



**REQUEST FOR PROPOSALS**

**FOR**

**INLAND PORT BUSINESS PLAN AND RAIL OPPORTUNITIES  
ANALYSIS**

**Key Dates:**

**Mandatory Pre-Bid Meeting:** Friday, January 4, 2019 at 10:00 A.M. at PhilaPort Offices at 3460 N Delaware Ave, Philadelphia, PA 19134. Please confirm your attendance by emailing [procurement@philaport.com](mailto:procurement@philaport.com).

**Questions:** Questions must be in writing and should be sent to the attention of the Procurement Department at e-mail address [procurement@philaport.com](mailto:procurement@philaport.com). Questions must be received by Friday, January 11, 2019 at 12:00 PM (Noon).

**Bid Submission Deadline:** Bids will be received in the office of the Philadelphia Regional Port Authority Procurement Department, at 3460 N. Delaware Avenue, 2<sup>nd</sup> Fl., Philadelphia, PA 19134 until Friday, January 25, 2019 at 2:00 PM.

**NO LATE PROPOSALS. NO FAXED OR EMAILED PROPOSALS.**

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## **I. INTRODUCTION**

### **A. NOTICE**

The information contained in and provided for this RFP is provided for background purposes only. While every effort has been made to ensure the accuracy of the information contained in this RFP, it is not, and shall not be construed as and shall not constitute, a representation, warranty or guaranty by the Philadelphia Regional Port Authority (“PhilaPort”) regarding the content, completeness, or accuracy of such information, or the qualifications or expertise of the individual(s) or firm(s) providing or preparing such information. Each entity responding to this RFP (“Offeror”) shall rely solely on its own inspections, investigation, confirmation and analysis of (1) the circumstances that will affect the performance of the “Services”, as defined in the General Conditions, (2) the information contained in or delivered pursuant to this RFP and (3) all other information that such Offeror deems necessary or prudent in evaluating and analyzing the “Project,” as defined in the General Conditions.

This RFP is not a legally binding document, but an invitation to submit proposals on the terms and conditions of this RFP. In no event shall PhilaPort be responsible for any costs, expenses or fees incurred by or on behalf of the Offeror in connection with this RFP. The Offeror shall be solely responsible for all such costs, expenses and fees.

PhilaPort reserves the right at any time prior to award, to modify the schedule and scope of this solicitation process, to terminate the RFP process, and to reject or not consider all or any part of any proposal submitted in response to this RFP for any reason or no reason. Further, after review of the proposals, PhilaPort reserves the right to request additional or clarifying information from any or all parties that submit proposals in response to this RFP.

### **B. BACKGROUND**

PhilaPort is an independent agency of the Commonwealth of Pennsylvania, responsible for the management, maintenance, promotion, and development of port facilities along the Delaware River.

PhilaPort’s principal goals are to enhance waterborne commerce, promote economic growth, and create jobs. PhilaPort was created for the purpose of acquiring, holding, developing, constructing, improving, maintaining, managing, operating, financing, equipping, repairing, leasing or subleasing, and owning port facilities and port-related projects within the Pennsylvania, Delaware River Port district. The port-district includes the area along Delaware River in Philadelphia, Bucks and Delaware Counties.

Over 3,000 ships load and offload at the Port of Philadelphia each year - making it one of the busiest ports on the North Atlantic range. The Port of Philadelphia handles more than one-quarter of the entire North Atlantic District's annual tonnage, and is the fourth largest port in the

U.S. for the handling of imported goods.

The Port of Philadelphia is strategically located at the center of the Northeast corridor, the country's largest and richest marketplace. The port has direct access to more major cities by rail and truck than any other port in the country; ensuring deliveries are made in a timely and cost effective manner.

PhilaPort's facilities are highly diversified and handle containers, break-bulk, project cargo, and liquid bulk. The port includes specialized facilities for forest products and for perishable cargo.

### **C. OBJECTIVE, GOALS, AND DELIVERABLES:**

PhilaPort is currently seeking a rail business advisor to conduct a business plan and opportunities analysis for developing an inland port and a transload facility within the Commonwealth, which supports PhilaPort's master planning process, long-term strategic needs, and comprehensive rail strategy.

East Coast Ports, including neighboring competitors in New York, New Jersey, Maryland and Virginia are investing billions of dollars in new on-dock and inland rail facilities. These Ports are utilizing the inland port model to keep pace with rising cargo volumes and maintain their competitive advantage. Targeted development of inland infrastructure supports the efficient movements of freight and is critical to the growth of the Port. As "the Keystone State," the Commonwealth is perfectly positioned to support several inland rail transportation nodes. Most importantly, PhilaPort will not be able to compete and grow without viable rail service and similar investment.

Numerous inland port feasibility and market studies have been conducted to examine the development of an inland port within the Commonwealth. Many of these studies have concluded that if several key concepts are realized, it would be both feasible and beneficial to develop an inland port in Pennsylvania. Rather than developing an additional feasibility/location study, PhilaPort is seeking the analysis to be focused on developing the business case and executing a site concept plan utilizing Norfolk Southern's Main Line Corridor, with strategic nodes in Harrisburg as a transload facility and Pittsburgh as an inland port facility for intermodal container moves and automotive moves.

Finally, as part of its long-term development, PhilaPort is evaluating several enhancements to stimulate rail activity which include: a more comprehensive on-dock or near-dock rail solution and the development of inland ports to support growth at the Port of Philadelphia.

#### **Objective:**

The advisor will assist PhilaPort in identifying potential rail opportunities and integrating them into the PhilaPort Master Plan. Detailed focus should be on developing the business case for an inland port within the Commonwealth to support forecasted growth and expansion at the Port of Philadelphia as well as enhance port competitiveness.

**Goals:**

1. Increase rail service at PhilaPort and improve rail access for Port customers
2. Demonstrate the benefits of developing an on-dock or near-dock rail terminal at PhilaPort
3. Grow the Port's discretionary business through development of services to the Midwest and Canada
4. Facilitate the efficient movement of freight and associated benefits to the economy, environment, community, and highway maintenance
5. Foster collaboration among Commonwealth Ports and promote Commonwealth-wide economic development
6. Spur surrounding industrial development through the attraction of rail-served warehousing and manufacturing across the Commonwealth
7. Maximize use of existing rail infrastructure, to leverage past Commonwealth investment

**Deliverables:**

1. Determine potential freight volumes for import and export generated through the development of an inland port and transload facility
2. Identify key cargo origins and destinations for import and export
3. Identify catchment area for potential businesses along the stated corridor that could act as anchor clients or benefit from the proposed rail service
4. Validate the economic justification (cost savings) for customers utilizing PhilaPort and associated inland Commonwealth terminals
5. Perform a cost-benefit analysis for key commodities that looks at cargo traveling entirely by truck to inland destinations versus cargo traveling by rail inland and truck only to its final destination (intermodal)
6. Based upon the potential rail lifts at the inland terminal and transload facility, develop an estimated rate structure to sustain the operation of the facilities
7. Perform break-even and profit analyses and provide a timeline
8. Quantify the resulting economic development generated through the development of the inland services
9. Assist in efforts to attract new freight volume and rail-associated businesses to the Port
10. Prepare a report and presentation summarizing the findings and making recommendations to the Port on next steps

**D. PROJECT TIMELINE:**

It is anticipated that a Notice to Proceed to start the project will be issued sometime in February 2019. The proposers should submit a timeline to accomplish the above tasks. The timeline should identify key milestones and critical path tasks or sub-tasks.

**II. PROCESS**

## A. EVALUATION AND SELECTION CRITERIA

The selection criteria for an Offeror submitting in response to this RFP (the “Proposal”) include a combination of the following:

- Understanding of the Services requested, their purpose, and the needs of PhilaPort.
- The Offeror’s expertise – relevant experience of the firms with contracts of a similar nature, proposed subcontractors and individuals who would be a part of the team and assigned to render Services.
- The Offeror’s capability to complete the Services that may be assigned.
- Interview of the Offeror’s team.
- The Offeror’s Cost Proposal
- Diversity requirements.

The Offerors will be ranked in accordance with the criteria identified above. The highest ranking Offeror will have their “Cost Information” as defined hereinafter, submittal opened, and the process outlined in Section IV C will be followed. The Offeror’s Proposal will be submitted using the Form for Submission of Proposal (**Appendix “A”**) and will be the basis for review and for discussion with the Offeror.

## C. SUBMISSION DEADLINE:

Proposals are due at PhilaPort’s by the deadline set forth on the first page of this RFP.

## D. SITE TOUR

If appropriate to the nature of the Services requested, a site tour will be offered upon an Offeror’s request.

## E. QUESTIONS ABOUT RFP

All questions or comments regarding this RFP must be submitted **in written form** via email at [procurement@philaport.com](mailto:procurement@philaport.com).

E-mail is the preferred method for submitting questions, but hand-delivery, mail, and facsimile transmission are acceptable. Other forms of electronic communication and telephone inquiries will not be accepted. All questions submitted to PhilaPort and the corresponding responses will be put on PhilaPort website in the form of an addendum. The deadline for submitting questions to PhilaPort is set forth on the first page of this RFP. **Addenda should be acknowledged by immediately faxing the acknowledgement page to (215) 426-6800.**

### III. SUBMISSION REQUIREMENTS

Proposals must contain all of the following elements to be considered complete. PhilaPort reserves the right to reject, or not consider, all or part of any proposal submitted in response to this RFP for any reason whatsoever at any time prior to the full execution of the Agreement with the selected Offeror. PhilaPort further reserves the right to request additional or clarifying information from Offerors.

#### A. PROPOSAL FORMAT

Offerors are to provide sufficient information for PhilaPort to evaluate the proposals to determine responsiveness and ability to meet the specifications for the Project. Offeror is to use the Form for Submission of Proposal, appearing here as **Appendix “A”** Submissions are limited to twenty pages, resumes excluded. At a minimum, the following sections should contain:

**Part I. Capabilities Narrative:** Describe the technical capabilities of the individual professionals or key contractor representatives on the firm/team with respect to the required areas of expertise. This Part should not exceed four (4) pages.

**Part II. Relevant Experience:** List similar assignments, matters, or projects completed in terms of their nature, size and scope and the individual professionals or other contractor representatives who are part of the proposed team, using the following format for each project. This Part should not exceed eight (8) pages.

**Part III. Proposed Team:** List the key individual members of the team. Provide curriculum vitae for each key member, their relevant experience. Provide an organizational chart and contact information. Identify the Services each team member will provide. For teams consisting of a single firm, it will be sufficient to reference all Service areas.

**Part IV. Responsiveness:** The Offeror shall demonstrate the ability of their team to provide the Services to PhilaPort on a prompt and efficient basis for emergency and time-sensitive situations. This Part should not exceed four (4) pages.

