



**PROJECT 22-083.S**

**REQUEST FOR PROPOSALS**

**PAMT CYBER SECURITY ASSESSMENT AND TRAINING PROGRAM**

**Key Dates:**

**MANDATORY PRE-PROPOSAL MEETING:** N/A.

**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 submitted with the project name and number in the subject line of the email.** Questions must be received by **Tuesday, August 30, 2022, by 12:00 P.M. (Noon)**

**PROPOSAL SUBMISSION DEADLINE:** Proposals will be submitted electronically per the directions in Section III by **Tuesday, September 13, 2022, at 2:00 P.M.**

**NOTE:** All information for this project, addenda, responses to questions, etc. will be communicated to Offerors via <https://www.philaport.com/procurement/> under the project number and name.

LATE, FAXED, OR EMAILED PROPOSALS WILL NOT BE ACCEPTED.

***THIS PROJECT IS BEING PARTIALLY FUNDED WITH FEDERAL DOLLARS  
UNDER THE FY 2020 PORT SECURITY GRANT PROGRAM, PROVIDED BY  
THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY.***

**ALL BIDDERS MUST HAVE AN ACTIVE SAM.GOV ACCOUNT IN ORDER TO BE  
CONSIDERED FOR AN AWARD**

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## **I. INTRODUCTION**

### **A. PURPOSE**

This request for proposals (RFP) provides information to enable Offerors to prepare and submit proposals for the Philadelphia Regional Port Authority's ("PhilaPort") consideration.

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 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. ABOUT PHILAPORT**

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.

The Packer Avenue Marine Terminal (PAMT) is owned by the Philadelphia Regional Port Authority (PhilaPort) and is leased to a terminal operator (Tenant). PAMT is the largest marine terminal in the Port of Philadelphia. The facility spans 112 acres and has 3,800 linear ft. of berthing space, including six berths with one RO/RO ramp. PAMT handles predominately containers but also handles auto, steel and project cargoes.

### **C. PROJECT DESCRIPTION**

#### **INTENT:**

It is the intent of PhilaPort to award a contract to the successful Offeror for a Cyber Security Assessment and Training Program at PAMT. The term of the contract will begin on the date the contract is fully executed and will be valid until the completion of the work.

The proposed project provides enhanced cyber-security by introducing a series of DHS/FEMA aimed risk-based assessments and exercises aimed at identifying areas of vulnerability and providing solutions to reduce cyber related risks to port operations and infrastructure. The impact of this cyber security related project will be far reaching in creating a secure port facility is a high target region. The project will consist of the following elements:

- 1 Conduct Risk Assessment
- 2 Conduct Penetration Testing – Internal and External

#### **SCOPE OF WORK:**

##### **RISK ASSESSMENT:**

- Planning session to review methodology, select physical and logical targets according to business risk, establish project timelines, and define success criteria for the project
- Interviews with key personnel:
  - Interviews with Information Technology and/or organizational management to understand desired risk profile
  - Interviews with network operations personnel to review the network topology and discuss security related areas such as logical segmentation, logging and monitoring, backup and recovery, change management, and remote access
  - Interviews with operational personnel for each platform / operating system to discuss security related processes and procedures, such as change management and system patching
- Review of existing security related policy and procedure documentation to baseline the current state of governance and program maturity. Baselines are established against the backdrop of the ISO 27000 series of information security standards (or other relevant industry-based standards as-needed)
- Analysis of vulnerabilities and identified security issues to determine risk severity and provide recommendations for remediation

## **PENETRATION TESTING:**

- Planning session to review methodology, select physical and logical targets according to business risk, establish project timelines, and define success criteria for the project
- External Penetration Test:
  - Reconnaissance of publicly available information to identify IP address ranges, email addresses, and phone numbers potentially associated with the company
  - Discussion to review discovered public information and define approved list of external IP addresses, email addresses, and phone numbers to be included in the scope of testing
  - Manual attempts to identify and exploit security vulnerabilities on in-scope external systems in order to obtain access to defined targets. Potential system pivoting to internal systems and privilege escalation in pursuit of defined targets
  - Social engineering via phishing emails to in-scope employees with the purpose of soliciting confidential information and eliciting assistance in gaining access to the internal network and defined targets
- Internal Penetration Test
  - Offsite meeting near one of the physical targets (i.e. coffee shop near the corporate office) so tenant's point of contact and the consultant(s) can meet in person prior to testing
  - Physical intrusion attempts into one or more target locations. This may include social engineering if required
  - Attempts to gain access to any additional defined physical targets (data center, HR records, payroll files, etc.)
  - Attempts to gain access to the internal network via a physical network jack or existing computer connection
  - Attempts to identify and exploit security vulnerabilities on internal systems in order to obtain access to defined logical targets. Potential system pivoting and privilege escalation in pursuit of defined targets
- Analysis of vulnerabilities and identified security issues to determine risk severity and provide recommendations for remediation
- Detailed written narrative of attacks and exploitation methods used to successfully acquire targets
- Vulnerability Identification
- Internet-Facing Hosts
- Remote use of network-based vulnerability scanners to identify live hosts and assess in-scope Internet accessible systems and network devices
- Review of automated scan results with manual testing to filter out false positives and determine validity
- Manual testing to identify vulnerabilities which cannot be discovered through automated scans
- Internal Hosts
- Use of network-based vulnerability scanners to identify weaknesses on internal hosts and assess in-scope systems and network devices
- Review of automated scan results to filter out false positives and determine validity
- Analysis of vulnerabilities and identified security issues to determine risk severity and provide recommendations for remediation

