sample recommendation memo provided to FAA \(redacted\).docx](#)  
[6-RFP NCOI Cert 9-23-13.docx](#)

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Thank you for the meeting last week and thank you for the comments on the RFP documents. We are in the process of reviewing your comments and will let you know if we have any questions. As requested, attached please find a sample Non-Disclosure Agreement (NDA) that the PA uses during the RFP process. The NDA is typically signed by both voting and non-voting members of the Committee.

Also as requested, attached please find a sample of the write-up the PA typically produces following the RFP selection process. Toward the end of RFP procurement process, the PANYNJ Evaluation Committee drafts a memo summarizing the procurement and evaluation. The first part of a memo is "history": it summarizes the procurement and evaluation from a facts-basis. (ie we received such and such proposals and the committee met on such and such dates, and the proposals received the following scores, etc.) The second part of the memo is a "narrative": it's a record of committee observations. The attached example provides a glimpse of the breadth of a typical narrative. Please let me know if you have any questions or comments on the attached documents.

Thanks,  
Katie

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**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Friday, February 09, 2018 6:01 PM  
**To:** Lamond, Kathryn <[REDACTED]> Papasavvas, Krystina <[REDACTED]>  
Summerville, James <[REDACTED]>  
**Cc:** Drew Brooks <[REDACTED]> [REDACTED]; [REDACTED] jean.wolfers-lawrence@faa.gov; Clark, Patty <[REDACTED]> DiScenna, Matthew <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]>

**Subject:** LGA Airtrain / Access Improvement Project - FAA comments on Port Authority RFQ Documents

Thank you taking the time to meet with us yesterday to discuss the subject project. Attached please find our comments to the proposed RFQ documents as well as answers to your questions.

We need to stress the following points:

- 1) We believe that early sharing of the planning documentation will assist in achieving the aggressive schedule targeted. We need to see the planning studies and have the ALP change prior to NOI issuance; however, sharing the documents even sooner will assist in the evaluation of project approach in the proposals and the expedited development of the scope of work. Additionally it will greatly inform the development of a reasonable yet expedited EIS schedule from the start. The planning is the foundation of the EIS, so we cannot stress enough how essential it is that it is provided to us as early as possible.

- 2) We need to see the revised language prior to distribution of the RFP, especially additional language discussed during yesterday's meeting and regarding the schedule/duration of performance.
- 3) We need to see the Non-Disclosure Agreement samples they mentioned yesterday as well in order to determine how we can work together on consultant evaluations.

Patricia Henn

Planning and Programming Branch Manager, AEA 610

Federal Aviation Administration

Eastern Region Airports Division

1 Aviation Plaza

Jamaica, NY 11434



**REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT  
PROFESSIONAL PORT PLANNING SERVICES FOR THE DEVELOPMENT OF A  
LONG-RANGE MASTER PLAN FOR THE PORT OF NEW YORK AND NEW JERSEY  
ON AN “AS NEEDED” BASIS (RFP #XXXXX)**

**NARRATIVE**

**FIRM A**

*Staff Qualifications* – XXXX’s proposed staff demonstrated a distinctive blend of experience in port planning, economic strategy, financial analysis, and stakeholder engagement. In particular, the proposed Project Manager, XXXXX, most recently served as Project Manager and technical lead on the XXXXXX, where he led a team in analyzing issues directly related to the XXXX such as port operations and capacity constraints, on-port infrastructure, and off-port transportation networks. The evaluation committee gave XXXX’s proposal high marks for its inclusion of a dedicated “strategic planning team” led by XXXX, who demonstrated experience in producing strategic, future-focused analyses, trade projections, fleet forecasts, and land use evaluations for XXXX and XXXX port facilities. The “strategic planning team” also included XXXX, who will serve as a port-funding strategist and brings intimate familiarity with both the institutions of the Authority and New York State as well as transportation and infrastructure projects, having provided financial analysis for the XXXXX and XXXXX replacement programs. The project management and strategic planning components of the proposal were rounded off with a strong stakeholder outreach team, consisting of XXXX, who will apply his intimate knowledge of the port commerce industry to incorporate the interests of the port’s business partners into this master planning effort. XXXX’s involvement adds strong maritime/port sector knowledge and experience to the Master Plan work scope especially as it relates to competitive port leasing practices as well as rates and charges. XXXXX possesses intimate knowledge of ports on the East, Gulf and West Coast due to the fact that his firm completes periodic economic impact studies and strategic plans for many ports throughout the U.S. The stakeholder outreach team also included XXXX’s XXXX, who has direct experience conducting stakeholder outreach for the Port Commerce Department, having recently provided similar services for the department’s Cross Harbor Program. Collectively, XXXX’s proposed staff exhibited a breadth and depth of experience in tasks related to this scope of work that made this firm uniquely qualified to deliver a comprehensive, strategic master plan for the PONYNJ.

*Firm Qualifications* – XXXX’s proposal demonstrated more direct experience in producing strategic plans for port facilities and transportation agencies than other proposers. XXXX demonstrated that it has provided services included in this RFP, such as market analysis, capacity assessment, and land use planning, while preparing studies for the Port Authority of XXXX and the XXXXX in South Africa. The firm’s overall experience was complimented by that of XXXX, a main sub consultant in XXXX’s proposal, which has provided economic analysis and forecasting services for the XXXXX. Moreover, XXXX and two of its sub consultants, XXXX and XXXX, demonstrated an ability to successfully work together by citing their past collaboration on the

development plan for the XXXXX in Philadelphia, which involved tasks that paralleled those contemplated for this project including public outreach, market and forecasting, as well as terminal and rail planning. The proposal indicated that while XXXX has extensive maritime-based planning experience, the firm has less direct experience working with the Authority, especially as compared to other firms. Yet, the committee felt this was an advantage for XXXX and that as a relative outsider to the Agency, the firm could provide a fresh set of eyes and new way of thinking with respect to planning for the PONYNJ's future.

***Technical Approach*** – XXXX demonstrated a significantly stronger technical approach than other proposers. The approach described a thorough methodology that detailed the steps XXXX would take to address each task and ultimately produce a comprehensive master plan that will be useful as a decision-making tool when planning for the PONYNJ's next 30+ years. XXXX's technical approach was particularly strong in the visioning task, which called for working with internal stakeholders to develop vision and mission statements as well as a baseline set of criteria for the PONYNJ to meet on interim and long-term bases. The firm's technical approach also made clear that its master plan would deliver industry benchmarking, best practices, and economic impact evaluations for the PONYNJ while taking into consideration the financial aspects of the port's performance. It was evident that the firm would employ rigorous financial analysis to shape the master plan's recommendations and strategies, while also applying its maritime industry expertise and fresh perspectives to create a truly strategic master plan. XXXX's cost estimate did include more hours than the Agency had independently estimated and other proposals had included. However, upon analysis of those hours, the committee felt the additional hours were more a function of XXXX's dedication to providing rigorous analysis and producing quality deliverables rather than its misunderstanding of the project's scope.

***Management Approach*** – XXXX demonstrated a strong management approach. The firm's proposal included an organization chart that clearly assigned a single point of contact for the overall project as well as leads within each of the proposed sub-teams. The proposal included a schedule that illustrated stakeholder engagement occurring throughout the planning effort and the management approach section highlighted the firm's eagerness to actively engage and work with the Port Authority to produce the PONYNJ Master Plan. The committee also noted that of all the proposals, XXXX seemed to take M/WBE participation most seriously by quantifying M/WBE participation and assigning M/WBE firms to lead tasks where appropriate. XXXX's clearly outlined management approach gave the committee confidence that the firm could successfully manage the project and ultimately deliver a master plan that will meet expectations.

## **FIRM B**

*Staff Qualifications* – XXXX submitted qualified staff to perform the tasks in this scope of work, with several of the proposed staff demonstrating extensive experience working with the Authority. The proposed Project Principal, XXXX, was a previous Executive Director for the XXXX and several task leads cited experience either working directly for the Authority in managerial roles or having performed consulting services for the Agency in the past. Two of the stakeholder outreach leads had worked for the Authority’s Government and Community Relations department, demonstrating direct experience working with many of the internal and external interest groups specific to this project. The proposed Project Manager, XXXX, demonstrated familiarity with port planning issues as well as a facility for financial analysis and master planning, having completed the XXXXX’s cost benefit analysis for the Authority’s Planning Department, the XXXXX in the early 2000s, and various analyses for the PONYNJ’s terminal operators. The staffing proposal also included subject matter experts known for their work in topics related to the Master Plan. The Market Analysis task lead, XXXX, demonstrated experience in this field, having completed market studies for facilities at Port Elizabeth and Port Newark Container Terminal, a “Long-Term U.S. East Coast Port Cargo Forecast” for a private industrial development company, as well as a cargo demand forecast for the Panama Canal Authority. The staff person assigned to evaluate port competitiveness, XXXX demonstrated an expertise in analyzing port uses and markets, which he developed throughout his career while holding positions such as an economist at the U.S. Panama Canal Commission and Manager of Business Planning and Marketing for Sea-Land Corporation. Overall, XXXX’s proposed staff exhibited maritime knowledge along with prior experience working within or for the Port Authority, helping the firm’s proposal demonstrate an intimate, keen understanding of the issues surrounding the task at hand.

*Firm Qualifications* – XXXX’s proposal demonstrated comprehensive port planning experience. The firm qualifications section relayed that XXXX has completed hundreds of studies and evaluations analyzing components of port facilities from piers and wharves to terminals and wider environmental elements like flood control and coastal engineering mechanisms. XXXX’s proposal demonstrated that it has worked directly for the Authority, as a “call-in” consultant for port related studies, as well as for similar port facilities like the Ports of Los Angeles and Long Beach as well as the Virginia Port Authority. While the “Relevant Expertise of XXXX Team” matrix included in this section listed a multitude of studies and plans that appeared similar to this scope of work, some of the project examples more thoroughly highlighted in the latter pages of this section appeared unrelated to the PONYNJ master planning effort. For instance, the firm’s work on the XXXX and the XXXX Terminal Master Plan appeared to involve planning for the development of new port facilities on greenfield sites, which qualitatively differs from planning land uses for a port constricted by a heavily developed urban environment as in the case of the PONYNJ. The *Port Everglades Master/Vision Plan* project cited in the proposal did involve many of the planning activities identified for this scope of work, however, there are significant differences in the size and relative geography between the PONYNJ and XXXXX. While the firm demonstrated its ability to perform port planning tasks, especially related to the physical aspects of a port facility,

it did not clearly evidence its experience in preparing a comprehensive, strategic plan for a port as large and complex as the PONYNJ.

**Technical Approach** – XXXX presented a strong technical approach. The proposal provided an adequate description of how XXXX would complete each task described in the scope of work. The proposal also included a detailed description of the process that would be used to conduct stakeholder outreach, one of the main tasks in this project. The approach also included use of a digital simulation tool to evaluate options for the final deliverable, which the committee found to be a value add to the overall proposal. The firm’s technical approach, however, was lacking description of the real estate considerations that would be included in the master planning effort. In addition, the firm did not emphasize use of metrics or quantitative analysis to the degree that other firms did in their proposals, making XXXX appear less equipped to produce a strategic, financially focused plan as compared to other firms.

**Management Approach** – XXXX presented a strong management approach. The proposal included an organization chart that clearly assigned a single point-of-contact for the project as well as task leads and illustrated the firm had an appropriate mix of sub consultants that XXXX could manage to complete the task at hand. Throughout the proposal, XXXX included matrixes that clearly showed the roles and responsibilities of various project staff along with their associated experience and expertise to demonstrate the rationale behind staffing assignments and overall strength of the proposed team. The proposal also displayed a schedule that demonstrated the firm understood and could meet the expected timeline of the overall project.

## **FIRM C**

**Staff Qualifications** – XXXX proposed staff qualified to perform this scope of work. The proposed Project Manager, XXXX, demonstrated extensive experience with port and rail planning, particularly in the NY-NJ area, having served in leadership roles for the Authority’s Port Commerce Department and the MTA’s Long Island Rail Road, directing studies and developing strategic plans for port facilities and rail networks while in those respective positions. Similar to the Project Manager, the stakeholder outreach task lead, XXXX, demonstrated familiarity with the Authority and the Agency’s goods movement challenges, having conducted stakeholder outreach for the Authority’s XXXX. The Master Plan Development task lead, XXXX, demonstrated experience in producing comprehensive maritime plans for west coast ports, including the Port of Long Beach and the Port of Oakland. Mr. XXXX also displayed an intimate knowledge of local port operations as he served as XXXXX in Bayonne, NJ and has provided redevelopment planning services for Port Newark Container Terminal in the past. While the proposed staff evidenced expertise in master planning and a deep knowledge of port-related issues, it did not demonstrate equal levels of experience with and an emphasis on financial and quantitative analysis, when compared to other firms, resulting in a relatively lower score in this category.

**Firm Qualifications** – XXXX’s proposal demonstrated comprehensive experience in port master planning. The proposal cited XXXX’s work on the XXXXX to demonstrate the firm’s experience

in leading a comprehensive planning effort for a port similar to the PONYNJ in terms of size and scope. XXXX's proposal also cited its work on other port planning projects, including the XXXX and the XXXX XXXX as further evidence of its ability to develop future forward strategies for port facilities. Additionally, the firm's proposal highlighted its contributions to the XXXXX, which showed that XXXX has successfully worked with agencies related to the Authority, like the American Association of Port Authorities and the US Maritime Administration, while gaining a thorough understanding of port resources and tools applicable to this project, resulting in the firm's relatively high score in this category.

**Technical Approach** – While XXXX demonstrated a strong approach to preparing a comprehensive master plan, the firm's approach was not as strong as the top firm's proposal, which focused more deeply on application of quantitative and metrics-based analysis to determine the plan's strategies and recommendations. XXXX's approach adequately detailed the firm's methods for performing each task in the scope of work. It clearly demonstrated a thorough project understanding and detailed XXXX's process to engage stakeholders, specifically outlining the various forums and meetings that would be used to obtain stakeholder input. The proposal drew particular attention to the firm's use of in-house modeling software that would meld the various planning tasks, like the market analysis and capacity assessment, with the physical features and land use patterns of the PONYNJ, to develop the master plan's recommendations, an aspect that helped the overall strength of XXXX's technical proposal. However, the technical approach focused less on the economic and financial implications of those studies, resulting in a lower score in this category as compared to the successful proposer.

**Management Approach** – XXXX presented an adequate management approach. The firm's proposal included an organization chart that clearly assigned task leads and a single point-of-contact responsible for the overall project. The approach specified weekly and monthly meetings with the Authority, demonstrating its ability to work closely with the Agency on the development of this master plan. The firm included a project schedule that demonstrated its ability to complete the project in the expected timeframe. Finally, the proposal also included a description of XXXX's cost control measures to monitor project spending and its quality assurance approach, though these descriptions appeared relatively generic in nature.

## **FIRM D**

**Staff Qualifications** – The proposal submitted by XXXX included staff experienced in port facility and transportation planning, economic analysis, and environmental planning within the project's leadership team. For instance, Mr. XXXX, the proposed project manager, demonstrated strong experience with topics relevant to this master planning effort, citing his experience as a project

manager for several Port Authority studies including a rail simulation for Greenville Yards, a chassis supply optimization study for the PONYNJ, facility planning and design evaluations for Port Newark Container Terminal, and land use studies for Port Jersey South as well as the Agency's properties at the former site of the Military Ocean Terminal at Bayonne. The Port Assessment Task Lead, XXXX, listed experience providing economic analysis for a number of port facilities and most recently for the Port Commerce Department's XXXXX and XXXX, the proposed environmental subject matter expert for the project, pointed to her experience in providing environmental assessment expertise on studies prepared for facilities and/or stakeholders within NY harbor. Additionally, two of the proposed technical advisors, Mr. XXXXX and Mr. XXXX, demonstrated intimate knowledge of port operations. Both proposed advisors cited 40 years of seaport management, with Mr. XXXX having served in leadership roles with the Port of Galveston and the Georgia Ports Authority and Mr. XXXX having served as the XXXX of ports in California and Florida. Collectively, however, the proposed staff lacked experience in developing comprehensive port master plans, especially when compared to other firms, resulting in a relatively lower score in this category.

***Firm Qualifications*** – XXXX's firm qualifications section demonstrated strong experience with many of the tasks involved in preparing a port master plan. The firm's proposal scored highly in this category given the demonstrated experience with benchmarking, productivity, and capacity assessments. Example projects included in the proposal, such as the XXXX for the Philadelphia Regional Port Authority and the XXXX for Los Angeles County, highlighted the engineering, design, and transportation planning expertise that this firm and its sub consultants could contribute to the project. The proposal failed to demonstrate, however, that the firm has directly led a comprehensive master planning effort for a port similar in size and complexity to the PONYNJ, making this firm less qualified when compared to higher ranked proposers in this criteria.

***Technical Approach*** – XXXX's proposal presented a fairly rigorous technical approach. The proposal demonstrated the firm's deep understanding of the analytical work needed to support the master plan by including a detailed listing of the background research, benchmarking exercises, and market assessments the firm would conduct as part of its technical work. The committee gave the firm high marks for its use of the XXXXX and the proposal's mention of evaluating off-port expansion options. The committee felt, however, that the firm's technical approach did not give equal consideration to analyzing land uses at both New York and New Jersey terminals, which led to a reduction in the firm's score for this category.

***Management Approach*** – XXXX's management approach was general in nature. The proposed project schedule demonstrated the firm's ability to deliver the project within the allotted timeframe, but the proposal failed to specifically outline the project management process that would be used to ensure completion of deliverables. The proposal did include a project organization chart. However, the evaluation committee noted that the project team consisted of 12 different firms as well as dozens of technical experts and team personnel, drawing into question



whether the firm could successfully coordinate with and communicate amongst the varied resources to execute its plan.

## **FIRM E**

*Staff Qualifications* – The staff proposed by XXXX were highly qualified in the consulting realm, demonstrating robust experience with the topics of transportation, infrastructure, logistics, industry, manufacturing, and public sector management. The proposed “core leadership team” included XXXX’s Transportation & Logistics practice lead for North America and the firm’s Public Sector practice lead for the NY metro area, both of which had 20 or more years working in the consulting field. The Transportation and Logistics practice lead, XXXX, cited experience with developing growth strategies for European and South African ports as well as having done work for companies in the manufacturing and industrial goods spheres and for transportation companies, primarily related to bus and rail modes. The Public Sector practice lead, XXXX, cited experience that included developing strategies for a rail and ocean transportation equipment manufacturer along with public sector experience, having worked with the Authority on its fleet management improvement initiative. While XXXX demonstrated experience in strategic planning for port facilities and the project team included a well-known maritime firm as a sub consultant (XXXX) along with one of the top experts in port design (XXXX), the proposed staff did not collectively demonstrate the depth of maritime and port-based planning experience as desired by the committee or required for this effort, especially when compared to other proposals. The lack of proposed maritime-based planning expertise was particularly apparent at the “daily project management” level. Both proposed project managers demonstrated experience with performing operational efficiency work for companies in the transportation and logistics sectors as well as experience in strategic planning, but neither demonstrated having led the development of a comprehensive maritime-based master plan in the past.

*Firm Qualifications* – XXXX demonstrated strong experience in strategic planning, organizational and change management, financial and market analysis, as well as industry benchmarking. XXXX’s proposal described its use of rigorous, data-driven analysis to successfully provide consulting, change management, and other services to clients spanning the public sector spectrum, from the Department of Defense to the Texas Department of Transportation and the World Bank. The committee scored XXXX relatively highly in the firm qualifications category as the proposal highlighted XXXX’s prior partnerships with XXXX, a sub included in this proposal, to complete a strategic business plan for the XXXX and a growth master plan for XXXX, both of which included one or multiple elements similar to tasks identified in this scope of work. Additionally, the firm’s proposal pointed to activities such as the development of a tool to analyze global trade flows and contributions to publications like “XXXX and XXXX” as examples of the research, analysis, and industry insights XXXX would bring to this scope of work.

*Technical Approach* – Based on XXXX’s proposal, the committee felt that the firm could contribute fresh perspectives, out-of-the-box thinking, and metrics-based analysis to produce a thorough, strategic master plan. The technical approach section mentioned development of

benchmarks and key performance indicators (KPIs) and included flow charts and process diagrams to illustrate the firm's proposed technical methodologies. While it was apparent that the firm would use a strategic, analytical, metrics-based approach, the proposal did not specifically state how the firm would address the maritime-based issues key to this project. Furthermore, the amount of hours included in the cost estimate as well as the overall project cost far exceeded the Agency's estimate for this effort as well as the mean estimated cost of all proposals submitted, making the proposal uncompetitive when compared to other firms, and bringing into question whether XXXX adequately understood the time required to complete the tasks at hand.

**Management Approach** – XXXX's management approach was general in nature. The proposal presented a matrix of project management-related documents and tools (i.e. checklists, communications plans, workstream roadmaps, schedules, dashboards, etc.) that would be used to plan and track execution of tasks. However, while mentioning "people" as one of the three pillars of the firm's management approach, the proposal did not clearly assign single point-of-contacts who would be responsible for the completion of tasks. XXXX did provide an organization chart, however, the chart appeared to illustrate significant management hierarchy. The core working groups were presented as collections of subject matter experts with no identifiable team/task leaders. Additionally, the leadership team was comprised of four individuals, making it unclear who would be the sole individual ultimately responsible for leading and guiding the project.

## **FIRM F**

**Staff Qualifications** – XXXX's proposed staff appeared to have an intimate knowledge of the Authority and its port facilities as well as familiarity with the maritime-based planning issues that shape the context in which the PONYNJ operates. Their proposal scored high in staff qualifications when compared to other firms mainly due to the presence of XXXX president of XXXXX, who cited having over 35 years of experience with port projects including the XXXXXX. The proposed staff also included XXXX's XXXX, a former Assistant Director for the Port Commerce Department, and XXXX of Baird, who cited experience with NY-NJ-based projects such as the development of Port Newark Container Terminal and the New York/New Jersey Harbor Navigation Project. However, the team did not include a real estate broker or advisory consultant, which made them uncompetitive as compared to other firms in performing real estate related tasks called for in the RFP.

**Firm Qualifications** – XXXX's proposal was lacking in the firm qualifications and experience category. The proposal failed to demonstrate experience in leading the development of a master plan for at least one port similar in size and complexity to the PONYNJ as explicitly stated in the "proposer requirements" section of the RFP. The firm's project examples were limited to preparation of master plans for port facilities incomparable to the PONYNJ in terms of size and geography (i.e. the XXXXX, XXXX and the Port XXXX) and cited topics far removed from those related to the PONYNJ, such as sediment in the Lower Mississippi River Delta wetlands. While some of XXXXX's projects demonstrated familiarity with aspects of the PONYNJ's business

practices, these examples failed to demonstrate that the firm would be qualified to prepare a master plan that comprehensively evaluated the multifaceted and varied issues relevant to the PONYNJ.

***Technical Approach*** – XXXX’s technical approach appeared strong as it clearly outlined the process the firm would use to execute the scope of work and identified the deliverables that would be produced at the end of each task. Specifically, the firm’s approach to stakeholder engagement, with options for engaging stakeholders in either a one-on-one format or group-based roundtables, demonstrated that the firm thoroughly understood the nuances of the stakeholder engagement process needed for this scope of work. The technical approach also stood out with its mention of evaluating the PONYNJ’s competitive advantage as well as benchmarking its position relative to that of competitor port facilities.

***Management Approach*** – The management approach presented in XXXX’s proposal was relatively general in nature. XXXX did provide an organization chart and outlined the project schedule, including an option for fast-tracking the completion of this effort, which helped its score in this category. However, the day-to-day project manager identified in the proposal came from one of XXXX’s sub consultants, XXXX, questioning XXXX’s ability to adequately resource this effort as the prime firm. Additionally, other elements of the firm’s management approach, like the document management and project quality statements, did not offer many details and appeared generic when compared to other proposals.

## **FIRM G**

***Staff Qualifications*** – XXXX proposed a strong collection of sub consultants and subject matter experts to form the team that would take on this scope of work, with staff demonstrating knowledge across diverse subject matter including port infrastructure components, maritime industry issues, energy and environment, traffic and risk management, cost benefit analysis, and stakeholder engagement. The assigned Project Manager, XXXX, demonstrated familiarity with market analysis and capacity assessments having contributed to the XXXXX for the US Maritime Administration as well as cargo demand outlooks for port facilities around the world. The proposed Deputy Project Manager, XXXX, complimented Mr. XXXX’s forecasting skills with expertise in environmental and infrastructure planning, citing experience with environmental impact statements and permit applications for various port facilities as well as direct involvement with the Port Authority as a manager of a call-in contract to provide civil and marine engineering services for the Agency. Beyond the project management level, however, proposed staff did not demonstrate the necessary levels of experience for this effort as compared to other firms. The technical lead for the master planning task, XXXX, demonstrated experience with leading master plans for east coast ports including Port XXXX and the Port of XXXX, yet those ports do not compare to the PONYNJ in terms of size and complexity. Additionally, the lead assigned to the visioning and stakeholder management task, XXXX, appeared experienced in land use planning, community outreach, and sustainability, having applied expertise in those areas to manage master plans for the Marine Corps. Yet, Ms. XXXX and the support staff for the stakeholder management task failed to demonstrate familiarity in working with interest groups and stakeholders specific to

the PONYNJ and the issues relevant to them. The firm also did not include a real estate broker or advisory consultant, making its proposed staffing plan look insufficient when considering other firms' proposals.

***Firm Qualifications*** – The overall proposal made clear that XXXX is an engineering firm with experience in planning and engineering the hard infrastructure components of port facilities including rolling stock, gantry cranes, and the like. Yet, the firm's qualifications and experience as related to producing comprehensive master plans were lacking when compared to other proposers. XXXX's firm qualifications and experience section focused on involvement in performing or supporting preparation of master plans for ports like XXXX, XXXX and XXXX, which are smaller in size and scope than the PONYNJ, and failed to demonstrate the requisite experience in preparing master plans for ports comparable to the PONYNJ.

***Technical Approach*** – XXXX's proposed technical approach was general in nature. The firm's approach appeared to restate the tasks outlined in the RFP issued for this effort and did not substantively detail or expand upon how the firm would apply its unique skills and expertise to complete the tasks outlined in the scope. Additionally, the firm's proposed amount of hours in the cost proposal was far below the Agency's estimate, particularly in the areas of market analysis and port assessment and master plan completion, bringing into question whether the firm adequately understood the amount of time needed to complete the tasks in this scope of work.

***Management Approach*** – XXXX's management approach was general in nature. The proposal included a schedule, an organization chart that indicated use of MBE/WBE firms, a matrix of the types of project status reports to be used throughout the master planning process, and a description of its quality assurance process.

## **FIRM H**

***Staff Qualifications*** – XXXX's proposed staff lacked the breadth and depth of experience in producing comprehensive, long-range master plans for ports like the PONYNJ, especially as compared to other firms. The experience demonstrated in the proposal focused primarily on services related to engineering, structural design, and construction management. The resume provided for the proposed Project Manager, XXXX, listed work activities such as providing technical engineering and project management services for the Battery Park City Ferry Terminal and producing feasibility and planning studies for waterfront structures and piers at the Port of Philadelphia as well as for properties near waterfronts, like Hoboken Terminal. Similarly, the proposed Chief Planner for this project, XXXX, cited experience with preparing redevelopment and master plans for counties in Pennsylvania as well as providing analysis for the XXXX and Brick Township's XXXX. While these activities demonstrated Mr. XXXX's experience with aspects of maritime-related land uses and structures and Mr. XXXX's experience with preparing master plans, these work activities appeared unrelated to producing a comprehensive master plan

for an operating port environment like the PONYNJ. Furthermore, the proposal designated an Assistant Project Manager in the organization chart, but there was no profile or resume provided for the individual, and so it was unclear if they were qualified for the role. The staff included in the proposal also appeared less experienced in strategic planning and stakeholder engagement than other firms and there was no real estate broker or advisory consultant included in the staffing mix, further lowering the firm's score in this category.

***Firm Qualifications*** – The firm qualifications presented in XXXX's proposal were not as strong when compared to other proposers. The firm qualifications included for XXXX, the prime firm, consisted of a generic summary of the firm's core services along with one project example. Several of the specialties listed under the firm's "comprehensive planning services" section, such as "active adult planning" and "hospital zoning and planning," were unrelated to the tasks in this scope of work. The firm's project example showcased its work on the XXXX, however, that work was limited to providing structural and marine engineering services for the project and failed to demonstrate the firm was capable of producing a comprehensive master plan. The proposal did highlight port master planning experience and related work of select sub consultants, such as XXXXX' work on the XXXX, XXXX's contributions to the XXXX and XXXX' XXXX for the NYCEDC. Yet, collectively, these examples did not demonstrate that XXXX and its sub consultants could together produce a holistic, comprehensive master plan as called for in the RFP, especially as compared to other proposers that demonstrated a greater depth of experience with preparing comprehensive port master plans.

***Technical Approach*** – XXXX presented a thorough technical approach that outlined their methodology for completing each task described in the scope of work. The technical approach highlighted the firm's use of market-driven analysis and solutions as a guiding theme, and while this will be one aspect of the plan, the firm's proposal seemed to lack the big-picture, qualitative thinking desired for the comprehensive, long-range port master plan.

***Management Approach*** – XXXX's management approach lacked sufficient detail to ensure the firm could manage this project to completion. The approach included an organization chart, which identified deputy planners to oversee collections of multi-disciplinary technical teams. However, the roles and responsibilities within each of those teams were not defined. In addition, the proposal did not include an overall project schedule or timeline, failing to demonstrate that the firm could complete this effort in the allotted period of time that was specified in the RFP.

Based on the evaluation conducted by the Committee, it is recommended that the firm of Hatch, be awarded an agreement for this project.

Committee:

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XXXX XXXX

XXXX XXXX

XXXX XXXX

**Subject: RFP TITLE \_\_\_\_\_**

**NON-CONFLICT OF INTEREST AND CONFIDENTIALITY CERTIFICATION**

As a member of the Proposal Evaluation Committee (“Committee Member”), assigned to review, rate and rank proposals submitted in response to the RFP, by signing below, I hereby certify that

to the best of my knowledge, information and belief, neither I, nor any member of my immediate family, have a financial or other interest in the procurement to which the RFP relates (the “Procurement”). I have not participated in any way in the preparation of any proposal submitted in response to the RFP;

to the best of my knowledge, information and belief, no business in which I, or any member of my immediate family, has a financial or other interest, is involved in the Procurement. [A business shall be deemed to be involved in Procurement if it is a prospective party to a contract, as well as when it is a party to an executed contract, or a proposed or actual party to a subcontract under a contract.];

to the best of my knowledge, information and belief, no person with whom I or a member of my immediate family is (or has been) negotiating or has an arrangement concerning prospective employment, is involved in the Procurement;

I will not (and have not previously) solicit(ed), demand(ed), accept(ed) or agree(d) to accept from another person anything of value or offer of employment, for myself or for a member of my immediate family, which I know or have reason to believe is (was) offered with the intent to influence or could reasonably be expected to influence the performance of my duties as a Committee Member, or was intended as a reward for an action on my part as a Committee Member;

I will not (and have not previously) knowingly use(d) confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of another person;

I will not (and have not previously) engage(d) in conduct which (i) gives reasonable basis for the impression that any person can improperly influence me or enjoy my favor in the performance of my duties as a Committee Member; or (ii) which might reasonably lead to the conclusion that I am engaged in acts which are in violation of the public trust.

As used herein, the terms indicated below are defined as follows:

“Business” means a private legal entity formed for profit including a corporation, partnership, sole proprietorship, joint stock company, or joint venture.

“Confidential information” means information which is available to me only because of my status as a Committee Member and is not a matter of public knowledge or available to the public on request.

“Financial interest” means:

1. ownership of an interest or involvement in a relationship from which or as a result of which a person has received within the past year, or is entitled to receive in any future year, more than \$1,000 or its equivalent; or

2. ownership of an interest other than in tangible personal property which has a market value in excess of \$1,000. In determining the value of an interest, debts, liens or other encumbrances thereon are not subtracted; or
3. ownership of an interest in tangible personal property other than motor vehicles which has a market value in excess of \$10,000. In determining the value of an interest, debts, liens or other encumbrances thereon are not subtracted; or
4. liability or indebtedness to a person in excess of \$5,000.

“Immediate family” means a spouse, children, parents, brothers and sisters.

“Other interest” means holding a position in a business such as an officer, director, trustee, partner, employee, or a position of management, or acting as a consultant, agent or representative in any capacity.

“Person” means a business, individual, union, committee, club, or other organization or group of individuals.

Should any circumstance arise regarding my participation as a Committee Member in connection with the Procurement where I believe a financial or other interest or involvement on my part might present a conflict of interest or other breach of ethical standards, I will immediately disclose the interest or involvement to the appropriate Procurement Department representative and disqualify myself from further participation in connection with the Procurement until advised in writing by the Law Department or the Port Authority Ethics Board that I may continue to participate.

I hereby agree that I will not intentionally discuss or intentionally disclose in any way to anyone, any information relating to the subject Request For Proposals (hereinafter, “RFP”) evaluation process, including, but not limited to the evaluation, negotiation, or selection of a proposer, or the contents of any letters, memoranda, documents, proposals or other materials, written or otherwise, which form a part of or are in any way involved in the RFP evaluation process, except as required by law, by governmental directive, or for the sole purpose of evaluating Project proposals, participating in negotiations, and/or selecting a proposer, without prior written approval by the appropriate Contract Specialist, or Manager in the Procurement Department.

Furthermore, I will not hold any discussions or respond to any written correspondence with any vendor regarding any portion of this RFP process, including but not limited to, if applicable, the vendor holding the current contract. I will immediately refer any such correspondence directly to the appropriate Contract Specialist, who is responsible for all communication with the vendor community and other outside parties for the duration of the RFP process, until an award is concluded. For the purposes of this paragraph, “vendor” shall include any principal, officer, director, employee, consultant, agent or representative in any capacity.

Signature	Name (Print)
Date	Title

Approved: \_\_\_\_\_  
 Procurement Manager (Signature)      Name (Print)      Date



**From:** [REDACTED]  
**To:** [Clark, Patty](#); [Lamond, Kathryn](#)  
**Cc:** [REDACTED]; [REDACTED] [Drew Brooks](#); [REDACTED]  
**Subject:** RE: LGA AirTrain - Sample Draft MOU  
**Date:** Thursday, November 02, 2017 1:57:40 PM  
**Attachments:** [Draft PANYNJ MOU v2.docx](#)

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Patty and Katie,

Attached is a sample draft Memorandum of Understanding (MOU) that we began developing for the LGA AirTrain EIS. The MOU presumes that there is a Federal funding component to the project, so it may require modification based on the actual funding sources proposed for use. Additionally, we are working on a Draft RFQ template. That document may also require some modification based on our internal discussions regarding the EIS consultant selection process, so we will be sending the template at a later time.

As a follow up from today's telcon, regardless of the approach the Port takes to shortlisting consultant teams, we wanted to clarify that we would expect to see a list of roughly 5 firms for consideration. This would help to ensure a strong pool of candidate firms that could be further refined.

Please let us know if you have any questions.

Marie

**Marie C. Jenet**

Environmental Specialist  
Federal Aviation Administration  
New York Airports District Office  
159-30 Rockaway Blvd, Suite 111  
Jamaica, New York 11434

[REDACTED]  
[REDACTED]

# MEMORANDUM OF UNDERSTANDING

## BETWEEN

### THE UNITED STATES DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION

## AND

### PORT AUTHORITY OF NEW YORK AND NEW JERSEY

#### I. INTRODUCTION AND PURPOSE

- A. This Memorandum of Understanding (MOU) provides a framework in which the United States Department of Transportation (DOT), Federal Aviation Administration (FAA) will prepare an Environmental Impact Statement (EIS) for the **LaGuardia (LGA) Airport AirTrain Project** (Project) being proposed by the Port Authority of New York and New Jersey (PANYNJ). The MOU describes the relationship of the above named parties in preparing the EIS. Subject to completion of the EIS, the FAA will issue a determination regarding the Project that will be set forth in a Record of Decision.
- B. As lead agency, the FAA has selected an independent contractor ("Contractor") to prepare the EIS. The PANYNJ ("Sponsor") shall be the party responsible to engage and retain the Contractor with funds provided by the Sponsor.
- C. The EIS and any related documents shall comply with the provisions of the National Environmental Policy Act of 1969 (NEPA) and Council on Environmental Quality (CEQ), DOT, and FAA environmental regulations and guidance, as well as all applicable local, state and Federal laws, as appropriate.
- D. It is the purpose of this MOU to establish an understanding between the Sponsor and the FAA regarding the responsibilities of the parties and the conditions and procedures to be followed in the development and preparation of the EIS.
- E. The parties that enter into this agreement intend that development and preparation of the EIS, as articulated in this MOU, will satisfy the pertinent environmental requirements of the FAA and any Cooperating Agencies that may have connected Federal Actions.

#### II. GENERAL PROVISIONS

- A. As the lead agency, the FAA will be responsible to ensure compliance with all the requirements of NEPA (42 U.S.C. 4321 et seq.), CEQ Regulations (40 C.F.R. Parts 1500-1508), and appropriate DOT and FAA environmental orders. The FAA shall ensure that all pertinent environmental issues and impacts; reasonable alternatives and their impacts; as well as cumulative impacts and

mitigation/conditions are treated in the EIS, and shall be responsible for the scope and content of the EIS.

- B. The Sponsor will engage and retain the Contractor, selected by the FAA, for the preparation of the EIS. The Contractor, with the approval of the FAA and Sponsor, may employ such other contractors and experts (collectively referred to as "Subcontractors"), as are required for the adequate development and preparation of the EIS.
- C. As approved by the FAA, the Contractor will provide, through its staff or by Subcontractor, the expertise, staffing, and technical capabilities required for the preparation of the EIS. The FAA will direct the scope of the EIS and will independently evaluate all information, environmental data and analyses submitted by the Contractor, or others, and revise or cause additional study and analyses to be performed as necessary.
- D. The Contracts between the Sponsor and Contractor and between the Contractor and Subcontractors (collectively the "Contract") shall be consistent with the provisions of this MOU and shall specifically incorporate those provisions articulated herein that address the conduct of the Contractor. Before starting EIS preparation, the Contractor and Subcontractors shall provide verification to FAA that they have no financial interest in the outcome of the action of the EIS will address, consistent with FAA Order 5050.4B, Paragraph 1003(d). The Contractor and Subcontractors working on the EIS may not bid on any future actions the EIS addresses until the approving FAA official issues a Record of Decision based on the EIS. This prohibition does not prevent the Sponsor from selecting the EIS Contractor or Subcontractors for later development actions, should they be approved. However, that selection must occur after free and open competition and there can be no implied or suggested guarantee that the Sponsor would favorably consider the EIS Contractor or Subcontractors. Further, the Sponsor shall ensure that the Contract shall specifically limit any remedies available to the Contractor and any Subcontractors, so as to affirmatively relieve the United States of America, the FAA, and any officer, agent or employee of same, from any liability arising out of the performance or termination of the contract for preparation of the EIS, or out of this MOU.
  - 1. Prior to beginning work on the EIS, the Contractor and any Subcontractors shall sign a "Disclosure Statement" provided by the FAA per the requirements of FAA Order 5050.4B, specifying they have no financial or other interest in the outcome of the project.
  - 2. The FAA shall evaluate the Disclosure Statement prior to its approval.
- E. The Sponsor shall facilitate the coordination of effort and the exchange of information related to the planning, design, and construction of the Project, as these activities relate to the preparation of the EIS among and between the

Contractor and its Subcontractors and the FAA. The Sponsor shall make all reasonable efforts to assure the satisfactory and timely performance of the duties of the Contractor and Subcontractors as specified in this MOU.

F. The Sponsor and FAA shall:

1. Appoint such representatives as necessary to accomplish the coordination necessary for the satisfactory preparation of the EIS. Notice to any such representative shall constitute notice to that party.
2. Review substantive work products under the Contract(s) for the EIS as the FAA deems necessary, consistent with Article III of this MOU.
3. Have their respective representatives attend meetings with other Federal, state, regional, and local agencies for the purpose of increasing communications and receiving comments, as the same may be necessary, desirable, or required by law in preparation of the EIS.

G. All costs incurred in connection with the employment of the Contractor and any and all Subcontractors, or other persons retained or employed by the Sponsor, shall be the sole responsibility of the Sponsor. The Sponsor agrees to hold harmless and indemnify the FAA, its officers, agents, and employees, with respect to any and all judgments or settlements arising from claims, demands, causes of action, and the like, in connection with the Sponsor's employment of the Contractor and any and all Subcontractors which may arise from the termination or performance of the Contract or any other services, or purchase of materials utilized for the development and preparation of the EIS, or from termination of this MOU. This indemnification by the Sponsor does not extend to administrative or legal costs of the FAA, including suits by third parties (other than the Contractor or its Subcontractors) against the FAA, involving the legality or adequacy of the FAA's compliance with NEPA and other laws and regulations, to the extent of the FAA's liabilities on those issues. The Sponsor shall cooperate and shall ensure that the Contractor cooperates in defense of any such suit. Notwithstanding anything to the contrary in this Agreement, nothing shall be construed to waive the applications of statutory provisions, immunities and limitations available under the Federal Tort Claims Act, (28 U.S.C. Sections 2671, et.seq.) or any other governmental immunity act, as the same may be amended from time to time, with respect to, and in defense of, any claim or claims asserted by any person or entity.

### **III. PROCEDURES**

A. Under the direction of the FAA, the Contractor shall develop and submit a Plan of Study to the FAA for the EIS for approval. The Plan of Study shall include detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated man-hours required for completion of each

aspect, the schedule for performing each aspect and a description of the internal and external review procedures to assure quality control. Also, the Plan of Study shall include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the environmental data and analyses and the development and preparation of the EIS. The Plan of Study should also identify procedures for retention of all data and sources used in the development of the EIS for eventual consolidation into the Administrative Record.

- B. The FAA will forward the Plan of Study to the Sponsor for review and comment. After receiving comments from the Sponsor, and the scoping process conducted pursuant to 40 C.F.R. Sec. 1501.7, the FAA will finalize and approve the Plan of Study. The Plan of Study and this MOU shall establish the scope of work required of the Contractor in the development and preparation of the EIS.
- C. The Plan of Study may be amended by the FAA from time to time as the work of the Contractor or its Subcontractors proceeds, but any amendments or changes which require the expenditure of additional funds by the Sponsor must be agreed to by the Sponsor. The Sponsor will be notified and consulted prior to any significant amendments or modifications to the Plan of Study.
- D. Unless otherwise directed by the FAA, any and all work performed by the Contractor and its Subcontractors in preparation of the EIS shall be submitted directly to the FAA, and upon request of the FAA, to the Sponsor. The Sponsor may communicate with the Contractor and its Subcontractors during the development of the EIS, but no prior review or discussion of data or analyses developed by the Contractor or Subcontractor as related to the EIS shall be afforded the Sponsor. In no case will the Sponsor discuss, review, modify, or edit the Contractor's work or the work of its Subcontractors prior to submission to the FAA, or be provided the opportunity to do so. All suggestions for modifications or changes to such sections recommended by the Sponsor shall only be made to the FAA.
- E. The FAA reserves the right to review periodically and modify the work of the Contractor to ensure that requirements under NEPA and other applicable laws and regulations are satisfied. The Contractor shall submit monthly written reports on the progress of its work to the FAA, with a concurrent copy to the sponsor. This report shall describe the present status of each aspect of the work, any problems encountered, and recommendations for modifications to the Plan of Study and any changes in personnel, methodology or schedules for completion.
- F. As each portion of any draft or final document is completed, the FAA shall review each portion and those tasks completed thereunder and, after consultation with the Sponsor, shall approve, modify, comment thereon and/or direct further work with regard to such portion or tasks as necessary. Said directions and/or comments shall be made by the FAA in a timely manner, and the Contractor shall

ensure incorporation of such comments into any editorial changes to the satisfaction of the FAA. Final drafts of any documents will require FAA approval. Prior to approval, the FAA will forward final drafts to the Sponsor for review and comment. Comments from the Sponsor shall be sent to the FAA. The Contractor will only make modifications as the FAA directs regarding these comments.

- G. If requested, the Contractor will provide the FAA access to and review of all procedures and underlying data used by the Contractor in developing submitted sections of the EIS, including, but not limited to, field reports, Subcontractor reports, and interviews with concerned private and public parties, whether or not such information may be contained in a draft or final EIS. The Sponsor will also have access to such procedures and underlying data. Such access by the FAA and Sponsor shall be governed by paragraph III.T in this MOU.
- H. To facilitate the development and preparation of the EIS, joint meetings among the FAA, Sponsor, and Contractor may be held. However, the FAA reserves the right to work directly with the Contractor for purposes of assuring objectivity in preparing reports and/or for assuring expeditious communications. The Contractor will notify the FAA and Sponsor of any substantive meetings that are scheduled and of their purpose and will provide an opportunity for the parties to attend if desired. No meeting will be held between the Contractor or Sponsor without prior notification to and approval of the FAA. A summary of all matters relating to EIS discussions in any meetings or communications between the Contractor and a party hereto without the participation of the other said party will be included in each formal monthly report submitted by the Contractor to the FAA and Sponsor. The FAA reserves the right to consult directly with other Federal, state, and local officials and agencies during the preparation of the EIS to assure compliance with NEPA and other applicable laws and regulations.
- I. The Sponsor shall assure the full cooperation of the Contractor and its Subcontractors with respect to participating in any public workshops, hearings, or meetings as required by the FAA to foster public familiarity and participation with respect to the assessment of impacts related to the Project.
- J. At such time as the FAA, after consultation with the Sponsor, has approved the Draft EIS developed and prepared by the Contractor and its Subcontractors, the Contractor shall print the contracted quantity of Draft EIS and submit same to the FAA. The FAA shall submit an appropriate number of copies of the Draft EIS to the Sponsor.
- K. The Contractor shall be responsible for the costs associated with the printing and publication of the draft and final copies of the EIS. The Contractor shall be responsible for all costs associated with the publication of FAA-approved notices announcing public workshops, meetings, hearings, and the like. The Contractor shall also be responsible for costs of stenographic and clerical services, preparation of graphics and visual aids associated with any public workshops, meetings, and hearings.

- L. In all instances involving questions as to the content or relevance of the environmental data and analyses, and evaluations and wording prepared by the Contractor during the EIS process, the FAA, with appropriate advice and consultation when it deems necessary, will make the final determination on the inclusion, deletion or modification of the same in the Draft or Final EIS.
- M. Upon completion of the Draft EIS, the FAA, with the Contractor's assistance, shall be responsible for organizing and conducting any public hearings.
- N. The FAA will receive all comments during the Draft EIS review and comment period. This period (at least 45 days) will be initiated when the Environmental Protection Agency (EPA) publishes the "Draft EIS Notice of Availability" in the Federal Register.
- O. At the close of the Draft EIS review and comment period, the FAA shall identify the issues and comments submitted which will require response in the Final EIS. The FAA will direct those comments to the Contractor for preparation of proposed responses, and shall furnish the Sponsor with copies of all comments received. The Contractor will furnish proposed responses to the FAA for review and comment. The FAA will share the proposed responses with the Sponsor for additional review and comment with proposed changes back to the FAA. The FAA, with appropriate advice and consultation, shall modify the proposed responses as it deems necessary.
- P. After receipt of comments and preparation of responses, the FAA, after appropriate advice and consultation, may direct the Contractor to make changes to the text of the Draft EIS as necessary.
- Q. At such time as the FAA has approved the Final EIS, the Contractor shall print the contracted quantity of Final EIS. The FAA shall submit an appropriate number of copies of the Final EIS to the Sponsor.
- R. The FAA will receive all comments on the Final EIS during the mandatory "hold period". This period (at least 30 days) will be initiated when the EPA publishes the "Final EIS Notice of Availability" in the Federal Register.
- S. The FAA, with assistance from the Contractor, will prepare and issue the FAA Record of Decision, and will make it available to the public.
- T. The FAA will maintain the confidentiality of, and will not release or allow access to, any information, documents or materials which in its opinion are validly designated as confidential by the Sponsor or Contractor and which contain trade secrets, proprietary data, or commercial or financial information. Information developed under this MOU is disclosable to the public to the extent required by law. In any instance where the FAA proposes to release to the public or allow access to any information, documents or materials which the Sponsor or

Contractor has designated as confidential, it shall notify the Sponsor or Contractor of its intention to do so and provide the Sponsor or Contractor the opportunity to appeal the decision in accordance with applicable regulations on such release or access prior to any such release or access.