**Part V. Diversity:** It is the intent and goal of PhilaPort that the selected Contractor or Contractors ensure diversity in all aspects of the performance of the Services. PhilaPort requires legally binding commitments to, and utilization of certified Minority, Women, LGBT, Veteran, and Service Disabled (collectively, “Historically Underutilized Businesses” or “HUB”) in the Proposals received in response to this RFP. Proposals must include a plan for utilizing HUBs in providing the Services. Submit targets for participation in the format set forth in **Appendix “C”**. In addition to target goals the firm proposes, names of prospective HUB firms should also be indicated. **Dollar amounts should not be listed.**

**Part VI. Proposal Certification and Legal Disclosures:** The Form for Submission of Proposal, appearing as **Appendix “A”** shall be completely filled and executed. The response to this Part VI shall be placed in a sealed envelope separate from the remainder of the Proposal.

Also, indicate whether there are any convictions or criminal proceedings within the last 10 years or any outstanding judgments, claims, arbitration proceedings or suits against any firm or individual who is a member of the team, and whether any firm has been debarred by any governmental authority within the last 10 years. If so, provide the caption and venue of the matter, along with identifying case number and description. The Offeror’s response should not indicate that another individual or entity should be contacted nor should it state that the requested information is not applicable to this project.

Offeror are permitted to identify proposed changes to the General Conditions set forth in **Appendix “B”**. PhilaPort reserves the right to reject any and all proposed changes. Offeror’s submission shall be based upon the General Conditions as they exist in **Appendix “B”**.

If appropriate to the nature of the Services being offered, PhilaPort will provide Offerors participating in negotiations with a list of entities which could pose a conflict of interest to the extent that an Offeror has an on-going financial, or analogous relationship. Offeror shall identify any such relationships during those negotiations by supplementing its Part VI submittal.

Finally, submit copies of the addenda acknowledgements.

**Part VII. Cost Information:** Submit “Cost Information,” defined as the information sufficient for PhilaPort to price with an appropriate degree of accuracy the cost that will be incurred for the Services. In certain instances, lump sum amounts will be appropriate and in other instances, hourly rates with good faith estimate of the time will be required. This Part should not exceed two (2) pages.

Proposals shall be broken down into two (2) parts.

**Part I** shall consist of the following four (4) sections:

- Section I. Capabilities Narrative
- Section II. Relevant Experience
- Section III. Proposed Team
- Section IV. Responsiveness

**Part II** shall consist of the following three (3) sections:

- Section V. Diversity
- Section VI. Proposal Certification and Legal Disclosure
- Section VII. Cost Information

Proposals shall be tabbed clearly identifying each section. References to financial terms in any Section of Part I shall be grounds for rejection of the proposal as being non-responsive. For electronic copies, please separate Parts into two (2) Separate files.

**B. OFFICIAL DESIGNATED TO RECEIVE PROPOSALS**

Four (4) Electronic Copies on flash drives of Part I and one (1) original hardcopy of Part I and one (1) original hardcopy of Part II of the proposal should be submitted to:

Kate Bailey  
Director of Procurement  
Philadelphia Regional Port Authority  
3460 N. Delaware Avenue  
Philadelphia, PA 19134

Unless otherwise specified, all Proposals must be submitted in the format specified in this RFP. Proposals shall be signed by a duly authorized representative capable of executing the Agreement on behalf of the Offeror. PhilaPort reserves the right to waive technical defects or irregularities in a Proposal. References to financial terms in any Part other than Part VII shall be grounds for rejection of the proposal as being non-responsive.

**C. PROPOSAL DEPOSIT**

No proposal deposit, bond or other form of security is required.

**D. DELIVERY OF PROPOSALS**

It is the responsibility of the Offeror to ensure that the Offeror's Proposal is received by the designated official of PhilaPort prior to the time scheduled for the opening of Proposals. No Proposal shall be considered if it arrives after this deadline. Each Proposal will be submitted in sealed envelopes, one Part for Sections I – IV, and one Part for Sections V, VI, and VII, clearly identifying which section is contained therein. If forwarded by mail, the envelope shall be addressed to the Procurement Department, Proposal Submission, 3460 North Delaware Avenue, Philadelphia, PA 19134, preferably by registered mail. If forwarded by courier or hand-delivery, the Proposal shall be delivered at the offices of PhilaPort at 3460 North Delaware Avenue, Philadelphia, PA 19134 prior to the time stated on the first page of this RFP. The four sealed envelopes shall be enclosed in a sealed envelope and marked plainly on the outside with the number and title of the RFP, the proposal opening date and time. If the Proposal envelope is to be enclosed in another envelope for the purpose of express-type delivery, the exterior envelope shall be clearly marked as a Proposal and the Proposal date, title and number shall be shown on the exterior envelope.

**E. MODIFICATION OF PROPOSALS**

Proposals may be modified by written notice by an Offeror by its authorized representative prior to the exact hour and date set for the opening of Proposals. If an authorized representative submits a modified Proposal on behalf of an Offeror, written documentation substantiating that the authorized representative is authorized to make the modified Proposal and that the modified Proposal is submitted on the Offeror's behalf must be provided with the modified Proposal. A modification of the Proposal shall also state that it is in compliance with this RFP.

#### **F. WITHDRAWAL OF PROPOSALS**

An Offeror may withdraw the Proposal by its authorized representative after receipt by PhilaPort, provided that the Offeror makes a request therefor in writing and the request is received by PhilaPort prior to the time fixed for the opening of Proposals.

### **IV. EVALUATION AND AWARD OF PROPOSALS**

#### **A. EVALUATION AND DISCUSSION OF PROPOSALS**

After the Proposals are opened and reviewed, PhilaPort may conduct discussions with one or more responsible Offerors which submitted Proposals that are determined by PhilaPort in its sole discretion to be reasonably susceptible of being selected for award on the basis of the best interests of PhilaPort. The discussions may be conducted for the purpose of clarification to assume full understanding of and responsiveness to the solicitation requirements and for the purpose of obtaining best and final offers.

If PhilaPort chooses not to conduct discussions, the submitted Proposals shall become the best and final offers. A best and final offer can be modified or withdrawn any time prior to the deadline for its submission in the same manner as if it were a Proposal.

#### **B. COLLUSIVE PROPOSALS WILL BE REJECTED**

The Proposals of any Offeror or Offeror which engage in collusion shall be rejected. Any Offeror who submits more than one Proposal in such manner as to make it appear that the Proposals submitted are on a competitive basis from different parties shall be considered a collusive Offeror. PhilaPort may reject the Proposals of any collusive Offeror upon Proposal openings. Nothing in this Section shall prevent an Offeror from superseding a Proposal by a subsequent Proposal delivered prior to the opening of Proposals which expressly revokes the previous Proposal.

#### **C. AWARD OF CONTRACT**

Negotiations will be held with the highest ranked firm. To begin the negotiation, the highest ranked firm will be asked to clarify and supplement the Cost Information submitted with its Proposal. The supplemental Cost Information shall be sufficiently detailed to allow PhilaPort to direct questions at specific areas of concern. By way of illustration, where the Offeror would expect to invoice PhilaPort on an hourly basis, the supplemental information should include complete information on the job classifications and billing rates as they would appear on

monthly invoices. Similarly, where the Offeror would expect to invoice on a lump sum basis, information on the derivation of the lump sum figures should be provided.

PhilaPort will allow expenses incurred by the Contractor and subcontractors in direct connection with each task as follows:

- (a) Direct expenses of transportation (except daily commutation), long distance communications and, if necessary, fees paid for securing permits and approvals.
- (b) Direct expenses of reproduction, postage and handling of drawings, specifications, and other documents.
- (c) Direct expenses associated with the renting of equipment for inspection and testing. Also, the direct expenses associated with laboratory testing of materials.
- (d) Other reasonable expenses incurred on PhilaPort's behalf with approval from PhilaPort in advance.

Reimbursement will not be made for daily commutation nor any, subsistence or housing costs. A maximum markup of 10% on external expenses will be permitted to be billed. All insurance shall be maintained by the Contractor at no cost to PhilaPort.

If negotiations fail to proceed to an award of a contract, the negotiations will be terminated and PhilaPort will then begin negotiations with the next highest ranked responsive firm. This process will continue. Awards may be made to more than one Offeror. PhilaPort reserves the right to reject all proposals that are submitted, cancel the project, and or rebid for the Services.

#### **D. EXECUTION OF THE AGREEMENT**

Promptly after the completion of negotiations, contracts may be awarded by PhilaPort, and the Services Agreement shall be executed by PhilaPort and the successful Offeror. As PhilaPort is an independent agency of the Commonwealth, for the purposes and within the meaning of the Act of October 15, 1980 (P.L. 950, No. 164), known as the Commonwealth Attorneys Act, all Contracts must be approved as to form and legality by the Office of the Attorney General.

Any Offeror not lawfully released from the submitted Proposal, and which refuses to execute a contract in accordance with the submitted Proposal shall be liable to PhilaPort for its damages, and, if security has been deposited with the Proposal, the amount of the security as liquidated damages.

By executing the Services Agreement, the Offeror represents that the Offeror has (i) reviewed the RFP thoroughly, (ii) if appropriate, visited the Site to become familiar with local conditions that may in any manner affect the cost, progress or performance of the Services, (iii) become familiar with Federal, Commonwealth and City laws, ordinances, rules and regulations that may in any manner effect cost, progress or performance of the Project, (iv) studied and carefully reviewed the Contract Documents, (v) received all information and documents necessary to allow the Offeror to perform the Services required under the Contract Documents, and (vi) reviewed and hereby acknowledges the provisions of the Philadelphia Regional Port Authority Act (55 Pa. C.S.A., § 697.1 *et seq.*) relevant to the performance of Services. The Offeror shall

not at any time after the execution of the Contract make any claims whatsoever alleging insufficient data or incorrectly assumed conditions, nor shall the Offeror claim any misunderstanding with regard to the nature, conditions, or character of the work to be done under the Project.

#### **E. CONTRACT SURETY**

This section intentionally deleted. There is no requirement for security in connection with the submission of a Proposal in response to the RFP.

#### **F. PROTESTS IN CONNECTION WITH THE SOLICITATION OR AWARD OF A CONTRACT**

Protests asserted in connection with the solicitation or award of a contract by PhilaPort are governed by the provisions of the Commonwealth Procurement Code, 62 Pa.C.S. §1711.1.

- (a) An actual or prospective Offeror who is aggrieved in the connection with the solicitation or award of a contract must file a protest with the Executive Director of PhilaPort in writing within the period of time provided in the Code.
- (b) Upon receipt of a timely protest and until the time has elapsed for the Offeror to file an action in Commonwealth Court, PhilaPort shall not proceed further with the solicitation or with the award of the Contract unless and until the appropriate official within PhilaPort makes a written determination that the protest is clearly without merit or that award of the Contract without delay is necessary to protect substantial interests of PhilaPort.
- (c) If the protest is not resolved by mutual agreement, the appropriate official within PhilaPort shall promptly, but in no event later than sixty (60) calendar days from the filing of the protest, issue a decision in writing stating the reason for the action taken and notifying the Offeror of their right to file an action in the Commonwealth Court within fourteen (15) calendar days from the mailing date of the decision.
- (d) No action may be commenced in Commonwealth Court in connection with the solicitation or award of a Contract unless the Offeror has exhausted the remedies set forth in this section.