- Review session to discuss findings and recommendations

## **DELIVERABLES**

### **VULNERABILITY ASSESSMENT**

Our deliverable report will include management-centric executive summary, high-level recommendations for remediation, and a detailed technical findings section. The executive summary section will reiterate the scope and purpose of the project as well as list any critical findings discovered during the assessment. A brief synopsis of remediation recommendations will follow the executive summary which serves to highlight steps the tenant can take to mitigate risk. The technical findings section will be compiled into a matrix by finding and each finding will include information regarding risk severity level, systems impacted, business risk summary, recommendations for remediation, and remediation level.

Electronic copies of the assessment report will be provided for tenant. Optionally, the successful Offeror will conduct an onsite presentation for management to provide an overview of the project objectives and results as well as to review and discuss the report in detail.

### **PENETRATION TESTING**

Our deliverable report will include management-centric executive summary, high-level recommendations for remediation, and a detailed technical findings section. The executive summary section will reiterate the scope and purpose of the project as well as list any critical findings discovered during the assessment. A brief synopsis of remediation recommendations will follow the executive summary which serves to highlight steps which can be taken to mitigate risk. The technical findings section will be compiled into a matrix by finding and each finding will include information regarding risk severity level, systems impacted, business risk summary, recommendations for remediation, and remediation level.

Electronic copies of the assessment report will be provided. Optionally, the successful Offeror will conduct an onsite presentation for management to provide an overview of the project objectives and results as well as to review and discuss the report in detail.

## **D. TYPE OF CONTRACT**

If PhilaPort enters into a contract as a result of this RFP, it will be for a not-to-exceed amount and will contain the Contract Terms and Conditions, and Grant Requirements attached to this RFP and made part of Appendix B.

## **E. REJECTION OF PROPOSALS**

PhilaPort reserves the right, in its sole and complete discretion, to reject any proposal received as a result of this RFP. The Proposals of any Offeror or Offerors that 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.

**F. INCURRING COSTS**

PhilaPort is not liable for any costs the Offeror incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.

**G. QUESTIONS & ANSWERS**

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). Please put the project name and number in the subject line. **Questions must be received by Tuesday, August 30, 2022, by 12:00 P.M. (Noon).** Questions must be submitted by the posted deadline. All questions and responses are considered an addendum to and part of this RFP. PhilaPort shall not be bound by any verbal information, nor shall it be bound by any written information that is not either contained within the RFP or formally issued by PhilaPort. PhilaPort does not consider questions to be a protest of the specifications or the solicitation. Questions received after the deadline will be answered at the sole discretion of PhilaPort.

**H. PRE-PROPOSAL CONFERENCE**

PhilaPort will not be hosting a pre-proposal meeting for this project.

**I. ADDENDA TO THE RFP**

Any revisions to this RFP will be made via addenda and will be posted to PhilaPort's website – [www.philaport.com/procurement](http://www.philaport.com/procurement). Copies of the addenda acknowledgements are to be submitted with Proposals. Acknowledged Addenda should be included in Part I of the proposal submission.

**J. RESPONSE DATE**

To be considered for selection, proposals must be submitted by the time and date specified. The Bonfire portal will reject any late proposals.

**K. PROPOSAL SUBMISSION**

To be considered, Offerors must submit a complete response to this RFP by the due date and time from an official authorized to bind the Offeror to its provisions.

**L. PROPOSAL FORMAT**

To be considered, the proposal must respond to all proposal requirements. Each proposal consists of three (3) submittal components: Proposal Certification and Legal Disclosures (including Addenda), Technical, and Cost. In addition, any proposal security required by this RFP must be timely received by PhilaPort. PhilaPort reserves the right to request additional information which, in PhilaPort's opinion, is necessary to assure that the Offeror's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to the RFP. PhilaPort may make investigations as



deemed necessary to determine the ability of the Offeror to perform the Project, and the Offeror shall furnish to PhilaPort all requested information and data.

#### **M. DISCUSSIONS FOR CLARIFICATION**

Offerors may be required to make an oral and/or written clarification of their proposals to PhilaPort to ensure thorough mutual understanding and responsiveness to the solicitation requirements. PhilaPort will initiate any requests for clarification. Clarifications may occur at any stage of the evaluation and selection process prior to contract execution.

#### **N. PROPOSAL CONTENTS**

A. Confidential Information. PhilaPort is not requesting confidential proprietary information or trade secrets to be included as part of Offerors' submissions. Accordingly, except as provided herein, Offerors should not label proposal submissions as confidential or proprietary or trade secret protected. Any Offeror who determines that it must divulge such information as part of its proposal must submit the signed written statement described in Subsection C. below. After contract award, the selected Offeror must additionally provide a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.

B. PhilaPort Use. All material submitted with the proposal shall be considered the property of PhilaPort. PhilaPort has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Offeror copyright designations contained in proposals, PhilaPort shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.

C. Public Disclosure. After the award of a contract pursuant to this RFP, all proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, et seq. If a proposal submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests. If financial capability information is submitted, such financial capability information is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).