- U. The Contractor will maintain a segregated copy of each record/document relating to the project that is used by the FAA in their decision making process. This will form the basis for the FAA's administrative record of the EIS.

#### **IV. CESSATION AND TERMINATION**

- A. Any of the parties to this MOU may withdraw from the terms of this MOU for good cause upon 30 days written notice to the other party. During this period, the parties will actively attempt to resolve any disagreement.
- B. In the event of a termination of this MOU, and if the FAA determines that preparation of an EIS by the FAA is still required, it is agreed as follows:
  - 1. The FAA shall have access to all documentation, reports, analyses and data by the Contractor and Subcontractors with confidentiality governed by paragraph III.T.
  - 2. The FAA shall assume the responsibility for preparing the EIS. The Sponsor shall no longer be responsible for the payment of costs associated with preparation of the EIS under the terminated MOU, apart from costs already incurred and required under the Sponsor's contract with the Contractor.
  - 3. Liability for termination shall be in accordance with paragraph II.G. of this MOU.

#### **VI. NO RIGHTS FOR NON-PARTIES**

No rights or privileges are created or intended to be created by this MOU in anyone not a signatory of this MOU.

#### **VII. MODIFICATION**

This MOU represents the entire agreement and may be modified by the parties hereto only by written agreement by all the parties.



**VIII. SIGNATORIES**

**United States Federal Aviation Administration**

\_\_\_\_\_  
**[FAA SIGNATORY AND TITLE]**

\_\_\_\_\_  
**DATE**

**Port Authority of New York and New Jersey**

\_\_\_\_\_  
**[PANYNJ SIGNATORY AND TITLE]**

\_\_\_\_\_  
**DATE**



**Sent:** Monday, February 26, 2018 2:41 PM

**To:** Papasavvas, Krystina <[REDACTED]> Drew Brooks <[REDACTED]>

**Cc:** [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] Clark, Patty <[REDACTED]> DiScenna, Matthew

<[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth

<[REDACTED]> Lamond, Kathryn <[REDACTED]> Summerville, James

<[REDACTED]> [REDACTED]

**Subject:** RE: LGA Airtrain / Access Improvement Project - Port Authority RFP Documents

Krystina and James,

Thank you for your responses to our comments. We will need a little time for our team to thoroughly review them. On an initial scan there seem to be a few items that will need further discussion. Because of scheduled training and other commitments, along with the time needed for our review, the next available time slot for a call would be on Monday March 5. Based on our schedules, we can be available 12:30-2:30.

Marie C. Jenet

Environmental Specialist

Federal Aviation Administration

New York Airports District Office

159-30 Rockaway Blvd, Suite 111

Jamaica, New York 11434

[REDACTED]

[REDACTED]

---

**From:** Papasavvas, Krystina [[mailto:\[REDACTED\]](mailto:[REDACTED])]

**Sent:** Friday, February 23, 2018 4:31 PM

**To:** Jenet, Marie (FAA) <[REDACTED]> Brooks, Andrew (FAA) <[REDACTED]>

**Cc:** Urlass, Steve (FAA) <[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]>

Sanchez, David (FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]> Wolfers-

Lawrence, Jean (FAA) <[REDACTED]> [REDACTED] DiScenna, Matthew

<[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth

<[REDACTED]> Lamond, Kathryn <[REDACTED]> Summerville, James

<[REDACTED]> Henn, Patricia (FAA) <[REDACTED]>

**Subject:** LGA Airtrain / Access Improvement Project - Port Authority RFP Documents

Hello Marie and Andrew -

Attached for your review are revised drafts of the RFP Letter and Attachment A, which the Port Authority intends to include in the publicly advertised solicitation for a third party consultant to assist the FAA with the preparation of an EIS for the LaGuardia Airport Access Improvement Project. The attached documents include Port Authority revisions responding to FAA comments provided during the 2/8 meeting and the written comments provided on 2/9. The Port Authority would like to request a conference call with FAA to close out any outstanding items regarding the attached revised draft RFP Letter and Attachment A, in order to finalize the documents and move forward with the issuance of the solicitation for proposals. The Port Authority is targeting issuance of this RFP no later than Monday, March 5<sup>th</sup>.

If necessary to discuss any of our changes, we would prefer to have a teleconference with you next week, preferably Tuesday, the 27<sup>th</sup>.

Thank you and we look forward to working together to finalizing the solicitation documents and issuing the RFP in the near future.

Thank you,

Krystina and James of the Procurement Department

**Krystina Papasavvas**

Integrity, Compliance and Contract Review

Port Authority of New York and New Jersey Procurement Department

4 World Trade Center

150 Greenwich Street, 21st Floor

New York, NY 10007

T: [REDACTED]

F: [REDACTED]

email: [REDACTED]

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**From:** [Lamond, Kathryn](#)  
**To:** [REDACTED]  
**Cc:** [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Cohen, Michelle](#); [Clark, Patty](#); [Puliafico, Jessica](#); [REDACTED]  
[REDACTED] [Jenet, Marie \(FAA\)](#); [REDACTED]  
[Matthew](#) [Herndon, Jane](#); [DiScenna,](#)  
**Subject:** RE: LGA AirTrain Follow Ups  
**Date:** Monday, July 23, 2018 10:48:00 AM  
**Attachments:** [Interagency Points of Contact 07202018.xlsx](#)  
[2018-06-26 Major Tasks to be Completed Prior to Issuance of NOI DRAFT-PA....docx](#)

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Good morning Andrew,

Attached please find a list of our initial contacts at the various agencies. The contacts may change once the agencies are further engaged in the project. We are also working on getting you the appropriate contact at the Governor's Office for the submittal of your letter. We should have the contact for you early this week.

Also attached, please find our comments on the Pre-NOI activities list. Please let us know if you have any questions.

We are still working through the latest version of the MOU. We will provide an updated version as soon as possible.

Thanks,  
Katie

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**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Monday, July 23, 2018 10:27 AM  
**To:** DiScenna, Matthew <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
**Cc:** Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Cohen, Michelle <[REDACTED]> Clark, Patty <[REDACTED]> Puliafico, Jessica <[REDACTED]> Jenet, Marie (FAA) <[REDACTED]> [REDACTED]  
[REDACTED]  
**Subject:** RE: LGA AirTrain Follow Ups

Good Morning Matt and Katie,

As a follow up to last week's call on the LGA Access Improvement Project, we were hoping you could provide us the POCs for the Regional, State, and City Agencies below. Additionally, we'd like to request any response to the latest version of the MOU as soon as you can provide it.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

---

**From:** DiScenna, Matthew <[REDACTED]>  
**Sent:** Thursday, June 28, 2018 11:30 AM  
**To:** Jenet, Marie (FAA) <[REDACTED]> Brooks, Andrew (FAA) <[REDACTED]>  
Doyle, John (FAA) <[REDACTED]> Wolfers-Lawrence, Jean (FAA) <[REDACTED]>  
[REDACTED] Teodorescu, Andrew P (FAA) <[REDACTED]> Henn, Patricia

(FAA) <[REDACTED]> McCarthy, Mary M (FAA) <[REDACTED]> Sanchez,  
David (FAA) <[REDACTED]>  
**Cc:** Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Cohen,  
Michelle <[REDACTED]> [REDACTED] Lamond, Kathryn <[REDACTED]>  
Puliafico, Jessica <[REDACTED]>

**Subject:** LGA AirTrain Follow Ups

All,

As a follow up to last week's call, we would like to confirm that we are ok with you sharing our draft ridership report with FTA. Please go ahead and solicit their input.

As requested, below is a comprehensive list of all agencies that we have coordinated with to date on the project. It's unlikely that all of these entities will be cooperating agencies as part of the NEPA process, though some will be. We're happy to discuss that further in advance of the initial interagency coordination meeting.

Federal

Federal Aviation Administration  
DOT Office of the Secretary/Build America Bureau

Regional

New York Metropolitan Transportation Council

New York State

Department of Transportation  
Metropolitan Transportation Authority

- Long Island Rail Road
- New York City Transit

New York City

Department of City Planning  
Department of Parks and Recreation  
Department of Transportation  
Department of Environmental Protection  
Economic Development Corporation  
Law Department  
Mayor's Office

Please be in touch with any questions or additional information requests on these topics.

Regards,

Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ

[REDACTED] (office)

[REDACTED] (cell)

[REDACTED]

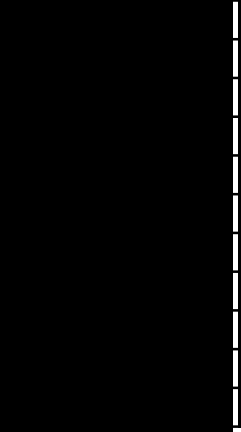
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WITH ANY ATTACHMENTS), AND DESTROY ANY PRINTOUTS.

LGA Access Improvement Project  
 Preliminary List of State and Local Agency Contacts

<b>Agency</b>	<b>POC</b>	<b>Name</b>
<b>New York State</b>		
Department of Transportation	ENV/MOU	Norman Kee
MTA	ENV/MOU	Bill Wheeler
Department of Environmental Conservation	ENV	Stephen Watts
	MOU	Steve Zahn
Department of State, Coastal Zone Resiliency	ENV	Jennifer Street
	MOU	Matthew Maraglio
<b>New York City</b>		
Mayor's Office of Environmental Coordination	ENV/MOU	Hilary Semel
Department of Transportation	ENV	Naim Rasheed
Department of City Planning	ENV	Jack Schmidt
Department of Environmental Protection	ENV	Nick Barbaro



Title	Phone Number
Assistant Counsel	
Director of Special Project Development and Planning	
Regional Permit Administrator - NYSDEC Region 2	
Regional Administrator - NYSDEC Region 2	
Coastal Resources Specialist	
Coastal Resources Specialist	
Director	
Senior Director, Traffic Engineering and Planning	
Director, Transportation Planning	
Director, Capital Programing BWSO	

**Major Tasks to be Completed Prior to Issuance of NOI**

Task/Action	PA Comments
<ul style="list-style-type: none"> <li>● Port submit planning documents to FAA for review (Scheduled for partial submittal in July)</li> </ul>	
<ul style="list-style-type: none"> <li>○ These should include:</li> </ul>	
<ul style="list-style-type: none"> <li>○ Proposed update to the ALP (The ALP change is the federal action that triggers NEPA)</li> </ul>	
<ul style="list-style-type: none"> <li>○ Purpose and need for the project (partial draft submitted 5/16/18)</li> </ul>	
<ul style="list-style-type: none"> <li>○ Forecasts of demand (including ridership/usage studies) (draft submitted 5/16/18)</li> </ul>	
<ul style="list-style-type: none"> <li>○ Analysis of alternatives considered and rationale for selection of a preferred alternative, if one is identified (preliminary approach submitted 5/16/18)</li> </ul>	
<ul style="list-style-type: none"> <li>○ Preliminary engineering analysis and design details (including up to 30% project design) of the preferred alternative</li> </ul>	PA intends to submit a concept design package for preferred alignment in advance of development of scope of work with the selected consultant
<ul style="list-style-type: none"> <li>○ Anticipated construction schedule</li> </ul>	PA will provide construction staging and phasing for the preferred alignment in advance of development of scope of work with the selected consultant
<ul style="list-style-type: none"> <li>● Port meet with ATO to identify potential issues with NAVAIDS, Line of Site, etc (scheduled for July)</li> </ul>	
<ul style="list-style-type: none"> <li>● FAA and PA enter into MOU (currently under negotiation)</li> </ul>	
Note: Planning information above needs to be complete at this point in order to proceed with any of the below	
<ul style="list-style-type: none"> <li>● PA issue Request for Proposals (currently under negotiation)</li> </ul>	
<ul style="list-style-type: none"> <li>● FAA conducts consultant selection</li> </ul>	
<ul style="list-style-type: none"> <li>● FAA and PA hold preliminary briefing/meeting with potential cooperating and participating agencies. Critical at this meeting is the presentation of the proposed project and discussions to <u>identify other authorizations and approvals needed by these agencies</u> and how to best approach and achieve ‘one federal decision’(OFD). EO 13807 sets forth the framework for OFD, the ‘MOU for Major Infrastructure Projects’ signed by 12 federal agencies, implements the targets and policy directives in the EO. The information from this meeting is essential to ensure the work scope is inclusive of the work needed to addresses the needs of all the agencies. This meeting would also serve to identify the appropriate level of decisionmakers and responsible staff points of contact.</li> </ul>	If deemed appropriate, the PA can provide a preliminary list of anticipated permits and approvals to FAA in advance of the interagency coordination meeting
<ul style="list-style-type: none"> <li>● Develop permitting timetables with concurrence points and key milestones</li> </ul>	

<p>The OFD MOU states that during prescoping, or as soon as practicable, the lead agency, in consultation with the cooperating agencies and the project sponsor, may develop a preliminary project plan that will establish how agencies will work together to process the environmental review and authorization decisions for the project.</p>	<p>PA is available to support these efforts in any way deemed appropriate</p>
<p>This includes:</p>	
<ul style="list-style-type: none"> <li>• A Permitting Timetable;</li> </ul>	
<ul style="list-style-type: none"> <li>• A project-specific framework for all agencies' reviews, analyses and decisions;</li> </ul>	
<ul style="list-style-type: none"> <li>• Specific areas of responsibilities and roles of all involved agencies;</li> </ul>	
<ul style="list-style-type: none"> <li>• Identification of the significant issues and concerns that affect the environmental review and</li> </ul>	
<p>authorizations needed for the project;</p>	
<ul style="list-style-type: none"> <li>• A stakeholder, public and tribal outreach and engagement plan;</li> </ul>	
<ul style="list-style-type: none"> <li>• Requirements for complete applications for respective authorizations, and an identification of</li> </ul>	
<p>the earliest possible stage when the application could be submitted;</p>	
<ul style="list-style-type: none"> <li>• Procedures for integration of environmental review and authorization processes with the goal</li> </ul>	
<p>of meeting milestones in the Permitting Timetable; and</p>	
<ul style="list-style-type: none"> <li>• Potential avoidance, minimization, and mitigation strategies.</li> </ul>	
<p><u>The Permitting Timetable would be developed as soon as practicable after the project is sufficiently advanced to allow the determination of relevant milestones and before publication of an NOI</u></p>	
<ul style="list-style-type: none"> <li>• FAA conduct pre-scoping outreach to existing public groups (e.g.,LGA Part 150 Roundtable)</li> </ul>	<p>PA recommends further discussion on this topic to determine the best approach</p>
<ul style="list-style-type: none"> <li>• FAA develop Scope of Work</li> </ul>	<p>PA will provide any necessary support for this process</p>
<ul style="list-style-type: none"> <li>• FAA Issue Notice of Intent to Prepare an Environmental Impact Statement</li> </ul>	



**From:** [Lamond, Kathryn](#)  
**To:** [Marie Jenet](#); [Drew Brooks](#); [REDACTED]  
**Cc:** [DiScenna, Matthew](#); [Cohen, Michelle](#); [Clark, Patty](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Herndon, Jane](#)  
**Subject:** LGA AirTrain Planning Documents - 5/16 submittal  
**Date:** Wednesday, May 16, 2018 8:07:35 PM

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AirTrain Team,

In response to your request, the Port Authority has prepared the following planning documents for submittal in support of the environmental review process for the proposed AirTrain LGA project (LaGuardia Airport Access Improvement Project):

- Project Purpose, Goals, and Objectives
- Alternatives Analysis Outline Tiers 1 and 2
- Alternatives Analysis Tier 3 Screening Map
- Ridership Report and Appendices

These planning documents can be accessed through AKRF's Extranet site, in a folder dated May 16<sup>th</sup>. Instructions for accessing the files from the Extranet site are included at the end of the email below. The Port Authority is of the opinion that the planning information included in these documents is sufficient for the purposes of moving forward with NEPA consultant procurement process.

In addition to providing the planning documents listed above, the Port Authority has also prepared a proposed schedule for the NEPA consultant procurement process and planning document submittals (also included in the Extranet folder). The intent of this schedule is to provide the FAA with an overview of at what point in the procurement process the Port Authority intends to submit the subsequent planning documents.

The Port Authority would like to request that we use our May 24<sup>th</sup> 9:00 to 10:00 am call to discuss any questions on the enclosed planning documents and proposed schedule, as well as to touch base on closing out any open items on the solicitation package (RFP Letter and Attachment A).

We look forward to further discussions and to the issuance of the solicitation in the near future. If you have any questions prior to the May 24<sup>th</sup> call, please be in touch.

Thank you,  
Katie

#### **AKRF WebFolders LogOn Instructions**

Below are instructions for securely sending/receiving large files for project via AKRF's Extranet:

1. Click on (or otherwise navigate to) [REDACTED]

Login with credentials:

Username [REDACTED]

Password: [REDACTED]

[Please Note: Username and Password are cAsE sEnSlTive]

2. A window should appear where you can:
  - Select extranet files to transfer to your computer; or
  - Select files on your computer to transfer to the extranet.

Notes:

As of 7/1/14: Files stored on AKRF's WebFolders system are available for thirty days only, based on the date they were uploaded.

WebFolders works best with the latest version of your web browser. If you are using an older web browser or a mobile phone , you may have trouble using the "full version" of the site: After a successful login, try the "View Lite Version" link at the bottom of the page.

If you are having trouble, contact your IT department. For password issues, contact AKRF's IT Help Desk [REDACTED] or [email us](#).

This site can also be reached from <https://www.akrf.com> (on the top menu, select "extranet" --> clients).

**From:** [DiScenna, Matthew](#)  
**To:** [Drew Brooks](#); [Jenet, Marie \(FAA\)](#)  
**Cc:** [REDACTED]; [Wolfers-Lawrence, Jean \(FAA\)](#); [Rogak, Elizabeth](#); [Lamond, Kathryn](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Clark, Patty](#); [Herndon, Jane](#)  
**Subject:** Planning Document Submittals  
**Date:** Tuesday, December 04, 2018 7:42:16 PM  
**Attachments:** [AirTrain LGA Planning Document Submittals 2018-12-4.pdf](#)

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Andrew/Marie,

Here is an overview of the PA planning document submittals to date, along with a list of the upcoming documents to be submitted. We hope this is helpful in your initial discussions with the consultant team.

Please be in touch with any questions on this.

Thank you,  
Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ  
[REDACTED] (office)  
[REDACTED] (cell)  
[REDACTED]

**Port Authority Planning Documents Submittals - LaGuardia Airport Access Improvement Project**

Document	Submittal Date*
Airport Layout Plan	8/21/2018
LGA Ground Access Mode Choice Model and AirTrain Ridership Forecast 2025-2045 (Ridership Report)	10/8/2018
LGA Ground Access Mode Choice Model and AirTrain Ridership Forecast 2025-2045: Appendices (Ridership Appendices)	10/9/2018
LGA Airport Access Improvement Project Purpose and Objectives and Analysis of Alternatives Report (Alternatives Report)	10/9/2018
New York City and LGA Access Traffic Conditions: Current and Projected Assessment (LGA Access Traffic Conditions Report)	10/9/2018
Potential Permits, Approvals, and Determinations	11/28/2018
Memorandum on Station Alternatives- Transportation and Access Studies Report (Off-Airport Station Traffic Memo)	
Study Area and Inventory of Environmental Conditions Report	
Conceptual Design and Construction Staging/Phasing Plans	
Traffic Data Package, including: - 2016, 2017, 2018 LGA Traffic Monitoring Plan and associated data (as required by NYCDOT a result of the CTB/ Terminal B Environmental) - 2017 and 2018 AirTrain LGA traffic data collection (raw data) -AirTrain LGA Operational Travel Demand Forecast Memo (draft version submitted to NYCDOT) -AirTrain LGA Construction Travel Demand Forecast Memo (draft version submitted to NYCDOT) -Traffic data comparison for the above years, prepared for NYCDOT	

\*For past submittals, the date reflects the date on which the latest version of the document was submitted to FAA.



**From:** [Cohen, Michelle](#)  
**To:** [Cohen, Michelle](#)  
**Subject:** FW: LGA FAA MOU  
**Date:** Wednesday, October 03, 2018 11:50:37 AM  
**Attachments:** [CLEAN DRAFT PANYNJ MOU - PA Comments \(10.1.18\).docx](#)  
[2018-09-14 \(FAA Cmts\) DRAFT PANYNJ MOU - PA Comments \(10.1.18\).docx](#)

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**From:** Tabafunda, Faith  
**Sent:** Wednesday, October 03, 2018 10:39 AM  
**To:** [REDACTED]  
**Cc:** Rogak, Elizabeth <[REDACTED]> Lamond, Kathryn <[REDACTED]> DiScenna, Matthew <[REDACTED]>  
**Subject:** LGA FAA MOU

Andrew, Mary and John,

Attached please find a revised draft (clean and redline) of the above referenced MOU for your review and comment. The proposed edits are highlighted in yellow on the redline.

If you feel further discussion may be helpful to close out these items, please let us know some dates/times that work for you and we can set up a call.

Best,  
Faith

Faith Tabafunda  
Attorney | Law Department  
The Port Authority of New York and New Jersey | 4 World Trade Center  
150 Greenwich Street, 25<sup>th</sup> Floor | New York, New York 10007  
[REDACTED] | [REDACTED]

**PA Comments (10.1.18) CLEAN**

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION**

**AND**

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**I. INTRODUCTION AND PURPOSE**

- A. This Memorandum of Understanding (“MOU”) provides a framework in which the United States Department of Transportation (the “DOT”), Federal Aviation Administration (the “FAA”), an executive agency of the United States, organized and existing under the laws of the United States, having its principal office at 800 Independence Avenue, S.W., Washington, D.C., 20591, will prepare an Environmental Impact Statement (the “EIS”) for the LaGuardia Airport (“LGA”) Access Improvement Project (the “Project”) proposed by The Port Authority of New York and New Jersey (the “Port Authority” or “Sponsor”), a body corporate and politic created by a Compact between the States of New York and New Jersey, with the consent of the Congress of the United States, having its principal office at Four World Trade Center, 150 Greenwich Street, New York, NY, 10007. The MOU describes the relationship of the above named parties in preparing the EIS. Subject to completion of the EIS, the FAA will issue a determination regarding the Project that will be set forth in a Record of Decision.
- B. As lead agency, the FAA [has selected ] an independent contractor (the "Contractor") to prepare the EIS. The Sponsor shall be the party responsible to engage and retain the Contractor with funds provided by the Sponsor.
- C. The EIS and any related documents shall comply with the provisions of the National Environmental Policy Act of 1969 (“NEPA”) and Council on Environmental Quality (“CEQ”), DOT, and FAA environmental regulations and guidance, as well as all applicable local, state and Federal laws, as appropriate.
- D. It is the purpose of this MOU to establish an understanding between the Sponsor and the FAA regarding the responsibilities of the parties and the conditions and procedures to be followed in the development and preparation of the EIS.
- E. The parties that enter into this agreement intend that development and preparation of the EIS, as articulated in this MOU, will satisfy the pertinent environmental requirements of the FAA and any Cooperating Agencies (as that term is defined in

40 CFR § 1501.6 and 1508.5) that may have jurisdiction over the Project, including Executive Order 13807 entitled Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects (“EO 13807”).

## **II. GENERAL PROVISIONS**

- A. As the lead agency, the FAA will be responsible to ensure compliance with all the requirements of NEPA (42 U.S.C. 4321 et seq.), CEQ Regulations (40 C.F.R. Parts 1500-1508), and appropriate DOT and FAA environmental orders. The FAA shall ensure that all reasonable alternatives and their impacts, cumulative impacts, and mitigation/conditions are analyzed in the EIS, and shall be responsible for the scope and content of the EIS. The FAA acknowledges that the Sponsor will be responsible for coordinating with such state and local entities as necessary for respective compliance with applicable state and local laws. The Sponsor agrees to invite the FAA to participate in meetings held with state and local entities wherein discussion would serve to support the EIS and to ensure that environmental data and analysis related to the EIS comply with the requirements of applicable state and local laws.
- B. The Sponsor will engage and retain the Contractor, selected by the FAA, for the preparation of the EIS. The Contractor, with the approval of the FAA and Sponsor, may employ such other contractors and experts (collectively referred to as "Subcontractors"), as are required for the adequate development and preparation of the EIS.
- C. As approved by the FAA, the Contractor will provide, through its staff or by Subcontractor, the expertise, staffing, and technical capabilities required for the preparation of the EIS. The FAA will direct the scope of the EIS and will independently evaluate all information, environmental data and analyses submitted by the Contractor and revise or cause additional study and analyses to be performed as necessary.
- D. The Contracts between the Sponsor and Contractor and between the Contractor and Subcontractors (collectively the "Contract") shall be consistent with the provisions of this MOU and shall specifically incorporate those provisions articulated herein that address the conduct of the Contractor. Before starting EIS preparation, the Contractor and Subcontractors shall provide verification to FAA that they have no financial interest in the outcome of the action the EIS will address, consistent with FAA Order 5050.4B, Paragraph 1003(d). The Contractor and Subcontractors working on the EIS may not bid on any future actions the EIS addresses until the approving FAA official issues a Record of Decision based on the EIS. This prohibition does not prevent the Sponsor from selecting the EIS Contractor or Subcontractors for later development actions, should they be approved. However, that selection must occur after free and open competition and there can be no implied or suggested guarantee that the Sponsor would favorably

consider the EIS Contractor or Subcontractors. Further, the Sponsor shall ensure that the Contract shall specifically limit any remedies available to the Contractor and any Subcontractors, so as to affirmatively relieve the United States of America, the FAA, and any officer, agent or employee of same, from any liability arising out of the performance or termination of the contract for preparation of the EIS, or out of this MOU.

1. Prior to beginning work on the Project, the Contractor and any Subcontractors shall sign a "Disclosure Statement" provided by the FAA per the requirements of FAA Order 5050.4B, Paragraph 1003(d), specifying they have no financial or other interest in the outcome of the project.
2. The FAA shall evaluate the Disclosure Statement prior to its approval.

E. The Sponsor shall facilitate the coordination of effort and the exchange of information related to the planning, design, and construction of the Project, as these activities relate to the preparation of the EIS among and between the Contractor and its Subcontractors and the FAA and other state or local entities as deemed mutually appropriate by the Sponsor and the FAA. The Sponsor shall make all reasonable efforts to assist and cooperate with the FAA's directions to the Contractor and Subcontractors and to support the FAA's efforts to ensure the satisfactory and timely performance of the duties of the Contractor and Subcontractors as specified in this MOU.

F. The Sponsor and FAA shall:

1. Appoint such representatives from their respective agencies as necessary to accomplish the coordination necessary for the satisfactory and expeditious preparation of the EIS. Notice to any such representative shall constitute notice to that party.
2. Review substantive work products under the Contract(s) for the EIS as the FAA deems necessary, consistent with Article III of this MOU.
3. Have their respective representatives attend meetings with other Federal, state, regional, and local agencies for the purpose of increasing communications and receiving comments, as the same may be necessary, desirable, or required by law in preparation of the EIS.

G. All costs incurred in connection with the employment of the Contractor and any and all Subcontractors, or other persons retained or employed by the Sponsor, shall be the sole responsibility of the Sponsor, except as limited by paragraph (B)(2) of Section IV below. To the extent authorized by law, the Sponsor agrees to hold harmless and indemnify the FAA, its officers, agents, and employees, with respect to any and all judgments or settlements arising from claims, demands, causes of action, and the like ("Claims"), in connection with the Sponsor's

employment of the Contractor and any and all Subcontractors thereof, which may arise from the termination or performance of the Contract or any other services or purchase of materials utilized for the development and preparation of the EIS, or from termination of this MOU, except for Claims that arise out of the gross negligence or willful misconduct of the FAA, its officers, agents and employees. This indemnification by the Sponsor does not extend to administrative or legal costs of the FAA, including suits by third parties (other than suits by the Contractor or its Subcontractors) against the FAA, involving the legality or adequacy of the FAA's compliance with NEPA and other laws and regulations, to the extent of the FAA's liabilities on those issues. The Sponsor shall cooperate and shall require as a term and condition of the Contract and enforce the contract condition that the Contractor cooperates in defense of any such suit against FAA described in the preceding sentence. Notwithstanding anything to the contrary in this Agreement, nothing shall be construed to waive the applications of statutory provisions, immunities and limitations available under the Federal Tort Claims Act, (28 U.S.C. Sections 2671, et. seq.) or any other governmental immunity act, as the same may be amended from time to time, with respect to, and in defense of, any claim or claims asserted by any person or entity. The FAA agrees that the Sponsor may satisfy the indemnification requirements set forth above by means of a self-insurance program.

- H. Both parties will assign the appropriate staff and management personnel dedicated to the expeditious development, preparation, review, and completion of the EIS. It is the intention of both parties to ensure that such dedicated staff are made available as appropriate to complete the EIS process in accordance with EO 13807. Further both parties agree that any actions taken to effectuate this MOU will be done promptly and in all instances in a manner consistent with the principles set forth in EO 13807.

### **III. PROCEDURES**

- A. Under the direction of the FAA, the Contractor shall develop and submit a plan of study to the FAA for the EIS for approval. The "Plan of Study" shall mean a plan that includes detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated man-hours required for completion of each aspect, the schedule for performing each aspect and a description of the internal and external review procedures to assure quality control. Also, the Plan of Study shall include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the environmental data and analyses and the development and preparation of the EIS. The Plan of Study should also identify procedures for retention of all data and sources used in the development of the EIS for eventual consolidation into the Administrative Record. In developing the Plan of Study, the Contractor may consider and use as appropriate any relevant submissions made

by the Sponsor, or the Sponsor's representative. However, submissions from the Sponsor must first be made directly to the FAA and whether they are transmitted to the Contractor will be determined at the FAA's discretion.

B. Upon completion of its review, the FAA will forward the draft Plan of Study to the Sponsor for review and comment. After receiving comments from the Sponsor, and the scoping process conducted pursuant to 40 C.F.R. Sec. 1501.7, the FAA will finalize and approve the Plan of Study. The Sponsor acknowledges that the Plan of Study is subject to change based on the scoping process. The Plan of Study and this MOU will serve as the basis for the Contractor's development and preparation of the EIS.

C.

1. The Plan of Study may be amended by the FAA from time to time as the work of the Contractor or its Subcontractors proceeds, but any amendments or changes which require the expenditure of additional funds by the Sponsor must be agreed to by the Sponsor. If any amendments to the Plan of Study require the expenditure of additional funds by the Sponsor, the Contractor shall be obligated to notify the FAA and the Sponsor of such additional costs, with sufficient time to accommodate funding authorization and allocation. After notification from the Contractor, FAA will consult with the Sponsor prior to the FAA authorizing and the Contractor undertaking any significant amendments or modifications to the Plan of Study that require the expenditure of additional funds or modification to the proposed schedule for completion of the EIS. Payments by the Sponsor will be made and are subject to the availability of funds authorized by the Sponsor's Board of Commissioners.

2. The Sponsor will pay Contractor and Subcontractors invoices only upon receipt from an FAA project manager confirming that the work product or materials set forth on a submitted invoice has been performed or provided by the Contractors and Subcontractors. Any invoices submitted for payment shall only include amounts for project work that has already been performed by the date on which such invoice is submitted for payment. The FAA cannot confirm the number of hours worked on the invoice but shall cooperate with any independent audit of contract performance. The Sponsor may deny payment for any portion of any invoice that is not supported by the confirmation described above or for work not actually performed.

D. Any and all work performed by the Contractor and its Subcontractors in preparation of the EIS shall be submitted directly to the FAA. In development of the EIS, the Contractor may consider and use as appropriate any relevant submissions made by the Sponsor, or the Sponsor's representative. However, submissions from the Sponsor must first be made directly to the FAA and whether they are transmitted to the Contractor will be determined at the FAA's discretion. After the FAA has had an opportunity to review, the Sponsor may request such material and, if

the FAA so directs, the Contractor or Subcontractors shall submit such work, data or analysis to the Sponsor. The Sponsor may communicate with the Contractor and its Subcontractors during the development of the EIS, but no prior review or discussion of data or analyses developed by the Contractor or Subcontractor as related to the EIS shall be afforded the Sponsor until the Contractor or Subcontractor submits such data or analyses to the FAA and the FAA authorizes disclosure to the Sponsor. In no case will the Sponsor discuss, review, modify, or edit the Contractor's work or the work of its Subcontractors prior to submission to the FAA, or be provided the opportunity to do so. All suggestions for modifications or changes to such sections recommended by the Sponsor or the Sponsor's representative shall only be made to the FAA in accordance with Paragraph F below. The Port Authority acknowledges that any such documents shared with the FAA will no longer be protected from disclosure based on the deliberative process privilege, however the FAA will consider whether other exemptions and privileges to withhold documents may still exist and be applicable.

- E. The FAA reserves the right to review periodically and modify the work of the Contractor to ensure that requirements under NEPA and other applicable laws and regulations are satisfied. The Contractor shall submit bi-weekly written reports on the progress of its work to the FAA, with a concurrent copy to the Sponsor. This report shall describe the present status of each aspect of the work, any problems encountered, and recommendations for modifications to the Plan of Study and any changes in personnel, methodology or schedules for completion.
- F. As each portion of any draft or final document is completed, the FAA shall review each portion and those tasks completed thereunder and, after consultation with the Sponsor, shall approve, modify, comment thereon and/or direct further work with regard to such portion or tasks as necessary. The FAA review will be coordinated in accordance with the principles outlined in EO 13807 and all other applicable orders including but not limited to FAA Orders 1050.1F and 5050.4B. The FAA will utilize concurrent reviews as it determines to be appropriate consistent with the guidance provided by EO 13807. Said directions and/or comments shall be made by the FAA in a manner so as to promote expeditious completion of the EIS. The Contractor shall ensure incorporation of such comments into any editorial changes to the satisfaction of the FAA. Prior to approval, the FAA will forward final drafts to the Sponsor for review and comment. Comments from the Sponsor shall be sent to the FAA. The Contractor will only make modifications as the FAA directs regarding these comments. After the aforementioned consultation, final drafts of any documents will require FAA approval.
- G. If requested, the Contractor will provide the FAA access to and review of all procedures and underlying data used by the Contractor in developing submitted sections of the EIS, including, but not limited to, field reports, Subcontractor reports, and interviews with concerned private and public parties, whether or not such information may be contained in a draft or final EIS.

Upon request by the Sponsor, the FAA will provide the Sponsor with access to all of the aforementioned procedures and underlying data. Such information provided by the FAA to the Sponsor shall be governed by paragraph III.T in this MOU.

- H. To facilitate the development and preparation of the EIS, joint meetings among the FAA, Sponsor, and Contractor shall be held at a minimum on a bi-weekly basis, as appropriate to facilitate the timely coordination and the exchange of information. However, the FAA reserves the right to work directly with the Contractor for purposes of assuring objectivity in preparing reports and/or for assuring expeditious communications. The Contractor will notify the FAA and Sponsor of any substantive meetings that are scheduled with other agencies and of their purpose and will provide an opportunity for the parties to attend if desired. No meeting will be held between the Contractor and Sponsor without prior notification to and approval of the FAA. A summary of all matters relating to EIS discussions in any meetings or communications between the Contractor and a party hereto without the participation of the other said party will be included in each formal bi-weekly report submitted by the Contractor to the FAA and Sponsor. The FAA reserves the right to consult directly with other Federal, state, and local officials and agencies during the preparation of the EIS to assure the Sponsor's compliance with all applicable laws and regulations. The Sponsor recognizes that FAA is the lead agency for preparation of the EIS and the FAA must be given an opportunity to attend all meetings that discuss or could impact the EIS, including meetings related to permits listed in the permitting timetable that will be established pursuant to EO 13807. The FAA acknowledges that independent of the above referenced EIS related meetings and coordination commitments the Sponsor also has an ongoing right to consult with state and local officials on other matters in connection with the Airport.
- I. The Sponsor and FAA each acknowledge that the Contractor and its Subcontractors' shall provide the FAA with full cooperation in coordinating any public workshops, hearings, or meetings as required and directed by the FAA to foster public familiarity and participation with respect to the assessment of impacts related to the Project.
- J. At such time as the FAA, after consultation with the Sponsor, has approved the Draft EIS developed and prepared by the Contractor and its Subcontractors, the Contractor shall print the quantity of Draft EIS copies as specified by the FAA and submit same to the FAA. Promptly after receipt from the Contractor copies of the Draft EIS, the FAA shall provide a courtesy copy of the Draft EIS to the Sponsor.
- K. The Contractor shall be responsible for the costs associated with the printing and publication of the draft and final copies of the EIS. The Contractor shall be responsible for all costs associated with the publication of FAA-approved notices announcing public workshops, meetings, hearings, and the like. The Contractor shall also be



responsible for costs of stenographic and clerical services, preparation of graphics and visual aids associated with any public workshops, meetings, and hearings.

- L. In all instances involving questions as to the content or relevance of the environmental data and analyses, and evaluations and wording prepared by the Contractor during the EIS process, the FAA, with appropriate advice and consultation shall make the final determination on the inclusion, deletion or modification of the same in the Draft or Final EIS. After its initial review, the FAA shall provide the Sponsor with the opportunity to review and comment on such environmental data, analyses, evaluations, and wording prepared by the Contractor that is proposed for inclusion in the Draft or Final EIS, at minimum to identify errors, or omissions and to ensure that both the Federal and State or local documentation are, to the extent feasible, consistent. After the aforementioned consultation, the inclusion of any environmental data and analyses and evaluations and wording will require FAA approval.
  
- M. Upon the anticipated completion of the Draft EIS, the FAA, with the Contractor's assistance, shall be responsible for organizing and conducting any public hearings.
  
- N. The FAA will receive all comments during the Draft EIS public review and comment period. This period (at least 45 days) will be initiated when the Environmental Protection Agency (EPA) publishes the "Draft EIS Notice of Availability" in the Federal Register.
  
- O. At the close of the Draft EIS public review and comment period, the FAA shall identify the issues and comments submitted which will require response in the Final EIS. The FAA will direct those issues and comments to the Contractor for preparation of proposed responses, and shall furnish the Sponsor with copies of comments received. The FAA shall direct the Contractor to furnish proposed responses to the FAA and if the FAA so directs to the Sponsor for review and comment. The Sponsor shall provide any comments to the FAA. The FAA may elect after appropriate advice and consultation with the Sponsor to modify the proposed responses as it deems necessary, with the FAA making the final determination on the inclusion, deletion or modification of the same in the Draft EIS.
  
- P. After receipt of comments and preparation of responses, the FAA, after appropriate advice and consultation, may direct the Contractor to make changes to the text of the Draft EIS as necessary.
  
- Q. At such time as the FAA has approved the Final EIS, the Contractor shall print the contracted quantity of the Final EIS. The FAA shall submit an appropriate number of copies of the Final EIS to the Sponsor.

- R. The FAA will receive all comments on the Final EIS during the mandatory "hold period". This period (at least 30 days) will be initiated when the EPA publishes the "Final EIS Notice of Availability" in the Federal Register.
- S. The FAA, with assistance from the Contractor, will expeditiously prepare and issue the FAA Record of Decision, upon or after publication of the "Final EIS Notice of Availability," and will make it available to the public; if permitted by applicable law, and determined by the FAA as appropriate, contemporaneously with the Final EIS.
- T. Information developed under this MOU is disclosable to the public to the extent required by law. The FAA will maintain the confidentiality of, and will not release or allow access to, any information, documents or materials which in its opinion are validly designated as confidential by the Sponsor or Contractor and which contain trade secrets, proprietary data, or commercial or financial information or falls within any other applicable federal exemption. In any instance where the FAA intends to release to the public or allow access to any information, documents, or materials, submitted to the FAA by the Sponsor in the development and preparation of the EIS, the FAA shall notify the Sponsor of its intention to release or allow access at least seven (7) business days prior to such release or grant of access. In addition, the Sponsor or Contractor has the opportunity to either (i) appeal the decision in accordance with applicable regulations on such release or access prior to any such release or access or (ii) seek a protective order. (See FAA Order 1270.1) This notification process shall reciprocally apply in the event the Sponsor intends to release to the public or allow access to any information, documents, or materials created by the FAA or the Contractor in the development and preparation of the EIS and shared with the Sponsor. The FAA similarly shall reserve the right to either (i) appeal the decision in accordance with applicable regulations on such release or access prior to any such release or access or (ii) seek a protective order in accordance with FAA Order 1270.1.
- U. ~~U~~-The Contractor will maintain a segregated copy of each record/document relating to the project that is used by the FAA in their decision making process. This will form the basis for the FAA's administrative record of the EIS. The Consultant shall be responsible for managing the project's records and, if an administrative record must be prepared in response to litigation, the FAA will provide the Sponsor with an index of the project record.. Once the contents of the administrative record has been determined, the Contractor will be responsible for submitting two copies of the completed administrative record for the project to the FAA, in accordance with FAA policy and guidance. The FAA will provide one copy of the completed administrative record for the project to the Sponsor.
- V. All work prepared in the preparation and development of the EIS shall be delivered to the FAA in printed format and searchable .pdf files along with

components associated with each item, such as data files, text files, image files, spreadsheets, graphs, and tables. Whenever the Contractor is directed by the FAA to provide materials or work prepared under this MOU to the Sponsor, the Contractor will deliver it to the Sponsor in format set forth in the preceding sentence.

#### **IV. CESSATION AND TERMINATION**

- A. Any of the parties to this MOU may withdraw from the terms of this MOU for good cause upon 30 days written notice to the other party. During this period, the parties will actively attempt to resolve any disagreement.
- B. In the event of a termination of this MOU, and if the FAA determines that preparation of an EIS by the FAA is still required, it is agreed as follows:
  - 1. The FAA shall have access to all documentation, reports, analyses and data by the Contractor and Subcontractors with confidentiality governed by paragraph III.T.
  - 2. The FAA shall assume the responsibility for preparing the EIS. The Sponsor shall no longer be responsible for the payment of costs associated with preparation of the EIS under the terminated MOU, apart from costs already incurred and required under the Sponsor's contract with the Contractor. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations which might require payment.
  - 3. Liability for termination shall be in accordance with paragraph II.G. of this MOU.

#### **VI. NO RIGHTS FOR NON-PARTIES**

This Agreement does not create any right or benefit enforceable by law or equity of any person who is not a party to this Agreement against the Sponsor or FAA. No rights or privileges are created or intended to be created by this MOU in anyone not a signatory of this MOU.

#### **VII. MODIFICATION**

This MOU represents the entire agreement and may be modified by the parties hereto only by written agreement by all the parties.

#### **VIII. AUTHORITY TO EXECUTE**

The representative of each party signing this Agreement warrants that he/she is duly authorized to do so.

**IX. COUNTERPARTS**

A photocopy or PDF copy of this Agreement shall have the same force and effect as an original of this Agreement.

**X. NOTICES**

Notices and other communications under this Agreement shall be in writing and shall be directed as follows, or to such other address as the party receiving such notice or communication shall have previously specified by notice to the other party sending such notice:

If to the Sponsor:

Title: Director of Aviation  
The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 18<sup>th</sup> Floor  
New York, New York 10007

with a copy to:

General Counsel  
The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 23<sup>rd</sup> Floor  
New York, New York 10007

If to the FAA:

[FAA to provide contact]  
[Title]  
Federal Aviation Administration  
1 Aviation Plaza, Suite [\_\_\_\_]  
Jamaica, New York 11434

with a copy to:

[FAA to provide contact]  
[Title]  
Federal Aviation Administration  
800 Independence Ave., S.W.,  
Washington, D.C., 20591

**XI. NO PERSONAL LIABILITY**

No Commissioner, director, officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

**XII. SIGNATORIES**

**United States Federal Aviation Administration**

\_\_\_\_\_  
[SIGNATORY AND TITLE]

\_\_\_\_\_  
DATE

**The Port Authority of New York and New Jersey**

\_\_\_\_\_  
\_\_\_\_\_  
[SIGNATORY AND TITLE]

\_\_\_\_\_  
\_\_\_\_\_  
DATE

<u>Port Authority Use Only:</u>	
Approval as to Terms	Approval as to Form



PA Comments (10.1.18)

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE UNITED STATES DEPARTMENT OF TRANSPORTATION**  
**FEDERAL AVIATION ADMINISTRATION**  
**AND**  
**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**I. INTRODUCTION AND PURPOSE**

- A. This Memorandum of Understanding ("MOU") provides a framework in which the United States Department of Transportation (the "DOT"), Federal Aviation Administration (the "FAA"), an executive agency of the United States, organized and existing under the laws of the United States, having its principal office at 800 Independence Avenue, S.W., Washington, D.C., 20591, will prepare an Environmental Impact Statement (the "EIS") for the LaGuardia Airport ("LGA") Access Improvement Project (the "Project") proposed by The Port Authority of New York and New Jersey (the "Port Authority" or "Sponsor"), a body corporate and politic created by a Compact between the States of New York and New Jersey, with the consent of the Congress of the United States, having its principal office at Four World Trade Center, 150 Greenwich Street, New York, NY, 10007. The MOU describes the relationship of the above named parties in preparing the EIS. Subject to completion of the EIS, the FAA will issue a determination regarding the Project that will be set forth in a Record of Decision.
- B. As lead agency, the FAA [has selected ] an independent contractor (the "Contractor") to prepare the EIS. The Sponsor shall be the party responsible to engage and retain the Contractor with funds provided by the Sponsor.
- C. The EIS and any related documents shall comply with the provisions of the National Environmental Policy Act of 1969 ("NEPA") and Council on Environmental Quality ("CEQ"), DOT, and FAA environmental regulations and guidance, as well as all applicable local, state and Federal laws, as appropriate.
- D. It is the purpose of this MOU to establish an understanding between the Sponsor and the FAA regarding the responsibilities of the parties and the conditions and procedures to be followed in the development and preparation of the EIS.
- E. The parties that enter into this agreement intend that development and preparation of the EIS, as articulated in this MOU, will satisfy the pertinent environmental requirements of the FAA and any Cooperating Agencies (as that term is defined in

Commented [A1]: Assumes execution prior to contractor selection

40 CFR § 1501.6 and 1508.5) that may have jurisdiction over the Project, including Executive Order 13807 entitled Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects ("EO 13807").

