

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
TWO MONTGOMERY STREET - 1st FLOOR
JERSEY CITY, NJ 07302**

October 11, 2017

ADDENDUM NO. 2

TO PROSPECTIVE BIDDERS ON CONTRACT MF-924.151—HOLLAND TUNNEL AND LINCOLN TUNNEL – TUNNEL FACILITY PRIORITY IMPROVEMENTS VIA WORK ORDER

The following changes are hereby made in the Contract Documents for the subject Contract.

This communication should be physically annexed to back cover of the book and initialed by each bidder before submitting his bid.

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

CHANGES IN THE CONTRACT BOOKLET

Pages 6 through 11 - Delete the text of the clause entitled "Minority and Women's Business Enterprises Program (MBE/WBE)" in its entirety and substitute therefor the following:

"The Authority has a long-standing practice of making its contract opportunities available to as many firms as possible and has taken affirmative steps to encourage Minority Business Enterprises (MBEs) and Women's Business Enterprises (WBEs) to seek business opportunities with it.

"Minority Business Enterprise" or "MBE" means a business entity which is at least 51 percent owned by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51 percent of the stock of which is owned by one or more members of one or more minority groups, and whose management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens.

"Women-owned Business Enterprise" or "WBE" means a business which is at least 51 percent owned by one or more women, or, in the case of a publicly held corporation, 51 percent of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more women who are citizens or permanent resident aliens.

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

- A. Black persons having origins in any of the black African racial groups not of Hispanic origin;
- B. Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central,

or South American culture or origin, regardless of race;

- C. Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;
- D. Native American or Alaskan native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

To ensure meaningful participation of MBEs and WBEs on this Contract, the Authority has set a combined good faith goal of 17 percent for firms owned and controlled by minorities and firms owned and controlled by women in all subcontracting opportunities. In the event that this Contract is awarded to an Authority certified MBE or WBE firm, such firm, as the prime contractor, is also held to this requirement with respect to subcontracting opportunities.

In the event that any portion of the Work is subcontracted in accordance with the clause of the Form of Contract entitled "Assignments and Subcontracts", the Contractor shall use and document every good faith effort to meet the above goals for MBE and WBE participation in the Work. The identified low bidder, at the time of submission of its MBE/WBE Participation Plan and Affirmation Statement (annexed hereto as Schedule A), seven (7) days after identification of its bid as the low bid, must utilize firms already certified by the Authority and listed in the Directory.

The Authority has compiled and made available on-line an MBE/WBE Directory which specifies the firms the Authority has determined to be (1) MBEs/WBEs and (2) experienced in performing work in the trades and contract dollar ranges indicated in the Directory. The Authority makes no representation as to the financial responsibility of such firms or their ability to perform Work required under any particular Contract. Subject to the following paragraph, only MBEs/WBEs listed in the Directory will count toward the required MBE/WBE participation. (Eligible MBE/WBE firms are listed on the following Authority website: <http://www.panynj.gov/business-opportunities/supplier-diversity.html>)

Once approved, the MBE/WBE Participation Plan and Affirmation Statement submitted by the bidder and incorporated into the Contract, upon acceptance of the Contractor's Bid, may be modified only with the written approval of the Authority's Office of Business Diversity and Civil Rights (OBDCR).

In the event that, prior to acceptance of the Contractor's Bid and following review of the MBE/WBE Participation Plan and Affirmation Statement submitted by the bidder pursuant to the clause hereof entitled "Qualification Information", the Authority determines that the bidder has not made a good faith effort to meet the MBE/ WBE participation goals set forth above, the Authority may advise the bidder that it is not responsive and may reject the bidder's Bid.

Such good faith efforts shall include at least the following:

- A. Attendance at pre-bid meetings, if any;
- B. Utilization of the Authority's Directory of certified MBE/WBEs available on-line (see Notification of MBE/WBE On-line Directory and Forms annexed hereto);
- C. Active and affirmative solicitation of bids for subcontracts from

MBE/WBEs;

- D. Advertisement in general circulation media, trade association publications and minority-focused media for a reasonable period before Bids are due;
- E. Dividing the work to be subcontracted into smaller portions or encouraging the formation of joint ventures, partnerships or similar arrangements among subcontractors in order to increase the likelihood of achieving the MBE/WBE goals;;
- F. Providing a sufficient supply of Contract Drawings and Specifications of prospective work to MBE/WBEs and providing appropriate materials to each in sufficient time to review; and
- G. Utilizing the services of available minority and women's community organizations; contractor's groups; local, State and Federal business assistance/development offices and other organizations that provide assistance to MBE/WBEs.

Subsequent to acceptance of the Contractor's Bid, the Contractor shall use and document every good faith effort to comply with his MBE/WBE Participation Plan and Affirmation Statement. Participation percentages shall be monitored throughout the performance of this Contract. Such good faith efforts shall include at least the following:

- A. Ensuring that progress payments are made in a timely fashion in accordance with the requirements of this Contract;
- B. Not requiring bonds from and/or providing bonds and insurance for subcontractors where appropriate;
- C. Soliciting specific recommendations on methods for enhancing MBE/WBE participation from Authority staff responsible for such participation; and
- D. Nominating subcontractors for participation in business assistance programs sponsored by the Authority or the Regional Alliance of Small Contractors such as the Loaned Executive Assistance Program (L.E.A.P.).

Subsequent to acceptance of the Contractor's Bid, the Contractor shall also provide the Authority, at its request, with a trade breakdown schedule showing when the Contractor's MBE/WBE subcontractors are scheduled to perform. The Contractor shall also submit to the Engineer, on a monthly basis, the Statement of Subcontractor's Payments annexed hereto as Schedule D.