#### **O. MODIFICATION OF PROPOSALS**

Proposals may be modified via written notice from an Offeror by its authorized representative prior to the exact hour and date set for the submission 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.

#### **P. WITHDRAWAL OF PROPOSALS**

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

**Q. BEST AND FINAL OFFERS (BAFO)**

PhilaPort reserves the right to conduct discussions with Offerors for the purpose of obtaining “best and final offers” in one or more of the following ways, in any combination and order: schedule oral presentations, request revised proposals, and enter into pre-selection negotiations. The following Offerors will not be invited by PhilaPort to submit a Best and Final Offer: those Offerors which PhilaPort has determined to be not responsible or whose proposals PhilaPort has determined to be not responsive; and those Offerors which PhilaPort has determined in accordance with the Offeror Responsibility subsection from the submitted and gathered financial and other information, do not possess the financial capability, experience or qualifications to assure good faith performance of the contract. PhilaPort may further limit participation in the best and final offers process to those remaining responsible Offerors which PhilaPort has determined to be within the top competitive range of responsive proposals. The Evaluation Criteria shall also be used to evaluate the Best and Final offers.

**R. NOTIFICATION OF SELECTION FOR CONTRACT NEGOTIATIONS.**

PhilaPort will notify all Offerors in writing of the Offerors selected for contract negotiations after PhilaPort has determined, taking into consideration all of the evaluation factors, the proposals that are the most advantageous to PhilaPort.

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 I Proposal submittal.

**S. NOTIFICATION OF AWARD**

Offerors whose proposals are not selected will be notified when contract negotiations have been successfully completed, and PhilaPort has received the final negotiated terms of the contract.

**T. DEBRIEFING CONFERENCES**

Upon notification of award, Offerors whose proposals were not selected will be given the opportunity to be debriefed. PhilaPort will schedule the debriefing at a mutually agreeable time. The debriefing will not compare the Offeror with other Offerors, other than the position of the Offeror’s proposal in relation to all other Offeror proposals. An Offeror’s exercise of the opportunity to be debriefed does not constitute nor toll the time for filing a protest.

**U. NEWS RELEASES**

Offerors shall not issue news releases, Internet postings, advertisements or any other public communications pertaining to this Project without prior written approval of PhilaPort, and then only in coordination with PhilaPort.

**V. RFP PROTEST PROCEDURE**

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 seven days after the protesting Offeror knew or should have known of the facts giving rise to the protest, but in no event may an Offeror file a protest later than seven days after the date of PhilaPort's notice of award of the contract.
- (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.

#### **W. ATTACHMENTS TO THE RFP**

The following attachments are incorporated into and made part of the RFP.

Appendix A: Form for Submission of Proposal

Appendix B: Form of Agreement, General Conditions, and Grant Flow Down Requirements

Appendix C: Form for Price Proposal

## **II. EVALUTION CRITERIA AND BASIS FOR AWARD**

The following criteria will be used in evaluating each proposal:

### **A. OFFEROR RESPONSIBILITY**

To be responsible, an Offeror must submit a responsive proposal and possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance of the contract.

### **B. PROPOSAL RESPONSIVENESS**

A proposal being timely submitted and signed by the Offeror are the two (2) mandatory responsiveness requirements and are nonwaivable. PhilaPort reserves the right, in its sole discretion, to (1) waive any other technical or immaterial nonconformities in an Offeror's proposal, (2) allow the Offeror to cure the nonconformity, or (3) consider the nonconformity in the scoring of the Offeror's proposal.

The proposal must remain valid for 120 days from submission or until a contract is fully executed, whichever is later. If PhilaPort selects the Offeror's proposal for award, the contents of the selected Offeror's proposal will become, except to the extent the contents are changed through Best and Final Offers or negotiations, contractual obligations.

### **C. EVALUATION CRITERIA**

- 1. Technical:** PhilaPort has established the weight for the technical criterion for this RFP as 40% of the total points. Understanding, methodology, and approach to project will be evaluated.
- 2. Experience:** PhilaPort has established this weight for experience criterion for the RFP as 30% of the total point.
- 3. Schedule:** PhilaPort has established the weight for the Cost criterion for this RFP as 10% of the total points. The schedule criterion is rated by giving the proposal with the shortest schedule the maximum number of cost points available.
- 4. Cost:** PhilaPort has established the weight for the Cost criterion for this RFP as 20% of the total points. The cost criterion is rated by giving the proposal with the lowest pricing the maximum number of cost points available.

The Offerors will be evaluated in accordance with the criteria identified above.

### **D. FINAL RANKING AND AWARD**

After any best and final offer process is conducted, PhilaPort will combine the evaluation committee's final technical scores and the final cost scores of responsive proposals submitted by responsible Offerors. PhilaPort will rank responsible Offerors according to the total overall score assigned to each in descending order. PhilaPort must select for contract negotiations the Offeror with the highest overall score. PhilaPort has the discretion to reject all proposals or cancel the request for proposals at any time prior to the time a contract is fully executed when it is in the best interests of the Commonwealth. The reasons for the rejection or cancellation shall be made part of the contract file.

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. PhilaPort reserves the right to reject all proposals that are submitted, cancel the project, and or rebid for the Services.