## II. GENERAL PROVISIONS

- A. As the lead agency, the FAA will be responsible to ensure compliance with all the requirements of NEPA (42 U.S.C. 4321 et seq.), CEQ Regulations (40 C.F.R. Parts 1500-1508), and appropriate DOT and FAA environmental orders. The FAA shall ensure that all reasonable alternatives and their impacts, cumulative impacts, and mitigation/conditions are analyzed in the EIS, and shall be responsible for the scope and content of the EIS. The FAA acknowledges that the Sponsor will be responsible for coordinating with such state and local entities as necessary for respective compliance with applicable state and local laws. The Sponsor agrees to invite the FAA to participate in meetings held with state and local entities wherein discussion would serve to support the EIS and to ensure that environmental data and analysis related to the EIS comply with the requirements of applicable state and local laws.
- B. The Sponsor will engage and retain the Contractor, selected by the FAA, for the preparation of the EIS. The Contractor, with the approval of the FAA and Sponsor, may employ such other contractors and experts (collectively referred to as "Subcontractors"), as are required for the adequate development and preparation of the EIS.
- C. As approved by the FAA, the Contractor will provide, through its staff or by Subcontractor, the expertise, staffing, and technical capabilities required for the preparation of the EIS. The FAA will direct the scope of the EIS and will independently evaluate all information, environmental data and analyses submitted by the Contractor and revise or cause additional study and analyses to be performed as necessary.
- D. The Contracts between the Sponsor and Contractor and between the Contractor and Subcontractors (collectively the "Contract") shall be consistent with the provisions of this MOU and shall specifically incorporate those provisions articulated herein that address the conduct of the Contractor. Before starting EIS preparation, the Contractor and Subcontractors shall provide verification to FAA that they have no financial interest in the outcome of the action the EIS will address, consistent with FAA Order 5050.4B, Paragraph 1003(d). The Contractor and Subcontractors working on the EIS may not bid on any future actions the EIS addresses until the approving FAA official issues a Record of Decision based on the EIS. This prohibition does not prevent the Sponsor from selecting the EIS Contractor or Subcontractors for later development actions, should they be approved. However, that selection must occur after free and open competition and there can be no implied or suggested guarantee that the Sponsor would favorably



consider the EIS Contractor or Subcontractors. Further, the Sponsor shall ensure that the Contract shall specifically limit any remedies available to the Contractor and any Subcontractors, so as to affirmatively relieve the United States of America, the FAA, and any officer, agent or employee of same, from any liability arising out of the performance or termination of the contract for preparation of the EIS, or out of this MOU.

1. Prior to beginning work on the Project, the Contractor and any Subcontractors shall sign a "Disclosure Statement" provided by the FAA per the requirements of FAA Order 5050.4B, Paragraph 1003(d), specifying they have no financial or other interest in the outcome of the project.

2. The FAA shall evaluate the Disclosure Statement prior to its approval.

E. The Sponsor shall facilitate the coordination of effort and the exchange of information related to the planning, design, and construction of the Project, as these activities relate to the preparation of the EIS among and between the Contractor and its Subcontractors and the FAA and other state or local entities as deemed mutually appropriate by the Sponsor and the FAA. The Sponsor shall make all reasonable efforts to assist and cooperate with the FAA's directions to the Contractor and Subcontractors and to support the FAA's efforts to ensure the satisfactory and timely performance of the duties of the Contractor and Subcontractors as specified in this MOU.

F. The Sponsor and FAA shall:

1. Appoint such representatives from their respective agencies as necessary to accomplish the coordination necessary for the satisfactory and expeditious preparation of the EIS. Notice to any such representative shall constitute notice to that party.

2. Review substantive work products under the Contract(s) for the EIS as the FAA deems necessary, consistent with Article III of this MOU.

3. Have their respective representatives attend meetings with other Federal, state, regional, and local agencies for the purpose of increasing communications and receiving comments, as the same may be necessary, desirable, or required by law in preparation of the EIS.

G. All costs incurred in connection with the employment of the Contractor and any and all Subcontractors, or other persons retained or employed by the Sponsor, shall be the sole responsibility of the Sponsor, except as limited by paragraph (B)(2) of Section IV below. To the extent authorized by law, the Sponsor agrees to hold harmless and indemnify the FAA, its officers, agents, and employees, with respect to any and all judgments or settlements arising from claims, demands, causes of action, and the like ("Claims"), in connection with the Sponsor's

employment of the Contractor and any and all Subcontractors thereof, which may arise from the termination or performance of the Contract or any other services or purchase of materials utilized for the development and preparation of the EIS, or from termination of this MOU, except for Claims that arise out of the gross negligence or willful misconduct of the FAA, its officers, agents and employees. This indemnification by the Sponsor does not extend to administrative or legal costs of the FAA, including suits by third parties (other than suits by the Contractor or its Subcontractors) against the FAA, involving the legality or adequacy of the FAA's compliance with NEPA and other laws and regulations, to the extent of the FAA's liabilities on those issues. The Sponsor shall cooperate and shall require as a term and condition of the Contract and enforce the contract condition that the Contractor cooperates in defense of any such suit against FAA described in the preceding sentence. Notwithstanding anything to the contrary in this Agreement, nothing shall be construed to waive the applications of statutory provisions, immunities and limitations available under the Federal Tort Claims Act, (28 U.S.C. Sections 2671, et. seq.) or any other governmental immunity act, as the same may be amended from time to time, with respect to, and in defense of, any claim or claims asserted by any person or entity. The FAA agrees that the Sponsor may satisfy the indemnification requirements set forth above by means of a self-insurance program.

- H. Both parties will assign the appropriate staff and management personnel dedicated to the expeditious development, preparation, review, and completion of the EIS. It is the intention of both parties to ensure that such dedicated staff are made available as appropriate to complete the EIS process in accordance with EO 13807. Further both parties agree that any actions taken to effectuate this MOU will be done promptly and in all instances in a manner consistent with the principles set forth in EO 13807.

### **III. PROCEDURES**

- A. Under the direction of the FAA, the Contractor shall develop and submit a plan of study to the FAA for the EIS for approval. The "Plan of Study" shall mean a plan that includes detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated man-hours required for completion of each aspect, the schedule for performing each aspect and a description of the internal and external review procedures to assure quality control. Also, the Plan of Study shall include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the environmental data and analyses and the development and preparation of the EIS. The Plan of Study should also identify procedures for retention of all data and sources used in the development of the EIS for eventual consolidation into the Administrative Record. In developing the Plan of Study, the Contractor may consider and use as appropriate any relevant submissions made

by the Sponsor, or the Sponsor's representative. However, submissions from the Sponsor must first be made directly to the FAA and whether they are transmitted to the Contractor will be determined at the FAA's discretion.

B. Upon completion of its review, the FAA will forward the draft Plan of Study to the Sponsor for review and comment. After receiving comments from the Sponsor, and the scoping process conducted pursuant to 40 C.F.R. Sec. 1501.7, the FAA will finalize and approve the Plan of Study. The Sponsor acknowledges that the Plan of Study is subject to change based on the scoping process. The Plan of Study and this MOU will serve as the basis for the Contractor's development and preparation of the EIS.

C.

1. The Plan of Study may be amended by the FAA from time to time as the work of the Contractor or its Subcontractors proceeds, but any amendments or changes which require the expenditure of additional funds by the Sponsor must be agreed to by the Sponsor. If any amendments to the Plan of Study require the expenditure of additional funds by the Sponsor, the Contractor shall be obligated to notify the FAA and the Sponsor of such additional costs, with sufficient time to accommodate funding authorization and allocation. After notification from the Contractor, FAA will consult with the Sponsor prior to the FAA authorizing and the Contractor undertaking any significant amendments or modifications to the Plan of Study that require the expenditure of additional funds or modification to the proposed schedule for completion of the EIS. Payments by the Sponsor will be made and are subject to the availability of funds authorized by the Sponsor's Board of Commissioners.

2. The Sponsor will pay Contractor and Subcontractors invoices only upon receipt from an FAA project manager confirming that the work product or materials set forth on a submitted invoice has been performed or provided by the Contractors and Subcontractors. Any invoices submitted for payment shall only include amounts for project work that has already been performed by the date on which such invoice is submitted for payment. The FAA cannot confirm the number of hours worked on the invoice but shall cooperate with any independent audit of contract performance. The Sponsor may deny payment for any portion of any invoice that is not supported by the confirmation described above or for work not actually performed.

D. Any and all work performed by the Contractor and its Subcontractors in preparation of the EIS shall be submitted directly to the FAA. In development of the EIS, the Contractor may consider and use as appropriate any relevant submissions made by the Sponsor, or the Sponsor's representative. However, submissions from the Sponsor must first be made directly to the FAA and whether they are transmitted to the Contractor will be determined at the FAA's discretion. -After the FAA has had an opportunity to review, the Sponsor may request such material and, if

the FAA so directs, the Contractor or Subcontractors shall submit such work, data or analysis to the Sponsor. The Sponsor may communicate with the Contractor and its Subcontractors during the development of the EIS, but no prior review or discussion of data or analyses developed by the Contractor or Subcontractor as related to the EIS shall be afforded the Sponsor until the Contractor or Subcontractor submits such data or analyses to the FAA and the FAA authorizes disclosure to the Sponsor. In no case will the Sponsor discuss, review, modify, or edit the Contractor's work or the work of its Subcontractors prior to submission to the FAA, or be provided the opportunity to do so. All suggestions for modifications or changes to such sections recommended by the Sponsor or the Sponsor's representative shall only be made to the FAA in accordance with Paragraph F below. The Port Authority acknowledges that any such documents shared with the FAA will no longer be protected from disclosure based on the deliberative process privilege, however the FAA will consider whether other exemptions and privileges to withhold documents may still exist and be applicable.

- E. The FAA reserves the right to review periodically and modify the work of the Contractor to ensure that requirements under NEPA and other applicable laws and regulations are satisfied. The Contractor shall submit bi-weekly written reports on the progress of its work to the FAA, with a concurrent copy to the Sponsor. This report shall describe the present status of each aspect of the work, any problems encountered, and recommendations for modifications to the Plan of Study and any changes in personnel, methodology or schedules for completion.
- F. As each portion of any draft or final document is completed, the FAA shall review each portion and those tasks completed thereunder and, after consultation with the Sponsor, shall approve, modify, comment thereon and/or direct further work with regard to such portion or tasks as necessary. The FAA review will be coordinated in accordance with the principles outlined in EO 13807 and all other applicable orders including but not limited to FAA Orders 1050.1F and 5050.4B. The FAA will utilize concurrent reviews as it determines to be appropriate consistent with the guidance provided by EO 13807. Said directions and/or comments shall be made by the FAA in a manner so as to promote expeditious completion of the EIS. The Contractor shall ensure incorporation of such comments into any editorial changes to the satisfaction of the FAA. Prior to approval, the FAA will forward final drafts to the Sponsor for review and comment. Comments from the Sponsor shall be sent to the FAA. The Contractor will only make modifications as the FAA directs regarding these comments. After the aforementioned consultation, final drafts of any documents will require FAA approval.
- G. If requested, the Contractor will provide the FAA access to and review of all procedures and underlying data used by the Contractor in developing submitted sections of the EIS, including, but not limited to, field reports, Subcontractor reports, and interviews with concerned private and public parties, whether or not such information may be contained in a draft or final EIS.

Upon request by the Sponsor, the FAA will provide the Sponsor with access to all of the aforementioned procedures and underlying data. Such information provided by the FAA to the Sponsor shall be governed by paragraph III.T in this MOU.

H. To facilitate the development and preparation of the EIS, joint meetings among the FAA, Sponsor, and Contractor shall be held at a minimum on a bi-weekly basis, as appropriate to facilitate the timely coordination and the exchange of information. However, the FAA reserves the right to work directly with the Contractor for purposes of assuring objectivity in preparing reports and/or for assuring expeditious communications. The Contractor will notify the FAA and Sponsor of any substantive meetings that are scheduled with other agencies and of their purpose and will provide an opportunity for the parties to attend if desired. No meeting will be held between the Contractor and Sponsor without prior notification to and approval of the FAA. A summary of all matters relating to EIS discussions in any meetings or communications between the Contractor and a party hereto without the participation of the other said party will be included in each formal bi-weekly report submitted by the Contractor to the FAA and Sponsor. The FAA reserves the right to consult directly with other Federal, state, and local officials and agencies during the preparation of the EIS to assure the Sponsor's compliance with all applicable laws and regulations. The Sponsor recognizes that FAA is the lead agency for preparation of the EIS and the FAA must be given an opportunity to attend all meetings that discuss or could impact the EIS, including meetings related to permits listed in the permitting timetable that will be established pursuant to E.O. 13807. ~~Subject to the requirements above, the FAA acknowledges that in accordance with the above referenced EIS related meetings and coordination commitments the Sponsor also has an ongoing right to consult with state and local officials on other matters related to the Project in connection with the Airport.~~

Commented [A2]: Note to FAA please see proposed revised language

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- I. The Sponsor and FAA each acknowledge that the Contractor and its Subcontractors' shall provide the FAA with full cooperation in coordinating any public workshops, hearings, or meetings as required and directed by the FAA to foster public familiarity and participation with respect to the assessment of impacts related to the Project.
- J. At such time as the FAA, after consultation with the Sponsor, has approved the Draft EIS developed and prepared by the Contractor and its Subcontractors, the Contractor shall print the quantity of Draft EIS copies as specified by the FAA and submit same to the FAA. Promptly after receipt from the Contractor copies of the Draft EIS, the FAA shall provide a courtesy copy of the Draft EIS to the Sponsor.
- K. The Contractor shall be responsible for the costs associated with the printing and publication of the draft and final copies of the EIS. The Contractor shall be responsible for all costs associated with the publication of FAA-approved notices announcing public workshops, meetings, hearings, and the like. The Contractor shall also be

responsible for costs of stenographic and clerical services, preparation of graphics and visual aids associated with any public workshops, meetings, and hearings.

- L. In all instances involving questions as to the content or relevance of the environmental data and analyses, and evaluations and wording prepared by the Contractor during the EIS process, the FAA, with appropriate advice and consultation shall make the final determination on the inclusion, deletion or modification of the same in the Draft or Final EIS. After its initial review, the FAA shall provide the Sponsor with the opportunity to review and comment on such environmental data, analyses, evaluations, and wording prepared by the Contractor that is proposed for inclusion in the Draft or Final EIS, at minimum to identify errors, or omissions and to ensure that both the Federal and State or local documentation are, to the extent feasible, consistent. After the aforementioned consultation, the inclusion of any environmental data and analyses and evaluations and wording will require FAA approval.
- M. Upon the anticipated completion of the Draft EIS, the FAA, with the Contractor's assistance, shall be responsible for organizing and conducting any public hearings.
- N. The FAA will receive all comments during the Draft EIS public review and comment period. This period (at least 45 days) will be initiated when the Environmental Protection Agency (EPA) publishes the "Draft EIS Notice of Availability" in the Federal Register.
- O. At the close of the Draft EIS public review and comment period, the FAA shall identify the issues and comments submitted which will require response in the Final EIS. The FAA will direct those issues and comments to the Contractor for preparation of proposed responses, and shall furnish the Sponsor with copies of comments received. The FAA shall direct the Contractor to furnish proposed responses to the FAA and if the FAA so directs to the Sponsor for review and comment. The Sponsor shall provide any comments to the FAA. The FAA may elect after appropriate advice and consultation with the Sponsor to modify the proposed responses as it deems necessary, with the FAA making the final determination on the inclusion, deletion or modification of the same in the Draft EIS.
- P. After receipt of comments and preparation of responses, the FAA, after appropriate advice and consultation, may direct the Contractor to make changes to the text of the Draft EIS as necessary.
- Q. At such time as the FAA has approved the Final EIS, the Contractor shall print the contracted quantity of the Final EIS. The FAA shall submit an appropriate number of copies of the Final EIS to the Sponsor.

- R. The FAA will receive all comments on the Final EIS during the mandatory "hold period". This period (at least 30 days) will be initiated when the EPA publishes the "Final EIS Notice of Availability" in the Federal Register.
- S. The FAA, with assistance from the Contractor, will expeditiously prepare and issue the FAA Record of Decision, upon or after publication of the "Final EIS Notice of Availability," and will make it available to the public; if permitted by applicable law, and determined by the FAA as appropriate, contemporaneously with the Final EIS.
- T. Information developed under this MOU is disclosable to the public to the extent required by law. The FAA will maintain the confidentiality of, and will not release or allow access to, any information, documents or materials which in its opinion are validly designated as confidential by the Sponsor or Contractor and which contain trade secrets, proprietary data, or commercial or financial information or falls within any other applicable federal exemption. In any instance where the FAA intends to release to the public or allow access to any information, documents, or materials, submitted to the FAA by the Sponsor in the development and preparation of the EIS, the FAA shall notify the Sponsor of its intention to release or allow access at least seven (7) business days prior to such release or grant of access. In addition, the Sponsor or Contractor has the opportunity to either (i) appeal the decision in accordance with applicable regulations on such release or access prior to any such release or access or (ii) seek a protective order. (See FAA Order 1270.1) This notification process shall reciprocally apply in the event the Sponsor intends to release to the public or allow access to any information, documents, or materials created by the FAA or the Contractor in the development and preparation of the EIS and shared with the Sponsor. The FAA similarly shall reserve the right to either (i) appeal the decision in accordance with applicable regulations on such release or access prior to any such release or access or (ii) seek a protective order in accordance with FAA Order 1270.1.
- U. ~~U~~-The Contractor will maintain a segregated copy of each record/document relating to the project that is used by the FAA in their decision making process. This will form the basis for the FAA's administrative record of the EIS. The Consultant shall be responsible for managing the project's records and, if an administrative record must be prepared in response to litigation, the FAA will provide the Sponsor with an index of the project record.. Once the contents of the administrative record has been determined, the Contractor will be responsible for submitting two copies of the completed administrative record for the project to the FAA, in accordance with FAA policy and guidance. The FAA will provide one copy of the completed administrative record for the project to the Sponsor.
- V. All work prepared in the preparation and development of the EIS shall be delivered to the FAA in printed format and searchable .pdf files along with

components associated with each item, such as data files, text files, image files, spreadsheets, graphs, and tables. Whenever the Contractor is directed by the FAA to provide materials or work prepared under this MOU to the Sponsor, the Contractor will deliver it to the Sponsor in format set forth in the preceding sentence.

#### **IV. CESSATION AND TERMINATION**

- A. Any of the parties to this MOU may withdraw from the terms of this MOU for good cause upon 30 days written notice to the other party. During this period, the parties will actively attempt to resolve any disagreement.
- B. In the event of a termination of this MOU, and if the FAA determines that preparation of an EIS by the FAA is still required, it is agreed as follows:
  - 1. The FAA shall have access to all documentation, reports, analyses and data by the Contractor and Subcontractors with confidentiality governed by paragraph III.T.
  - 2. The FAA shall assume the responsibility for preparing the EIS. The Sponsor shall no longer be responsible for the payment of costs associated with preparation of the EIS under the terminated MOU, apart from costs already incurred and required under the Sponsor's contract with the Contractor. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations which might require payment.
  - 3. Liability for termination shall be in accordance with paragraph II.G. of this MOU.

#### **VI. NO RIGHTS FOR NON-PARTIES**

This Agreement does not create any right or benefit enforceable by law or equity of any person who is not a party to this Agreement against the Sponsor or FAA. No rights or privileges are created or intended to be created by this MOU in anyone not a signatory of this MOU.

#### **VII. MODIFICATION**

This MOU represents the entire agreement and may be modified by the parties hereto only by written agreement by all the parties.

#### **VIII. AUTHORITY TO EXECUTE**



The representative of each party signing this Agreement warrants that he/she is duly authorized to do so.

**IX. COUNTERPARTS**

A photocopy or PDF copy of this Agreement shall have the same force and effect as an original of this Agreement.

**X. NOTICES**

Notices and other communications under this Agreement shall be in writing and shall be directed as follows, or to such other address as the party receiving such notice or communication shall have previously specified by notice to the other party sending such notice:

If to the Sponsor:

Title: Director of Aviation  
The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 18<sup>th</sup> Floor  
New York, New York 10007

with a copy to:

General Counsel  
The Port Authority of New York and New Jersey  
Four World Trade Center  
150 Greenwich Street, 23<sup>rd</sup> Floor  
New York, New York 10007

If to the FAA:

[FAA to provide contact]  
[Title]  
Federal Aviation Administration  
1 Aviation Plaza, Suite [ ]  
Jamaica, New York 11434

with a copy to:

[FAA to provide contact]  
[Title]  
Federal Aviation Administration  
800 Independence Ave., S.W.,  
Washington, D.C., 20591

**XI. NO PERSONAL LIABILITY**

No Commissioner, director, officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

**XII. SIGNATORIES**

United States Federal Aviation Administration

\_\_\_\_\_  
[SIGNATORY AND TITLE]

\_\_\_\_\_  
DATE

The Port Authority of New York and New Jersey

\_\_\_\_\_  
\_\_\_\_\_  
[SIGNATORY AND TITLE]

\_\_\_\_\_  
\_\_\_\_\_  
DATE

Port Authority Use Only	
Approval as to Terms	Approval as to Form



**From:** [DiScenna, Matthew](#)  
**To:** [Drew Brooks](#); [Jenet, Marie \(FAA\)](#)  
**Cc:** [REDACTED]; [Wolfers-Lawrence, Jean \(FAA\)](#); [Rogak, Elizabeth](#); [Lamond, Kathryn](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Clark, Patty](#); [Herndon, Jane](#)  
**Subject:** Planning Document Submittals  
**Date:** Tuesday, December 04, 2018 7:42:16 PM  
**Attachments:** [AirTrain LGA Planning Document Submittals 2018-12-4.pdf](#)

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Andrew/Marie,

Here is an overview of the PA planning document submittals to date, along with a list of the upcoming documents to be submitted. We hope this is helpful in your initial discussions with the consultant team.

Please be in touch with any questions on this.

Thank you,  
Matt

Matt DiScenna  
Senior Program Manager  
LaGuardia AirTrain  
Aviation Department  
Port Authority of NY & NJ  
[REDACTED] (office)  
[REDACTED] (cell)  
[REDACTED]

**Port Authority Planning Documents Submittals - LaGuardia Airport Access Improvement Project**

Document	Submittal Date*
Airport Layout Plan	8/21/2018
LGA Ground Access Mode Choice Model and AirTrain Ridership Forecast 2025-2045 (Ridership Report)	10/8/2018
LGA Ground Access Mode Choice Model and AirTrain Ridership Forecast 2025-2045: Appendices (Ridership Appendices)	10/9/2018
LGA Airport Access Improvement Project Purpose and Objectives and Analysis of Alternatives Report (Alternatives Report)	10/9/2018
New York City and LGA Access Traffic Conditions: Current and Projected Assessment (LGA Access Traffic Conditions Report)	10/9/2018
Potential Permits, Approvals, and Determinations	11/28/2018
Memorandum on Station Alternatives- Transportation and Access Studies Report (Off-Airport Station Traffic Memo)	
Study Area and Inventory of Environmental Conditions Report	
Conceptual Design and Construction Staging/Phasing Plans	
Traffic Data Package, including: - 2016, 2017, 2018 LGA Traffic Monitoring Plan and associated data (as required by NYCDOT a result of the CTB/ Terminal B Environmental) - 2017 and 2018 AirTrain LGA traffic data collection (raw data) -AirTrain LGA Operational Travel Demand Forecast Memo (draft version submitted to NYCDOT) -AirTrain LGA Construction Travel Demand Forecast Memo (draft version submitted to NYCDOT) -Traffic data comparison for the above years, prepared for NYCDOT	

\*For past submittals, the date reflects the date on which the latest version of the document was submitted to FAA.

**From:** [Papasavvas, Krystina](#)  
**To:** [Summerville, James](#); [Lamond, Kathryn](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Jenet, Marie \(FAA\)](#); [Drew Brooks](#); [REDACTED]  
**Cc:** [REDACTED]; [Puliafico, Jessica](#); [REDACTED]; [Herndon, Jane](#)  
**Subject:** LGA Access Improvement Project  
**Date:** Monday, September 24, 2018 4:09:58 PM  
**Attachments:** [Attachment A Draft Track Changes 9 24 2018.docx](#)  
[RFP Letter Draft Track Changes 9.18.18 FAA Edits PA.DOCX](#)

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Andrew, Marie, et. al.

Attached are the updated documents comprising the RFP for the LGA AirTrain EIS Consultant procurement. Updates are represented in track-change mode for your ease of review. The Port Authority accepts your changes to the Attachment A.

Please review the documents so that we may close out any outstanding comments on our upcoming call.

Thank you.

**Krystina Papasavvas**  
Integrity, Compliance and Contract Review  
Port Authority of New York and New Jersey Procurement Department  
4 World Trade Center  
150 Greenwich Street, 21st Floor  
New York, NY 10007  
T: [REDACTED]  
F: [REDACTED]  
email: [REDACTED]

**ATTACHMENT A**

**PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (“LGA”) ACCESS IMPROVEMENT PROJECT**

**I. BACKGROUND**

*General:*

For background with respect to The Port Authority of New York and New Jersey (the “Authority” or “Sponsor”) see [www.panynj.gov](http://www.panynj.gov). Additionally, the most recent electronic version of the Authority’s Annual Report is available at <http://www.panynj.gov/corporate-information/annual-reports.html>.

*Project Description:*

The Authority is proposing to construct a new automated people mover (“APM”) AirTrain system to provide a fast, convenient, predictable, and reliable transit alternative for air passenger and employee access to LaGuardia Airport (“LGA” or the “Airport”). This proposed project, herein referred to as the LaGuardia Airport Access Improvement Project (the “Project”), is to provide a direct connection between the Airport and Metropolitan Transportation Authority’s (“MTA”) Long Island Rail Road (“LIRR”) and New York City Transit (“NYCT”) stations. Further, the LaGuardia Airport Access Improvement Project shall include provision for off-airport employee parking with convenient access by way of the new transportation service to the Airport. The Federal actions associated with the Authority’s proposed Project are decisions by the Federal Aviation Administration (“FAA”) on an updated Airport Layout Plan (“ALP”) and for the use of Passenger Facility Charge (“PFC”) funding, should the Authority pursue imposing and using PFC funding for the proposed Project.

The Authority’s preferred alternative is for an elevated AirTrain to operate between the Airport and a transfer station at Willets Point. The proposed AirTrain system would include two on-airport stations and a terminus station at Willets Point providing connections to the Mets-Willets Point stations of the LIRR Port Washington Branch and the NYCT Flushing No. 7 subway line. In addition to providing a connection to the LIRR and NYCT stations at the Willets Point terminus station, the proposed AirTrain would serve as an on-airport transit system that would facilitate transfers between airline terminals and provide connections to parking facilities. The proposed AirTrain system would provide access to LGA’s new Terminals B and C. Additionally, the Authority seeks not to preclude future service to Terminal A. The proposed Project includes associated facilities and infrastructure (stations, guideway, maintenance/control facility, etc.) as well as the systems (vehicles, train control, power distribution system, etc.) for the AirTrain.

The Authority’s goal is to complete the proposed Project and commence passenger service as close as possible to the end of 2022, when other major redevelopment projects are expected to be completed, in order to minimize the duration of construction-related disruptions to customers. As such, the Authority is seeking to accelerate the environmental review schedule for the proposed Project, with the goal of the FAA completing the issuance of a Record of

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Decision (“ROD”) and completing the National Environmental Policy Act (“NEPA”) review as early as 12-months from the Notice of Intent (“NOI”) for services hereunder to enable construction of the proposed Project to begin by the first quarter of 2020. This proposed timeframe may be impacted by a number of factors, including concurrent environmental review by other Federal, state, and local agencies. The Consultant shall comply with the processes and procedures outlined in Executive Order 13807: Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, signed on August 15, 2017, such as facilitation of efficient collaboration and communication with agencies involved with the environmental review and permitting for the proposed Project.

### *General Description of Consultant Services:*

The Authority is seeking a Consultant to provide professional services to assist the FAA in preparing an Environmental Impact Statement (“EIS”) to assess and disclose the potential environmental impacts of the construction and operation of the Authority’s proposed Project and reasonable alternatives in a manner that complies with all applicable federal, state and local environmental laws and regulations. The FAA is the lead Federal agency for preparing the EIS in accordance with the requirements of NEPA (42 U.S.C. 4321 et. seq.), the Council on Environmental Quality (“CEQ”) regulations (40 C.F.R. Parts 1500-1508), and appropriate U.S. Department of Transportation and FAA environmental orders. As stated above, the Federal actions associated with the Authority’s proposed Project include but are not limited to a decision by FAA on an updated ALP, and should the Authority pursue imposing and using PFC funding for its proposed Project, a decision by FAA regarding use of such PFC funds.

The Consultant shall be responsible to the FAA for the preparation of an EIS associated with the Authority’s proposed Project. The FAA shall direct the services provided by the Consultant hereunder. The Consultant shall serve as the independent third party assisting the FAA with conducting the EIS process in an efficient and cost-effective manner, while maintaining a high degree of accuracy and validity in the production of all EIS deliverables.

Preliminary planning work is being conducted by the Authority. The documentation for the Authority’s planning efforts will be provided by the Authority to the FAA. This documentation will be provided to the Consultant at the discretion of the FAA.

## **II. SCOPE OF SERVICES**

Within fifteen (15) business days of notice of selection, the Consultant should develop and submit a detailed scope of work for the entire assignment, in order to meet the Authority’s goal for the expeditious completion of the EIS. The detailed scope of work is hereinafter referred to as the Plan of Study, which is subject to FAA approval. The draft Plan of Study shall be accepted by the FAA prior to issuance of the NOI. It is the Authority’s goal that the NOI be issued no later than the end of the fourth quarter of 2018. The Plan of Study will include detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated person-hours required for completion of each aspect, the schedule for performing each aspect,



DRAFT AND DELIBERATIVE

and a description of the internal and external review procedures to assure quality control. The Plan of Study will also include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the planning and environmental data and analyses and the development and preparation of the EIS. Finally, the Plan of Study must comply with all applicable regulations and must include such additional analytical requirements as provided by the FAA prior to completion. In addition, in producing or revising the Plan of Study, the Consultant may consider as appropriate any relevant submissions made by the Authority or its representative to the FAA. The Plan of Study, as accepted by the FAA, shall amend and restate the entirety of this section, Section II. Scope of Services.

The EIS is to be accomplished in accordance with FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, Order 5050.4B, *NEPA Implementing Instructions for Airport Actions*, and associated Desk References (or the current version at time of contract award) and special purpose laws, and the requirements of any Cooperating Agency (as defined in 40 CFR §§ 1501.6 and 1508.5) that may have jurisdiction over the Project. Specific environmental issues to be included in the EIS may include, but are not limited to:

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- a) Air Quality
- b) Biological Resources
- c) Climate
- d) Coastal Resources
- e) Department of Transportation Act, Section 4(f)
- f) Farmlands
- g) Hazardous Materials, Solid Waste, and Pollution Prevention
- h) Historical, Architectural, Archaeological, and Cultural Resources
- i) Land Use
- j) Natural Resources and Energy Supply
- k) Noise and Noise Compatible Land Use
- l) Socioeconomic, Environmental Justice, and Children's Environmental Health and Safety Risks
- m) Visual Effects
- n) Water Resources (Wetlands, Floodplains, Surface Waters, Groundwater, Wild and Scenic Rivers)
- o) Cumulative Impacts
- p) Irreversible and Irrecoverable Commitment of Resources

The individual scope of these studies may be modified by the needs and requirements of the FAA designated cooperating agencies.

It is anticipated that the scope of work resulting from the Plan of Study may require the Consultant to perform the following services, at minimum:

1. Facilitate and conduct meetings necessary for the preparation and development of the EIS.
2. Provide project management duties, including but not limited to preparing reports,

## DRAFT AND DELIBERATIVE

updating the Plan of Study as necessary, taking meeting minutes, coordinating activities between all stakeholders, schedule monitoring, preparing presentation materials, creating and maintaining the project file, assisting in the identification and compilation of the administrative record in the event of any potential legal proceedings associated with the environmental review or final agency actions or decisions, and assistance throughout any potential legal proceedings, etc.

3. Review project-related documents necessary for the development of the EIS, including planning documents provided to the FAA by the Authority or its representative. The Consultant shall review and independently evaluate the materials prepared by the Authority or its representative and shall complete the EIS documentation as required.
4. Assist the FAA to fulfill its lead Federal agency role and enhance effective NEPA scoping to ensure early in the process that the EIS addresses key issues of concern to agencies and the public. This will include working with any Cooperating Agency to identify permitting requirements within the jurisdiction of that agency, as established in the Federal Permitting Dashboard contemplated in the Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807.
5. Develop the Purpose and Need Statement, to provide the parameters for defining a reasonable range of alternatives and to be utilized for the comparative evaluation of alternatives to the Sponsor's proposed Project. The Purpose should outline the goals and objectives that the Sponsor's proposed Project should achieve, and the Need should provide the data to support the Purpose.
6. Prepare an alternatives analysis addressing a range of reasonable alternatives to the Sponsor's proposed Project. It is expected that the "No Action" and the Sponsor's proposed Project will be alternatives. The Consultant will identify other potential alternatives and conduct a screening of alternatives, as appropriate.
7. Describe existing environmental resources and conditions that the Sponsor's proposed Project, reasonable alternatives, and No Action may affect.
8. Describe impacts and environmental consequences of the Sponsor's proposed Project and reasonable alternatives that were previously identified for further evaluation, including the No Action alternative.
9. Prepare draft and final versions of the EIS, including the preparation of draft chapters and preliminary draft EIS and preliminary final EIS. It is anticipated that the draft and final version should include the following elements, at minimum:
  - a. Cover Page
  - b. Executive Summary
  - c. Table of Contents
  - d. Purpose and Need
  - e. Alternatives
  - f. Affected Environment

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## DRAFT AND DELIBERATIVE

- g. Environmental Consequences
  - h. Mitigation
  - i. List of Preparers
  - j. List of Agencies, Organizations, and Persons to Whom Copies of the Statement are Sent
  - k. Index
  - l. Appendices (if any)
  - m. Comments
  - n. Footnotes
10. Solicit and facilitate public and stakeholder involvement on behalf of FAA throughout the EIS process in accordance with NEPA and relevant special purpose laws.
  11. Ensure that the EIS documentation includes relevant information required for future permitting applications and processes, as required.
  12. Assist the FAA in the preparation of a draft ROD.

All work prepared under this Agreement shall be delivered to the FAA in printed format and searchable .pdf files along with components associated with each item, such as data files, text files, image files, spreadsheets, graphs, and tables. These products, where applicable, will be compatible with and incorporated into the Airports Geographic Information System (“AGIS”) managed by the FAA (as applicable). While performing work under this Agreement, the Consultant shall be responsible for managing the ~~administrative~~ project file and, upon completion of the work, will be responsible for submitting a completed project file ~~administrative record~~ for the project to the FAA, in accordance with FAA policy and guidance.

### **III. PERIOD OF PERFORMANCE**

The period of performance (through completion of the final EIS) of the services is not to exceed that which is to be directed by the FAA as the lead Federal agency for services hereunder. The work will be performed in accordance with FAA's procedures for assessing environmental impacts including FAA Orders 1050.1F and 5050.4B (or the current version(s) at time of agreement award). While it is conceivable that issues raised during the public comment process could affect the time of performance, the Consultant should assume that the FAA will grant any extensions of time for performance only for the most extraordinary circumstances. The Period of Performance establishes the expected outer limit for project development.

### **IV. LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE**

#### **A. Commercial Liability Insurance:**

1) The Consultant(s), and all of its/their Sub-consultants shall take out, maintain, and pay the premiums on **Commercial General Liability Insurance** for the life of the Agreement and such Insurance and shall be written on an ISO occurrence form CG 00 01 0413 or its equivalent covering the obligations assumed by the Consultant(s) under this Agreement, including, but not limited to, Premises-Operations, Products and Completed Operations, Broad form property damage, personal and advertising injury and Independent Contractor's coverages, with contractual

DRAFT AND DELIBERATIVE

liability language covering the obligations assumed by the Consultant(s) with insurance covering against claims for injuries to persons or damages to property which may arise from or in connection with products and materials supplied to the Agency in limits of not less than **\$10,000,000** combined single limit per occurrence and in the annual aggregate. If vehicles are to be used to carry out the performance of this Agreement, then the Consultant(s) shall also take out, maintain and pay the premiums on **Automobile Liability Insurance** covering all owned, non-owned and hired autos in not less than **\$5,000,000** combined single limit per accident for bodily injury and property damage. **(Only if Applicable)**

The insurance shall be written on an occurrence basis, as distinguished from a “claims made” basis, and shall not include any exclusions for “action over claims” (insured vs. insured) and minimally arranged to provide and encompass at least the following coverages:

- Contractual Liability to cover liability assumed under the Agreement;
- Independent Contractor’s Coverage;
- Premises-Operations, Products and Completed Operations Liability Insurance;
- The insurance coverage (including primary, excess and/or umbrella) hereinafter afforded by the Consultant(s) and Sub-consultant(s) shall be primary insurance and non-contributory with respect to the additional insureds;
- Excess/umbrella policies shall “follow form” to the underlying policies;
- Excess/umbrella policies shall have a liberalization clause with drop down provision;
- To the extent any coverage the Consultant(s) and Sub-consultant(s) obtains and/or maintains under this Agreement contains “Other Insurance” language or provisions shall not be applicable to the additional insureds or to any insurance coverage maintained by the additional insureds;
- All insurance policies shall include a waiver of subrogation, as allowed by law, in favor of the additional insureds;
- Defense costs must be outside of policy limits. Eroding limits policies are not permitted;
- In the event the Consultant(s) and/or its Sub-consultant(s) obtains and/or maintains broader coverage and/or insurance in an amount greater than the minimum limits required under this Agreement, then the full limits of that insurance coverage will be available to respond to any claims asserted against the additional insureds that arises out of or is in any way connected with this Agreement;
- Additional insureds coverage shall not be restricted to vicarious liability unless required by controlling law;

In addition, the liability policy(ies) shall be written on a form at least as broad as ISO Form CG 20 10 10 01 (for ongoing operations work) together with ISO Form CG 20 37 10 01 (for completed operations work) or their equivalent and endorses to name “The Port Authority of New York and New Jersey, and its related entities, their Commissioners, Directors, Superintendents, officers, partners, employees, agents, their affiliates, successors or assigns”, in addition to: The Federal Aviation Administration, The City of New York, for all operations at John F. Kennedy and LaGuardia Airports; Port Authority Trans-Hudson Corporation, for operations at PATH; AFCO AvPorts Management LLC, for operations at Teterboro Airport; AFCO AvPorts Management LLC and NY State Dept. of Transportation , for operations at Stewart Int’l Airport, Trends Urban

## DRAFT AND DELIBERATIVE

Renewal for operations at PATC and Silverstein Properties Inc.; The Port Authority of New York and New Jersey; Silverstein 2/3/4 WTC Redevelopment LLC; WTC Redevelopment LLC; World Trade Center Properties LLC; 4 World Trade Center LLC; Net Lessees 'Association of the World Trade Center; WTC Management and Development LLC; Silverstein WTC Mgmt. Co. LLC. Silverstein WTC Mgmt. Co II LLC; Silverstein WTC Properties LLC; Silverstein WTC Management and Development LLC; Silverstein WTC LLC.; WTC Investors LLC.; 4 WTC Holdings LLC; WTC Investors Management and Development LLC; World Trade Center Holdco LLC; 4 WTC Mezz LLC. for operations at the World Trade Center Site as "Insured" (as defined in the policy or in an additional insured endorsement amending the policy's "Who Is An Insured" language as the particular policy may provide) on its liabilities policies with respect to liability arising out of work or operations performed by or on behalf of the Consultant(s) including, but not limited to, materials, parts or equipment furnished in connection with such work or operations. The "Insured" shall be afforded coverage and defense as broad as if they are the first named insured and regardless of whether they are otherwise identified as additional insureds under the liability policies, including but not limited to premises-operations, products-completed operations of the Commercial General Liability Policy. Such additional insureds status shall be provided regardless of privity of contract between parties. The liability policy(ies) and certificate of insurance shall contain cross-liability language providing severability of interests so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds shall not reduce or void coverage to the other insureds. The Consultant(s) is/are responsible for all deductibles or losses not covered by commercially procured insurance. Any portion of the coverage to be provided under a Self-Insured Retention (SIR) of the Consultant(s) is/are subject to the review and approval of the General Manager, Risk Financing. Furthermore, any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim.

Any self-insured retention shall cover any liability imposed upon the Consultant(s) and any and all subsidiaries with respect to all operations and obligations assumed by the Consultant(s) and any and all subsidiaries. The undersigned represents that such program provides the Additional Insureds (as defined in the Agreement) with all rights, immunities and protections that would be provided by traditional independent insurance required under the Agreement, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies pursuant to the terms of the Agreement.

If any of the Work is to be done on or at Port Authority facilities by the Sub-consultants and, if the Consultant(s) requires its Sub-consultant(s) to procure and maintain such insurance in the name of the Consultant(s), then such insurance as is required herein shall include and cover the additional insureds and it must have insurance limits not lower than those set forth by the Port Authority herein, along with all the insurance requirements in this "Insurance" section.

Further, it is the Consultant's responsibility to maintain, enforce and ensure that the type of coverages and all limits maintained by it and any of all Sub-consultants are accurate, adequate and in compliance with the Port Authority requirement. All certificates of insurance shall be turned over to the Port Authority prior to the start of work, and upon completion of the Agreement.

DRAFT AND DELIBERATIVE

*The Consultant, its Sub-consultant(s) and its insurer(s) shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.*

**2) Workers' Compensation Insurance:**

The Consultant(s) and its/their Sub-consultant(s) shall take out, maintain and pay premiums on Workers' Compensation Insurance in accordance with the requirements of law in the state(s) where work will take place, and Employer's Liability Insurance with limits of not less than **\$1,000,000** each accident. Such policy shall include a waiver of subrogation endorsement in the benefit of the additional insureds.

**3) Additional Coverages:** The Consultant(s) shall have the policy endorsed "**Only when required by the Director**" for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) Any/all activities performed airside must, at all times, be performed while under security escort as approved in advance, and in writing by the Project Manager. If the services of the Consultant(s), as directed by the Authority, require the performance of services airside, the Commercial General Liability and Automobile Liability coverage limits stipulated in subparagraph 1, above, shall be increased to an amount not less than \$25,000,000 per occurrence as provided herein.
- b) Endorsement to eliminate any exclusions applying to the explosion, collapse, and underground property damage (XCU) hazards.
- c) Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
- d) Coverage for work within fifty (50) feet of railroad.

**4) Additional Coverages:** The Consultant(s) shall have the policy endorsed "**Only when required by the Director**" for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.
- b) Coverage B Endorsement - Maritime (Masters or Members of the Crew of Vessels), in limits of not less than \$1,000,000 per occurrence.
- c) Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$1,000,000 per occurrence.

**5) Professional Liability Insurance:**

DRAFT AND DELIBERATIVE

The Consultant(s) shall take out, maintain and pay premiums on Professional Liability Insurance in limits of not less than **\$10,000,000** each occurrence, covering acts, errors, mistakes, and omissions arising out of the work or services performed by Consultant(s), or any person employed by Consultant(s). All endorsements and exclusions shall be evidenced on the certificate of insurance. The coverage shall be written on an occurrence basis or may be written on a claims made basis with a minimum of a three-year reporting/discovery period.

Each policy above shall contain an endorsement that the policy may not be canceled, terminated or modified without thirty (30) days' prior written notice to the Project Manager, at the location where the work will take place with a copy to the General Manager, Risk Financing.

The Port Authority may, at any time during the term of this Agreement, change or modify the limits and coverages of insurance. Should the modification or change result in an additional premium, the General Manager, Risk Financing for the Port Authority may consider such cost as an out-of-pocket expense.

Within five (5) days after award of this Agreement and prior to the start of work at the site, the Consultant(s) must submit an original certificate of insurance, to the Project Manager and Exigis email: [REDACTED] at the location where the work will take place. This certificate of insurance MUST show evidence of the above insurance policy(ies), including, but not limited to, the title of this Agreement, the P. A. Agreement number, the notice of cancellation provisions, prior to the start of work. The Consultant(s) is/are also responsible for maintaining and conforming to all insurance requirements from the additional insureds and their successors and assigns. The General Manager, Risk Financing must approve the certificate(s) of insurance before any work can begin. Upon request of the General Manager, Risk Financing/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.

Renewal certificates of insurance or policies shall be delivered to the Authority's Project Manager, and upon request from the additional insureds, their successors or assigns at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Financing must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Authority, the Consultant(s) shall promptly obtain a new and satisfactory certificate and policy and provide same to the Port Authority.

If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then, the Consultant(s) and all Sub-consultants shall suspend performance of the Agreement at the premises until a satisfactory insurance policy(ies) and certificate of insurance is provided to and approved by Risk Financing, unless the Facility or Project Manager directs the Consultant(s), in writing, to continue to performing work under the Agreement. If the Agreement is so suspended, no extension of time shall be due on account thereof.

Failure by the Consultant(s) to meet any of the insurance requirements, including the requirement that the Port Authority be afforded the full extent of the insurance obtained under this Agreement

DRAFT AND DELIBERATIVE

without limitation, shall be deemed a material breach of Agreement and may be a basis for termination of this Agreement by the Port Authority.

The requirements for insurance procured by the Consultant(s) shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Consultant(s) under this Agreement. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Consultant against the obligations imposed on them by law or by this or any other Agreement.

All insurance coverage shall be provided by the Consultant(s) and/or by or for any of its/their Sub-consultant(s) at no additional expense to the Port Authority and its related entities. A copy of this "Insurance" section shall be given to your insurance agent and Sub-consultant(s) and shall form a part of the covered Agreement for insurance purposes in furtherance of the insurance requirements of this Agreement.

\*\*\*\*



DATE

**SUBJECT: REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (LGA) ACCESS IMPROVEMENT PROJECT (RFP# 54523)**

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the “Authority”) is seeking proposals in response to this Request for Proposals (“RFP”) for a Consultant to provide the subject services. The services will require the preparation of an Environmental Impact Statement (“EIS”) for the LGA Access Improvement Project (the “Project”). The Authority’s goal is to complete the proposed Project and commence passenger service as close as possible to the end of 2022, when other major redevelopment projects are expected to be completed, in order to minimize the duration of construction-related disruptions to customers. Therefore, the Authority is committed to supporting the completion of the EIS within 12 months of the Notice of Intent (“NOI”) to enable construction of the proposed Project to begin by the first quarter of 2020. As such, both the Authority, as the Airport Sponsor, and the Federal Aviation Administration (“FAA”) will work together to facilitate the expeditious preparation of the EIS. The Authority is issuing this RFP, and both the Authority and FAA will participate in the process to evaluate proposals. The roles of the Authority and FAA in the evaluation process are set forth below in Section III. Selection Process. The selected firm (the “Consultant”) will work directly with the FAA for the performance of the services that will culminate in the development of the EIS. The Authority and the Consultant will negotiate and enter into an agreement (“Agreement”) resulting from this RFP, for the performance of the Consultant’s services on behalf of the FAA. The Authority will be responsible for overall contract administration and payment for the Consultant’s services as accepted by the FAA, while the Consultant reports to the FAA for direction on the development of the EIS.

The general scope of services to be performed by the Consultant is set forth in Attachment A. In order to meet the Authority’s goal for the expeditious completion of the EIS, a detailed scope of work should be drafted by the selected Consultant and provided to the FAA for review within fifteen (15) business days of notice of selection. This detailed scope of work shall serve as a Plan of Study for the assignment. The draft Plan of Study must be accepted by the FAA prior to ~~contract award and subsequent~~ issuance of the FAA’s NOI to conduct an EIS. It is the Authority’s goal that the NOI be issued by the FAA no later than the end of the fourth quarter of 2018.

**I. PROPOSAL FORMAT REQUIREMENTS:**

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

- A. To be acceptable, this Proposal shall be no more than **20** single sided pages or **10** double sided pages, using 12 point or greater font size, not including resumes. Each resume shall be a maximum of two-pages single-sided or one-page double-sided, using 12 point or greater font size. The page limit pertains only to Numbers 4 through 9 (excluding resumes requested in Number 6) in Section II, below. The Proposal pages shall be numbered and

## DRAFT AND DELIBERATIVE

bound, or in a 3-ring binder, with “Your Firm Name”, and **RFP Number 54523** clearly indicated on the cover.