**Appendix “A”**

**Form for Submission of Proposal & RFP**

PROJECT NO(S). \_\_\_\_\_



**PROPOSAL FOR**  
 \_\_\_\_\_ **SERVICES**  
**FOR THE PERIOD OF**  
 \_\_\_\_\_, 201\_, THROUGH \_\_\_\_\_, 201\_

\*\*\*\*\*

The undersigned, \_\_\_\_\_ (“Offeror”), having familiarized itself and its team with the Services being requested in PhilaPort’s Request for Proposal (“RFP”) dated \_\_\_\_\_, 201\_, hereby proposes to provide the requested Services in accordance with the standards applicable to its profession or occupation. Offeror hereby incorporates Parts I through VII of this Proposal, which are attached and incorporated by reference as though fully set forth herein.

**I. Monetary Section:**

Offeror proposes to provide the Services for the cost set forth in Part VII.

**II. Offeror Responsiveness Section:**

A. The Offeror certifies by its representative below that to the best of the representative’s knowledge, information and belief:

- i. Neither the Offeror nor the members of its team are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if this representation cannot be made, that Offeror agrees to submit, along with its Proposal, a written explanation of why such certification cannot be made and why the Contract should nonetheless be awarded to Offeror.
- ii. That as of the date of its execution of this Proposal, the Offeror has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if

such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.

- iii. That the Offeror's team possesses all required business, professional contracting and trade licenses required to provide the Services.
- iv. That the Offeror's team possesses all the technical qualifications and resources, including equipment, personnel and financial resources, to provide the Services.
- v. That the information provided in Part V in connection with PhilaPort's Diversity Inclusion Plan Forms is accurate and complete.

**III. Offeror Responsibility Section:**

A. The Offeror certifies by its representative below that to the best of the representative's knowledge, information and belief:

- i. Offeror's team has a satisfactory record of past contract performance and past compliance with applicable law that demonstrates a solid history of both technical competency and business integrity sufficient to justify receiving a Port PhilaPort contract.
- ii. Offeror's team possesses all qualifications, skills, resources, equipment personnel, financial resources and other required performance capabilities needed to successfully complete the prospective contract it is seeking to perform.
- iii. Offeror's team will comply with all relevant security requirements.
- iv. If applicable, Offeror's team will have sufficient personnel that possess Transportation Worker Identification Credentials to gain access and properly perform the Services.

B. The Offeror certifies by its representative below that the following responses to the questions posed to assist PhilaPort in its determination of Offeror Responsibility are true and correct:

1. Has the Offeror or any member of its team been suspended and/or debarred or voluntarily agreed not to submit a proposal in response to the RFP as a result of an action by any federal, state or local government agency or authority in the past three years?

Yes No

2. Has any officer, director, owner or managerial employee of the Offeror or any member of its team been convicted of a felony relating to construction, maintenance, service or repair contracting industries?

Yes No

3. Has the Offeror or any member of its team defaulted on any project in the past three years?

Yes No

4. Has the Offeror or any member of its team had any type of business, contracting or trade license revoked or suspended by any government agency or authority in the past three (3) years?

Yes No

5. Has the Offeror or any member of its team been found in violation of any other law relating to its contracting business, including, but not limited to antitrust laws, licensing laws, tax laws, wage or hour laws, environmental or safety\* laws, by a final decision of a court or government agency authority in the past three (3) years?

Yes No

\*For purposes of this question, violations of safety laws may be limited to serious or willful safety violations.

6. Has the Offeror or any member of its team been the subject of voluntary or involuntary bankruptcy proceedings at any time in the past three years?

Yes No

C. Offeror's Vendor Data Management Unit Number is: \_\_\_\_\_.

**IV. Offeror's Point of Contact Section:**

Contact Information for the Offeror on this project (for purposes of affirming pricing, or providing information in response to inquiries, insurance information, diversity information, and the like):

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**V. Acknowledgment and Disclaimers Section:**

Offeror should include in Part VI, an acknowledgement of any addenda issued by PhilaPort.

It is understood that the right is reserved by PhilaPort to reject any or all proposals and to waive any informalities in the Proposal.

Submission of false or misleading information or statements in connection with this Certification shall render the Offeror ineligible to provide Services to PhilaPort and/or shall be considered a material breach of any contract entered and entitle PhilaPort to all applicable remedies available at law or in equity.

Failure to submit or fully complete the certifications required by this Proposal Form shall render the Offeror ineligible for the prospective contract.

## **VI. Representation and Authorization Section:**

By making this Proposal, Offeror and its representative understand, represent, acknowledge and certify:

- a) That the foregoing representations regarding the past performance and present qualifications of the undersigned Offeror and its team are true and correct;
- b) The Offeror by its representative has read and understands the terms and conditions of the RFP and this Proposal is made in accordance with those terms and conditions;
- c) The price(s) and amount of the Proposal have been arrived at independently and without consultation, communication, or agreement with any other contractor, proposer or potential proposer;
- d) Neither the price(s) contained in nor the total amount of the Proposal, nor the approximate price(s) or total amount, have been disclosed to any other firm or person who is a proposer or potential proposer, and they will not be disclosed prior to the deadline for submitting proposals;
- e) No attempt has been made or will be made to induce any firm or person to refrain from proposing in response to the RFP, or to submit a proposal higher than the Proposal, or to submit an intentionally high or noncompetitive proposal or other form of complementary proposal;
- f) The Proposal is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person;
- g) This Proposal has been completed by an authorized representative of the Offeror that the sufficient knowledge and information to address all matter addressed herein;
- h) If an award is made to the Offeror, the Offeror agrees that it intends to be legally bound to the contract that is formed between PhilaPort and the Offeror; and

- i) If an award is made to the Offeror, the Offeror will enter into and execute a contract based upon this Proposal, without delay, upon notice of award of contract.

*[Signature pages to follow; select the page that is appropriate to Offeror's form of business organization.]*

**[SIGNATURE PAGE FOR INDIVIDUAL OFFEROR]**

\_\_\_\_\_  
Name of Offeror (Printed)

\_\_\_\_\_  
Signature of Individual

Trading and doing business as:

\_\_\_\_\_

Business Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tax Identification Number:

\_\_\_\_\_

*\*If fictitious or trade name is employed in conduct of business, complete, by deletion as appropriate, the following statement:*

[Foregoing fictitious or trade name (has) (has not) been registered by the individual proprietorship under Pennsylvania Law.]

[SIGNATURE PAGE FOR PARTNERSHIP OFFEROR]

\_\_\_\_\_  
Name of Partnership

\_\_\_\_\_  
Name of General Partner (Printed)

By: \_\_\_\_\_  
(Signature of General Partner)

Witness: \_\_\_\_\_

Business Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tax Identification Number:

\_\_\_\_\_

The partners constituting the partnership herein named are:

Partner: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Partner: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

*Add additional lines for the names and addresses of additional Partners, if there are more than four Partners in the Partnership, by attaching an additional page or pages to this Proposal.*

\*If fictitious or trade name is employed by the partnership in conduct of its business, insert name here:

\_\_\_\_\_

*Next, complete, by deletion as appropriate, the following statement:*

[Foregoing fictitious or trade name (has) (has not) been registered by the partnership under Pennsylvania Law.

[SIGNATURE PAGE FOR CORPORATE OFFEROR]

\_\_\_\_\_  
Name of Corporation

\_\_\_\_\_  
Attest:

Signature of Secretary, Assistant Secretary  
Treasurer, Assistant Treasurer or  
other authorized representative\*\*

\_\_\_\_\_  
By:

Signature of President, Vice President or  
other authorized representative\*

\_\_\_\_\_  
(Print Name of Representative)

\_\_\_\_\_  
(Print Name of Representative)

*\* If a representative other than the President or a Vice President of the Corporation signs this Proposal on its behalf, then attach a valid corporate resolution or other appropriate proof, dated prior to or as of the date of the Proposal, evidencing authority to execute this Proposal on behalf of the Corporation.*

*\*\* If a representative other than the Secretary, an Assistant Secretary, the Treasurer or an Assistant Treasurer attests to the signature of the corporate representative, then attach a valid corporate resolution or other appropriate proof, dated prior to or as of the date of the Proposal, evidencing authority to attest to the execution of this Proposal on behalf of the Corporation.*

Tax Identification Number:  
  
\_\_\_\_\_

(1) Complete the following statement: The Corporation has been organized and is existing under laws of the State/Commonwealth of: \_\_\_\_\_.

(2) *If Corporation has been organized under laws of a State other than those of the Commonwealth of Pennsylvania, complete, by deletion as appropriate, the following statement:*

[The Corporation (has) (has not) been granted a certificate of authority to do business in the Commonwealth of Pennsylvania under applicable laws.]

(3) *If Corporation has been organized under laws other than those of the Commonwealth of Pennsylvania and has NOT been granted a certificate of authority, complete, by deletion as appropriate, the following statement:*

[The Corporation (has) (has not) applied for a certificate of authority to do business in the Commonwealth of Pennsylvania and (has) (has not) attached a copy of the pending application to this Proposal.]

**[SIGNATURE PAGE FOR A LIMITED LIABILITY COMPANY (LLC) OFFEROR]**

\_\_\_\_\_  
Name of Limited Liability Company

\_\_\_\_\_  
Attest:

\_\_\_\_\_  
By:

\_\_\_\_\_  
Signature of an Authorized Representative\*

\_\_\_\_\_  
Signature of Authorized Representative\*\*

\_\_\_\_\_  
(Print Name of Representative)

\_\_\_\_\_  
(Print Name of Representative)

*\* The individual attesting verifies and represents that the person whose signature is affixed to this Proposal on behalf of the Limited Liability Company (LLC) is duly authorized in accordance with the representations hereafter set forth.*

*\*\* Check the box which applies to this Proposal:*

\_\_\_\_\_ *The Certificate of Organization provides that LLC is to be managed by managers, and this Proposal has been executed by a Manager fully authorized by the Certificate, by the Operating Agreement and by Resolutions of the LLC. Copies of the relevant documents are provided with the Proposal or can be provided upon request within three (3) working days.*

\_\_\_\_\_ *The Certificate of Organization does not provide that LLC is to be managed by managers, and this Proposal has been executed by a Member fully authorized by the Certificate, by the Operating Agreement and by Resolutions of the LLC. Copies of the relevant documents are provided with the Proposal or can be provided upon request within three (3) working days.*

\_\_\_\_\_ *This Proposal has been executed by a representative of the LLC who is not a Manager or a Member of the LLC, and instead who holds the office of \_\_\_\_\_ (insert title), and the execution of this Proposal is fully authorized by the Certificate, by the Operating Agreement and by Resolutions of the LLC. Copies of the relevant documents are provided with the Proposal or can be provided upon request within three (3) working days. The Offeror and the individuals signing and attesting to the execution of this document further represent that (1) execution of the Proposal is carrying on business in the usual way; (2) the LLC authorizes the execution of this Proposal even if execution and submission of this Proposal is not carrying on business in the usual way for the LLC; and (3) to the best of the individuals' information and belief, the Owner has no knowledge of the Member's or the Manager's lack of actual authority, or of any applicable and relevant restriction on his or her authority.*

Tax Identification Number:  
  
\_\_\_\_\_

(1) Complete the following statement: The LLC has been organized and is existing under laws of the State/Commonwealth of \_\_\_\_\_.

(2) If the LLC has been organized under laws of a State other than those of the Commonwealth of Pennsylvania, complete, by deletion as appropriate, the following statement:

**[SIGNATURE PAGE FOR A LIMITED LIABILITY COMPANY (LLC) OFFEROR]**

[The LLC (has) (has not) been granted a certificate of authority to do business in the Commonwealth of Pennsylvania under applicable laws.]

*(3) If the LLC has been organized under laws other than those of the Commonwealth of Pennsylvania and has NOT been granted a certificate of authority, complete, by deletion as appropriate, the following statement:*

[The LLC (has) (has not) applied for a certificate of authority to do business in the Commonwealth of Pennsylvania and (has) (has not) attached a copy of the pending application to this Proposal.]

**Appendix “B”**

**Form of Agreement & General Conditions**



**SERVICE AGREEMENT**

**DATE:**

**PROJECT #:**

**EXPIRATION DATE:**

**CONTRACT #:**

**PHILADELPHIA REGIONAL PORT AUTHORITY**

3460 N. Delaware Avenue, 2<sup>nd</sup> Floor

Philadelphia Pennsylvania 19134

Attn: \_\_\_\_\_

("PhilaPort"), a body corporate and politic and an independent agency of the Commonwealth of Pennsylvania,

And

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

(the "Contractor"), a \_\_\_\_\_, a \_\_\_\_\_ [insert form of business organization] organized under the laws of the \_\_\_\_\_.

PhilaPort and Contractor hereby agree that the Contractor will perform the requisite services as forth in this written understanding (the "Contract"):

**Services:** \_\_\_\_\_. The Contractor shall perform the services for PhilaPort as requested in PhilaPort's Request-for-Proposal attached as Exhibit A and Contractor's Proposal attached as Exhibit B, both of which are incorporated herein by reference as part of the Contract and constitute a statement of work that describes and defines the services to be performed ("Services") The Contractor shall perform the Services hereunder using its best efforts and in accordance with the standards of its occupation, industry or profession. The Contracting Officer shall be \_\_\_\_\_ or such other individual identified in writing by PhilaPort.

**Contract Amount:** The payment from PhilaPort for the Services performed by the Contractor hereunder, inclusive of all expenses, shall not exceed the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) for the Term of this Contract. In Addition Provider agrees that twenty (20) percent of the Proposal Amount, which represents \_\_\_\_\_ (\$ \_\_\_\_\_) toward the contractors identified in the Proposal.

**Term of Contract:** This Contract shall be effective on the date that the last of the signatures have been affixed to this Agreement ("Effective Date"). The duration of this Agreement shall be \_\_\_\_\_ (\_\_\_\_) days ("Term") from the Effective Date.

**Terms and Conditions:** The terms and conditions are set forth in the General Conditions in Exhibit "A" attached hereto and incorporated herein by reference as part of the Contract.

**IN WITNESS WHEREOF**, and intending to be legally bound hereby, PhilaPort and the Contractor have caused this Agreement to be executed on the dates hereafter set forth.

PHILADELPHIA REGIONAL PORT  
PHILAPORT (“PHILAPORT”)

By: \_\_\_\_\_  
Name: Jeff Theobald  
Title: CEO & Executive Director  
Date: \_\_\_\_\_

Approved as to Legality and Form:

Approved as to Budgetary Appropriateness &  
Fiscal  
Responsibility:

PHILADELPHIA REGIONAL PORT  
PHILAPORT

PHILADELPHIA REGIONAL PORT  
PHILAPORT

By: \_\_\_\_\_  
Name: Gregory V. Iannarelli  
Title: Chief Counsel  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Edward Henderson  
Title: Director of Finance & Capital Funding  
Date: \_\_\_\_\_

OFFICE OF ATTORNEY GENERAL

OFFICE OF THE BUDGET

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chief Deputy Attorney General  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Anna Maria Kiehl  
Title: Comptroller  
Date: \_\_\_\_\_

[CONTRACTOR (where entity  
is a business corporation)]

\_\_\_\_\_  
Name of Corporation

\_\_\_\_\_  
Attest:

Signature of Secretary, Assistant Secretary  
Treasurer, Assistant Treasurer or  
other authorized representative\*\*

\_\_\_\_\_  
(Print Name of Representative)

\_\_\_\_\_  
By:

Signature of President, Vice President or  
other authorized representative\*

\_\_\_\_\_  
(Print Name of Representative)

*\* If a corporate representative other than the President or a Vice President of the Corporation signs this Contract on its behalf, then attach a valid corporate resolution or other appropriate proof, dated prior to or as of the date of signature, evidencing PhilaPort to execute this Contract on behalf of the Corporation.*

*\*\* If a representative other than the Secretary, an Assistant Secretary, the Treasurer or an Assistant Treasurer attests to the signature of the corporate representative, then attach a valid corporate resolution or other appropriate proof, dated prior to or as of the date of signature, evidencing PhilaPort to attest to the execution of this Contract on behalf of the Corporation.*

**[Note: When agreements are signed with limited liability companies or non-corporate contractors, the form of signatures will be changed to the form appropriate to the form of business organization being used.]**

**Exhibit A**

**Request for Proposals**

**Exhibit B**

**Proposal**



**Exhibit "A"**

**GENERAL CONDITIONS  
FOR SERVICE CONTRACTS**

**Section I. Definitions:**

The following terms and expressions used in the Contract Documents shall be defined and understood as follows:

"City" shall mean the City of Philadelphia.

"Commonwealth" shall mean the Commonwealth of Pennsylvania.

"Contract" shall mean the written agreement and understanding between PhilaPort and the Contractor.

"Contract Documents" shall mean the documents described in the Contract.

"Contractor" shall mean the party of the second part to the Contract that is providing Services.

"Contract Sum" shall mean the amount stated in the Contract for the payment to the Contractor.

"Contract Officer" The Contract Officer shall be the Procurement Director prior to the execution of the Contract. Subsequent to the execution of the Contract, the Contract Officer shall be the individual designated by PhilaPort. The term, "Contract Officer" shall have the same meaning as "Contracting Officer" in the Commonwealth Procurement Code.

"Date of Completion" shall mean the last day of the term specified in Article III of the Contract for the completion of the Work.

"Day(s)" shall mean the number of days, excluding the first and including the last day of such period. Whenever the last day of any such period shall fall on a Saturday or Sunday, or on any day made a legal holiday by the laws of the Commonwealth or the United States, such day shall be omitted from the computation.

"Contract Officer" shall mean either the Director of Contract Officering of PhilaPort, or any successor or successors duly appointed in writing by the Director of Contract Officering, or any deputy or substitute who may be so designated, in writing, by the Executive Director or through a duly authorized representative within the scope of the particular duties assigned such representative.

"Executive Director" shall mean the Executive Director of PhilaPort, or any deputy or substitute who may be so designated in writing by the Executive Director.

“PhilaPort” shall mean the Philadelphia Regional Port Authority.

“Plans” in the context of Services provided by an engineer or other design professional shall mean the general plans and designs accompanying the Specifications and such supplementary drawings as may be furnished from time to time.

“Professional” shall mean the Contract Officer unless designated otherwise.

“Project” shall mean the undertaking being assumed by the Contractor.

“Site” shall mean the location where the Services will be performed.

“Special Conditions” shall mean special conditions, if any, which modify the General Conditions.

“Specifications” in the context of Services provided by an engineer or other design professional shall mean the written documentation accompanying the Plans, which set forth the Work to be performed and the methods to be used to perform the Work. In the context of other Services, the term shall mean the requirements set forth in the Contract Documents.

“Subcontractor” shall mean persons, firms, or corporations having a direct contract with the Contractor to provide a portion of the Services specified, subject to the right of PhilaPort to approve or disapprove the entity proposed.

“Task Order” shall mean a directive, using the Form attached as an Exhibit to the Agreement, directing Contractor to provide specific Services, with pricing and performance duration specified.

“Working Day” shall mean a calendar day except Saturday, Sunday, and any day made a legal holiday by the laws of the Commonwealth or the United States.

## **Section II. Payment:**

A. The Contractor shall invoice PhilaPort on a monthly basis for actual time expended at the rates listed in the Proposal or other Contract Document, with sufficient detail to be rendered acceptable to PhilaPort. Provided the Contractor has performed its services in accordance with this Contract, PhilaPort shall pay the Contractor for such services within forty-five (45) days from the date of receipt by PhilaPort of the Contractor’s invoice. All invoices are to be sent to the Accounts Payable Department of PhilaPort at the address listed on the Contract.

## **Section III. Disputes:**

A. All claims, disputes and other matters in question between the parties to this Contract arising out of or relating to this Contract or the breach thereof, shall be decided by arbitration before the Board of Claims (See 62 Pa.C.S.A. § 1721 et seq.), in the manner and under the terms and conditions provided therein.

## **Section IV. Nondiscrimination:**

A. In accordance with Pa. Stat. Ann. tit. 55, § 697.16, the nondiscrimination and contract compliance plans used by PhilaPort are required to be the same as those used by the Commonwealth of Pennsylvania's Department of General Services.

B. During the term of this Contract, the Contractor agrees to comply with the following "nondiscrimination clause":

The Contractor shall not discriminate against any employee, applicant for employment, independent contractor, or any other person because of race, color, religious creed, ancestry, national origin, age, or sex. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not 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. The Contractor shall post in conspicuous places, available to employees, agents, applicants for employment, and other persons, a notice to be provided by PhilaPort setting forth the provisions of this nondiscrimination clause.

C. The Contractor shall in advertisements or requests for employment placed by it or on its behalf state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, or sex;

D. The Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by the Contractor;

E. It shall be no defense to a finding of noncompliance with the Contract Compliance Regulations the "Contract Compliance Regulations" (16 Pa. Code Chapter 49) issued by the Pennsylvania Human Relations Commission (the "Commission") or with the terms and provisions of this nondiscrimination clause that the Contractor had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor was not on notice of the third-party discrimination or made a good faith effort to correct such discrimination, such factor shall be considered in mitigation in determining appropriate sanctions;

F. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that the Contractor will be unable to meet its obligations under the Contract Compliance Regulations or pursuant to the terms and provisions of this nondiscrimination clause, the Contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures;

G. The Contractor shall comply with the Contract Compliance Regulations, which are incorporated herein by reference as if fully set forth herein, and with all laws prohibiting discrimination in hiring or employment opportunities. In the event of the Contractor's

noncompliance with the terms and provisions of this nondiscrimination clause or with any such laws, the Contractor may, after hearing and adjudication, be terminated or suspended, in whole or in part, and the Contractor may be declared temporarily ineligible for other contracts with agencies of the Commonwealth of Pennsylvania, and such other sanctions may be imposed and remedies invoked as provided by the Contract Compliance Regulations;

H. The Contractor shall furnish to PhilaPort and the Commission, all necessary employment documents and records and shall permit access by PhilaPort and the Commission to the Contractor's books, records, and accounts, for purposes of investigation to ascertain compliance with the provisions of the Contract Compliance Regulations. If the Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by PhilaPort or the Commission;

J. The Contractor shall actively recruit minority subcontractors or subcontractors with substantial minority representation among their employees;

K. The Contractor shall include the provisions of this nondiscrimination clause in every subcontract, so that such provisions will be binding upon each subcontractor;

L. The terms used in this nondiscrimination clause shall have the same meanings as used in the Contract Compliance Regulations; and

M. The Contractor's obligations under this nondiscrimination clause are limited to the Contractor's facilities within the Commonwealth of Pennsylvania.

**Section V. Contract Extension, Termination and Suspension:**

A. For the convenience of PhilaPort, this Contract may be terminated for any reason by PhilaPort after seven (7) calendar days' written notice to the Contractor. In the event of termination under this Section V.(A.), the Contractor shall be paid that portion of the payment due to the Contractor hereunder which represents the compensation for services performed to the date of termination and all termination expenses. Termination expenses are defined as those expenses arising prior, during, and subsequent to termination that are directly attributable to the termination.

B. This Contract may be terminated by either party hereto upon seven (7) calendar days' written notice should the other party fail substantially to perform in accordance with the terms hereof through no fault of the party initiating the termination. In the event of termination under this Section V.(B.), the Contractor shall be paid that portion of the payment due to the Contractor hereunder which represents the compensation for services performed to the date of termination.

C. PhilaPort may, in writing, order the Contractor to suspend all or any part of the Contractor's services hereunder for the convenience of PhilaPort. In the event of suspension under this Section V.(C.), notwithstanding Article II of this Contract, an equitable adjustment in the Contractor's compensation shall be made for the increase, if any, in the cost of the Contractor's performance of this Contract caused by such suspension, and this Contract shall be modified in writing accordingly.

D. PhilaPort shall have the right to exercise options to extend that have been included in the original Request for Proposal.

E. PhilaPort shall have the right in the exercise of its sole discretion to extend this contract on a month-to-month basis, pending a solicitation of a new contract for the Services.

**Section VI. Contractor Integrity:**

A. The following terms used in this Section VI shall be defined and understood as follows:

"Confidential" means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with PhilaPort;

"Consent" means written permission by a duly authorized member or employee of PhilaPort, provided that where the material facts have been disclosed, in writing, by prequalification or contractual terms, PhilaPort shall be deemed to have consented by virtue of execution of this Contract;

"Financial Interest" means ownership of more than a five (5) percent interest in any business; or holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management; and

"Gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

B. The Contractor shall maintain professional standards of integrity in the performance of the services required hereunder and shall take no action in violation of federal or state laws, regulations, or other requirements that govern contracting with the Commonwealth of Pennsylvania or PhilaPort.

C. The Contractor shall not disclose to others any confidential information gained by virtue of this Contract.

D. The Contractor shall not, in connection with this Contract or any other contract with PhilaPort or the Commonwealth of Pennsylvania, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any member or employee of PhilaPort or the Commonwealth of Pennsylvania.

E. The Contractor shall not, in connection with this Contract or any other contract with PhilaPort or the Commonwealth of Pennsylvania, directly or indirectly, offer, give or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any member or employee of PhilaPort or the Commonwealth of Pennsylvania.

F. Except with the consent of PhilaPort or the Commonwealth of Pennsylvania, neither the Contractor nor anyone in privity with the Contractor shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of the services required hereunder except as provided herein.

G. Except with the consent of PhilaPort, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material for the services required hereunder.

H. The Contractor, upon being informed that any violation of this Section VI has occurred or may occur, shall immediately notify PhilaPort in writing.

I. The Contractor, by execution of this Contract and by the submission of any bills or invoices for payment pursuant hereto, certifies and represents that the Contractor has not violated any of these provisions.

J. The Contractor shall, upon request of PhilaPort or the Office of State Inspector General, reasonably and promptly make available to PhilaPort and that office and its representatives, for inspection and copying, all business and financial records of the Contractor of, concerning, and referring to this Contract or which are otherwise relevant to the enforcement of this Section VI.

K. For a violation of this Section VI, PhilaPort may terminate this Contract and any other contract with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of this Section VI, claim damages for all expenses incurred in obtaining another contractor to complete performance under this Contract, and debar and suspend the Contractor from doing business with PhilaPort. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those PhilaPort and/or the Commonwealth of Pennsylvania may have under law, statute, regulation or otherwise.

## **Section VII. Task Orders**

**[This Section left Intentionally Blank]**

## **Section VIII. Insurance:**

A. The Contractor shall, at its sole cost and expense, procure and maintain in full force and effect, covering the performance of the Services required under this Contract, the types of insurance specified in this Section. The insurance required shall be procured from reputable insurers, acceptable to PhilaPort, with an A.M. Best rating of B+ or better, and authorized to do business in the Commonwealth of Pennsylvania. The insurance required by this Section VIII, except the Contractor Liability Insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall Services be provided until the required evidence of insurance has been furnished to PhilaPort. If the Contractor fails to obtain or maintain the required insurance, PhilaPort shall have the right to treat such failure as a material breach of this Contract and to exercise all appropriate rights and remedies. The insurance policies required by this Section VIII

shall provide for at least thirty (30) calendar days' prior written notice to be given to PhilaPort in the event coverage is materially changed, cancelled or non-renewed.

B. PhilaPort and the Commonwealth of Pennsylvania, their officers, employees, and agents are to be named as additional insureds on the General Liability Insurance policy of the Contractor. In addition, an endorsement to the insurance policy is required stating that the coverage afforded PhilaPort and the Commonwealth of Pennsylvania and their officers, employees, and agents as additional insureds will be primary to any coverage available to the Contractor.

C. The amount of Insurance required by this Section VIII is as follows:

1. Workers Compensation and Employers Liability:

Workers Compensation: Statutory limits.

Employers Liability: \$500,000 each accident - bodily injury by accident  
\$500,000 each employee - bodily injury by disease  
\$500,000 policy limit - bodily injury by disease.

Other States' coverage and Pennsylvania endorsement.

2. General Liability Insurance:

Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury and property damage;  
\$1,000,000 personal and advertising injury;  
\$2,000,000 general aggregate.

Coverage: Premises operations; blanket contractual liability; personal injury liability (employee exclusion deleted); products and completed operations; independent contractors; employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations).

3. Automobile Liability:

Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury and property damage liability. Coverage: Owner, non-owned and hired vehicles.

4. Professional Liability Insurance (for design professionals, legal counsel and other professionals):

Limit of Liability: \$1,000,000 with a deductible not to exceed \$25,000.

Coverage: Errors and omissions. Coverage for occurrences happening during the performance of the services required under this Agreement shall be maintained in full force and effect under the insurance policy or "tail" coverage for a period of at least two (2) years after completion of the services.

D. Certificates of insurance evidencing the required coverages shall be submitted to PhilaPort's Insurance Department at least ten (10) calendar days before Services are begun. This ten (10)

calendar day requirement for advance documentation of coverage may be waived in situations where such waiver will benefit PhilaPort. PhilaPort reserves the right to require the Contractor to furnish certified copies of the original policies of all insurance required under this Contract at any time upon ten (10) calendar days' prior written notice to the Contractor.

E. It is expressly understood and agreed that the furnishing of insurance pursuant to this Section shall in no way limit the liability or responsibilities and obligations of the Contractor as provided in this Contract.

**Section IX. Indemnification:**

A. The Contractor shall indemnify, defend, and hold harmless PhilaPort and the Commonwealth of Pennsylvania, and their officers, employees, and agents, from and against any and all losses, costs (including litigation costs and counsel fees), claims, suits, actions, damages, liability, and expenses in connection with loss of life, bodily injury, personal injury, or damage to tangible property to the extent occasioned wholly or in part by the Contractor's act or omission or the act or omission of the Contractor's agents, contractors (including subcontractors and suppliers), officers, employees, or servants pursuant to this Contract.

**Section X. Ownership of Documents:**

A. All reports, plans, specifications, computer files, field data, notes and other documents and instruments prepared by the Contractor in accordance with this Contract are and shall remain the property of PhilaPort. Any use or reuse by the Contractor without the express written approval of PhilaPort will be at the Contractors sole risk and without liability or legal exposure to PhilaPort.

**Section XI. Commonwealth Audit:**

A. The funds for this Contract are subject to audit by PhilaPort and other agencies and representatives of the Commonwealth of Pennsylvania in accordance with applicable laws and regulations. PhilaPort reserves the right to perform additional audits of a financial/compliance, economy/efficiency or program results nature, if deemed necessary.

B. The Contractor will submit to PhilaPort copies of any audits conducted by or at the request of the Contractor that involve the funds for this Contract.

**Section XII. Sovereign Immunity:**

A. The Contractor acknowledges that PhilaPort, as an agency of the Commonwealth of Pennsylvania, enjoys sovereign immunity as provided in Section 18 of the Philadelphia Regional Port PhilaPort Act, Pa. Stat. Ann. tit. 55, § 697.18.

**Section XIII. Notices:**

A. All notices required by this Contract or other communications to either party by the other shall

be deemed given when made in writing and received or when made in writing and deposited in the United States Mail, first class, postage prepaid, addressed as on the Service Contract.

**Section XIV. Entire Contract:**

A. This Contract constitutes the entire agreement and understanding between the parties with respect to the subject matter contained herein and supersedes all prior agreements, understandings, negotiations, and discussions, both written and oral, among the parties hereto with respect to the subject matter hereof.

**Section XV. Hierarchy:**

A. If any provision of one Contract Document is in conflict with another, the conflict shall be resolved by giving precedence to the document first listed:

1. Agreement
2. General Conditions
3. Special Conditions (if any)
4. Task Order
5. RFP
6. Proposal

**Section XVI. Severability:**

A. The provisions of this Contract are severable and if any of its provisions become or are found to be unlawful, the decision so holding shall not be construed to impair or affect the enforceability of the remaining provisions of this Contract or any part hereof.