### **E. EXECUTION OF THE AGREEMENT**

Promptly after the completion of negotiations, a contract may be awarded by PhilaPort, and the Contract 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 Contract, 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 applicable 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.

### III. PROPOSALS

For Proposals to be considered for award Offerors must obtain a Vendor Management Unit Number. To register for the Vendor Management Unit Number visit [www.vendorregistration.state.pa.us](http://www.vendorregistration.state.pa.us) or call 717-346-2676.

**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 (Appendix A), including acknowledged Addenda and legal disclosures in addition to the following: Technical Proposal, and Form for Price Proposal (Appendix C).**

The Technical Proposal is limited to **ten (10) pages**. This excludes information on key personnel.

Proposals shall be clearly marked identifying each section.

References to financial terms in the Part II Technical Section may be grounds for rejection of the proposal as being non-responsive.

Finally, submit copies of the addenda acknowledgements.

At a minimum, the Proposals should include the following:

#### **A. PART I: PROPOSAL CERTIFICATION, LEGAL DISCLOSURES, AND ACKNOWLEDGED ADDENDA**

The Form for Submission of Proposal, appearing as **Appendix A** shall be completely filled and executed. All acknowledged Addenda and legal disclosures must be included in this part.

**B. PART II: TECHNICAL, EXPERIENCE, AND SCHEDULE**

- a) The Offeror shall demonstrate it has a clear understanding of the Services required as set forth in this Section I.C of this RFP. Offeror shall demonstrate methodology and approach to this project.
- b) Describe the relevant experience of the firm, individual professionals or key contractor representatives on the firm/team with respect to the required areas of expertise experience with similar projects.
- c) List similar assignments, matters, or projects completed in terms of their nature, size and scope, using the following format for each project.
- d) Provide references for similar projects. Include project name and description, contact name, email address, phone number.
- e) Provide a detailed schedule to complete the project.

**C. PART III: PRICE PROPOSAL**

Submit a Price Proposal defined as the information sufficient for PhilaPort to price with an appropriate degree of accuracy the cost that will be incurred for the Services. Please use the Form for Price Proposal attached as **Appendix C**.

**D. SUBMISSION OF PROPOSALS**

PhilaPort will be utilizing an e-Sourcing platform called Bonfire. Offerors must register with Bonfire to submit an electronic proposal with PhilaPort. Instructions and video tutorial can be found at:

- <https://support.gobonfire.com/hc/en-us/articles/360011135513-Vendor-Registration>.
- and
- <https://support.gobonfire.com/hc/en-us/articles/203903356-Vendor-Registration-and-Submission->

Proposals must be submitted through the online Bonfire Portal at:

<https://PhilaPort.bonfirehub.com>

Be sure to register well in advance of the proposal submission date and time. Submissions by other methods will not be accepted.

Offerors must use Internet Explorer 11, Microsoft Edge, Google Chrome, or Mozilla Firefox. JavaScript must be enabled. Browser cookies must be enabled. Ensure pop-up blockers are turned off to avoid any issues.

Respondents should contact Bonfire at Support@GoBonfire.com for technical questions related to submissions or visit Bonfire's help forum at <https://bonfirehub.zendesk.com/hc>.

Submission materials should be prepared in the file formats listed under Requested Information for this opportunity in the Bonfire Portal. The maximum upload file size is 1000 MB. Documents should not be embedded within uploaded files, as the embedded files will not be accessible or evaluated.

The following portions of the proposal submission should be uploaded into Bonfire. This includes:

**Part I (Form for Submission of Proposal - Appendix A, Acknowledged Addenda, Legal Disclosures)**

**Part II (Technical Proposal – Including narratives on understanding, methodology, approach as well as experience, and schedule)**

**Part III (Form for Price Proposal - Appendix C)**

**Within one (1) business day of the proposal submission date, the original Form for Submission of Proposal (Appendix A) shall be delivered to:**

Kate Bailey  
PhilaPort  
3460 North Delaware Avenue  
2<sup>nd</sup> Floor  
Philadelphia, PA 19134

**E. PROPOSAL SECURITY**

Section intentionally deleted.

**F. CONTRACT SURETY**

Section intentionally deleted.

**G. ADDITIONAL INSUREDS**

The contractor selected for award shall be responsible for all claims, losses, causes of action, damages (including, but not limited to, damages to vehicles of Tenants or Subtenants customers stored/parked on the Premises), injury (including death), caused by and/or arising out of the services performed under any contract awarded as a result of this RFP, except for such claims, losses, causes of action, damages or injuries caused by the actions or omissions of Tenants or Subtenants.

Upon contract award, the contractor shall provide a certificate of insurance to PhilaPort, naming PhilaPort, the Commonwealth of Pennsylvania, and the tenants of any facilities affected by the Work as additional insureds, with limits consistent with the General Conditions as follows. The awarded contractor's insurance shall be primary to any other coverage available to PhilaPort, the Commonwealth of Pennsylvania, and their tenants. Any insurance maintained by PhilaPort will be excess and non-contributory.

