

Board of Commissioners Port of New Orleans  
Requests for Qualifications for Design-Build Services  
Riverfront Cold Storage Facility Project

## **TECHNICAL PROPOSAL**

Appendix F  
General Conditions of the Design-Build Contract

Issued in Addendum No. 5

February 12, 2010

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## ARTICLE 1-DEFINITIONS

- (a) The Contract Documents consist of the Request for Qualifications, the Request for Technical Proposals and its Appendices A thru F, all addenda, all drawings, reports, minutes of meetings, and miscellaneous project information posted to the project website [www.riverfrontcoldstoragefacilityproject.htm](http://www.riverfrontcoldstoragefacilityproject.htm), the technical and performance specifications referenced in the Governor Nicholls and Esplanade Avenue Riverfront Cold Storage Facility Project, specifically Sections 20650 thru 20654 and 21750 through 21752, the Technical Proposal of the Design-Builder, the Letter of Award, the Notice to Proceed, the Performance Bond and Payment Bond, also all change orders and agreements that are required to complete the scope of work and scope of services in an acceptable manner, including all authorized extensions thereof. These form the Contract Documents.
- (b) Board and Design-Builder are those stated as such in the Form of Proposal.
- (c) Wherever in this contract the word "Engineer" is used, it shall be understood as referring to the Board as the project owner acting personally or through the Board's Director of Port Development, or her designees, such as the Board's Manager of Construction Services or Manager of Engineering or any assistant to said, whether a Board employee or a consultant duly authorized for such act by Engineer and under direct contract to the Board.
- (d) Any and all notices to be given by Board to Design-Builder under this contract shall be deemed to be served if the same be delivered to the person in charge of any office used by Design-Builder or to its superintendent, or, in their absence, to a foreman at or near the work, or deposited in the post office, postpaid, addressed to Design-Builder at its last known place of business.
- (e) The term "subcontractor" as employed herein, includes only those having a direct contract with Design-Builder to provide services or who furnishes material worked to a special design according to the plans and specifications of this work, but does not include one who merely furnishes material not so worked.
- (f) The term "work" of Design-Builder or subcontractor includes labor or materials or both, equipment, transportation and other facilities, necessary to complete the design, construction and other services provided for in the contract.

- (g) The words "plans" and "drawings" are used synonymously in this contract.
- (h) Wherever the singular masculine pronoun is used herein, as referring to Design-Builder, it shall be construed to mean all genders, singular and plural, according to the status of Design-Builder.
- (i) The term "project site" as employed herein, refers to the site as shown and described in the Contract Documents as Henry Clay Avenue Terminal.

## **ARTICLE 2-INTENT OF DOCUMENTS**

The intention of the documents is to include all labor and materials, equipment, transportation and other facilities, necessary for the proper execution of the work.

The Design-Builder shall abide by the rules and statements set forth in the Contract Documents.

Design-Builder shall keep at job site one copy of all project drawings and specifications on the work, in good order, available to Engineer and to his representatives for reference during the Contract Time.

If Design-Builder, in the course of the work, finds any condition different from that designated in the Contract Documents either in regard to work previously existing or being performed by others, it shall be his duty to immediately inform Engineer and confirm in writing, and Engineer will promptly verify same. After observing any such discrepancy, Design-Builder shall not proceed with any part of the work that involves the discrepancy, and he shall neither start nor resume work thereon until the condition has been corrected or until authorized to proceed by Engineer. Any work by the Design-Builder without such correction or authorization, shall be at its own risk and expense.

## **ARTICLE 3-LIQUIDATED DAMAGES**

After expiration of the Contract Time as stated by the Design-Builder in the Technical Proposal for completion of the work, including all authorized extensions, and without the necessity or formality of putting Design-Builder in default therefore, there shall be assessed ascertained and liquidated damages, in the amount of **\$2,500.00** per calendar day of delay in completing said work or substantially and satisfactorily completing the work in accordance with the Contract Documents.

## **ARTICLE 4-NIGHT, WEEKEND, HOLIDAY WORK**

No work shall be allowed to be performed at night, weekends, or on a legal holiday, without due notification, in advance, by Design-Builder to Engineer.

## **ARTICLE 5-DELAYS AND EXTENSION OF TIME**

If Design-Builder is delayed at any time in the progress of the work by any act or neglect of Board or of its employees, or by any other contractor employed by the Board, or by changes ordered in the work, or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties, or any causes beyond Design-Builder's control, or by any cause which Engineer shall decide justifies the delay, then the time of completion shall be extended for such reasonable time as Engineer may decide.

No such extension shall be made for delay occurring more than seven (7) days before claim therefore is made in writing to Engineer. In the case of a continuing cause of delay, only one claim is necessary.

This Article does not exclude the recovery of damages for delay by either party under other provisions in the Contract Documents.

## **ARTICLE 6-DESIGN-BUILDER'S UNDERSTANDING**

It is understood that Design-Builder has, prior to submission of Technical Proposal, satisfied himself as to the nature and location of the work, the conformation of the ground, the type, quality and quantity of the materials to be encountered, the type of equipment and the facilities needed prior to and during the prosecution of the work, the general and local conditions, and all other matters which might in any way affect the work under this contract. No verbal agreement or conversation with any officer, agent or employee of Board, before, during, or after the execution of this contract, shall affect or modify the terms or obligations herein contained.

## **ARTICLE 7-MATERIALS, EQUIPMENT, APPLIANCES, AND EMPLOYEES**

Unless otherwise stipulated, Design-Builder shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the both the design and the construction of the work, including other professional services such as surveying and construction materials testing.

All materials shall be new, and all workmanship, equipment, materials and articles incorporated into the work covered by the contract are to be of grade and quality consistent with the Contract Documents.

When so requested by Engineer, Design-Builder shall submit certified copies of records showing course of supply, mill certificates, quality control of production and processing, or other evidence satisfactory to Engineer proving material quality. Engineer has the right, at Board's cost, to do additional checking at source of supply or manufacture, and at any time before, during or after delivery, and to reject materials whenever non-compliance or defects are found.

Design-Builder shall be responsible for all materials received for this construction, and he shall take all necessary precautions to protect same from loss and damage.

Construction equipment shall be adequate to perform the work; any alterations made in equipment shall be without added cost to Board. Design-Builder shall, at all times, enforce strict discipline and good order among his employees, and shall not employ on the work any unfit person or anyone not qualified to perform the work assigned.

If any person employed on the work shall refuse or neglect to obey the directions of Design-Builder, or his duly authorized agents, as to workmanship, character of the work or quality of materials, or is so incompetent, disorderly or unfaithful as to interfere with the proper fulfillment of this contract, that person shall, upon the request of Engineer, be at once discharged and not again employed on the work.

#### **ARTICLE 8-EQUALITY**

Whenever proprietary materials, equipment, machinery or other products are specified, alternate materials, equipment, machinery or other products, of well-known manufacture, equal in every respect to those specified, may be used, when approved in advance of their use, by Engineer. All substitutions shall be compatible with other items required for the work, and equality with specified items shall be as determined by Engineer, predicated upon the alternate item or items meeting all requirements embodied in those specified. Every substitution, even though approved by Engineer, shall remain the full responsibility of Design-Builder. All items shall be handled, applied or installed in strict accordance with manufacturer's recommendations and instructions and with these specifications.

All requests for substitutions shall be submitted in writing by Design-Builder, and Engineer's decision will be rendered to Design-Builder in writing. All requests must be accompanied by complete manufacturer's literature, drawings if necessary, and specifications, covering the properties and use of the item or items to be substituted.

#### **ARTICLE 9-REMOVAL OF IMPROPER MATERIALS**

If Design-Builder shall bring or cause to be brought on the work materials which do not conform to the requirements of the Contract Documents, Engineer shall order the same to be removed forthwith, whether or not incorporated into the work, and in case of the neglect or refusal of Design-Builder or those employed by him to remove such materials, Engineer shall cause the same to be removed at the expense of Design-Builder and shall deduct the cost of such removal and all other expenses incident thereto either from the final or from any other estimate of the amount due to Design-Builder on this contract.

## **ARTICLE 10-ROYALTIES AND PATENTS**

Unless otherwise specified, Design-Builder shall pay all royalties and license fees. He shall defend, at his own cost and risk, all suits or claims for infringement of any and all patent rights and shall save Board harmless from all loss, claim, expense or damage on account thereof.

## **ARTICLE 11-CONNECTIONS WITH UTILITY SERVICES**

Prior to any work being connected to receive service from any utility, whether owned privately or publicly, all requirements of that utility shall be complied with by Design-Builder, who shall be held responsible for determining the extent of such requirements, and who shall pay all fees and charges involved.

## **ARTICLE 12-INSPECTION OF WORK**

Engineer and his representatives shall at all times have access to the work in preparation or progress, and Design-Builder shall provide proper facilities for such access and for inspection.

The work is to be done under the supervision of an inspector or inspectors, representing Engineer, whose duties shall be to see that the requirements of the Contract Documents are carried out, but their presence or absence does not relieve, in any degree, the responsibility or obligations of Design-Builder.

If the Contract Documents, Engineer's instructions, laws, ordinances, or any public authority requires any work to be specially tested or approved, Design-Builder shall give Engineer timely notice of its readiness for inspection, and if the inspection is by an authority other than Engineer, of the date fixed for such inspection. If any work should be covered-up without approval or consent of Engineer, and if required by Engineer to be uncovered for examination, then the Design-Builder shall do so at his sole expense.

This Article includes all tests and inspections of electrical installations, sewer lines, and water lines as well as the requirements of authorities having jurisdiction. Satisfactory compliance and acceptance is a requirement before acceptance of the work by the Engineer.

Design-Builder shall remove, rebuild and make acceptable to the Engineer at his own cost all work which is found to be defectively executed or otherwise not in conformity with contract requirements, including repair or replacement of materials or other property of Board damaged or destroyed by the Design-Builder. Failure to condemn work at the time of its construction shall not be construed as an acceptance of defective work. If any doubt exists as to quality of workmanship of such work, Design-Builder must, on order of Engineer, remove or expose such work for examination. Upon such examination, if the work is found to be imperfect, or otherwise not in conformity with the requirements of the contract, it must be corrected by Design-Builder at his sole cost, risk

and expense; if, however, such work is found to be satisfactory upon such inspection, the actual cost of removing and replacing, plus an allowance for overhead and profit on a percentage basis, shall be paid to Design-Builder by Board (except when the work was concealed without approval or consent of Engineer and was ordered to be uncovered by Design-Builder, as stated herein.

### **ARTICLE 13-PERMITS**

All permits of a temporary nature and licenses of a temporary nature necessary for the prosecution of the work shall be secured and paid for by Design-Builder. The Design-Builder shall obtain a permit from, and follow the procedures of, the New Orleans Sewerage and Water Board (NOSW&B) for all plumbing work and potable water and sewer work on Board property which connects into NOSW&B's municipal potable water supply or discharges into the municipal sewerage system.

The Board will obtain permits and/or letters of no objection from governmental agencies for the permanent work including those from the Corps of Engineers, Orleans Levee Board, LADOTD, LADNR, LADEQ, U. S. Coast Guard, etc. and the New Orleans Public Belt Railroad, as applicable. Refer to the Request for Technical Proposals, Section II, Subsection "Codes" issued in Addendum No. 3. **A City of New Orleans building permit is not required.**

Design-Builder shall give all notices and shall comply with all laws, ordinances, rules and regulations bearing on the conduct of the work.

Design-Builder, his employees, and all engaged in the prosecution of this work shall be legally qualified for engaging in public work.

### **ARTICLE 14-PROTECTION OF WORK AND PROPERTY**

Design-Builder shall provide and maintain all necessary flagmen, watchmen, barricades, warning lights, signs and other suitable protective devices, together with marking buoys and other navigational aids, as required, and shall take all other necessary precautions for the protection and safety of the work and the public against personal injury (including death) and property damage. He shall continuously maintain adequate protection of all work from damage, and shall take all reasonable precautions to protect the Board's properties from damage or loss arising in connection with this contract. He shall make good any and all damage, injury or loss resulting from his failure to provide such necessary protective precautions, except such as may be directly due to, or caused by agents or employees of the Board. He shall adequately protect adjacent private and public property.

In an emergency affecting the safety of life, of the work, or of adjoining property, Design-Builder is, without special instructions or authorization from Engineer, hereby required to immediately take all necessary measures to prevent such threatened damage, loss or injury.

The responsibility of Design-Builder under this contract shall continue until final written acceptance of the project by Engineer, except as to those portions of the work for which Engineer has issued to Design-Builder a certificate of completion or when areas of partially completed construction are taken over for an interim period.

#### **ARTICLE 15-SUPERVISION OF WORK AND PROPERTY**

From commencement of mobilization at the project site and the start of construction activities through final acceptance of the project, the Design-Builder shall provide a competent, qualified, experienced superintendent at the job site during all working hours. Design-Builder shall keep on the site of the work project, at all times during its progress, a competent superintendent and any necessary assistants, all satisfactory to Engineer. Said superintendent shall have full authority from Design-Builder to carry out all orders given by Engineer, and shall exercise active supervision of all work performed under this contract. Design-Builder shall give efficient supervision to work, using his best skill and attention.

#### **ARTICLE 16-CHANGES IN THE WORK**

Engineer shall have the right to make alterations in the work herein contemplated, either before or after the commencement of the work and without notice to Surety, but subject to adjustment in payments as provided in Article 40. If such alterations diminish the quantity of work to be done, they shall not constitute a claim for damages for anticipated profits for the work dispensed with, but when the reduction in amount is a material part of the work contemplated, Design-Builder shall be entitled to compensation, as determined by Engineer, for overhead and equipment charges which he may have incurred in expectation of the quantity of work originally estimated, unless otherwise specifically provided herein; if such alterations increase the amount of work, the increase shall be paid for according to the quantity of work actually done and at the price established for such work under this contract. If, however, the character of the work or costs thereof are materially changed, an allowance shall be made on such basis as may have been agreed to in advance of the performance of the work, or in case no such basis has been previously agreed upon, then an allowance shall be made, either for or against Design-Builder, in such amount as Engineer may determine to be fair and equitable.

This document is understood as providing for alterations that do not decrease the total sum to be paid under the contract by more than twenty-five percent (25%) nor increase said sum by more than fifty percent (50%).

#### **ARTICLE 17-SUSPENSION OF WORK**

Board may at any time suspend the work, or any part thereof, giving notice to Design-Builder in writing specifying the date work is to be suspended. The work shall be resumed by Design-Builder within ten (10) calendar days after the date fixed to resume

work in the said written notice, or in a supplementary written notice, from Board to Design-Builder.

Board shall reimburse Design-Builder for reasonable expense incurred by Design-Builder in connection with the work under this contract as a result of such suspension, the amount of such reasonable expense to be approved by the Engineer, unless such suspension is ordered to secure compliance with the terms of this contract.

If the work, or any part thereof, shall be stopped by the notice in writing aforesaid, and if Board does not give notice in writing to Design-Builder to resume work at a date within ninety (90) calendar days of the date fixed in written notice to suspend, then Design-Builder may abandon that portion of the work so suspended, provided that Design-Builder shall have given Board thirty (30) calendar days written notice of such intent prior to the termination of the said ninety (90) calendar day period, unless such suspension had been ordered to secure compliance with the terms of this contract. Design-Builder will be entitled to the estimates and payments, if any be due, and as determined by Engineer, for all completed portions of the work so abandoned.

#### **ARTICLE 18-BOARD'S RIGHT TO DO WORK**

If it shall appear to Engineer that the progress of any portion of the work is not sufficient to insure satisfactory completion of the contract within the time herein designated, or within any additional time which may have been granted, or that any portion of the work is not executed or is not being executed in compliance with the specifications or plans, then Engineer shall notify Design-Builder in writing to remove all cause of complaint within the time specified in such notice. If Design-Builder fails so to do, Engineer may proceed to complete such portion of the work in such manner as he may determine. All cost of such work shall be deducted from any money due, or which may become due, to Design-Builder under this contract.