If, during the performance of the Contract, the Contractor fails to demonstrate good faith in carrying out his MBE/WBE Participation Plan and in permitting his MBE/WBE subcontractors to perform, then, upon receipt of a future bid or bids from the Contractor, the Authority may advise the Contractor that he is not a responsible bidder and may reject such bid(s).

Following approval by the Engineer under the clause entitled "Assignments and Subcontracts" of one or more subcontractors who are either MBEs or WBEs and listed in the MBE/WBE Directory, the Authority may, at its sole option, provide to said approved MBE/WBEs, without charge, whatever appropriate consultant services may be available under the L.E.A.P. program; provided, however, that such consultant services will only be

furnished pursuant to a request in writing from the Director, Office of Business Diversity and Civil Rights of the Port Authority of New York and New Jersey, 2 Montgomery Street, 2nd Floor, Jersey City, NJ 07302.

Such services will be discontinued following a written request from the Contractor to the Director, Office of Business Diversity and Civil Rights of the Port Authority of New York and New Jersey, to discontinue them.

The L.E.A.P. services include advising firms on scheduling, purchasing, planning and other aspects of construction to mitigate business or management problems which could negatively impact on their performance. These services do not include engineering or legal advice. The determination as to whether or not to follow the advice given lies solely with the MBE/WBE subcontractor. Prior to being accepted as a participant in the L.E.A.P. program, the MBE/WBE subcontractor will be required to release the Authority and the individuals furnishing consultant advice of all liability and responsibility in connection therewith.

MBE/WBE Conditions of Participation:

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

- A. **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 Contractor 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 an MBE/WBE, the Contractor 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.
- B. **Work Force:** The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Contractor, their affiliates and other subcontractors performing Work on the Contract. 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.
- C. **Supervision:** All Work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory

personnel from the Contractor, their affiliates and other subcontractors performing Work on the Contract. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the Work.

- D. Equipment: MBE/WBE subcontractors may supplement their equipment by renting or leasing additional equipment in accordance with customary industry practice. If the MBE/WBE obtains equipment from the Contractor, their affiliates and other subcontractors performing Work on the Contract, the MBE/WBE shall provide documentation to the Authority demonstrating that similar equipment and terms could not be obtained at a lower cost from other customary sources of equipment. The required documentation shall include copies of the rental or leasing agreements, and the names, addresses and terms quoted by other sources of equipment.

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. The Contractor, even if himself an MBE/WBE, 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/WBE's work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will receive credit and be counted toward the goal.

- A. Subcontractors: 100 percent of the value of the Work to be performed by an MBE/WBE subcontractor 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 Contractor, their affiliates and other subcontractors performing Work on the Contract will not be counted. When a MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward MBE/WBE goals only if the MBE/WBE's subcontractor is itself a MBE/WBE. Work that a MBE/WBE subcontracts to a non-MBE/WBE firm does not count toward MBE/WBE goals.
- B. Manufacturers/Fabricators: 100 percent of the expenditure to an MBE/WBE manufacturer or fabricator will be counted towards the MBE/WBE goal.
- C. Material Suppliers: 60 percent 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.
- D. Brokers/Manufacturer's Representatives: 100 percent 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.

- E. Services: 100 percent 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.
- F. Trucking Operations: If using an MBE/WBE firm for trucking operations, the MBE/WBE trucking firm of record is the firm that is listed on the MBE/WBE Participation Plan and Affirmation Statement. The MBE/WBE trucking firm shall own and operate at least one registered, insured and fully operational truck used for the performance of the Work and shall be responsible for the management and supervision of the entire trucking operation on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the MBE/WBE goal. The MBE/WBE trucking firm of record shall control the day-to-day MBE/WBE trucking operations for performance of the Work, and shall be responsible for (1) negotiating and executing rental/leasing agreements; (2) hiring and terminating the work force; (3) coordinating the daily trucking needs with the Contractor; and (4) scheduling and dispatching trucks.
 - 1.) MBE/WBE Owned/Leased Trucks: 100 percent of the value of the trucking operations the MBE/WBE provides for the performance of the Work using trucks it owns and trucks that are registered, insured and operated by the MBE/WBE using drivers it employs, will be counted toward the MBE/WBE goal.
 - 2.) MBE/WBE Leased Trucks: The MBE/WBE may lease trucks from another MBE/WBE, including an owner/operator who is certified as a MBE/WBE. 100 percent of the value of the trucking operations that the lessee MBE/WBE provides will be counted toward the MBE/WBE goal.
 - 3.) Non-MBE/WBE Trucks: The MBE/WBE may lease trucks from non-MBE/WBE firms, and owner-operators. The value of these trucking services will be counted toward the MBE/WBE goal up to the value of services performed by the MBE/WBE trucks used on the Contract. MBE/WBE participation can be counted for the value of the services of non-MBE/WBE trucks that exceed the value of the services performed by MBE/WBE trucks only in the amount of the fee or commission a MBE/WBE receives as a result of the lease agreement.
- G. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs will be counted toward the MBE/WBE goal in proportion to the total dollar value of the Contract equal to the distinct, clearly defined portion of the Work of the Contract that the MBE/WBE performs with its own forces. The joint venture agreement is subject to approval by OBDCR and a copy of which is to be furnished by the bidder to be awarded the Contract before acceptance of the Contractor's Bid (together with the

MBE/WBE Participation Plan and Affirmation Statement).

Nothing herein shall be deemed to supersede or to otherwise modify the clause of the Form of Contract entitled "Assignments and Subcontracts".

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

James Starace, P.E.
Chief Engineer/Director

INITIALLED BY THE BIDDER:
