



Request for Proposals

Construction of Arthur Kill Terminal

Arthur Kill Terminal, LLC
145 Avenue of the Americas, 7th Floor
New York, NY 10013

RFP Issued: May 19, 2023

Proposal Submission Deadline: July 31, 2023

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1 RFP INSTRUCTIONS AND PROCESS

1.1 Overview of RFP Process

Arthur Kill Terminal, LLC (the “Owner”) is developing a purpose-built offshore wind (“OSW”) port on an approximately 32.5-acre site in Staten Island, New York to support the staging, assembly and installation of wind turbine generators (“WTGs”) and other main components for OSW farms in the New York Bight and elsewhere along the East Coast of the United States.

This Request for Proposals (“RFP”) invites qualified contractors (“Proposers”) to submit Proposals for the construction of the Facility and the performance of related services (the “Work”), as described in detail in the Appendices to this RFP, in accordance with a comprehensive agreement (the “Agreement”) substantially in the form of the Agreement in Appendix 11 of this RFP. The successful Proposer will enter into the Agreement with the Owner following conditional acceptance by the Owner of the Proposer’s Proposal.

The scope of the Work is divided into five (5) Packages. Proposers may submit Proposals to perform all of the Packages or as few as one (1) Package. The Owner may award one or more Agreements to one or more successful Proposers to perform the Work.

This RFP is accompanied by the following documents, which together are the “RFP Documents”:

- Proposer Acknowledgement Form
- Confidentiality Agreement
- Appendix 1: Proposal Certification Form
- Appendix 2: WBS Proposal Form
- Appendix 3: List of Drawings and Specifications
- Appendix 4: Drawings and Specifications
- Appendix 5: Construction Sequencing and Package Interfaces
- Appendix 6: Package A Scope of Work
- Appendix 7: Package B Scope of Work
- Appendix 8: Package C Scope of Work
- Appendix 9: Package D Scope of Work
- Appendix 10: Package E Scope of Work
- Appendix 11: Agreement
- Appendix 12: Owner’s Construction Schedule
- Appendix 13: Owner Permits and Other Governmental Approvals
- Appendix 14: List of Engineering, Architectural, and Environmental Reports
- Appendix 15: Safety Questionnaire
- Appendix 16: NYSDOL Prevailing Wage Schedule
- Appendix 17: Government Mandated Requirements

This RFP and the other RFP Documents define the procedures to be followed and the information to be submitted and otherwise describe the requirements for preparation and submission of a Proposal. This RFP and the other RFP Documents: (i) are not part of and shall not be construed as an offer by the Owner that is capable of acceptance by the Proposer; and (ii) are issued solely

for the formulation, submission and consideration of Proposals which, when submitted, will constitute a binding offer by the Proposer that is eligible for acceptance by the Owner.

As the Project has been awarded funding through the United States Department of Transportation (USDOT) Maritime Administration (MARAD) Port Infrastructure Development Program (PIDP) this RFP, the Agreement and its execution must all be conducted in accordance with Federal procurement and performance requirements (2 CFR Section 200.318 – 200.327).

Owner, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d-2000d-4) and related regulations, notifies all Proposers that it will affirmatively ensure that for any contract entered into pursuant to this Request For Proposals, disadvantaged business enterprises will be afforded full and fair opportunity to submit Proposals in response to this RFP and will not be discriminated against on the grounds or race, color or national origin in consideration of an award.

1.2 Communications

All questions or communications to the Owner regarding this RFP and all other RFP Documents shall be submitted via email to the Owner’s RFP Contact:

Brian Delaney
Owner’s RFP Contact
brian@tms-waterfront.com

All communications regarding this RFP should be addressed to the Owner’s RFP Contact. Proposers may not contact the Owner or any employee, contractor, or representative of the Owner other than the Owner’s RFP Contact.

No questions or communications of whatever nature received less than five (5) Business Days before the Proposal Submission Deadline shall be considered by the Owner.

1.3 Schedule of RFP Process

The schedule for the bidding process is as follows:

RFP Issue Date:	May 19, 2023
RFP Acknowledgement and Confidentiality Agreement due:	May 26, 2023
Pre-proposal conference:	June 2, 2023
Deadline for submission of questions #1:	June 5, 2023
Pre-proposal Site visit:	June 8, 2023
Addendum #1:	June 15, 2023
Deadline for submission of questions #2:	June 30, 2023
Addendum #2:	July 10, 2023
Proposal Submission Deadline:	July 30, 2023
Anticipated Agreement award:	September 2023

Anticipated Agreement execution:	Sept./Oct. 2023
Anticipated commencement of pre-construction:	Sept./Oct. 2023
Anticipated Notice to Proceed:	Q4 2023

1.3.1 Proposer RFP Acknowledgement/Confidentiality Agreement

Within seven (7) days of receipt of this RFP and Form of Confidentiality Agreement, Proposers shall confirm their intent to submit a Proposal by submitting a signed Proposer Acknowledgment Letter and a signed Confidentiality Agreement, copies of which accompany this RFP. The signed Acknowledgment Letter and Confidentiality Agreement shall be sent by both e-mail and hard copy to the addresses stated in Section 1.2.

Following receipt of the Proposer Acknowledgment Letter and signed Confidentiality Agreement, the remaining RFP Documents and Appendices will be made available to the Proposer.

1.3.2 Pre-Proposal Conference

All Proposers planning to submit Proposals are required to attend a virtual pre-proposal conference:

Date:	June 2, 2023
Time:	1-2 pm
Location:	Microsoft Teams meeting (virtual)

The agenda of the conference will include an overview of the Project, the Scope of Work Packages, and the RFP process and a brief oral question and answer period.

Note that all Proposer questions will be considered at any time prior to, or during, the pre-proposal conference; however, Proposers will be asked to confirm oral questions in writing. Subsequent to the conference, an RFP Addendum containing an abstract of the questions and Owner's answers, and a list of attendees, will be made available.

Proposers are cautioned that, notwithstanding any remarks, clarifications, or responses provided at the conference, all terms and conditions of the RFP remain unchanged unless they are changed through a written RFP Addendum. It is the responsibility of each Proposer, prior to submitting a Proposal, to seek clarification of any perceived ambiguity in the RFP or an RFP Addendum.

1.3.3 Pre-Proposal Site Visit

All Proposers are encouraged to attend the pre-proposal site visit:

Date:	June 8, 2023
Time:	1-2 pm
Location:	Unpaved parking area immediately north of 4849 Arthur Kill Road, Staten Island, NY 10309

The site visit will entail an approximately 1-hour guided walking tour of the Site during which Proposers may ask questions that, in the Owner's sole and absolute discretion, may be answered orally to all attendees and/or via follow up RFP Addendum.

Proposers planning to attend the pre-proposal site visit should notify the Owner's RFP Contact by June 5, 2023, with the names of individuals planning to attend.

Questions that Proposers believe need to be addressed during a site visit should be submitted to the Owner's RFP Contact no later than June 5, 2023.

1.3.4 Pre-Proposal Question and Answer Rounds

There will be two rounds of questions accepted from the Proposers as identified in Section 1.3. Questions will be anonymized and may be answered through RFP Addenda distributed to all Proposers. Owner reserves the right to not answer any questions received.

Each question or communication shall clearly state the Proposer's name, the Project name, and the subject, and questions should be sequentially numbered.

1.3.5 Proposal Submission Deadline and Instructions

All Proposals must be received by the Owner's RFP Contact by 5:00 pm. on July 30, 2023 (the "Proposal Submission Deadline").

On or before the Proposal Submission Deadline each Proposer shall submit (i) an electronic copy of its Proposal to Owner's RFP Contact, and (ii) an original hard copy of its Proposal, clearly marked and identified on the outside, along with a digital copy of its Proposal stored on a thumb/USB drive to the following address:

Arthur Kill Terminal, LLC
c/o Atlantic Offshore Terminals, LLC
145 Avenue of the Americas, 7th Floor
New York, New York 10013

1.3.6 Owner Review

Following the Proposal Submission Deadline, the Owner shall evaluate each of the Proposals in accordance with the process described in Section 1.4.10.

1.3.6.1 Interviews

If the Owner determines that an interview of some or all Proposers will assist in the evaluation of Proposals the Owner shall be in contact with Proposers to schedule and conduct interviews, likely within 30-45 days of submission of Proposals.

1.3.6.2 *Visits to Proposer*

The Owner reserves the right, upon reasonable notice, to review the premises, facilities, equipment, personnel and other resources of a Proposer and to carry out related technical and commercial appraisals in the course of evaluating a Proposal.