**Section XVII. Amendments:**

A. This Contract may not be amended or modified in any way except by a written instrument executed by each of the parties hereto. In the event that an amendment to this Contract is desired by either party, the party wishing to amend must present the proposed amendment in writing to the other party. If the amendment is accepted by the other party, a true copy of the amendment shall be signed by the parties' official representatives and shall be attached as a rider to this Contract.

**Section XVIII. Section Headings:**

A. The section headings contained in this Contract are for reference purposes only and shall not affect the meaning or interpretation of any provisions of this Contract.

**Section XIX. Other Laws:**

A. Any and all other applicable state or federal laws not specifically mentioned in this Contract

shall also apply to the parties.

**Section XX. Governing Law:**

A. This Contract shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to the principles of conflicts of law thereof.

**Section XXI. Diversity and Inclusion:** Contractor acknowledges that the diversity and inclusion commitments submitted as part of its proposal were an integral part of its submission. Contractor commits to satisfy the requirements of at least twenty (20) percent of diversity and inclusion. Contractor agrees that each of the Identified Contractors will be paid at least five (5) percent of the Proposal Amount and that the combined total amount paid to the Identified Contractors shall be at least twenty (20) percent of the Proposal Amount.

Contractor and agrees that PhilaPort will incur substantial damages to its efforts to promote diversity and inclusion if the commitment levels for the Work are not achieved in accordance with the requirements of this Agreement. The parties agree that it would be extremely difficult and impractical under the presently known and anticipated facts and circumstances to ascertain and fix actual damages that PhilaPort would incur under these circumstances, and, accordingly, the parties agree that PhilaPort's remedy shall be to recover from the Contractor as liquidated damages, and not as a penalty the dollar value of the participation committed multiplied by 0.10. The liquidated damages identified in this Section relate solely to Contractor's failure to meet its commitment of diversity and inclusion in accordance with the requirements of this Agreement and not to other breaches, actions or omissions of the Contractor. The liquidated damages identified in this Section shall not limit PhilaPort's remedies for other breaches, actions, or omissions of the Contractor, including termination for failure to complete the Work.

**Appendix “C”**

**Form for the Submission of  
Targets for HUB Participation**

# **DIVERSITY AND INCLUSION**

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**PHILADELPHIA REGIONAL PORT AUTHORITY  
(PHILAPORT)**

**Diversity Inclusion Plan (Construction)**

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## **DIVERSITY AND INCLUSION POLICY MINIMUM PARTICIPATION LEVELS**

PHILAPORT has established the following minimum participation levels (MPLs) for Historically Underutilized Business Enterprises in accordance with a policy on diversity inclusion, set forth in Part X of the Contracting, Procurement, and Leasing Policies and Procedures, revised as of November 2015, the provisions of which are incorporated as though fully set forth herein.

**All contracts awarded for construction will have a minimum HUB participation level set by the Director of Procurement, but in no event shall it be less than 20% of the contract value. The participation for each award must include at least 2 of the categories that are identified as HUB with no less than 5% participation for every category being included.**

### Historically Underutilized Business Enterprise (HUB)

A Business Enterprise that is:

1. an MBE
2. a WBE
3. a Veteran or Service-Disabled Veteran Business Enterprise
4. an LGBT Business Enterprise

\*\*\*Use forms included to submit HUB solicitation and commitments at time of bidding.

## **ACCEPTED CERTIFICATIONS**

PhilaPort accepts approved third-party certifications from any of the following entities:

- [Woman's Business Enterprise National Council \(WBENC\)](#)
- [National Minority Supplier Development Council \(NMSDC\)](#)
- [United States Small Business Administration \(SBA\) 8\(a\) Program \\*](#)
- [Vets First Verification Program at vetbiz.gov](#)
- [US Business Leadership Network \(USBLN\)](#)
- [National Gay & Lesbian Chamber of Commerce \(NGLCC\)](#)

*07/15/2017*

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**PHILADELPHIA REGIONAL PORT AUTHORITY**  
**Diversity Inclusion Plan (Construction)**

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**EXHIBITS**

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Exhibit 2	Prime Contractor's HUB Monthly Reporting Form Summarizing Payments Made

## II. POLICY STATEMENT

The Board of the Philadelphia Regional Port Authority, an independent agency of the Commonwealth of Pennsylvania, pursuant to Sections 697.4 and 697.6(c)(5) of the Philadelphia Regional Port Authority Act, has adopted a policy on diversity inclusion, set forth in Part X of the Contracting, Procurement, and Leasing Policies and Procedures, revised as of November 2015 (the “Diversity Inclusion Policy” or the “Policy”).

It is the policy of the Philadelphia Regional Port Authority (“PHILAPORT”) to promote opportunities for full participation by Minority-owned, Women-owned, Veteran-owned or Service-Disabled-Veteran-owned and LGBT-owned small businesses, hereafter collectively referred to as disadvantaged business enterprises (“HUBs”) in all project-related construction contracts to the greatest extent feasible and to do so by insuring that all Prime Contractors do not discriminate in the solicitation, award and administration of construction subcontracts on PHILAPORT’s projects.

Further, PHILAPORT’s policy is to extend the applicability of the Diversity Inclusion Policy to other professional and non-professional services for which PHILAPORT contracts.

## III. DIVERSITY INCLUSION PLAN

### A. HUB Requirements

PHILAPORT shall take all necessary and appropriate steps to assure that its Prime Contractors do not discriminate and use HUBs in accordance with this Diversity Inclusion Plan (the “Diversity Inclusion Plan” or the “Plan”) for all project-related construction contract awards that exceed the bidding threshold established annually for authorities in Pennsylvania.<sup>1</sup>

## IV. DEFINITIONS

- A. Bidder Responsiveness - Actions taken by a Prime Bidder to seek participation by Subcontractors as defined below who are HUBs, and documented in the bid. Responsiveness includes submission at the time of the bid of the HUB Solicitation and Commitment Statement (similar in content to Exhibit 1), and, if needed, documentation providing an explanation for failure to achieve minimum levels of participation (MPLs). This documentation must demonstrate that the bidder has not engaged in discriminatory practices and may include a description of any barriers or impediments encountered despite the actions taken.
- B. Bidder Responsibility – Demonstration of non-discrimination in the selection of Subcontractors. Bidders are presumed to meet these responsibilities if minimum participation levels established for the project on the pertinent subcontract are

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<sup>1</sup> Although the Plan is termed the “Diversity Inclusion Plan,” the intent of the Plan is to achieve both Diversity and Inclusion, as two distinct characteristics, with respect to its construction contracts.

achieved. Non-discrimination can also be demonstrated by submitting supplemental evidence that failure to achieve the MPLs was not motivated by consideration of race, gender or other impermissible criterion; that HUBs were not treated less favorably than others; and that solicitation and commitment decisions were not based upon policies which disparately affect HUBs.

C. Business Enterprise - Any legal entity that is organized in any form other than as a joint venture (e.g., sole proprietorship, partnership, corporation, etc.) to engage in lawful commercial transactions.

D. Contractor - An entity that contracts with the PHILAPORT to perform work in connection with a construction project.

E. Control - The exclusive, ultimate and sole control of a business including, but not limited to, capital investment and all other financial, property acquisition, contract negotiation, and legal matters, officer-director-employee selection and comprehensive hiring, operating responsibility, cost-control matters, income and dividend matters, financial transactions, and rights of other shareholders or partners. Control shall be real, substantial, and continuing, not merely pro forma. Control shall include the power to direct or cause the direction of the management and policies of the business and to make the day-to-day as well as major decisions in matters of policy, management, and operations. Control shall be exemplified by possession of the requisite knowledge and expertise to operate the particular business. Control shall not be vested in majority or absentee ownership. Control by a HUB defined herein shall not be deemed to exist in any case where any majority owner or employee of the business is disproportionately responsible for the operation of the firm.

F. Disadvantaged Business Enterprise (HUB)

A Business Enterprise that is:

1. an MBE
2. a WBE
3. a Veteran or Service-Disabled Veteran Business Enterprise
4. an LGBT Business Enterprise

G. LGBT Business Enterprise

A Business Enterprise that is:

1. a sole proprietorship, owned and controlled by a LGBT Person; or

2. a partnership or joint venture of Business Enterprises controlled by LGBT Persons in which 51% of the beneficial ownership interest is held by LGBT Persons; or
3. a corporation or other entity controlled by LGBT Persons in which at least 51% of the voting interest and 51% of the beneficial ownership interest are held by LGBT Persons.

H. LGBT Person

Persons who identify as lesbian, gay, bisexual, or transgender.

I. Minority Business Enterprise (MBE)

A Business Enterprise that is:

1. a sole proprietorship, owned and controlled by a Minority Person; or
2. a partnership or joint venture of Business Enterprises controlled by Minority Persons in which 51% of the beneficial ownership interest is held by Minority Persons; or
3. a corporation or other entity controlled by Minority Persons in which at least 51% of the voting interest and 51% of the beneficial ownership interest are held by Minority Persons.

J. Minority Person

Persons who are citizens of the United States and who are Black Americans, Hispanic Americans, Native Americans, Asian-Indian Americans, or Asian-Pacific Americans.

1. Black (African) Americans - Persons having origins from any of the Black groups of Africa. The term includes persons having origins in any of the original peoples of the Cape Verdes Islands.
2. Hispanic Americans - Persons having their origins from one or more of the Spanish- speaking peoples of Mexico, Puerto Rico, Cuba, Central or South America or the Caribbean Islands.
3. Native Americans - Persons having origins from one or more of the original peoples of North America and who are recognized as an Indian by a tribe or tribal organization.
4. Asian-Indian – Persons having origins from one or more countries in south Asia, including India and Pakistan.

5. Asian-Pacific Americans - Persons having origins from one or more of the original peoples of the Far East, Southeast Asia or the Pacific Islands, including China, Japan, Korea, Samoa, and the Philippine Islands.

K. Owner – PHILAPORT

L. Prime Bidder and Prime Contractor

For HUB purposes, the term, “Prime Bidder” means a Business Enterprise that submits a bid to PHILAPORT (e.g., general contractors, plumbing contractors). A Prime Contractor is a Prime Bidder that has received an award from PHILAPORT.

M. Service-Disabled Veteran Business Enterprise. A Business Enterprise that is:

1. a sole proprietorship, owned and controlled by a Service-Disabled Veteran; or
2. a partnership or joint venture of Business Enterprises controlled by Service-Disabled Veterans in which 51% of the beneficial ownership interest is held by Service-Disabled Veterans; or
3. a corporation or other entity controlled by Service-Disabled Veterans in which at least 51% of the voting interest and 51% of the beneficial ownership interest are held by Service-Disabled Veterans.