- B. Separate each section of the Proposal with a tab divider that is labeled in accordance with the letter of the requirements specified below in Section II.
- C. All proposals must be delivered in sealed envelopes and/or packages. Address the Proposal to: The Port Authority of New York and New Jersey, 4 World Trade Center, 21<sup>st</sup> Floor, New York, NY 10007, Attention: RFP Custodian.
- D. You shall submit the Technical Proposal as follows in one envelope:

**One (1) reproducible original** hard copy containing original signatures along with **twenty (20) compact disc copies of your Technical Proposal** for review. USB Flash Drives will not be accepted. In case of conflict, the reproducible original of the Technical Proposal shall take precedence over material on the CDs.

The Technical Proposal shall include all information requested in the “Technical Proposal” subsection of Section II hereof. **No pricing-related information shall be provided in the original and CD copies of the Technical Proposal.**

- E. In each submission to the Authority, including any return address label, information on the compact disc and information on the reproducible original and copies of the proposal, the Proposer shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure to comply with this requirement may lead to delays in contract award and contract payments, which shall be the responsibility of the Proposer.
- F. Your Proposal should be forwarded in sufficient time so that the Authority receives it **no later than 2:00 p.m. on <DATE>**. The outermost cover of your submittal must be labeled to include the RFP Number and title as indicated in the “Subject” above. The Authority assumes no responsibility for delays caused by any delivery services.

If your Proposal is to be hand-delivered, note that only individuals with proper identification (e.g. photo identification) will be permitted access to the Authority’s offices. Individuals without proper identification will be turned away and their packages not accepted.

There is extensive security at the World Trade Center Site. You must present a valid government-issued photo ID to enter 4 WTC. Individuals without packages or carrying small packages, envelopes or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All packages, envelopes and boxes may be subject to additional security screening. There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited. Express carrier deliveries by commercial vehicles will only be made via vendors approved by Silverstein Properties, the WTC Property Manager, through the Vehicle Security Center (VSC). Please note that use of the U.S. Mail does not guarantee delivery to Authority offices by the below listed due date for submittals. Proposers using the U.S. Mail are advised to allow sufficient delivery time to ensure timely receipt of their proposals. Presently, UPS is the only delivery vendor with approved recurring delivery times. UPS makes deliveries to 4 WTC around 9:30 a.m. each day. Please plan your submission accordingly. As additional express carriers may be approved by Silverstein Properties and scheduled for recurring delivery times with the VSC, this information may be updated. Under certain circumstances, a solicitation may allow for

## **DRAFT AND DELIBERATIVE**

a commercial vehicle to be approved to make a delivery in accordance with the VSC procedures. If applicable, the specific solicitation document will include that information. The Port Authority assumes no responsibility for delays, including, but not limited to, delays caused by any delivery services, building access procedures, or security requirements.

### **II. SUBMISSION REQUIREMENTS:**

To respond to this RFP, provide the following information:

#### **A. TECHNICAL PROPOSAL:**

1. In the front of your Technical Proposal, a copy of Attachment B (Agreement on Terms of Discussion) signed by an officer of your company. If proposing as a joint venture, each member of the joint venture must sign a copy of Attachment B.
2. Complete a copy of Attachment C (Company Profile).
3. Transmittal Letter
  - a. Include a statement indicating whether the Consultant is proposing as a single entity, or as a joint venture.
  - b. If a joint venture which has not been established as a distinct legal entity (a common-law joint venture) submits a proposal, all participants in the joint venture shall be bound jointly and severally and each participant shall execute the proposal. If a single entity proposer cannot demonstrate that it meets all of the referenced qualifications, then the single entity proposer may, with others, form a joint venture and request that the joint venture be deemed to be the Proposer (i.e. members of the joint venture may meet the qualification requirement collectively).
  - c. If the Proposer is a joint venture, the joint venture's Proposal shall contain an executed teaming agreement or, alternatively, if the entities making up the joint venture proposer have not executed a teaming agreement, the joint venture's proposal shall contain a summary of key terms of the anticipated agreement. If the joint venture proposer is a consortium, partnership or any other form of a joint venture, or an association that is not a legal entity, the proposal shall include a letter signed by each member indicating a willingness to accept joint and several liability until the point at which a corporation, limited liability company or other form of legal entity is formed for the purposes of undertaking the Agreement.
4. Project Approach/Schedule: Demonstrate a thorough understanding of the FAA EIS process. Identify methodologies and approaches that would be utilized to analyze and resolve environmental issues. Describe the proposed public scoping and public hearing process, work products, detailed project schedule, along with the responsibilities of each of the proposed staff/team members and subconsultants and their anticipated percentage of each individual's time working on the project. In order to meet the Authority's goal for the expeditious completion of the EIS, propose an approach to enable the expeditious development a draft Plan of Study within fifteen (15) business days of notice of selection and provide any assumptions related to producing an EIS within twelve (12) months of an NOI. To achieve the 12-month schedule, include a description of the proposed process for

## DRAFT AND DELIBERATIVE

1) efficient coordination with FAA, the Authority, subconsultant work efforts, other federal, state and local agencies and the general public; 2) expediting the development of EIS documentation 3) facilitating accelerated completion of comment review, responses and associated revisions. For example, developing a detailed timeline for development of the EIS and an approach for gaining commitment from all necessary stakeholders to adhere to the timeline; initiating the Draft EIS documentation in parallel with preparation for public scoping, as appropriate; and streamlining comment collection from necessary stakeholders through roundtable reviews.

A description of the team's understanding of any unique issues associated with the preparation of an EIS at LGA should be included. Describe procedures to be followed to adhere to the Authority's goal of completion of the issuance by the FAA of a Record of Decision ("ROD") and completion of the National Environmental Policy Act ("NEPA") review within a 12-month period from the Notice of Intent ("NOI"). In addition, if the Proposer proposes an alternate schedule (exceeding the aforementioned twelve months), the Proposer shall provide its rationale for the longer schedule, its assumptions to producing an EIS within the longer proposed period, and a description of procedures to be followed to adhere to the alternate schedule.

5. Project Experience: Provide summaries of experience for past projects by prime consultant and team members (if applicable) that demonstrate experience and ability to undertake and complete an EIS specifically for airport projects and transit systems similar to the proposed project. Do not include projects for which key project personnel are no longer employed by the firm. List the names of key employees with each project. Projects for which individuals gained experience during previous employment should be indicated in this section.

For each qualifying project, include the following information in tabular form: project name, location, client, total contract amount, principal-in-charge, day-to-day technical project manager, key design staff, original estimated schedule and actual schedule of completion (defined for an EIS as Notice of Intent to Record of Decision and for an EA as Notice to Proceed to acceptance of the Final EA) client reference (name, position and phone number) and brief narrative description of the project.

6. Organization and Management: Provide an organizational chart and narrative description of the administrative structure proposed for managing this project. Outline major responsibilities and areas of expertise.

The overall project manager and key staff members (both prime firm and subconsultants) must be identified and resumes provided. The project manager is considered to be the single most important Consultant asset, and is expected to maintain responsibility and availability for the project through completion of the EIS required by the scope of services (Attachment A).

Provide a list of projects that the proposed project manager is responsible for and expected completion dates. Resumes of firm principals are not required unless they are proposed as active, integral members of the Consultant team. Principals should, however, be listed on

## **DRAFT AND DELIBERATIVE**

the organizational diagram in relation to the Consultant team. This section should also include the location of each firm and key staff members.

In addition, if the proposal includes a prime firm and subconsultants, demonstration of relevant past working experience as a team is desired. The relevance of past working experience will be prioritized based on the following: 1) experience on FAA-directed environmental projects; 2) experience on other airport projects not directed by the FAA; 3) experience on environmental projects for other modes under the umbrella of the Department of Transportation; 4) experience on environmental projects for other Federal agencies; and 5) experience with expedited completion of environmental projects

7. References: provide a total of five (5) references of similar projects. For each reference include contact name, title, project name and location, mailing address, phone number, fax number and e-mail address.
8. Description of Proposer/Team: Provide a general description of the Proposer, including services offered, number of employees, office location, years in business, etc. Indicate aviation and rail-related EIS and EA work to which the firm is currently committed. Include similar descriptions for each subconsultant.
9. QA/QC: Describe quality assurance and quality control procedures. Demonstrate experience in successfully implementing quality control programs on comparable projects.
10. See Appendix A to this RFP letter for the MBE/WBE Subcontracting Provisions.
11. Provide a complete list of your firm's affiliates.
12. If the Proposer or any employee, agent or subcontractor of the Proposer may have, or may give the appearance of a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict. The Authority reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any source could create, or give the appearance of, a conflict of interest. The Authority's determination regarding any question(s) of conflict of interest shall be final.

Proposer is required to disclose all work performed at LaGuardia Airport for a period of three (3) years prior to the date of submission. Proposer shall include work performed by all affiliates, and provide, to the extent applicable, start and end dates of each engagement, the name of the stakeholder or entity for which the Proposer performed work, and a short description of the nature of the work or project.

Proposers are further advised that under this Agreement, firms must provide, written notice to the Port Authority of any existing or potential conflict of interest the firm(s) may have in the performance of Services under this Agreement.

Furthermore, Proposers should ensure that they are familiar with FAA regulations and policy on conflicts of interest of EIS consultants. Pursuant to 40 C.F.R. Part 1506.5(c), the selected Consultant and any subconsultants performing the work shall certify that they have not entered into and will not enter into during the lifetime of the EIS preparation any agreement affording the Consultant and any subconsultants with any direct or indirect

## DRAFT AND DELIBERATIVE

financial interest in the planning, design, construction or operation of the project that is the subject of the EIS except the preparation of the EIS. Prior to beginning work on the EIS, the Consultant and any subconsultants shall sign a "Disclosure Statement" per the requirements of 40 C.F.R. 1506.5(c) and FAA Orders 1050.1F and 5050.4B, specifying they have no financial or other interest in the outcome of the project.

13. **Code of Ethics for Port Authority Vendors:** The Proposer's attention is directed to the Port Authority's "Code of Ethics for Port Authority Vendors." Vendors must certify in writing that they will comply with every aspect of this Code. The Proposer should submit an executed Compliance Certification with their Proposal. The Compliance Certification, once executed, will be a material and integral part of any Agreement resulting from this solicitation. The Code of Ethics and the Compliance Certification can be found on the Authority's website at <https://www.panynj.gov/business-opportunities/become-vendor.html>.
14. The selected Consultant(s) shall comply with the requirements of the Agreement. The scope of tasks to be performed by you is summarized in Attachment A and will be detailed in the Plan of Study, which will be attached to and incorporated in the final Agreement and will amend and restate Section II. Scope of Services of Attachment A.

### **III. SELECTION PROCESS:**

The qualifications based selection shall take into consideration the technical criteria conveyed in this section (listed in order of importance). After consideration of these factors, the Authority may enter into negotiations with the firm(s) deemed best qualified, in terms of the forgoing Technical Proposal criteria, to perform the required services.

The Authority will review proposals to determine if they satisfy the requirements of this RFP, including adherence to the RFP's specified format and the provision of all required documentation. Proposals will then be reviewed according to a two-phased evaluation process. The **first phase of the evaluation process** will involve Authority and FAA staff, and will include a detailed review and evaluation of the proposals according to the following criteria:

1. Project Approach/Schedule;
2. Project Experience;
3. Organization and Management;
4. References;
5. Description of Proposer/Team;
6. QA/QC.

Only those proposals receiving the highest scores in the first phase of the evaluation process will be evaluated in the **second phase of the evaluation process**.

The **second phase of the evaluation** will involve staff from the Authority and FAA. Only FAA staff will score proposers in the second phase of the evaluation. The second phase of the evaluation commences with interviews of the highest-rated proposers from the first phase of evaluation. The interviews will consist of presentations by the highest-rated proposers, followed by a question and answer session by FAA staff. After the last interview, FAA staff

## DRAFT AND DELIBERATIVE

will score the interviews, add the interview scores to the first phase scores, and establish a ranked list of Proposers based on their combined scores. The FAA will then select the Proposer with the highest combined score for the Authority to retain for the performance of the agreement resulting from this RFP, consistent with the Agreement ~~process~~ between the selected Proposer and the Authority ~~established in this document~~. A notice of selection will be transmitted to the selected Proposer.

The following is the anticipated schedule for the selection process:

- Week 1** Request for proposals advertised
- Week 4** Proposals due to the Authority
- Week 6** Selection Committee holds interviews with select firms
- Week 6 - 12** Notice of selection to firm, commencement of draft Plan of Study with FAA, and contract award

#### IV. PROJECT DOCUMENTS:

Proposers can access available documents related to the Project **through xxx**. These documents are made available merely for the purpose of making available such information as is in the possession of the Authority and which it is able to make available, whether or not such information may be accurate, complete or pertinent or of any value to prospective Proposers.

Proposers are ~~advised~~encouraged to ~~continually~~access and monitor **[xxx]** throughout the ~~open proposalsolicitation~~ process ~~as documents and information may be added or modified without prior notice.~~ to ensure awareness of changes, if any.

#### V. ADDITIONAL INFORMATION:

If your firm is selected for performance of the subject services, the agreement you will be asked to sign will include clauses entitled “Certification of No Investigation (Criminal Or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure Of Other Information” And “Non-Collusive Proposing, And Code Of Ethics Certification; Certification Of No Solicitation Based On Commission, Percentage, Brokerage, Contingent Or Other Fees.” By submitting a proposal, the Consultant shall be deemed to have made the certifications contained therein unless said Consultant submits a statement with its proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your proposal clearly marked “CERTIFICATION STATEMENT.”

Rejection of a proposal shall be only by either (a) a notice in writing specifically stating that the proposal is not accepted, signed by an authorized representative of the Authority and provided to the Proposer, or (b) omission of the Authority to accept the proposal within 180 days after the Proposal Due Date. No other act of the Authority, its Commissioners, officers, agents, representatives or employees shall constitute rejection of a proposal.

It is Authority policy that its consultants, contractors and vendors comply with the legal requirements of the States of New York and New Jersey. Your attention is therefore called to New York State’s requirements that certain consultants, contractors, affiliates, subcontractors

## DRAFT AND DELIBERATIVE

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

Prior to commencing any work associated with this Project, the selected consultant and any subconsultants shall submit a Disclosure Statement.

Proposers are also advised that additional vendor information, including but not limited to forms, documents and other related information, may be found on the Authority website at [www.panynj.gov](http://www.panynj.gov) or <http://www.panynj.gov/business-opportunities/become-vendor.html>.

After a review of all proposals received, the Authority will forward two (2) copies of the Agreement and Attachment A thereto to the selected firm(s), which shall sign and return both copies. Signature shall be by a corporate officer. The return of one copy executed by the Authority will effectuate the Agreement.

Should you have any questions, please contact James Summerville, Solicitation Manager (██████████) and Krystina Papasavvas (██████████). All such correspondence must have your name, title, company, mailing address, telephone number, and state "RFP 54523" in the subject line. **The Authority must receive all questions no later than 4:00 P.M. EST four (4) calendar days after the RFP issuance date.** Neither Mr. Summerville nor Ms. Papasavvas, nor any other employee of the Authority is authorized to interpret the provisions of this RFP or accompanying documents or give additional information as to their requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned and such writing shall form a part of this RFP, or the accompanying documents, as appropriate. For RFP updates and Addenda, if any, Proposers are encouraged to access, and monitor, the Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html>. You should, therefore, monitor the advertisement on said website, as appropriate, to ensure you are aware of changes, if any.

Proposal preparation costs are not reimbursable by the Authority. The Authority shall have no obligation to a firm except under a duly authorized agreement executed by the Authority.

No rights accrue to any Proposer except under a duly authorized agreement for performance of the specified services.

The Authority reserves the right, in its sole and absolute discretion, to reject all proposals, to undertake discussions and modifications with one or more Consultants, to waive defects in proposals, and to proceed with that Proposal or modified Proposal, if any, which in its judgment will, under all the circumstances, best serve the public interest.

Sincerely,

David Gutiérrez, CPPO  
Assistant Director  
Procurement Department

Attachments



**DRAFT AND DELIBERATIVE**

## **DRAFT AND DELIBERATIVE**

### **APPENDIX A – MBE/WBE SUBCONTRACTING PROVISIONS**

For this Agreement, the Consultant shall use good faith efforts to achieve participation equivalent to twenty percent (20%) of the total Agreement price for Authority certified MBEs and ten percent (10%) of the total Agreement price for Authority certified WBEs. Submit details on how you intend to meet these goals. A listing of certified MBE/WBE firms is available at <http://www.panynj.gov/business-opportunities/sd-mini-profile.html>.

The Proposer shall include its MBE/WBE Participation Plan (Form PA 3760C) with its Proposal, to be reviewed and approved by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

The MBE/WBE Plan submitted by the Proposer to the Authority shall contain, at a minimum, the following:

- Identification of MBE/WBEs: Provide the names and addresses of all MBE/WBEs included in the Plan. If none are identified, describe the process for selecting participant firms in order to achieve the good faith goals under this Agreement.
- Level of Participation: Indicate the percentage of MBE/WBE participation expected to be achieved with the arrangement described in the Plan.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

All MBE/WBE subconsultants listed on the MBE/WBE Participation Plan must be certified by the Authority in order for the Consultant to receive credit toward the MBE/WBE goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/supplier-diversity.html> to search for MBE/WBEs by a particular commodity or service. The Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to the MBE/WBE Participation Plan must be submitted via a modified MBE/WBE Participation Plan to the Manager for review and approval by OBDCR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use form PA3760D. The Consultant shall not make changes to its approved MBE/WBE Participation Plan or substitute MBE/WBE subconsultants or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performance of work designated for a subconsultant by the Consultant's own forces, shall be deemed a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored by the Authority throughout the duration of the Agreement.

The Consultant shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments in the form of the MBE/WBE Participation Report, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subconsultant and supplier actually involved in the Agreement, a description of the work performed and/or the product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information as it may assist the Project Manager in determining the Consultant's compliance with the foregoing provisions.

# **DRAFT AND DELIBERATIVE**

## **MBE/WBE Conditions of Participation**

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

1. Commercially Useful Function: An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Consultant and the MBE/WBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as a MBE/WBE, the Consultant will receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

2. Work Force: The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Consultant, other subcontractors/subconsultants on the Agreement, or their affiliates. This does not preclude the employment by the MBE/WBE of an individual that has been previously employed by another firm involved in the Agreement, provided that the individual was independently recruited by the MBE/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.

3. Supervision: All work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Consultant, other subconsultants on the agreement, or their affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the work.

## **Counting MBE/WBE Participation**

The value of the work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime consultant/contractor shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. Subconsultants: One hundred percent (100%) of the value of the work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Consultant, other subconsultants or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE

## **DRAFT AND DELIBERATIVE**

subconsultant is itself a MBE/WBE. Work that a MBE/WBE subcontracts to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. Material Suppliers: Sixty percent (60%) of the expenditure to a MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. Broker's/Manufacturer's Representatives: One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees or commissions customarily allowed for similar services. The costs of materials and supplies themselves will not be counted.

4. Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces. Contact OBDCR at [REDACTED] for more information about requirements for such joint ventures.

**From:** [Summerville, James](#)  
**To:** [Drew Brooks](#)  
**Cc:** [Papasavvas, Krystina](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Herndon, Jane](#); [Summerville, James](#); [Lamond, Kathryn](#); [Jenet, Marie \(FAA\)](#); [REDACTED]  
**Subject:** FW: LGA AirTrain Consultant Selection: Interview Questions  
**Date:** Friday, October 26, 2018 11:25:13 AM  
**Attachments:** [LGA AirTrain Draft Interview Questions.doc](#)  
[LGA AirTrain-Draft Interview Selection Letter.docx](#)  
[LGA AirTrain-Draft Non-Selection Letter.docx](#)  
[RE LGA AirTrain Consultant Selection Interviews.msg](#)

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Andrew,

This email responds to the interview questions (emailed on 10/17) and the draft letters provided in your recent email dated 10/24. Please review our observations and provide feedback as soon as possible.

Thanks, James, [REDACTED]

**1. Interview Questions:**

- a. See the comment and proposed additional language to the Long Question on page 2
- b. There's a pattern to the Long and accompanying Short Questions until the last Long Question, which doesn't have an accompanying Short Question. Is that purposeful?

**2. Interview Invitation Letter:** The attachment includes some proposed edits and corresponding comments. In addition, one question: The letter conveys that, with respect to the interview, the PA's role is observatory. However, in a recent teleconference, I recall that the FAA expects the PA to participate (in some capacity) in scoring (or, really, pre-scoring). In other words, I recall that, after each interview, the FAA will solicit our feedback (orally and via unofficial scoring). Is that correct? Please clarify the FAA's expectations of the PA throughout the interview process.

**3. Decline letter:** Typically the PA does not issue "status" letters to any proposer until after authorization and execution of a contract resulting from an RFP. We'd prefer not to introduce a precedent here. Besides, Addendum 2 to the RFP, shared with the FAA on 10/12, conveyed expectations concerning the interviews; see the second attachment below. Via that Addendum, Proposers should realize that if they don't receive a formal invitation for an interview on or close to 11/8, we are not intending to interview them. Therefore, we feel that a formal non-selection letter (during the ongoing evaluation process) is unnecessary and we'd prefer not to introduce a precedent by issuing such a letter.

**From:** [REDACTED] [[mailto:\[REDACTED\]](mailto:[REDACTED])]

**Sent:** Wednesday, October 24, 2018 8:20 AM

**To:** Papasavvas, Krystina <[REDACTED]> Clark, Patty <[REDACTED]>  
DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]>  
Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]>  
Herndon, Jane <[REDACTED]> Summerville, James <[REDACTED]>  
Lamond, Kathryn <[REDACTED]>

**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]; [REDACTED] [REDACTED]

**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Krystina,

Attached, please find two draft letters and our understanding of the pre-NOI tasks at this time. The two letters are for use following review of the proposals; one for short-listed firms and one for non-selected firms.

Thanks,

Andrew Brooks

Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

**From:** Papasavvas, Krystina <[REDACTED]>

**Sent:** Thursday, October 18, 2018 12:11 PM

**To:** Brooks, Andrew (FAA) <[REDACTED]> [REDACTED] DiScenna,  
Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda,  
Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane  
<[REDACTED]> Summerville, James <[REDACTED]> Lamond, Kathryn  
<[REDACTED]>

**Cc:** Jenet, Marie (FAA) <[REDACTED]> Martinez, Evelyn (FAA)  
<[REDACTED]> Sanchez, David (FAA) <[REDACTED]> Doyle, John  
(FAA) <[REDACTED]> Henn, Patricia (FAA) <[REDACTED]> Wolfers-  
Lawrence, Jean (FAA) <[REDACTED]> Teodorescu, Andrew P (FAA)  
<[REDACTED]> Price, Laura E (FAA) <[REDACTED]>

**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Good afternoon,

Thank you for your proposed Interview Questions for the Consultant Selection Process. As mentioned this morning on our call, we will discuss internally and get back to you.

For your review, I have attached the draft Agreement. Please review and provide any commentary. Also, please provide a list of the pre-NOI support tasks that would be incorporated into the budget for Paragraph 10A of the attached Agreement.

Thank you.

**Krystina Papasavvas**

Integrity, Compliance and Contract Review

Port Authority of New York and New Jersey Procurement Department

4 World Trade Center

150 Greenwich Street, 21st Floor

New York, NY 10007

T: [REDACTED]

F: [REDACTED]

email: [REDACTED]

**From:** [REDACTED] [[mailto:\[REDACTED\]](mailto:[REDACTED])]

**Sent:** Wednesday, October 17, 2018 1:11 PM

**To:** Lamond, Kathryn <[REDACTED]> Clark, Patty <[REDACTED]> DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane <[REDACTED]> Summerville, James <[REDACTED]> Papasavvas, Krystina <[REDACTED]>

**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]

**Subject:** LGA AirTrain Consultant Selection: Interview Questions

Good Afternoon Everyone,

Attached are the proposed Interview Questions for the Consultant Selection Process. We will be able to discuss in more depth during tomorrow's call.

Thanks,

Andrew Brooks

Environmental Program Manager

Federal Aviation Administration

Eastern Regional Office

1 Aviation Plaza

Jamaica, NY 11434

Phone: [REDACTED] —

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**From:** [Papasavvas, Krystina](#)  
**To:** [Drew Brooks](#); [Summerville, James](#); [Lamond, Kathryn](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Jenet, Marie \(FAA\)](#); [REDACTED]  
**Cc:** [REDACTED]; [Puliafico, Jessica](#); [REDACTED]; [Herndon, Jane](#)  
**Subject:** RE: LGA Access Improvement Project  
**Date:** Tuesday, September 25, 2018 12:11:13 PM

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Andrew,

I apologize. Those comments were inadvertently left in the document, please disregard them as they have been closed out and there will not be any further edits.

Once we have an update regarding timing for posting the RFP documents, we will let you know.

Thank you.

**Krystina Papasavvas**

Integrity, Compliance and Contract Review  
Port Authority of New York and New Jersey Procurement Department  
4 World Trade Center  
150 Greenwich Street, 21st Floor  
New York, NY 10007

T: [REDACTED]

F: [REDACTED]

email: [REDACTED]

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Tuesday, September 25, 2018 10:58 AM  
**To:** Papasavvas, Krystina <[REDACTED]> Summerville, James  
<[REDACTED]> Lamond, Kathryn <[REDACTED]> Clark, Patty  
<[REDACTED]> DiScenna, Matthew <[REDACTED]> Cohen, Michelle  
<[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Jenet, Marie (FAA) <[REDACTED]> [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
Herndon, Jane <[REDACTED]>  
**Cc:** [REDACTED] Puliafico, Jessica <[REDACTED]>  
[REDACTED]  
**Subject:** RE: LGA Access Improvement Project

Krystina,

The changes look good to us. We had one question regarding two areas flagged in Attachment A. They both say flagged for legal review. Does this mean additional changes may be forthcoming?

Also, please let us know as soon as you can when you intend to publish the RFP.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone [REDACTED]

---

**From:** Papasavvas, Krystina <[REDACTED]>  
**Sent:** Monday, September 24, 2018 4:10 PM  
**To:** Summerville, James <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
[REDACTED] DiScenna, Matthew <[REDACTED]> Cohen, Michelle  
<[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth  
<[REDACTED]> Jenet, Marie (FAA) <[REDACTED]> Brooks, Andrew (FAA)  
<[REDACTED]> Martinez, Evelyn (FAA) <[REDACTED]> Sanchez, David  
(FAA) <[REDACTED]> McCarthy, Mary M (FAA) <[REDACTED]> Doyle,  
John (FAA) <[REDACTED]> Henn, Patricia (FAA) <[REDACTED]> Herndon, Jane  
<[REDACTED]>  
**Cc:** Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Puliafico, Jessica  
<[REDACTED]> Teodorescu, Andrew P (FAA) <[REDACTED]>  
**Subject:** LGA Access Improvement Project

Andrew, Marie, et. al.

Attached are the updated documents comprising the RFP for the LGA AirTrain EIS Consultant procurement. Updates are represented in track-change mode for your ease of review. The Port Authority accepts your changes to the Attachment A.

Please review the documents so that we may close out any outstanding comments on our upcoming call.

Thank you.

**Krystina Papasavvas**  
Integrity, Compliance and Contract Review  
Port Authority of New York and New Jersey Procurement Department  
4 World Trade Center  
150 Greenwich Street, 21st Floor  
New York, NY 10007  
T: [REDACTED]  
F: [REDACTED]  
email: [REDACTED]

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

**From:** [Summerville, James](#)  
**To:** [Vero, Anthony](#); [DeGraffe, Clarelle](#); [Herndon, Jane](#); [Venech, Lou](#); [DiScenna, Matthew](#); [Rogak, Elizabeth](#); [Tabafunda, Faith](#); [Papasavvas, Krystina](#); [Lamond, Kathryn](#); [Lafazia, Michael](#); [Cohen, Michelle](#); [Drew Brooks](#); [Jenet, Marie \(FAA\)](#); [Wolfers-Lawrence, Jean \(FAA\)](#); [REDACTED] [Peters, Carl](#); [Henry, Portia](#)  
**Subject:** RE: LGA EIS-related RFP; Committee meeting, 11/8  
**Date:** Wednesday, November 07, 2018 1:15:17 PM  
**Attachments:** [FW Port Authority of NY NJ: RFP for Consulting Services.msg](#)  
[RFP 54523--MWBE Review \(CP11718\).pdf](#)

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Everyone,

Just brief update:

1. Reference Checks: We received another response from one of Ricondo's references  
Please see attached:
  
2. The PA's Office of Business Diversity and Civil Rights (OBDCR) reviewed the MWBE plans submitted by each proposer. Attached below is a snapshot of the review. I'm unsure if OBDCR's representative will be able to attend tomorrow's meeting, hence the reason to submit it in this email.
  
3. I understand that certain **nonvoting** committee members might be unable to attend in person tomorrow. Thus my update to the MS Outlook invite with a teleconference number for use by such individuals. **All voters, however, must attend in person tomorrow.**

Thanks all, James, [REDACTED]

---

**From:** Summerville, James

**Sent:** Tuesday, November 06, 2018 3:57 PM

**To:** Vero, Anthony <[REDACTED]> DeGraffe, Clarelle <[REDACTED]>  
Herndon, Jane <[REDACTED]> Venech, Lou <[REDACTED]> DiScenna,  
Matthew <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Tabafunda,  
Faith <[REDACTED]> Papasavvas, Krystina <[REDACTED]> Lamond,  
Kathryn <[REDACTED]> Lafazia, Michael <[REDACTED]> Cohen, Michelle  
<[REDACTED]> [REDACTED] jean.wolfers-  
lawrence@faa.gov; [REDACTED] Peters, Carl <[REDACTED]> Henry, Portia  
<[REDACTED]>

**Subject:** LGA EIS-related RFP; Committee meeting, 11/8

**Importance:** High

**Everyone:** Sorry for the length of this email. It addresses the Committee as a whole and,

toward the end, the voters. As a reminder, the voters and nonvoters for this phase of the evaluation are:

- **Voters:** Anthony Vero; Clarelle DeGraffe; Jane Herndon; Lou Venech; Matt DiScenna; FAA (two members)
- **Nonvoters:** Liz Rogak; Faith Tabufunda; Katie Lamond; Michael Lafazia; Michelle Cohen; Portia Henry; Carl Peters.

Just a friendly reminder that **we're meeting on Thursday, 11/8** at 4 WTC (Conference Rooms 25-5 and 25-6) for a discussion of our review of the proposals to the subject RFP. **The meeting will begin at 8:15.** (We shouldn't need the entire scheduled time). This is an **in-person** meeting culminating in official scoring; the scores will be added to the scores in Round 2 (Interviews on 11/14). The combined scores should determine a recommended winner.

11/8's discussion is meant to be free and frank. All attendees – nonvoters and voters -- are encouraged to provide their opinions. The meeting should begin with a brief discussion of **overall impressions** and continue with a **proposal-by-proposal discussion**. The discussion should align with the evaluation criteria:

1. Project Approach
2. Project Experience
3. Organization and Management
4. References
5. Description of Proposer/Team
6. QA & QC

Each criterion is elaborated in the attachment:

<< File: evaluation criteria.pdf >>

Before we score (toward the end of the meeting), I'll ask the nonvoters to summarize their impressions to the voters. Afterward, the nonvoters will leave and the voters (with Procurement and the client project mgr for this procurement – M. Cohen) will remain to conclude the discussion and thereafter score.

One evaluation criterion is **references**. Procurement requested reference checks from the firms listed in each proposal (5 each). To date, Procurement received a total of 7 responses. For your review and consideration, I've attached the responses:

[REDACTED]

[REDACTED]

If we receive more responses before Thursday, I'll forward them to you. Furthermore, I understand that some Committee members might have experience with the proposers. I'll ask them to convey their impressions during the meeting.

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I've attached individual scoring sheets. Please bring them to the meeting on 11/8. You can pre-populate them with ratings (10 – 1, with 10 being the best), but in my experience, preliminary scores often change after a full Committee discussion. I'll have additional blank sheets at the meeting should your preliminary scores change.

<< File: 1st round scoring sheet - Vero.docx >> << File: 1st round scoring sheet - DeGraffe.docx >> << File: 1st round scoring sheet - Herndon.docx >> << File: 1st round scoring sheet - Venech.docx >> << File: 1st round scoring sheet - DiScenna.docx >> << File: 1st round scoring sheet - Brooks.docx >> << File: 1st round scoring sheet - Jenet.docx >>

Thanks, James, [REDACTED]

RFP# 54523 Review for MWBE Participation (OBDCR--CP11718)

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**From:** [Summerville, James](#)  
**To:** [Vero, Anthony](#); [DeGraffe, Clarelle](#); [Herndon, Jane](#); [Venech, Lou](#); [DiScenna, Matthew](#); [Rogak, Elizabeth](#); [Tabafunda, Faith](#); [Papasavvas, Krystina](#); [Lamond, Kathryn](#); [Lafazia, Michael](#); [Cohen, Michelle](#); [Drew Brooks](#); [Jenet, Marie \(FAA\)](#); [Wolfers-Lawrence, Jean \(FAA\)](#); [REDACTED]; [Peters, Carl](#); [Henry, Portia](#)  
**Subject:** LGA EIS-related RFP; Committee meeting, 11/8  
**Date:** Tuesday, November 06, 2018 3:58:45 PM  
**Attachments:** [evaluation criteria.pdf](#)  
[RE Port Authority of NY NJ: RFP for Consulting Services.msg](#)  
[REDACTED]  
[RE Port Authority of NY NJ: RFP for Consulting Services.msg](#)  
[RE Port Authority of NY NJ: RFP for Consulting Services.msg](#)  
[REDACTED]  
[FW From Ed K. .msg](#)  
[1st round scoring sheet - Vero.docx](#)  
[1st round scoring sheet - DeGraffe.docx](#)  
[1st round scoring sheet - Herndon.docx](#)  
[1st round scoring sheet - Venech.docx](#)  
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2. Project Experience
3. Organization and Management
4. References

5. Description of Proposer/Team

6. QA & QC

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Thanks, James, [REDACTED]



1. **Project Approach/Schedule:** Demonstrate a thorough understanding of the FAA EIS process. Identify methodologies and approaches that would be utilized to analyze and resolve environmental issues. Describe the proposed public scoping and public hearing process, work products, detailed project schedule, along with the responsibilities of each of the proposed staff/team members and subconsultants and their anticipated percentage of each individual's time working on the project. In order to meet the Authority's goal for the expeditious completion of the EIS, propose an approach to enable the expeditious development a draft Plan of Study within fifteen (15) business days of notice of selection and provide any assumptions related to producing an EIS within twelve (12) months of an NOI. To achieve the 12-month schedule, include a description of the proposed process for 1) efficient coordination with FAA, the Authority, subconsultant work efforts, other federal, state and local agencies and the general public; 2) expediting the development of EIS documentation 3) facilitating accelerated completion of comment review, responses and associated revisions. For example, developing a detailed timeline for development of the EIS and an approach for gaining commitment from all necessary stakeholders to adhere to the timeline; initiating the Draft EIS documentation in parallel with preparation for public scoping, as appropriate; and streamlining comment collection from necessary stakeholders through roundtable reviews.

A description of the team's understanding of any unique issues associated with the preparation of an EIS at LGA should be included. Describe procedures to be followed to adhere to the Authority's goal of completion of the issuance by the FAA of a Record of Decision ("ROD") and completion of the National Environmental Policy Act ("NEPA") review within a 12-month period from the Notice of Intent ("NOI"). In addition, if the Proposer proposes an alternate schedule (exceeding the aforementioned twelve months), the Proposer shall provide its rationale for the longer schedule, its assumptions to producing an EIS within the longer proposed period, and a description of procedures to be followed to adhere to the alternate schedule.

2. **Project Experience:** Provide summaries of experience for past projects by prime consultant and team members (if applicable) that demonstrate experience and ability to undertake and complete an EIS specifically for airport projects and transit systems similar to the proposed project. Do not include projects for which key project personnel are no longer employed by the firm. List the names of key employees with each project. Projects for which individuals gained experience during previous employment should be indicated in this section.

For each qualifying project, include the following information in tabular form: project name, location, client, total contract amount, principal-in-charge, day-to-day technical project manager, key design staff, original estimated schedule and actual schedule of completion (defined for an EIS as Notice of Intent to Record of Decision and for an EA as Notice to Proceed to acceptance of the Final EA) client reference (name, position and phone number) and brief narrative description of the project.

3. **Organization and Management:** Provide an organizational chart and narrative description of the administrative structure proposed for managing this project. Outline major responsibilities and areas of expertise.

The overall project manager and key staff members (both prime firm and subconsultants) must be identified and resumes provided. The project manager is considered to be the single most important Consultant asset, and is expected to maintain responsibility and availability for the project through completion of the EIS required by the scope of services (Attachment A).

Provide a list of projects that the proposed project manager is responsible for and expected completion dates. Resumes of firm principals are not required unless they are proposed as active, integral members of the Consultant team. Principals should, however, be listed on the organizational diagram in relation to the Consultant team. This section should also include the location of each firm and key staff members.

In addition, if the proposal includes a prime firm and subconsultants, demonstration of relevant past working experience as a team is desired. The relevance of past working experience will be prioritized based on the following: 1) experience on FAA-directed environmental projects; 2) experience on other airport projects not directed by the FAA; 3) experience on environmental projects for other modes under the umbrella of the Department of Transportation; 4) experience on environmental projects for other Federal agencies; and 5) experience with expedited completion of environmental projects

4. References: provide a total of five (5) references of similar projects. For each reference include contact name, title, project name and location, mailing address, phone number, fax number and e-mail address.
5. Description of Proposer/Team: Provide a general description of the Proposer, including services offered, number of employees, office location, years in business, etc. Indicate aviation and rail-related EIS and EA work to which the firm is currently committed. Include similar descriptions for each subconsultant.
6. QA/QC: Describe quality assurance and quality control procedures. Demonstrate experience in successfully implementing quality control programs on comparable projects.

**RFP 54523: EIS-RELATED CONSULTING SERVICES FOR PROPOSED LGA AIRTRAIN  
FIRST ROUND EVALUATION, 11/8/18**

**PROPOSER: RICONDO & ASSOCIATES**

<b>Evaluation Criteria</b>	<b>Rating</b>
<p><b>Project Approach/Schedule</b></p> <p>Project Approach/Schedule: Demonstrate a thorough understanding of the FAA EIS process. Identify methodologies and approaches that would be utilized to analyze and resolve environmental issues. Describe the proposed public scoping and public hearing process, work products, detailed project schedule, along with the responsibilities of each of the proposed staff/team members and subconsultants and their anticipated percentage of each individual's time working on the project. In order to meet the Authority's goal for the expeditious completion of the EIS, propose an approach to enable the expeditious development a draft Plan of Study within fifteen (15) business days of notice of selection and provide any assumptions related to producing an EIS within twelve (12) months of an NOI. To achieve the 12-month schedule, include a description of the proposed process for 1) efficient coordination with FAA, the Authority, subconsultant work efforts, other federal, state and local agencies and the general public; 2) expediting the development of EIS documentation 3) facilitating accelerated completion of comment review, responses and associated revisions. For example, developing a detailed timeline for development of the EIS and an approach for gaining commitment from all necessary stakeholders to adhere to the timeline; initiating the Draft EIS documentation in parallel with preparation for public scoping, as appropriate; and streamlining comment collection from necessary stakeholders through roundtable reviews.</p> <p>A description of the team's understanding of any unique issues associated with the preparation of an EIS at LGA should be included. Describe procedures to be followed to adhere to the Authority's goal of completion of the issuance by the FAA of a Record of Decision and completion of the National Environmental Policy Act review within a 12-month period from the Notice of Intent. In addition, if the Proposer proposes an alternate schedule (exceeding the aforementioned twelve months), the Proposer shall provide its rationale for the longer schedule, its assumptions to producing an EIS within the longer proposed period, and a description of procedures to be followed to adhere to the alternate schedule.</p>	
<p><b>Project Experience:</b></p> <p>Provide summaries of experience for past projects by prime consultant and team members (if applicable) that demonstrate experience and ability to undertake and complete an EIS specifically for airport projects and transit systems similar to the proposed project. Do not include projects for which key project personnel are no longer employed by the firm. List the names of <u>key</u> employees with each project. Projects for which individuals gained experience during previous employment should be indicated in this section.</p> <p>For each qualifying project, include the following information in tabular form: project name, location, client, total contract amount, principal-in-charge, day-to-day technical project manager, key design staff, original estimated schedule and actual schedule of completion (defined for an EIS as Notice of Intent to Record of Decision and for an EA as Notice to Proceed to acceptance of the Final EA) client reference (name, position and phone number) and brief narrative description of the project.</p>	

<p><b>Organization and Management:</b></p> <p>Provide an organizational chart and narrative description of the administrative structure proposed for managing this project. Outline major responsibilities and areas of expertise.</p> <p>The overall project manager and key staff members (both prime firm and subconsultants) must be identified and resumes provided. The project manager is considered to be the single most important Consultant asset, and is expected to maintain responsibility and availability for the project through completion of the EIS required by the scope of services (Attachment A).</p> <p>Provide a list of projects that the proposed project manager is responsible for and expected completion dates. Resumes of firm principals are not required unless they are proposed as active, integral members of the Consultant team. Principals should, however, be listed on the organizational diagram in relation to the Consultant team. This section should also include the location of each firm and key staff members.</p> <p>In addition, if the proposal includes a prime firm and subconsultants, demonstration of relevant past working experience as a team is desired. The relevance of past working experience will be prioritized based on the following: 1) experience on FAA-directed environmental projects; 2) experience on other airport projects not directed by the FAA; 3) experience on environmental projects for other modes under the umbrella of the Department of Transportation; 4) experience on environmental projects for other Federal agencies; and 5) experience with expedited completion of environmental projects</p>	
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Evaluated by: Andrew Brooks

Signature: \_\_\_\_\_

Date: November 8, 2018

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- 10-9: Excellent;
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**RFP 54523: EIS-RELATED CONSULTING SERVICES FOR PROPOSED LGA AIRTRAIN  
FIRST ROUND EVALUATION, 11/8/18**



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Evaluated by: Andrew Brooks

Signature: \_\_\_\_\_

Date: November 8, 2018

Rating system:

- 10-9: Excellent;
- 8-7: Very Good
- 6-5: Average
- 4-3: Below Average
- 2-0: Poor



**RFP 54523: EIS-RELATED CONSULTING SERVICES FOR PROPOSED LGA AIRTRAIN  
FIRST ROUND EVALUATION, 11/8/18**

**PROPOSER: RICONDO & ASSOCIATES**

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Evaluated by: Clarelle DeGraffe

Signature: \_\_\_\_\_

Date: November 8, 2018

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**RFP 54523: EIS-RELATED CONSULTING SERVICES FOR PROPOSED LGA AIRTRAIN  
FIRST ROUND EVALUATION, 11/8/18**



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<p><b>Project Approach/Schedule</b></p> <p>Project Approach/Schedule: Demonstrate a thorough understanding of the FAA EIS process. Identify methodologies and approaches that would be utilized to analyze and resolve environmental issues. Describe the proposed public scoping and public hearing process, work products, detailed project schedule, along with the responsibilities of each of the proposed staff/team members and subconsultants and their anticipated percentage of each individual's time working on the project. In order to meet the Authority's goal for the expeditious completion of the EIS, propose an approach to enable the expeditious development a draft Plan of Study within fifteen (15) business days of notice of selection and provide any assumptions related to producing an EIS within twelve (12) months of an NOI. To achieve the 12-month schedule, include a description of the proposed process for 1) efficient coordination with FAA, the Authority, subconsultant work efforts, other federal, state and local agencies and the general public; 2) expediting the development of EIS documentation 3) facilitating accelerated completion of comment review, responses and associated revisions. For example, developing a detailed timeline for development of the EIS and an approach for gaining commitment from all necessary stakeholders to adhere to the timeline; initiating the Draft EIS documentation in parallel with preparation for public scoping, as appropriate; and streamlining comment collection from necessary stakeholders through roundtable reviews.</p> <p>A description of the team's understanding of any unique issues associated with the preparation of an EIS at LGA should be included. Describe procedures to be followed to adhere to the Authority's goal of completion of the issuance by the FAA of a Record of Decision and completion of the National Environmental Policy Act review within a 12-month period from the Notice of Intent. In addition, if the Proposer proposes an alternate schedule (exceeding the aforementioned twelve months), the Proposer shall provide its rationale for the longer schedule, its assumptions to producing an EIS within the longer proposed period, and a description of procedures to be followed to adhere to the alternate schedule.</p>	
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<p><b>Organization and Management:</b></p> <p>Provide an organizational chart and narrative description of the administrative structure proposed for managing this project. Outline major responsibilities and areas of expertise.</p> <p>The overall project manager and key staff members (both prime firm and subconsultants) must be identified and resumes provided. The project manager is considered to be the single most important Consultant asset, and is expected to maintain responsibility and availability for the project through completion of the EIS required by the scope of services (Attachment A).</p> <p>Provide a list of projects that the proposed project manager is responsible for and expected completion dates. Resumes of firm principals are not required unless they are proposed as active, integral members of the Consultant team. Principals should, however, be listed on the organizational diagram in relation to the Consultant team. This section should also include the location of each firm and key staff members.</p> <p>In addition, if the proposal includes a prime firm and subconsultants, demonstration of relevant past working experience as a team is desired. The relevance of past working experience will be prioritized based on the following: 1) experience on FAA-directed environmental projects; 2) experience on other airport projects not directed by the FAA; 3) experience on environmental projects for other modes under the umbrella of the Department of Transportation; 4) experience on environmental projects for other Federal agencies; and 5) experience with expedited completion of environmental projects</p>	
<p><b>References:</b></p> <p>Provide a total of five (5) references of similar projects. For each reference include contact name, title, project name and location, mailing address, phone number, fax number and e-mail address.</p>	
<p><b>Description of Proposer/Team:</b></p> <p>Provide a general description of the Proposer, including services offered, number of employees, office location, years in business, etc. Indicate aviation and rail-related EIS and EA work to which the firm is currently committed. Include similar descriptions for each subconsultant.</p>	
<p><b>QA/QC:</b></p> <p>Describe quality assurance and quality control procedures. Demonstrate experience in successfully implementing quality control programs on comparable projects.</p>	

Evaluated by: Clarelle DeGraffe

Signature: \_\_\_\_\_

Date: November 8, 2018

Rating system:

- 10-9: Excellent;
- 8-7: Very Good
- 6-5: Average
- 4-3: Below Average
- 2-0: Poor