#### **ARTICLE 19-BOARD'S RIGHT TO TERMINATE CONTRACT**

If Design-Builder should become insolvent, or be adjudged bankrupt, or if he should make a general assignment for the benefit of his creditors, or if, being a corporation, a receiver should be appointed for Design-Builder, or if he should persistently or repeatedly refuse or fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws or ordinances or the instructions of Engineer, or should cease operations under this contract at any time for more than ten (10) calendar days, or otherwise be guilty of a substantial violation of any provision of the contract, then Board, upon the certificate of Engineer that sufficient cause exists to justify such action, may without prejudice to any other right or remedy and after giving Design-Builder and his Surety seven (7) calendar days written notice, take possession of the premises and of all materials, tools and appliances thereon, and finish the work by whatever method it may deem expedient. In such case, Design-Builder shall not be entitled to receive any further payment until the

work is finished. If the unpaid balance of the contract price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services, such excess shall be paid to Design-Builder. If such expense shall exceed such unpaid balance, Design-Builder and Surety shall pay the difference to Board. The expense incurred by Board, as herein provided, and the damage incurred through Design-Builder's default, shall be certified by Engineer.

#### **ARTICLE 20-BOARD'S RIGHT TO TERMINATE CONTRACT FOR ITS CONVENIENCE**

The Board, by written notice, may terminate this contract in whole or in part when it is in the interest and for the convenience of the Board. Any such termination shall be effected by delivery to the Design-Builder of a Notice of Termination specifying the extent to which performance of work under this contract is terminated and the date on which the termination is effective.

After receipt of a Notice of Termination, the Design-Builder shall:

- (1) Stop work immediately;
- (2) Place no further orders for materials or services;
- (3) Settle any outstanding liabilities arising out of the termination of subcontracts with the approval of the Engineer;
- (4) Turn over to Board, if directed by the Engineer, fabricated or unfabricated parts, supplies, and other materials produced or acquired in connection with the contract so terminated;
- (5) Complete whatever portion of the work in progress as shall not have been terminated.

The Design-Builder and the Board may agree upon the amount to be paid the Design-Builder because of the termination pursuant to this clause, which amount may include a reasonable allowance for profit on work done. The contract shall be amended accordingly and the Design-Builder paid the agreed amount upon certification by the Engineer.

#### **ARTICLE 21-DESIGN-BUILDER'S RIGHT TO STOP WORK OR TERMINATE CONTRACT**

If the work should be stopped under an order of any court or public authority, for a period of ninety (90) calendar days, through no act or fault of Design-Builder or of anyone employed by him, or if Engineer should fail to issue any estimate for payment within sixty (60) calendar days after it is due, or if Board shall fail to pay to Design-Builder within a reasonable time any sum certified by Engineer, then Design-Builder

may, upon seven (7) calendar days written notice to Board and Engineer, stop work or terminate this contract and recover from Board payment for all work executed and any loss sustained.

#### **ARTICLE 22-REMOVAL OF EQUIPMENT AND SUPPLIES FROM BOARD PROPERTY**

In case of termination of this contract before completion from any cause whatsoever, Design-Builder, if notified to do so by Board, shall promptly remove any part or all of his equipment and supplies from the property of Board. Should Design-Builder fail to make such removals, Board shall have the right to remove all such equipment and supplies at the expense of Design-Builder.

#### **ARTICLE 23-USE OF COMPLETED WORK PRIOR TO FINAL ACCEPTANCE**

Without in any way invalidating this contract, Board shall have the right to take possession of and to use any portion of the work at any time, as hereinafter provided.

If, at any time, any portion of the permanent construction has been substantially and satisfactorily completed in accordance with the Contract Documents, and if Engineer determines that such portion of the permanent construction is not required for the operations of Design-Builder, but is needed by Board, Engineer shall issue to Design-Builder a certificate of completion for such portion, and thereupon or at any time thereafter Board may take over and use said portion of the permanent construction described in such certificate, and may exclude Design-Builder therefrom.

When all of the work has been substantially and satisfactorily completed in accordance with the plans and specifications, Engineer may issue to Design-Builder a certificate of completion, and thereupon or at any time thereafter Board may take over and use the work and may exclude Design-Builder therefrom. At the time of such takeover and until the contract is formally accepted by the Board as complete, and during such further periods thereafter as any payment provided for under the contract shall remain unpaid by the Board, the insurance coverage shall continue but only to the extent of the amount remaining unpaid.

If at any time, it is determined by Board that the interim use by Board of parts of project site are necessary as a temporary measure, Engineer shall issue a written notice to Design-Builder stipulating this need and thereupon, or at any time thereafter, Board may take over and use such area as described in said notice, and may exclude Design-Builder therefrom. Such area taken over by Board for interim use shall be returned to custody of Design-Builder for completion of construction upon termination of Board's need for the area. The entire area used shall be returned to Design-Builder in its original condition, otherwise Board will be fully responsible for all expense incurred in restoring said area to such original condition.

When completed portions of permanent construction are taken over by Board, or when parts of the project site are taken over for an interim period, then in both cases Design-Builder's obligation shall immediately cease within the stipulated areas of Board use, until such time as Board returns such parts of the project site to the custody of Design-Builder.

The guarantee period stipulated in Article 28 for all work satisfactorily completed in areas taken over by Board for permanent use shall begin at time of issuance by Board to Design-Builder of certificate of completion of such areas.

Design-Builder's performance and payment bonds may be reduced at time of issue by Board of certificate of completion for a completed area of the work. The amount of such reduction shall be equal to the Contract Price of the work covered in the certificate of completion, provided that the performance bond shall never be reduced to less than fifty percent (50%) of the contract amount. If such prior use increases the cost of or delays the work, Design-Builder shall be entitled to extra compensation, or extension of time, or both, as determined by Engineer.

#### **ARTICLE 24-WARRANTY**

Design-Builder warrants to Board that the work under this Contract shall be as specified by the Contract Documents, and built using new materials, and that the work will be free from defects. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. Design-Builder's warranty excludes remedy for damage or defect caused by abuse, improper or insufficient maintenance, improper operation, normal wear and tear and normal usage.

The Design-Builder shall repair, maintain, and guarantee all work performed under this contract until accepted by the Board, and for the same five year warranty period as provided for in the Louisiana Public Works Act LA R.S. 38:2211 et seq. Any part of the work found not to be in accordance with the requirements of the Contract Documents shall be corrected by the Design-Builder promptly after receipt of written notice from Board to do so. Board shall not be required to provide notice or allow Design-Builder an opportunity to repair if Board reasonably believes that the delays associated with such notification and repair by Design-Builder may adversely affect Board's interests. If Design-Builder fails to correct non-conforming work within a reasonable time after receipt of notice from Board, or if Board determines that delays associated with notice and Design-Builder's repair may adversely affect Board's interest, then Board may correct or have the defective or non-conforming work corrected at Design-Builder's expense. If later inspection demonstrates that the defect or failure was not covered by the manufacturer's warranty, nor attributable to a design error or omission, nor defective construction workmanship of the Design-Builder, then the cost of repairs or replacements will be for Board's account.

Nothing contained shall be construed to establish a period of limitation with respect to other obligations which Design-Builder might have under the Contract Documents or at

law. Establishment of a period for correction of work relates only to the specific obligation of Design-Builder to correct such work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, to the time within which Board may pursue a claim against Design-Builder for correcting defective or non-conforming work, nor to the time within which legal proceedings may be commenced to establish Design-Builder's liability with respect to Design-Builder's obligations other than specifically to correct the work.

## **ARTICLE 25-INDEMNITY**

Design-Builder shall protect, defend, indemnify, and keep, save, and hold harmless the Board from any and all loses, costs, claims, damages, demands, attorney's fees, expenses, penalties, fines, suits and actions of any kind and nature arising out of any accident or any occurrence, negligent or otherwise, including environmental liability, causing injury including death, to any person or persons or damage to property, directly or indirectly caused by, resulting from, or growing out of the performance of his obligations under this contract, whether caused by his affiliates, his subsidiaries or his employees, servants, agents, representatives or subcontractors, including such as may be imposed for the violation of any law, ordinance, or regulation (federal, state or local); and Design-Builder shall defend and indemnify the Board from and against any and all costs and expenses in connection with the foregoing, including court costs, related litigation expenses, and reasonable attorney's fees that may be incurred by the Board, provided however, that nothing herein shall be construed as indemnifying the Board against its own negligence or that of its officers, agents, servants, or employees when such negligence (as determined by final judgment of a court of competent jurisdiction) is the direct cause of such loss, damage, injury or death and when there is no negligence on Design-Builder's part which is a contributing cause of such loss, damage, injury or death.

Furthermore, Design-Builder shall be liable for attorney's fees and costs incurred by the Board if it must file suit or retain counsel to enforce the terms of this indemnity. The Board shall notify Design-Builder of any claim, demand, suit or other action brought or raised against the Board for which Design-Builder may be liable as stated above. The provisions of this indemnity shall survive this Design-Builder and are intended to be severable. If any term or provision should be determined invalid or unenforceable for any reason, that invalidity or unenforceability shall not affect the validity or enforceability of the remainder of the terms of this indemnity.

## **ARTICLE 26-BOARD'S INSURANCE**

Board may, at its option and at its expense, procure and maintain such insurance as will protect it from its contingent liability for damages for personal injury, including death, which may arise from operations under this contract.

## **ARTICLE 27-FORCE MAJEURE**

Design-Builder shall not be in default in the performance of any obligation undertaken on this Contract if performance is rendered impossible or delayed because of any Force Majeure, but for no longer time period. As used in this contract, Force Majeure shall include but not be limited to acts of God, lightning, earthquakes, hurricanes, tornadoes, fires, storms, epidemics, riots, labor disputes, labor strikes, civil insurrections, wars, acts of terrorism, or any other cause not within the reasonable control of the Design-Builder and occurring without its fault. Any delay caused by such a Force Majeure shall not be recognized unless Design-Builder notifies the Board in writing within ten working days after the occurrence of the Force Majeure event. Design-Builder shall use commercially reasonable efforts to remedy the effects of the Force Majeure with all due diligence. Neither economic impracticality nor the inability of the Design-Builder to perform in whole or in part for economic reasons shall be considered loss under this Article.

## **ARTICLE 28-PERFORMANCE BOND AND PAYMENT BOND AND CONTINUING OBLIGATIONS**

Design-Builder shall furnish a Performance Bond and Payment Bond written by a company licensed to do business in Louisiana with at least an "A-VIII" rating in the latest edition A.M. Best's Key Rating Guide in an amount equal to 100 percent of the contract amount. The Performance Bond and Payment Bond shall be in favor of the Board of Commissioners Port of New Orleans to insure prompt and proper performance of all of the objectives imposed on Design-Builder under the contract in an amount equal to the total amount of the contract, except as provided under La. R.S. 38:2216(C). The bond shall be cancelled and the Surety released only in accordance with the provisions of law and of this contract.

Under the bond and as a guarantee against faulty materials or workmanship and the negligence of Design-Builder, the responsibility of Design-Builder and Surety shall continue as provided by law after a certificate of completion of work has been issued by Board to the Design-Builder or after final acceptance when no certificate of completion is given. Consistent with its obligations arising under this Contract and the Public Works Act., La. R.S. 38:2211 et seq., Design-Builder shall, at its expense, remedy any and all defects which appear after issuance of certificate of completion (with respect to the particular portion of the work affected if certificate of completion was issued for that portion separately from the whole of the work) or after final acceptance as the case may be, and Design-Builder shall replace defective materials and equipment and shall pay for all damage to other work resulting therefrom. Board shall give notice to Design-Builder of any and all observed defects with reasonable promptness.

## **ARTICLE 29-CLAIMS BY DESIGN-BUILDER FOR ADJUSTMENTS; DISPUTES**

Should Design-Builder be of the opinion, at any time, that additional compensation is due him for work or materials not clearly covered in this contract or not previously ordered by Engineer as extra work, as defined herein, Design-Builder shall notify

Engineer in writing of his intention to make claim for such additional compensation before he begins the work on which he bases the claim. If such notification is not given and Engineer is not afforded proper facilities by Design-Builder for keeping strict account of actual cost as required, then Design-Builder shall thereby automatically forfeit his right to such additional compensation.

Such notice by Design-Builder and the fact that Engineer has kept account of the cost as aforesaid shall not in any way be construed as proving or substantiating the validity of the claim. If the claim, after consideration by Engineer, is found to be just, it will be paid for as extra work as stipulated in Article 40. Nothing in this Article shall be construed as establishing any claim contrary to the terms of Article 16.

Except as provided in this Article, should Design-Builder be of the opinion, at any time, that he has sustained damage or has incurred additional costs, for which he may be due compensation under this contract, he shall, within thirty (30) calendar days after sustaining, or after ascertaining the probable existence of, such damage, make a written statement to Engineer of the nature of the damage claimed. Engineer shall thereupon render a decision in the matter.

#### **ARTICLE 30-TEMPORARY CONSTRUCTION FACILITIES AND STORAGE AREAS**

Design-Builder shall provide such off-site, temporary construction facilities, materials storage areas, and parking areas for workers, as required for execution of the work, all at the Design-Builder's sole cost. The only riverfront Board-owned property on the east bank of the Mississippi River available to the Design-Builder is the project site.

#### **ARTICLE 31-ASSIGNMENT OF CONTRACT**

Design-Builder shall not assign this contract or subcontract it as a whole without the prior written consent of Board, and only when Engineer of Board determines that it would be to the advantage of the Board.

#### **ARTICLE 32-WORK BY BOARD UNDER SEPARATE CONTRACTS OR BY BOARD'S FORCES**

Wherever work being done by Board's forces or by other Board contractors is contiguous to work covered by this contract, the respective rights of the various interests involved shall be established by Engineer.

Design-Builder shall afford other Board contractors and Board's forces reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs for the demolition of the Henry Clay Avenue Terminal shed and the wharf's substructure repair projects which will be performed by others under separate contract.

If any part of Design-Builder's work depends for proper execution or results upon the work of any other party, Design-Builder shall inspect and promptly report to Engineer any and all defects in such work that render it unsuitable for such proper execution and results. His failure to inspect and report shall constitute an acceptance of the other party's work as fit and proper for the reception of his work except as to defects that may develop in the other party's work after the execution of his work.

### **ARTICLE 33-SUBCONTRACTORS**

The Design-Builder shall, as soon as practicable after the signing of the contract, notify Engineer in writing of the names of subcontractors proposed for the work. All construction sub-contractors performing work valued at \$50,000 or more shall be licensed in accordance with L.A. R.S. 37:2163.

Design-Builder shall be fully responsible to Board for the acts and omissions of his subcontractors and of persons either directly employed by them, as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the Contract Documents shall create any contractual relation between any subcontractor and Board.

### **ARTICLE 34- SURVEYS, ALIGNMENTS, BENCHMARKS**

The Design-Builder shall establish at the project site a base line with starting point thereon, and one or two bench marks, and shall be responsible for making, with his own surveyors, all other measurements required in laying-out and controlling his work.

Design-Builder shall carefully preserve bench marks, reference points and stakes, and in case of willful or careless destruction he shall be charged with the expense of restoring them, and Design-Builder shall be responsible for any and all mistakes that may be caused by their unnecessary loss or disturbance.

At his discretion, Engineer may check Design-Builder's work for proper alignment and grade at any time, but the making of such check or checks shall not be assumed either to establish a precedent requiring similar checking by Engineer at any other time, or to relieve Design-Builder from full responsibility for the correctness of his work.

### **ARTICLE 35-ENGINEER'S STATUS**

Engineer shall represent the Board in the execution of all work under the contract and may perform technical inspection of the work as, at his discretion, is necessary in the best interest of the Board. He has authority to stop the work whenever such stoppage may be necessary to insure the proper execution of this contract. He shall also have authority to reject all work and materials which do not conform to this contract. He shall verify and approve work for which Board will make payment to Design-Builder as listed in the Technical Proposal in the Schedule of Progress Checkpoints.