N. Service-Disabled Veteran.

Persons who are Veterans and either (1) are “disabled veterans” as defined in 5 USC 2108(2) (i.e. “individuals who have served on active duty in the armed forces, have been separated therefrom under honorable conditions, and have established the present existence of a service-connected disability or are receiving compensation, disability retirement benefits, or pension because of a public statute administered by the Department of Veterans Affairs or military department”) or (2) have a disability as defined in the Social Security regulations, 42 USC 423 (i.e. “an inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted, or can be expected to last for a continuous period of not less than 12 months”) and have a present determination of a disability by the Social Security Administration or Veterans Administration.

O. Subcontractor. A Business Enterprise that has a contract with a Prime Contractor to supply labor, equipment, materials or supplies for a project as a manufacturer, vendor, supplier or subcontractor.

P. Veteran. Persons who served in honorably in the United States military.

Q. Veteran Business Enterprise.

1. a sole proprietorship, owned and controlled by a Veteran; or
2. a partnership or joint venture of Business Enterprises controlled by Veterans in which 51% of the beneficial ownership interest is held by Veterans; or
3. a corporation or other entity controlled by Veterans in which at least 51% of the voting interest and 51% of the beneficial ownership interest are held by Veterans.

R. Women's Business Enterprise (WBE). A Business Enterprise that is:

1. a sole proprietorship, owned and controlled by a Woman; or
2. a partnership or joint venture of Business Enterprises controlled by Women in which 51% of the beneficial ownership interest is held by Women; or
3. a corporation or other entity controlled by Women in which at least 51% of the voting interest and 51% of the beneficial ownership interest are held by Women.

S. Women. United States citizens who are of the female gender.

## V. **CONTRACTOR COMPLIANCE GENERALLY**

A. Minimum Participation Levels (MPLs)

PHILAPORT will establish minimum participation levels (MPLs) for the HUBs on a project-by-project basis. The MPLs will be established for each prime bid to be used solely as a guide in determining Prime Bidder responsibility. MPLs are applied to each bid category. The MPLs will vary based on the market availability of subcontracting opportunities for HUB's, on a project-by-project basis.

PHILAPORT shall endeavor to establish MPLs on the basis of actual market availability that matches the scope of work included in the project and available HUB firms, on a project-by-project basis with separate participation levels for the HUB categories.

B. Bidder's Submissions at Time of Bid

The Prime Bidder shall submit the HUB Solicitation and Commitment Statement attached as Exhibit 1 with its bid, showing efforts made to solicit HUB Subcontractors, and written confirmations of the intent to use the identified Subcontractors if awarded the prime contract. Prime Contractor's HUB Contact/Solicitation and Commitment Statement shall include the names of all companies and individuals contacted or solicited for participation in the project,

the type of work, material, supplies or equipment involved in the solicitation, the total dollar amount of each quote received, the time of solicitation, and, where applicable, the total dollar amount of each subcontract that would be awarded.

C. Safe Harbor and Compliance at Time of Bidding

In the absence of evidence to the contrary, compliance with the requirements under this Plan to demonstrate both bidder responsiveness and responsibility is presumed if MPLs are achieved.

If MPLs are not met, the Prime Bidder shall document why it was not feasible to meet the numerical levels by submitting evidence that failure to achieve MPLs was not motivated by consideration of race or gender, or other disadvantaged status; that HUBs were not treated less favorably than others; that solicitation and commitment decisions were not based upon policies which disparately affect HUBs. Justification for not meeting the MPLs may include impediments encountered despite actions taken.

D. Compliance Responsibilities – PHILAPORT and Prime Contractor

PHILAPORT has the responsibility to comply with the requirements under this Plan and ensure non-discrimination in the selection of Subcontractors, and in the administration of the project.

Prime Contractor has the responsibility to meet its commitments made during bidding by utilizing each Subcontractor it selected to the full extent of the subcontract value. The failure to meet minimum participation levels at the completion of two projects shall warrant Prime Contractor's disqualification from contracting with PHILAPORT for a period of six months and the imposition of liquidated damages in the amount of 10% of the dollar amount of the shortfall in the commitment to compensate PHILAPORT for the administrative costs of addressing the deficiency and not as a penalty.

E. Prime Contractor's Submissions during Project Administration

Prime Contractor shall submit monthly reports as specified in this Plan and in the Contract Documents. Specifically, Prime Contractor shall submit the Prime Contractor's HUB Monthly Reporting Form Summarizing Payments Made (similar in content to Exhibit 2) for each project as well as proof of payment in the form of invoices from subcontractors. Both form and proff of payment to subcontractors should be submitted to the Finance Department along with the Prime Contractor's monthly invoicing. PhilaPort reserves the right to withhold payment to Prime Contractor until the HUB monthly reporting is up-to-date and in accordance with the MPLs submitted with the bid..

**VI. PROCEDURES – CLAUSES INCLUDED IN BIDDING AND CONTRACT DOCUMENTS**

PHILAPORT shall insert the following in the appropriate contract document, establishing requirements applicable to the Prime Bidder:

A. Advertisement / Invitation for Bid (IFB)

All advertisements for IFB will include the following statement:

“The bidder must submit documentary evidence of solicitations from HUBs, which have been contacted and to which commitments have been made. Documentation of contract solicitations and commitments shall be submitted concurrently with the bid.”

B. Instructions to Bidders (ITB)

The following statements will be placed in the bid documents, establishing requirements applicable to the Prime Bidder:

1. Participation Level

a. PHILAPORT has established the following minimum participation levels (MPLs) for Disadvantaged Business Enterprises in accordance with a policy on diversity inclusion, set forth in Part X of the Contracting, Procurement, and Leasing Policies and Procedures, revised as of November 2015, the provisions of which are incorporated as though fully set forth herein.

- MBEs \_\_\_\_% of the total dollar amount of the \_\_\_\_\_ contract
- WBEs \_\_\_\_% of the total dollar amount of the \_\_\_\_\_ contract
- Veteran or Service-Disabled Veteran Business Enterprise

- \_\_\_\_\_ % of the total dollar amount of the \_\_\_\_\_ contract
- LGBT Business Enterprise \_\_\_\_\_ % of the total dollar amount of the \_\_\_\_\_ contract

**All contracts awarded for construction will have a minimum HUB participation level set by the Director of Procurement, but in no event shall it be less than 20% of the contract value. The participation for each award must include at least 2 of the categories that are identified as HUB with no less than 5% participation for every category being included.**

MPLs are established for this project to be used solely as a threshold in determining Prime Bidder responsibility. Prime Bidders are presumed to meet their responsibilities under the Policy if the dollar commitments to the HUBs reflect these participation levels. A Prime Bidder will not be rejected as non-responsible solely because it fails to reach the MPLs. To determine the participation level that has been reached, a Prime Bidder shall divide the total dollar amount of the commitments for the project by the total dollar amount of the Prime Bidder's contract award.

- b. HUB subcontracts will be credited toward the MPLs at 100%. HUB stocking suppliers and manufacturers are credited at 100%. HUB non-stocking suppliers, which are commonly and ordinarily the custom in the industry and a part of the industry's trade practices, are credited at 100%. Non-stocking suppliers, which are not commonly and ordinarily the custom in the industry nor a part of the industry's trade practice, are not credited.
- c. A prospective Subcontractor that qualifies in one, two, three or all four categories, will only receive credit toward MPLs as one but not more than one. Prime Bidders must indicate on the HUB Solicitation and Commitment Statement (similar in content to Exhibit 1) how the prospective Subcontractor should be credited.
- d. A HUB which is the Prime Bidder on a project with a contract valued at \$100,000 or less will receive full MPL credit for its own work effort for services provided. Such a business bidding as Prime Contractor should nonetheless attempt to hire and solicit other, certified HUBs for participation in subcontracts.
- e. HUB Subcontractors providing labor must perform at least seventy-five percent (75%) of the cost of the subcontract, not including the cost of materials, with its own employees.

C. General Conditions

PHILAPORT will include following provisions in construction contracts, establishing requirements applicable to Prime Contractor.

1. Reporting Requirements After Award

a. Prime contractors must provide PHILAPORT directly with the Prime Contractor's HUB Monthly Reporting Form Summarizing Payments Made (similar in content to Exhibit 2) for each project that is underway and for which payment applications are being submitted. The report shall include the names of and the total dollar amount paid to all HUB Subcontractors utilized under this contract. PHILAPORT reserves the right to verify payments to subcontractors at any time.

2. Joint Ventures and Subcontracting

a. Joint Venture.

Project-related contracts that involve a joint venture with a HUB firm must include the following clause:

If the joint venture relationship identified as the \_\_\_\_\_ is dissolved, ~~or otherwise discontinued~~, (\_\_\_\_\_),

Name of Replacement Prime Contractor

Replacement Prime Contractor, as the successor on the contract, shall continue this commitment by entering into contractual agreements with other appropriate firms to perform work on this contract. Replacement Prime Contractor must submit all requests for change orders to PHILAPORT for approval.

b. Subcontracting.

Subcontracts with HUB firms must include the following clause:

If the subcontracting commitment made to the \_\_\_\_\_ is terminated or materially reduced, \_\_\_\_\_

Name of Subcontractor

Name of Prime Contractor

agrees that the termination or material reduction is subject to the approval of PHILAPORT, which approval shall not be withheld unreasonably.

**VII. PROCEDURE TO SOLICIT PARTICIPATION**

A. HUB Certification

1. Prime Bidders will only be given credit for HUBs that are certified or accepted as certified HUBs by programs approved by, and in accordance with additional requirements set forth by, Board resolution.
2. Under the State Act of December 21, 1984, No. 230, P.L. 210, 18 PA. C.S.A. § 4107.2 a person commits a felony of the third degree if, in the course of business, he/she engages in deception relating to HUB certification.
3. To be credited, the certification relied upon must be for the category of labor, equipment, materials or supplies that would be used by Prime Contractor in the proposed subcontract with the Subcontractor. For example, a certification as a masonry contractor does not qualify as a certification to supply electrical equipment.

B. Notification to HUBs

The procedure for Prime Contractor to notify HUBs of contract shall be as follows:

1. Notice of ITBs

The Prime Bidder shall utilize available information regarding certified HUB firms capable of performing in the project's area. PHILAPORT shall provide reasonable assistance to the Prime Bidder. The Prime Bidder shall provide notice of the project to HUB firms so identified and to other qualified HUB firms and shall otherwise provide the same level of communication and interaction with prospective HUB Subcontractors as it would to other companies with which the Prime Bidder routinely contracts.

2. Other Notices - Notices of the HUB subcontracting opportunities will be sent by PHILAPORT to appropriate organizations, such as:

- a. local minority churches and civic organizations;
- b. appropriate (1) minority business technical assistance organizations and schools, (2) minority, women, veteran, LGBT and small business contractor associations and appropriate trade organizations; and,
- c. other business assistance agencies, community organizations, and media organizations such as trade association papers and newsletters, community television networks, local newsletters, and radio advertising.