**RFP 54523: EIS-RELATED CONSULTING SERVICES FOR PROPOSED LGA AIRTRAIN  
FIRST ROUND EVALUATION, 11/8/18**

**PROPOSER: RICONDO & ASSOCIATES**

<b>Evaluation Criteria</b>	<b>Rating</b>
<p><b>Project Approach/Schedule</b></p> <p>Project Approach/Schedule: Demonstrate a thorough understanding of the FAA EIS process. Identify methodologies and approaches that would be utilized to analyze and resolve environmental issues. Describe the proposed public scoping and public hearing process, work products, detailed project schedule, along with the responsibilities of each of the proposed staff/team members and subconsultants and their anticipated percentage of each individual’s time working on the project. In order to meet the Authority’s goal for the expeditious completion of the EIS, propose an approach to enable the expeditious development a draft Plan of Study within fifteen (15) business days of notice of selection and provide any assumptions related to producing an EIS within twelve (12) months of an NOI. To achieve the 12-month schedule, include a description of the proposed process for 1) efficient coordination with FAA, the Authority, subconsultant work efforts, other federal, state and local agencies and the general public; 2) expediting the development of EIS documentation 3) facilitating accelerated completion of comment review, responses and associated revisions. For example, developing a detailed timeline for development of the EIS and an approach for gaining commitment from all necessary stakeholders to adhere to the timeline; initiating the Draft EIS documentation in parallel with preparation for public scoping, as appropriate; and streamlining comment collection from necessary stakeholders through roundtable reviews.</p> <p>A description of the team’s understanding of any unique issues associated with the preparation of an EIS at LGA should be included. Describe procedures to be followed to adhere to the Authority’s goal of completion of the issuance by the FAA of a Record of Decision and completion of the National Environmental Policy Act review within a 12-month period from the Notice of Intent. In addition, if the Proposer proposes an alternate schedule (exceeding the aforementioned twelve months), the Proposer shall provide its rationale for the longer schedule, its assumptions to producing an EIS within the longer proposed period, and a description of procedures to be followed to adhere to the alternate schedule.</p>	
<p><b>Project Experience:</b></p> <p>Provide summaries of experience for past projects by prime consultant and team members (if applicable) that demonstrate experience and ability to undertake and complete an EIS specifically for airport projects and transit systems similar to the proposed project. Do not include projects for which key project personnel are no longer employed by the firm. List the names of <u>key</u> employees with each project. Projects for which individuals gained experience during previous employment should be indicated in this section.</p> <p>For each qualifying project, include the following information in tabular form: project name, location, client, total contract amount, principal-in-charge, day-to-day technical project manager, key design staff, original estimated schedule and actual schedule of completion (defined for an EIS as Notice of Intent to Record of Decision and for an EA as Notice to Proceed to acceptance of the Final EA) client reference (name, position and phone number) and brief narrative description of the project.</p>	

<p><b>Organization and Management:</b></p> <p>Provide an organizational chart and narrative description of the administrative structure proposed for managing this project. Outline major responsibilities and areas of expertise.</p> <p>The overall project manager and key staff members (both prime firm and subconsultants) must be identified and resumes provided. The project manager is considered to be the single most important Consultant asset, and is expected to maintain responsibility and availability for the project through completion of the EIS required by the scope of services (Attachment A).</p> <p>Provide a list of projects that the proposed project manager is responsible for and expected completion dates. Resumes of firm principals are not required unless they are proposed as active, integral members of the Consultant team. Principals should, however, be listed on the organizational diagram in relation to the Consultant team. This section should also include the location of each firm and key staff members.</p> <p>In addition, if the proposal includes a prime firm and subconsultants, demonstration of relevant past working experience as a team is desired. The relevance of past working experience will be prioritized based on the following: 1) experience on FAA-directed environmental projects; 2) experience on other airport projects not directed by the FAA; 3) experience on environmental projects for other modes under the umbrella of the Department of Transportation; 4) experience on environmental projects for other Federal agencies; and 5) experience with expedited completion of environmental projects</p>	
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<p><b>QA/QC:</b></p> <p>Describe quality assurance and quality control procedures. Demonstrate experience in successfully implementing quality control programs on comparable projects.</p>	

Evaluated by: Matt DiScenna

Signature: \_\_\_\_\_

Date: November 8, 2018

Rating system:

- 10-9: Excellent;
- 8-7: Very Good
- 6-5: Average
- 4-3: Below Average
- 2-0: Poor

**RFP 54523: EIS-RELATED CONSULTING SERVICES FOR PROPOSED LGA AIRTRAIN  
FIRST ROUND EVALUATION, 11/8/18**



<b>Evaluation Criteria</b>	<b>Rating</b>
<p><b>Project Approach/Schedule</b></p> <p>Project Approach/Schedule: Demonstrate a thorough understanding of the FAA EIS process. Identify methodologies and approaches that would be utilized to analyze and resolve environmental issues. Describe the proposed public scoping and public hearing process, work products, detailed project schedule, along with the responsibilities of each of the proposed staff/team members and subconsultants and their anticipated percentage of each individual’s time working on the project. In order to meet the Authority’s goal for the expeditious completion of the EIS, propose an approach to enable the expeditious development a draft Plan of Study within fifteen (15) business days of notice of selection and provide any assumptions related to producing an EIS within twelve (12) months of an NOI. To achieve the 12-month schedule, include a description of the proposed process for 1) efficient coordination with FAA, the Authority, subconsultant work efforts, other federal, state and local agencies and the general public; 2) expediting the development of EIS documentation 3) facilitating accelerated completion of comment review, responses and associated revisions. For example, developing a detailed timeline for development of the EIS and an approach for gaining commitment from all necessary stakeholders to adhere to the timeline; initiating the Draft EIS documentation in parallel with preparation for public scoping, as appropriate; and streamlining comment collection from necessary stakeholders through roundtable reviews.</p> <p>A description of the team’s understanding of any unique issues associated with the preparation of an EIS at LGA should be included. Describe procedures to be followed to adhere to the Authority’s goal of completion of the issuance by the FAA of a Record of Decision and completion of the National Environmental Policy Act review within a 12-month period from the Notice of Intent. In addition, if the Proposer proposes an alternate schedule (exceeding the aforementioned twelve months), the Proposer shall provide its rationale for the longer schedule, its assumptions to producing an EIS within the longer proposed period, and a description of procedures to be followed to adhere to the alternate schedule.</p>	
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<p><b>Organization and Management:</b></p> <p>Provide an organizational chart and narrative description of the administrative structure proposed for managing this project. Outline major responsibilities and areas of expertise.</p> <p>The overall project manager and key staff members (both prime firm and subconsultants) must be identified and resumes provided. The project manager is considered to be the single most important Consultant asset, and is expected to maintain responsibility and availability for the project through completion of the EIS required by the scope of services (Attachment A).</p> <p>Provide a list of projects that the proposed project manager is responsible for and expected completion dates. Resumes of firm principals are not required unless they are proposed as active, integral members of the Consultant team. Principals should, however, be listed on the organizational diagram in relation to the Consultant team. This section should also include the location of each firm and key staff members.</p> <p>In addition, if the proposal includes a prime firm and subconsultants, demonstration of relevant past working experience as a team is desired. The relevance of past working experience will be prioritized based on the following: 1) experience on FAA-directed environmental projects; 2) experience on other airport projects not directed by the FAA; 3) experience on environmental projects for other modes under the umbrella of the Department of Transportation; 4) experience on environmental projects for other Federal agencies; and 5) experience with expedited completion of environmental projects</p>	
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Evaluated by: Matt DiScenna

Signature: \_\_\_\_\_

Date: November 8, 2018

Rating system:

- 10-9: Excellent;
- 8-7: Very Good
- 6-5: Average
- 4-3: Below Average
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**RFP 54523: EIS-RELATED CONSULTING SERVICES FOR PROPOSED LGA AIRTRAIN  
FIRST ROUND EVALUATION, 11/8/18**

**PROPOSER: RICONDO & ASSOCIATES**

<b>Evaluation Criteria</b>	<b>Rating</b>
<p><b>Project Approach/Schedule</b></p> <p>Project Approach/Schedule: Demonstrate a thorough understanding of the FAA EIS process. Identify methodologies and approaches that would be utilized to analyze and resolve environmental issues. Describe the proposed public scoping and public hearing process, work products, detailed project schedule, along with the responsibilities of each of the proposed staff/team members and subconsultants and their anticipated percentage of each individual's time working on the project. In order to meet the Authority's goal for the expeditious completion of the EIS, propose an approach to enable the expeditious development a draft Plan of Study within fifteen (15) business days of notice of selection and provide any assumptions related to producing an EIS within twelve (12) months of an NOI. To achieve the 12-month schedule, include a description of the proposed process for 1) efficient coordination with FAA, the Authority, subconsultant work efforts, other federal, state and local agencies and the general public; 2) expediting the development of EIS documentation 3) facilitating accelerated completion of comment review, responses and associated revisions. For example, developing a detailed timeline for development of the EIS and an approach for gaining commitment from all necessary stakeholders to adhere to the timeline; initiating the Draft EIS documentation in parallel with preparation for public scoping, as appropriate; and streamlining comment collection from necessary stakeholders through roundtable reviews.</p> <p>A description of the team's understanding of any unique issues associated with the preparation of an EIS at LGA should be included. Describe procedures to be followed to adhere to the Authority's goal of completion of the issuance by the FAA of a Record of Decision and completion of the National Environmental Policy Act review within a 12-month period from the Notice of Intent. In addition, if the Proposer proposes an alternate schedule (exceeding the aforementioned twelve months), the Proposer shall provide its rationale for the longer schedule, its assumptions to producing an EIS within the longer proposed period, and a description of procedures to be followed to adhere to the alternate schedule.</p>	
<p><b>Project Experience:</b></p> <p>Provide summaries of experience for past projects by prime consultant and team members (if applicable) that demonstrate experience and ability to undertake and complete an EIS specifically for airport projects and transit systems similar to the proposed project. Do not include projects for which key project personnel are no longer employed by the firm. List the names of <u>key</u> employees with each project. Projects for which individuals gained experience during previous employment should be indicated in this section.</p> <p>For each qualifying project, include the following information in tabular form: project name, location, client, total contract amount, principal-in-charge, day-to-day technical project manager, key design staff, original estimated schedule and actual schedule of completion (defined for an EIS as Notice of Intent to Record of Decision and for an EA as Notice to Proceed to acceptance of the Final EA) client reference (name, position and phone number) and brief narrative description of the project.</p>	

<p><b>Organization and Management:</b></p> <p>Provide an organizational chart and narrative description of the administrative structure proposed for managing this project. Outline major responsibilities and areas of expertise.</p> <p>The overall project manager and key staff members (both prime firm and subconsultants) must be identified and resumes provided. The project manager is considered to be the single most important Consultant asset, and is expected to maintain responsibility and availability for the project through completion of the EIS required by the scope of services (Attachment A).</p> <p>Provide a list of projects that the proposed project manager is responsible for and expected completion dates. Resumes of firm principals are not required unless they are proposed as active, integral members of the Consultant team. Principals should, however, be listed on the organizational diagram in relation to the Consultant team. This section should also include the location of each firm and key staff members.</p> <p>In addition, if the proposal includes a prime firm and subconsultants, demonstration of relevant past working experience as a team is desired. The relevance of past working experience will be prioritized based on the following: 1) experience on FAA-directed environmental projects; 2) experience on other airport projects not directed by the FAA; 3) experience on environmental projects for other modes under the umbrella of the Department of Transportation; 4) experience on environmental projects for other Federal agencies; and 5) experience with expedited completion of environmental projects</p>	
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Evaluated by: Jane Herndon

Signature: \_\_\_\_\_

Date: November 8, 2018

Rating system:

- 10-9: Excellent;
- 8-7: Very Good
- 6-5: Average
- 4-3: Below Average
- 2-0: Poor

**RFP 54523: EIS-RELATED CONSULTING SERVICES FOR PROPOSED LGA AIRTRAIN  
FIRST ROUND EVALUATION, 11/8/18**



<b>Evaluation Criteria</b>	<b>Rating</b>
<p><b>Project Approach/Schedule</b></p> <p>Project Approach/Schedule: Demonstrate a thorough understanding of the FAA EIS process. Identify methodologies and approaches that would be utilized to analyze and resolve environmental issues. Describe the proposed public scoping and public hearing process, work products, detailed project schedule, along with the responsibilities of each of the proposed staff/team members and subconsultants and their anticipated percentage of each individual's time working on the project. In order to meet the Authority's goal for the expeditious completion of the EIS, propose an approach to enable the expeditious development a draft Plan of Study within fifteen (15) business days of notice of selection and provide any assumptions related to producing an EIS within twelve (12) months of an NOI. To achieve the 12-month schedule, include a description of the proposed process for 1) efficient coordination with FAA, the Authority, subconsultant work efforts, other federal, state and local agencies and the general public; 2) expediting the development of EIS documentation 3) facilitating accelerated completion of comment review, responses and associated revisions. For example, developing a detailed timeline for development of the EIS and an approach for gaining commitment from all necessary stakeholders to adhere to the timeline; initiating the Draft EIS documentation in parallel with preparation for public scoping, as appropriate; and streamlining comment collection from necessary stakeholders through roundtable reviews.</p> <p>A description of the team's understanding of any unique issues associated with the preparation of an EIS at LGA should be included. Describe procedures to be followed to adhere to the Authority's goal of completion of the issuance by the FAA of a Record of Decision and completion of the National Environmental Policy Act review within a 12-month period from the Notice of Intent. In addition, if the Proposer proposes an alternate schedule (exceeding the aforementioned twelve months), the Proposer shall provide its rationale for the longer schedule, its assumptions to producing an EIS within the longer proposed period, and a description of procedures to be followed to adhere to the alternate schedule.</p>	
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Evaluated by: Jane Herndon

Signature: \_\_\_\_\_

Date: November 8, 2018

Rating system:

- 10-9: Excellent;
- 8-7: Very Good
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**RFP 54523: EIS-RELATED CONSULTING SERVICES FOR PROPOSED LGA AIRTRAIN  
FIRST ROUND EVALUATION, 11/8/18**

**PROPOSER: RICONDO & ASSOCIATES**

<b>Evaluation Criteria</b>	<b>Rating</b>
<p><b>Project Approach/Schedule</b></p> <p>Project Approach/Schedule: Demonstrate a thorough understanding of the FAA EIS process. Identify methodologies and approaches that would be utilized to analyze and resolve environmental issues. Describe the proposed public scoping and public hearing process, work products, detailed project schedule, along with the responsibilities of each of the proposed staff/team members and subconsultants and their anticipated percentage of each individual's time working on the project. In order to meet the Authority's goal for the expeditious completion of the EIS, propose an approach to enable the expeditious development a draft Plan of Study within fifteen (15) business days of notice of selection and provide any assumptions related to producing an EIS within twelve (12) months of an NOI. To achieve the 12-month schedule, include a description of the proposed process for 1) efficient coordination with FAA, the Authority, subconsultant work efforts, other federal, state and local agencies and the general public; 2) expediting the development of EIS documentation 3) facilitating accelerated completion of comment review, responses and associated revisions. For example, developing a detailed timeline for development of the EIS and an approach for gaining commitment from all necessary stakeholders to adhere to the timeline; initiating the Draft EIS documentation in parallel with preparation for public scoping, as appropriate; and streamlining comment collection from necessary stakeholders through roundtable reviews.</p> <p>A description of the team's understanding of any unique issues associated with the preparation of an EIS at LGA should be included. Describe procedures to be followed to adhere to the Authority's goal of completion of the issuance by the FAA of a Record of Decision and completion of the National Environmental Policy Act review within a 12-month period from the Notice of Intent. In addition, if the Proposer proposes an alternate schedule (exceeding the aforementioned twelve months), the Proposer shall provide its rationale for the longer schedule, its assumptions to producing an EIS within the longer proposed period, and a description of procedures to be followed to adhere to the alternate schedule.</p>	
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Evaluated by: Marie Jenet

Signature: \_\_\_\_\_

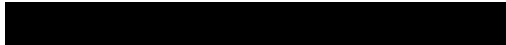
Date: November 8, 2018

Rating system:

- 10-9: Excellent;
- 8-7: Very Good
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- 4-3: Below Average
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**RFP 54523: EIS-RELATED CONSULTING SERVICES FOR PROPOSED LGA AIRTRAIN  
FIRST ROUND EVALUATION, 11/8/18**



<b>Evaluation Criteria</b>	<b>Rating</b>
<p><b>Project Approach/Schedule</b></p> <p>Project Approach/Schedule: Demonstrate a thorough understanding of the FAA EIS process. Identify methodologies and approaches that would be utilized to analyze and resolve environmental issues. Describe the proposed public scoping and public hearing process, work products, detailed project schedule, along with the responsibilities of each of the proposed staff/team members and subconsultants and their anticipated percentage of each individual's time working on the project. In order to meet the Authority's goal for the expeditious completion of the EIS, propose an approach to enable the expeditious development a draft Plan of Study within fifteen (15) business days of notice of selection and provide any assumptions related to producing an EIS within twelve (12) months of an NOI. To achieve the 12-month schedule, include a description of the proposed process for 1) efficient coordination with FAA, the Authority, subconsultant work efforts, other federal, state and local agencies and the general public; 2) expediting the development of EIS documentation 3) facilitating accelerated completion of comment review, responses and associated revisions. For example, developing a detailed timeline for development of the EIS and an approach for gaining commitment from all necessary stakeholders to adhere to the timeline; initiating the Draft EIS documentation in parallel with preparation for public scoping, as appropriate; and streamlining comment collection from necessary stakeholders through roundtable reviews.</p> <p>A description of the team's understanding of any unique issues associated with the preparation of an EIS at LGA should be included. Describe procedures to be followed to adhere to the Authority's goal of completion of the issuance by the FAA of a Record of Decision and completion of the National Environmental Policy Act review within a 12-month period from the Notice of Intent. In addition, if the Proposer proposes an alternate schedule (exceeding the aforementioned twelve months), the Proposer shall provide its rationale for the longer schedule, its assumptions to producing an EIS within the longer proposed period, and a description of procedures to be followed to adhere to the alternate schedule.</p>	
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<p><b>QA/QC:</b></p> <p>Describe quality assurance and quality control procedures. Demonstrate experience in successfully implementing quality control programs on comparable projects.</p>	

Evaluated by: Marie Jenet

Signature: \_\_\_\_\_

Date: November 8, 2018

Rating system:

- 10-9: Excellent;
- 8-7: Very Good
- 6-5: Average
- 4-3: Below Average
- 2-0: Poor



**RFP 54523: EIS-RELATED CONSULTING SERVICES FOR PROPOSED LGA AIRTRAIN  
FIRST ROUND EVALUATION, 11/8/18**

**PROPOSER: RICONDO & ASSOCIATES**

<b>Evaluation Criteria</b>	<b>Rating</b>
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<p><b>QA/QC:</b></p> <p>Describe quality assurance and quality control procedures. Demonstrate experience in successfully implementing quality control programs on comparable projects.</p>	

Evaluated by: Lou Venech

Signature: \_\_\_\_\_

Date: November 8, 2018

Rating system:

- 10-9: Excellent;
- 8-7: Very Good
- 6-5: Average
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**RFP 54523: EIS-RELATED CONSULTING SERVICES FOR PROPOSED LGA AIRTRAIN  
FIRST ROUND EVALUATION, 11/8/18**



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Evaluated by: Lou Venech

Signature: \_\_\_\_\_

Date: November 8, 2018

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**RFP 54523: EIS-RELATED CONSULTING SERVICES FOR PROPOSED LGA AIRTRAIN  
FIRST ROUND EVALUATION, 11/8/18**

**PROPOSER: RICONDO & ASSOCIATES**

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Evaluated by: Anthony Vero

Signature: \_\_\_\_\_

Date: November 8, 2018

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Signature: \_\_\_\_\_

Date: November 8, 2018

Rating system:

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teleconference). We're contemplating the following dates:

October 15, 3-4 PM

October 17, 1-2 PM

October 26, 2-3 PM

Please reply as soon as possible with the FAA's availability during these dates/times. The kick-off meeting (really, teleconference) should last no longer than 30 minutes.

Thanks,

James Summerville, Sr. Proj. Contracts Specialist  
Port Authority of NY & NJ  
Procurement Dept.  
[REDACTED]

---

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Thursday, October 11, 2018 3:10 PM  
**To:** DiScenna, Matthew <[REDACTED]> Lamond, Kathryn <[REDACTED]>  
Herndon, Jane <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Tabafunda, Faith  
<[REDACTED]> Summerville, James <[REDACTED]> Papasavvas, Krystina  
<[REDACTED]> Clark, Patty <[REDACTED]>  
**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
**Subject:** LGA AirTrain Consultant Selection Interviews

Good Afternoon Everyone,

The FAA Selection Panel (myself, Marie, Jean, and Dave) will be available to conduct interviews of short listed firms on Wednesday, November 14<sup>th</sup>. When you issue a supplement to the solicitation, please include the following in some manner:

- Firms selected for the Short List for Interviews will be notified on or about November 8<sup>th</sup>
- Interviews will occur on November 14<sup>th</sup> at Federal Aviation Administration Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434.
- Interviews will be comprised of a 30 minute presentation followed by a 30 minute question and answer session.
- Firms participating in the interviews will be limited to four members of the consultant team, which will include and be lead by the proposed project manager and must be comprised of key project personnel that will be actively assigned to the project. A hard copy of any presentation materials can be submitted; however, no material supplementing the Statement of Qualifications will be accepted.

Additionally, we are available Monday, November 19<sup>th</sup> in the event of inclement weather or other need to change dates.

Thanks,

Andrew Brooks  
Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]



**From:** [Summerville, James](#)  
**To:** [Drew Brooks](#)  
**Cc:** [Papasavvas, Krystina](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Herndon, Jane](#); [Summerville, James](#); [Lamond, Kathryn](#); [Jenet, Marie \(FAA\)](#); [REDACTED]  
**Subject:** FW: LGA AirTrain Consultant Selection: Interview Questions  
**Date:** Friday, October 26, 2018 11:25:13 AM  
**Attachments:** [LGA AirTrain Draft Interview Questions.doc](#)  
[LGA AirTrain-Draft Interview Selection Letter.docx](#)  
[LGA AirTrain-Draft Non-Selection Letter.docx](#)  
[RE LGA AirTrain Consultant Selection Interviews.msg](#)

---

Andrew,

This email responds to the interview questions (emailed on 10/17) and the draft letters provided in your recent email dated 10/24. Please review our observations and provide feedback as soon as possible.

Thanks, James, [REDACTED]

**1. Interview Questions:**

- a. See the comment and proposed additional language to the Long Question on page 2
- b. There's a pattern to the Long and accompanying Short Questions until the last Long Question, which doesn't have an accompanying Short Question. Is that purposeful?

**2. Interview Invitation Letter:** The attachment includes some proposed edits and corresponding comments. In addition, one question: The letter conveys that, with respect to the interview, the PA's role is observatory. However, in a recent teleconference, I recall that the FAA expects the PA to participate (in some capacity) in scoring (or, really, pre-scoring). In other words, I recall that, after each interview, the FAA will solicit our feedback (orally and via unofficial scoring). Is that correct? Please clarify the FAA's expectations of the PA throughout the interview process.

**3. Decline letter:** Typically the PA does not issue "status" letters to any proposer until after authorization and execution of a contract resulting from an RFP. We'd prefer not to introduce a precedent here. Besides, Addendum 2 to the RFP, shared with the FAA on 10/12, conveyed expectations concerning the interviews; see the second attachment below. Via that Addendum, Proposers should realize that if they don't receive a formal invitation for an interview on or close to 11/8, we are not intending to interview them. Therefore, we feel that a formal non-selection letter (during the ongoing evaluation process) is unnecessary and we'd prefer not to introduce a precedent by issuing such a letter.

**From:** [redacted] [[mailto:\[redacted\]](mailto:[redacted])]

**Sent:** Wednesday, October 24, 2018 8:20 AM

**To:** Papasavvas, Krystina <[redacted]> Clark, Patty <[redacted]>  
DiScenna, Matthew <[redacted]> Cohen, Michelle <[redacted]>  
Tabafunda, Faith <[redacted]> Rogak, Elizabeth <[redacted]>  
Herndon, Jane <[redacted]> Summerville, James <[redacted]>  
Lamond, Kathryn <[redacted]>

**Cc:** Jenet, Marie (FAA) <[redacted]> [redacted]  
[redacted] [redacted] [redacted] [redacted]  
[redacted] [redacted] [redacted]

**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Krystina,

Attached, please find two draft letters and our understanding of the pre-NOI tasks at this time. The two letters are for use following review of the proposals; one for short-listed firms and one for non-selected firms.

Thanks,

Andrew Brooks

Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [redacted]

**From:** Papasavvas, Krystina <[redacted]>

**Sent:** Thursday, October 18, 2018 12:11 PM

**To:** Brooks, Andrew (FAA) <[redacted]> [redacted] DiScenna,  
Matthew <[redacted]> Cohen, Michelle <[redacted]> Tabafunda,  
Faith <[redacted]> Rogak, Elizabeth <[redacted]> Herndon, Jane  
<[redacted]> Summerville, James <[redacted]> Lamond, Kathryn  
<[redacted]>

**Cc:** Jenet, Marie (FAA) <[redacted]> Martinez, Evelyn (FAA)  
<[redacted]> Sanchez, David (FAA) <[redacted]> Doyle, John  
(FAA) <[redacted]> Henn, Patricia (FAA) <[redacted]> Wolfers-  
Lawrence, Jean (FAA) <[redacted]> Teodorescu, Andrew P (FAA)  
<[redacted]> Price, Laura E (FAA) <[redacted]>

**Subject:** RE: LGA AirTrain Consultant Selection: Interview Questions

Good afternoon,

Thank you for your proposed Interview Questions for the Consultant Selection Process. As mentioned this morning on our call, we will discuss internally and get back to you.

For your review, I have attached the draft Agreement. Please review and provide any commentary. Also, please provide a list of the pre-NOI support tasks that would be incorporated into the budget for Paragraph 10A of the attached Agreement.

Thank you.

**Krystina Papasavvas**

Integrity, Compliance and Contract Review

Port Authority of New York and New Jersey Procurement Department

4 World Trade Center

150 Greenwich Street, 21st Floor

New York, NY 10007

T: [REDACTED]

F: [REDACTED]

email: [REDACTED]

**From:** [REDACTED] [[mailto:\[REDACTED\]](mailto:[REDACTED])]

**Sent:** Wednesday, October 17, 2018 1:11 PM

**To:** Lamond, Kathryn <[REDACTED]> Clark, Patty <[REDACTED]> DiScenna, Matthew <[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith <[REDACTED]> Rogak, Elizabeth <[REDACTED]> Herndon, Jane <[REDACTED]> Summerville, James <[REDACTED]> Papasavvas, Krystina <[REDACTED]>

**Cc:** Jenet, Marie (FAA) <[REDACTED]> [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED]; [REDACTED] [REDACTED]

**Subject:** LGA AirTrain Consultant Selection: Interview Questions

Good Afternoon Everyone,

Attached are the proposed Interview Questions for the Consultant Selection Process. We will be able to discuss in more depth during tomorrow's call.

Thanks,

Andrew Brooks


Environmental Program Manager

Federal Aviation Administration

Eastern Regional Office

1 Aviation Plaza

Jamaica, NY 11434

Phone: 

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



<p><b>Long Question:</b> The Executive Order implementing One Federal Decision targets a two-year schedule from issuance of NOI to ROD. The Port Authority has expressed a desire to accelerate the schedule further. Describe how your team would provide a thorough analysis of the project impacts in a legally defensible manner within the desired timeframe. Please discuss specific strategies you intend to implement.</p>	<p><b>Score: /10</b></p>
<p><b>Short Question:</b> What is the name of the team member that will oversee QA/QC? What specific plan will they implement?</p>	<p><b>Score: /2.5</b></p>

<p><b>Long Question:</b> Describe your individual and team experience on projects where the Proposed Action evolved during the course of analysis, either due to additional design being performed or alternative screening yielding unexpected results. How were changes to the Proposed Action managed in the context of the NEPA analysis to ensure compliance with the applicable laws and regulations? How did the changes affect project scope and schedule? What was the ultimate outcome?</p>	<p><b>Score: /10</b></p>
<p><b>Short Question:</b> If you could pick the cast of any TV Show or Movie, which would best represent your team and why?</p>	<p><b>Score: /2.5</b></p>

<p><b>Long Question:</b> Describe your individual and team experience working on projects involving multiple agencies that all had decisions relating to the proposed action that was under consideration. Discuss how communications and schedules were managed to ensure the various agency requirements were addressed in a timely fashion. What was the ultimate result of the project?</p>	<p>Score: ____/10</p>
<p><b>Short Question:</b> What EIS or Major EA has your team worked on are you most proud of and why?</p>	<p>Score: /2.5</p>



**Long Question:**

Describe your team's experience on projects that have been the subject of focus from politicians, the media, and the public. How was the outreach strategy developed to address this focus? Please discuss how support and opposition to the project were specifically considered. How was the potential for future legal challenges factored into the development of the strategy?

Score: \_\_\_\_/10

DATE

PROJECT PRINCIPAL  
COMPANY NAME  
COMPANY ADDRESS

Same Letter to  
ALL SHORT-LISTED FIRMS

**Re: Request for Proposals – Environmental Impact Statement  
LaGuardia Airport Access Improvement Project  
New York City, New York**

Dear NAME,

The LaGuardia Airport Access Improvement Project Environmental Impact Statement (EIS) Proposal Review Panel received and reviewed your qualifications to prepare an EIS for the subject project. We are pleased to inform you that the Review Panel has selected your team to be shortlisted and invited to interview for the project. The following provides the details of the upcoming interview process:

Date: Wednesday, November 14

Location: Federal Aviation Administration Eastern Region, 159-30 Rockaway Blvd., Jamaica, NY

Time: Firm 1: 8:30, Firm 2: 10:30, Firm 3: 1:00, Firm 4: 3:00

The Federal Aviation Administration (FAA) Selection Panel will conduct the interview. The Selection Panel is comprised of four FAA staff members that will have critical roles in the management of the project. One (or more) representatives from the Port Authority of New York and New Jersey (PANYNJ) will also be present in an observational capacity.

Each team is limited to 4 persons maximum to represent their team. It is required that the proposed Project Manager be present for the interview. The other three members representing the team at the interview must be from the list of key staff identified in your submitted proposal (as established by the RFP).

The Interview has been scheduled for 60 minutes. The time allocated has been broken into 30 minutes for each team to present their qualifications per the criteria below and 30 minutes has been reserved for questions and answers. The presentation should expand upon the material provided in your team's Statement of Qualifications and should emphasize the aspects of the project you feel are critical to the project's success. The scoring for the interviews will total 100 points and will be added to the 100 point score of the written proposals to determine the winning team. The scoring criteria are listed below:

Schedule	15 Points
Project Approach	15 Points
Unique Project Issues	10 Points
Past Experience on Similar Issues	10 Points

Questions and Answers                      50 Points  
Total Score                                      100 Points

We ask that each team arrive 20-30 minutes prior to their scheduled time to allow processing through security. Each team will be allowed ten minutes to set up the room. Some audio visual equipment will be available in the interview room. Please contact Andrew Brooks of the FAA at (718) 553-2511 to discuss your team's audio visual equipment needs.

When the team arrives at the FAA Eastern Region office, please have the security booth call (718) 553-3330 to arrange for an escort to the 5<sup>th</sup> floor Airports Conference Room.

We also like to remind each team that we cannot discuss the project until the selection is made so please do not contact either PANYNJ or FAA staff regarding aspects of the project other than the conditions discussed above.

Lastly, we sincerely appreciate your interest in this important project and we wish you good luck with the upcoming interviews.

Sincerely,

Huntley Lawrence,  
Director of Aviation

Commented [BA(1): PA to determine signature level

October 12, 2018

**SUBJECT: REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (LGA) ACCESS IMPROVEMENT PROJECT (RFP# 54523)**

Dear Sir or Madam:

Pursuant to Section III (Selection Process) of the RFP, the Port Authority of New York and New Jersey (Authority) intends to invite select firms (the highest-rated proposers) for interviews during the second phase of the evaluation process. The Authority anticipates, but does not guarantee, that interviews with select proposers will be held on November 14, 2018, at Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434. Not every proposer will be guaranteed an invitation for an interview. However, all prospective proposers are encouraged to be available for interviews on November 14.

Interviews will consist of a thirty-minute presentation followed by a question-and-answer session of the same duration. Participating proposers will be allowed to bring up to four members of the proposing team, which shall be led by the proposed project manager. In addition to including the project manager, the proposing team should include key project personnel that will be actively assigned to the project. A hard copy of any presentation materials can be submitted on the day of the interview, however, no material supplementing the proposal provided in response to the RFP (due on November 1, 2018) will be accepted.

Should a proposer be invited to an interview on November 14, the proposer will be notified by the Authority on or around November 8, 2018.

If you have any questions, please contact Mr. James Summerville at [REDACTED] and Krystina Papasavvas at [REDACTED]

Sincerely,

David Gutiérrez  
Assistant Director  
Procurement Department

October 12, 2018

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If you have any questions, please contact Mr. James Summerville at [REDACTED] and Krystina Papasavvas at [REDACTED]

Sincerely,

David Gutiérrez  
Assistant Director  
Procurement Department

**From:** [Summerville, James](#)  
**To:** [Lamond, Kathryn](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Jenet, Marie \(FAA\)](#); [Drew Brooks](#); [REDACTED]; [Herndon, Jane](#)  
**Cc:** [REDACTED]; [Puliafico, Jessica](#); [REDACTED]; [Papasavvas, Krystina](#)  
**Subject:** RE: LGA Access Improvement Project: Weekly Check-in  
**Date:** Tuesday, September 18, 2018 11:10:37 AM  
**Attachments:** [Attachment A Draft Track Changes 9.18.18.docx](#)  
[RFP Letter Draft Track Changes 9.18.18 kp.docx](#)  
[Advertisement.docx](#)

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Andrew, Marie, et. al.

In anticipation of Thursday's call at 9:00 AM, I've attached updated documents comprising the RFP for the LGA AirTrain EIS Consultant procurement. Updates are represented in track-change mode from the prior version that you reviewed (July). I've also included the draft advertisement for the notice of the RFP. Our goal is to close out any final items related to the RFP documents no later than Thursday's call.

Sincerely,

James Summerville, Sr. Proj. Contracts Specialist

Port Authority of NY & NJ

Procurement Dept.

[REDACTED]

Attachments:

1. Attachment A
2. RFP letter
3. Advertisement: Attached is an advertisement form. Fyi, The yellow-highlighted language in the form will appear in advertisements for this opportunity.

-----Original Appointment-----

**From:** Lamond, Kathryn

**Sent:** Tuesday, September 18, 2018 9:06 AM

**To:** Lamond, Kathryn; Clark, Patty; DiScenna, Matthew; Cohen, Michelle; Tabafunda, Faith;

Rogak, Elizabeth; [REDACTED] Drew Brooks; [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] Herndon, Jane

**Cc:** [REDACTED] Puliafico, Jessica; [REDACTED]  
Summerville, James; Papasavvas, Krystina

**Subject:** FW: LGA Access Improvement Project: Weekly Check-in

**When:** Thursday, September 20, 2018 9:00 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).

**Where:** Call-in #: [REDACTED] Code: [REDACTED] Host (Katie): [REDACTED]

-----Original Appointment-----

**From:** Lamond, Kathryn

**Sent:** Friday, April 13, 2018 7:50 AM

**To:** Lamond, Kathryn; Clark, Patty; DiScenna, Matthew; Cohen, Michelle; Tabafunda, Faith;  
Rogak, Elizabeth; [REDACTED] Drew Brooks; [REDACTED]

[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] Herndon, Jane

**Cc:** [REDACTED] Puliafico, Jessica; [REDACTED]

**Subject:** LGA Access Improvement Project: Weekly Check-in

**When:** Thursday, September 20, 2018 9:00 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).

**Where:** Call-in #: [REDACTED] Code: [REDACTED] Host (Katie): [REDACTED]

ATTACHMENT A

PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (“LGA”) ACCESS IMPROVEMENT PROJECT

I. **BACKGROUND**

*General:*

For background with respect to The Port Authority of New York and New Jersey (the “Authority” or “Sponsor”) see [www.panynj.gov](http://www.panynj.gov). Additionally, the most recent electronic version of the Authority’s Annual Report is available at <http://www.panynj.gov/corporate-information/annual-reports.html>.

*Project Description:*

The Authority is proposing to construct a new automated people mover (“APM”) AirTrain system to provide a fast, convenient, predictable, and reliable transit alternative for air passenger and employee access to LaGuardia Airport (“LGA” or the “Airport”). This proposed project, herein referred to as the LaGuardia Airport Access Improvement Project (the “Project”), is to provide a direct connection between the Airport and Metropolitan Transportation Authority’s (“MTA”) Long Island Rail Road (“LIRR”) and New York City Transit (“NYCT”) stations. Further, the LaGuardia Airport Access Improvement Project shall ~~provide a connection to employee parking and not preclude the potential future expansion of support facilities beyond the existing airport boundary, such as a consolidated rental car facility and/or additional airport parking~~ include provision for off-airport employee parking with convenient access by way of the new transportation service to the Airport. The Federal actions associated with the Authority’s proposed Project are decisions by the Federal Aviation Administration (“FAA”) on an updated Airport Layout Plan (“ALP”) and for the use of Passenger Facility Charge (“PFC”) funding, should the Authority pursue imposing and using PFC funding for the proposed Project.

The Authority’s preferred alternative is for an elevated AirTrain to operate between the Airport and a transfer station at Willets Point. The proposed AirTrain system would include two on-airport stations and a terminus station at Willets Point providing connections to the Mets-Willets Point stations of the LIRR Port Washington Branch and the NYCT Flushing No. 7 subway line. In addition to providing a connection to the LIRR and NYCT stations at the Willets Point terminus station, the proposed AirTrain would serve as an on-airport transit system that would facilitate transfers between airline terminals and provide connections to ~~employee parking and potential future passenger parking and a consolidated rental car facility~~ facilities. The proposed AirTrain system would provide access to LGA’s ~~primary passenger terminals and must~~ new Terminals B and C. Additionally, the Authority seeks not to preclude ~~a future~~ extensionservice to ~~the Marine Air~~ Terminal A. The proposed Project includes associated facilities and infrastructure (stations, guideway, maintenance/control facility, etc.) as well as the systems (vehicles, train control, power distribution system, etc.) for the AirTrain.



The Authority's goal is to complete the proposed Project and commence passenger service as close as possible to the end of 2022, when other major redevelopment projects are expected to be completed, in order to minimize the duration of construction-related disruptions to customers. As such, the Authority is seeking to accelerate the environmental review schedule for the proposed Project, with the goal of the FAA completing the issuance of a Record of Decision ("ROD") and completing the National Environmental Policy Act ("NEPA") review as early as 12-months from the Notice of Intent ("NOI") for services hereunder to enable construction of the proposed Project to begin ~~in 2019~~ by the first quarter of 2020. This proposed timeframe may be impacted by a number of factors, including concurrent environmental review by other Federal, state, and local agencies. The Consultant shall comply with the processes and procedures outlined in Executive Order 13807: Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, signed on August 15, 2017, such as facilitation of efficient collaboration and communication with agencies involved with the environmental review and permitting for the proposed Project.

*General Description of Consultant Services:*

The Authority is seeking a Consultant to provide professional services to assist the FAA in preparing an Environmental Impact Statement ("EIS") to assess and disclose the potential environmental impacts of the construction and operation of the Authority's proposed Project and reasonable alternatives in a manner that complies with all applicable federal, state and local environmental laws and regulations. The FAA is the lead Federal agency for preparing the EIS in accordance with the requirements of NEPA (42 U.S.C. 4321 et. seq.), the Council on Environmental Quality ("CEQ") regulations (40 C.F.R. Parts 1500-1508), and appropriate U.S. Department of Transportation and FAA environmental orders. As stated above, the Federal actions associated with the Authority's proposed Project include but are not limited to a decision by FAA on an updated ALP, and should the Authority pursue imposing and using PFC funding for its proposed Project, a decision by FAA regarding use of such PFC funds.

The Consultant shall be responsible to the FAA for the preparation of an EIS associated with the Authority's proposed Project. The FAA shall direct the services provided by the Consultant hereunder. The Consultant shall serve as the independent third party assisting the FAA with conducting the EIS process in an efficient and cost-effective manner, while maintaining a high degree of accuracy and validity in the production of all EIS deliverables.

Preliminary planning work is being conducted by the Authority. The documentation for the Authority's planning efforts will be provided by the Authority to the FAA. This documentation will be provided to the Consultant at the discretion of the FAA.

**II. SCOPE OF SERVICES**

~~Prior to agreement execution, and~~ Within fifteen (15) business days of notice of selection, the Consultant should develop and submit a detailed scope of work for the entire assignment, in order to meet the Authority's goal for the expeditious completion of the EIS. The detailed scope of work is hereinafter referred to as the Plan of Study, which is subject to FAA approval.

The draft Plan of Study shall be accepted by the FAA prior to ~~contract award and subsequent~~ issuance of the NOI. It is the Authority's goal that the NOI be issued no later than the end of the fourth quarter of 2018. The Plan of Study will include detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated person-hours required for completion of each aspect, the schedule for performing each aspect, and a description of the internal and external review procedures to assure quality control. The Plan of Study will also include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the planning and environmental data and analyses and the development and preparation of the EIS. Finally, the Plan of Study must comply with all applicable regulations and must include such additional analytical requirements as provided by the FAA prior to completion. In addition, in producing or revising the Plan of Study, the Consultant may consider as appropriate any relevant submissions made by the Authority or its representative to the FAA. The Plan of Study, as accepted by the FAA, shall amend and restate the entirety of this section, Section II. Scope of Services.

The EIS is to be accomplished in accordance with FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, Order 5050.4B, *NEPA Implementing Instructions for Airport Actions*, and associated Desk References (or the current version at time of contract award) and special purpose laws. Specific environmental issues to be included in the EIS may include, but are not limited to:

- a) Air Quality
- b) Biological Resources
- c) Climate
- d) Coastal Resources
- e) Department of Transportation Act, Section 4(f)
- f) Farmlands
- g) Hazardous Materials, Solid Waste, and Pollution Prevention
- h) Historical, Architectural, Archaeological, and Cultural Resources
- i) Land Use
- j) Natural Resources and Energy Supply
- k) Noise and Noise Compatible Land Use
- l) Socioeconomic, Environmental Justice, and Children's Environmental Health and Safety Risks
- m) Visual Effects
- n) Water Resources (Wetlands, Floodplains, Surface Waters, Groundwater, Wild and Scenic Rivers)
- o) Cumulative Impacts
- p) Irreversible and Irrecoverable Commitment of Resources

The individual scope of these studies may be modified by the needs and requirements of the FAA designated cooperating agencies.

It is anticipated that the scope of work resulting from the Plan of Study may require the Consultant to perform the following services, at minimum:

## DRAFT AND DELIBERATIVE

1. Facilitate and conduct meetings necessary for the preparation and development of the EIS.
2. Provide project management duties, including but not limited to preparing reports, updating the Plan of Study as necessary, taking meeting minutes, coordinating activities between all stakeholders, schedule monitoring, preparing presentation materials, creating and maintaining the project file, assisting in the identification and compilation of the administrative record in the event of any potential legal proceedings associated with the environmental review or final agency actions or decisions, and assistance throughout any potential legal proceedings, etc.
3. Review project-related documents necessary for the development of the EIS, including planning documents provided to the FAA by the Authority or its representative. The Consultant shall review and independently evaluate the materials prepared by the Authority or its representative and shall complete the EIS documentation as required.
4. Assist the FAA to fulfill its lead Federal agency role and enhance effective NEPA scoping to ensure early in the process that the EIS addresses key issues of concern to agencies and the public.
5. Develop the Purpose and Need Statement, to provide the parameters for defining a reasonable range of alternatives and to be utilized for the comparative evaluation of alternatives to the Sponsor's proposed Project. The Purpose should outline the goals and objectives that the Sponsor's proposed Project should achieve, and the Need should provide the data to support the Purpose.
6. Prepare an alternatives analysis addressing a range of reasonable alternatives to the Sponsor's proposed Project. It is expected that the "No Action" and the Sponsor's proposed Project will be alternatives. The Consultant will identify other potential alternatives and conduct a screening of alternatives, as appropriate.
7. Describe existing environmental resources and conditions that the Sponsor's proposed Project, reasonable alternatives, and No Action may affect.
8. Describe impacts and environmental consequences of the Sponsor's proposed Project and reasonable alternatives that were previously identified for further evaluation, including the No Action alternative.
9. Prepare draft and final versions of the EIS, including the preparation of draft chapters and preliminary draft EIS and preliminary final EIS. It is anticipated that the draft and final version should include the following elements, at minimum:
  - a. Cover Page
  - b. Executive Summary
  - c. Table of Contents
  - d. Purpose and Need

## DRAFT AND DELIBERATIVE

- e. Alternatives
  - f. Affected Environment
  - g. Environmental Consequences
  - h. Mitigation
  - i. List of Preparers
  - j. List of Agencies, Organizations, and Persons to Whom Copies of the Statement are Sent
  - k. Index
  - l. Appendices (if any)
  - m. Comments
  - n. Footnotes
10. Solicit and facilitate public and stakeholder involvement on behalf of FAA throughout the EIS process in accordance with NEPA and relevant special purpose laws.
11. Ensure that the EIS documentation includes relevant information required for future permitting applications and processes, as required.
12. Assist the FAA in the preparation of a draft ROD.

All work prepared under this Agreement shall be delivered to the FAA in printed format and searchable .pdf files along with components associated with each item, such as data files, text files, image files, spreadsheets, graphs, and tables. These products, where applicable, will be compatible with and incorporated into the Airports Geographic Information System (“AGIS”) managed by the FAA (as applicable). While performing work under this Agreement, the Consultant shall be responsible for managing the administrative project file and, upon completion of the work, will be responsible for submitting a completed administrative record for the project to the FAA, in accordance with FAA policy and guidance.

### **III. PERIOD OF PERFORMANCE**

The period of performance (through completion of the final EIS) of the services is not to exceed that which is to be directed by the FAA as the lead Federal agency for services hereunder. The work will be performed in accordance with FAA's procedures for assessing environmental impacts including FAA Orders 1050.1F and 5050.4B (or the current version(s) at time of agreement award). While it is conceivable that issues raised during the public comment process could affect the time of performance, the Consultant should assume that the FAA will grant any extensions of time for performance only for the most extraordinary circumstances. The Period of Performance establishes the expected outer limit for project development.