## **ARTICLE 36-ENGINEER'S DECISIONS**

Within a reasonable time after the Design-Builder presents a claim in writing to the Board, the Engineer shall make a decision. The Engineer shall render decisions on all matters relating to the execution and progress of the work and the interpretation of the Contract Documents, whenever such decisions are necessary for the proper conduct of the work. Should the Design-Builder disagree with the decision made by the Board's Manager of Construction, he shall request an Engineer's decision. Engineer's decision in all matters under his jurisdiction shall be accepted as final and conclusive, unless the Design-Builder makes an appeal for a review of the Engineer's decision.

## **ARTICLE 37-REVIEW OF ENGINEER'S DECISION**

Should Design-Builder object to any decision, other than as to technical engineering questions, rendered by Engineer, Design-Builder may appeal, in writing, to Board for a review of such decision. Within thirty (30) calendar days after receipt of such appeal, Board shall afford opportunity to Design-Builder to appear before it or before any committee or any senior executive designated by Board, for the purpose of a hearing on the objections previously submitted in writing. The decision of Board on such appeal shall be final and conclusive, subject however to Design-Builder's option to appeal any adverse decision to a court of competent jurisdiction as provided by applicable law.

## **ARTICLE 38-FINAL PROJECT SITE INSPECTION**

Design-Builder shall, after completion of the work, and prior to final inspection and acceptance by Board, remove and satisfactorily dispose of all temporary structures, false work, debris, tools, equipment and materials left over and not incorporated into the work. The project site shall always be left in a clean condition, with the work itself in a finished, complete and satisfactory state. Building floors, decks, paved areas and similar finished surfaces shall be left broom clean.

## **ARTICLE 39-PAYMENTS WITHHELD AND DEDUCTIONS**

Board may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate to such an extent as may be necessary to protect itself from loss on account of:

- (a) Defective work not remedied.
- (b) Claims filed against Design-Builder or reasonable evidence indicating probable filing of claims.
- (c) Failure of Design-Builder to make payments promptly to subcontractors or for material or labor. Design-Builder shall furnish full and satisfactory evidence, when called upon by Board, that all persons having done work

or furnished materials hereunder, and for which Board may be liable, or for which a lien has been or might be filed, shall have been paid or satisfactorily secured.

- (d) A reasonable doubt that the contract can be completed for the balance then unpaid.
- (e) Damage to another contractor.

When the above grounds are removed, payments shall be made for amounts withheld because of them.

If Engineer deems it inexpedient to correct work damaged or not done in accordance with the Contract Documents, an equitable deduction from the Contract Price shall be made therefore.

#### **ARTICLE 40-EXTRA WORK AND PAYMENT THEREFOR**

When Design-Builder is directed to perform work, including furnishing of materials as required, which is neither shown on the drawings nor reasonably implied elsewhere in the contract documents, and for which no price has been named in the agreement for work or materials of like character, such items shall be considered as extra work, and shall be performed by Design-Builder to the satisfaction of Engineer.

Extra payment will positively not be made for work indicated in the Contract Documents, or which can be predetermined from careful pre-proposal examination by Design-Builder, nor for miscellaneous and incidental materials and work required for repairs and replacements.

Payment for extra work, including materials, will not be allowed unless approved in advance, in writing, by Engineer.

Terms of payment for extra work will be the same as for work stipulated in the contract.

The value of all such extra work, or change, for which full payment is to be made, shall be determined through mutual agreement by one or more of the following methods:

- (a) By estimate and acceptance in a lump sum. The estimate shall be fully documented and itemized as to costs, including material quantities, material costs, taxes, insurance, employee benefits, other related costs, plus an allowance for profit and overhead on a percentage basis as hereinafter provided.
- (b) By actual cost, plus an allowance for overhead and profit on a percentage basis as hereinafter provided.

Method (b) will be used only when Method (a) is not practical or not in the best interest of Board. If method (b) is agreed on, Design-Builder shall keep an accurate account of his actual costs, as defined below, together with supporting invoices and payroll records, and shall present them in such form as Engineer may direct. Actual reimbursable costs for extra work shall include the incurred costs of actual labor and materials charges. Labor charges shall include actual payroll cost of labor, mechanics and foremen used on the extra work, together with those additional expenses directly based on payroll, such as workers' compensation insurance, social security, payroll taxes, welfare and other fringe benefits. No part of the time of supervisory, engineering, clerical or general utility employees, nor of executive personnel, not previously and regularly assigned to the project, shall be included in the payroll charges for extra work unless their employment is used solely on the extra work and is authorized in advance, in writing, by Engineer. Cost of materials shall include actual net invoice amounts, after allowance for trade discounts, together with other incidental costs such as freight and transportation charges, sales and use taxes. Cost of all manual hand tools together with mechanically, electrically or pneumatically operated hand tools with manufacturer's power rating not exceeding two (2) horsepower will be considered as part of the charge included in the provision for overhead. All hand tools in excess of two (2) horsepower rating will be paid for at rental rates not in excess of those current and prevailing in the New Orleans area.

Large construction equipment shall be paid for during time when used exclusively on extra work and at rental rates not in excess of those shown in the "Compilation of Rental Rates for Construction Equipment," latest revision, prepared by Associated Equipment Distributors, 30 East Cedar Street, Chicago Illinois, and subject to approval by Engineer. In the absence of a listing of such equipment in the foregoing publication, charges for such unlisted equipment shall be agreed upon in advance and confirmed in writing by Engineer. The rental rates shall be the lowest applicable to the period during which they are in use. Taxes, if any, applicable to rental shall be added. The foregoing charges shall be understood to include all overhead and profit on such large equipment. If such large equipment is transported to and from the job site solely for the extra work, usual charges, if any, as approved as aforesaid, shall be added for handling to and from said job site. Fuel and lubricants furnished by Design-Builder and used in operations solely for extra work shall be added to the foregoing at actual delivered prices paid for them.

The wages of operators for large equipment for periods of extra work shall be carried in the labor payroll for such work and excluded from the rentals of equipment. All rental equipment shall be in first class condition when delivered to site. No payment will be made for equipment repairs and operators' time during periods of repair caused by the following:

- (1) Normal wear and tear.
- (2) The furnishing of defective or inadequate equipment.
- (3) Lack of or improper servicing of equipment.
- (4) Improper operation of equipment.

When extra work is required and is compensated for under any of the above methods which is normally performed by a subcontractor, and no capable subcontractor is already on the project, Design-Builder shall secure competitive bids and shall award the work to the lowest responsible bidder, all subject to the approval of Engineer. If a qualified subcontractor is already employed on the project, that subcontractor shall perform any such extra work required, subject to the terms and conditions of this document, and shall keep such records of labor, material and equipment charges as shall be required.

In order to adequately reimburse Design-Builder, together with subcontractors if any, for overhead and profit on the extra work as herein above defined, the following percentages will be utilized as full compensation for all general office, construction office and plant overhead, and profit:

- (a) On Design-Builder's aggregate cost of labor and materials, when no subcontractor is involved, a single twenty percent (20%) allowance for both overhead and profit.
- (b) On each subcontractor's aggregate cost for labor and materials, a single fifteen percent (15%) allowance for both overhead and profit for subcontractor, in addition to a single eight percent (8%), allowance for both overhead and profit for Design-Builder. The Design-Builder's eight percent (8%) shall be computed on the subcontractor's cost after the subcontractor's fifteen percent (15%) has been added.

No verbal order or suggestion given by an employee of Board shall be construed as authorizing or being the basis for any claim on the part of Design-Builder for extra compensation, either for extra work, materials or equipment, or for damages because of Design-Builder's compliance therewith. Extra work will constitute the basis for additional compensation to Design-Builder only when such work is duly authorized. In case of dispute as to what does or does not constitute extra work, a decision will be made by Engineer.

#### **ARTICLE 41-ENGINEER'S CERTIFICATES, PAYMENTS, AND ACCEPTANCE**

Unless otherwise provided for, payments shall be made only on amounts certified by Engineer as being due under the terms of the contract, from which, however, Board may make deductions of such amounts as may be required to protect it from claims.

The issuance of any payment certificate by Engineer or the payment of any moneys to Design-Builder, whether due under the contract or not, shall not be considered or construed as an acceptance by Board of the work either in whole or in part, and the said work shall remain at the sole risk of Design-Builder until it is finally completed and accepted in accordance with these contract documents.

Neither Design-Builder nor Surety shall be released from the whole or any part of the obligations herein assumed by reason of any change in the amount, nature, scope, character or extent of the work, or in any plan or specification, or in the mode or time of payment, or by any extension of time or indulgence granted to Design-Builder, even though any or all of said acts be without the knowledge and consent of Design-Builder or Surety, unless such release be expressly made in writing by Board.

Payments will be made on or about the first of each month, and final payment will be made as provided for herein. In his submission of the Technical Proposal the Design-Builder submitted a Proposal Periodic Payment Schedule indicating estimated planned cumulative payments for each month of the Contract Time and a Schedule of Progress Checkpoints, which shall serve as a basis for monthly payments. On or about the first of each month, Engineer will estimate the amount of work performed and payment will be made in the amount of ninety-five percent (95%) of the value of work in place and acceptably completed since the last estimate.

When parts of the work are turned over to the Board for permanent use prior to completion of the contract as a whole, pursuant to Article 23, upon written request of the Design-Builder, the Board may pay all or part of the retained amount, with respect to such portions of the work for which certificate of completions have been given, the amount of such payment to be determined by Engineer; provided that the Design-Builder shall submit to Engineer acceptable evidence that all invoices for materials and all payments due to subcontractors have been paid up to that time.

## **ARTICLE 42-SUBSTANTIAL COMPLETION**

Upon due notice from Design-Builder of presumptive completion of the entire project, or a specified portion of the project, Engineer will make an inspection. If all construction provided for and contemplated by this contract is found to be substantially complete to his satisfaction, Engineer shall issue a certificate of substantial completion.

"Substantial completion" is defined as the construction being sufficiently complete in accordance with the Contract Documents, so that the project or a specified portion of the project can be utilized for the purposes for which it was intended). Should this inspection disclose items that are not complete or which require corrections, Engineer shall prepare a list of these items and the estimated cost of completion of the items, which shall be attached to the certificate of substantial completion. These items must be completed within the time specified in the certificate of substantial completion. After

these items are completed, another inspection will be made. If necessary additional inspections will be made until all items are complete to the satisfaction of the Engineer.

Within fourteen (14) days of the date of substantial completion the Board will issue a formal notice of acceptance of completed contract prepared by the Board for the Design-Builder to record with the Orleans Parish Recorder of Mortgages. Not less than forty-five (45) days after the recondition of this notice of acceptance of completed contract, the Design-Builder shall furnish to the Engineer a clear lien and privilege certificate issued by the said Recorder of Mortgages certifying that there are no outstanding claims or liens recorded against this project. Upon receipt of the clear lien and privilege certificate and an invoice marked "final" from the Design-Builder for the entire balance due including retainage, all prior certificates or estimates upon which payments have been made being approximate only and subject to correction on the final payment, the Design-Builder shall be paid in full after Engineer is satisfied all quantities shown on final estimate are correct.

It is expressly stipulated and understood that payment of the full contract amount shall not operate to release Design-Builder or his Surety from liability for any and all fraud in construction, or in obtaining progress payments, or in payment for materials, labor or other supplies or services incidental to the work, or for any and all claims for damages, loss or injury sustained by any person or persons whomsoever, through the fault, negligence or conduct of said Design-Builder, his employees, agents or subcontractors.

On projects in which parts of the work are turned over to Board for permanent use prior to completion of the contract as a whole, upon written request of Design-Builder Board may pay all or part of the retained amount, with respect to such portions of the work for which certificate of completion has been given, the amount of such payment to be determined by Engineer; provided that Design-Builder shall submit to Engineer acceptable evidence that all invoices for materials and all payments due subcontractors have been paid up to that time.

## **ARTICLE 43-INSURANCE REQUIREMENTS**

Before this contract can be executed and become effective, the Design-Builder shall furnish to the Board's risk manager original, manually signed certificates evidencing that it has procured the insurance herein required. Current insurance certificates must be provided for the coverages required herein during the entire term of this agreement. The Design-Builder shall furnish originals of all required insurance policies to the Board and New Orleans Public Belt Railroad before commencing any work.

All insurance shall be written with insurance companies authorized and licensed to do business in the State of Louisiana and acceptable to the Board (Best's rating A-, VI, or better). Self-insurance programs authorized by the Commissioner of Insurance of the State of Louisiana for workers' compensation insurance are acceptable with the submission of a notarized copy of the Design-Builder's authority to self insure.

All insurance required herein shall be primary to any similar insurance that may be carried by the Board for its own protection.

Except for the workers' compensation insurance and the professional liability insurance, the Board shall be named as an additional insured on all policies required herein.

All insurance policies required herein, as well as any other insurance carried by the Design-Builder for its protection or the protection of its property on the contract, shall provide that the insurers waive any rights of subrogation in favor of the Board.

All policies required herein shall provide for thirty (30) calendar days written notice of cancellation or material change to be sent to the Board at P.O. Box 60046, New Orleans, LA 70160, Attention: Risk Manager. For additional information contact the Board's Risk Manager at (504) 528-3273.

All insurance policies herein required shall remain in full force and effect for the duration of the contract. If any insurance required herein is canceled or materially changed and not immediately replaced during the term of this contract the Board reserves the right to purchase insurance at the expense of the Design-Builder to protect the Board's interest. The furnishing of insurance shall not relieve the Design-Builder of the responsibility for losses not covered by insurance.

The Board makes no representation or warranty that the insurance set forth in this Section will be sufficient to protect the Design-Builder's interests.

The Design-Builder shall be responsible for the full amount of any deductible associated with any of the insurance policies required herein.

A combination of primary and excess insurance may be used to satisfy the insurance requirements.

The insurance requirements are as follows:

**Comprehensive General Liability Insurance** - Design-Builder shall procure and maintain at Design-Builder's sole cost and expense comprehensive general liability insurance (**on an occurrence basis**) with limit of liability of not less than ten million dollars (\$10,000,000) for all injuries or deaths resulting to any one person or from any one occurrence. The aggregate limit for products and completed operations shall be not less than ten million dollars (\$10,000,000). The limit of liability for property damage shall be not less than ten million dollars (\$1,000,000) for each occurrence and aggregate. Coverage under such insurance shall also include damage hazards. This insurance shall include coverage for explosion, collapse and underground property damage hazards, completed operations and abroad form contractual endorsement. Where Design-Builder's operations include the use of water craft, the water craft exclusion in the comprehensive general liability policy shall be eliminated. A combination of primary and excess liability insurance may be used to satisfy the

conditions of this paragraph.

**Comprehensive Motor Vehicle Liability Insurance** - Design-Builder shall procure and maintain at Design-Builder's sole cost and expense comprehensive motor vehicle liability insurance which shall include hired car and non-ownership coverage with limit of liability of not less than one million dollars (\$1,000,000) for all injuries or deaths resulting to any one person or from any one occurrence. The limit of liability for property damage shall be not less than one million dollars (\$1,000,000) for each occurrence and aggregate.

**Workers' Compensation Insurance** - Design-Builder shall procure and maintain at Design-Builder's sole cost and expense workers' compensation insurance which will protect Design-Builder from claims under the Louisiana Workers' Compensation Act (LSA 23:1021, et. seq.). If Design-Builder's employees qualify for compensation benefits under the provisions of the federal Longshoremen's and Harbor Workers' Compensation Act (33 USC 901, et. seq.), Design-Builder shall also procure and maintain insurance which will protect Design-Builder from claims under the LHWCA. The limits of liability under the employer's liability section of the workers' compensation policy, as well as both compensation schemes, shall be not less than one million dollars (\$1,000,000). If Design-Builder's employees qualify for compensation benefits for injury or death under the provisions of the Jones Act (46 USC 688, et. seq.) and under the general maritime law, Design-Builder shall also procure and maintain insurance to cover such claims with a limit of not less than one million dollars (\$1,000,000).

**Builder's Risk** - Design-Builder shall procure and maintain at Design-Builder's sole cost and expense builder's risk insurance that shall be the all risks type and shall protect Design-Builder and Board against all risks of damage to structures, materials, equipment, and buildings, excluding damages due to flood and earthquake. The amount of such insurance shall be not less than the value of the work at completion. Such insurance shall be issued subject to a deductible not to exceed ten thousand dollars (\$10,000.00) that will be for the account of the Design-Builder. Builder's risk insurance shall provide for losses to be payable to Design-Builder and Board. The Board shall be named as co-loss payee. The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against Design-Builder and the Board.

**Professional Design Liability Insurance** – The Design-Builder shall procure and maintain errors and omissions / professional liability insurance for design of the project in the amount of either a project policy for two million dollars (\$2,000,000) or a practice policy for ten million dollars (\$10,000,000). The insurance shall be in full force and effect for a period of three years after substantial completion of the construction phase of the project. Such insurance shall be issued subject to a deductible not to exceed ten thousand dollars (\$10,000.00) that will be for the account of the Design-Builder.

**Railroad Insurance-** The Design-Builder shall carry railroad protective liability insurance with combined single limit for bodily injury liability, and physical damage to

property of two million dollars (\$2,000,000) per occurrence and an aggregate limit of six million dollars (\$6,000,000) for the term of the policy naming the New Orleans Public Belt Railroad as the insured. The standards for Railroad Protective Liability Insurance shall be in accordance with provisions of "Federal Aid Policy Guide (FHPG) part 646" as amended.

#### **ARTICLE 44-COORDINATION OF WORK**

It is the responsibility of the Design-Builder to coordinate his work to minimize the inconvenience to the Board's operations. Design-Builder shall coordinate work with the Board, Board's adjacent terminal operator at the Nashville Avenue Terminal, and other nearby Board tenants, and shall schedule and conduct his operations in such a manner as to cause the least possible inconvenience in order to conduct their operations without interruption throughout the contract period.

Design-Builder shall confine his operations to within the project site limits as indicated in the Contract Documents and he shall conduct his operations to perform the work so as to reduce disruption of port operations, other construction operations, and rail, and port-related truck traffic in the vicinity of the project site.

The Design-Builder shall install, maintain and remove all construction equipment and auxiliary devices, and shall be responsible for the safe, proper, and lawful maintenance of same. The Design-Builder will be held responsible for any loss of materials on the site or incorporated in the project site including vandalism, theft and malicious mischief, fire, or weather related events. Any losses involved, damages, etc. occurring shall be replaced or restitution made agreeable to the Board, as the case may be, at no cost to the Board, until completion and acceptance of the work.

The Construction Industry, OSHA Safety and Health Standards (29) CFR 1926/1920), U.S. Department of Labor, Occupational Safety and Health Administration Revised 1987 publication OSHA 2207 are contract requirements for the construction and occupancy of the completed facility by the Board's tenant.

#### **ARTICLE 45-SUBMITTALS AND SHOP DRAWINGS**

The requirements of this Article are the Board's standard procedures for submittal and shop drawing review. However, if an alternate process is offered in writing by the Design-Builder and agreeable to the Engineer, then the requirements of this Article, either partially or in its entirety, may be substituted with the Design-Builder's alternative process for submittal and shop drawing review.

Whenever work is to be fabricated and/or machined specifically for this contract, the Design-Builder shall submit to its design professional of record for approval, and then to the Engineer, for review, final shop and erection drawings, manufacturer's drawings, catalogue cuts and/or literature covering products (equipment, fixtures, devices, etc.) to be furnished or for items of work for which submittals are required in the technical

specifications, all as soon as possible. These are to be delivered to the Board of Commissioners of the Port of New Orleans, Engineering Dept., 1350 Port of New Orleans Place, P.O. Box 60046, New Orleans, Louisiana 70160, Attention: Engineering Department. The checking and approval as to overall conformity with the Contract Document will not be considered to waive any of the provisions of these Contract Documents and shall not release the Design-Builder from responsibility for the corrections of his submittals nor for errors in details which may interfere with erection. All submittals transmitted for approval shall be in strict conformity thereto as provided for under "Request for Alterations or Substitutions." Prior to transmittal, all submittals must be thoroughly checked by Design-Builder to insure this conformity. In addition, the Design-Builder must be certain that any equipment he proposes to furnish and/or install will fit and functionally operate within the facility he designs within the designated available space on the project site. Each submittal shall have Design-Builder's signed statement that the above requirements have been met and that he approves it for submission, such as "Reviewed and Approved by xxx."

Whenever required in the refrigeration technical specifications of the Contract Documents, the originator of the shop drawings or data shall certify compliance with the Contract Documents except for deviations specifically identified as a variation and noted clearly on the submittal.

If the Design-Builder fails to comply with the requirements, the Engineer will not review the submittal and it will be returned stamped "NOT ACCEPTED FOR REVIEW."

Submittals not required by the Contract Documents will not be reviewed and will be returned stamped "NOT APPLICABLE."

Such submittals, properly checked before submission, shall be delivered to the Board in a timely manner to allow review by the Engineer prior to ordering or fabrication. These submittals are to be requested within the time stated in Subsection c-2 and will be reviewed by the Board within fourteen (14) calendar days, not including Board holidays, after receipt. After Board's review the Design-Builder shall pick up submittals from the Board. Submittal and checking time is included in total time for completion of work.

Submittals/shop drawings reviewed by the Engineer shall be returned stamped with one of the following:

**CONFORMS WITH CONCEPT**

The Engineer's review found no objectionable deviations and it conforms with the design concept.

**CONFORMS WITH CONCEPT AS NOTED**

The Engineer's review found no major deviations from the contract requirements. Minor discrepancies or deficiencies were noted onto the drawing or submittal. Corrected copies are not required for re-submittal,

however the item is to be furnished in accordance with the Engineer's notes. If the Design-Builder, supplier, or manufacturer takes exception to any of the Engineer's comments, then corrected or supplemental data is to be re-submitted.

## REVISE AND RESUBMIT

The Engineer found major discrepancies or deficiencies such that the submittal/shop drawing must be corrected to comply with the Contract Documents and re-submitted.

## NOT ACCEPTED

It is the Engineer's opinion that the item submitted does not meet the Contract Document requirements. The correct data must be re-submitted.

The Engineer's review is to determine if the shop drawing, catalog brochure, letter, etc., conforms to the design concept and the requirements of the Contract Documents. Design concept relates to the final, in-place installation of material and equipment as part of a functioning whole project as required by the Contract Documents.

Time lost because of submission by Design-Builder of incorrect or incomplete submittals will not be cause for extension of specified contract period.

The Design-Builder shall follow up requests for approval, if not acknowledged within the time designated above, to avoid loss of submittals in mail or in handling.

The Design-Builder shall furnish at least six (6) complete sets of check prints plus the number of additional copies over two (2) required for return to Design-Builder; four (4) of these copies will be retained for use by the Board and the others returned. The Design-Builder shall furnish, for Board use, four (4) sets of prints of all final drawings, plus one or more sets of prints for return to Design-Builder after approval.

The Design-Builder, at his option, may elect to submit one (1) reproducible drawing and two (2) check prints, in which case, one (1) marked-up reproducible will be returned to the Design-Builder for his duplication.

Where manufacturer's drawings or catalogue cuts are required, the quantities required shall be the same as above. Two (2) of these **MUST BE PRINTED ORIGINALS** which will be kept by the Board for its records. Those submittals which do not contain two (2) originals will not be accepted.

All catalogue cuts, brochures or other literature submitted shall be manufacturer's latest issue in current use.

All information on all submittals must be clearly legible. Those submittals which are not clearly legible will not be accepted. For refrigeration equipment, any variations from the

Contract Documents made by the supplier, manufacturer or Design-Builder shall be clearly identified.

As far as practical, drawings shall be submitted in installments as to avoid any unnecessary concentration of checking by Board.

When submission of manufacturer's catalogue cuts or brochures is required to described items of equipment to be furnished by Design-Builder, each brochure shall include manufacturer's name, catalogue number and dimensions, and shall indicate all modifications to standard equipment. Each piece of literature shall be clearly marked to indicate the specific type or catalogue number of the item to be supplied, and the location and application for which it is intended, for example: "limit switch No. 000XYZ, upper travel limit for overhead rolling door, Bay No. 42." All such submittals shall bear the title of the project, in the case of shop and erection drawings, each shall additionally bear an appropriate drawing number.

If the submittal data is bound in a folder, the outside of the folder shall be clearly marked with the name of the job, otherwise each individual sheet must carry this identification.

Each submittal package presented for review must be accompanied by an itemized list of all items submitted.

All manufacturers' literature as well as Design-Builder's shop and erection drawings, as above specified, which are submitted without proper marking and identification, will not be reviewed by the Board, but will be returned for proper marking as required.

Whenever Design-Builder's drawings and/or catalogue cuts are returned to him marked other than "Conforms with Concept" or "Conforms with Concept As Noted," he shall correct these documents and resubmit for final review and distribution. No product shall be purchased or work fabricated until final corrected submittals, shop drawings and/or catalogue cuts are reviewed by Board and returned to Design-Builder marked "Conforms with Concept" or "Conforms with Concept as Noted."

Within ten (10) days after substantial completion of the work, the Design-Builder shall furnish the Board, at Design-Builder's expense, one complete set of vellum reproducible of all final shop and erection drawings. Vellum shall be of quality acceptable to Board. No part of the retainage due Design-Builder will be paid until all such vellum reproducible have been furnished, and accepted by the Board.

At the time the construction schedule is submitted, a schedule shall be submitted of the items of materials and equipment for which submittals are required by the specifications.

For each required submittal, the date shall be given for intended submission of the submittal to Engineer for review and the date required for its return to avoid delay in any activity beyond the scheduled start date. Sufficient time shall be allowed for initial

review, correction and resubmission, and final review of all submittals. In no case will a schedule be acceptable which allows less than fourteen (14) calendar days, not including Board holidays, for each review by Engineer.

#### **ARTICLE 46-MAINTENANCE AND OPERATION MANUALS AND AS-BUILT DRAWINGS**

Within ten (10) days after substantial completion, the Design-Builder shall submit two copies of all maintenance and/or operation manuals, installation drawings, instructions, calibration manuals and assembly instructions received or used for this contract.

The Design-Builder shall be responsible for keeping accurate records and up to date design files, surveys, and “as-built” drawings. These “as-built” drawings shall be available for viewing on the site at all times and shall be reviewed by the Engineer at the monthly progress meetings.

Final “as-built” drawings shall be approved by the Engineer. Final payment shall not be issued until all “as-built” drawings are completely submitted and approved by the Engineer.

#### **ARTICLE 47- MATERIAL TESTING AND QUALITY CONTROL**

The Design-Builder is responsible for all material testing and quality control. The Design-Builder shall follow the design approach, the materials and methods of construction, and the construction techniques and sequencing stated in its Technical Proposal. Board reserves the right to conduct its own tests of any materials. These tests will be performed at the direction and under the general supervision of the Engineer. If such tests by the Board indicate a quality control issue, then the cost of the tests shall be at the Design-Builder’s expense and will be deducted from amounts due the Design-Builder. The Board will assume the costs of tests ordered by the Engineer on materials found to meet the project’s requirements. The Design-Builder is obligated without extra cost to Board, to render all reasonable assistance needed at his plant or shop or at job site in connection with any Board sampling and testing of construction materials or products.

#### **ARTICLE 48-CONSTRUCTION PROGRAM, PROGRESS REPORTS AND MEETINGS**

The Design-Builder shall submit regular progress reports to the Board. A progress report shall be submitted for each calendar month or other suitable period as may be mutually agreed upon by the Engineer and Design-Builder. The Design-Builder shall track actual progress attained during the period and submit to the Engineer within five (5) working days following the end of the period covered. Progress shall be indicated as a percentage completed for each phase of design and construction as indicated in the Technical Proposal submitted by the Design-Builder, plus an overall percentage completed for the entire project. Should the design and/or construction program be delayed, the Engineer shall require a revised schedule, and same shall be provided

within fifteen (15) consecutive calendar days after date of Board's request, by Design-Builder and at Design-Builder's expense. Should the Design-Builder fail to submit a revised design and/or construction schedule within the time herein prescribed the Board shall have the right to order all work on the project to cease until such time as an acceptable schedule is furnished, and without any extension of the Contract Time for time so lost. Failure to submit a progress report within the time herein prescribed will be cause for the Board to withhold approval of progress payment until such time as Design-Builder submits the required progress report.

The Design-Builder shall schedule and hold regular progress meetings at least monthly and at other times as requested by Engineer or required by progress of the work at the project site. Design-Builder's Project Manager and the Board's Engineer, and all subcontractors active on the site shall be represented at each meeting. Design-Builder may at his discretion request attendance by representatives of his suppliers, manufacturers, and other subcontractors, and Engineer may at his discretion request attendance by additional Board staff or Board consultants working directly for the Board, as well as representatives of Board's cold storage terminal operator.

Design-Builder shall preside at the meetings and provide for keeping and distribution of the minutes. The purpose of the meetings will be to review the progress of the work, maintain coordination of efforts, discuss changes in scheduling, submittal data, anticipated work, pay requests, etc. and resolve other problems which may develop.

#### **ARTICLE 49-CONTRACT TIME**

Contract Time, as indicated in the Design-Builder's Technical Proposal, will not be extended because of inclement weather ordinarily liable to occur during the contract period, or regularly established holidays, whether set by law or labor rules. Forces employed and rate of progress must be sufficient for the work as scheduled, and to compensate for usual non-working hours. If work lags, sufficiently increased forces and hours shall be used to maintain the schedule.

Time will not be extended due to high river stages ordinarily liable to occur during the Contract Time. Design-Builder shall schedule his work taking into account the varying stages of the Mississippi River and the following stipulations that prohibit certain activities based on actual river stages.

Pile driving and deep excavations shall be discontinued when the river is at El. 11.0 feet N.G.V.D. or greater at the Corps of Engineers New Orleans District's Carrollton Gage, New Orleans, Louisiana. The Design-Builder may, at that time, request the Board to seek a waiver from the Orleans Levee District so that pile driving and deep excavations can resume for river stages between El. 11.0 and El. 14.9 feet N.G.V.D. In the event the Board successfully obtains a waiver of this restriction from the Orleans Levee District, the Design-Builder shall be so notified. Pile driving is strictly prohibited and no waivers will be issued for river stages of El. 15.0 feet N.G.V.D. or higher at the Carrollton Gage in New Orleans. Design-Builder shall monitor actual and predicted

river stages as provided by the U.S. Army Corps of Engineers, New Orleans District website. Hydrographs are available for review at <http://www.mvn.usace.army.mil/cgi-bin/watercontrol.pl?01300>.

Throughout the progress of the job, Design-Builder shall provide sufficient materials, labor, tools and equipment needed to carry on the various types of work required in proper sequence and in an orderly and efficient manner to complete all items of work as promptly and satisfactorily as possible.

The Board has established the following time to be lost "because of inclement weather ordinarily liable to occur during the contract period":

January	4 work days
February	4 work days
March	4 work days
April	2 work days
May	2 work days
June	2 work days
July	2 work days
August	2 work days
September	0 work days
October	0 work days
November	2 work days
December	<u>2 work days</u>
TOTAL	26 work days

Time extensions will be granted when inclement weather, as defined herein, prevents the Design-Builder from performing work (critical to the construction schedule at the time the adverse condition occurs) for more than the number of work days stipulated above.

The Design-Builder shall coordinate time and location of deliveries of material and equipment to the project site with the Engineer. The Design-Builder shall have his own representative receive all deliveries. The Design-Builder shall be fully responsible for all items delivered to the project site and shall provide, at his expense, all necessary protection and security for same.

#### **ARTICLE 50-USE OF CONSTRUCTION SITE**

In using the project site, the Design-Builder shall not interfere with or interrupt the operations of the Board and its tenants and terminal operators, except as herein stipulated or as may be necessary and only by previous arrangement with the Engineer.

In his use of the construction site described above, the Design-Builder will be responsible for the safety of his own equipment with reference to all hazards. All

personnel who enter Port terminals in areas with cargo or construction activities will be denied access into restricted terminal areas if personal protective equipment is not worn outside of vehicles. Refer to Article 65 regarding access to the project site via the Nashville Avenue Terminal.