***Please include in the description section of the certificate:***

This COI is for all contracts entered into with the certificate holder. PhilaPort, Philadelphia Regional Port Authority, PRPA, the Commonwealth of Pennsylvania, and the tenants of any facilities affected by the Work 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 shall be required stating that the coverage afforded PhilaPort, Philadelphia Regional Port Authority, PRPA, the Commonwealth of Pennsylvania, and the tenants of any facilities affected by the Work, and their officers, employees and agents as additional insureds will be primary and non-contributory to any coverage available to the Contractor.

Sign and return all insurance certificates required by the General and/or Special Conditions to the Contract.



**Appendix A**

**Form for Submission of Proposal**



**RFP PAMT CYBER SECURITY ASSESSMENT AND TRAINING PROGRAM**

\*\*\*\*\*

The undersigned, \_\_\_\_\_ (“Offeror”), having familiarized itself and its team with the Services being requested in PhilaPort’s Request for Proposal (“RFP”) dated \_\_\_\_\_, 20\_\_, hereby proposes to provide the requested Services in accordance with the standards applicable to its profession or occupation. Offeror hereby incorporates the terms set forth in Parts I through IV herein as part of its Proposal.

**I. 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. (1) That the Bidder (and the labor force) participates at the time of bid submission in an approved Apprenticeship Program as defined in the General Conditions for each craft or trade of the labor force contemplated to perform the work, (2) that such Program is currently registered with the Pennsylvania Apprenticeship and Training Council and (3) that such Program has apprentices and trainees currently participating.
- vi. That the information provided in Part IV in connection with PhilaPort's Diversity Inclusion Plan Forms is accurate and complete.

**II. 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.
- v. He will utilize labor enrolled in approved Apprenticeship Programs as defined in the General Conditions for the full duration of the contract Work.

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: \_\_\_\_\_

Offeror's SAM.gov Unique Entity ID is: \_\_\_\_\_

**III. 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: \_\_\_\_\_

**IV. Acknowledgment and Disclaimers Section:**

Offeror should include in Part I, 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.

**Further, in the event Contractor fails to gain entry or cannot perform Work due to noncompliance, the Authority reserves the right to provide escorts to be billed to the Contractor with no increase in cost under the contract or terminate the contract for failure to perform.**

**V. 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.]*

**Project 22-083.S**  
**[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.]

**Project 22-083.S**  
**[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.

**Project 22-083.S**  
**[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.*

Business Address:

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

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.]



**Project 22-083.S**  
**[SIGNATURE PAGE FOR LIMITED LIABILITY 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.*

Business Address:

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

Tax Identification Number:

\_\_\_\_\_

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

**Project 22-083.S**  
**[SIGNATURE PAGE FOR LIMITED LIABILITY OFFEROR]**

*(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:*

[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, Grant Flow-Down Requirements**

## **Form of Agreement**



<b><u>SERVICE AGREEMENT</u></b>
<b>DATE:</b>
<b>PROJECT #:</b>
<b>EXPIRATION DATE:</b>
<b>CONTRACT #:</b>

**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  
AUTHORITY 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  
AUTHORITY  
PHILAPORT

PHILADELPHIA REGIONAL PORT  
AUTHORITY  
PHILAPORT

By: \_\_\_\_\_  
Name: Colette A. Pete  
Title: Chief Counsel  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: George Hutchinson, IV  
Title: Director of Finance  
Date: \_\_\_\_\_

OFFICE OF ATTORNEY GENERAL

OFFICE OF THE BUDGET

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
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\*\*

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

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

\_\_\_\_\_  
(Print Name of 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**

## **General Conditions**

**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.

## **Grant Flow-Down Requirements**

**NOTE: THESE REQUIREMENTS FLOW-DOWN FROM OWNER TO PRIME CONTRACTOR AND ALL SUBCONTRACTORS**

## **GRANT SPECIFIC ARTICLES**

- Costs charged to a PSGP award must be consistent with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, located at **2 C.F.R. Part 200**.
- This project is being partially funded by Port Security Grant and therefore prohibition regarding certain telecommunications and video surveillance services or equipment is mandated by Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115-232 (2018).
- Grant regulations are applicable to all contractors and subcontractors.
- Contractor must maintain current information in the System for Award Management (SAM.GOV).
- Appendix II to 2 C.F.R. 200 is applicable to this project and are attached to this part.
- The Six Good Faith Efforts are required methods employed by the federal government. This project is subject to the Six Good Faith Efforts found in **40 C F R 33 SUBPART C** financial assistance agreement recipients to ensure that all disadvantaged business Enterprises (DBEs) have the opportunity to compete for procurements funded by EPA financial assistance dollars. A copy of the Six Good Faith Efforts is attached to this part.

**Agreement Articles**

Tue Sep 01 00:00:00 GMT 2020

U.S. Department of Homeland Security  
Washington, D.C. 20472



**AGREEMENT ARTICLES**  
**Port Security Grant Program**

**GRANTEE:** Philadelphia Regional Port Authority  
**PROGRAM:** Port Security Grant Program  
**AGREEMENT NUMBER:** EMW-2020-PU-00540-S01

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Article I - Summary Description of Award**

The terms of the approved Investment Justification(s) and Budget Detail Worksheet(s) submitted by the recipient are incorporated into the terms of this Federal award, subject to the additional description and limitations stated in this Agreement Article and the limitations stated in subsequent reviews by FEMA of the award budget. Investments not listed in this Agreement Article are not approved for funding under this award.