### **IV. LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE**

#### **A. Commercial Liability Insurance:**

1) The Consultant(s), and all of its/their Sub-consultants shall take out, maintain, and pay the premiums on **Commercial General Liability Insurance** for the life of the Agreement and such Insurance and shall be written on an ISO occurrence form CG 00 01 0413 or its equivalent covering the obligations assumed by the Consultant(s) under this Agreement, including, but not

## DRAFT AND DELIBERATIVE

limited to, Premises-Operations, Products and Completed Operations, Broad form property damage, personal and advertising injury and Independent Contractor's coverages, with contractual liability language covering the obligations assumed by the Consultant(s) with insurance covering against claims for injuries to persons or damages to property which may arise from or in connection with products and materials supplied to the Agency in limits of not less than **\$10,000,000** combined single limit per occurrence and in the annual aggregate. If vehicles are to be used to carry out the performance of this Agreement, then the Consultant(s) shall also take out, maintain and pay the premiums on **Automobile Liability Insurance** covering all owned, non-owned and hired autos in not less than **\$5,000,000** combined single limit per accident for bodily injury and property damage. **(Only if Applicable)**

The insurance shall be written on an occurrence basis, as distinguished from a "claims made" basis, and shall not include any exclusions for "action over claims" (insured vs. insured) and minimally arranged to provide and encompass at least the following coverages:

- Contractual Liability to cover liability assumed under the Agreement;
- Independent Contractor's Coverage;
- Premises-Operations, Products and Completed Operations Liability Insurance;
- The insurance coverage (including primary, excess and/or umbrella) hereinafter afforded by the Consultant(s) and Sub-consultant(s) shall be primary insurance and non-contributory with respect to the additional insureds;
- Excess/umbrella policies shall "follow form" to the underlying policies;
- Excess/umbrella policies shall have a liberalization clause with drop down provision;
- To the extent any coverage the Consultant(s) and Sub-consultant(s) obtains and/or maintains under this Agreement contains "Other Insurance" language or provisions shall not be applicable to the additional insureds or to any insurance coverage maintained by the additional insureds;
- All insurance policies shall include a waiver of subrogation, as allowed by law, in favor of the additional insureds;
- Defense costs must be outside of policy limits. Eroding limits policies are not permitted;
- In the event the Consultant(s) and/or its Sub-consultant(s) obtains and/or maintains broader coverage and/or insurance in an amount greater than the minimum limits required under this Agreement, then the full limits of that insurance coverage will be available to respond to any claims asserted against the additional insureds that arises out of or is in any way connected with this Agreement;
- Additional insureds coverage shall not be restricted to vicarious liability unless required by controlling law;

In addition, the liability policy(ies) shall be written on a form at least as broad as ISO Form CG 20 10 10 01 (for ongoing operations work) together with ISO Form CG 20 37 10 01 (for completed operations work) or their equivalent and endorses to name "The Port Authority of New York and New Jersey, and its related entities, their Commissioners, Directors, Superintendents, officers, partners, employees, agents, their affiliates, successors or assigns", in addition to: The Federal Aviation Administration, The City of New York, for all operations at John F. Kennedy and LaGuardia Airports; Port Authority Trans-Hudson Corporation, for operations at PATH; AFCO

## DRAFT AND DELIBERATIVE

AvPorts Management LLC, for operations at Teterboro Airport; AFCO AvPorts Management LLC and NY State Dept. of Transportation, for operations at Stewart Int'l Airport, Trends Urban Renewal for operations at PATC and Silverstein Properties Inc.; The Port Authority of New York and New Jersey; Silverstein 2/3/4 WTC Redevelopment LLC; WTC Redevelopment LLC; World Trade Center Properties LLC; 4 World Trade Center LLC; Net Lessees 'Association of the World Trade Center; WTC Management and Development LLC; Silverstein WTC Mgmt. Co. LLC. Silverstein WTC Mgmt. Co II LLC; Silverstein WTC Properties LLC; Silverstein WTC Management and Development LLC; Silverstein WTC LLC.; WTC Investors LLC.; 4 WTC Holdings LLC; WTC Investors Management and Development LLC; World Trade Center Holdco LLC; 4 WTC Mezz LLC. for operations at the World Trade Center Site as "Insured" (as defined in the policy or in an additional insured endorsement amending the policy's "Who Is An Insured" language as the particular policy may provide) on its liabilities policies with respect to liability arising out of work or operations performed by or on behalf of the Consultant(s) including, but not limited to, materials, parts or equipment furnished in connection with such work or operations. The "Insured" shall be afforded coverage and defense as broad as if they are the first named insured and regardless of whether they are otherwise identified as additional insureds under the liability policies, including but not limited to premises-operations, products-completed operations of the Commercial General Liability Policy. Such additional insureds status shall be provided regardless of privity of contract between parties. The liability policy(ies) and certificate of insurance shall contain cross-liability language providing severability of interests so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds shall not reduce or void coverage to the other insureds. The Consultant(s) is/are responsible for all deductibles or losses not covered by commercially procured insurance. Any portion of the coverage to be provided under a Self-Insured Retention (SIR) of the Consultant(s) is/are subject to the review and approval of the General Manager, Risk Financing. Furthermore, any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim.

Any self-insured retention shall cover any liability imposed upon the Consultant(s) and any and all subsidiaries with respect to all operations and obligations assumed by the Consultant(s) and any and all subsidiaries. The undersigned represents that such program provides the Additional Insureds (as defined in the Agreement) with all rights, immunities and protections that would be provided by traditional independent insurance required under the Agreement, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies pursuant to the terms of the Agreement.

If any of the Work is to be done on or at Port Authority facilities by the Sub-consultants and, if the Consultant(s) requires its Sub-consultant(s) to procure and maintain such insurance in the name of the Consultant(s), then such insurance as is required herein shall include and cover the additional insureds and it must have insurance limits not lower than those set forth by the Port Authority herein, along with all the insurance requirements in this "Insurance" section.

Further, it is the Consultant's responsibility to maintain, enforce and ensure that the type of coverages and all limits maintained by it and any of all Sub-consultants are accurate, adequate and in compliance with the Port Authority requirement. All certificates of insurance shall be turned over to the Port Authority prior to the start of work, and upon completion of the Agreement.

*The Consultant, its Sub-consultant(s) and its insurer(s) shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.*

**2) Workers' Compensation Insurance:**

The Consultant(s) and its/their Sub-consultant(s) shall take out, maintain and pay premiums on Workers' Compensation Insurance in accordance with the requirements of law in the state(s) where work will take place, and Employer's Liability Insurance with limits of not less than **\$1,000,000** each accident. Such policy shall include a waiver of subrogation endorsement in the benefit of the additional insureds.

**3) Additional Coverages:** The Consultant(s) shall have the policy endorsed "**Only when required by the Director**" for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) Any/all activities performed airside must, at all times, be performed while under security escort as approved in advance, and in writing by the Project Manager. If the services of the Consultant(s), as directed by the Authority, require the performance of services airside, the Commercial General Liability and Automobile Liability coverage limits stipulated in subparagraph 1, above, shall be increased to an amount not less than \$25,000,000 per occurrence as provided herein.
- b) Endorsement to eliminate any exclusions applying to the explosion, collapse, and underground property damage (XCU) hazards.
- c) Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
- d) Coverage for work within fifty (50) feet of railroad.

**4) Additional Coverages:** The Consultant(s) shall have the policy endorsed "**Only when required by the Director**" for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.
- b) Coverage B Endorsement - Maritime (Masters or Members of the Crew of Vessels), in limits of not less than \$1,000,000 per occurrence.
- c) Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$1,000,000 per occurrence.

**5) Professional Liability Insurance:**

## DRAFT AND DELIBERATIVE

The Consultant(s) shall take out, maintain and pay premiums on Professional Liability Insurance in limits of not less than **\$10,000,000** each occurrence, covering acts, errors, mistakes, and omissions arising out of the work or services performed by Consultant(s), or any person employed by Consultant(s). All endorsements and exclusions shall be evidenced on the certificate of insurance. The coverage shall be written on an occurrence basis or may be written on a claims made basis with a minimum of a three-year reporting/discovery period.

Each policy above shall contain an endorsement that the policy may not be canceled, terminated or modified without thirty (30) days' prior written notice to the Project Manager, at the location where the work will take place with a copy to the General Manager, Risk Financing.

The Port Authority may, at any time during the term of this Agreement, change or modify the limits and coverages of insurance. Should the modification or change result in an additional premium, the General Manager, Risk Financing for the Port Authority may consider such cost as an out-of-pocket expense.

Within five (5) days after award of this Agreement and prior to the start of work at the site, the Consultant(s) must submit an original certificate of insurance, to the Project Manager and Exigis email: [REDACTED] at the location where the work will take place. This certificate of insurance MUST show evidence of the above insurance policy(ies), including, but not limited to, the title of this Agreement, the P. A. Agreement number, the notice of cancellation provisions, prior to the start of work. The Consultant(s) is/are also responsible for maintaining and conforming to all insurance requirements from the additional insureds and their successors and assigns. The General Manager, Risk Financing must approve the certificate(s) of insurance before any work can begin. Upon request of the General Manager, Risk Financing/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.

Renewal certificates of insurance or policies shall be delivered to the Authority's Project Manager, and upon request from the additional insureds, their successors or assigns at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Financing must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Authority, the Consultant(s) shall promptly obtain a new and satisfactory certificate and policy and provide same to the Port Authority.

If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then, the Consultant(s) and all Sub-consultants shall suspend performance of the Agreement at the premises until a satisfactory insurance policy(ies) and certificate of insurance is provided to and approved by Risk Financing, unless the Facility or Project Manager directs the Consultant(s), in writing, to continue to performing work under the Agreement. If the Agreement is so suspended, no extension of time shall be due on account thereof.

Failure by the Consultant(s) to meet any of the insurance requirements, including the requirement that the Port Authority be afforded the full extent of the insurance obtained under this Agreement



DRAFT AND DELIBERATIVE

without limitation, shall be deemed a material breach of Agreement and may be a basis for termination of this Agreement by the Port Authority.

The requirements for insurance procured by the Consultant(s) shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Consultant(s) under this Agreement. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Consultant against the obligations imposed on them by law or by this or any other Agreement.

All insurance coverage shall be provided by the Consultant(s) and/or by or for any of its/their Sub-consultant(s) at no additional expense to the Port Authority and its related entities. A copy of this "Insurance" section shall be given to your insurance agent and Sub-consultant(s) and shall form a part of the covered Agreement for insurance purposes in furtherance of the insurance requirements of this Agreement.

\*\*\*\*

DATE

**SUBJECT: REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (LGA) ACCESS IMPROVEMENT PROJECT (RFP# ~~\*\*\*\*\*~~54523)**

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the “Authority”) is seeking proposals in response to this Request for Proposals (“RFP”) for a Consultant to provide the subject services. The services will require the preparation of an Environmental Impact Statement (“EIS”) for the LGA Access Improvement Project (the “Project”). The Authority’s goal is to complete the proposed Project and commence passenger service as close as possible to the end of 2022, when other major redevelopment projects are expected to be completed, in order to minimize the duration of construction-related disruptions to customers. Therefore, the Authority is committed to supporting the completion of the EIS within 12 months of the Notice of Intent (“NOI”) to enable construction of the proposed Project to begin ~~in 2019~~ by the first quarter of 2020. As such, both the Authority, as the Airport Sponsor, and the Federal Aviation Administration (“FAA”) will work together to facilitate the expeditious preparation of the EIS. The Authority is issuing this RFP, and both the Authority and FAA will participate in the process to evaluate proposals. The roles of the Authority and FAA in the evaluation process are set forth below in Section III. Selection Process. The selected firm (the “Consultant”) will work directly with the FAA for the performance of the services that will culminate in the development of the EIS. The Authority and the Consultant will negotiate and enter into an agreement (“Agreement”) resulting from this RFP, for the performance of the Consultant’s services on behalf of the FAA. The Authority will be responsible for overall contract administration and payment for the Consultant’s services as accepted by the FAA, while the Consultant reports to the FAA for direction on the development of the EIS.

The general scope of services to be performed by the Consultant is set forth in Attachment A. ~~In accordance with Section IV below and~~ In order to meet the Authority’s goal for the expeditious completion of the EIS, a detailed scope of work should be drafted by the selected Consultant and provided to the FAA for review within fifteen (15) business days of notice of selection, ~~and prior to Agreement execution.~~ This detailed scope of work shall serve as a Plan of Study for the assignment. The draft Plan of Study must be accepted by the FAA prior to contract award and subsequent issuance of the FAA’s NOI to conduct an EIS. It is the Authority’s goal that the NOI be issued by the FAA no later than the end of the fourth quarter of 2018.

**I. PROPOSAL FORMAT REQUIREMENTS:**

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

- A. To be acceptable, this Proposal shall be no more than **20** single sided pages or **10** double sided pages, using 12 point or greater font size, not including resumes. Each resume shall be a maximum of two-pages single-sided or one-page double-sided, using 12 point or greater font size. The page limit pertains only to Numbers 4 through 9 (excluding resumes)

## DRAFT AND DELIBERATIVE

requested in Number 6) in Section II, below. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with “Your Firm Name”, and **RFP Number \*\*\*\*\*54523** clearly indicated on the cover.

- B. Separate each section of the Proposal with a tab divider that is labeled in accordance with the letter of the requirements specified below in Section II.
- C. All proposals must be delivered in sealed envelopes and/or packages. Address the Proposal to: The Port Authority of New York and New Jersey, 4 World Trade Center, 21<sup>st</sup> Floor, New York, NY 10007, Attention: RFP Custodian.
- D. You shall submit the Technical Proposal as follows in one envelope:

**One (1) reproducible original** hard copy containing original signatures along with **twenty (20) compact disc copies of your Technical Proposal** for review. USB Flash Drives will not be accepted. In case of conflict, the reproducible original of the Technical Proposal shall take precedence over material on the CDs.

The Technical Proposal shall include all information requested in the “Technical Proposal” subsection of Section II hereof. **No pricing-related information shall be provided in the original and CD copies of the Technical Proposal.**

- E. In each submission to the Authority, including any return address label, information on the compact disc and information on the reproducible original and copies of the proposal, the Proposer shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure to comply with this requirement may lead to delays in contract award and contract payments, which shall be the responsibility of the Proposer.
- F. Your Proposal should be forwarded in sufficient time so that the Authority receives it **no later than 2:00 p.m. on <DATE>**. The outermost cover of your submittal must be labeled to include the RFP Number and title as indicated in the “Subject” above. The Authority assumes no responsibility for delays caused by any delivery services.

If your Proposal is to be hand-delivered, note that only individuals with proper identification (e.g. photo identification) will be permitted access to the Authority’s offices. Individuals without proper identification will be turned away and their packages not accepted.

There is extensive security at the World Trade Center Site. You must present a valid government-issued photo ID to enter 4 WTC. Individuals without packages or carrying small packages, envelopes or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All packages, envelopes and boxes may be subject to additional security screening. There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited. Express carrier deliveries by commercial vehicles will only be made via vendors approved by Silverstein Properties, the WTC Property Manager, through the Vehicle Security Center (VSC). Please note that use of the U.S. Mail does not guarantee delivery to Authority offices by the below listed due date for submittals. Proposers using the U.S. Mail are advised to allow sufficient delivery time to ensure timely receipt of their proposals. Presently, UPS is the only delivery vendor with approved recurring delivery times. UPS makes deliveries to 4 WTC around 9:30 a.m. each day. Please plan your submission accordingly. As additional express carriers may be approved by Silverstein Properties and scheduled for recurring delivery times with the VSC,

## **DRAFT AND DELIBERATIVE**

this information may be updated. Under certain circumstances, a solicitation may allow for a commercial vehicle to be approved to make a delivery in accordance with the VSC procedures. If applicable, the specific solicitation document will include that information. The Port Authority assumes no responsibility for delays, including, but not limited to, delays caused by any delivery services, building access procedures, or security requirements.

### **II. SUBMISSION REQUIREMENTS:**

To respond to this RFP, provide the following information:

#### **A. TECHNICAL PROPOSAL:**

1. In the front of your Technical Proposal, a copy of Attachment B (Agreement on Terms of Discussion) signed by an officer of your company. If proposing as a joint venture, each member of the joint venture must sign a copy of Attachment B.
2. Complete a copy of Attachment C (Company Profile).
3. Transmittal Letter
  - a. Include a statement indicating whether the Consultant is proposing as a single entity, or as a joint venture.
  - b. If a joint venture which has not been established as a distinct legal entity (a common-law joint venture) submits a proposal, all participants in the joint venture shall be bound jointly and severally and each participant shall execute the proposal. If a single entity proposer cannot demonstrate that it meets all of the referenced qualifications, then the single entity proposer may, with others, form a joint venture and request that the joint venture be deemed to be the Proposer (i.e. members of the joint venture may meet the qualification requirement collectively).
  - c. If the Proposer is a joint venture, the joint venture's Proposal shall contain an executed teaming agreement or, alternatively, if the entities making up the joint venture proposer have not executed a teaming agreement, the joint venture's proposal shall contain a summary of key terms of the anticipated agreement. If the joint venture proposer is a consortium, partnership or any other form of a joint venture, or an association that is not a legal entity, the proposal shall include a letter signed by each member indicating a willingness to accept joint and several liability until the point at which a corporation, limited liability company or other form of legal entity is formed for the purposes of undertaking the Agreement.
4. Project Approach/Schedule: Demonstrate a thorough understanding of the FAA EIS process. Identify methodologies and approaches that would be utilized to analyze and resolve environmental issues. Describe the proposed public scoping and public hearing process, work products, detailed project schedule, along with the responsibilities of each of the proposed staff/team members and subconsultants and their anticipated percentage of each individual's time working on the project. In order to meet the Authority's goal for the expeditious completion of the EIS, propose an approach to enable the expeditious development a draft Plan of Study within fifteen (15) business days of notice of selection and provide any assumptions related to producing an EIS within twelve (12) months of an

## DRAFT AND DELIBERATIVE

NOI. To achieve the 12-month schedule, include a description of the proposed process for 1) efficient coordination with FAA, the Authority, subconsultant work efforts, other federal, state and local agencies and the general public; 2) expediting the development of EIS documentation 3) facilitating accelerated completion of comment review, responses and associated revisions. For example, developing a detailed timeline for development of the EIS and an approach for gaining commitment from all necessary stakeholders to adhere to the timeline; initiating the Draft EIS documentation in parallel with preparation for public scoping, as appropriate; and streamlining comment collection from necessary stakeholders through roundtable reviews.

A description of the team's understanding of any unique issues associated with the preparation of an EIS at LGA should be included. Describe procedures to be followed to adhere to the Authority's goal of completion of the issuance by the FAA of a Record of Decision ("ROD") and completion of the National Environmental Policy Act ("NEPA") review within a 12-month period from the Notice of Intent ("NOI"). In addition, if the Proposer proposes an alternate schedule (exceeding the aforementioned twelve months), the Proposer shall provide its rationale for the longer schedule, its assumptions to producing an EIS within the longer proposed period, and a description of procedures to be followed to adhere to the alternate schedule.

5. Project Experience: Provide summaries of experience for past projects by prime consultant and team members (if applicable) that demonstrate experience and ability to undertake and complete an EIS specifically for airport projects and transit systems similar to the proposed project. Do not include projects for which key project personnel are no longer employed by the firm. List the names of key employees with each project. Projects for which individuals gained experience during previous employment should be indicated in this section.

For each qualifying project, include the following information in tabular form: project name, location, client, total contract amount, principal-in-charge, day-to-day technical project manager, key design staff, original estimated schedule and actual schedule of completion (defined for an EIS as Notice of Intent to Record of Decision and for an EA as Notice to Proceed to acceptance of the Final EA) client reference (name, position and phone number) and brief narrative description of the project.

6. Organization and Management: Provide an organizational chart and narrative description of the administrative structure proposed for managing this project. Outline major responsibilities and areas of expertise.

The overall project manager and key staff members (both prime firm and subconsultants) must be identified and resumes provided. The project manager is considered to be the single most important Consultant asset, and is expected to maintain responsibility and availability for the project through completion of the EIS required by the scope of services (Attachment A).

Provide a list of projects that the proposed project manager is responsible for and expected completion dates. Resumes of firm principals are not required unless they are proposed as active, integral members of the Consultant team. Principals should, however, be listed on

## DRAFT AND DELIBERATIVE

the organizational diagram in relation to the Consultant team. This section should also include the location of each firm and key staff members.

In addition, if the proposal includes a prime firm and subconsultants, demonstration of relevant past working experience as a team is desired. The relevance of past working experience will be prioritized based on the following: 1) experience on FAA-directed environmental projects; 2) experience on other airport projects not directed by the FAA; 3) experience on environmental projects for other modes under the umbrella of the Department of Transportation; 4) experience on environmental projects for other Federal agencies; and 5) experience with expedited completion of environmental projects

7. References: provide a total of five (5) references of similar projects. For each reference include contact name, title, project name and location, mailing address, phone number, fax number and e-mail address.
8. Description of Proposer/Team: Provide a general description of the Proposer, including services offered, number of employees, office location, years in business, etc. Indicate aviation and rail-related EIS and EA work to which the firm is currently committed. Include similar descriptions for each subconsultant.
9. QA/QC: Describe quality assurance and quality control procedures. Demonstrate experience in successfully implementing quality control programs on comparable projects.
10. See Appendix A to this RFP letter for the MBE/WBE Subcontracting Provisions.
11. Provide a complete list of your firm's affiliates.
12. If the Proposer or any employee, agent or subcontractor of the Proposer may have, or may give the appearance of a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict. The Authority reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any source could create, or give the appearance of, a conflict of interest. The Authority's determination regarding any question(s) of conflict of interest shall be final.

Proposer is required to disclose all work performed at LaGuardia Airport for a period of three (3) years prior to the date of submission. Proposer shall include work performed by all affiliates, and provide, to the extent applicable, start and end dates of each engagement, the name of the stakeholder or entity for which the Proposer performed work, and a short description of the nature of the work or project.

Proposers are further advised that under this Agreement, firms must provide, written notice to the Port Authority of any existing or potential conflict of interest the firm(s) may have in the performance of Services under this Agreement.

Furthermore, Proposers should ensure that they are familiar with FAA regulations and policy on conflicts of interest of EIS consultants. Pursuant to 40 C.F.R. Part 1506.5(c), the selected Consultant and any subconsultants performing the work shall certify that they have not entered into and will not enter into during the lifetime of the EIS preparation any agreement affording the Consultant and any subconsultants with any direct or indirect

## DRAFT AND DELIBERATIVE

financial interest in the planning, design, construction or operation of the project that is the subject of the EIS except the preparation of the EIS. Prior to beginning work on the EIS, the Consultant and any subconsultants shall sign a "Disclosure Statement" per the requirements of 40 C.F.R. 1506.5(c) and FAA Orders 1050.1F and 5050.4B, specifying they have no financial or other interest in the outcome of the project.

13. **Code of Ethics for Port Authority Vendors:** The Proposer's attention is directed to the Port Authority's "Code of Ethics for Port Authority Vendors." Vendors must certify in writing that they will comply with every aspect of this Code. The Proposer should submit an executed Compliance Certification with their Proposal. The Compliance Certification, once executed, will be a material and integral part of any Agreement resulting from this solicitation. The Code of Ethics and the Compliance Certification can be found on the Authority's website at <https://www.panynj.gov/business-opportunities/become-vendor.html>.
14. The selected Consultant(s) shall comply with the requirements of the Agreement. The scope of tasks to be performed by you is summarized in Attachment A and will be detailed in the Plan of Study, which will be attached to and incorporated in the final Agreement and will amend and restate Section II. Scope of Services of Attachment A.

### **III. SELECTION PROCESS:**

The qualifications based selection shall take into consideration the technical criteria conveyed in this section (listed in order of importance). After consideration of these factors, the Authority may enter into negotiations with the firm(s) deemed best qualified, in terms of the forgoing Technical Proposal criteria, to perform the required services.

The Authority will review proposals to determine if they satisfy the requirements of this RFP, including adherence to the RFP's specified format and the provision of all required documentation. Proposals will then be reviewed according to a two-phased evaluation process. The **first phase of the evaluation process** will involve Authority and FAA staff, and will include a detailed review and evaluation of the proposals according to the following criteria:

1. Project Approach/Schedule;
2. Project Experience;
3. Organization and Management;
4. References;
5. Description of Proposer/Team;
6. QA/QC.

Only those proposals receiving the highest scores in the first phase of the evaluation process will be evaluated in the **second phase of the evaluation process**.

The **second phase of the evaluation** will involve staff from the Authority and FAA. Only FAA staff will score proposers in the second phase of the evaluation. The second phase of the evaluation commences with interviews of the highest-rated proposers from the first phase of evaluation. The interviews will consist of presentations by the highest-rated proposers, followed by a question and answer session led by FAA staff. After the last interview, FAA

## DRAFT AND DELIBERATIVE

staff will score the interviews and add the interview scores to the first phase scores, and recommend that the Port Authority retain the proposer that received the highest combined score for the performance of the agreement resulting from this RFP. A notice of selection will be transmitted to the selected Proposer, ~~prior to execution of the Agreement.~~

The following is the anticipated schedule for the selection process:

~~XX~~ **Week 1** Request for proposals advertised

~~XX~~ **Week 4** Proposals due to the Authority

~~XX~~ **Week 6** Selection Committee holds interviews with select firms

~~XX~~ **Week 6 - 12** ~~Selected~~ Notice of selection to firm is notified and commences commencement of draft Plan of Study with FAA

~~XX~~ \_\_\_\_\_, and contract award

### ~~IV. POST SELECTION PROCESS (prior to Agreement execution):~~

~~In order to meet the Authority's goal for the expeditious completion of the EIS, a detailed scope of work and cost proposal for all work to be performed under the agreement resulting from this RFP should be drafted by the selected Consultant and provided to the FAA within fifteen (15) business days of notice of selection, and prior to agreement execution. The Authority will compensate the Consultant for its efforts in developing the detailed scope of work at the rates provided in the Consultant's cost proposal, as accepted by the Authority.~~

~~After this detailed scope of work has been finalized and accepted by the FAA, it shall serve as the Plan of Study for the assignment. The Authority will then negotiate a cost proposal with the Consultant for the services to be provided in accordance with the Plan of Study.~~

### ~~V. READING ROOM FOR CERTAIN PROJECT RELATED INFORMATION~~

~~The Authority will provide prospective Proposers with access to a reading room (Reading Room) containing certain documents related to the Project; the Reading Room will be located at 4 World Trade Center. Such access will be provided only to those firms deemed solely by the Authority as bona fide Proposers interested in responding to this RFP. The Authority makes no representation or guarantee, and shall not be responsible, for the documents' accuracy, completeness or pertinence, and shall not be responsible for the conclusions drawn therefrom.~~

### IV. PROJECT DOCUMENTS:

Proposers can access available documents related to the Project through xxx. These documents are made available merely for the purpose of making available such information as is in the possession of the Authority and which it is able to make available, whether or not such information may be accurate, complete or pertinent or of any value to prospective Proposers.

~~In order to be deemed a bona fide Proposer and obtain Reading Room access to these documents, a firm must first submit the following to the Solicitation Manager listed in~~



## DRAFT AND DELIBERATIVE

~~Section VI below (firms shall send a PDF attachment of the required documents to the Solicitation Manager via email: [REDACTED] (copying Krystina Papasavvas at [REDACTED])~~

~~A. A letter of intent to propose on this RFP, signed by a principal of the firm on firm letterhead.~~

~~B. A completed Attachment C (Company Profile).~~

~~C. A notarized affirmation signed by a principal of the firm that contains the following certification:~~

- ~~1. the information provided for review by the Authority will be kept in confidence by the firm and by any contemplated and actual proposed subconsultants and/or team members with which the firm might have shared the information;~~
- ~~2. the information provided for review will be used only for the purpose of addressing the requirements of the RFP;~~
- ~~3. any notes (electronic or hard copy) taken at the Reading Room will be destroyed in the event of notification that the firm(s) was not awarded an agreement for the work to be performed under this Agreement; and~~
- ~~4. the firm will retrieve all information (notes) that might have been provided by the firm to any contemplated and actual proposed subconsultants and/or team members, for destruction in accordance with the requirements set forth under number (3) above.~~

~~It is currently anticipated that the Reading Room will be available during the following dates and times:~~

~~August X, 2018, from X:00 to X:00  
August X, 2018, from X:00 to X:00  
August X, 2018, from X:00 to X:00  
August X, 2018, from X:00 to X:00  
August X, 2018, from X:00 to X:00~~

~~Access to the Reading Room is by appointment only. Interested Proposers must RSVP by email to James Summerville ([REDACTED]) copying Krystina Papasavvas ([REDACTED]) no later than 3:00 PM of August X, 2018. The email must contain and convey the following:~~

- ~~• In separate attachments, the information requested in subsections A, B, and C, above;~~
- ~~• The requested date for access to the Reading Room; and~~
- ~~• Contact information (names, phone numbers, email addresses) for each planned attendee.~~

~~Documents provided in the Reading Room cannot be removed from the Reading Room. Furthermore, access to the Reading Room will be limited to two individuals per prospective bona fide Proposer. For further information and instructions about the Reading Room access, see Attachment X. On the day of the bona fide Proposer's visit the Reading Room, each attendee will be required to sign Attachment X. Failure to sign Attachment X and agree~~

## DRAFT AND DELIBERATIVE

to all the conditions set forth therein will preclude the attendee from having access to the available documents.

Submission of any information requested in accordance this Section is separate and apart from that also requested elsewhere in this RFP. If the information is also required under any section of the RFP, including, but not limited to, Proposer Requirements and Proposal Requirements, the information must also be submitted with the firm's proposal. Submission of such information with respect to requesting the documents, as set forth in this Section, will not constitute submission of the information for purposes of the RFP. The Authority's determination as to whether a requestor of these documents is deemed a bona fide Proposer and therefore eligible to receive the documents shall be final.

### **VI.V. ADDITIONAL INFORMATION:**

If your firm is selected for performance of the subject services, the agreement you will be asked to sign will include clauses entitled "Certification of No Investigation (Criminal Or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure Of Other Information" And "Non-Collusive Proposing, And Code Of Ethics Certification; Certification Of No Solicitation Based On Commission, Percentage, Brokerage, Contingent Or Other Fees." By submitting a proposal, the Consultant shall be deemed to have made the certifications contained therein unless said Consultant submits a statement with its proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your proposal clearly marked "CERTIFICATION STATEMENT."

Rejection of a proposal shall be only by either (a) a notice in writing specifically stating that the proposal is not accepted, signed by an authorized representative of the Authority and provided to the Proposer, or (b) omission of the Authority to accept the proposal within 180 days after the Proposal Due Date. No other act of the Authority, its Commissioners, officers, agents, representatives or employees shall constitute rejection of a proposal.

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

Prior to commencing any work associated with this Project, the selected consultant and any subconsultants shall submit a Disclosure Statement.

Proposers are also advised that additional vendor information, including but not limited to forms, documents and other related information, may be found on the Authority website at [www.panynj.gov](http://www.panynj.gov) or <http://www.panynj.gov/business-opportunities/become-vendor.html>.

After a review of all proposals received, the Authority will forward two (2) copies of the Agreement and Attachment A thereto to the selected firm(s), which shall sign and return both copies. Signature shall be by a corporate officer. The return of one copy executed by the Authority will effectuate the Agreement.

## DRAFT AND DELIBERATIVE

Should you have any questions, please contact James Summerville, Solicitation Manager (██████████) and Krystina Papasavvas (██████████). All such correspondence must have your name, title, company, mailing address, telephone number, and state “RFP \*\*\*\*\*54523” in the subject line. **The Authority must receive all questions no later than 4:00 P.M. EST four (4) calendar days after the RFP issuance date.** Neither Mr. Summerville nor Ms. Papasavvas, nor any other employee of the Authority is authorized to interpret the provisions of this RFP or accompanying documents or give additional information as to their requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned and such writing shall form a part of this RFP, or the accompanying documents, as appropriate. For RFP updates and Addenda, if any, Proposers are encouraged to access, and monitor, the Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html>. You should, therefore, monitor the advertisement on said website, as appropriate, to ensure you are aware of changes, if any.

Proposal preparation costs are not reimbursable by the Authority. The Authority shall have no obligation to a firm except under a duly authorized agreement executed by the Authority.

No rights accrue to any Proposer except under a duly authorized agreement for performance of the specified services.

The Authority reserves the right, in its sole and absolute discretion, to reject all proposals, to undertake discussions and modifications with one or more Consultants, to waive defects in proposals, and to proceed with that Proposal or modified Proposal, if any, which in its judgment will, under all the circumstances, best serve the public interest.

Sincerely,

David Gutiérrez, CPPO  
Assistant Director  
Procurement Department

Attachments

# DRAFT AND DELIBERATIVE

## APPENDIX A – MBE/WBE SUBCONTRACTING PROVISIONS

For this Agreement, the Consultant shall use good faith efforts to achieve participation equivalent to twenty percent (20%) of the total Agreement price for Authority certified MBEs and ten percent (10%) of the total Agreement price for Authority certified WBEs. Submit details on how you intend to meet these goals. A listing of certified MBE/WBE firms is available at <http://www.panynj.gov/business-opportunities/sd-mini-profile.html>.

The Proposer shall include its MBE/WBE Participation Plan (Form PA 3760C) with its Proposal, to be reviewed and approved by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

The MBE/WBE Plan submitted by the Proposer to the Authority shall contain, at a minimum, the following:

- Identification of MBE/WBEs: Provide the names and addresses of all MBE/WBEs included in the Plan. If none are identified, describe the process for selecting participant firms in order to achieve the good faith goals under this ~~Contract~~Agreement.
- Level of Participation: Indicate the percentage of MBE/WBE participation expected to be achieved with the arrangement described in the Plan.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

All MBE/WBE subconsultants listed on the MBE/WBE Participation Plan must be certified by the Authority in order for the Consultant to receive credit toward the MBE/WBE goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/supplier-diversity.html> to search for MBE/WBEs by a particular commodity or service. The Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to the MBE/WBE Participation Plan must be submitted via a modified MBE/WBE Participation Plan to the Manager for review and approval by OBDCR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use form PA3760D. The Consultant shall not make changes to its approved MBE/WBE Participation Plan or substitute MBE/WBE subconsultants or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performance of work designated for a subconsultant by the Consultant's own forces, shall be deemed a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored by the Authority throughout the duration of the Agreement.

The Consultant shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments in the form of the MBE/WBE Participation Report, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subconsultant and supplier actually involved in the Agreement, a description of the work performed and/or the product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information as it may assist the Project Manager in determining the Consultant's compliance with the foregoing provisions.

# DRAFT AND DELIBERATIVE

## **MBE/WBE Conditions of Participation**

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

1. Commercially Useful Function: An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Consultant and the MBE/WBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as a MBE/WBE, the Consultant will receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

2. Work Force: The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the ~~Contractor~~ Consultant, other subcontractors/subconsultants on the ~~Contract~~ Agreement, or their affiliates. This does not preclude the employment by the MBE/WBE of an individual that has been previously employed by another firm involved in the ~~Contract~~ Agreement, provided that the individual was independently recruited by the MBE/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.

3. Supervision: All work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Consultant, other subconsultants on the agreement, or their affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the work.

## **Counting MBE/WBE Participation**

The value of the work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime consultant/contractor shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. Subconsultants: One hundred percent (100%) of the value of the work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Consultant, other subconsultants or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE

## **DRAFT AND DELIBERATIVE**

subconsultant is itself a MBE/WBE. Work that a MBE/WBE subcontracts to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. **Material Suppliers:** Sixty percent (60%) of the expenditure to a MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. **Broker's/Manufacturer's Representatives:** One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees or commissions customarily allowed for similar services. The costs of materials and supplies themselves will not be counted.

4. **Services:** One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

5. **Joint Venture:** Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces. Contact OBDCR at (201) 395-3958 for more information about requirements for such joint ventures.

## **THE PORT AUTHORITY OF NY & NJ**

### **REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (LGA) ACCESS IMPROVEMENT PROJECT (RFP# 54523)**

The Port Authority of New York and New Jersey is seeking to identify firms interested in responding to a Request for Proposals (RFP) for the Performance of Expert Professional Environmental Review Services for the LaGuardia Airport Access Improvement Project. The successful firm will work with, and be responsible to, the Federal Aviation Administration, in preparing an Environmental Impact Statement to assess and disclose the potential environmental impacts associated with the construction and operation of a proposed AirTrain at LaGuardia Airport.

RFP #54523 may be obtained online at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html?tabnum=6>. Addenda to the RFP, if any, will be posted at this site. Monitor the advertisement on the web site to ensure your awareness of any changes.

If you have any technical problems accessing the documents online, email us at [REDACTED] or call us at [REDACTED] for assistance. Your email should include the RFP number, your firm name, email address, contact person, mailing address, and phone number.

It is currently anticipated that proposals shall be due by **2:00 PM** on **October XX, 2018** or as otherwise indicated in the document. Proposals must have the RFP Number and full legal firm name clearly indicated on the outside package.

Send Proposal(s) to: The Port Authority of New York and New Jersey, Procurement Department, 4 WTC, 150 Greenwich Street, 21st Floor, New York, NY 10007, Attention: RFP/Proposal Custodian. **\*\*SEE RFP DOCUMENT FOR SPECIFIC DELIVERY INSTRUCTIONS\*\***

**A VALID PHOTO ID IS REQUIRED TO GAIN ACCESS INTO THE BUILDING, IF YOU ARE HAND DELIVERING YOUR PROPOSAL.**

---

#### **PLEASE PUBLISH IN THE FOLLOWING:**

Newark Star Ledger  
Bergen Record  
ENR – Electronic  
NYSCR  
NJ State Contractor

**From:** [Summerville, James](#)  
**To:** [Drew Brooks](#); [Lamond, Kathryn](#); [DiScenna, Matthew](#); [Clark, Patty](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Cohen, Michelle](#); [REDACTED]; [Papasavvas, Krystina](#); [REDACTED]; [Resnick, Risa](#)  
**Subject:** RE: LGA Airtrain MOU  
**Date:** Tuesday, July 03, 2018 3:12:26 PM  
**Attachments:** [rfp letter 7-3-18.docx](#)  
[Items for Further Discussion-NEPA Consultant Procurement Process-2018-07-03.docx](#)  
[Reading Room instructions 7-3-18.docx](#)  
[Attachment A Draft 2018-03-08 PA Responses to FAA Comments Updated 2018-....docx](#)

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Andrew et al,

We're looking forward to the call on Thursday. In anticipation of that call and in response to your email below, I've attached the following documents:

**For review and discussion between the FAA and the Port Authority:**

1. Updated RFP letter. We've introduced a section for the reading room (yellow-highlighted sections on pp 7-9) and highlighted the area addressing addenda, which would include, as necessary, Q&A (pg 10)
2. A document conveying certain procurement- and evaluation-related topics, for discussion between the FAA and the Port Authority

**For reference:**

3. A new document with instructions for the Reading Room. This is being provided for your reference.
4. Attachment A (no changes from the last submission). This should be the final copy that will be included in the solicitation. Provided as reference at this time

Have a great 4<sup>th</sup>.

Thanks, James @ the Port Authority

**From:** [REDACTED] [[mailto:\[REDACTED\]](mailto:[REDACTED])]  
**Sent:** Thursday, June 21, 2018 8:20 AM  
**To:** Summerville, James <[REDACTED]> Lamond, Kathryn



<[REDACTED] DiScenna, Matthew <[REDACTED] Clark, Patty  
<[REDACTED] Tabafunda, Faith <[REDACTED] Rogak, Elizabeth  
<[REDACTED] Cohen, Michelle <[REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
Papasavvas, Krystina <[REDACTED] [REDACTED]

**Subject:** RE: LGA Airtrain MOU

James,

Thank you for sending these documents along. I was unable to respond earlier due to being at a conference in DC for the first part of the week.

We have no comments on the revisions made. We do; however, note that there is no discussion of the process by which documents will be made available to the consultant teams for review. This should be added to RFP so that the bidding firms are aware of their ability to access this information. Additionally, page 9 should include language that written answers to any questions received will be posted to the website, as the link is already provided in the RFP.

Please let us know if you have any questions on these two items. We would like to review the language again after these have been addressed within the RFP.

Thanks,

Andrew Brooks

Environmental Program Manager  
Federal Aviation Administration  
Eastern Regional Office  
1 Aviation Plaza  
Jamaica, NY 11434  
Phone: [REDACTED]

**From:** Summerville, James [[mailto:\[REDACTED\]](mailto:[REDACTED])]  
**Sent:** Tuesday, June 12, 2018 2:26 PM  
**To:** Lamond, Kathryn <[REDACTED] DiScenna, Matthew <[REDACTED]  
[REDACTED] Tabafunda, Faith <[REDACTED] Rogak, Elizabeth  
<[REDACTED] Cohen, Michelle <[REDACTED] Wolfers-Lawrence, Jean  
(FAA) <[REDACTED] Jenet, Marie (FAA) <[REDACTED] Brooks,  
Andrew (FAA) <[REDACTED] Sanchez, David (FAA) <[REDACTED]  
Doyle, John (FAA) <[REDACTED] Papasavvas, Krystina <[REDACTED]

**Subject:** RE: LGA Airtrain MOU

Everyone,

In addition to resolving open items on the draft MOU, we would like to address the outstanding items in the latest version of the RFP (attached). Ideally, by the time the RFP is ready to be issued, we would like to have an RFP that has already been accepted by both the FAA and the Port Authority. If we can't resolve all open items in the RFP on Thursday, let's discuss a plan for resolving them in the near future, so we will have a ready-to-be-issued RFP when the 'green light' appears.

Therefore, in addition to the MOU, attached for discussion during our conference call scheduled for Thursday 6/14 are the most current drafts of the RFP Letter and Attachment A, which the Port Authority intends to include in the publicly advertised solicitation for the third party consultant to assist the FAA with the preparation of an EIS for the LaGuardia Airport Access Improvement Project. These documents are overall the same as the track changes versions we last discussed on March 8th, but include minor changes and updates to our responses to comments.

Please note that we should also discuss language in the RFP Letter describing the availability of planning documents for review by potential proposers in a reading room.

Thank you and we look forward to discussing this further on Thursday 6/14.

Thanks,

James Summerville, Sr. Projects Contracts Specialist

Port Authority of NY & NJ

Procurement Dept.

[REDACTED]

-----Original Appointment-----

**From:** Lamond, Kathryn

**Sent:** Monday, June 11, 2018 2:44 PM

**To:** Lamond, Kathryn; DiScenna, Matthew; Clark, Patty; Tabafunda, Faith; Rogak, Elizabeth; Cohen, Michelle; [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

**Cc:** Summerville, James; Papasavvas, Krystina

**Subject:** FW: LGA Airtrain MOU

**When:** Thursday, June 14, 2018 8:30 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).

**Where:** [REDACTED] participant code: [REDACTED] Host (Katie): [REDACTED]

-----Original Appointment-----

**From:** Lamond, Kathryn

**Sent:** Friday, June 01, 2018 11:05 AM

**To:** Lamond, Kathryn; DiScenna, Matthew; Clark, Patty; Tabafunda, Faith; Rogak, Elizabeth; Cohen, Michelle; [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

**Subject:** LGA Airtrain MOU

**When:** Thursday, June 14, 2018 8:30 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).

**Where:** [REDACTED] participant code: [REDACTED] Host (Katie): [REDACTED]

This call is a follow-up to our 5/31 discussion on the draft MOU.

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

DATE

**SUBJECT: REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (LGA) ACCESS IMPROVEMENT PROJECT (RFP# \*\*\*\*\*)**

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the Authority) is seeking proposals in response to this Request for Proposals (RFP) for a Consultant to provide the subject services. The services will require the preparation of an Environmental Impact Statement (EIS) for the LGA Access Improvement Project (the "Project"). The Authority's goal is to complete the proposed Project and commence passenger service as close as possible to the end of 2022, when other major redevelopment projects are expected to be completed, in order to minimize the duration of construction-related disruptions to customers. Therefore, the Authority is committed to supporting the completion of the EIS within 12 months of the Notice of Intent ("NOI") to enable construction of the proposed Project to begin in 2019. As such, both the Authority, as the Airport Sponsor, and the Federal Aviation Administration ("FAA") will work together to facilitate the expeditious preparation of the EIS. The Authority is issuing this RFP, and both the Authority and FAA will participate in the process to evaluate proposals. The roles of the Authority and FAA in the evaluation process are set forth below in Section III. Selection Process. The selected firm (the "Consultant") will work directly with the FAA for the performance of the services that will culminate in the development of the EIS. The Authority and the Consultant will negotiate and enter into an agreement ("Agreement") resulting from this RFP, for the performance of the Consultant's services on behalf of the FAA. The Authority will be responsible for overall contract administration and payment for the Consultant's services as accepted by the FAA, while the Consultant reports to the FAA for direction on the development of the EIS.

The general scope of services to be performed by the Consultant is set forth in Attachment A. In accordance with Section IV below and to meet the Authority's goal for the expeditious completion of the EIS, a detailed scope of work should be drafted by the selected Consultant and provided to the FAA for review within fifteen (15) business days of notice of selection, and prior to Agreement execution. This detailed scope of work shall serve as a Plan of Study for the assignment. The draft Plan of Study must be accepted by the FAA prior to contract award and subsequent issuance of the FAA's NOI to conduct an EIS. It is the Authority's goal that the NOI be issued by the FAA no later than the end of the fourth quarter of 2018.

**I. PROPOSAL FORMAT REQUIREMENTS:**

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

- A. To be acceptable, this Proposal shall be no more than **20** single sided pages or **10** double sided pages, using 12 point or greater font size, not including resumes. Each resume shall be a maximum of two-pages single-sided or one-page double-sided, using 12 point or greater font size. The page limit pertains only to Numbers 4 through 9 (excluding resumes

## DRAFT AND DELIBERATIVE

requested in Number 6) in Section II, below. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with "Your Firm Name", and **RFP Number \*\*\*\*\*** clearly indicated on the cover.

- B. Separate each section of the Proposal with a tab divider that is labeled in accordance with the letter of the requirements specified below in Section II.
- C. All proposals must be delivered in sealed envelopes and/or packages. Address the Proposal to: The Port Authority of New York and New Jersey, 4 World Trade Center, 21<sup>st</sup> Floor, New York, NY 10007, Attention: RFP Custodian.
- D. You shall submit the Technical Proposal as follows in one envelope:

**One (1) reproducible original** hard copy containing original signatures along with **twenty (20) compact disc copies of your Technical Proposal** for review. USB Flash Drives will not be accepted. In case of conflict, the reproducible original of the Technical Proposal shall take precedence over material on the CDs.

The Technical Proposal shall include all information requested in the "Technical Proposal" subsection of Section II hereof. **No pricing-related information shall be provided in the original and CD copies of the Technical Proposal.**

- E. In each submission to the Authority, including any return address label, information on the compact disc and information on the reproducible original and copies of the proposal, the Proposer shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure to comply with this requirement may lead to delays in contract award and contract payments, which shall be the responsibility of the Proposer.
- F. Your Proposal should be forwarded in sufficient time so that the Authority receives it **no later than 2:00 p.m. on <DATE>**. The outermost cover of your submittal must be labeled to include the RFP Number and title as indicated in the "Subject" above. The Authority assumes no responsibility for delays caused by any delivery services.

If your Proposal is to be hand-delivered, note that only individuals with proper identification (e.g. photo identification) will be permitted access to the Authority's offices. Individuals without proper identification will be turned away and their packages not accepted.

There is extensive security at the World Trade Center Site. You must present a valid government-issued photo ID to enter 4 WTC. Individuals without packages or carrying small packages, envelopes or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All packages, envelopes and boxes may be subject to additional security screening. There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited. Express carrier deliveries by commercial vehicles will only be made via vendors approved by Silverstein Properties, the WTC Property Manager, through the Vehicle Security Center (VSC). Please note that use of the U.S. Mail does not guarantee delivery to Authority offices by the below listed due date for submittals. Proposers using the U.S. Mail are advised to allow sufficient delivery time to ensure timely receipt of their proposals. Presently, UPS is the only delivery vendor with approved recurring delivery times. UPS makes deliveries to 4 WTC around 9:30 a.m. each day. Please plan your submission accordingly. As additional express carriers may be approved by Silverstein Properties and scheduled for recurring delivery times with the VSC,

## DRAFT AND DELIBERATIVE

this information may be updated. Under certain circumstances, a solicitation may allow for a commercial vehicle to be approved to make a delivery in accordance with the VSC procedures. If applicable, the specific solicitation document will include that information. The Port Authority assumes no responsibility for delays, including, but not limited to, delays caused by any delivery services, building access procedures, or security requirements.