1.4 RFP Terms and Conditions

1.4.1 Proposer Review of RFP Documents

Each Proposer shall be responsible for its own investigation and interpretation of all information provided in the RFP Documents and shall inform itself as to all other data and conditions that might in any way affect a Proposer's evaluation of the Project or the cost of the Work, performance of the Work, or any other aspect of the Work. Neither the Owner nor any of its Affiliates makes any representation or warranty of any kind, and will not be liable to any Proposer in any way whatsoever, with respect to Work or the RFP Documents

Should any Proposer find discrepancies, errors or omissions in the RFP Documents, or should any other questions arise relative to the RFP Documents, the Proposer should promptly notify the Owner of such in writing without delay. Replies to such notices may be made in the form of an RFP Addendum.

Any failure or neglect by a Proposer to carry out the verifications and investigations of the Project, the Work or the RFP Documents or any other information communicated to the Proposer by or on behalf of the Owner shall not excuse a Proposer from its obligation to comply with: (a) the requirements contained in the RFP Documents in preparing and submitting its Proposal; and (b) any Agreement subsequently executed by the Owner and a Proposer.

The Owner may, in its sole and absolute discretion, address any possible error, omission or discrepancy in the RFP Documents through the issuance of a RFP Addendum to all Proposers. Any failure or delay by the Owner to issue such an RFP Addendum shall not entitle any Proposer to any relief or consideration or create any liability of the Owner or any of its Affiliates to any Proposer.

1.4.2 Modifications to the RFP Documents and/or RFP Addenda

This RFP and the other RFP Documents may be changed only by a writing issued by the Owner (each an "RFP Addendum"). No oral statement shall be deemed to change or supplement the RFP Documents. The following shall apply in respect of all RFP Addenda:

- 1) A RFP Addendum may be issued simultaneously to all Proposers and will be deemed to constitute part of the RFP Documents;
- 2) If a response to any query or communication raised by any Proposer materially affects the RFP or any of the RFP Documents, then the Owner, in its sole and absolute discretion, may issue an RFP Addendum in connection therewith; and
- 3) Each Proposer shall promptly acknowledge, in writing, its receipt of any RFP Addendum.

1.4.3 Exceptions to the RFP

Any exceptions that a Proposer may wish to raise with respect to the RFP Documents (including to the Agreement and scopes of Work) should be clearly stated in the Proposal.

The only exceptions to the RFP Documents that will be considered by the Owner are those that clearly state: (i) the nature of the proposed exception and to what it applies in the relevant provision(s) of the RFP Documents (i) the reason for such exception; (iii) any effect the Owner's acceptance or rejection of such exception may have on the Proposer's price proposal for the Work; (iv) any effect the Owner's acceptance or rejection of such exception may have on the Proposer's ability to execute the Work; and (v) any effect the Owner's acceptance or rejection of such exception may have on the schedule for completion of the Work.

All exceptions will be considered for acceptance or rejection at the sole and absolute discretion of the Owner. The extent and nature of any exceptions included in a Proposal will be a factor in the Owner's evaluation of such Proposal and Proposers are strongly encouraged to keep their exceptions to a minimum.

1.4.4 Cost of Proposing

The preparation of each Proposer's Proposal and all other work performed or paid for in connection with the preparation or submission of a Proposal shall be at the sole expense of the Proposer.

1.4.5 Binding Nature of Proposals

Each Proposal shall constitute an offer by the relevant Proposer, open and capable of acceptance by the Owner at any time from such Proposal's submission to the earlier of the execution of an Agreement between a Proposer and the Owner or the day that is 120 days following the date of receipt by Owner of such Proposal (the "Proposal Validity Period").

1.4.6 Proposal Bond

Each Proposer is required to at the time of submission of its Proposal security equal to five percent (5%) of the Proposal price in the form of a bank bond issued by a financial institution of international standing located in the United States with a credit rating of at least A- (Standard & Poor's) or A3 (Moody's) and which is reasonably acceptable to Owner or such other institution as may be agreed by Owner in its absolute discretion ("Proposal Bond"). The Proposal Bond shall be in a form reasonably acceptable to Owner. A Proposer should provide Owner with the identity of its proposed issuing financial institution and the proposed form of bond no later than ten (10) days prior to the Bid Submission Deadline. The Proposal Bond must be valid for a period ending thirty (30) days after the Proposal Validity Period.

A Proposal Bond will be returned to the Proposer within thirty (30) days following an award or awards by Owner for all of the Scopes of Work or a decision by Owner not to make an award for the Packages as to which the Proposer submitted a Proposal. The Owner shall be entitled to draw in full on a Proposer's Proposal Bond upon the occurrence of any of the following circumstances: (i) the Proposer withdraws its Proposal during the Period of Validity prior to the making of an award for the Packages as to which the Proposer submitted a Proposal; (ii) the Proposer, whose

Proposal has been awarded by Owner, fails to enter into a form of the Agreement containing the changes proposed by the Proposer; or (iii) the Proposer, whose Proposal has been awarded by Owner, after the Proposal Submission deadline, demands additional changes to the Agreement.

A Proposal not accompanied by the required Proposal Security shall not be considered for award.

1.4.7 Ownership of the RFP Documents

The RFP Documents shall, at all times, remain the property of the Owner and are transmitted to the Proposer solely for the purpose of the Proposer's preparation and submission of its Proposal. If a Proposer decides not to submit a Proposal, or if the Owner so demands, for any or no reason, the Proposer shall return all RFP Documents immediately to the Owner's RFP Contact at the address stated in Section 1.2.

1.4.8 Confidentiality

Each Proposer intending to submit a Proposal shall provide a signed Confidentiality Agreement with respect to the RFP and the Project. which shall survive the execution of any Agreement between Proposer and Owner, a Proposer's withdrawal from the Proposal process, or the receipt by a Proposer of a written notice from the Owner that the Owner is withdrawing the RFP or that the Proposer's Proposal has been rejected and shall not be considered further.

If at any time the Proposer receives a written notification from the Owner that the Owner will not be further considering such Proposer's Proposal and that such Proposer's Proposal is not accepted, such Proposer shall take all steps necessary to ensure all RFP Documents, including electronically issued materials, are promptly destroyed or returned to the Owner, as directed by the Owner, and the Proposer shall notify the Owner in writing within seven (7) days of such notice that they have complied with the obligations under this Section 1.4.

1.4.9 Business Conduct

Each Proposer shall ensure that its Proposal and participation in this RFP process are fully compliant with all applicable law, including without limitation all laws regulating procurement corruption, conflicts of interest, use of bribes and related matters and with Owner's Responsible Contractor Policy.

1.4.10 Proposal Evaluation Process

The Owner will conduct an evaluation of all Proposals against such criteria that in the sole and absolute discretion of the Owner are believed to be critical to the success of the Project and the execution of the Work, primarily those criteria addressed below in Section 1.5.

Consistent with the requirements of 2 CFR 200.318, Agreement(s) will be awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of Agreement. Consideration will be given to such matters as contractor qualifications and integrity, proposed means and methods, compliance with public policy, record of past performance, financial and technical resources and proposed price.

The Owner reserves the right, before or after the Proposal Submission Deadline, to request any further information it may deem, in its sole and absolute discretion, necessary to evaluate the Proposal, including any additional technical, commercial or financial information necessary for the appraisal of a Proposal. Additionally, the Owner reserves the right to discuss, at any time, any exceptions raised by a Proposer and may, at any time and at the Owner's sole and absolute discretion, request that a Proposer resubmit its Proposal (including a proposed final form of the Agreement) in order to confirm and restate such Proposer's latest and best position in respect to any exceptions or proposed changes and the terms of its Proposal.

For the purposes of the Owner's review of a Proposal or any part thereof, the hard copy of the Proposal sent to the address in Section 1.2 shall be the definitive reference copy, except for electronic documents where the version supplied via USB drive shall be the definitive reference copy.

All information relating to the evaluation and comparison of the Proposals submitted will be held confidential by the Owner.

Any attempt by a Proposer to: (a) improperly influence the Owner in the process of its examination, clarification and evaluation of the Proposals; or (b) disclose any information in its Proposal to any other Proposers or persons not officially involved with the Proposal process, may (in the Owner's sole and absolute discretion) result in the rejection of such Proposer's Proposal.