[REDACTED]

Investment 3: Packer Avenue Marine Terminal (PAMT) Cyber-Security Assessment and Training Program is fully funded for

**Article II - Activities Conducted Abroad**

Recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

**Article III - Reporting of Matters Related to Recipient Integrity and Performance**

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the recipients must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

**Article IV - Trafficking Victims Protection Act of 2000 (TVPA)**

Recipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), codified as amended at 22 U.S.C. section 7104. The award term is located at 2 C.F.R. section 175.15, the full text of which is incorporated here by reference.

**Article V - Federal Leadership on Reducing Text Messaging while Driving**

Recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the federal government.

## **Article VI - Debarment and Suspension**

Recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3000. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

## **Article VII - Fly America Act of 1974**

Recipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C. section 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. section 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

## **Article VIII - Americans with Disabilities Act of 1990**

Recipients must comply with the requirements of Titles I, II, and III of the *Americans with Disabilities Act*, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. sections 12101-12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

## **Article IX - Duplication of Benefits**

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

## **Article X - Copyright**

Recipients must affix the applicable copyright notices of 17 U.S.C. sections 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

## **Article XI - Civil Rights Act of 1968**

Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, as amended through Pub. L. 113-4, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (see 42 U.S.C. section 3601 et seq.), as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units-i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)-be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)

## **Article XII - Best Practices for Collection and Use of Personally Identifiable Information (PII)**

Recipients who collect PII are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy Template as useful resources respectively.

## **Article XIII - Limited English Proficiency (Civil Rights Act of 1964, Title VI)**

Recipients must comply with Title VI of the Civil Rights Act of 1964, (42 U.S.C. section 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services.

For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

#### **Article XIV - Hotel and Motel Fire Safety Act of 1990**

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. section 2225a, recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, (codified as amended at 15 U.S.C. section 2225.)

#### **Article XV - Disposition of Equipment Acquired Under the Federal Award**

When original or replacement equipment acquired under this award by the recipient or its sub-recipients is no longer needed for the original project or program or for other activities currently or previously supported by DHS/FEMA, you must request instructions from DHS/FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. Section 200.313.

#### **Article XVI - Patents and Intellectual Property Rights**

Recipients are subject to the Bayh-Dole Act, 35 U.S.C. section 200 et seq, unless otherwise provided by law. Recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. section 401.14.

#### **Article XVII - DHS Specific Acknowledgements and Assurances**

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

1. Recipients must cooperate with any compliance reviews or compliance investigations conducted by DHS.
2. Recipients must give DHS access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance.
3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
5. Recipients of federal financial assistance from DHS must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receipt of the Notice of Award or, for State Administering Agencies, thirty (30) days from receipt of the DHS Civil Rights Evaluation Tool from DHS or its awarding component agency. After the initial submission for the first award under which this term applies, recipients are required to provide this information once every two (2) years as long as they have an active award, not every time an award is made. Recipients should submit the completed tool, including supporting materials, to [CivilRightsEvaluation@hq.dhs.gov](mailto:CivilRightsEvaluation@hq.dhs.gov). This tool clarifies the civil rights obligations and related reporting requirements contained in the DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>.
6. The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension if the recipient identifies steps and a timeline for completing the tool. Recipients should request extensions by emailing the request to [CivilRightsEvaluation@hq.dhs.gov](mailto:CivilRightsEvaluation@hq.dhs.gov) prior to expiration of the 30-day deadline.

#### **Article XVIII - Procurement of Recovered Materials**

States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. section 6962.) The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

#### **Article XIX - Terrorist Financing**

Recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

#### **Article XX - Civil Rights Act of 1964 - Title VI**

Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. section 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

#### **Article XXI - Prior Approval for Modification of Approved Budget**

Before making any change to the DHS/FEMA approved budget for this award, you must request prior written approval from DHS/FEMA where required by 2 C.F.R. Section 200.308. DHS/FEMA is also utilizing its discretion to impose an additional restriction under 2 C.F.R. Section 200.308(e) regarding the transfer of funds among direct cost categories, programs, functions, or activities. Therefore, for awards with an approved budget where the Federal share is greater than the simplified acquisition threshold (currently \$250,000), you may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from DHS/FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget DHS/FEMA last approved. You must report any deviations from your DHS/FEMA approved budget in the first Federal Financial Report (SF-425) you submit following any budget deviation, regardless of whether the budget deviation requires prior written approval.

#### **Article XXII - Acknowledgement of Federal Funding from DHS**

Recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

#### **Article XXIII - Acceptance of Post Award Changes**

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate recipient acceptance of the changes to the award. Please call the FEMA/GMD Call Center at (866) 927-5646 or via e-mail to [ASK-GMD@fema.dhs.gov](mailto:ASK-GMD@fema.dhs.gov) if you have any questions.

#### **Article XXIV - Rehabilitation Act of 1973**

Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112 (1973), (codified as amended at 29 U.S.C. section 794,) which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

#### **Article XXV - False Claims Act and Program Fraud Civil Remedies**

Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. sections 3729-3733, which prohibits the submission of false or fraudulent claims for payment to the federal government. (See 31 U.S.C. sections 3801-3812, which details the administrative remedies for false claims and statements made.)