### II. SUBMISSION REQUIREMENTS:

To respond to this RFP, provide the following information:

#### A. TECHNICAL PROPOSAL:

1. In the front of your Technical Proposal, a copy of Attachment B (Agreement on Terms of Discussion) signed by an officer of your company. If proposing as a joint venture, each member of the joint venture must sign a copy of Attachment B.
2. Complete a copy of Attachment C (Company Profile).
3. Transmittal Letter
  - a. Include a statement indicating whether the Consultant is proposing as a single entity, or as a joint venture.
  - b. If a joint venture which has not been established as a distinct legal entity (a common-law joint venture) submits a proposal, all participants in the joint venture shall be bound jointly and severally and each participant shall execute the proposal. If a single entity proposer cannot demonstrate that it meets all of the referenced qualifications, then the single entity proposer may, with others, form a joint venture and request that the joint venture be deemed to be the Proposer (i.e. members of the joint venture may meet the qualification requirement collectively).
  - c. If the Proposer is a joint venture, the joint venture's Proposal shall contain an executed teaming agreement or, alternatively, if the entities making up the joint venture proposer have not executed a teaming agreement, the joint venture's proposal shall contain a summary of key terms of the anticipated agreement. If the joint venture proposer is a consortium, partnership or any other form of a joint venture, or an association that is not a legal entity, the proposal shall include a letter signed by each member indicating a willingness to accept joint and several liability until the point at which a corporation, limited liability company or other form of legal entity is formed for the purposes of undertaking the Agreement.
4. Project Approach/Schedule: Demonstrate a thorough understanding of the FAA EIS process. Identify methodologies and approaches that would be utilized to analyze and resolve environmental issues. Describe the proposed public scoping and public hearing process, work products, detailed project schedule, along with the responsibilities of each of the proposed staff/team members and subconsultants and their anticipated percentage of each individual's time working on the project. In order to meet the Authority's goal for the expeditious completion of the EIS, propose an approach to enable the expeditious development a draft Plan of Study within fifteen (15) business days of notice of selection and provide any assumptions related to producing an EIS within twelve (12) months of an

## DRAFT AND DELIBERATIVE

NOI. To achieve the 12-month schedule, include a description of the proposed process for 1) efficient coordination with FAA, the Authority, subconsultant work efforts, other federal, state and local agencies and the general public; 2) expediting the development of EIS documentation 3) facilitating accelerated completion of comment review, responses and associated revisions. For example, developing a detailed timeline for development of the EIS and an approach for gaining commitment from all necessary stakeholders to adhere to the timeline; initiating the Draft EIS documentation in parallel with preparation for public scoping, as appropriate; and streamlining comment collection from necessary stakeholders through roundtable reviews.

A description of the team's understanding of any unique issues associated with the preparation of an EIS at LGA should be included. Describe procedures to be followed to adhere to the Authority's goal of completion of the issuance by the FAA of a Record of Decision ("ROD") and completion of the National Environmental Policy Act ("NEPA") review within a 12-month period from the Notice of Intent ("NOI"). In addition, if the Proposer proposes an alternate schedule (exceeding the aforementioned twelve months), the Proposer shall provide its rationale for the longer schedule, its assumptions to producing an EIS within the longer proposed period, and a description of procedures to be followed to adhere to the alternate schedule.

5. **Project Experience:** Provide summaries of experience for past projects by prime consultant and team members (if applicable) that demonstrate experience and ability to undertake and complete an EIS specifically for airport projects and transit systems similar to the proposed project. Do not include projects for which key project personnel are no longer employed by the firm. List the names of key employees with each project. Projects for which individuals gained experience during previous employment should be indicated in this section.

For each qualifying project, include the following information in tabular form: project name, location, client, total contract amount, principal-in-charge, day-to-day technical project manager, key design staff, original estimated schedule and actual schedule of completion (defined for an EIS as Notice of Intent to Record of Decision and for an EA as Notice to Proceed to acceptance of the Final EA) client reference (name, position and phone number) and brief narrative description of the project.

6. **Organization and Management:** Provide an organizational chart and narrative description of the administrative structure proposed for managing this project. Outline major responsibilities and areas of expertise.

The overall project manager and key staff members (both prime firm and subconsultants) must be identified and resumes provided. The project manager is considered to be the single most important Consultant asset, and is expected to maintain responsibility and availability for the project through completion of the EIS required by the scope of services (Attachment A).

Provide a list of projects that the proposed project manager is responsible for and expected completion dates. Resumes of firm principals are not required unless they are proposed as active, integral members of the Consultant team. Principals should, however, be listed on

## DRAFT AND DELIBERATIVE

the organizational diagram in relation to the Consultant team. This section should also include the location of each firm and key staff members.

In addition, if the proposal includes a prime firm and subconsultants, demonstration of relevant past working experience as a team is desired. The relevance of past working experience will be prioritized based on the following: 1) experience on FAA-directed environmental projects; 2) experience on other airport projects not directed by the FAA; 3) experience on environmental projects for other modes under the umbrella of the Department of Transportation; 4) experience on environmental projects for other Federal agencies; and 5) experience with expedited completion of environmental projects

7. References: provide a total of five (5) references of similar projects. For each reference include contact name, title, project name and location, mailing address, phone number, fax number and e-mail address.
8. Description of Proposer/Team: Provide a general description of the Proposer, including services offered, number of employees, office location, years in business, etc. Indicate aviation and rail-related EIS and EA work to which the firm is currently committed. Include similar descriptions for each subconsultant.
9. QA/QC: Describe quality assurance and quality control procedures. Demonstrate experience in successfully implementing quality control programs on comparable projects.
10. See Appendix A to this RFP letter for the MBE/WBE Subcontracting Provisions.
11. Provide a complete list of your firm's affiliates.
12. If the Proposer or any employee, agent or subcontractor of the Proposer may have, or may give the appearance of a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict. The Authority reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any source could create, or give the appearance of, a conflict of interest. The Authority's determination regarding any question(s) of conflict of interest shall be final.

Proposer is required to disclose all work performed at LaGuardia Airport for a period of three (3) years prior to the date of submission. Proposer shall include work performed by all affiliates, and provide, to the extent applicable, start and end dates of each engagement, the name of the stakeholder or entity for which the Proposer performed work, and a short description of the nature of the work or project.

Proposers are further advised that under this Agreement, firms must provide, written notice to the Port Authority of any existing or potential conflict of interest the firm(s) may have in the performance of Services under this Agreement.

Furthermore, Proposers should ensure that they are familiar with FAA regulations and policy on conflicts of interest of EIS consultants. Pursuant to 40 C.F.R. Part 1506.5(c), the selected Consultant and any subconsultants performing the work shall certify that they have not entered into and will not enter into during the lifetime of the EIS preparation any agreement affording the Consultant and any subconsultants with any direct or indirect



## DRAFT AND DELIBERATIVE

financial interest in the planning, design, construction or operation of the project that is the subject of the EIS except the preparation of the EIS. Prior to beginning work on the EIS, the Consultant and any subconsultants shall sign a "Disclosure Statement" per the requirements of 40 C.F.R. 1506.5(c) and FAA Orders 1050.1F and 5050.4B, specifying they have no financial or other interest in the outcome of the project.

13. **Code of Ethics for Port Authority Vendors:** The Proposer's attention is directed to the Port Authority's "Code of Ethics for Port Authority Vendors." Vendors must certify in writing that they will comply with every aspect of this Code. The Proposer should submit an executed Compliance Certification with their Proposal. The Compliance Certification, once executed, will be a material and integral part of any Agreement resulting from this solicitation. The Code of Ethics and the Compliance Certification can be found on the Authority's website at <https://www.panynj.gov/business-opportunities/become-vendor.html>.
14. The selected Consultant(s) shall comply with the requirements of the Agreement. The scope of tasks to be performed by you is summarized in Attachment A and will be detailed in the Plan of Study, which will be attached to and incorporated in the final Agreement and will amend and restate Section II. Scope of Services of Attachment A.

### III. SELECTION PROCESS:

The qualifications based selection shall take into consideration the technical criteria conveyed in this section (listed in order of importance). After consideration of these factors, the Authority may enter into negotiations with the firm(s) deemed best qualified, in terms of the forgoing Technical Proposal criteria, to perform the required services.

The Authority will review proposals to determine if they satisfy the requirements of this RFP, including adherence to the RFP's specified format and the provision of all required documentation. Proposals will then be reviewed according to a two-phased evaluation process. The **first phase of the evaluation process** will involve Authority and FAA staff, and will include a detailed review and evaluation of the proposals according to the following criteria:

1. Project Approach/Schedule;
2. Project Experience;
3. Organization and Management;
4. References;
5. Description of Proposer/Team;
6. QA/QC;

Only those proposals receiving the highest scores in the first phase of the evaluation process will be evaluated in the **second phase of the evaluation process**.

The **second phase of the evaluation** will involve staff from the Authority and FAA. Only FAA staff will score proposers in the second phase of the evaluation. The second phase of the evaluation commences with interviews of the highest-rated proposers from the first phase of evaluation. The interviews will consist of presentations by the highest-rated proposers, followed by a question and answer session led by FAA staff. After the last interview, FAA

## DRAFT AND DELIBERATIVE

staff will score the interviews and add the interview scores to the first phase scores, and recommend that the Port Authority retain the proposer that received the highest combined score for the performance of the agreement resulting from this RFP. A notice of selection will be transmitted to the selected Proposer, prior to execution of the Agreement.

The following is the anticipated schedule for the selection process:

- XX Request for proposals advertised
- XX Proposals due to the Authority
- XX Selection Committee holds interviews with select firms
- XX Selected firm is notified and commences draft Plan of Study with FAA
- XX Contract award

#### IV. POST-SELECTION PROCESS (prior to ~~agreement~~ Agreement execution):

In order to meet the Authority's goal for the expeditious completion of the EIS, a detailed scope of work and cost proposal for all work to be performed under the agreement resulting from this RFP should be drafted by the selected Consultant and provided to the FAA within fifteen (15) business days of notice of selection, and prior to agreement execution. The Authority will compensate the Consultant for its efforts in developing the detailed scope of work at the rates provided in the Consultant's cost proposal, as accepted by the Authority.

After this detailed scope of work has been finalized and accepted by the FAA, it shall serve as the Plan of Study for the assignment. The Authority will then negotiate a cost proposal with the Consultant for the services to be provided in accordance with the Plan of Study.

#### V. **READING ROOM FOR CERTAIN PROJECT-RELATED INFORMATION**

The Authority will provide prospective Proposers with access to a reading room (Reading Room) containing certain documents related to the Project; the Reading Room will be located at 4 World Trade Center. Such access will be provided only to those firms deemed solely by the Authority as bona fide Proposers interested in responding to this RFP. The Authority makes no representation or guarantee, and shall not be responsible, for the documents' accuracy, completeness or pertinence, and shall not be responsible for the conclusions drawn therefrom. These documents are made available merely for the purpose of making available such information as is in the possession of the Authority and which it is able to make available, whether or not such information may be accurate, complete or pertinent or of any value to prospective Proposers.

In order to be deemed a bona fide Proposer and obtain Reading Room access to these documents, a firm must first submit the following to the Solicitation Manager listed in Section VI below (firms shall send a PDF attachment of the required documents to the Solicitation Manager via email: [REDACTED] (copying Krystina Papasavvas at [REDACTED])

## DRAFT AND DELIBERATIVE

- A. A letter of intent to propose on this RFP, signed by a principal of the firm on firm letterhead.
- B. A completed Attachment C (Company Profile).
- C. A notarized affirmation signed by a principal of the firm that contains the following certification:
  1. the information provided for review by the Authority will be kept in confidence by the firm and by any contemplated and actual proposed subconsultants and/or team members with which the firm might have shared the information;
  2. the information provided for review will be used only for the purpose of addressing the requirements of the RFP;
  3. any notes (electronic or hard-copy) taken at the Reading Room will be destroyed in the event of notification that the firm(s) was not awarded an agreement for the work to be performed under this Agreement; and
  4. the firm will retrieve all information (notes) that might have been provided by the firm to any contemplated and actual proposed subconsultants and/or team members, for destruction in accordance with the requirements set forth under number (3) above.

It is currently anticipated that the Reading Room will be available during the following dates and times:

August X, 2018, from X:00 to X:00  
August X, 2018, from X:00 to X:00  
August X, 2018, from X:00 to X:00  
August X, 2018, from X:00 to X:00  
August X, 2018, from X:00 to X:00

**Access to the Reading Room is by appointment only. Interested Proposers must RSVP by email to James Summerville ( ) copying Krystina Papasavvas ( ) no later than 3:00 PM of August X, 2018. The email must contain and convey the following:**

- In separate attachments, the information requested in subsections A, B, and C, above;
- The requested date for access to the Reading Room; and
- Contact information (names, phone numbers, email addresses) for each planned attendee.

Documents provided in the Reading Room cannot be removed from the Reading Room. Furthermore, access to the Reading Room will be limited to two individuals per prospective bona fide Proposer. For further information and instructions about the Reading Room access, see Attachment X. On the day of the bona fide Proposer's visit the Reading Room, each attendee will be required to sign Attachment X. Failure to sign Attachment X and agree to all the conditions set forth therein will preclude the attendee from having access to the available documents.

## DRAFT AND DELIBERATIVE

Submission of any information requested in accordance this Section is separate and apart from that also requested elsewhere in this RFP. If the information is also required under any section of the RFP, including, but not limited to, Proposer Requirements and Proposal Requirements, the information must also be submitted with the firm's proposal. Submission of such information with respect to requesting the documents, as set forth in this Section, will **not** constitute submission of the information for purposes of the RFP. The Authority's determination as to whether a requestor of these documents is deemed a bona fide Proposer and therefore eligible to receive the documents shall be final.

### VI. ADDITIONAL INFORMATION:

If your firm is selected for performance of the subject services, the agreement you will be asked to sign will include clauses entitled "Certification of No Investigation (Criminal Or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure Of Other Information" And "Non-Collusive Proposing, And Code Of Ethics Certification; Certification Of No Solicitation Based On Commission, Percentage, Brokerage, Contingent Or Other Fees." By submitting a proposal, the Consultant shall be deemed to have made the certifications contained therein unless said Consultant submits a statement with its proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your proposal clearly marked "CERTIFICATION STATEMENT."

Rejection of a proposal shall be only by either (a) a notice in writing specifically stating that the proposal is not accepted, signed by an authorized representative of the Authority and provided to the Proposer, or (b) omission of the Authority to accept the proposal within 180 days after the Proposal Due Date. No other act of the Authority, its Commissioners, officers, agents, representatives or employees shall constitute rejection of a proposal.

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

Prior to commencing any work associated with this Project, the selected consultant and any subconsultants shall submit a Disclosure Statement.

Proposers are also advised that additional vendor information, including but not limited to forms, documents and other related information, may be found on the Authority website at [www.panynj.gov](http://www.panynj.gov) or <http://www.panynj.gov/business-opportunities/become-vendor.html>.

After a review of all proposals received, the Authority will forward two (2) copies of the Agreement and Attachment A thereto to the selected firm(s), which shall sign and return both copies. Signature shall be by a corporate officer. The return of one copy executed by the Authority will effectuate the Agreement.

Should you have any questions, please contact James Summerville, Solicitation Manager [REDACTED] and Krystina Papisavvas [REDACTED] All such

## DRAFT AND DELIBERATIVE

correspondence must have your name, title, company, mailing address, telephone number, and state "RFP \*\*\*\*\*" in the subject line. **The Authority must receive all questions no later than 4:00 P.M. EST four (4) calendar days after the RFP issuance date.** Neither Mr. Summerville nor Ms. Papasavvas, nor any other employee of the Authority is authorized to interpret the provisions of this RFP or accompanying documents or give additional information as to their requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned and such writing shall form a part of this RFP, or the accompanying documents, as appropriate. For RFP updates and Addenda, if any, Proposers are encouraged to access, and monitor, the Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html>. You should, therefore, monitor the advertisement on said website, as appropriate, to ensure you are aware of changes, if any.

Commented [S11]: This is the standard template language instructing proposers to consult the website for addenda

Proposal preparation costs are not reimbursable by the Authority. The Authority shall have no obligation to a firm except under a duly authorized agreement executed by the Authority.

No rights accrue to any Proposer except under a duly authorized agreement for performance of the specified services.

The Authority reserves the right, in its sole and absolute discretion, to reject all proposals, to undertake discussions and modifications with one or more Consultants, to waive defects in proposals, and to proceed with that Proposal or modified Proposal, if any, which in its judgment will, under all the circumstances, best serve the public interest.

Sincerely,

David Gutiérrez, CPPO  
Assistant Director  
Procurement Department

Attachments

## DRAFT AND DELIBERATIVE

### APPENDIX A – MBE/WBE SUBCONTRACTING PROVISIONS

For this Agreement, the Consultant shall use good faith efforts to achieve participation equivalent to twenty percent (20%) of the total Agreement price for Authority certified MBEs and ten percent (10%) of the total Agreement price for Authority certified WBEs. Submit details on how you intend to meet these goals. A listing of certified MBE/WBE firms is available at <http://www.panynj.gov/business-opportunities/sd-mini-profile.html>.

The Proposer shall include its MBE/WBE Participation Plan (Form PA 3760C) with its Proposal, to be reviewed and approved by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

The MBE/WBE Plan submitted by the Proposer to the Authority shall contain, at a minimum, the following:

- Identification of MBE/WBEs: Provide the names and addresses of all MBE/WBEs included in the Plan. If none are identified, describe the process for selecting participant firms in order to achieve the good faith goals under this Contract.
- Level of Participation: Indicate the percentage of MBE/WBE participation expected to be achieved with the arrangement described in the Plan.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

All MBE/WBE subconsultants listed on the MBE/WBE Participation Plan must be certified by the Authority in order for the Consultant to receive credit toward the MBE/WBE goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/supplier-diversity.html> to search for MBE/WBEs by a particular commodity or service. The Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to the MBE/WBE Participation Plan must be submitted via a modified MBE/WBE Participation Plan to the Manager for review and approval by OBDCR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use form PA3760D. The Consultant shall not make changes to its approved MBE/WBE Participation Plan or substitute MBE/WBE subconsultants or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performance of work designated for a subconsultant by the Consultant's own forces, shall be deemed a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored by the Authority throughout the duration of the Agreement.

The Consultant shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments in the form of the MBE/WBE Participation Report, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subconsultant and supplier actually involved in the Agreement, a description of the work performed and/or the product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information as it may assist the Project Manager in determining the Consultant's compliance with the foregoing provisions.

## **DRAFT AND DELIBERATIVE**

### **MBE/WBE Conditions of Participation**

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

1. **Commercially Useful Function:** An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Consultant and the MBE/WBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as a MBE/WBE, the Consultant will receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

2. **Work Force:** The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Contractor, other Subcontractors on the Contract, or their Affiliates. This does not preclude the employment by the MBE/WBE of an individual that has been previously employed by another firm involved in the Contract, provided that the individual was independently recruited by the MBE/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.

3. **Supervision:** All Work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Consultant, other subconsultants on the agreement, or their Affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the Work.

### **Counting MBE/WBE Participation**

The value of the Work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. **Subconsultants:** One hundred percent (100%) of the value of the Work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such Work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Consultant, other subconsultants or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE

## DRAFT AND DELIBERATIVE

subconsultant is itself a MBE/WBE. Work that a MBE/WBE subcontracts to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. Material Suppliers: Sixty percent (60%) of the expenditure to a MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. Broker's/Manufacturer's Representatives: One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees or commissions customarily allowed for similar services. The costs of materials and supplies themselves will not be counted.

4. Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces. Contact OBD CR at [REDACTED] for more information about requirements for such joint ventures.



## LaGuardia Airport Access Improvement Project

### NEPA Third Party Contractor Selection and Procurement Process- Items for Discussion

- 1) Reading Room
  - a. Duration of reading room period- PA recommends a full week, starting two business days after RFP issuance.
  - b. Time of day that the room will be open to proposers- PA recommends a half day, rotating every other day between morning and afternoon.
  - c. Limit on the number of individuals per firm that will be allowed to access- PA recommends no more than two people per firm.
  - d. Restrictions in place for the reading room- PA recommends that notetaking be permitted but that phone use be prohibited (no taking of photos of materials, no placing of phone calls).
  - e. Submittal of credentials in advance to prove individuals are bona fide proposers
- 2) Q&A and Addendum Process
  - a. Deadline for submittal of questions from proposers- PA recommends that proposers be required to submit questions to the PA within 4 calendar days of RFP issuance.
  - b. Responding to questions from proposers- PA recommends that it post addenda, as necessary, on its website within 5 business days of the deadline for submitting questions, with prior consultation with FAA.
- 3) Selection Committee Questions on Proposals (Phase I of Selection)
  - a. Process for distributing questions that arise during the Phase I review of the proposals by the Selection Committee- PA recommends that all members of the Selection Committee (PA and FAA) be required to submit any questions on the proposals prior to the Selection Committee meeting to determine the short list of firms to be invited for Phase II interviews. PA and FAA to have a conference call to discuss and agree upon which questions to distribute to the proposers 3 business days in advance of the Selection Committee meeting.
  - b. Responses from proposers- PA recommends that proposers must respond to the questions within 2 business days of PA distributing the questions to the proposers. This would enable the Selection Committee to receive responses from the proposers prior to the meeting to determine the shortlist.
- 4) Reference Checks (Phase I of Selection)
  - a. Minimum number of reference checks per proposer - PA recommends the goal of speaking with two references per proposer, however, that the requirement be that the PA speak with a minimum of one reference per proposer.
- 5) Interview Questions (Phase II of Selection)
  - a. Will the Port Authority contribute to the development of interview questions for Phase II?
  - b. Will interview questions be distributed to interviewees in advance of interviews?
- 6) Recommendation Memo
  - a. Is FAA amenable to the PA's recommendation memo process, and does FAA need to sign the memo?
  - b. Are there other FAA requirements for documenting the evaluation and procurement process?
- 7) Terms and Conditions

- a. PA to develop terms and conditions for the third party contractor, to be distributed to the selected contractor only. As previously discussed, the terms and conditions will not be posted at the time of RFP issuance.
- b. FAA to follow up with the PA as to the extent to which FAA would like to be involved in the development of the terms and conditions for the contract.

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## ATTACHMENT X: READING ROOM INSTRUCTIONS

REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (LGA) ACCESS IMPROVEMENT PROJECT (RFP# \*\*\*\*\*)

To all Proposers:

The documents to be provided in the Reading Room have been made available for your examination. The Authority makes no representation or guarantee, and shall not be responsible for their accuracy, completeness or pertinence, and, in addition, shall not be responsible for the conclusions drawn therefrom. These documents are made available merely for the purpose of making available such information as is in the possession of the Authority and which it is able to make available, whether or not such information may be accurate, complete or pertinent or of any value to prospective Proposers.

Reading Room instructions:

1. Documents provided cannot be removed from the Reading Room.
2. When handling the documents, take the following precautions:
  - Do not make any marks on the pages.
  - Do not spindle, fold or mutilate any pages.
  - Do not trace, alter, tear, bend or handle the pages in such a way as to cause damage to any pages.
  - Do not tear out any pages.
  - Do not refold pages in a new or different way.
  - Use only Post-It notes or slips of paper for marking your place. Remove all page markers before leaving the Reading Room.
3. Duplication of documents by camera, scanner, photocopier or other means is prohibited.
4. Laptop or other electronic devices for taking notes is prohibited. Reviewer may take handwritten notes.
5. The Port Authority shall not be held responsible for the loss, damage or theft of any Proposer's electronic equipment or personal items brought into the Reading Room.

Access to the documents is by appointment only. If you require further examination of the documents provided, schedule another appointment by contacting James Summerville ( [REDACTED] ) and Krystina Papasavvas ( [REDACTED] ). It is anticipated that additional access will be provided only during the timeframe conveyed in Section V of the RFP letter.

If you have read and accept these Reading Room Instructions, please fill out the information requested below. Failure to sign this statement and agree to all the above conditions shall preclude you from having access to the available documents.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Company Address: \_\_\_\_\_

Business Phone and email: \_\_\_\_\_

Date and Time: \_\_\_\_\_

ATTACHMENT A

PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (“LGA”) ACCESS IMPROVEMENT PROJECT

I. **BACKGROUND**

*General:*

For background with respect to The Port Authority of New York and New Jersey (the “Authority” or “Sponsor”) see [www.panynj.gov](http://www.panynj.gov). Additionally, the most recent electronic version of the Authority’s Annual Report is available at <http://www.panynj.gov/corporate-information/annual-reports.html>.

*Project Description:*

The Authority is proposing to construct a new automated people mover (“APM”) AirTrain system to provide a fast, convenient, and reliable transit alternative for air passenger and employee access to LaGuardia Airport (“LGA” or the “Airport”). This proposed project, herein referred to as the LaGuardia Airport Access Improvement Project (the “Project”), is to provide a direct connection between the Airport and Metropolitan Transportation Authority’s (“MTA”) Long Island Rail Road (“LIRR”) and New York City Transit (“NYCT”) stations. Further, the LaGuardia Airport Access Improvement Project shall provide a connection to employee parking and not preclude the potential future expansion of support facilities beyond the existing airport boundary, such as a consolidated rental car facility and/or additional airport parking. The Federal actions associated with the Authority’s proposed Project are decisions by the Federal Aviation Administration (“FAA”) on an updated Airport Layout Plan (“ALP”) and for the use of Passenger Facility Charge (“PFC”) funding, should the Authority pursue imposing and using PFC funding for the proposed Project.

The Authority’s preferred alternative is for an elevated AirTrain to operate between the Airport and a transfer station at Willets Point. The proposed AirTrain system would include two on-airport stations and a terminus station at Willets Point providing connections to the Mets-Willets Point stations of the LIRR Port Washington Branch and the NYCT Flushing No. 7 subway line. In addition to providing a connection to the LIRR and NYCT stations at the Willets Point terminus station, the proposed AirTrain would serve as an on-airport transit system that would facilitate transfers between airline terminals and provide connections to employee parking and potential future passenger ~~and employee~~ parking and a consolidated rental car facility. The proposed AirTrain system would provide access to LGA’s primary passenger terminals and must not preclude a future extension to the Marine Air Terminal. The proposed Project includes associated facilities and infrastructure (stations, guideway, maintenance/control facility, etc.) as well as the systems (vehicles, train control, power distribution system, etc.) for the AirTrain.

The Authority’s goal is to complete the proposed Project and commence passenger service as close as possible to the ~~completion of Terminal B and several key landside components of Terminal C~~ end of 2022, when other major redevelopment at LGA, both of which will projects

Commented [FAA1]: The requested ALP change needs to be submitted as soon as possible. The submittal of the ALP is the trigger for the start of the NEPA review

Commented [CM2R1]: As discussed, ALP change update is in progress. It will be submitted along with the Alternatives Analysis or sooner

Commented [FAA3]: We understand from our 3/5/18 call that it is the intent of the PANYNJ to have a schedule for submittal of the planning information to us in the very near future. This information is needed not only for FAA use, but also for use by the potential bidders in developing their proposals. As discussed on the above referenced call, we have concerns regarding the amount of information being provided on which the consultants can base a response. The planning information is a critical component needed to achieve a quality product as well as the schedule goal.

Commented [CM4R3]: The Port Authority submitted a proposed schedule on 5/16 along with initial planning documents submittal. Updates to the schedule are in progress, as discussed

are expected to be completed ~~by, in order to minimize the end of 2022, duration of construction-related disruptions to customers.~~ As such, the Authority is seeking to accelerate the environmental review schedule for the proposed Project, with the goal of the FAA completing the issuance of a Record of Decision (“ROD”) and completing the National Environmental Policy Act (“NEPA”) review ~~within as early as 12-month period~~ months from the Notice of Intent (“NOI”) for services hereunder to enable construction of the proposed Project to begin in 2019. This ~~hypothetical-proposed~~ timeframe may be impacted by a number of factors, including concurrent environmental review by other Federal, ~~state,~~ and ~~state~~ local agencies. The Consultant shall comply with the processes and procedures outlined in Executive Order ~~13604 on Improving Performance of Federal~~ 13807: Establishing Discipline and Accountability in the Environmental Review and Permitting ~~and Review of Process for Infrastructure Projects, signed on August 15, 2017.~~ —such as facilitation of efficient collaboration and communication with agencies involved with the environmental review and permitting for the proposed Project.

*General Description of Consultant Services:*

The Authority is seeking a Consultant to provide professional services to assist the FAA in preparing an Environmental Impact Statement (“EIS”) to assess and disclose the potential environmental impacts of the construction and operation of the Authority’s proposed Project and reasonable alternatives in a manner that complies with all applicable federal, state and local environmental laws and regulations. The FAA is the lead Federal agency for preparing the EIS in accordance with the requirements of NEPA (42 U.S.C. 4321 et. seq.), the Council on Environmental Quality (“CEQ”) regulations (40 C.F.R. Parts 1500-1508), and appropriate U.S. Department of Transportation and FAA environmental orders. As stated above, the Federal actions associated with the Authority’s proposed Project include but are not limited to a decision by FAA on an updated ALP, and should the Authority pursue imposing and using PFC funding for its proposed Project, a decision by FAA regarding use of such PFC funds.

The Consultant shall be responsible to the FAA for the preparation of an EIS associated with the Authority’s proposed Project. The FAA shall direct the services provided by the Consultant hereunder. The Consultant shall serve as the independent third party assisting the FAA with conducting the EIS process in an efficient and cost-effective manner, while maintaining a high degree of accuracy and validity in the production of all EIS deliverables.

Preliminary planning work is being conducted by the Authority. The documentation for the Authority’s planning efforts will be provided ~~by the Authority to the FAA. This documentation will be provided~~ to the Consultant at the discretion of ~~the~~ FAA.

**II. SCOPE OF SERVICES**

Prior to agreement execution, and within ~~ten (10) calendar~~ fifteen (15) business days of notice of selection, the Consultant should develop and submit a detailed scope of work for the entire assignment, ~~in order to meet the Authority’s goal for the expeditious completion of the EIS.~~ The detailed scope of work is hereinafter referred to as the Plan of Study, which is subject to

Commented [FAA5]: Rework this language to focus on the stress of construction and customer disruption rather than specifically mentioning the Terminals

Commented [CM6R5]: Revised language to focus on minimizing construction related disruptions

Commented [FAA7]: Recommend changing to “as early as 12 months from the Notice of Intent”

Commented [CM8R7]: Revised accordingly

Commented [CM9]: Minor edit

Commented [CM10]: Added reference to local agencies

Commented [FAA11]: It is EO 13807 Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects Please reference properly, including the date the order was issued The second EO is related to ‘high priority infrastructure projects,’ thus far this project has not been designated as such Please remove EO 13604

Commented [CM12R11]: Revised accordingly

Commented [FAA13]: This language implies that the Port Authority will be providing documentation directly to the consultant, which should occur through the FAA This is potentially misleading, as a prospective firm may believe the FAA already has preliminary information that could be requested by the consultant Recommend adding a qualifier. For example: “Once the Authority’s planning information is shared with the FAA, documentation will be provided ”

Commented [CM14R13]: Revised to clarify that the Authority will provide these documents to FAA directly Included a separate sentence which states that FAA will then provide this documentation to the Consultant, at FAA’s discretion

DRAFT AND DELIBERATIVE

FAA approval. The draft Plan of Study shall be accepted by the FAA prior to contract award and subsequent issuance of the NOI. ~~The~~ It is the Authority's goal that the ~~NOI shall~~ be issued no later than ~~May 24, the end of the fourth quarter of 2018.~~ The Plan of Study will include detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated person-hours required for completion of each aspect, the schedule for performing each aspect, and a description of the internal and external review procedures to assure quality control. The Plan of Study will also include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the planning and environmental data and analyses and the development and preparation of the EIS. Finally, the Plan of Study must comply with all applicable regulations and must include such additional analytical requirements as provided by the FAA prior to completion. In addition, in producing or revising the Plan of Study, the Consultant may consider as appropriate any relevant submissions made by the Authority or its representative to the FAA. The Plan of Study, as accepted by the FAA, shall amend and restate the entirety of this section, Section II. Scope of Services.

The EIS is to be accomplished in accordance with FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, Order 5050.4B, *NEPA Implementing Instructions for Airport Actions*, and associated Desk References (or the current version at time of contract award) and special purpose laws. Specific environmental issues to be included in the EIS may include, but are not limited to:

- a) Air Quality
- b) Biological Resources
- c) Climate
- d) Coastal Resources
- e) Department of Transportation Act, Section 4(f)
- f) Farmlands
- g) Hazardous Materials, Solid Waste, and Pollution Prevention
- h) Historical, Architectural, Archaeological, and Cultural Resources
- i) Land Use
- j) Natural Resources and Energy Supply
- k) Noise and Noise Compatible Land Use
- l) Socioeconomic, Environmental Justice, and Children's Environmental Health and Safety Risks
- m) Visual Effects
- n) Water Resources (Wetlands, Floodplains, Surface Waters, Groundwater, Wild and Scenic Rivers)
- o) Cumulative Impacts
- p) Irreversible and Irretrievable Commitment of Resources

The individual scope of these studies may be modified by the needs and requirements of the FAA designated cooperating agencies.

**Commented [FAA15]:** To reiterate a comment made on previous versions of this document, we continue to have concerns about the development of a robust project approach within the two weeks provided for response to solicitation and the establishment of a viable scope within the 10 days allotted

The preparation of a draft Plan of Study, and the FAA's approval of that Plan, is preconditioned on the availability of and access to planning information. Heretofore we have not received any planning information, nor have we been told when it will be provided. Neither the FAA nor the contractor can bind itself to dates or timelines until planning information is provided

**Commented [CM16]:** Extended time period to 15 business days, doubling the total amount of time for the consultant submittal, and added text referring to Port Authority's goal

Port Authority submitted initial planning documents and a proposed schedule for the subsequent planning document submittals on 5/16

**Commented [FAA17]:** Remove. It is not appropriate to prescribe a date here in a PANYNJ document when the issuance of the NOI is a federal role. Additionally, this level of schedule detail is not appropriate for inclusion in an RFP

**Commented [CM18R17]:** Revised to refer to Port Authority goal and extended to end of Q4 2018

**Commented [FAA19]:** Reference to planning/justification data should be included here as well

**Commented [CM20R19]:** Added reference to planning data

**Commented [FAA21]:** Edit

**Commented [CM22R21]:** Accepted edit

**Commented [FAA23]:** Edit

**Commented [CM24R23]:** Accepted edit

## DRAFT AND DELIBERATIVE

It is anticipated that the scope of work resulting from the Plan of Study may require the Consultant to perform the following services, at minimum:

1. Facilitate and conduct meetings necessary for the preparation and development of the EIS.
2. Provide project management duties, including but not limited to preparing reports, updating the Plan of Study as necessary, taking meeting minutes, coordinating activities between all stakeholders, schedule monitoring, preparing presentation materials, creating and maintaining the project file, ~~administrative record~~ assisting in the identification and compilation of the administrative record in the event of any potential legal proceedings associated with the environmental review or final agency actions or decisions, and assistance throughout any potential legal proceedings, etc.
3. Review project-related documents necessary for the development of the EIS, including planning documents provided to the FAA by the Authority or its representative. The Consultant shall review and independently evaluate the materials prepared by the Authority or its representative and shall complete the EIS documentation as required.
4. Assist the FAA to fulfill its lead Federal agency role and enhance effective NEPA scoping to ensure early in the process that the EIS addresses key issues of concern to agencies and the public.
5. Develop the Purpose and Need Statement, to provide the parameters for defining a reasonable range of alternatives and to be utilized for the comparative evaluation of alternatives to the Sponsor's proposed Project. The Purpose should outline the goals and objectives that the Sponsor's proposed Project should achieve, and the Need should provide the data to support the Purpose.
6. Prepare an alternatives analysis addressing a range of reasonable alternatives to the Sponsor's proposed Project. It is expected that the "No Action" and the Sponsor's proposed Project will be alternatives. The Consultant will identify other potential alternatives and conduct a screening of alternatives, as appropriate.
7. Describe existing environmental resources and conditions that the Sponsor's proposed Project, reasonable alternatives, and No Action may affect.
8. Describe impacts and environmental consequences of the Sponsor's proposed Project and reasonable alternatives that were previously identified for further evaluation, including the No Action alternative.
9. Prepare draft and final versions of the EIS, including the preparation of draft chapters and preliminary draft EIS and preliminary final EIS. It is anticipated that the draft and final version should include the following elements, at minimum:
  - a. Cover Page

**Commented [FAA25]:** Recommend expanding: "assisting in the identification and compilation of the administrative record in the event of litigation and assistance throughout the litigation"

**Commented [CM26R25]:** Revised language to include reference to potential legal proceedings associated with the environmental review or final agency actions or decisions



## DRAFT AND DELIBERATIVE

- b. Executive Summary
  - c. Table of Contents
  - d. Purpose and Need
  - e. Alternatives
  - f. Affected Environment
  - g. Environmental Consequences
  - h. Mitigation
  - i. List of Preparers
  - j. List of Agencies, Organizations, and Persons to Whom Copies of the Statement are Sent
  - k. Index
  - l. Appendices (if any)
  - m. Comments
  - n. Footnotes
10. Solicit and facilitate public and stakeholder involvement on behalf of FAA throughout the EIS process in accordance with NEPA and relevant special purpose laws.
  11. Ensure that the EIS documentation includes relevant information required for future permitting applications and processes, as required.
  12. Assist the FAA in the preparation of a draft ROD.

All work prepared under this Agreement shall be delivered to the FAA in printed format and searchable .pdf files along with components associated with each item, such as data files, text files, image files, spreadsheets, graphs, and tables. These products, where applicable, will be compatible with and incorporated into the Airports Geographic Information System ("AGIS") managed by the FAA (as applicable). While performing work under this Agreement, the Consultant shall be responsible for managing the administrative project file and, upon completion of the work, will be responsible for submitting a completed administrative record for the project to the FAA, in accordance with FAA policy and guidance.

### **III. PERIOD OF PERFORMANCE**

The period of performance (through completion of the final EIS) of the services is not to exceed that which is to be directed by the FAA as the lead Federal agency for services hereunder. The work will be performed in accordance with FAA's procedures for assessing environmental impacts including FAA Orders 1050.1F and 5050.4B (or the current version(s) at time of agreement award). While it is conceivable that issues raised during the public comment process could affect the time of performance, the Consultant should assume that the FAA will grant any extensions of time for performance only for the most extraordinary circumstances. The Period of Performance establishes the expected outer limit for project development.

Commented [FAA27]: Edit

Commented [CM28R27]: Accepted edit

### **IV. LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE**

DRAFT AND DELIBERATIVE

**A. Commercial Liability Insurance:**

1) The Consultant(s), and all of its/their Sub-consultants shall take out, maintain, and pay the premiums on **Commercial General Liability Insurance** for the life of the Agreement and such Insurance and shall be written on an ISO occurrence form CG 00 01 0413 or its equivalent covering the obligations assumed by the Consultant(s) under this Agreement, including, but not limited to, Premises-Operations, Products and Completed Operations, Broad form property damage, personal and advertising injury and Independent Contractor's coverages, with contractual liability language covering the obligations assumed by the Consultant(s) with insurance covering against claims for injuries to persons or damages to property which may arise from or in connection with products and materials supplied to the Agency in limits of not less than **\$10,000,000** combined single limit per occurrence and in the annual aggregate. If vehicles are to be used to carry out the performance of this Agreement, then the Consultant(s) shall also take out, maintain and pay the premiums on **Automobile Liability Insurance** covering all owned, non-owned and hired autos in not less than **\$5,000,000** combined single limit per accident for bodily injury and property damage. **(Only if Applicable)**

The insurance shall be written on an occurrence basis, as distinguished from a "claims made" basis, and shall not include any exclusions for "action over claims" (insured vs. insured) and minimally arranged to provide and encompass at least the following coverages:

- Contractual Liability to cover liability assumed under the Agreement;
- Independent Contractor's Coverage;
- Premises-Operations, Products and Completed Operations Liability Insurance;
- The insurance coverage (including primary, excess and/or umbrella) hereinafter afforded by the Consultant(s) and Sub-consultant(s) shall be primary insurance and non-contributory with respect to the additional insureds;
- Excess/umbrella policies shall "follow form" to the underlying policies;
- Excess/umbrella policies shall have a liberalization clause with drop down provision;
- To the extent any coverage the Consultant(s) and Sub-consultant(s) obtains and/or maintains under this Agreement contains "Other Insurance" language or provisions shall not be applicable to the additional insureds or to any insurance coverage maintained by the additional insureds;
- All insurance policies shall include a waiver of subrogation, as allowed by law, in favor of the additional insureds;
- Defense costs must be outside of policy limits. Eroding limits policies are not permitted;
- In the event the Consultant(s) and/or its Sub-consultant(s) obtains and/or maintains broader coverage and/or insurance in an amount greater than the minimum limits required under this Agreement, then the full limits of that insurance coverage will be available to respond to any claims asserted against the additional insureds that arises out of or is in any way connected with this Agreement;
- Additional insureds coverage shall not be restricted to vicarious liability unless required by controlling law;

In addition, the liability policy(ies) shall be written on a form at least as broad as ISO Form CG 20 10 10 01 (for ongoing operations work) together with ISO Form CG 20 37 10 01 (for

DRAFT AND DELIBERATIVE

completed operations work) or their equivalent and endorses to name “The Port Authority of New York and New Jersey, and its related entities, their Commissioners, Directors, Superintendents, officers, partners, employees, agents, their affiliates, successors or assigns”, in addition to: **The Federal Aviation Administration**, The City of New York, for all operations at John F. Kennedy and LaGuardia Airports; Port Authority Trans-Hudson Corporation, for operations at PATH; AFCO AvPorts Management LLC, for operations at Teterboro Airport; AFCO AvPorts Management LLC and NY State Dept. of Transportation , for operations at Stewart Int’l Airport, Trends Urban Renewal for operations at PATC and Silverstein Properties Inc.; The Port Authority of New York and New Jersey; Silverstein 2/3/4 WTC Redevelopment LLC; WTC Redevelopment LLC; World Trade Center Properties LLC; 4 World Trade Center LLC; Net Lessees 'Association of the World Trade Center; WTC Management and Development LLC; Silverstein WTC Mgmt. Co. LLC. Silverstein WTC Mgmt. Co II LLC; Silverstein WTC Properties LLC; Silverstein WTC Management and Development LLC; Silverstein WTC LLC.; WTC Investors LLC.; 4 WTC Holdings LLC; WTC Investors Management and Development LLC; World Trade Center Holdco LLC; 4 WTC Mezz LLC. for operations at the World Trade Center Site as “Insured” (as defined in the policy or in an additional insured endorsement amending the policy’s “Who Is An Insured” language as the particular policy may provide) on its liabilities policies with respect to liability arising out of work or operations performed by or on behalf of the Consultant(s) including, but not limited to, materials, parts or equipment furnished in connection with such work or operations. The “Insured” shall be afforded coverage and defense as broad as if they are the first named insured and regardless of whether they are otherwise identified as additional insureds under the liability policies, including but not limited to premises-operations, products-completed operations of the Commercial General Liability Policy. Such additional insureds status shall be provided regardless of privity of contract between parties. The liability policy(ies) and certificate of insurance shall contain cross-liability language providing severability of interests so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds shall not reduce or void coverage to the other insureds. The Consultant(s) is/are responsible for all deductibles or losses not covered by commercially procured insurance. Any portion of the coverage to be provided under a Self-Insured Retention (SIR) of the Consultant(s) is/are subject to the review and approval of the General Manager, Risk Financing. Furthermore, any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim.

Any self-insured retention shall cover any liability imposed upon the Consultant(s) and any and all subsidiaries with respect to all operations and obligations assumed by the Consultant(s) and any and all subsidiaries. The undersigned represents that such program provides the Additional Insureds (as defined in the Agreement) with all rights, immunities and protections that would be provided by traditional independent insurance required under the Agreement, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies pursuant to the terms of the Agreement.

If any of the Work is to be done on or at Port Authority facilities by the Sub-consultants and, if the Consultant(s) requires its Sub-consultant(s) to procure and maintain such insurance in the name of the Consultant(s), then such insurance as is required herein shall include and cover the additional insureds and it must have insurance limits not lower than those set forth by the Port Authority herein, along with all the insurance requirements in this “Insurance” section.

DRAFT AND DELIBERATIVE

Further, it is the Consultant's responsibility to maintain, enforce and ensure that the type of coverages and all limits maintained by it and any of all Sub-consultants are accurate, adequate and in compliance with the Port Authority requirement. All certificates of insurance shall be turned over to the Port Authority prior to the start of work, and upon completion of the Agreement.

*The Consultant, its Sub-consultant(s) and its insurer(s) shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.*

**2) Workers' Compensation Insurance:**

The Consultant(s) and its/their Sub-consultant(s) shall take out, maintain and pay premiums on Workers' Compensation Insurance in accordance with the requirements of law in the state(s) where work will take place, and Employer's Liability Insurance with limits of not less than **\$1,000,000** each accident. Such policy shall include a waiver of subrogation endorsement in the benefit of the additional insureds.

**3) Additional Coverages:** The Consultant(s) shall have the policy endorsed "**Only when required by the Director**" for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) Any/all activities performed airside must, at all times, be performed while under security escort as approved in advance, and in writing by the Project Manager. If the services of the Consultant(s), as directed by the Authority, require the performance of services airside, the Commercial General Liability and Automobile Liability coverage limits stipulated in subparagraph 1, above, shall be increased to an amount not less than \$25,000,000 per occurrence as provided herein.
- b) Endorsement to eliminate any exclusions applying to the explosion, collapse, and underground property damage (XCU) hazards.
- c) Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
- d) Coverage for work within fifty (50) feet of railroad.

**4) Additional Coverages:** The Consultant(s) shall have the policy endorsed "**Only when required by the Director**" for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

DRAFT AND DELIBERATIVE

- a) United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.
- b) Coverage B Endorsement - Maritime (Masters or Members of the Crew of Vessels), in limits of not less than \$1,000,000 per occurrence.
- c) Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$1,000,000 per occurrence.

**5) Professional Liability Insurance:**

The Consultant(s) shall take out, maintain and pay premiums on Professional Liability Insurance in limits of not less than **\$10,000,000** each occurrence, covering acts, errors, mistakes, and omissions arising out of the work or services performed by Consultant(s), or any person employed by Consultant(s). All endorsements and exclusions shall be evidenced on the certificate of insurance. The coverage shall be written on an occurrence basis or may be written on a claims made basis with a minimum of a three-year reporting/discovery period.

Each policy above shall contain an endorsement that the policy may not be canceled, terminated or modified without thirty (30) days' prior written notice to the Project Manager, at the location where the work will take place with a copy to the General Manager, Risk Financing.

The Port Authority may, at any time during the term of this Agreement, change or modify the limits and coverages of insurance. Should the modification or change result in an additional premium, the General Manager, Risk Financing for the Port Authority may consider such cost as an out-of-pocket expense.

Within five (5) days after award of this Agreement and prior to the start of work at the site, the Consultant(s) must submit an original certificate of insurance, to the Project Manager and Exigis email: [REDACTED] at the location where the work will take place. This certificate of insurance MUST show evidence of the above insurance policy(ies), including, but not limited to, the title of this Agreement, the P. A. Agreement number, the notice of cancellation provisions, prior to the start of work. The Consultant(s) is/are also responsible for maintaining and conforming to all insurance requirements from the additional insureds and their successors and assigns. The General Manager, Risk Financing must approve the certificate(s) of insurance before any work can begin. Upon request of the General Manager, Risk Financing/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.

Renewal certificates of insurance or policies shall be delivered to the Authority's Project Manager, and upon request from the additional insureds, their successors or assigns at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Financing must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Authority, the Consultant(s) shall promptly obtain a new and satisfactory certificate and policy and provide same to the Port Authority.

If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then, the Consultant(s) and all Sub-consultants

DRAFT AND DELIBERATIVE

shall suspend performance of the Agreement at the premises until a satisfactory insurance policy(ies) and certificate of insurance is provided to and approved by Risk Financing, unless the Facility or Project Manager directs the Consultant(s), in writing, to continue to performing work under the Agreement. If the Agreement is so suspended, no extension of time shall be due on account thereof.

Failure by the Consultant(s) to meet any of the insurance requirements, including the requirement that the Port Authority be afforded the full extent of the insurance obtained under this Agreement without limitation, shall be deemed a material breach of Agreement and may be a basis for termination of this Agreement by the Port Authority.

The requirements for insurance procured by the Consultant(s) shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Consultant(s) under this Agreement. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Consultant against the obligations imposed on them by law or by this or any other Agreement.