1.4.11 Owner's Right to Accept or Reject a Proposal

The Owner may, in its sole and absolute discretion: (a) modify any or all of the requirements set forth in this RFP; (b) waive irregularities or formalities with respect to any Proposal; (c) accept or reject any Proposal in whole or in part; (d) accept multiple Proposals and award multiple Agreements; (e) reject all Proposals at any time with or without giving of reason therefor; (f) withdraw the RFP at any time; (g) abandon the Project or have the Work performed and/or Project developed in such other manner and using such other entities as the Owner may elect; and (h) take any other such action with respect to a Proposer or the Project Owner in its sole discretion deems appropriate. Additionally, the Owner reserves the right to enter into negotiations with any Proposer with respect to its Proposal or the Agreement and any such negotiation shall not amount to any offer or acceptance in relation to such Proposal by the Owner, create any binding obligations upon or liabilities of the Owner, or create any obligation to enter into negotiations with any other Proposer.

In no event shall any Proposer have a claim against the Owner arising out of or relating to this RFP for damages or any other form of relief or create any liability as between the Owner and any Proposer.

1.4.12 Late Submissions and Extensions

Any Proposal received after the Proposal Submission Deadline may or may not, in the Owner's sole and absolute discretion, be taken into consideration by the Owner. The Owner may or may not grant an extension to the Proposal Submission Deadline to a Proposer in its sole and absolute discretion and may or may not offer such an extension to any other Proposer in its sole and absolute discretion.

1.4.13 Governing Law; Binding Effect

The RFP Documents and all Proposals and any dispute or claim arising out of or relating to them or their subject matter, existence, negotiation, validity, termination or enforceability shall be governed by and construed in accordance with the laws of the State of New York.

1.5 Evaluation Criteria and Weighting

The following criteria, and the weight to be given them, shall be principally used by the Owner to evaluate Proposals received in response to this RFP:

1.5.1 Price

The Proposer's costs breakdown and price proposal will be evaluated for completeness and fairness and will be assessed in light of market comparables.

The weight to be given to this evaluation criterion is 40%.

1.5.2 Technical Approach

The Proposer's means, methods and materials that the Proposer proposes to use to perform the Work will be evaluated for efficacy, completeness and likelihood of success.

The weight to be given to this evaluation criterion is 15%.

1.5.3 Past Performance, Relevant Experience, and Qualifications

The Proposers' past performance and relevant experience relating to quality of work, customer satisfaction, business ethics and reputation, budget performance, schedule performance, commercial litigation history, capacity to manage successfully projects comparable in size and complexity to the Project, and other factors will be assessed to determine the Proposer's qualifications for the Work.

The weight to be given to this evaluation criterion is 15%.

1.5.4 Construction Management and Organization

Owner will review the Proposer's proposed organization of its approach to the Work, its management team (in particular, its Key Personnel), the training and experience of those individuals, the Proposer's proposed key subcontractors and its management of those subcontractors. In addition, the Proposer's stated approach to and experience in risk identification and mitigation, safety management, and quality control will also be assessed.

The weight to be given to this evaluation criterion is 10%.

1.5.5 Schedule

Proposals will be evaluated based on the level of detail provided in the Proposer's Schedule for the sequence of the Work, the identification of schedule risks and opportunities and critical path, and the Proposer's ability to deliver the Project in accordance with the Owner's Schedule.

The weight to be given to this evaluation criterion is 10%.

1.5.6 Business and Workforce Opportunity Program

Proposals will be evaluated based on the Proposer's Business and Workforce Opportunity Program, including the Proposers' demonstrated experience in the successful utilization of MWBE, SDVOB, and DBE subcontractors, the Proposer's plans to meet the Project's disadvantaged community (DAC), MWBE, SDVOB, and DBE goals and requirements, and proposed dollars to be expended in DACs and for MWBEs, SDVOBs, and DBEs participation in the Work.

The weight to be given to this evaluation criteria is 10%.

2 SCOPE OF WORK

2.1 General Description of Project

The Project is the development and construction of a special-purpose marine terminal for the staging and assembly of offshore wind turbine generators (WTGs) and other main components involved in the installation of offshore wind farms along the eastern seaboard. The Facility will consist of five (5) main areas: a ship basin, a quay, an upland storage and staging area, a tenant area containing a warehouse/office building and parking, and a visitor center and Owner area.

The 18-acre ship basin outboard of the bulkhead will require dredging down to elevation -36 NAVD88 to provide sufficient navigable depth for large draft vessels. The limits of the dredge basin will be sloped and protected with articulated concrete block mattresses, as well as a steel combination wall bulkhead on the north end to provide bridge protection. U.S. Coast Guard compliant buoys will be installed to mark the entrance.

A 1,365 LF, 4.5-acre quay will be installed along the bulkhead line. The quay will be enclosed by a steel bulkhead consisting of an O-pile combination wall at the seaward face and sheet pile wall at the returns. The deck will be concrete with a crushed stone wearing surface supported by a grid array of precast prestressed concrete piles. Below the quay platform, processed dredge material will be used as fill up to the bottom of the platform, over which will be installed the pile supported concrete platform. The quay shall be furnished with 100-ton bollards, foam fenders, lighting fixtures, and fire hydrants. The quay is also expected to accommodate 5 outfall penetrations of varying sizes which shall be supported by shallow foundation concrete cradles and a headwall at the seaward face of the quay.

The 24-acre upland storage area will require significant geotechnical improvements in order to be suitable for storage and staging. Soil improvements will include but not be limited to rigid inclusions, grouted inclusions, in-situ soil mixing, soils replacement, additional testing at points of interest, and compaction. Additional work will include placement of a concrete transition slab from the easter edge of the quay approximately 135 feet inward, installation of concrete cradles for the outfalls, installation of light poles and fire hydrants, and installation of retaining structures and MARSEC fencing around the perimeter of the site. Retaining structures will include sheet piles, concrete retaining walls and soldier pile walls.

The 2.5-acre Tenant Area will include the two-story, 22,472 GSF warehouse/office building and parking area. The building will include rooftop solar and the parking area will include solar canopies and landscaping.

The Owner Area will consist of a renovated existing 2-story building (known as the Cole House), a new concrete sidewalk around the perimeter of the house, a new asphalt parking lot, and a new asphalt driveway which will provide access to the port.

2.2 General Project Information

Project name:	Arthur Kill Terminal
Project address:	4927 Arthur Kill Road, Staten Island, New York 10309

Owner: Arthur Kill Terminal, LLC
Engineer: Mueser Rutledge Consulting Engineers (MRCE)
Architect: T. LaPorta Architect (TLA)
Owner's Representative: TMS Waterfront (TMS)

2.3 Type of Agreement

The Agreement will provide for a Guaranteed Maximum Price (GMP) for the Work. In accordance with the terms set forth in the Agreement, the Proposer's GMP shall cover everything required to fully perform the Work. The Agreement also shall provide for a sharing between Owner and Contractor of any amounts by which the final total price is less than the GMP.

2.4 Work Packages

The Work is defined in the Agreement and is organized into five (5) Packages for purposes of this RFP, each of which is described in the scopes of work (Appendices 6-10) and itemized within the Work Breakdown Structure (WBS) provided in the WBS Proposal Form attached as Appendix 2.

The Proposer shall include in its Proposal(s) all items required in order to carry out the Work as described in the Agreement and scopes of work for each Package proposed.

2.4.1 Package A: Dredging and Subaqueous

The Package A scope of work is provided in Appendix 6 and includes the following main elements:

- 1) Dredging for the quay and ship basin between the bulkhead and the state border including applicable articulated concrete block mattresses (ACBM) slope protection.
- 2) Scour protection.
- 3) Jack up vessel pad.

The Drawings and Specifications relevant to Package A are identified in Appendix 3 [List of Drawings and Specifications].

2.4.2 Package B: Marine, Quay and Pile Driving

The Package B scope of work is provided in Appendix 7 and includes the following main elements:

- 1) Bulkheads and O-pile retaining walls.
- 2) Bridge protection.
- 3) Relieving platform & concrete construction.
- 4) Quay utilities including electric, storm and water.
- 5) Fendering, mooring accessories and cathodic protection.
- 6) Final backfilling and grading.

The Drawings and Specifications relevant to Package B are identified in Appendix 3 [List of Drawings and Specifications].