#### **Article XXVI - Nondiscrimination in Matters Pertaining to Faith-Based Organizations**

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

#### **Article XXVII - Lobbying Prohibitions**

Recipients must comply with 31 U.S.C. section 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or

employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

#### **Article XXVIII - Education Amendments of 1972 (Equal Opportunity in Education Act) - Title IX**

Recipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. No. 92-318 (1972) (codified as amended at 20 U.S.C. section 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.

#### **Article XXIX - Age Discrimination Act of 1975**

Recipients must comply with the requirements of the Age Discrimination Act of 1975, Pub. L. No. 94-135 (1975) (codified as amended at Title 42, U.S. Code, section 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

#### **Article XXX - National Environmental Policy Act**

Recipients must comply with the requirements of the National Environmental Policy Act of 1969 (NEPA), Pub. L. No. 91-190 (1970) (codified as amended at 42 U.S.C. section 4321 et seq.) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

#### **Article XXXI - Assurances, Administrative Requirements, Cost Principles, Representations and Certifications**

DHS financial assistance recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances - Non-Construction Programs, or OMB Standard Form 424D Assurances - Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances applicable to their program as instructed by the awarding agency. Please contact the DHS FAO if you have any questions.

DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200, and adopted by DHS at 2 C.F.R. Part 3002.

#### **Article XXXII - USA PATRIOT Act of 2001**

Recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Pub. L. No. 107-56, which amends 18 U.S.C. sections 175-175c.

#### **Article XXXIII - Non-Supplanting Requirement**

Recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

#### **Article XXXIV - Drug-Free Workplace Regulations**

Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. sections 8101-8106).

#### **Article XXXV - Universal Identifier and System of Award Management**

Recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference.

**Article XXXVI - Reporting Subawards and Executive Compensation**

Recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation located at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated here by reference in the award terms and conditions.

**Article XXXVII - Energy Policy and Conservation Act**

Recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. No. 94- 163 (1975) (codified as amended at 42 U.S.C. section 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

**Article XXXVIII - Whistleblower Protection Act**

Recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C section 2409, 41 U.S.C. section 4712, and 10 U.S.C. section 2324, 41 U.S.C. sections 4304 and 4310.

**Article XXXIX - Federal Debt Status**

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)

**Article XL - Use of DHS Seal, Logo and Flags**

Recipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

**Article XLI - Notice of Funding Opportunity Requirements**

All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.

**Article XLII - SAFECOM**

Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

**Article XLIII - Funding Hold: Environmental Planning and Historic Preservation (EHP) Compliance**

This award includes work, such as ground disturbance, that triggers an Environmental Planning and Historic Preservation (EHP) compliance review. A funding hold is placed on the following Investment/projects, and the recipient is prohibited from obligating, expending, or drawing down FY 2020 PSGP funds in the amount of [REDACTED] in support of the following Investment/projects, with a limited exception for any approved costs associated with the preparation, conduct, and completion of required EHP reviews. Refer to the FY 2020 PSGP Notice of Funding Opportunity (NOFO) and Preparedness Grants Manual (PGM) for further information on EHP requirements and other applicable program guidance, including FEMA Information Bulletin No. 404.

[REDACTED]

To release this hold, the recipient is required to obtain the required DHS/FEMA EHP compliance approval for this Investment pursuant to the FY 2020 PSGP NOFO and PGM. Failure to comply with this condition may jeopardize your ability to access and expend federal funds for the Investment/projects listed above. Please contact your DHS/FEMA GPD Headquarters Preparedness Officer to receive specific guidance regarding EHP compliance.

If you have questions about this funding hold or believe it was placed in error, please contact the DHS/FEMA GPD Headquarters Preparedness Officer.

[REDACTED]



## **APPENDIX II**



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This content is from the eCFR and is authoritative but unofficial.

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## Title 2 - Grants and Agreements

### Subtitle A - Office of Management and Budget Guidance for Grants and Agreements

#### Chapter II - Office of Management and Budget Guidance

#### Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

**Authority:** 31 U.S.C. 503

**Source:** 78 FR 78608, Dec. 26, 2013, unless otherwise noted.

**Source:** 85 FR 49543, Aug. 13, 2020, unless otherwise noted.

**Source:** 85 FR 49539, Aug. 13, 2020, unless otherwise noted.

#### Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- (A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by

Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.323.

(K) See § 200.216.

(L) See § 200.322.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]

## **SIX GOOD FAITH EFFORTS**

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This content is from the eCFR and is authoritative but unofficial.

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## **Title 40 - Protection of Environment**

### **Chapter I - Environmental Protection Agency**

#### **Subchapter B - Grants and Other Federal Assistance**

#### **Part 33 - Participation by Disadvantaged Business Enterprises in United States Environmental Protection Agency Programs**

**Authority:** 15 U.S.C. 637 note; 42 U.S.C. 4370d, 7601 note, 9605(f); E.O. 11625, 36 FR 19967, 3 CFR, 1971 Comp., p. 213; E.O. 12138, 49 FR 29637, 3 CFR, 1979 Comp., p. 393; E.O. 12432, 48 FR 32551, 3 CFR, 1983 Comp., p. 198, 2 CFR part 200.