The Design-Builder shall confine his construction operation and shall use due care in placing construction tools, equipment, construction materials and supplies, so as to cause no damage to Board property which is to remain, such as the Henry Clay Avenue Wharf and the Mississippi River Levee. No materials may be stored in excess of the design live load limits shown on the Contract Documents. No materials shall be stored on other Board property without a written agreement with the Board.

Design-Builder shall make his own arrangements for receiving his materials and shall assume full responsibility for security of all items stored at the project site, including equipment and tools. Design-Builder shall adhere to the security and access requirements stipulated in Articles 57 and 65 for access to the project site via the Nashville Avenue Terminal entrance of Ports America Louisiana, LLC.

The Design-Builder is also expected to observe and to be cognizant of the existing conditions of Mississippi River, the New Orleans climate, and the soil at the project site, and how these conditions can change during the Contract Time due to a seasonal change, and how construction operations and conditions could be affected.

The Design-Builder shall observe all rules and regulations of the Orleans Levee District and of the federal government in regard to performing work at his location, particularly those of the U.S. Department of Homeland Security, the U.S. Coast Guard, and U.S. Army Corps of Engineers. Refer to the Request for Technical Proposals, Section II, Subsection "Codes", issued in Addendum No. 3 regarding permits.

The Design-Builder shall also observe all rules and regulations applicable to railroad, highway and navigation operations, and shall keep the railroad tracks, roads, and river channel clear of all obstructions from his construction operations.

The physical extension of all utilities, including electric power facilities and piping from present service locations to points of temporary consumption during construction, the removal of any and all additions or extensions so made, and restoration to its previous condition of any and all services into which a tie-in was made, shall be made by Design-Builder at his expense. Design-Builder shall make his own arrangements for such services. He shall be fully responsible for all utility costs. Refer to Article 60.

Damage done to structures or equipment of the Board or others shall be repaired by the Design-Builder at his cost, to the satisfaction of the Engineer.

Smoking and operations creating a fire or explosion hazard are prohibited, except in areas where specifically allowed, and only if adequate precautions, approved in advance by the Engineer, are taken.

Welding and burning on the project site will be permitted only under controlled conditions approved in advance by the Engineer. When required, non-combustible shields and manned fire hoses with water instantly available shall be provided. Design-Builder shall obtain a welding and burning permit from the U.S. Coast Guard and Harbor Police.

## **ARTICLE 51-WORK ON OR NEAR NEW ORLEANS PUBLIC BELT RAILROAD TRACKS**

The scope of work of this project involves construction adjacent to active New Orleans Public Belt Railroad (NOPBRR) tracks as indicated on the Contract Documents.

In the event the Design-Builder requires a crossing of NOPBRR's right-of-way and tracks at other than a public crossing and outside the project site limits of this contract with its machinery or equipment incident to the contract, the Design-Builder shall first enter into an agreement satisfactory to the NOPBRR setting forth the terms and conditions with respect to the establishment, use, and removal of such crossing. Contact the NOPBRR at (504) 896-7420 for questions, comments, insurance, requirements, and coordination for any encroachment adjacent to NOPBRR tracks, yards or other properties.

Should the Design-Builder cause any materials, earth, mud, rocks and other debris to fall on active NOPBRR tracks, he shall clear it immediately. Any silting of track adjacent to Design-Builder's work areas which is caused by sand or other material blowing or draining into active tracks shall be hosed and/or swept clean by the Design-Builder before the end of the day at no cost to the Board or the railroad.

If the NOPBRR deems its tracks are unsafe due to construction debris and equipment unnecessarily on or adjacent to railroad tracks, then it will require watchmen or flagging services by railroad personnel and for the account of the Design-Builder. This cost is approximately \$318.00/ day per man or \$39.75/hour per man. The Design-Builder shall pay the NOPBRR directly for watchmen or flagmen at its sole cost.

The Design-Builder shall keep all equipment, tools and materials stored at least ten (10) feet from the center line of any active track.

Any cost for damage to NOPBRR track and/or delays in service caused by the Design-Builder shall be at the sole expense of the Design-Builder.

The Design-Builder shall perform all work adjacent to the railroad in accordance with the requirements of the Contract Documents. During the progress of such work, the Design-Builder shall maintain liaison with the NOPBRR's representatives as may be designated by the NOPBRR.

The Design-Builder shall send a copy of the most current project schedule to NOPBRR at least one (1) week in advance of mobilizing to the project site. Schedules should be sent to:

New Orleans Public Belt Railroad  
Mr. Robert Kollmar  
Chief Engineering Officer  
4822 Tchoupitoulas Street  
New Orleans, LA 70115  
504-896-7420

It is essential that any temporary loss of track service be minimized and approved in advance by the NOPBRR and the Engineer.

As the work proceeds the Design-Builder shall be required to advise the NOOBRR verbally at least two (2) days in advance of any work near the railroad tracks and the day after completing all work near the railroad tracks.

The Design-Builder will be required to have railroad flagmen (lookouts) whenever work will be within four (4) feet of the nearest NOPBRR rail and abide by NOPBRR's work on track, railway worker protection rule as per FRA requirements.

The Design-Builder shall perform all work adjacent to the railroad so as not to interrupt or delay the operation of trains over the tracks in use, or upon said premises except under arrangements between the Design-Builder and the NOPBRR. During the progress of such work, the Design-Builder shall maintain liaison with the NOPBRR representatives as may be designated by the NOPBRR so as to ascertain the time of passage of trains at the site of the work, and to clear the railroad tracks and facilities of men, equipment and obstructions to permit free flow of railroad traffic.

## **ARTICLE 52-ENVIRONMENTAL COMPLIANCE**

The work covered by this Article consists of furnishing all labor, materials and equipment and performing all work required for the prevention of environmental pollution during as the result of construction operations under this contract. For the purpose of this contract, environmental pollution is defined as the presence of chemical, physical, or biological elements or agents which adversely affect human health or welfare; unfavorably alter ecological balances or importance to human life; affect other species of importance to man; or degrade the utility of the environment for esthetic and recreational purposes. The control of environmental pollution requires consideration of air, water, and land, and involves noise, solid waste-management and management of radiant energy and radioactive materials, as well as other pollutants.

The Design-Builder shall establish and maintain quality control for environmental protection to assure compliance with contract specifications and applicable environmental regulations.

In order to prevent, and to provide for abatement and control of any environmental pollution arising from construction and/or demolition activities in the performance of this

contract, the Design-Builder and his subcontractors shall comply with all applicable Federal, State, and Local laws, and regulations concerning environmental pollution control and abatement.

Design-Builder shall be in compliance with all applicable Federal, State, and Local environmental laws. Industrial discharge permits if any are required, shall be obtained by the Design-Builder from the Louisiana Department of Environmental Quality (LDEQ) and/or U. S. Environmental Protection Agency (EPA). Design-Builder shall file for any permits which may be required regarding National Pollutant Discharge Elimination System. The Clean Water Act requires industrial and construction activities to obtain a National Pollutant Discharge Elimination System (NPDES) permit. Included as part of this permit's requirements is a storm water pollution prevention plan. This plan must accompany the permit application for construction and/or demolition activities. It is the Design-Builder's responsibility to obtain these required permits if they apply to this construction and/or demolition project and store these documents on site, as well as comply with all requirements of the storm water pollution prevention plan.

Further information and the complete final rule of the Clean Water Act NPDES Program concerning construction and/or demolition activities can be found in the following locations: September 9, 1992 issue of the Federal Register or at the following website: <http://www.deq.state.la.us/permits/lpdes/pldesgenpermits.htm>

The Engineer will notify the Design-Builder in writing of any non-compliance with the foregoing provisions and the action to be taken. The Design-Builder shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Design-Builder or his authorized representative at the site of the work, shall be deemed sufficient for the purpose. If the Design-Builder fails or refuses to comply promptly, the Engineer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of time lost due to any such stop order shall be made the subject of a claim for extension of time or for excess costs or damages by the Design-Builder. Any fines/penalties that are levied against the Design-Builder or any subcontractor as a result of failure to comply with the applicable federal, state or local laws regarding environmental pollution control and abatement shall be the responsibility of the Design-Builder and/or applicable subcontractor.

Compliance with the provisions of the section by subcontractors will be the responsibility of the Design-Builder.

The land resources outside the limits of the project site work performed under this contract shall be preserved in their present condition or be restored to a condition after completion of construction that will not detract from the appearance of the project. The Design-Builder shall confine his construction activities to project site.

The Design-Builder shall obliterate all signs of temporary construction and stockpiles of excess or waste materials upon completion of construction.

All items having any apparent historical or archeological interest that are discovered in the course of any construction activities shall be carefully preserved. The Design-Builder shall leave the archeological find undisturbed and shall immediately report the find to the Engineer so that the proper authorities may be notified.

The Design-Builder shall not pollute lakes, ditches, rivers, bayous, canals, waterways, ground water, or reservoirs with fuels, oils, bitumens, calcium chloride, insecticides, herbicides, or other similar materials harmful to fish, shellfish, or wildlife, or materials

which may be detrimental to outdoor recreation.

The methods and locations of disposal of materials, wastes, effluents, trash, garbage, oil, grease, chemicals, etc., shall be such that harmful debris will not enter lakes, ditches, rivers, bayous, canals, waterways, or reservoirs by erosion, and thus prevent the use of the area for recreation or present a hazard to wildlife. Storage and disposal methods should be in accordance with applicable Federal, State and Local regulation.

All debris resulting from operations on this contract shall be legally disposed of at an off-site location. Documentation as to the landfill's name, copy of the landfill's permit, the last five years of the landfill's compliance history, insurance certificate for the landfill, and product being disposed of shall be provided to the engineer.

If any hazardous or solid wastes will be generated as a result of the Design-Builder's operations, the Design-Builder shall submit a plan that details the proper handling, removal, transportation and disposal of such wastes. The plan shall identify what types of hazardous and/or solid wastes will be generated and shall list the hazards involved with each waste. The plan must also include the name of the disposal facility to be utilized a copy of the disposal facility's operating permit, the last five years of the disposal facility's compliance history, and the insurance certificate for the disposal facility. In addition, the Design-Builder is to provide documentation regarding the transporter of any wastes to the Port for approval of the transporter. This must include the name of the transporter, EPA/DOT license of the transporter, and insurance certificate for the transporter. All waste generated on-site by the Design-Builder will be properly identified within 30 days of generation and disposed of within 90 days, and the Design-Builder will sign all disposal manifests as the generator. All disposal manifests will be provided to the Port for recordkeeping within fourteen (14) days after disposal. The Design-Builder shall be responsible for any sampling and analyses that may be required by the disposal facility(ies) for characterization purposes. Regulated solid and hazardous wastes are these listed in the Louisiana Administrative Code (LAC), Title 33, Environmental Quality, Part V and Part VII.

For the handling, removal, transportation and disposal of any generated regulated solid wastes, the plan shall conform to the requirements of Louisiana Administrative Code (LAC), Title 33, Environmental Quality, Part V, Solid Waste Regulation. Solid wastes shall be transported to a Federal and State approved oil recycler, Industrial Type I Landfill, or Construction/Demolition Debris Type III Landfill. The Design-Builder shall identify in the plan how he/she intends to dispose of each solid waste. The plan shall include the name, address, licenses, five year compliance history, and certifications of each disposal facility that will be used. If disposal manifests are required, the Design-Builder shall sign them as the generator. The Design-Builder shall be responsible for any sampling and analyses that may be required by the disposal facility(ies) for characterization purposes. Licenses and certifications, as well as the certificates of insurance of the transporter and disposal facilities shall be included in the plan. The Design-Builder shall submit to the Engineer a completed copy of any waste disposal manifests within fourteen (14) days after ultimate disposal.

The Design-Builder shall adhere to the City of New Orleans Code of Ordinances, Chapter 66, Article IV NOISE. Construction and demolitions activities shall not begin before 7 a.m. or continue after 6 p.m. within 300 feet of residential zones. Construction and demolition activities beyond 300 feet of residential zones shall not begin construction before 7 a.m. on weekdays or before 8 a.m. on weekends nor continue after 10 p.m. on any day of the week.

In addition, the L maximum (as measured in accordance with the City ordinance) between the hours of 7 a.m. and 10 p.m. shall not exceed 70 dBa.

In order to prevent, and to provide for abatement and control of any environmental pollution arising from removal and demolition activities in the performance of this contract, the Design-Builder and its subcontractors shall comply with all applicable Federal, State, and local laws, and regulations concerning environmental pollution control and abatement.

The Design-Builder shall accept the site as it finds it and shall inform itself of its character and type of structures and construction to be demolished and removed. The Design-Builder will be held liable for damage or loss to facilities of Board or others resulting from its operations under the contract.

Dumping of any construction debris and/or materials on adjacent premises, on the levee or bature or in the Mississippi River is positively prohibited. All debris and material, including vegetation, removed shall become the property of the Design-Builder and shall be removed from the project site and legally disposed of beyond Board's property.

All work under this contract shall be accomplished without damage to infrastructure such as the Henry Clay Avenue Wharf and other infrastructure which is to remain. The Design-Builder shall repair any and all damage to remaining infrastructure caused by its activities without cost to the Board.

Smoking and operations creating a fire or explosive hazard are prohibited on Board property. Welding and the use of cutting torches (burning) on the project site will be permitted. The Design-Builder shall obtain a burning permit from the Port of New Orleans Harbor Police Department in advance of any such activities by calling at (504) 528-3371.

From the commencement of work through final acceptance, the Design-Builder shall provide a competent, qualified, experienced superintendent at the job site during all working hours. The Design-Builder shall be responsible for receipt of its materials and protection thereof from theft or damage, as well as for its equipment, tools and other items.

The Design-Builder shall occupy only the Board property designated as the project site and shall remove all equipment, temporary construction, scrap material, litter, and debris upon substantial completion of the work.

Direct or indirect discharge of contaminants into the Mississippi River is strictly prohibited by law. The Design-Builder shall be held responsible for any and all such discharges or pollution resulting from construction work performed under this contract. Should a contaminant be discharged to a navigable waters, thereby bypassing proper and legal disposal procedures, then immediate remedial action is required by the Design-Builder, at his cost, risk and expense, to recover and properly and legally dispose of any and all such material(s) constituting the condition of pollution. The

Design-Builder must promptly inform Board concerning all such discharge or release of contaminants.

The word contaminants includes hazardous wastes and toxic substances. The Federal Water Pollution Act, appearing in "United States Code Annotated" (USCA) Title 33 provides information concerning the regulation of discharges of oil and hazardous substances. Discharges of other "contaminants" are defined by applicable Government regulation(s). For example, the Clean Water Act of 1977 includes the discharge of toxic substances under Section 307a and the discharge of conventional pollutants under Sections 301 and 402.

All construction debris and grubbed materials including vegetation shall become the property of the Design-Builder and shall be legally disposed of off of Board property.

Any cranes the Design-Builder proposes to place on any Board wharf to facilitate the work shall be defined and reviewed by the Engineer prior to placing.

## **ARTICLE 53-TAXES**

To the extent that work is performed or materials purchased in Louisiana, the Design-Builder shall not include in his Contract Price any state and local sales or use tax on materials, supplies, and equipment which are purchased to be affixed, incorporated into or otherwise made a permanent part of the completed work as well as other taxable services, leases and rentals of tangible personal property used in the completion of the Contract (hereafter referred to as "Applicable Materials and Services").

All purchases of Applicable Materials and Services shall be made by the Design-Builder in its designated capacity as Agent for and on behalf of Board. Board shall provide to the Design-Builder a copy of the Department of Revenue & Taxation Form R-1020 ("Designation of Construction Contractor as Agent of Government Entity") at the time of the Notice to Proceed after award of the contract. The Design-Builder shall submit this form to the Department of Revenue and Taxation for the purpose of obtaining a Certificate of Sales Use Tax Exemption/Exclusion. The Design-Builder shall present to vendors and suppliers of Applicable Materials and Services a copy of the Department of Revenue and Taxation Form R-1056 ("Certificate of Sales Use Tax Exemption/Exclusion") when purchasing Applicable Materials and Services for the project.