All insurance coverage shall be provided by the Consultant(s) and/or by or for any of its/their Sub-consultant(s) at no additional expense to the Port Authority and its related entities. A copy of this "Insurance" section shall be given to your insurance agent and Sub-consultant(s) and shall form a part of the covered Agreement for insurance purposes in furtherance of the insurance requirements of this Agreement.

\*\*\*\*

**From:** [REDACTED]  
**To:** [Summerville, James](#); [Lamond, Kathryn](#); [Clark, Patty](#); [DiScenna, Matthew](#); [Cohen, Michelle](#); [Tabafunda, Faith](#); [Rogak, Elizabeth](#); [Jenet, Marie \(FAA\)](#); [Drew Brooks](#); [REDACTED]; [REDACTED]; [Herndon, Jane](#)  
**Cc:** [REDACTED]; [Puliafico, Jessica](#); [Papasavvas, Krystina](#)  
**Subject:** RE: LGA Access Improvement Project: RFP & Attachment A  
**Date:** Thursday, September 20, 2018 3:00:51 PM  
**Attachments:** [Attachment A Draft Track Changes 9.18.18 FAA Edits.docx](#)  
[RFP Letter Draft Track Changes 9.18.18 FAA Edits.docx](#)

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Hi James, et. al.,

Attached please find the revised draft RFP and Attachment A that incorporates proposed language from the FAA in track changes. All the language in track from the Port Authority redraft circulated on Tuesday has been accepted in the attached versions.

Thank you

Andrew

Andrew Teodorescu  
Attorney, Environmental Law Branch, AGC-620  
Office of the Chief Counsel  
Federal Aviation Administration  
1 Aviation Plaza  
Jamaica, NY 11434  
Tel: [REDACTED]  
Cell: [REDACTED]

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---

**From:** Summerville, James <[REDACTED]>  
**Sent:** Tuesday, September 18, 2018 11:08 AM  
**To:** Lamond, Kathryn <[REDACTED]> [REDACTED] DiScenna, Matthew  
<[REDACTED]> Cohen, Michelle <[REDACTED]> Tabafunda, Faith  
<[REDACTED]> Rogak, Elizabeth <[REDACTED]> Jenet, Marie (FAA)  
<[REDACTED]> Brooks, Andrew (FAA) <[REDACTED]> Martinez, Evelyn (FAA)  
<[REDACTED]> Sanchez, David (FAA) <[REDACTED]> McCarthy, Mary M  
(FAA) <[REDACTED]> Doyle, John (FAA) <[REDACTED]> Henn, Patricia (FAA)  
<[REDACTED]> Herndon, Jane <[REDACTED]>

**Cc:** Wolfers-Lawrence, Jean (FAA) <[REDACTED]> Puliafico, Jessica  
<[REDACTED]> Teodorescu, Andrew P (FAA) <[REDACTED]>  
Papasavvas, Krystina <[REDACTED]>

**Subject:** RE: LGA Access Improvement Project: Weekly Check-in

Andrew, Marie, et. al.

In anticipation of Thursday's call at 9:00 AM, I've attached updated documents comprising the RFP for the LGA AirTrain EIS Consultant procurement. Updates are represented in track-change mode from the prior version that you reviewed (July). I've also included the draft advertisement for the notice of the RFP. Our goal is to close out any final items related to the RFP documents no later than Thursday's call.

Sincerely,

James Summerville, Sr. Proj. Contracts Specialist  
Port Authority of NY & NJ  
Procurement Dept.  
[REDACTED]

Attachments:

Attachment A  
RFP letter

Advertisement: Attached is an advertisement form. Fyi, The yellow-highlighted language in the form will appear in advertisements for this opportunity.

-----Original Appointment-----

**From:** Lamond, Kathryn

**Sent:** Tuesday, September 18, 2018 9:06 AM

**To:** Lamond, Kathryn; Clark, Patty; DiScenna, Matthew; Cohen, Michelle; Tabafunda, Faith; Rogak, Elizabeth; [REDACTED] Drew Brooks; [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] Herndon, Jane

**Cc:** [REDACTED] Puliafico, Jessica; [REDACTED] Summerville, James; Papasavvas, Krystina

**Subject:** FW: LGA Access Improvement Project: Weekly Check-in

**When:** Thursday, September 20, 2018 9:00 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).

**Where:** Call-in #: [REDACTED] Code: [REDACTED] Host (Katie): [REDACTED]

-----Original Appointment-----

**From:** Lamond, Kathryn

**Sent:** Friday, April 13, 2018 7:50 AM

**To:** Lamond, Kathryn; Clark, Patty; DiScenna, Matthew; Cohen, Michelle; Tabafunda, Faith; Rogak,



Elizabeth; [REDACTED] Drew Brooks; [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] Herndon, Jane

**Cc:** [REDACTED] Puliafico, Jessica; [REDACTED]

**Subject:** LGA Access Improvement Project: Weekly Check-in

**When:** Thursday, September 20, 2018 9:00 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).

**Where:** Call-in #: [REDACTED] Code: [REDACTED] Host (Katie): [REDACTED]

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

**ATTACHMENT A**

**PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (“LGA”) ACCESS IMPROVEMENT PROJECT**

**I. BACKGROUND**

*General:*

For background with respect to The Port Authority of New York and New Jersey (the “Authority” or “Sponsor”) see [www.panynj.gov](http://www.panynj.gov). Additionally, the most recent electronic version of the Authority’s Annual Report is available at <http://www.panynj.gov/corporate-information/annual-reports.html>.

*Project Description:*

The Authority is proposing to construct a new automated people mover (“APM”) AirTrain system to provide a fast, convenient, predictable, and reliable transit alternative for air passenger and employee access to LaGuardia Airport (“LGA” or the “Airport”). This proposed project, herein referred to as the LaGuardia Airport Access Improvement Project (the “Project”), is to provide a direct connection between the Airport and Metropolitan Transportation Authority’s (“MTA”) Long Island Rail Road (“LIRR”) and New York City Transit (“NYCT”) stations. Further, the LaGuardia Airport Access Improvement Project shall include provision for off-airport employee parking with convenient access by way of the new transportation service to the Airport. The Federal actions associated with the Authority’s proposed Project are decisions by the Federal Aviation Administration (“FAA”) on an updated Airport Layout Plan (“ALP”) and for the use of Passenger Facility Charge (“PFC”) funding, should the Authority pursue imposing and using PFC funding for the proposed Project.

The Authority’s preferred alternative is for an elevated AirTrain to operate between the Airport and a transfer station at Willets Point. The proposed AirTrain system would include two on-airport stations and a terminus station at Willets Point providing connections to the Mets-Willets Point stations of the LIRR Port Washington Branch and the NYCT Flushing No. 7 subway line. In addition to providing a connection to the LIRR and NYCT stations at the Willets Point terminus station, the proposed AirTrain would serve as an on-airport transit system that would facilitate transfers between airline terminals and provide connections to parking facilities. The proposed AirTrain system would provide access to LGA’s new Terminals B and C. Additionally, the Authority seeks not to preclude future service to Terminal A. The proposed Project includes associated facilities and infrastructure (stations, guideway, maintenance/control facility, etc.) as well as the systems (vehicles, train control, power distribution system, etc.) for the AirTrain.

The Authority’s goal is to complete the proposed Project and commence passenger service as close as possible to the end of 2022, when other major redevelopment projects are expected to be completed, in order to minimize the duration of construction-related disruptions to customers. As such, the Authority is seeking to accelerate the environmental review schedule for the proposed Project, with the goal of the FAA completing the issuance of a Record of

Decision (“ROD”) and completing the National Environmental Policy Act (“NEPA”) review as early as 12-months from the Notice of Intent (“NOI”) for services hereunder to enable construction of the proposed Project to begin by the first quarter of 2020. This proposed timeframe may be impacted by a number of factors, including concurrent environmental review by other Federal, state, and local agencies. The Consultant shall comply with the processes and procedures outlined in Executive Order 13807: Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, signed on August 15, 2017, such as facilitation of efficient collaboration and communication with agencies involved with the environmental review and permitting for the proposed Project.

*General Description of Consultant Services:*

The Authority is seeking a Consultant to provide professional services to assist the FAA in preparing an Environmental Impact Statement (“EIS”) to assess and disclose the potential environmental impacts of the construction and operation of the Authority’s proposed Project and reasonable alternatives in a manner that complies with all applicable federal, state and local environmental laws and regulations. The FAA is the lead Federal agency for preparing the EIS in accordance with the requirements of NEPA (42 U.S.C. 4321 et. seq.), the Council on Environmental Quality (“CEQ”) regulations (40 C.F.R. Parts 1500-1508), and appropriate U.S. Department of Transportation and FAA environmental orders. As stated above, the Federal actions associated with the Authority’s proposed Project include but are not limited to a decision by FAA on an updated ALP, and should the Authority pursue imposing and using PFC funding for its proposed Project, a decision by FAA regarding use of such PFC funds.

The Consultant shall be responsible to the FAA for the preparation of an EIS associated with the Authority’s proposed Project. The FAA shall direct the services provided by the Consultant hereunder. The Consultant shall serve as the independent third party assisting the FAA with conducting the EIS process in an efficient and cost-effective manner, while maintaining a high degree of accuracy and validity in the production of all EIS deliverables.

Preliminary planning work is being conducted by the Authority. The documentation for the Authority’s planning efforts will be provided by the Authority to the FAA. This documentation will be provided to the Consultant at the discretion of the FAA.

**II. SCOPE OF SERVICES**

Within fifteen (15) business days of notice of selection, the Consultant should develop and submit a detailed scope of work for the entire assignment, in order to meet the Authority’s goal for the expeditious completion of the EIS. The detailed scope of work is hereinafter referred to as the Plan of Study, which is subject to FAA approval. The draft Plan of Study shall be accepted by the FAA prior to issuance of the NOI. It is the Authority’s goal that the NOI be issued no later than the end of the fourth quarter of 2018. The Plan of Study will include detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated person-hours required for completion of each aspect, the schedule for performing each aspect,

## DRAFT AND DELIBERATIVE

and a description of the internal and external review procedures to assure quality control. The Plan of Study will also include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the planning and environmental data and analyses and the development and preparation of the EIS. Finally, the Plan of Study must comply with all applicable regulations and must include such additional analytical requirements as provided by the FAA prior to completion. In addition, in producing or revising the Plan of Study, the Consultant may consider as appropriate any relevant submissions made by the Authority or its representative to the FAA. The Plan of Study, as accepted by the FAA, shall amend and restate the entirety of this section, Section II. Scope of Services.

The EIS is to be accomplished in accordance with FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, Order 5050.4B, *NEPA Implementing Instructions for Airport Actions*, and associated Desk References (or the current version at time of contract award) and special purpose laws, and the requirements of any Cooperating Agency (as defined in 40 CFR §§ 1501.6 and 1508.5) that may have jurisdiction over the Project. Specific environmental issues to be included in the EIS may include, but are not limited to:

- a) Air Quality
- b) Biological Resources
- c) Climate
- d) Coastal Resources
- e) Department of Transportation Act, Section 4(f)
- f) Farmlands
- g) Hazardous Materials, Solid Waste, and Pollution Prevention
- h) Historical, Architectural, Archaeological, and Cultural Resources
- i) Land Use
- j) Natural Resources and Energy Supply
- k) Noise and Noise Compatible Land Use
- l) Socioeconomic, Environmental Justice, and Children's Environmental Health and Safety Risks
- m) Visual Effects
- n) Water Resources (Wetlands, Floodplains, Surface Waters, Groundwater, Wild and Scenic Rivers)
- o) Cumulative Impacts
- p) Irreversible and Irretrievable Commitment of Resources

The individual scope of these studies may be modified by the needs and requirements of the FAA designated cooperating agencies.

It is anticipated that the scope of work resulting from the Plan of Study may require the Consultant to perform the following services, at minimum:

1. Facilitate and conduct meetings necessary for the preparation and development of the EIS.
2. Provide project management duties, including but not limited to preparing reports,

## DRAFT AND DELIBERATIVE

- updating the Plan of Study as necessary, taking meeting minutes, coordinating activities between all stakeholders, schedule monitoring, preparing presentation materials, creating and maintaining the project file, assisting in the identification and compilation of the administrative record in the event of any potential legal proceedings associated with the environmental review or final agency actions or decisions, and assistance throughout any potential legal proceedings, etc.
3. Review project-related documents necessary for the development of the EIS, including planning documents provided to the FAA by the Authority or its representative. The Consultant shall review and independently evaluate the materials prepared by the Authority or its representative and shall complete the EIS documentation as required.
  4. Assist the FAA to fulfill its lead Federal agency role and enhance effective NEPA scoping to ensure early in the process that the EIS addresses key issues of concern to agencies and the public. This will include working with any Cooperating Agency to identify permitting requirements within the jurisdiction of that agency, as established in the Federal Permitting Dashboard contemplated in the Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807.
  5. Develop the Purpose and Need Statement, to provide the parameters for defining a reasonable range of alternatives and to be utilized for the comparative evaluation of alternatives to the Sponsor's proposed Project. The Purpose should outline the goals and objectives that the Sponsor's proposed Project should achieve, and the Need should provide the data to support the Purpose.
  6. Prepare an alternatives analysis addressing a range of reasonable alternatives to the Sponsor's proposed Project. It is expected that the "No Action" and the Sponsor's proposed Project will be alternatives. The Consultant will identify other potential alternatives and conduct a screening of alternatives, as appropriate.
  7. Describe existing environmental resources and conditions that the Sponsor's proposed Project, reasonable alternatives, and No Action may affect.
  8. Describe impacts and environmental consequences of the Sponsor's proposed Project and reasonable alternatives that were previously identified for further evaluation, including the No Action alternative.
  9. Prepare draft and final versions of the EIS, including the preparation of draft chapters and preliminary draft EIS and preliminary final EIS. It is anticipated that the draft and final version should include the following elements, at minimum:
    - a. Cover Page
    - b. Executive Summary
    - c. Table of Contents
    - d. Purpose and Need
    - e. Alternatives
    - f. Affected Environment

## DRAFT AND DELIBERATIVE

- g. Environmental Consequences
  - h. Mitigation
  - i. List of Preparers
  - j. List of Agencies, Organizations, and Persons to Whom Copies of the Statement are Sent
  - k. Index
  - l. Appendices (if any)
  - m. Comments
  - n. Footnotes
10. Solicit and facilitate public and stakeholder involvement on behalf of FAA throughout the EIS process in accordance with NEPA and relevant special purpose laws.
  11. Ensure that the EIS documentation includes relevant information required for future permitting applications and processes, as required.
  12. Assist the FAA in the preparation of a draft ROD.

All work prepared under this Agreement shall be delivered to the FAA in printed format and searchable .pdf files along with components associated with each item, such as data files, text files, image files, spreadsheets, graphs, and tables. These products, where applicable, will be compatible with and incorporated into the Airports Geographic Information System (“AGIS”) managed by the FAA (as applicable). While performing work under this Agreement, the Consultant shall be responsible for managing the ~~administrative~~ project file and, upon completion of the work, will be responsible for submitting a completed project file~~administrative record~~ for the project to the FAA, in accordance with FAA policy and guidance.

### **III. PERIOD OF PERFORMANCE**

The period of performance (through completion of the final EIS) of the services is not to exceed that which is to be directed by the FAA as the lead Federal agency for services hereunder. The work will be performed in accordance with FAA's procedures for assessing environmental impacts including FAA Orders 1050.1F and 5050.4B (or the current version(s) at time of agreement award). While it is conceivable that issues raised during the public comment process could affect the time of performance, the Consultant should assume that the FAA will grant any extensions of time for performance only for the most extraordinary circumstances. The Period of Performance establishes the expected outer limit for project development.

### **IV. LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE**

#### **A. Commercial Liability Insurance:**

1) The Consultant(s), and all of its/their Sub-consultants shall take out, maintain, and pay the premiums on Commercial General Liability Insurance for the life of the Agreement and such Insurance and shall be written on an ISO occurrence form CG 00 01 0413 or its equivalent covering the obligations assumed by the Consultant(s) under this Agreement, including, but not limited to, Premises-Operations, Products and Completed Operations, Broad form property

## DRAFT AND DELIBERATIVE

damage, personal and advertising injury and Independent Contractor's coverages, with contractual liability language covering the obligations assumed by the Consultant(s) with insurance covering against claims for injuries to persons or damages to property which may arise from or in connection with products and materials supplied to the Agency in limits of not less than **\$10,000,000** combined single limit per occurrence and in the annual aggregate. If vehicles are to be used to carry out the performance of this Agreement, then the Consultant(s) shall also take out, maintain and pay the premiums on **Automobile Liability Insurance** covering all owned, non-owned and hired autos in not less than **\$5,000,000** combined single limit per accident for bodily injury and property damage. **(Only if Applicable)**

The insurance shall be written on an occurrence basis, as distinguished from a "claims made" basis, and shall not include any exclusions for "action over claims" (insured vs. insured) and minimally arranged to provide and encompass at least the following coverages:

- Contractual Liability to cover liability assumed under the Agreement;
- Independent Contractor's Coverage;
- Premises-Operations, Products and Completed Operations Liability Insurance;
- The insurance coverage (including primary, excess and/or umbrella) hereinafter afforded by the Consultant(s) and Sub-consultant(s) shall be primary insurance and non-contributory with respect to the additional insureds;
- Excess/umbrella policies shall "follow form" to the underlying policies;
- Excess/umbrella policies shall have a liberalization clause with drop down provision;
- To the extent any coverage the Consultant(s) and Sub-consultant(s) obtains and/or maintains under this Agreement contains "Other Insurance" language or provisions shall not be applicable to the additional insureds or to any insurance coverage maintained by the additional insureds;
- All insurance policies shall include a waiver of subrogation, as allowed by law, in favor of the additional insureds;
- Defense costs must be outside of policy limits. Eroding limits policies are not permitted;
- In the event the Consultant(s) and/or its Sub-consultant(s) obtains and/or maintains broader coverage and/or insurance in an amount greater than the minimum limits required under this Agreement, then the full limits of that insurance coverage will be available to respond to any claims asserted against the additional insureds that arises out of or is in any way connected with this Agreement;
- Additional insureds coverage shall not be restricted to vicarious liability unless required by controlling law;

In addition, the liability policy(ies) shall be written on a form at least as broad as ISO Form CG 20 10 10 01 (for ongoing operations work) together with ISO Form CG 20 37 10 01 (for completed operations work) or their equivalent and endorses to name "The Port Authority of New York and New Jersey, and its related entities, their Commissioners, Directors, Superintendents, officers, partners, employees, agents, their affiliates, successors or assigns", in addition to: The Federal Aviation Administration, The City of New York, for all operations at John F. Kennedy and LaGuardia Airports; Port Authority Trans-Hudson Corporation, for operations at PATH; AFCO AvPorts Management LLC, for operations at Teterboro Airport; AFCO AvPorts Management LLC

## DRAFT AND DELIBERATIVE

and NY State Dept. of Transportation , for operations at Stewart Int'l Airport, Trends Urban Renewal for operations at PATC and Silverstein Properties Inc.; The Port Authority of New York and New Jersey; Silverstein 2/3/4 WTC Redevelopment LLC; WTC Redevelopment LLC; World Trade Center Properties LLC; 4 World Trade Center LLC; Net Lessees 'Association of the World Trade Center; WTC Management and Development LLC; Silverstein WTC Mgmt. Co. LLC. Silverstein WTC Mgmt. Co II LLC; Silverstein WTC Properties LLC; Silverstein WTC Management and Development LLC; Silverstein WTC LLC.; WTC Investors LLC.; 4 WTC Holdings LLC; WTC Investors Management and Development LLC; World Trade Center Holdco LLC; 4 WTC Mezz LLC. for operations at the World Trade Center Site as “Insured” (as defined in the policy or in an additional insured endorsement amending the policy’s “Who Is An Insured” language as the particular policy may provide) on its liabilities policies with respect to liability arising out of work or operations performed by or on behalf of the Consultant(s) including, but not limited to, materials, parts or equipment furnished in connection with such work or operations. The “Insured” shall be afforded coverage and defense as broad as if they are the first named insured and regardless of whether they are otherwise identified as additional insureds under the liability policies, including but not limited to premises-operations, products-completed operations of the Commercial General Liability Policy. Such additional insureds status shall be provided regardless of privity of contract between parties. The liability policy(ies) and certificate of insurance shall contain cross-liability language providing severability of interests so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds shall not reduce or void coverage to the other insureds. The Consultant(s) is/are responsible for all deductibles or losses not covered by commercially procured insurance. Any portion of the coverage to be provided under a Self-Insured Retention (SIR) of the Consultant(s) is/are subject to the review and approval of the General Manager, Risk Financing. Furthermore, any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim.

Any self-insured retention shall cover any liability imposed upon the Consultant(s) and any and all subsidiaries with respect to all operations and obligations assumed by the Consultant(s) and any and all subsidiaries. The undersigned represents that such program provides the Additional Insureds (as defined in the Agreement) with all rights, immunities and protections that would be provided by traditional independent insurance required under the Agreement, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies pursuant to the terms of the Agreement.

If any of the Work is to be done on or at Port Authority facilities by the Sub-consultants and, if the Consultant(s) requires its Sub-consultant(s) to procure and maintain such insurance in the name of the Consultant(s), then such insurance as is required herein shall include and cover the additional insureds and it must have insurance limits not lower than those set forth by the Port Authority herein, along with all the insurance requirements in this “Insurance” section.

Further, it is the Consultant’s responsibility to maintain, enforce and ensure that the type of coverages and all limits maintained by it and any of all Sub-consultants are accurate, adequate and in compliance with the Port Authority requirement. All certificates of insurance shall be turned over to the Port Authority prior to the start of work, and upon completion of the Agreement.



*The Consultant, its Sub-consultant(s) and its insurer(s) shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.*

**2) Workers' Compensation Insurance:**

The Consultant(s) and its/their Sub-consultant(s) shall take out, maintain and pay premiums on Workers' Compensation Insurance in accordance with the requirements of law in the state(s) where work will take place, and Employer's Liability Insurance with limits of not less than **\$1,000,000** each accident. Such policy shall include a waiver of subrogation endorsement in the benefit of the additional insureds.

**3) Additional Coverages:** The Consultant(s) shall have the policy endorsed "**Only when required by the Director**" for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) Any/all activities performed airside must, at all times, be performed while under security escort as approved in advance, and in writing by the Project Manager. If the services of the Consultant(s), as directed by the Authority, require the performance of services airside, the Commercial General Liability and Automobile Liability coverage limits stipulated in subparagraph 1, above, shall be increased to an amount not less than \$25,000,000 per occurrence as provided herein.
- b) Endorsement to eliminate any exclusions applying to the explosion, collapse, and underground property damage (XCU) hazards.
- c) Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
- d) Coverage for work within fifty (50) feet of railroad.

**4) Additional Coverages:** The Consultant(s) shall have the policy endorsed "**Only when required by the Director**" for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.
- b) Coverage B Endorsement - Maritime (Masters or Members of the Crew of Vessels), in limits of not less than \$1,000,000 per occurrence.
- c) Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$1,000,000 per occurrence.

**5) Professional Liability Insurance:**

## DRAFT AND DELIBERATIVE

The Consultant(s) shall take out, maintain and pay premiums on Professional Liability Insurance in limits of not less than **\$10,000,000** each occurrence, covering acts, errors, mistakes, and omissions arising out of the work or services performed by Consultant(s), or any person employed by Consultant(s). All endorsements and exclusions shall be evidenced on the certificate of insurance. The coverage shall be written on an occurrence basis or may be written on a claims made basis with a minimum of a three-year reporting/discovery period.

Each policy above shall contain an endorsement that the policy may not be canceled, terminated or modified without thirty (30) days' prior written notice to the Project Manager, at the location where the work will take place with a copy to the General Manager, Risk Financing.

The Port Authority may, at any time during the term of this Agreement, change or modify the limits and coverages of insurance. Should the modification or change result in an additional premium, the General Manager, Risk Financing for the Port Authority may consider such cost as an out-of-pocket expense.

Within five (5) days after award of this Agreement and prior to the start of work at the site, the Consultant(s) must submit an original certificate of insurance, to the Project Manager and Exigis email: [REDACTED] at the location where the work will take place. This certificate of insurance MUST show evidence of the above insurance policy(ies), including, but not limited to, the title of this Agreement, the P. A. Agreement number, the notice of cancellation provisions, prior to the start of work. The Consultant(s) is/are also responsible for maintaining and conforming to all insurance requirements from the additional insureds and their successors and assigns. The General Manager, Risk Financing must approve the certificate(s) of insurance before any work can begin. Upon request of the General Manager, Risk Financing/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.

Renewal certificates of insurance or policies shall be delivered to the Authority's Project Manager, and upon request from the additional insureds, their successors or assigns at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Financing must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Authority, the Consultant(s) shall promptly obtain a new and satisfactory certificate and policy and provide same to the Port Authority.

If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then, the Consultant(s) and all Sub-consultants shall suspend performance of the Agreement at the premises until a satisfactory insurance policy(ies) and certificate of insurance is provided to and approved by Risk Financing, unless the Facility or Project Manager directs the Consultant(s), in writing, to continue to performing work under the Agreement. If the Agreement is so suspended, no extension of time shall be due on account thereof.

Failure by the Consultant(s) to meet any of the insurance requirements, including the requirement that the Port Authority be afforded the full extent of the insurance obtained under this Agreement

DRAFT AND DELIBERATIVE

without limitation, shall be deemed a material breach of Agreement and may be a basis for termination of this Agreement by the Port Authority.

The requirements for insurance procured by the Consultant(s) shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Consultant(s) under this Agreement. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Consultant against the obligations imposed on them by law or by this or any other Agreement.

All insurance coverage shall be provided by the Consultant(s) and/or by or for any of its/their Sub-consultant(s) at no additional expense to the Port Authority and its related entities. A copy of this "Insurance" section shall be given to your insurance agent and Sub-consultant(s) and shall form a part of the covered Agreement for insurance purposes in furtherance of the insurance requirements of this Agreement.

\*\*\*\*

DATE

**SUBJECT: REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE LAGUARDIA AIRPORT (LGA) ACCESS IMPROVEMENT PROJECT (RFP# 54523)**

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the “Authority”) is seeking proposals in response to this Request for Proposals (“RFP”) for a Consultant to provide the subject services. The services will require the preparation of an Environmental Impact Statement (“EIS”) for the LGA Access Improvement Project (the “Project”). The Authority’s goal is to complete the proposed Project and commence passenger service as close as possible to the end of 2022, when other major redevelopment projects are expected to be completed, in order to minimize the duration of construction-related disruptions to customers. Therefore, the Authority is committed to supporting the completion of the EIS within 12 months of the Notice of Intent (“NOI”) to enable construction of the proposed Project to begin by the first quarter of 2020. As such, both the Authority, as the Airport Sponsor, and the Federal Aviation Administration (“FAA”) will work together to facilitate the expeditious preparation of the EIS. The Authority is issuing this RFP, and both the Authority and FAA will participate in the process to evaluate proposals. The roles of the Authority and FAA in the evaluation process are set forth below in Section III. Selection Process. The selected firm (the “Consultant”) will work directly with the FAA for the performance of the services that will culminate in the development of the EIS. The Authority and the Consultant will negotiate and enter into an agreement (“Agreement”) resulting from this RFP, for the performance of the Consultant’s services on behalf of the FAA. The Authority will be responsible for overall contract administration and payment for the Consultant’s services as accepted by the FAA, while the Consultant reports to the FAA for direction on the development of the EIS.

The general scope of services to be performed by the Consultant is set forth in Attachment A. In order to meet the Authority’s goal for the expeditious completion of the EIS, a detailed scope of work should be drafted by the selected Consultant and provided to the FAA for review within fifteen (15) business days of notice of selection. This detailed scope of work shall serve as a Plan of Study for the assignment. The draft Plan of Study must be accepted by the FAA prior to contract award and subsequent issuance of the FAA’s NOI to conduct an EIS. It is the Authority’s goal that the NOI be issued by the FAA no later than the end of the fourth quarter of 2018.

**I. PROPOSAL FORMAT REQUIREMENTS:**

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

- A. To be acceptable, this Proposal shall be no more than **20** single sided pages or **10** double sided pages, using 12 point or greater font size, **not including resumes**. Each resume shall be a maximum of two-pages single-sided or one-page double-sided, using 12 point or greater font size. The page limit pertains only to Numbers 4 through 9 (excluding resumes requested in Number 6) in Section II, below. The Proposal pages shall be numbered and

## DRAFT AND DELIBERATIVE

bound, or in a 3-ring binder, with “Your Firm Name”, and **RFP Number 54523** clearly indicated on the cover.

- B. Separate each section of the Proposal with a tab divider that is labeled in accordance with the letter of the requirements specified below in Section II.
- C. All proposals must be delivered in sealed envelopes and/or packages. Address the Proposal to: The Port Authority of New York and New Jersey, 4 World Trade Center, 21<sup>st</sup> Floor, New York, NY 10007, Attention: RFP Custodian.
- D. You shall submit the Technical Proposal as follows in one envelope:

**One (1) reproducible original** hard copy containing original signatures along with **twenty (20) compact disc copies of your Technical Proposal** for review. USB Flash Drives will not be accepted. In case of conflict, the reproducible original of the Technical Proposal shall take precedence over material on the CDs.

The Technical Proposal shall include all information requested in the “Technical Proposal” subsection of Section II hereof. **No pricing-related information shall be provided in the original and CD copies of the Technical Proposal.**

- E. In each submission to the Authority, including any return address label, information on the compact disc and information on the reproducible original and copies of the proposal, the Proposer shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure to comply with this requirement may lead to delays in contract award and contract payments, which shall be the responsibility of the Proposer.
- F. Your Proposal should be forwarded in sufficient time so that the Authority receives it **no later than 2:00 p.m. on <DATE>**. The outermost cover of your submittal must be labeled to include the RFP Number and title as indicated in the “Subject” above. The Authority assumes no responsibility for delays caused by any delivery services.

If your Proposal is to be hand-delivered, note that only individuals with proper identification (e.g. photo identification) will be permitted access to the Authority’s offices. Individuals without proper identification will be turned away and their packages not accepted.

There is extensive security at the World Trade Center Site. You must present a valid government-issued photo ID to enter 4 WTC. Individuals without packages or carrying small packages, envelopes or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All packages, envelopes and boxes may be subject to additional security screening. There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited. Express carrier deliveries by commercial vehicles will only be made via vendors approved by Silverstein Properties, the WTC Property Manager, through the Vehicle Security Center (VSC). Please note that use of the U.S. Mail does not guarantee delivery to Authority offices by the below listed due date for submittals. Proposers using the U.S. Mail are advised to allow sufficient delivery time to ensure timely receipt of their proposals. Presently, UPS is the only delivery vendor with approved recurring delivery times. UPS makes deliveries to 4 WTC around 9:30 a.m. each day. Please plan your submission accordingly. As additional express carriers may be approved by Silverstein Properties and scheduled for recurring delivery times with the VSC, this information may be updated. Under certain circumstances, a solicitation may allow for

## **DRAFT AND DELIBERATIVE**

a commercial vehicle to be approved to make a delivery in accordance with the VSC procedures. If applicable, the specific solicitation document will include that information. The Port Authority assumes no responsibility for delays, including, but not limited to, delays caused by any delivery services, building access procedures, or security requirements.

### **II. SUBMISSION REQUIREMENTS:**

To respond to this RFP, provide the following information:

#### **A. TECHNICAL PROPOSAL:**

1. In the front of your Technical Proposal, a copy of Attachment B (Agreement on Terms of Discussion) signed by an officer of your company. If proposing as a joint venture, each member of the joint venture must sign a copy of Attachment B.
2. Complete a copy of Attachment C (Company Profile).
3. Transmittal Letter
  - a. Include a statement indicating whether the Consultant is proposing as a single entity, or as a joint venture.
  - b. If a joint venture which has not been established as a distinct legal entity (a common-law joint venture) submits a proposal, all participants in the joint venture shall be bound jointly and severally and each participant shall execute the proposal. If a single entity proposer cannot demonstrate that it meets all of the referenced qualifications, then the single entity proposer may, with others, form a joint venture and request that the joint venture be deemed to be the Proposer (i.e. members of the joint venture may meet the qualification requirement collectively).
  - c. If the Proposer is a joint venture, the joint venture's Proposal shall contain an executed teaming agreement or, alternatively, if the entities making up the joint venture proposer have not executed a teaming agreement, the joint venture's proposal shall contain a summary of key terms of the anticipated agreement. If the joint venture proposer is a consortium, partnership or any other form of a joint venture, or an association that is not a legal entity, the proposal shall include a letter signed by each member indicating a willingness to accept joint and several liability until the point at which a corporation, limited liability company or other form of legal entity is formed for the purposes of undertaking the Agreement.
4. Project Approach/Schedule: Demonstrate a thorough understanding of the FAA EIS process. Identify methodologies and approaches that would be utilized to analyze and resolve environmental issues. Describe the proposed public scoping and public hearing process, work products, detailed project schedule, along with the responsibilities of each of the proposed staff/team members and subconsultants and their anticipated percentage of each individual's time working on the project. In order to meet the Authority's goal for the expeditious completion of the EIS, propose an approach to enable the expeditious development a draft Plan of Study within fifteen (15) business days of notice of selection and provide any assumptions related to producing an EIS within twelve (12) months of an NOI. To achieve the 12-month schedule, include a description of the proposed process for

## DRAFT AND DELIBERATIVE

1) efficient coordination with FAA, the Authority, subconsultant work efforts, other federal, state and local agencies and the general public; 2) expediting the development of EIS documentation 3) facilitating accelerated completion of comment review, responses and associated revisions. For example, developing a detailed timeline for development of the EIS and an approach for gaining commitment from all necessary stakeholders to adhere to the timeline; initiating the Draft EIS documentation in parallel with preparation for public scoping, as appropriate; and streamlining comment collection from necessary stakeholders through roundtable reviews.

A description of the team's understanding of any unique issues associated with the preparation of an EIS at LGA should be included. Describe procedures to be followed to adhere to the Authority's goal of completion of the issuance by the FAA of a Record of Decision ("ROD") and completion of the National Environmental Policy Act ("NEPA") review within a 12-month period from the Notice of Intent ("NOI"). In addition, if the Proposer proposes an alternate schedule (exceeding the aforementioned twelve months), the Proposer shall provide its rationale for the longer schedule, its assumptions to producing an EIS within the longer proposed period, and a description of procedures to be followed to adhere to the alternate schedule.

5. **Project Experience:** Provide summaries of experience for past projects by prime consultant and team members (if applicable) that demonstrate experience and ability to undertake and complete an EIS specifically for airport projects and transit systems similar to the proposed project. Do not include projects for which key project personnel are no longer employed by the firm. List the names of key employees with each project. Projects for which individuals gained experience during previous employment should be indicated in this section.

For each qualifying project, include the following information in tabular form: project name, location, client, total contract amount, principal-in-charge, day-to-day technical project manager, key design staff, original estimated schedule and actual schedule of completion (defined for an EIS as Notice of Intent to Record of Decision and for an EA as Notice to Proceed to acceptance of the Final EA) client reference (name, position and phone number) and brief narrative description of the project.

6. **Organization and Management:** Provide an organizational chart and narrative description of the administrative structure proposed for managing this project. Outline major responsibilities and areas of expertise.

The overall project manager and key staff members (both prime firm and subconsultants) must be identified and resumes provided. The project manager is considered to be the single most important Consultant asset, and is expected to maintain responsibility and availability for the project through completion of the EIS required by the scope of services (Attachment A).

Provide a list of projects that the proposed project manager is responsible for and expected completion dates. Resumes of firm principals are not required unless they are proposed as active, integral members of the Consultant team. Principals should, however, be listed on

## DRAFT AND DELIBERATIVE

the organizational diagram in relation to the Consultant team. This section should also include the location of each firm and key staff members.

In addition, if the proposal includes a prime firm and subconsultants, demonstration of relevant past working experience as a team is desired. The relevance of past working experience will be prioritized based on the following: 1) experience on FAA-directed environmental projects; 2) experience on other airport projects not directed by the FAA; 3) experience on environmental projects for other modes under the umbrella of the Department of Transportation; 4) experience on environmental projects for other Federal agencies; and 5) experience with expedited completion of environmental projects

7. References: provide a total of five (5) references of similar projects. For each reference include contact name, title, project name and location, mailing address, phone number, fax number and e-mail address.
8. Description of Proposer/Team: Provide a general description of the Proposer, including services offered, number of employees, office location, years in business, etc. Indicate aviation and rail-related EIS and EA work to which the firm is currently committed. Include similar descriptions for each subconsultant.
9. QA/QC: Describe quality assurance and quality control procedures. Demonstrate experience in successfully implementing quality control programs on comparable projects.
10. See Appendix A to this RFP letter for the MBE/WBE Subcontracting Provisions.
11. Provide a complete list of your firm's affiliates.
12. If the Proposer or any employee, agent or subcontractor of the Proposer may have, or may give the appearance of a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict. The Authority reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any source could create, or give the appearance of, a conflict of interest. The Authority's determination regarding any question(s) of conflict of interest shall be final.

Proposer is required to disclose all work performed at LaGuardia Airport for a period of three (3) years prior to the date of submission. Proposer shall include work performed by all affiliates, and provide, to the extent applicable, start and end dates of each engagement, the name of the stakeholder or entity for which the Proposer performed work, and a short description of the nature of the work or project.

Proposers are further advised that under this Agreement, firms must provide, written notice to the Port Authority of any existing or potential conflict of interest the firm(s) may have in the performance of Services under this Agreement.

Furthermore, Proposers should ensure that they are familiar with FAA regulations and policy on conflicts of interest of EIS consultants. Pursuant to 40 C.F.R. Part 1506.5(c), the selected Consultant and any subconsultants performing the work shall certify that they have not entered into and will not enter into during the lifetime of the EIS preparation any agreement affording the Consultant and any subconsultants with any direct or indirect



## DRAFT AND DELIBERATIVE

financial interest in the planning, design, construction or operation of the project that is the subject of the EIS except the preparation of the EIS. Prior to beginning work on the EIS, the Consultant and any subconsultants shall sign a "Disclosure Statement" per the requirements of 40 C.F.R. 1506.5(c) and FAA Orders 1050.1F and 5050.4B, specifying they have no financial or other interest in the outcome of the project.

13. **Code of Ethics for Port Authority Vendors:** The Proposer's attention is directed to the Port Authority's "Code of Ethics for Port Authority Vendors." Vendors must certify in writing that they will comply with every aspect of this Code. The Proposer should submit an executed Compliance Certification with their Proposal. The Compliance Certification, once executed, will be a material and integral part of any Agreement resulting from this solicitation. The Code of Ethics and the Compliance Certification can be found on the Authority's website at <https://www.panynj.gov/business-opportunities/become-vendor.html>.
14. The selected Consultant(s) shall comply with the requirements of the Agreement. The scope of tasks to be performed by you is summarized in Attachment A and will be detailed in the Plan of Study, which will be attached to and incorporated in the final Agreement and will amend and restate Section II. Scope of Services of Attachment A.

### III. SELECTION PROCESS:

The qualifications based selection shall take into consideration the technical criteria conveyed in this section (listed in order of importance). After consideration of these factors, the Authority may enter into negotiations with the firm(s) deemed best qualified, in terms of the forgoing Technical Proposal criteria, to perform the required services.

The Authority will review proposals to determine if they satisfy the requirements of this RFP, including adherence to the RFP's specified format and the provision of all required documentation. Proposals will then be reviewed according to a two-phased evaluation process. The **first phase of the evaluation process** will involve Authority and FAA staff, and will include a detailed review and evaluation of the proposals according to the following criteria:

1. Project Approach/Schedule;
2. Project Experience;
3. Organization and Management;
4. References;
5. Description of Proposer/Team;
6. QA/QC.

Only those proposals receiving the highest scores in the first phase of the evaluation process will be evaluated in the **second phase of the evaluation process**.

The **second phase of the evaluation** will involve staff from the Authority and FAA. Only FAA staff will score proposers in the second phase of the evaluation. The second phase of the evaluation commences with interviews of the highest-rated proposers from the first phase of evaluation. The interviews will consist of presentations by the highest-rated proposers, followed by a question and answer session ~~led~~ by FAA staff. After the last interview, FAA

## DRAFT AND DELIBERATIVE

staff will score the interviews, ~~and~~ add the interview scores to the first phase scores, and establish a ranked list of Proposers based on their combined scores. The FAA ~~and~~ will then select the Proposer with the highest combined score for ~~recommend that the Port Authority to retain the proposer that received the highest combined score~~ for the performance of the agreement resulting from this RFP, consistent with the Agreement process between the selected Proposer and the Authority established in this document. A notice of selection will be transmitted to the selected Proposer.

The following is the anticipated schedule for the selection process:

- Week 1** Request for proposals advertised
- Week 4** Proposals due to the Authority
- Week 6** Selection Committee holds interviews with select firms
- Week 6 - 12** Notice of selection to firm, commencement of draft Plan of Study with FAA, and contract award

#### IV. PROJECT DOCUMENTS:

Proposers can access available documents related to the Project **through xxx**. These documents are made available merely for the purpose of making available such information as is in the possession of the Authority and which it is able to make available, whether or not such information may be accurate, complete or pertinent or of any value to prospective Proposers.

Proposers are advised to continually monitor [xxx] throughout the open proposal process as documents and information may be added or modified without prior notice.

#### V. ADDITIONAL INFORMATION:

If your firm is selected for performance of the subject services, the agreement you will be asked to sign will include clauses entitled “Certification of No Investigation (Criminal Or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure Of Other Information” And “Non-Collusive Proposing, And Code Of Ethics Certification; Certification Of No Solicitation Based On Commission, Percentage, Brokerage, Contingent Or Other Fees.” By submitting a proposal, the Consultant shall be deemed to have made the certifications contained therein unless said Consultant submits a statement with its proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your proposal clearly marked “CERTIFICATION STATEMENT.”

Rejection of a proposal shall be only by either (a) a notice in writing specifically stating that the proposal is not accepted, signed by an authorized representative of the Authority and provided to the Proposer, or (b) omission of the Authority to accept the proposal within 180 days after the Proposal Due Date. No other act of the Authority, its Commissioners, officers, agents, representatives or employees shall constitute rejection of a proposal.

It is Authority policy that its consultants, contractors and vendors comply with the legal requirements of the States of New York and New Jersey. Your attention is therefore called to New York State’s requirements that certain consultants, contractors, affiliates, subcontractors

## DRAFT AND DELIBERATIVE

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

Prior to commencing any work associated with this Project, the selected consultant and any subconsultants shall submit a Disclosure Statement.

Proposers are also advised that additional vendor information, including but not limited to forms, documents and other related information, may be found on the Authority website at [www.panynj.gov](http://www.panynj.gov) or <http://www.panynj.gov/business-opportunities/become-vendor.html>.

After a review of all proposals received, the Authority will forward two (2) copies of the Agreement and Attachment A thereto to the selected firm(s), which shall sign and return both copies. Signature shall be by a corporate officer. The return of one copy executed by the Authority will effectuate the Agreement.

Should you have any questions, please contact James Summerville, Solicitation Manager (██████████) and Krystina Papasavvas (██████████). All such correspondence must have your name, title, company, mailing address, telephone number, and state "RFP 54523" in the subject line. **The Authority must receive all questions no later than 4:00 P.M. EST four (4) calendar days after the RFP issuance date.** Neither Mr. Summerville nor Ms. Papasavvas, nor any other employee of the Authority is authorized to interpret the provisions of this RFP or accompanying documents or give additional information as to their requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned and such writing shall form a part of this RFP, or the accompanying documents, as appropriate. For RFP updates and Addenda, if any, Proposers are encouraged to access, and monitor, the Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html>. You should, therefore, monitor the advertisement on said website, as appropriate, to ensure you are aware of changes, if any.

Proposal preparation costs are not reimbursable by the Authority. The Authority shall have no obligation to a firm except under a duly authorized agreement executed by the Authority.

No rights accrue to any Proposer except under a duly authorized agreement for performance of the specified services.

The Authority reserves the right, in its sole and absolute discretion, to reject all proposals, to undertake discussions and modifications with one or more Consultants, to waive defects in proposals, and to proceed with that Proposal or modified Proposal, if any, which in its judgment will, under all the circumstances, best serve the public interest.

Sincerely,

David Gutiérrez, CPPO  
Assistant Director  
Procurement Department

Attachments

**DRAFT AND DELIBERATIVE**

## **DRAFT AND DELIBERATIVE**

### **APPENDIX A – MBE/WBE SUBCONTRACTING PROVISIONS**

For this Agreement, the Consultant shall use good faith efforts to achieve participation equivalent to twenty percent (20%) of the total Agreement price for Authority certified MBEs and ten percent (10%) of the total Agreement price for Authority certified WBEs. Submit details on how you intend to meet these goals. A listing of certified MBE/WBE firms is available at <http://www.panynj.gov/business-opportunities/sd-mini-profile.html>.

The Proposer shall include its MBE/WBE Participation Plan (Form PA 3760C) with its Proposal, to be reviewed and approved by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

The MBE/WBE Plan submitted by the Proposer to the Authority shall contain, at a minimum, the following:

- Identification of MBE/WBEs: Provide the names and addresses of all MBE/WBEs included in the Plan. If none are identified, describe the process for selecting participant firms in order to achieve the good faith goals under this Agreement.
- Level of Participation: Indicate the percentage of MBE/WBE participation expected to be achieved with the arrangement described in the Plan.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

All MBE/WBE subconsultants listed on the MBE/WBE Participation Plan must be certified by the Authority in order for the Consultant to receive credit toward the MBE/WBE goals set forth in this Agreement. Please go to <http://www.panynj.gov/business-opportunities/supplier-diversity.html> to search for MBE/WBEs by a particular commodity or service. The Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to the MBE/WBE Participation Plan must be submitted via a modified MBE/WBE Participation Plan to the Manager for review and approval by OBDCR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use form PA3760D. The Consultant shall not make changes to its approved MBE/WBE Participation Plan or substitute MBE/WBE subconsultants or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performance of work designated for a subconsultant by the Consultant's own forces, shall be deemed a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored by the Authority throughout the duration of the Agreement.

The Consultant shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments in the form of the MBE/WBE Participation Report, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each MBE/WBE subconsultant and supplier actually involved in the Agreement, a description of the work performed and/or the product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information as it may assist the Project Manager in determining the Consultant's compliance with the foregoing provisions.

# **DRAFT AND DELIBERATIVE**

## **MBE/WBE Conditions of Participation**

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

1. Commercially Useful Function: An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Consultant and the MBE/WBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as a MBE/WBE, the Consultant will receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

2. Work Force: The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Consultant, other subcontractors/subconsultants on the Agreement, or their affiliates. This does not preclude the employment by the MBE/WBE of an individual that has been previously employed by another firm involved in the Agreement, provided that the individual was independently recruited by the MBE/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.

3. Supervision: All work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Consultant, other subconsultants on the agreement, or their affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the work.

## **Counting MBE/WBE Participation**

The value of the work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime consultant/contractor shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. Subconsultants: One hundred percent (100%) of the value of the work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Consultant, other subconsultants or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE

## **DRAFT AND DELIBERATIVE**

subconsultant is itself a MBE/WBE. Work that a MBE/WBE subcontracts to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. Material Suppliers: Sixty percent (60%) of the expenditure to a MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. Broker's/Manufacturer's Representatives: One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees or commissions customarily allowed for similar services. The costs of materials and supplies themselves will not be counted.

4. Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces. Contact OBDCR at [REDACTED] for more information about requirements for such joint ventures.