2.4.3 Package C: Site Civil

The Package C scope of work is provided in Appendix 8 and includes the following main elements:

- 1) Site and utility demolitions.
- 2) Site clearing, grubbing, excavation and debris removals, removal of organics, crush and reuse on site concrete.
- 3) Ground improvement.
- 4) Comprehensive site backfilling and grading.
- 5) Barge Offloading and Amendment of dredge for reuse on site and disposal
- 6) PDM stockpile management and placement as fill.
- 7) Installation of site lighting, electric, storm, wastewater, fire protection and potable water utilities.
- 8) Retaining walls & embankments including sheet piles, not including Bulkheads and O-pile retaining walls.
- 9) Security fencing, gates and systems external to the buildings.

The Drawings and Specifications relevant to Package C are identified in Appendix 3 [List of Drawings and Specifications].

2.4.4 Package D: Tenant Area

The Package D scope of work is provided in Appendix 9 and includes the following main elements:

- 1) Warehouse construction (foundations to finishes).
- 2) Parking lot, stormwater, right of way, road widening, sidewalks and curbs.
- 3) Security systems internal to the warehouse.
- 4) Landscaping.
- 5) Solar and battery storage.

The Drawings and Specifications relevant to Package D are identified in Appendix 3 [List of Drawings and Specifications].

2.4.5 Package E: Owner Area

The Package E scope of work is provided in Appendix 10 and includes the following main elements:

- 1) Renovation of the Cole House.
- 2) Parking lot, stormwater, right of way, road widening, sidewalks and curbs.
- 3) Landscaping.
- 4) Solar arrays and battery storage.

The Drawings and Specifications relevant to Package E are identified in Appendix 3 [List of Drawings and Specifications].

2.4.6 Other Contractors and Key Interfaces Between Packages

If a Proposer and Owner enter into an Agreement for one or some but not all of the Packages (“Limited Agreement”) Owner will enter into separate Agreement(s) with other Proposers (“Other Contractors”) for the Packages not covered by the Limited Agreement. In those circumstances, part of the Work of each of those contractors will be to cooperate with the other contractors to ensure that the interfaces among the Work of those Agreements together are fully covered.

For purposes of this RFP, Proposers should be aware of the interfaces that exist between Packages (see Appendix 5 – Construction Sequencing and Package Interfaces), and to the extent the Proposer is not submitting a Proposal for all Packages, care should be taken to ensure each Package is appropriately priced to account fully for such interfaces.

Appendices 6-10 describe the areas of interface and designate which Package Contractor is responsible for tasks that overlap a Work Area.

2.4.7 General Conditions Applicable to All Packages

As indicated in the Agreement and Appendices 6-10, certain general conditions of the Work are applicable to all Packages, including:

- 1) Insurances
- 2) Erosion and Environmental
- 3) Mobilization and Demobilization
- 4) Site Management
- 5) Testing, Inspection & Documentation
- 6) Required Permits & Fees
- 7) Pre-Construction
- 8) Reporting
- 9) Closeout

Proposers should ensure that these general conditions costs are appropriately accounted for in accordance with the WBS Proposal Form.

2.4.8 Permit Requirements

The Work shall be performed in accordance with the Permits detailed in Appendix 13.

2.4.9 Project Labor Agreement Requirements

The Contractor will be required, pursuant to the terms of the Agreement, to negotiate and enter into a Project Labor Agreement (PLA) covering all aspects of the construction of the Project. The PLA shall contain:

- 1) Provisions that appropriately limit applicability of the PLA to United States-based (including federal waters) covered work on the Project (and not extending to any other work performed by Project contractors and subcontractors, or to the work of their affiliated entities), ensuring that Project contractors or subcontractors are not required to become a signatory to any other labor agreement, and appropriately providing for the supremacy of the PLA over any

potentially conflicting labor agreements that might otherwise apply to contractors and subcontractors. The PLA must apply to all covered construction and all contractors and subcontractors, of whatever tier, performing construction work on the Project (subject to appropriate exceptions), and the PLA should be available to all contractors and subcontractors, of whatever tier, regardless of their union affiliation;

- 2) Provisions for appropriate union recognition and security (limited to Project work) and the referral of skilled craft workers, including provisions for staffing in the event qualified referrals are not reasonably available and for the reasonable use of a number of core employees by contractors and subcontractors (regardless of union affiliation and referral practices that might otherwise exist);
- 3) Comprehensive labor harmony provisions to ensure against Project disruption as a result of worksite disputes or other labor disputes of any kind;
- 4) Comprehensive provisions for the resolution of workplace disputes through third party resolution, including provisions for the resolution of jurisdictional disputes (without Project disruption), and appropriate provisions for labor management cooperation;
- 5) Appropriate provisions to allow the cost effective and efficient coordination of multiple trades and contractors and subcontractors (notwithstanding any local labor agreements that might otherwise be applicable to contractors and subcontractors), as well as other appropriate management rights (such as adequately ensuring the Contractors'/subcontractors' choice of materials, techniques, methods, technology or design, or, regardless of source or location; use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials, tools, or other labor-saving devices; the installation or use of materials, supplies or equipment regardless of their source (including as may be required by a - 37 - vendor and/or to ensure warranty coverage); and to perform off-site work, subject to any restrictions imposed by law);
- 6) Appropriate provisions promoting MWBE and SDVOB employment, as well as the employment of New York workers and low-income workers;
- 7) Appropriate provisions for the use of apprentices; and
- 8) Appropriate provisions for rules governing worksite access and conduct.

Assuming that part of the Project funding is provided by NYSERDA, Contractor shall be obligated to provide NYSERDA with the opportunity to participate in the discussions with organized labor regarding a project labor agreement and shall also be required to enter into a labor peace agreement to the extent the likely provisions of such an agreement are not covered by the project labor agreement.

3 PROPOSAL CONTENTS

3.1 Checklist of Required Proposal Elements

Proposals must include the following elements, which are described further below.

- 1) Proposal Certification
- 2) Proposal Guarantee
- 3) WBS Proposal Form
- 4) Proposal Narrative
- 5) Markup of Agreement
- 6) Proposer's Schedule
- 7) Business and Workforce Opportunity Plan
- 8) Construction Management Plan
- 9) Environment, Health and Safety Plan(s)
- 10) Safety Questionnaire
- 11) Quality Plan
- 12) Financial Statements
- 13) Profiles of Relevant Completed Projects
- 14) Resumes and References for Key Personnel

3.2 Proposal Certification

Proposals shall include a Proposal Certification in the form attached as Appendix 1.

3.3 Proposal Bond

Proposals shall include a Proposal Bond in accordance with the requirements set forth in Section 1.4.5.

3.4 WBS Proposal Form

The WBS Proposal Form provided in Appendix 2 shall be used to present a breakdown of the Proposer's Price itemizing all costs, on a per Package basis, including without limitation takeoff quantities and unit pricing.

The Proposer is responsible for completing all of the lines in the WBS Proposal Form with the following:

- 1) **Quantities.** The Proposer is responsible for verifying quantities bid. There is no guarantee of any maximum or minimum quantities under the Agreement.
- 2) **Unit Prices.** The Proposer shall provide the unit prices for each WBS item.
- 3) **Total Prices.** The Proposer shall provide the correctly calculated Total (extended) price for each WBS item based upon the quantities estimated and unit pricing developed by the Proposer.

The prices contained in the WBS Proposal Form are to be utilized as the basis for the Proposer's Price and may be used for unit price or lump sum costs for added or deducted work at Owner's discretion. Therefore, it is imperative that the values provided by the Proposer in the WBS Proposal Form have been entered and calculated accurately and that the total prices in the WBS Proposal Form equals the Proposer's Price provided in the Proposal Certification.

The WBS Proposal Form shall not be manipulated or modified in any way. Except as instructed on the form, nothing shall be entered on the WBS Proposal Form that alters or proposes conditions or contingencies on the prices. Proposed qualifications, exceptions, and alternative price and delivery structures should be provided in the Comments section of the Proposal Certification Form and may also be included in the Proposal Narrative.

Federal procurement rules require that Proposals be evaluated for reasonable conformance with the Owner's Construction Estimate to determine whether or not a Proposal is accurate and balanced. The Proposer will not materially or mathematically unbalance their Proposal or adjust quantities to unbalance their Proposal. Proposals may be rejected if the prices for any line items or subline items are materially or mathematically unbalanced.

A completed WBS Proposal Form shall be submitted as a workable, unlocked excel file as part of each Proposal.