The designation of the Design-Builder by the Board as its agent in accordance with LAC 61:14301 is for the limited purpose of purchasing Applicable Materials and Services in furtherance and performance of the work specified in the contract and is not intended nor should it be construed as a designation of the Design-Builder as agent for any other purpose.

All Applicable Materials purchased by the Design-Builder as Board's agent exclusively for the project specified in this contract, but not actually used, shall belong to and

become the property of Board. All whole, unused Applicable Materials not incorporated into the work shall be picked up by Board at its expense on notification by the Design-Builder. When the said Applicable Materials are turned over to Board, the Design-Builder shall provide to Board a certified list of items being transmitted to Board. All rights and warranties with respect to the Applicable Materials shall inure to the benefit of Board.

Nothing in this Article nor in any other article is intended nor should be construed to alter, amend, or otherwise revise the responsibilities of the Design-Builder, whether express or implied herein, to:

- (a) fully insure the Applicable Materials to be used on the project or stored on or off site of the project;
- (b) insure the progress of the project prior to Final Acceptance in accordance with the insurance provisions of Article 43;
- (c) warrant the Applicable Materials furnished under the contract;
- (d) indemnify the Board in accordance with the provisions of Article 25;
- (e) alter, amend, or otherwise revise the method of payment as provided in Articles 39,40,and 41;
- (f) alter, amend, or otherwise revise the right of Board to accept or reject any of the work during the progress of the project or to make or have made inspections of the work as it progresses in accordance with provisions of Article 12;
- (g) provide for the safety, protection, and security of the Applicable Materials throughout the progress of the project in accordance with the provisions of Article 48 (“Insurance”);
- (h) furnish and maintain liability and property insurance coverage for damage, loss or destruction of the Applicable Materials until Final Acceptance in accordance with the provisions of Article 43; and
- (i) remit to the pertinent taxing authority any taxes other than sales and use tax that may be applicable to the project for which Board or the Design-Builder as Board’s agent do not enjoy a legitimate exemption or exclusion.

Nothing herein shall be construed to relieve the Design-Builder or any subcontractor from the payment of any sales, use or other taxes with respect to purchases of material, supplies or equipment which are not to be incorporated into the work or used solely in the fulfillment of the obligations to be performed under this Contract, provided the Design-Builder has complied with the terms of this Contract and all applicable laws and procedures.

In the event that the Design-Builder is subject to a sales or use tax audit by either the State of Louisiana or a local taxing authority, and the taxing authority assesses taxes on any Applicable Materials and Services, Board agrees to defend its tax-exempt status as a political subdivision and the Contractor as its agent. Should the taxing authority prevail in imposing sales or use taxes on any purchases of Applicable Materials and Services, Board agrees to reimburse Contractor for those taxes or to pay the taxes directly to the taxing authority, but only to the extent that Contractor has complied with the terms of this Contract and all applicable laws and procedures.

#### **ARTICLE 54-SUBSURFACE UTILITIES**

The Design-Builder shall give sufficient notice to the interested utility of their intention to remove or disturb any other pipe, conduit, etc., and shall abide by their regulations governing such work.

In the event that subsurface structures are broken or damaged in the prosecution of the work, the Design-Builder shall immediately notify the proper authorities, and at the option of said authority, either repair the damage at once, at his own expense, or pay the utility the proper charges for repairing said damage. The Design-Builder shall be responsible for any damage to persons or property caused by such breaks or due to his own neglect in reporting and/or repairing such damages.

The Board will not be liable for any claims made by the Design-Builder based on underground obstructions being different than that indicated on the Contract Drawings. Where ordered by the Engineer, the Design-Builder shall uncover subsurface obstructions in advance of construction so that the method of avoiding same may be determined before the work reaches the obstruction.

Existing underground installations are indicated on the Contract Drawings only to the extent such information was made available to or discovered by Engineer in preparing the drawings. There is no guarantee as to the accuracy or completeness of such information, and all responsibility for the accuracy and completeness thereof is expressly disclaimed.

Generally, service connections are not indicated on the Contract Drawings.

The Design-Builder shall be responsible for discovery of existing underground installations, in advance of excavating or trenching, by contacting all local utilities, and by prospecting.

## **ARTICLE 55-MATERIALS AND WORKMANSHIP**

The Design-Builder shall confine his operations to work that will not be affected adversely by unfavorable weather, wet ground, or other unsuitable construction conditions. No portion of the work shall proceed under conditions that would affect adversely the quality or efficiency of the Work, unless suitable special precautions or countermeasures are taken by Design-Builder.

All permanent and temporary materials, parts and equipment furnished by the Design-Builder shall be new high grade, and free from defects and imperfections unless otherwise hereinafter specified. Workmanship shall be in accordance with the best standard practices.

All materials and workmanship not conforming to the requirements of the Contract Documents specifications shall be rejected. Defective material whether in place or not, shall be removed immediately from the site of the work by the Design-Builder at his expense when so directed by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used until approval in writing has been given by the Engineer.

In the event any defect in material or workmanship is of a minor nature and the Engineer determines that it is not of such consequence as to result in a dangerous or undesirable condition, or that the removal of such work would create a dangerous or undesirable condition, the Engineer shall have the right to retain such work and make such deductions in the payment therefore as they determine reasonable and in the public interest. Such determination by the Engineer is final.

The Design-Builder shall perform all cutting and patching required for the work, and as may be necessary in connection with uncovering work for inspection or for the correction of defective work.

Design-Builder shall perform all cutting and patching required for the installation of improperly timed work, to remove samples of installed materials for his testing, and to provide for alteration of existing facilities or the installation of new work in existing construction.

Except when the cutting or removal of existing construction is specified or indicated, Design-Builder shall not undertake any cutting or demolition which may affect the structural stability of the work or existing facilities without Engineer's concurrence.

Design-Builder shall provide all shoring, bracing, supports, and protective devices necessary to safeguard all work and existing facilities during cutting and patching operations.

Materials shall be cut and removed to the extent indicated on the drawings or as required to complete the work. Materials shall be removed in a careful manner with no damage to adjacent facilities or materials.

All work and existing facilities affected by cutting operations shall be restored with new materials, to obtain a finished installation with the strength, appearance, and functional capacity required. If necessary, entire surfaces shall be patched and refinished.

Design-Builder shall not cut and patch operational elements and safety-related components in a manner resulting in a reduction of capacities to perform in the manner intended or resulting in decreased operational life, increased maintenance or decreased safety.

#### **ARTICLE 56-PHOTOGRAPHS OF CONSTRUCTION PROGRESS**

Design-Builder shall be responsible for the production of monthly construction progress photographs as provided herein. Engineer reserves the right to designate the subject of each photograph.

Views shall be taken prior to commencement of work and throughout the construction period and shall be submitted prior to the release of monthly progress payments.

Preconstruction photos shall be bound separately and submitted to Engineer within ten (10) days from date of work commencement. Progress photographs shall be taken, bound separately and submitted to Engineer before release of progress payment.

Design-Builder shall use a digital camera only.

All photographs shall be color photographs. The Engineer reserves the right to reject photographs due to unacceptable quality. One (1)- 8" x 10" photograph of each view shall be submitted enclosed in clear plastic binders, and marked with the Board's name and requisition number of the contract, name of Design-Builder, description and location of view, and date photographed along with a CD containing said photos. Design-Builder shall provide a CD disk(s) at end of project containing all photos taken along with a directory with a description of each view and date each photo was taken.

Failure to submit the monthly progress photographs will be cause for the Board to withhold approval of progress payment until such time that the Design-Builder submits the required photographs.

## **ARTICLE 57-PORT SECURITY REQUIREMENTS**

Refer to the project website for rules and procedures regarding port security credentials. The Nashville Avenue Terminal is a restricted terminal and it is the entry point to access the project site at Henry Clay Avenue Terminal. For additional information on obtaining a TWIC card go to [www.tsa.gov/what\\_we\\_do/layers/twic/twic\\_faq.shtm](http://www.tsa.gov/what_we_do/layers/twic/twic_faq.shtm).

## **ARTICLE 58-SAFETY REQUIREMENTS**

All personnel who enter Board property in areas with cargo or construction activity, may be denied access if a hard hat and a safety vest are not worn.

Comply with the requirements of the Manual of Accident Prevention in Construction by Association of General Design-Builders and/or the current U. S. Occupational Safety and Health Act, whichever is the more stringent.

Comply with Federal, State and local codes and regulations and with utility company requirements. Comply with National Electric Code. Comply where applicable to the latest editions of the Manual on Uniform Traffic Control Devices (MUTCD) and the Louisiana Standard Specifications for Roads and Bridges (LDOTD "Blue Book").

Install signs and warning lights as necessary for safety and as necessary to meet insurance, MUTCD, LDOTD and OSHA requirements. Colors shall meet test specified in Section 3 - Color Definitions, ANSI Z 53.1 1988 "Safety Color Code for Working Physical Hazards".

Where construction is open and accessible by others, build and maintain until construction is completed and accepted, fences, barricades and other necessary construction required to prevent injury to persons on or about Project Site, including damage to property, and intrusion of unauthorized persons. Barricades and temporary signing shall conform to the latest editions of the Manual on Uniform Traffic Control Devices and LDOTD"Blue Book, Sec. 713."

Provide personal safety equipment for authorized visitors. Provide and maintain warning lights burning from dusk to dawn at barricades.

## **ARTICLE 59- FIELD OFFICES**

The Design-Builder shall furnish, throughout the Contract Time, for the exclusive use his representative(s), a temporary trailer, to be utilized as a field office within a the project site. Toilet facilities shall be provided within the field office. It shall be equipped with approved electrical wiring, telephones service, lighting and outlets, and the required switches and fuses, to provide 110-volt power. It shall be equipped with an air conditioning unit to provide cooling in warm or hot weather, and a heater, properly installed and vented in accordance with the National Fire Protection Association Code, for heating in cold weather, as required. The Design-Builder shall make the necessary arrangements to obtain telephone service and Entergy power required to operate the air conditioning unit, lights, etc., and the power required for the heater, and shall bear the cost thereof. The outside door of the building shall be equipped with butt hinges and a cylinder lock. The window frames shall be equipped with iron security guards.

The Design-Builder shall provide a trailer equipped with a fire suppression system in compliance with NFPA 13 anytime the trailer is to be inside or within 10 feet of a facility that is equipped with a fire suppression system.

The Design-Builder shall also provide a temporary trailer to be utilized as a field office for the Engineer from the time the Design-Builder mobilizes to the site until substantial completion. Accommodations shall be similar to that stated above.

All trailers shall be removed by the Design-Builder and remain his property after completion of all work under this contract. The Design-Builder shall provide daily janitorial services for this and any other of his temporary buildings at the site throughout the life of the contract. Costs for furnishing, maintaining, providing the prescribed field office and utilities, and janitorial services shall be included in the Contract Price.

## **ARTICLE 60-CONSTRUCTION UTILITIES**

Design-Builder shall arrange for and pay the cost of water, fuel, electrical energy and operating personnel required for temporary water, light, and power during the entire period of construction. Design-Builder shall arrange and pay for electrical service as required to provide light and power during the construction period, including any light deemed necessary at storage areas and provide adequate artificial light wherever sufficient natural light is lacking to properly execute the work. Design-Builder shall be invoiced and shall pay Entergy directly for all electricity charges.

The Board's Facility Services Department must approve of electrical connections and will notify Entergy to install and release the electrical service meter in the Design-Builder's name. The Design-Builder shall install circuit and branch wiring, with area distribution boxes located so that power and lighting is available throughout the

construction by the use of construction-type power cords and provide adequate artificial lighting for all areas of work when natural light is not adequate for work, and for areas accessible to authorized personnel.

Toilet accommodations for use by all workmen shall be furnished and maintained and kept clean and sanitary at all times by the Design-Builder. The Design-Builder shall provide sewer and potable water connections, or use approved chemical toilets, and also provide toilet tissue holders and tissue. Installation shall be of a type approved by local Health Department authorities. Design-Builder shall remove toilets upon completion of work.

There are two types of allowable temporary water service metered connections:

- (i) Design-Builder Furnished Meter: For the Design-Builder's and the Engineer's trailers, the Design-Builder shall furnish and install his own water meter(s), size 1 inch diameter, maximum. If water service is not needed for a construction trailer, or if not required in the contract documents, the Design-Builder is not required to furnish a meter. The Design-Builder shall not connect his water meter to trailers unless the Board's Facility Services personnel is present to record the meter size, meter number, and record the initial reading.
- (ii) Board Remote Meter: For **all other remote water meters** on the work site, the Design-Builder shall use only the Board's meter, furnished and connected/disconnected by the Facility Services Department, only. There will be no exceptions.

Each meter will be read monthly by the Board with the water usage unit cost being \$5.00 per 1000 gallons. The rate is subject to change as the New Orleans Sewerage & Water Board adjusts its rates to the Board, or as in the best interest of the Board.

A monthly service fee of \$50.00 will be charged for each trailer and remote water meter used by the Board's prime Design-Builders. The connection fee for a Board remote meter is \$250.00 per meter. The disconnect fee for a Board remote meter is \$250.00 per meter. The charge for a damaged or lost Board remote meter will be \$1,000 per meter. In the event a meter is missing, the monthly usage charge to be assigned to the missing monthly reading will be the largest of all previous monthly readings.

Prior to a Design-Builder's request for water utility services, the Design-Builder must complete and execute a "Water Utility Request" form and submit it directly to the Board's Construction Services. A copy of this form is available from Construction Services at 504-528-3288. The Board's Facility Services will not provide these forms, nor will they begin service until the form has been completed and processed.

The Board will not provide a remote water meter or water utilities to subcontractors or to any entity except the Design-Builder. All meters and water usage must be in the name of the prime Design-Builder. The exchange or sharing of water meters between the Design-Builder and another contractor or tenant is prohibited, as is the sharing of water with another Board contractor or tenant.

Should the Design-Builder disconnect the construction trailer (and Engineer's trailer) meter(s) prior to the Board taking a final reading, he shall be assessed an estimated usage for the water used since the time of the last reading.

#### **ARTICLE 61-DAMAGE TO BOARD WATER NETWORK**

The Design-Builder is responsible for reporting all water supply system (piping, valves, etc.) damage due to his activities to the Board's Facility Services at 504-528-3500 between the hours of 7:00am and 2:00pm, Monday thru Friday. During other hours, report damages to the Engineer. This will result in the quickest response time for the Board's water crew to shut-off water service to the damaged line.

Damage to the Board's water supply network by the Design-Builder or his subcontractor's work force is a Design-Builder liability, provided the line is reasonably indicated on Board contract drawings. The Design-Builder is required to make the repairs to the line and have the repairs inspected by representatives of the Board's Construction Services Department and the Facility Services Department prior to requesting the water service restored. The Design-Builder will be charged for Board labor and material expenses associated with the damaged line, as well as the estimated water loss resulting from the damage, as given in the following table. Water loss will be estimated from the size of the line and the duration of open flow as follows:

<u>LINE SIZE DIAMETER</u>	<u>COST PER MINUTE FOR WATER LOSS*</u>
4" and Smaller	\$18.75
Between 4" and 12"	\$62.50
12" and Greater	\$118.75

\* Based on the Board's cost of water as of March 1, 2010.

If the line is not reasonably shown on utility drawings provided by the Board, the Board will be responsible for the Design-Builder's costs associated with repairs and water loss, and will inspect the line prior to returning the line to service.

All water usage charges will be invoiced monthly to the Design-Builder with back-up documentation attached.

The Engineer will send to the Board's Accounting Services Department via the "Damage Report," and back-up documentation, all charges associated with damages to the Board's water supply network due to Design-Builder's activities. The Engineer will investigate the nature of the water line breakage, and direct reimbursement from the Board's Design-Builder, if warranted. This will also be included in the monthly invoice, with back-up documentation attached. For water piping network damages that are not a Design-Builder responsibility, as determined by the Engineer, the "Damage Report" will indicate that these charges are not to be charged to the Design-Builder.