**Source:** 73 FR 15913, Mar. 26, 2008, unless otherwise noted.

#### **Subpart C Good Faith Efforts**

**§ 33.301** What does this subpart require?

**§ 33.302** Are there any additional contract administration requirements?

**§ 33.303** Are there special rules for loans under EPA financial assistance agreements?

**§ 33.304** Must a Native American (either as an individual, organization, Tribe or Tribal Government) recipient or prime contractor follow the six good faith efforts?

#### **Subpart C - Good Faith Efforts**

##### **§ 33.301 What does this subpart require?**

A recipient, including one exempted from applying the fair share objective requirements by § 33.411, is required to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, even if it has achieved its fair share objectives under subpart D of this part:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

### **§ 33.302 Are there any additional contract administration requirements?**

- (a) A recipient must require its prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient.
- (b) A recipient must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.
- (c) If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime contractor to employ the six good faith efforts described in § 33.301 if soliciting a replacement subcontractor.
- (d) A recipient must require its prime contractor to employ the six good faith efforts described in § 33.301 even if the prime contractor has achieved its fair share objectives under subpart D of this part.
- (e) A recipient must require its prime contractor to provide EPA Form 6100-2 - DBE Program Subcontractor Participation Form to all of its DBE subcontractors. EPA Form 6100-2 gives a DBE subcontractor the opportunity to describe the work the DBE subcontractor received from the prime contractor, how much the DBE subcontractor was paid and any other concerns the DBE subcontractor might have, for example reasons why the DBE subcontractor believes it was terminated by the prime contractor. DBE subcontractors may send completed copies of EPA Form 6100-2 directly to the appropriate EPA DBE Coordinator.
- (f) A recipient must require its prime contractor to have its DBE subcontractors complete EPA Form 6100-3 - DBE Program Subcontractor Performance Form. A recipient must then require its prime contractor to include all completed forms as part of the prime contractor's bid or proposal package.
- (g) A recipient must require its prime contractor to complete and submit EPA Form 6100-4 - DBE Program Subcontractor Utilization Form as part of the prime contractor's bid or proposal package.
- (h) Copies of EPA Form 6100-2 - DBE Program Subcontractor Participation Form, EPA Form 6100-3 - DBE Program Subcontractor Performance Form and EPA Form 6100-4 - DBE Program Subcontractor Utilization Form may be obtained from EPA OSDBU's Home Page on the Internet or directly from EPA OSDBU.
- (i) A recipient must ensure that each procurement contract it awards contains the term and condition specified in the appendix concerning compliance with the requirements of this part. A recipient must also ensure that this term and condition is included in each procurement contract awarded by an entity receiving an identified loan under a financial assistance agreement to capitalize a revolving loan fund.

### **§ 33.303 Are there special rules for loans under EPA financial assistance agreements?**

A recipient of an EPA financial assistance agreement to capitalize a revolving loan fund, such as a State under the CWSRF or DWSRF or an eligible entity under the Brownfields Cleanup Revolving Loan Fund program, must require that borrowers receiving identified loans comply with the good faith efforts described in § 33.301 and the contract administration requirements of § 33.302. This provision does not require that such private and nonprofit borrowers expend identified loan funds in compliance with any other procurement procedures contained in 2 CFR part 200 Subpart D - Post Federal Award Requirements, Procurement Standards, or 40 CFR part 35 subpart O, as applicable.

[73 FR 15913, Mar. 26, 2008, as amended at 79 FR 76054, Dec. 19, 2014]

**§ 33.304 Must a Native American (either as an individual, organization, Tribe or Tribal Government) recipient or prime contractor follow the six good faith efforts?**

- (a) A Native American (either as an individual, organization, corporation, Tribe or Tribal Government) recipient or prime contractor must follow the six good faith efforts only if doing so would not conflict with existing Tribal or Federal law, including but not limited to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e), which establishes, among other things, that any federal contract, subcontract, grant, or subgrant awarded to Indian organizations or for the benefit of Indians, shall require preference in the award of subcontracts and subgrants to Indian organizations and to Indian-owned economic enterprises.
- (b) Tribal organizations awarded an EPA financial assistance agreement have the ability to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. Tribal governments with promulgated tribal laws and regulations concerning the solicitation and recruitment of Native-owned and other minority business enterprises, including women-owned business enterprises, have the discretion to utilize these tribal laws and regulations in lieu of the six good faith efforts. If the effort to recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts. All tribal recipients still must retain records documenting compliance in accordance with § 33.501 and must report to EPA on their accomplishments in accordance with § 33.502.
- (c) Any recipient, whether or not Native American, of an EPA financial assistance agreement for the benefit of Native Americans, is required to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. If the efforts to solicit and recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts.
- (d) Native Americans are defined in § 33.103 to include American Indians, Eskimos, Aleuts and Native Hawaiians.

## **Appendix C**

### **Form for Price Proposal**



**APPENDIX C  
FORM FOR PRICE PROPOSAL  
PROJECT 22-083.S**

**ITEM 1: AMOUNT TO PERFORM VULNERABILITY ASSESSMENT:**

\$ \_\_\_\_\_

**ITEM 2: AMOUNT TO PERFORM PENETRATION TESTING:**

\$ \_\_\_\_\_

**TOTAL PRICE TO PERFORM PROJECT (add Item 1 and Item 2 together):**

\$ \_\_\_\_\_

**Note: Pricing will be evaluated based on TOTAL PRICE TO PERFORM PROJECT.**