3.5 Proposal Narrative

Each Proposal shall include a Proposal Narrative containing the following information:

1) Proposer Identification

a) Proposer shall identify the entity(ies) that comprise the Proposer's team and describe clearly the respective roles, responsibilities and basic information on the entity(ies) history, ownership, and experience.

b) Legal Structure

i) The Proposer shall provide a description of the legal entity proposed to enter into the Agreement. If the Proposer's legal entity has already been formed, the Proposer shall provide complete copies of the organizational documents, along with evidence that the Proposer is authorized to conduct business in New York State or will be authorized to conduct business in the State prior to the award of the Agreement. If the Proposer's legal entity has not yet been formed, then the Proposer shall provide a description of the proposed legal structure, with sufficient information to enable Owner to determine whether the future organization will be capable of entering into the Agreement and to meet all applicable legal requirements once it is formed. Once the entity is legally formed, the Proposer shall supplement its Proposal with copies of the final organizational documents.

ii) If the Proposer is a joint venture, the Proposer shall provide a copy of the executed joint venture agreement or a copy of the executed letter of intent to joint venture.

c) Organization Chart

i) Provide an organization chart showing the companies and participants on the Proposer's team. It shall include the Proposer, Key Subcontractors, Key Personnel

- (indicating their firm affiliation), and other proposed Subcontractors and staff identified and necessary for the performance of the Work. The organization chart shall also clearly show the reporting structure and lines of communication and responsibility.
- ii) The organization chart should be accompanied by a narrative of the Proposer team organization and how it shall accomplish the effective management and execution of the Work.
- d) Key Subcontractors
 - i) Proposals shall separately identify all Key Subcontractors and their proposed roles in the execution of the Work. Please also identify all other Subcontractors and suppliers (by type if they can be identified by name at this time) for the portions of the Work not proposed to be performed directly by the Contractor and summarize the proposed role of each subcontractor.
 - e) Key Personnel
 - i) The Proposer shall present its Key Personnel and explain how their qualifications, experiences, and past performance on Projects of Similar Scope and Complexity make them uniquely qualified to lead in their role on this Project.
- 2) Proposer and Key Subcontractor Relevant Experience
- a) Describe the experience of the Proposer and Key Subcontractors with the execution of marine, dredging, pile driving, heavy civil, buildings, and large infrastructure projects comparable to the Project within the past ten (10) years involving any or all of the following:
 - i) Marine construction
 - (1) Dredging
 - (2) Pile driving
 - (3) Retaining wall and sheetpile wall installation
 - (4) Tug and barge operations including marine logistics
 - (5) Marine terminal accessories, fendering, etc.
 - ii) Heavy concrete
 - (1) Cast in place (CIP) concrete
 - (2) Precast concrete
 - iii) Site / civil construction
 - (1) Excavation, backfill and grading
 - (2) Ground improvement
 - (3) Dredge offloading, amendment, placement as structural fill
 - (4) Dredge disposal
 - (5) Subgrade utilities (storm, electrical, fire protection, water)
 - (6) Retaining walls, embankments
 - (7) Bioswales
 - (8) Roadway, street, ROW, and highway
 - iv) MEP construction
 - (1) Low, medium, and high voltage electric
 - (2) Fire protection and fire alarm

- (3) Plumbing
 - (4) HVAC
 - (5) Utilities
 - (6) Site lighting
 - (7) Solar and battery storage
 - v) Warehouse Construction
 - (1) Foundations
 - (2) Elevator construction
 - (3) Low and medium voltage electric
 - (4) Fire protection and fire alarm
 - (5) Plumbing
 - (6) HVAC
 - (7) Utilities
 - (8) Site lighting
 - (9) Finishes
 - (10) Solar and battery storage
 - (11) Landscaping
 - (12) Roadway, street, ROW, and highway
 - vi) Residential to Commercial Renovation
 - (1) Renovation & Historical Restoration
 - (2) Foundation underpinning
 - (3) Elevator construction
 - (4) Low and medium voltage electric
 - (5) Fire protection and fire alarm
 - (6) Plumbing
 - (7) HVAC
 - (8) Utilities
 - (9) Site lighting
 - (10) Solar and battery storage
 - (11) Landscaping & Irrigation
 - (12) Roadway, street, ROW, and highway
 - b) Describe the experience of the Proposer and Key Subcontractors with the execution of projects using union labor and Project Labor Agreements, particularly in the New York metropolitan area, and involving NYCDOB, NYCDSBS, NYSDEC and/or USACE permits and conditions. Please also provide information on the experience of the Proposer and Key Subcontractors with the achievement of project-specific sustainability goals and certifications such as LEED and WEDG.
 - c) Describe the experience of the Proposer working with the Key Subcontractors and other Subcontractors identified in the Proposal.
- 3) Technical Capacity and Resource Availability
- a) At a minimum, the following information is required to demonstrate the Proposer's technical capacity and availability of the required resources:

- i) Average number of projects (with construction value equal to or greater than one hundred million dollars (\$100,000,000) over the last fifteen (15) years and the cumulative aggregate value of all such projects for each of the years in that period.
 - ii) For each current in-progress project with construction value in excess of one hundred million dollars (\$100,000,000), identify project value, start and forecast completion dates, and number of staff currently assigned to the project.
 - iii) The aggregate staffing level currently assigned to existing projects plus the total staffing level available for assignment to prospective or upcoming projects between 2023 and 2026.
 - iv) The sources and availability of all vessels, vehicles and equipment expected to be used to perform the Work and any other projects to which the Proposer is committed that might be competing uses of such resources.
- 4) Proposer Financial Condition, Parent Guaranty and Bonding Capacity
 - a) Proposers must demonstrate having sufficient financial strength to perform the Work under its Proposal.
 - b) Proposers may propose to supplement its financial strength by proposing a parent or affiliate company to serve as a guarantor of Proposer's obligations under the Agreement. The Proposer shall indicate if it is proposing such a guarantor for purposes of the Work, and if so, provide financial statements for and a letter of acknowledgement from such proposed guarantor.
 - c) The Agreement requires the Proposer to furnish payment and performance bonds, each in the amount of the Proposal Price, to secure Proposer's performance under the Agreement. The Proposer shall provide with its Proposal a letter confirming the availability of such bonds from an U.S. bank or financial institution that has an unsecured indebtedness rating of A+ or A1 depending on whether the rating is from S&P or Moody's, and otherwise acceptable to Owner.
- 5) Technical Approach to Performance of the Package(s)
 - a) The Proposer should describe in detail the Proposer's means and methods and materials for performing the Work, including a narrative describing the overall construction sequence, descriptions and plans for all staging areas, means and methods, vessels, tools and equipment and specialty trades and subcontractors required. The narrative should discuss the logistics and challenges of constructing the Work elements while meeting all contractual requirements. It should discuss why the proposed sequence for the Work was chosen and why it is the best solution for performing the Work. Discuss the elements of the Work that the Proposer intends to self-perform as well as the Work anticipated to be performed by Subcontractors.
 - b) The Proposal also should include a table that identifies the top ten (10) perceived risks to the Work and the mitigation strategies to address those risks.

- 6) Explanation of Proposer's Schedule
 - a) The Proposer shall provide a narrative describing the approach, key features and critical path of the Proposer's Schedule. The narrative shall identify and describe the various assumptions used in preparing the Proposer's Schedule as well as any perceived advantages and risks to the schedule. Proposer should highlight their overall approach to schedule float, and how they would implement a recovery schedule if needed.
 - b) If Proposer intends to propose multiple approaches or means and methods to achieve earlier completion than the milestones set forth in the Owner's Schedule, Proposer should describe such means and methods and any resulting changes to the schedule.
 - c) The Proposer shall also provide an initial monthly manpower projection to indicate level of resources that are anticipated to be available between NTP and Final Completion. This manpower projection shall be broken down to provide information on specific trade and subcontractor manpower as well as manpower related to construction management and administration.

- 7) Value Engineering Recommendations
 - a) Proposer is encouraged to submit with their Proposal detailed value engineering proposals which will accelerate completion, reduce cost to Owner, or which offer significant benefits (including long-term benefits) to Owner. The Proposal shall be sufficiently detailed, engineered, and described such that it can be reviewed by the Engineer for the project during Proposal evaluation. Value engineering proposals without adequate backup including, but not limited to, insufficient engineering, lack of cost analysis, and lack of schedule impacts, will be rejected. Value engineering proposals must not delay completion of the Project, materially affect the Regulatory Permits, or adversely affect the quality of design or construction or the operation or maintenance of the Project.
 - b) Any value engineering proposals presented will be maintained as confidential by Owner prior to award of Agreement.

- 8) Exceptions and Price Alternatives
 - a) Proposers shall describe exceptions, if any, that the Proposer may have to this RFP and alternatives, if any, that Proposer would like to present in the pricing of its Proposal for the Work. Any such alternative pricing must be presented in addition to, not in substitution for, the pricing required by this RFP.