## **ARTICLE 62-CONSTRUCTION-RELATED VEHICULAR TRAFFIC**

All trucks hauling debris or delivering materials to the project site shall be within legal allowable weight limits according to Local, Parish, or State requirements for truck loads, whichever are more stringent, and shall use designated truck routes. The loading of trucks bringing materials to the site or removing debris from the site shall do so in a manner that prevents dropping materials and debris on any streets. The Design-Builder shall maintain an installation at all points where and when trucks enter or leave a site to remove materials, mud or debris immediately from Port and City streets.

Truck routes through all Board-owned and City streets to be utilized by the Design-Builder during the construction of the contracted work, shall be defined and three (3) copies furnished, if so requested, to the Engineer for review and approval prior to commencing work.

All transportation equipment shall be State inspected, mechanically safe, and equipped with backup/reverse audio alarm movement devices as required by OSHA (Occupational Safety and Health Administration).

The Design-Builder shall post flagmen as necessary for safety and to control vehicular traffic flow in the area of construction operations and for safe transport of material deliveries on Board-owned and City streets.

All construction vehicles shall conform to all local regulations regarding load limits and use approved truck routes.

The Design-Builder will be required to provide for and maintain terminal traffic during the construction of this project. It will be the responsibility of the Design-Builder to conduct his operations in such a manner as not to block any roads during construction. It is further the responsibility of the Design-Builder to provide tenants and their customers

with reasonable access to their properties at all times during construction and to provide access for emergencies and necessary service vehicles, such as fire fighting equipment and sanitary refuse collection trucks.

The Design-Builder will be required to provide and maintain all necessary flagmen, police, barricades, warning and detour signs in order to properly facilitate the movement of all traffic at all times when work is in progress that obstructs or is hazardous to traffic safety or impedes traffic flow.

### **ARTICLE 63 – PROJECT SIGN**

The Design-Builder shall construct, maintain, remove, and dispose of one (1) project sign. The sign shall be painted by a professional sign painter. Information to be provided on the sign shall be provided to the Design-Builder by the Engineer. Actual lettering and layout shall be submitted to the Engineer for approval prior to fabrication of the sign face. The Design-Builder shall be responsible for correct wordage, spelling and titles.

All lumber shall be treated pine. Signs shall be  $\frac{3}{4}$  inch thick exterior grade plywood with “B” or better face; size shall be 4 ft. high x 8 ft. wide mounted on a 2 x 4 wood frame and mounted to 4 x 4 treated wood posts with treated 2 x 4 braces set firmly in the ground for supporting the sign. The height of the top of the sign above existing grade shall be a minimum of 8 feet.

Placement location will be designated by the Engineer within or near the project site.

The Project Sign shall be removed at the end of the Contract Time and disposed of properly. Except for the job sign specified herein, no Contractor, Subcontractor, or separate Contractor, nor any supplier or equipment shall post or display any sign or advertising device on any part of the site, structure, fence or temporary structure.

### **ARTICLE 64-HARBOR POLICE**

In those instances when it is deemed necessary to provide uniformed, armed, fully commissioned police officers to provide security or traffic control at the work site in the port area, the members of this Board's Harbor Police Department have full police powers applicable in the parishes of Orleans, Jefferson and St. Bernard, pursuant to commissions issued by this Board (LRS 34:26), and are legally permitted, when not on Port duty, to take outside assignments.

### **ARTICLE 65-ACCESS INTO PORTS AMERICA SECURITY GATE**

Access to the project site is through the adjacent terminal at Nashville Avenue at Clarence Henry Truckway. The lease agreement with the Nashville Avenue Terminal's

operator, Ports America Louisiana, LLC, states that Ports America shall provide to any Board invitee that is not a Board tenant at or user of the Henry Clay Avenue Terminal access to the Henry Clay Avenue Terminal at no charge subject to said invitee providing the same insurance and indemnity that Ports America requires of other parties entering the Nashville Avenue Terminal.

Ports America has specific requirements as shown below for the Design-Builder and its subcontractors and anyone else the Design-Builder authorizes to enter the Henry Clay Avenue Terminal, in addition to security credentials, in order to drive through the Nashville Avenue Terminal to reach the project site.

1. Each person entering must sign Ports America's hold harmless (see below).
2. Each company entering must provide Ports America with the required insurance.
3. Each person entering must sign-in before entry and sign-out upon exit at the Nashville Circle Building.
4. Each person entering must watch a 5-minute safety video at the Nashville Circle Building before first entry. They will be given a card that shows they watched the video that is valid for 1 year.
5. Only company vehicles with proof of insurance and a driver with a valid driver's license will be allowed through Ports America's gate.
6. Ports America has verbally consented to allow contractor employees to park in the privately owned vehicles lot, if space permits, and get shuttled to Henry Clay in company vehicles of the Design-Builder and its subcontractors. However, if Ports America determines there is no parking available for the Design-Builder's use in this lot, then the Design-Builder will need to provide off-site parking, if space is not available within the project site to accommodate construction workers.
7. Vehicles entering Ports America's gate must have valid vehicle registration in the company's name.
8. Each person entering must have a valid Transportation Worker Identification Credential card or be an approved Port of New Orleans TWIC Escort in accordance with the rules posted on the project website.
9. Any person who is not in a vehicle while on Ports America's lease site will be required to wear a hard hat, high-visibility safety vest, and steel-toe shoes. However, there is no reason for the Design-Builder's construction workers to leave a vehicle in the Nashville Avenue Terminal site.

10. All entrants must enter through Ports America's Nashville Avenue entry gate and proceed along Terminal Drive directly to Henry Clay Avenue Terminal and shall not obstruct Ports America's operations along the specified route.
11. The Ports America entry gate will be manned 24 hours a day, 7 days a week. However, entry outside of normal working hours (0700 to 1700 hours weekdays) should be coordinated with Ports America in advance.
12. While driving through the Nashville Avenue Terminal, the following rules apply:
  - a. Speed Limit 15 MPH unless otherwise posted.
  - b. Vehicles are not allowed inside warehouse, shed, container yard, shop area, river apron or cityside apron.
  - c. No parking is allowed in any warehouse, shed container yard, shop area, riverside apron or cityside apron.
  - d. No driving under cranes or lift machines.
  - e. Observe and yield the right of way to all working vehicles, cranes, forklifts and trucks.
  - f. Restrict driving only to designated roadways and parking lots.
  - g. Smoking is allowed only in designated areas.
  - h. No non-Ports America Louisiana, LLC. employee will be allowed in vessel's holds at any time during vessel loading/discharging operations.
  - i. All authorized non-Ports America Louisiana, LLC. employees must wear hard hats and safety shoes when on terminal and/or on board vessel and on all occasions.
  - j. Authorized individuals must remain at a safe distance from cargo loads being handled to/from vessel/dock and/or barge.

#### Ports America Louisiana, LLC Indemnity and Hold Harmless Agreement

THE UNDERSIGNED INDIVIDUAL acknowledges that they have been allowed to enter the property of Ports America Louisiana, LLC. to conduct authorized business and agrees on all such occasions, to use only the space designated by Ports America Louisiana, LLC. for conducting business and/or parking and, further agrees to and shall indemnify, defend and hold harmless Ports America Louisiana, LLC. its members, principals, beneficiaries, partners, officers, directors, employees, and agents harmless against and from all liabilities, obligations, damages, penalties, claims, cost, charges and expenses, including, without limitation, reasonable attorney's fees and other professional fees which may be imposed upon, incurred by, or asserted against Ports America Louisiana, LLC. arising, directly or indirectly, out of or in connection with authorized individual's use, parking or conducting of its business upon the premises of Ports America Louisiana, LLC. including, without limitation, property damage to any of the individual's property, Ports America and/or any injury to and person whether employed by vendor or Ports America Louisiana, LLC. or on the premises for any other purpose when such property damage or personal injury is caused in whole or in part by the acts of any authorized

individual or any of its agents, servants, contractors, employees, customers, licensees or invites.

THIS AGREEMENT executed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness

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

Re: Ports America Louisiana, LLC. Insurance Requirements

Dear Sirs:

Please be advised, as per our tariff filed with the Port of New Orleans Board of Commissioners, anyone entering the property of Ports America Wharf complex must carry the following minimum limits of insurance.

General Liability	\$500,000.00
Workers Compensation	State Statutory Limit
Auto Liability	\$500,000.00

In addition to the above limits, Ports America Louisiana, LLC. must be named, as additional insured, on your policies and subrogation must be waived. Finally, we have enclosed a Hold Harmless and Indemnification Agreement, which must be executed and returned prior to allowing your employees on our leased area. Once this information is received, our facility guard will allow your employees access to our facility. However, after July 1, 2004 you will not be allowed to access our leased area unless the undersigned has received the above information, and prior notification given by ship's agent. Please fax all information to David Adams at 504-894-6223.

If you have any questions, please contact the undersigned at your convenience. The above items must be forwarded the attention of the undersigned and in our possession no later than July 1, 2004

Additional Insured/Certificate Holder

Ports America Louisiana, LLC.  
601 Louisiana Avenue  
New Orleans, La. 70115  
Very truly yours

Gus Bertucci  
Facility Security Officer

Port of New Orleans Request for Technical Proposals Appendix F

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## ARTICLE 66-ADDITIONAL INFORMATION

**Listed below are questions posed during the Design-Build evaluation process and the answers issued so as to incorporate the Board's responses into Appendix F.**

*Do you know what offset from the rail centerline that we must maintain?*

Yes, the standard rail offset from any rail track on the project site is ten feet from each side of the track centerline.

*Please provide all available information on the wharf, such as construction drawings, as-built drawings, condition surveys, underground utilities, drainage, sheet pile wall and anchors if any, concrete drawings, etc.*

Much of this information has already been provided to the Design-Build Applicants on the reference drawings contained electronically on the sets of CDs furnished with the RFP. Older, hand-drawn archival drawings are only available as hard copies. Arrangements can be made for reviewing these drawings by contacting Darren Austin at 504-528-3416 for an appointment weekdays between 8am and 5pm. Drawings can be tagged and single copies of archival drawings can be furnished at no cost to the Design-Build Applicants. Additional drawings regarding rail and utilities to be posted on the project website by January 15, 2010.

*Are electronic drawing files available on the topographic drawings presented in the RFP?*  
AutoCAD survey drawing files were posted to the project website on January 12, 2010.

*The RFP under the Project Description section indicates the existing wharf deck was built with a load rating of 850 psf. Is this rating also good for the landside wharf concrete slab on grade? What are the defined boundaries of this 850 psf load rating?*

A site plan (Allowable Live Load Drawing) of the existing wharf was posted to the project website on January 12, 2010. It indicates the uniform allowable live load ratings riverside (southside) and cityside (northside) of the concrete levee wall which is located under the wharf. Riverside of this concrete levee wall is the pile-supported wharf structure over water, whereas the area cityside of this concrete levee wall is soil-supported on land. The concrete levee wall is basically a bulkhead. The 850 pounds per square foot uniform allowable live load is for areas riverside of the concrete levee wall, i.e. the pile-supported wharf; the uniform allowable live load for areas cityside of the concrete levee wall is 1,000 pounds per square foot.

*Is the Environmental Assessment part of the bidder's scope of work?*

There is no requirement for the Design-Build Applicants to perform any environmental assessments of the project site. The Henry Clay Shed that is to be demolished by the Port has been environmentally assessed already in order to prepare the bid documents for its upcoming demolition by the Port's contractor. The use of the site for over 50 years, including the open land cityside of the wharf and shed, based upon historical activities, does not indicate a concern for environmental degradation of the Port property within the project site.

*Is a LADEQ Storm water Discharge Permit required for this project?*

Yes. Refer to Appendix F for general environmental requirements of the Design-Builder. The Design-Builder shall file for any permits which may be required regarding the National Pollutant

Discharge Eliminations System (NPDES). The Clean Water Act requires industrial and construction activities to obtain a NPDES permit. A part of this permit's requirements is a storm water pollution prevention plan that must accompany the permit application for construction activities. It is the Design Builder's responsibility to obtain these required permits as applicable to this project and to store these documents on site, as well as comply with all requirements of the storm water pollution prevention plan.

*Please confirm that all storm water can be discharged into the river.*

All normal rainwater/stormwater runoff shall be discharged into the Mississippi River, either by runoff from the cold storage warehouse to the wharf deck that slopes to the river, or via open ditches and buried culverts that lead to two outfalls through the concrete levee wall. Additional improvements due to the construction of the new warehouse and the paving of the existing unpaved yard will require new sub-surface system improvements and if necessary, a pump storm water drainage system in order to discharge into the river if gravity discharge cannot be accomplished. However, any wash-down, condensate from the cold storage chillers, or other potentially contaminated or potentially treated discharge must go to the Port and City sanitary sewer system. There is no existing sanitary sewer system within the project site. Sewage discharge alternatives available to the Design-Builder are either to provide a sewage treatment package plant on the Henry Clay site that is designed for receiving the waste generated by the cold storage facility for discharge into the Mississippi River or construction of a new sewage force main from the Henry Clay project site to the existing 4 inch diameter Port sewer main that begins on the east end of the former cold storage warehouse and ultimately discharges into the Sewerage and Water Board sewer main in State Street. The Design-Builder is prohibited from polluting ditches, rivers, ground water, and the sanitary sewer system with materials harmful to the environment and in violation of federal, state, and local laws and regulations. Refer to additional utility drawings to be posted to the project website by January 15, 2010.

*In Appendix C, geotechnical investigation, slope stability analysis at four locations along with wharf was shown to have a potential for shallow sloughing failures. Is analysis and construction of remediation efforts for this potential slope stability failure part of the bidder's scope of work?*  
No, this is not part of the scope of work. Shallow sloughing is a routine occurrence along a riverbank subject to accretion. The wharf structure has been analyzed as indicated in the report, to have an adequate factor of safety of 1.3 against a deep-seated bank failure. The Design-Builder is prohibited from any changing any conditions that would lower the factor of safety below 1.3. The Port is responsible for dredging to EL -35 which will not change the riverbank profile.

*In Appendix C, the geotechnical investigation indicated that if dredging was to occur, reevaluation of the soil investigation was recommended. The RFP indicates that dredging to -35' (NGVD) is to occur. Is the re-evaluation of the geotechnical investigation part of the bidder's scope of work?*

The Port is awaiting a supplemental report from Eustis Engineering regarding to what extent , if any, the dredging to EL. -35 at the face of the wharf will have on the design of any new piles driven by the Design-Builder to accommodate the new warehouse, such as additional bracing or wall thickness due to increased lateral loads.

*It was noted that wharf repair construction activities were forthcoming and to be either completed or underway before commencement of the new cold storage building. Please provide drawings or documentation on these planned repair activities and the condition survey and analysis that were the basis for this work.*

The final draft of the contract drawings and technical specifications for this work was already provided as part of the Reference CD package given to the representatives of the three Design-Build Applicants on December 18, 2009 as part of the RFP package.

*Is there any historical information available concerning movement between the wharf and the landside apron at this specific location or at other nearby, similar locations at the Port?*

No. However, the normal expansion and contraction of the wharf structure is accommodated by expansion joints in the wharf deck as shown on Reference Drawing, Disc 1, files 029.pdf, 030.pdf, 031.pdf, and 032.pdf provided as part of the RFP.

*Is providing preconstruction site survey of existing conditions part of the bidder's scope of work?*

All the survey information that the Port intends to furnish has been furnished and posted to the project website. The intent was to provide sufficient information for the Design-Build Applicants to prepare their proposals. Any and all additional survey work necessary to design and build the project is the responsibility of the Design-Builder.

*Is providing ground velocity monitoring services during construction part of the bidder's scope of work?*

The geotechnical report provided in Appendix A to the RFP recommends dynamic pile testing on new and existing piles to evaluate new pile capacity, monitor driving stresses during installation of new piles, and evaluate pile integrity during and after installation, and monitor energy transfer to evaluate pile installation and efficiency. Monitoring peak particle velocities during all pile driving operations for assessing potential damage and for changes in pile driving operations is also recommended in the geotechnical report. Peak particle velocity is recommended to be limited to .5 in/second to reduce risk of liquefaction of the soils in the project area. All testing, monitoring, and other quality control services are the responsibility of the Design-Builder.