3. Plans and Specifications - Plans and specifications and all bidding documents on all projects will be made available to potential

Subcontractors, and HUB contractor associations, and trade organizations, through Penn Bid and similar web-based databases, and otherwise as may be appropriate.

4. List of Plan holders - The names of Prime Bidders requesting bid documents will be made available upon request by PHILAPORT to HUB firms which provide labor, equipment, materials or supplies that appropriate to the scope of project work being solicited.
5. Lists of HUB's Businesses - PHILAPORT will provide each Prime Bidder obtaining plans and specifications for a project with any available lists of HUB firms.

## **VIII. PROCEDURE TO EVALUATE BIDS**

### **A. Responsiveness**

1. The Prime Bidder must complete and submit the HUB Solicitation and Commitment Statement (similar in content to Exhibit 1) with the bid. Failure to submit a completed form with the bid will result in the bid being rejected as nonresponsive.
2. The Prime Bidder should only solicit HUB Subcontractors whose labor, equipment, materials or supplies are within the scope of work and which the Prime Bidder reasonably believes it could choose to subcontract with or purchase from.
3. Prime Bidders failing to meet the MPLs must submit concurrently with the bid, an explanation of why the MPLs have not been met. This explanation must demonstrate that the Prime Bidder has not engaged in discriminatory practices in the solicitation and utilization of HUBs to perform as Subcontractors on the project. The evidence submitted by the Prime Bidder must demonstrate the following:
  - a. indicate whether HUB firms were solicited for each type of work the Prime Bidder expects to subcontract for and for all materials which the Prime Bidder expects to procure and, if not, the reason(s) why no such solicitation was made;
  - b. indicate the reason why commitments were not made to HUB firms for a type of subcontract labor, equipment, materials or supplies in any areas where quotes were received from such firms; and
  - c. in any case where no quotations are received from, nor commitments made to HUB firms, indicate on Exhibit 1 that no quotes were received, and if there is another reason for no commitments being made, the reason for the lack of commitments.

4. If the Prime Bidder fails to submit such evidence, the bid submission shall be considered non-responsive and the bid shall be rejected.
5. Information related to the above shall be submitted on Exhibit 1 with the bid and on such additional materials as the Prime Bidder wishes to attach.

**B. Responsibility**

1. The submittals of each Prime Bidder are subject to review by PHILAPORT to determine whether the Prime Bidder has discriminated in the selection of Subcontractors.

Where the MPLs are not met, PHILAPORT will determine whether discrimination has occurred. If, after investigation including a review of Exhibit 1, other materials submitted by the Prime Bidder, and such additional documents and information as PHILAPORT has secured, it is determined that discrimination has occurred, the Prime Bidder shall be deemed to be not responsible and the bid will be rejected.

2. Documentation submitted by the Prime Bidder should meet the following standards for review:
  - a. the Prime Bidder whose actions resulted in a limited or no commitment to HUB firms was not motivated by consideration of race or gender;
  - b. HUB firms were not treated less favorably than other businesses in the hiring and/or contract solicitation and commitment processes; and
  - c. solicitation and commitment decisions were not based upon policies that disparately affect HUB firms.
3. Commitments to HUB firms at the time of bidding must be maintained throughout the project unless a change in commitment is approved in advance by PHILAPORT. Such approval shall not unreasonably be withheld.

**C. Access to Information**

PHILAPORT may obtain documents and information from any Prime Bidder and any Subcontractor as may be required to ascertain Prime Bidder's contractor responsibility. Failure to provide requested information may result in the Prime Bidder's bid being declared non-responsive, the Prime Bidder being declared not responsible, or both.

**IX. PROCEDURES – RECORDS AND REPORTS**

A. Records and Reports

1. PHILAPORT will review all reports received to determine if the commitments made by Prime Contractors in their bids are being met. This review is to be done contemporaneously with the receipt of payment applications, and in any event prior to final payment being made to Prime Contractor.
2. PHILAPORT will keep such records as are necessary to determine compliance with its HUB requirements. These records must be in sufficient detail to indicate the prime contract work performed, and the percentages of project-related work that is being performed by HUBs.
3. Prime Contractor must retain HUB records related to the construction period for a period of four years after final completion of the project. If any litigation, claim, negotiation, audit, or other action has been commenced before the previously mentioned record retention periods, the records must be retained until the completion of the action and resolution of all issues which arise from it or until the end of the previously referenced record retention period, whichever is later.

# **Exhibit 1**

## **DBE Solicitation and Commitment Statement**

## **Exhibit 1**

### **DBE SOLICITATION AND COMMITMENT STATEMENT Instructions and Explanation of Columns**

Project owners and all prime bidders will complete this form to document all businesses solicited and all businesses that provided solicited or unsolicited quotes for project-related contracts.

1. Provide your company name, address, telephone number.
2. Provide the project name, project number, bid opening date, contract award date, and a contact person's name.
3. For each business solicited and each quote/bid received, enter the firm name, Employer Identification Number (EIN) or Social Security Number (SSN) for a sole proprietorship, telephone number with area code, and e-mail address. Only the company's name is a mandatory item.
4. Indicate whether or not the firm is an MBE, a WBE, Veteran or Service-Disabled Veteran Business Enterprise, or LGBT Business Enterprise. Place a check mark in only one of the appropriate MBE, WBE, Veteran or Service-Disabled Veteran Business Enterprise or LGBT Business Enterprise, add the identity of the certifying entity and the DBE's certification number.
5. Indicate the type of work to be performed and/or material to be supplied.
6. Enter the total dollar amount of the quote received.
7. Enter the total dollar (\$) amount of the commitment which you have made to the MBE, WBE, Veteran or Service-Disabled Veteran Business Enterprise or LGBT Business Enterprise. If no amount is provided in this space, it will be presumed that your firm made no commitment to the MBE, WBE, Veteran or Service-Disabled Veteran Business Enterprise or LGBT Business Enterprise.
8. NOTE: You must include information on both solicited and unsolicited quotes. Failure to include a firm providing solicited or unsolicited quotes may result in the rejection of the bid or a determination that you are not a responsible contractor. Adequate time equivalent to that provided to other Subcontractor proposers must be provided for DBE Subcontractors and suppliers to respond to bids.
9. Indicate the name, telephone number and e-mail address of the person(s) who prepared the form.

**Exhibit 1**

<b>DBE SOLICITATION AND COMMITMENT STATEMENT</b>									
OWNER / PRIME BIDDER'S FIRM NAME (1)					PROJECT NAME (2)				
ADDRESS					BID OPENING DATE			CONTRACT AWARD DATE	
TELEPHONE NUMBER					CONTACT PERSON				
*(3)	(4)	(4)	(4)	(4)	(4)	(4)	(5)	(6)	*(7)
COMPANY NAME EIN/SSN TELEPHONE NUMBER	DATE OF SOLICITATION	MBE	WBE	Veteran or Service- Disabled Veteran Business Enterprise	LGBT Business Enterprise	Certification Program and Number	TYPE OF WORK TO BE PERFORMED AND/OR MATERIAL TO BE SUPPLIED	TOTAL DOLLAR AMOUNT OF QUOTE RECEIVED	TOTAL COMMITMENT DOLLAR AMOUNT
(8) Note: List those certified DBE Subcontractors from which you solicited quotes or which contacted you and gave you quotes in regard to this invitation to bid. Contact with DBE Subcontractors should be at least equivalent to the notice given to other subcontractor proposers.									
(9) PREPARED BY (please print)					TELEPHONE NUMBER			E-MAIL	

\*Use additional sheets, if necessary.

## **Exhibit 2**

### **Prime Contractor's DBE Monthly Reporting Form Summarizing Payments Made**

**EXHIBIT 2**

**Mandatory S. Submit Monthly**

**(Page 1 of 2)**

**Prime Contractor's Monthly DBE Payment Report**

Name of Project \_\_\_\_\_

Contract No.: \_\_\_\_\_

Prime Original Contract Value: \_\_\_\_\_

Report for the Month of: \_\_\_\_\_

Change Orders (Overall Add/Deduct): \_\_\_\_\_

Notice to Proceed Date: \_\_\_\_\_

Total Contract Amount to Date: \_\_\_\_\_

Project Mgr. Name: \_\_\_\_\_

Total Payments Issued from \_\_\_\_\_ to \_\_\_\_\_ (date)

Assigned DBE Goal %: \_\_\_\_\_

Name of DBE Subcontractor	Work Task Performed	Original Contract Amount (\$)	Change Order Amount \$ (+/-)	Amount of Invoice Received this Month	Date of Invoice Received in this Month	Payments Made to DBE in this Month (\$)	Date(s) Payments Made this Month	Total DBE Payments Made to Date in \$	% Overall Work Finished	Final Payment (Y/N)
	Total(s) →	\$	\$	\$	Total(s)	\$	Total(s)	\$		

Itemize payments/invoices and dates if paid/received more than one payment/invoice between the 1st and 31st of this Month.

**Prime Contractor Information:**

Prime Firm Name: \_\_\_\_\_

Project Director Name: \_\_\_\_\_

Address: \_\_\_\_\_

Project Director Signature: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Date: \_\_\_\_\_

EIN # / TIN # \_\_\_\_\_

**Prime's Past Due Invoice Information:** List any invoice more than \_\_\_\_\_ days past due from the date **submitted** to \_\_\_\_\_ at the time you complete this form.

Invoice #	Invoice Date	Invoice Amount (\$)	No. of Days Past Due	Comments

**Prime Contractor's Monthly DBE Payment Report**

1. Have all DBE Subcontractors with executed subcontracts been paid amounts due from previous progress payments?

**If Yes**, skip the next section and go to Number 3.

**If No**, please complete fields in box below (use additional paper, if necessary)

Subcontractor Name	Amount Withheld from Invoice (\$)	Total of Invoice Amount (\$)	Invoice No.	Invoice Date	Specific Reason for Withholding

2. Have you notified the DBE Subcontractor(s) that you are withholding payment and the reason(s) why?

**If Yes**, provide a copy of written notification to the DBE Subcontractor with this form, indicating the date of notification.

**If No**, lack of prior written notification to the DBE(s) that you are withholding payment may violate the prompt payment clause guidelines.

**Please contact the DBE immediately, and provide a copy of written notification to the Subcontractor with this form.**

3. By signing this form, I certify that all of the above represent true and accurate information.

\_\_\_\_\_  
Project Director Name (Print)

\_\_\_\_\_  
Project Director (Signature)

\_\_\_\_/\_\_\_\_/\_\_\_\_  
Date

Additional Reasons/Comments for Withholding Payment:

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**DO NOT WRITE BELOW**

**This Form is Due on the \_\_\_\_ of each Month.**

Please forward to: \_\_\_\_\_

Approved

\_\_\_\_\_

Denied