- 9) Explanations of Proposed Changes to Agreement
 - a) The Proposer's rationales for any material changes to the Agreement shall be included in the Narrative.

3.6 Markup of Agreement

- 1) Proposers shall reflect any proposed changes to the Agreement in a redline of the Agreement provided in Appendix 11.

3.7 Proposer's Schedule

- 1) Proposals shall include a resource loaded Proposer's Schedule in either MS Project or Primavera P6, with electronic copies in native and PDF format, that at a minimum includes the following information:
 - a) Commencement of Pre-Construction
 - b) Timelines for receipt of all Contractor Permits and Approvals
 - c) Notice to Proceed
 - d) Mobilization and start of Work at the Site
 - e) Start/end dates for all major construction activities
 - f) Project critical path
 - g) Milestones

3.8 Business and Workforce Opportunity Program

- 1) Proposals shall include a Business and Workforce Opportunity Program that details both quantitatively and qualitatively how and to what extent the Proposer would create economic benefits in local disadvantaged communities (DACs) and for minority or woman-owned business enterprises (MWBES), service-disabled veteran-owned businesses (SDVOBs), and disadvantaged business enterprises (DBEs).¹
- 2) Proposers' Business and Workforce Opportunity Programs should include, at a minimum, the following actions consistent with 2 CFR 200.321:
 - a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - c) Breaking down the Work, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - d) Establishing delivery schedules, where the Work permits, which encourage participation by small and minority businesses, and women's business enterprises; and
 - e) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce
- 3) Proposals shall include descriptions of how the Proposer arrived at dollar values for the Proposer's commitments to expenditures in DACs and to MWBES and SDVOBs to be provided as part of its Proposal Certification.

¹ Criteria and maps for New York State DACs can be found at: <https://climate.ny.gov/resources/disadvantaged-communities-criteria/>

3.9 Construction Management Plan

- 1) Proposals shall include a Construction Management Plan describing how the Work will be managed and how the Proposer would ensure successful, timely delivery of the Project in accordance with the requirements of the Agreement and this RFP. The Construction Management Plan should include discussion of the following:
 - a) Key Personnel and experience and qualifications
 - b) Means of and responsibility for coordination among Subcontractors, Engineer, Architect, Owner, Key Subcontractors and Other Contractors
 - c) Tracking of Work progress and schedule compliance and deviation
 - d) Quality control and assurance; management of organization
- 2) The Construction Management Plan shall address the Proposer's experience with its proposed construction management approach with other projects and what lessons have been learned from that prior experience.
 - a) Construction Management Plans shall include details on the individuals and roles and responsibilities for all Key Personnel and Key Subcontractor Personnel, supplying at least the following information:
 - i) Individual name and resume.
 - ii) Company affiliation and title.
 - iii) Proposed role for the Work
 - iv) Intended commitment during Project (pre-construction, construction, post-construction phases) as percentage of full-time employment.
 - b) Key Personnel shall include the following roles, at a minimum, and individuals may satisfy multiple roles as appropriate:
 - i) Project Executive
 - (1) The Project Executive is the Proposer's executive with the final responsibility and decision-making authority for the Work, i.e., the chief executive officer of the Work. The Project Executive should possess, at a minimum, twenty-five (25) years of experience as a senior manager responsible for multiple phases of larger heavy/civil infrastructure projects.
 - ii) Project Manager/Director
 - (1) The Project Manager is the primary liaison for the Proposer with the Owner and will serve as the primary manager and director of the Work. The Project Manger should possess, at a minimum fifteen (15) years of experience as a senior manager responsible for multiple phases of larger heavy/civil infrastructure projects.
 - iii) Project Superintendent/Manager
 - (1) The Project Superintendent is the Work's senior field manager and subcontractor and logistics coordinator. The Project Superintendent/Manager should possess, at a minimum, twenty (20) years of experience as a senior manager responsible for multiple phases of larger heavy/civil infrastructure projects.
 - iv) Project Scheduler
 - (1) The Project Scheduler shall have at least 10 years experience in the production of large-scale complex schedules and project tracking documents, including overall

schedules, detailed construction schedules, delay analysis, and four-week look ahead schedules. The Project Scheduler shall be proficient in the use of use of MS Project and/or Primavera P6, one of which will be selected as the mandatory scheduling software for the Project.

v) Project Estimator

(1) The Project Estimator shall have at least ten (10) experience in the preparation of cost estimates based on the tracking of historical costs and construction market conditions and dynamics and the reconciliation of budgets during construction and preparation of cost reports.

vi) Quality Manager

(1) The Quality Manager shall prepare and implement the quality control plan and quality assurance protocol/applications and make recommendations pertaining to constructability, sequencing, impact analysis, and other related tasks. The Quality Manger should have experience on providing cost-effective quality control consistent with the complexity, criticality, and safety aspects of the Project, and possess a minimum of ten (10) years of comparable experience.

vii) Environmental Compliance Manager

(1) The Environmental Compliance Manager shall oversee all on-site activities related to compliance with environmental protection requirements, regulatory conditions, and sustainability objectives. The Environmental Compliance Manager shall have a minimum of 10 years of experience ensuring environmental compliance for larger heavy/civil infrastructure projects.

viii) Site Safety Manager.

(1) The “Safety Manager” shall be responsible for the Work’s safety program and ensure the Project’s compliance with OSHA and all other applicable health and safety law. This individual shall have a NYCDOB Site Safety Manager (“SSM”) Certification and have a minimum of 10 years experience in construction of large projects in New York City. The SSM position cannot be shared with other duties.

ix) Additional Personnel

(1) Proposers may include qualifications, technical competence, and experience of additional personnel and their proposed involvement that Proposer wishes to identify as Key Personnel.

x) Key Subcontractor Personnel

(1) For all Key Subcontracts, provide information on the Subcontractor personnel responsible for commercial management and performance of the Work.

3.10 Environment, Health, and Safety Plan(s)

1) Proposals shall include Environment, Health and Safety Plan(s) that describe the Proposer’s overall approach to ensuring protection of the environment, and the health and safety of workers, other personnel, and the public over the duration of the Project. Proposers may aggregate or separate their health and safety management and environmental management plans.

- 2) Major safety and environmental issues and areas of concern should be identified and the proposed method of mitigating or eliminating the safety issue should be outlined. The plan shall describe the organizational arrangements it intends to implement to manage project safety successfully. The organizational arrangements described shall clearly identify responsibilities and reporting lines of staff, particularly relating to Key Personnel, and shall include Subcontractors.
- 3) Proposals should include a description of the proposed methods of protecting existing facilities and implementing environmental controls including a description of the specific means and methods the Proposer intends to use to minimize impacts to the environment, existing utilities, neighboring properties, structures, and stakeholders adjacent to or within the Site. For example, identify how the Proposer intends to mitigate impacts due to dredging, vibration, noise, dust, staging of construction materials and equipment, and construction vehicles of the Proposer's construction operations.
- 4) The Proposer's plan(s) and/or narrative shall also provide information on historical safety performance and how the Proposer has corrected or prevented safety challenges on projects performed in the last five (5) years, including projects where the Occupational Safety and Health Administration ("OSHA") lost time frequency rates were two (2) times the national average and the assigned experience modification rate ("EMR") is greater than one-point-two (1.1).
- 5) The Environment, Health and Safety Plan(s) shall be considered draft living document(s) for the purpose of conveying the overall approach of the Proposer regarding safety and is not intended to replace the Project-specific Environment, Health and Safety Plan(s) to be adopted in accordance with the Agreement and Specifications.

3.11 Safety Questionnaire

- 1) Proposals should include a completed Safety Questionnaire in the form provided as Appendix 15.

3.12 Quality Plan

- 1) Proposals shall include a Quality Plan that details the Proposer's quality control (QC) and quality assurance (QA) methods for the Work. The Quality Plan shall detail how non-conformance issues will be documented, communicated and resolved. The narrative shall include an explanation of how quality will be maintained for items fabricated and tested off-site and how mock-ups will be managed and presented to Owner for acceptance.

3.13 Financial Statements

- 2) Proposers shall provide audited financial statements for the three (3) most recent fiscal years and interim financial statements since the last fiscal year for which audited statements are provided.