*Do local zoning ordinances apply to this facility within the Port or is the Port exempt from local zoning? Who is the governing authority if any zoning requirements exist?*

The property requires no City of New Orleans Building permit. The project site is already properly zoned for maritime/industrial use. Federal, state, and local laws and ordinances do apply with regards to using authorized truck routes, noise limitations, etc. and will be referred to in the forthcoming Appendix F. The Port will obtain Letters of No Objection for construction and permits from the Orleans Levee District, the Corps of Engineers New Orleans District, State Fire Marshal, New Orleans Sewerage and Water Board, New Orleans Public Belt Railroad, Louisiana Department of Health and Hospitals. The Design-Builder is the professional of record for obtaining the Louisiana State Fire Marshal Permit (Port submits plan review application to SFM for approval) and permits from the New Orleans Sewerage and Water Board and Louisiana Department of Health and Hospitals (Port submits application based on Design-Builder's stamped drawings) for installation of the water meter and plumbing fixtures (sewer connections).

*What State and local building authorities have jurisdiction over this Port project?*

The Port is the governing building authority. Refer to #14 regarding permits.

*Are there any other specific design criteria or standards required by the Port that are not necessarily required by the other local authorities having jurisdiction?*

Refer to Appendix F

*Are there any applicable permitting and impact fees?*

The Design-Builder must complete a Department of Natural Resources / Corps of Engineers Joint Permit Application with the Port of New Orleans as applicant (there are no fees involved) – required if additional soil borings are taken, piles are driven or other structures are constructed on the water side of the bankline, including excavation and filling (including installation of rip-rap). This application is sent by the Port to the Orleans Levee District, Louisiana Department of Transportation, Corps of Engineers and LA Department of Environmental Quality for review and required approvals.

*Does the project need to meet any FM Global or other underwriter requirements?*

No, the Port's current insurer underwriter simply requires that the construction meets all applicable federal, state, and local codes in order to meet underwriter requirements.

*Are the specifications provided from the previous design intended to be used as design standards or are other materials to be considered?*

The intent of providing the previous design was to indicate what was required operationally of the tenant (NOCS) and establish the quality of construction, general configuration, and features. Specific project requirements for design and/or performance will be issued in Appendix F.

*Are there any program requirements outlined in the design provided "for reference" but not in the RFP that we are to apply to this project?*

The intent of supplying the previous design as a reference was to provide a reference for Design-Build Applicants. Specific project requirements for design and/or performance will be issued in Appendix F.

*Are there any restrictions on wharf and deep foundation work in terms of non-work periods due to river level or any other restrictions?*

Yes, as will be stated in Appendix F, a condition of the Orleans Levee District permit will be no pile driving or deep excavation when the Mississippi River has reached EL. 11.0 at the Carrollton Gage. On a case-by-case basis, a waiver to continue pile driving and deep excavation up to EL. 15.0 NGVD at the Carrollton Gage may be granted by the Corps of Engineers if the Port Requests such an exception. However, the Design-Builder should plan on not receiving such a waiver when preparing its proposal.

*Is the rail access to the west of the existing wharf to be maintained? If so, it appears to be in disrepair. Is maintaining and/or repairing this section of rail in the Scope of Work? If so, what clearance to the new building is required?*

New Orleans Public Belt Railroad (NOPBRR) has reviewed the existing rail and the Port will issue a rail drawing indicating which rail is to remain and which rail it to be removed by the Design-Builder. The drawing will be posted to the project website by January 15, 2010.

*How many parking spaces are required? Of these, how many need to be automobile and how many need to be tractor/trailer?*

In the new paved yard, 30 automobile parking spaces and at least 40 tractor-trailer positions are required.

*Which existing rails need to be maintained and which can be removed?*

See answer to previous question.

*Can any of the existing rails can be modified and/or relocated?*

See answer to previous question.

*Are there any restrictions regarding who is authorized/approved for rail work in the Port of New Orleans?*

By agreements between the Port and NOPBRR, all rail work on the project site must be performed by the NOPBRR or its contractors. The Design-Builder will have to contract with the NOPBRR for this work and include all costs in the proposal. The rail drawing to be issued by January 15, 2010 will indicate which rail sections shall be removed and where new at-grade crossings must be installed as part of the Design-Build scope of work.

*What site utilities exist for us to tie in to? Sanitary sewer? Water? Power? Please provide information showing the location of these utilities.*

Henry Clay Draft Demolition Plans provided on CD#4 of the RFP package includes reference drawings of the utilities on the site. This is the extent of information the Port has on the locations of utilities at the project site. It will be the Design-Builder's responsibility to field verify all site utilities prior to construction.

*What is the average pallet weight to be used in capacities calculations?*

The average pallet weight to use in design is 2,200 pounds.

*What is the product mix?*

The product mix at this time is 90% chicken leg quarters in 22 to 44 pound boxes.

*What is the temperature of incoming product?*

The temperature of incoming fresh product range is +38F to +42F.

The temperature of incoming frozen product range +10F to -5F.

*Based on product mix what are the pallet dimensions (slated vs. un-slatted)?*

Based on the product mix, pallet dimensions for slated height 67 ¼ - 68 ½ - 71 ½ - 72 ¾ and un-slatted height 50 ¾ - 52 - 55 - 56 ¼

*What is the capacity of the stevedores for loading the vessel? How many pallets per hour that must be meet by NOCS, average and maximum?*

Wharf capacity for the stevedore crews loading a vessel is five workers per hatch and 4 hatches per vessel, with up to 8 hatches working at one time. Pallets per hour rate is an average of 40 pallets per hatch per hour with a maximum of 80 pallets per hatch per hour, depending on the vessel being serviced.

*Is the building storage capacity to be determined by the listed 35,000,000 lbs divided by the average pallet weight?*

Yes.

*In the freezer storage, is any racking required? If not, is the ability to add racks in the future desired?*

Racking is currently not required in the freezer storage and is therefore not in the scope of work. The ability to add racks in the future is desired by the terminal operator, but is not a project requirement.

*Is there a clear height minimum/desired?*

The clear minimum height is 32 feet.

*Is there a required minimum number of dock doors? Desired?*

The minimum required number of dock doors is 16 with a preference for up to 22.

*What are the expected hours of operation?*

The expected hours of operation of the facility are 24 hours a day, six day a week.

*How many shifts are normally worked at the facility? Minimum? Average? Maximum?*

There are two shifts worked at the facility: 6 a.m. to 7 p.m. and 8 p.m. to 4 a.m.

*What is the estimated warehouse and office employee count by shift?*

For the day shift, the expected employee count is 28 in the warehouse and 6 in the office. For the night shift, the expected employee count is 24 in the warehouse and 2 in the office. There is an additional USDA employee on site during each shift.

*Are there any requirements for any driver welfare areas?*

Restroom facilities and vending machine electrical outlets with capacity to accommodate 6 to 8 truckers is required for the driver welfare area. Please refer to architectural drawing A2.4 included on the RFP CD#2 Governor Nicholls Cold Storage Concept Drawings as an example of the requirements.

*During the site visit on December 18, it was indicated that a drawing would be provided showing which rail lines could be vacated and which lines would need to remain. Are you planning to issue this drawing? If not, could you provide us with this information in writing as it will be critical to our design and layout.*

See answer to previous question.

*Could you provide us with a copy of the final structural engineering calculations and assumptions associated with the restoration and improvements to the existing wharf and pile structural systems for the Riverfront Cold Storage Terminal identified as the "Henry Clay Avenue Wharf - Substructure Repairs - W.O 1-941? We are particularly interested in determining the lateral load carrying structural capabilities of the wharf deck and any structural engineering assumptions used for the current contract documents regarding substructure repairs.*

The substructure repairs are mostly to the corrosion protection, spalled concrete, and replacing a few damaged lateral braces. The load characteristics of the wharf are not being altered. Any further structural alterations of the existing wharf will be the responsibility of the Design-Builder in order to support the new warehouse structure.

*Could you provide us with any recent flow tests on the existing water line currently serving the Henry Clay Avenue Wharf Terminal?*

The flow test results are posted on the project website.

*What equipment is going to be owner furnished/owner installed, owner furnished/contractor installed (welding equipment, vending machines, pallet inverters, shrink wrap machines, forklifts/chargers, etc.) Please provide quantities of each.*

All the equipment shown in the plans and specifications for the Governor Nicholls and Esplanade Riverfront Cold Storage Contract Documents are the responsibility of the Design-Builder to furnish and install. There is no owner-furnished equipment to be provided in this Design-Build contract's scope of work. The Design-Builder shall be furnishing and installing such items as the airflow spacer machines (pallet inverters) with electrical and plumbing connections for drains and hot water wash down capabilities to be located on side of the pallet invertors, out of the way of the workflow, as well as providing the forklift battery charging system capable of charging 20-- 36volt batteries with racking. Items such as forklifts, batteries, and vending machines, etc. are considered terminal operational equipment not included in the Design-Build contract scope of work.

*Are there any requirements for empty pallet storage? If so, how many inside vs. outside after loading vessels?*

Yes, the preference for pallet storage is inside above the dock doors with a minimum storage for at least 48 pallets per door.

*In the freezer storage, is there a desired configuration of pallets?*

In the freezer storage, the terminal operator is currently free-standing 4 to 5 pallets high and 7 to 10 pallets deep.

*Is relocation of existing overhead power lines if required in the scope of work or will the Port assume this responsibility?*

There are no existing power lines that conflict with the cold storage operations. All new power lines should be buried.

*Please provide load capacity of the existing wharf piles.*

The rated pile capacity of the steel pipe piles is 50 tons static loading. This can be found on the RFP CD#1, file 020.pdf, drawing 609-1, General Note No.2 (Henry Clay Existing Substructure Drawing Set)

*Does the Port Authority have any cad standards that must be followed?*

Yes there is a CAD standard that the Port follows for its contract drawings which was posted to the project website on January 14, 2010. This information will further be provided electronically to the Design-Builder for use in all contract drawings across all disciplines. The drawings of the

Governor Nicholls Cold Storage facility concept drawings provided in the RFP package include AutoCAD files that can be used as examples. AutoCAD Version 2009 is the minimum acceptable CAD for the Port's standard.

*When will flow test results be available?*

The report was posted to the project website on January 27, 2010.

*Do you have a copy of the PONO title block and pen table file? Is it to be used in the RFP or only for drawings provided by the Design-Builder awarded the contract?*

The AutoCad requirements were posted to the project website last week and it indicates format, as well as pen files and title block standards. However, this is not necessary for the RFP. It applies to the contract drawings that the Design-Builder will prepare and submit to the PONO and the as-built drawings upon project completion.

*Who demolishes the building in the yard labeled, "Old Crane Maintenance Building"?*

The existing shed in the yard will remain "as is" and be renovated at a future date by others. The building currently has overhead power service. The Design-Builder's scope of work includes providing new, underground electrical service and removing the overhead power line.

*Who demolishes the restroom building labeled, "Comfort Station" on the Henry Clay Wharf?*

Demolition of the entire Henry Clay Shed and the Comfort Station Building, both on the Henry Clay Wharf, will be done under the Port's publicly bid contract for demolition which is scheduled to be advertised publicly, bid, awarded, and constructed as shown in the Timeline. Refer to the revised Timeline issued in Addendum No. 1 on the project website for a complete schedule.

*Can all product be bulk-stacked 5 high, or is there a percentage that is stacked 4 high?*

The terminal operator currently stacks 80% to 4 high and 20% to 5 high. This is the design criteria the Design-Build Applicant Entities should use for designing the refrigerated warehouse.

*What is the earliest date the Port will allow the Design-Builder to mobilize on the site and begin construction?*

Refer to the revised Appendix B-Timeline issued in Addendum No. 3. As shown in the Timeline, once the Port has received final approval from its funding sources to enter into contracts (anticipated April 6, 2010), the Board of Commissioners Port of New Orleans will be able to award of the Design-Build contract and be able to publish the advertisements for the demolition of the shed and the substructure repairs for a publicly bid contract (anticipated date April 7, 2010). The Timeline estimates that the final execution of the contract between the Port and the Design-Builder will be before the contract for the shed demolition and substructure repairs are awarded (anticipated date May 20, 2010). The execution of the Design-Build contract depends upon the time needed for the Design-Builder to provide the related contract documents such as performance bond, insurance, etc. Following execution of the Design-Build contract, the Design-Builder may mobilize to the project site once it receives the Notice to Proceed and contract time begins (anticipated date May 12, 2010). The Design-Builder is required to coordinate its on-site work so that the shed demolition contractor can perform its work within the 90 calendar day contract time that is anticipated to start on June 1, 2010. The substructure repair work is a marine-based operation and should not be affected by other work.

*The RFP does not appear to set out specific procedures for the development, submission, review and approval of working drawings and specifications.*  
Refer to Appendix F.

*Does any environmental assessment information exist and can such information be distributed and/or otherwise be made available to potential bidders?*

The existing Henry Clay Avenue Shed will be demolished by others. The Board's environmental consultant has determined that there are no environmental concerns at the wharf and marshalling yard. The use of the site for over 50 years, based on the historical activities, does not indicate a concern for environmental degradation of the Board's property within the project site.

*In respect to concealed, unknown and/or unforeseeable conditions that cannot be reasonably foreseen by potential bidders, will such conditions, if encountered, be the subject of a change order issued to and for the benefit of the party who is awarded the contract for the work?*

Refer to Appendix F.

*In respect to builder's risk insurance what precisely are the limits of coverage required to be provided under the Contract Documents? Will damage within applicable deductibles and/or exceeding applicable limits, including damage attributable to flood and/or earthquake conditions, be the subject of a change order issued to and for the benefit of the party who is awarded the contract for the work?*

Refer to Appendix F. The limits of coverage shall be the value of the project at completion. Deductibles are not reimbursable.

*Can the deductible attributable to windstorm conditions be increased above \$10,000 if coverage for such conditions is not commercially available at reasonable rates and will damage attributable to windstorm conditions, if such damage is within applicable deductibles and/or exceeds applicable limits, also be the subject of a change order issued to and for the benefit of the party who is awarded the contract for the work?*

Refer to Appendix F. There will be no change order for this. The \$10,000 deductible is commonly available.

*The provision in the Contract Documents relating to the maintenance of professional errors and omissions insurance coverage by the party who is awarded the contract for the work is unclear and we would appreciate this provision being clarified to indicate precisely who must maintain such coverage, the precise type of such coverage required i.e., a practice policy or a project policy, the precise limits of such coverage per claim and per annual aggregate and the permitted deductible attributable to such coverage.*

Refer to Appendix F, Article 43.

*In respect to liquidated damages for delay contemplated by the Contract Documents, will such liquidated damages be the sole and exclusive damages attributable to delay in completion of the work payable by the party who is awarded the contract for the work?*

Refer to Appendix F.

*Do we need to make any provisions for future expansion of the facility?*

The terminal lease site is within the project site limits shown and therefore there are no provisions for expanding the facility at this time that the Design-Build Applicant Entities need be concerned with for submitting Technical Proposals.

*Is there any signage requirement for the new facility...if so, should it be New Orleans Cold Storage, or Port of New Orleans? Any reference to Henry Clay for historical significance?*

The Henry Clay Avenue Terminal has been found to have no historical significance. The design of signage should be the Port of New Orleans standard signs with respect to materials, colors, font, size, etc. and a sample drawing will be posted to the project website for reference. Signage is required along the riverside and landside of the façade of the new cold storage warehouse building. Signage required to meet building codes are part of the project requirements and were furnished to the Design-Build Applicant Entities on CD #2, labeled "Disc 2- Governor Nicholls Concept Drawing, and are shown on Drawing A.3.4 on the CD.

*Are there any architectural standards (materials, colors, etc.) that must be maintained within the Port property?*

The new cold storage warehouse should be compatible with the existing cargo sheds at Nashville Avenue Terminal.