- 3) If any entity provides financial statements prepared in accordance with principles other than US GAAP or IFRS, a letter must be provided from a certified public accountant, or equivalent, discussing the ways in which the financial statements that would be materially affected by a conversion to US GAAP or IFRS.
- 4) If audited financials are not available, the Proposal must include unaudited financials for such member, certified as true, correct, and accurate by the Chief Financial Officer (“CFO”) or treasurer of the entity. If any entity required to submit financial statements is a newly formed entity and does not have independent financial statements, such entity shall expressly state that it is a newly formed entity and does not have independent financial statements meeting the requirements above and shall provide financial statements otherwise consistent with those required hereby for each of its shareholders/equity members.
- 5) If Proposer files reports with the U.S. Securities and Exchange Commission (SEC), then such entity must provide electronic links to the most recently filed Forms 10-K, 10-Q and 8-K for all such reporting entities in lieu of hard copies.
- 6) Financial statement information must be prepared in English. If audited financial statements are prepared in a language other than English, translations of all financial statement information must accompany the original financial statement information.
- 7) If financial statements are not available in US dollars, Proposer must include summaries of the income statement, balance sheet and cash flow statement for the applicable time periods converted to US dollars. If financial statements are converted from a foreign currency into US dollars, the conversion method(s) must be explained in an attachment and must be reasonable. Translation at the average period rate for income statements and cash flow statements, and period end rate for balance sheet statements, shall be appropriate.
- 8) To the extent Proposer intends to rely on a guarantor to meet its obligations under the Agreement, the financial statements of the guarantor, in accordance with the above stated requirements, shall be provided.

3.14 Profiles of Relevant Completed Projects

- 1) Please provide project profiles to demonstrate that the Proposer’s team (including, as applicable, Key Subcontractors) has completed, or has the capability to complete, projects of similar scope and complexity. Project profile criteria are as follows:
- 2) Project profiles shall include the project name, project location, client name, project manager name, project description (including identifying relevance to the Project), delivery method, services provided, baseline and actual completion date, baseline and actual contract amounts, and reasons for any variations from baseline;
- 3) Project profiles and/or Proposal narratives should identify the experience of any Key Personnel proposed for this Project, and include description of the scope of services and length of involvement provided by any Key Personnel;
- 4) Project profiles should demonstrate experience with projects of similar scope and complexity;
- 5) Owner may contact those individuals and firms that are listed as references by the Proposer and consideration will be given to whether or not the Proposer’s reference verifies the accuracy of the Proposer’s characterization of its involvement in the project, as well as their overall

assessment of the quality of those services provided, including project management, partnership and collaboration, cost and schedule control, quality, and commissioning and function of installed work. It is the Proposer's responsibility to verify that all references listed can be reached by telephone and email. If a reference cannot be located based upon the information provided by the Proposer, Owner may disregard the listed project.

- 6) Owner reserves the right to maintain the confidentiality of the past performance information provided by the references listed by the Proposer, as well as references obtained by other means, and is under no obligation to share such information with the Proposer. By submitting a Proposal for consideration under this RFP the Proposer agrees that it shall not seek to discover from any source the contents of such communications.

3.15 Resumes and References for Key Personnel

- 1) Proposers should provide resumes for each Key Personnel and three (3) references for each Key Personnel from different projects that are identified in each resume. The Owner reserves the right to contact those individuals that are listed as references.

4 GOVERNMENT MANDATED REQUIREMENTS

Proposals must account for the government mandated requirements set forth in Appendix 17, all of which are incorporated into the Agreement.

5 DEFINED TERMS

As used in this RFP, the following defined terms have the meanings indicated below:

“Affiliate” shall have the meaning set forth in the Agreement.

“Agreement” means the Agreement attached as Appendix 11 of this RFP.

“Appendix” means an Appendix to this RFP.

“Applicable Laws” shall have the meaning set forth in the Agreement.

“Architect” shall have the meaning set forth in the Agreement.

“Confidentiality Agreement” means the Confidentiality Agreement to be executed by each Proposer and received by the Owner with respect to the RFP and the Project.

“Construction Management Plan” means the Contractor’s construction management plan included in its Proposal.

“Contractor” means the entity so identified in the Agreement with responsibility for performance of the Work.

“Drawings” or “Contract Drawings” means the graphic and pictorial documents, materials, photographs and models (in written or electronic format) showing the design, location or dimensions of any part of the Facility and/or related property, including without limitations plans, elevations, sections, details, schedules and diagrams.

“Engineer” shall have the meaning set forth in the Agreement.

“Environment, Health and Safety Plan” shall have the meaning set forth in the Agreement.

“Facility” shall have the meaning set forth in the Agreement.

“Final Completion” shall have the meaning set forth in the Agreement.

“Key Personnel” shall have the meaning set forth in the Agreement.

“Key Subcontractor” shall have the meaning set forth in the Agreement.

“Other Contractor” has the meaning set forth in the Agreement.

“Owner” means the Arthur Kill Terminal, LLC, or its designees.

“Owner’s Construction Schedule” shall mean the schedule of the Owner’s projected timeline for the completion of the construction of the Project, attached as Appendix 12.

“Owner’s Representative” means TMS-Waterfront or such other person or firm so designated by the Owner.

“Package” has the meaning set forth in Section 2.4.

“Permits” has the meaning set forth in the Agreement.

“Project” has the meaning set forth in the Agreement.

“Proposal” means a proposal submitted by a Proposer in accordance with this Request for Proposals (RFP) and the other RFP Documents.

“Proposal Submission Deadline” shall have the meaning set forth in Section 1.3.5.

“Proposer” means any recipient of the RFP regardless of whether or not any such recipient completes and submits an Acknowledgement Letter or a Proposal.

“Proposer Acknowledgement Letter” means the letter acknowledging receipt of the RFP and Confidentiality Agreement to be executed by each Proposer and received by the Owner with respect to the RFP and the Project.

“Proposer’s Schedule” shall mean the construction schedule for the Project proposed by a Proposer.

“Quality Plan” shall have the meaning set forth in the Agreement.

“RFP” means this Request for Proposals asking Proposers to submit one or more Proposals to the Owner with respect of certain Work for the Project, as more fully described herein and in associated RFP Documents.

“RFP Addendum” shall have the meaning set forth in Section 1.4.2.

“RFP Documents” shall have the meaning set forth in Section 1.1.

“Site” shall have the meaning set forth in the Agreement.

“Specifications” shall have the meaning set forth in the Agreement.

“Subcontractor” shall have the meaning set forth in the Agreement.

“Substantial Completion” shall have the meaning set forth in the Agreement.

“Work” shall have the meaning set forth in the Agreement.

“Work Product” shall have the meaning set forth in the Agreement.

6 APPENDICES

Appendix 1: Proposal Certification Form

Appendix 2: WBS Proposal Form

Appendix 3: List of Drawings and Specifications

Appendix 4: Drawings and Specifications

Appendix 5: Construction Sequencing and Package Interfaces

Appendix 6: Package A Scope of Work

Appendix 7: Package B Scope of Work

Appendix 8: Package C Scope of Work

Appendix 9: Package D Scope of Work

Appendix 10: Package E Scope of Work

Appendix 11: Agreement

Appendix 12: Owner's Construction Schedule

Appendix 13: Owner Permits and Other Governmental Approvals

Appendix 14: List of Engineering, Architectural, and Environmental Reports

Appendix 15: Safety Questionnaire

Appendix 16: NYSDOL Prevailing Wage Schedule

Appendix 17: Government Mandated Requirements

**Request for Proposals
Arthur Kill Terminal Construction**



Proposer Acknowledgement

We acknowledge our receipt of the Request for Proposal for Arthur Kill Terminal Construction dated as of May 19, 2023 (the “RFP”) and have executed the accompanying Confidentiality Agreement, complete, with all blanks filled in.

It is our current intention to submit a Proposal in response to and in accordance with the terms of the RFP.

Our principal contact in relation to the RFP and our Proposal is as follows:

Name: _____ Tel No: _____

Title: _____ E-Mail: _____

Address: _____

Dated: _____, 2023

Name of Proposer: _____

Signature: _____

Name: _____

CONFIDENTIALITY AGREEMENT

This NONDISCLOSURE AGREEMENT (“Agreement”) is entered into as of May [] , 2023, between Arthur Kill Terminal, LLC, having its principal place of business at 145 Avenue of the Americas, New York, New York 10013 (“AKT”) and [] having its principal place of business at [], (the “Counterparty”), each such party referred to herein individually as a “Party” and collectively as the “Parties.”

WHEREAS, the Parties desire to explore a potential business opportunity in relation to the business of AKT (the “Project”);

WHEREAS, the Parties desire to enter into this Agreement to set forth their respective obligations as to the disclosure of certain confidential information relating to the Project;

NOW THEREFORE, in consideration of the mutual promises set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

1. This Agreement creates mutual obligations of confidentiality with respect to certain confidential information (the “Confidential Information”) to be shared between the Parties in connection with a possible transaction involving the Project. The Party disclosing Confidential Information (as defined below) is termed the “Disclosing Party” herein, and the Party receiving such Confidential Information is termed the “Receiving Party.” Inasmuch as either Party may disclose Confidential Information under this Agreement to the other, a Party may be a Disclosing Party as to certain Confidential Information and a Receiving Party to other Confidential Information. “Party” shall also include without limitation all affiliates, parents, subsidiaries and representatives of a Party.
2. “Confidential Information” shall mean all information that is disclosed by or on behalf of a Disclosing Party to the Receiving Party on or after the date hereof in connection with the Project, including material in any form, including oral, printed, handwritten, electronic, and drawing form.
3. The Receiving Party shall treat any and all Confidential Information provided by the Disclosing Party as confidential in accordance with the terms herein and shall not use, disclose or distribute such Confidential Information to any person or entity, other than as specifically permitted by this Agreement. The Receiving Party shall use Confidential Information solely for the purpose of analyzing, evaluating, negotiating and, if applicable, consummating, the Project and any transaction in connection therewith (the “Purpose”) and shall not use, disclose or exploit such Confidential Information for any other purpose without the prior written consent of the Disclosing Party.
4. Notwithstanding the other provisions of this Agreement, the Receiving Party may disclose Confidential Information to its affiliates, financing sources and insurance

providers and its and their respective employees, officers, directors, consultants and advisors, including legal advisors (such of the aforementioned persons that receive Disclosing Party's Confidential Information from the Receiving Party, its "Representatives"), provided that Receiving Party shall restrict access to Confidential Information to its Representatives who have a need to know such Confidential Information in connection with the Project and shall direct such Representatives to maintain the confidentiality of Confidential Information as required by this Agreement. Receiving Party shall be responsible for any breach of the confidentiality and use terms of this Agreement by any of Receiving Party's Representatives, except that Receiving Party shall not be liable for breaches by any Representative that (i) enters into a separate agreement in a form similar to this Agreement in substance for the benefit of the Disclosing Party or (ii) executes a separate confidentiality agreement with the Disclosing Party relating to a potential transaction.

5. The obligations imposed upon the Parties under this Agreement shall not apply to Confidential Information:

- a. which is generally known or available to the public at the time of disclosure or becomes generally known or available to the public through no breach by the Receiving Party or its Representatives of this Agreement;
- b. which is already known to or in the possession of the Receiving Party or its Representatives on a non-confidential basis at the time of disclosure hereunder;
- c. which was or becomes available to the Receiving Party or its Representatives from a third person who was not, to the actual knowledge of the Receiving Party, bound by an obligation to the Disclosing Party to keep such information confidential;
- d. which is independently developed by the Receiving Party or its Representatives without the use of or reference to Confidential Information; or
- e. which is disclosed pursuant to a request or requirement of any regulatory, self-regulatory or government agency or in connection with any law, rule, regulation or legal proceeding or process (collectively "Law"), provided that the Receiving Party or such Representative shall, to the extent permitted by Law and other than where such disclosure is requested or required as a result of a routine examination by a regulatory, self-regulatory or governmental agency, organization, or body, give notice to the Disclosing Party that the Receiving Party or such Representative is requested or required to make such disclosure so that the Disclosing Party may, if it so desires and at its own expense, seek a protective order with respect to the confidentiality of the Confidential Information covered thereby. Receiving Party or such Representative shall, to the extent permitted by Law and other than where such disclosure is requested or required as a result of a routine examination by a regulatory, self-regulatory or governmental agency, organization, or body, use commercially reasonable efforts to cooperate with Disclosing Party's reasonable

efforts, at its expense, to seek a protective order, to avoid and/or minimize the extent of such disclosure. If Receiving Party or such Representative is nonetheless required by Law to disclose the Confidential Information, Receiving Party and its Representatives, may without liability hereunder disclose only such of the Confidential Information as is required by Law.

6. The Disclosing Party is and shall remain the exclusive owner of the Confidential Information and all patent, copyright, trade secret, trademark and other intellectual property rights therein. No license or conveyance of any such rights to the Receiving Party is granted or implied under this Agreement.

7. Upon written request of the Disclosing Party, the Confidential Information disclosed by or on behalf of the Disclosing Party and all copies, reproductions and reprints thereof in the Receiving Party's or its Representatives' possession shall be destroyed or, at the Receiving Party's election, returned by the Receiving Party to the Disclosing Party, except that the Receiving Party and its Representatives may, subject to the other terms of this Agreement, retain any Confidential Information (i) pursuant to Law or bona fide document retention policies and (ii) created pursuant to automatic electronic archiving and back-up procedures, provided that any Confidential Information so retained shall remain subject to this Agreement.

8. This Agreement constitutes the entire Agreement between the Parties and supersedes any prior or contemporaneous oral or written agreements with regard to the subject matter hereof. The Disclosing Party has not made any representation or warranty and the Disclosing Party shall have no liability with respect to the Confidential Information, absent fraud, unless it is specifically set forth in a definitive agreement between the Parties. No Party shall assign any of its rights or delegate any of its obligations under this Agreement, except with the prior written consent of the other Party.

9. The Receiving Party shall promptly report to the Disclosing Party any actual or suspected violation of the terms of this Agreement and shall take all reasonable further steps requested by the Disclosing Party to prevent, control or remedy any such violation.

10. No failure or delay in exercising any right, power or privilege contained in this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

11. This Agreement shall inure to the benefit of the Parties and their respective successors and permitted assigns.

12. In the event that any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this

Agreement. The covenants contained in this Agreement shall be construed as a series of separate and separable covenants. If, in any judicial proceeding, a court refuses fully to enforce any such separate covenant, then such non-enforceable covenant shall be deemed eliminated from this Agreement or reduced for purposes of such proceedings to the extent necessary to permit the remainder hereof to be enforced.

13. No agency, partnership, joint venture or other joint relation is created by this Agreement. Unless and until a definitive agreement regarding a possible transaction between the Parties has been executed and delivered by the Parties, neither Party shall be under any legal obligation of any kind whatsoever with respect to any possible transaction between the Parties by virtue of this Agreement, except for the matters specifically agreed to herein.

15. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of law principles. The courts of New York, New York shall have jurisdiction over any action, claim, suit or proceeding arising from or relating to this Agreement. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN ANY ACTION, CLAIM, SUIT OR PROCEEDING RELATING TO OR ARISING OUT OF THIS AGREEMENT.

16. The Parties acknowledge that neither has made any representation or warranty herein as to the accuracy or completeness of the Confidential Information or of any other information provided to each other, nor shall the transmission thereof constitute any representation, warranty, assurance, guaranty or inducement by one Party to the other with respect to infringement of intellectual property or other rights of others, and the Parties agree that neither shall have liability to the other resulting from the use of the Confidential Information or such other information, absent fraud and except as may otherwise be set forth in a definitive agreement.

17. The Parties acknowledge that a breach of this Agreement by one Party will result in immediate and irreparable harm to the other, for which there will be no adequate remedy at law, and the non-breaching Party shall be entitled to equitable relief to compel the breaching Party to cease and desist all unauthorized use and disclosure of the Confidential Information. Remedies referenced in this Agreement shall be considered cumulative and not exclusive. The non-prevailing Party agrees to pay all costs and expenses (including reasonable attorney's fees) incurred by the prevailing Party in enforcing the terms of this Agreement. A Party's breach of any provision of this Agreement shall not constitute a defense of any violation by the other Party of the foregoing restrictions.

18. All notices under this Agreement shall be deemed to have been duly given five (5) days following the mailing of the notice by first class mail or upon the email transmission, return receipt received, to the Party entitled to such notice at the address set forth below:

If to CounterParty:

If to AKT:
145 Avenue of the Americas, 7th Flr
New York, New York 10012
Attn: Manager
bdavis@atlanticterminals.com

19. Counterparts Either the original or copies, including facsimile transmissions, of this Agreement, may be executed in counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

20. Term. This Agreement and the obligations of the Parties hereunder shall terminate and be of no further force and effect two (2) years from the date set forth above other than those obligations that survive termination.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective duly authorized representative as of the date first written above.

Arthur Kill Terminal, LLC.

By: _____
Name: _____

By: _____