



**Solicitation Information**

**July 27, 2012**

**RFP # 7457925**

**TITLE: Design Services for Two Barges**

**OPENING DATE AND TIME: Thursday, August 23 at 11:30 AM (EST)**

Questions concerning this solicitation shall be e-mailed to the Division of Purchases at [rfp.questions@purchasing.ri.gov](mailto:rfp.questions@purchasing.ri.gov) no later than **Tuesday, August 7, 2012**. Please reference the RFP / LOI number in the subject of all correspondence. Answers to questions received, if any, will be posted on the internet at <http://www.purchasing.ri.gov>.

**SURETY REQUIRED: YES**

**BOND REQUIRED: YES**

**Daniel W. Majcher, Esq.  
Assistant Director, Special Projects**

**Vendors must register on-line at the State Purchasing Website**

**NOTE TO VENDORS:**

Offers received without the entire completed three-page RIVP Generated Bidder Certification Form attached may result in disqualification.

**THIS PAGE IS NOT A BIDDER CERTIFICATION FORM**

## ***SECTION I - GENERAL INFORMATION AND INSTRUCTIONS***

### **Introduction**

The Rhode Island Division of Purchases (“Division”), on behalf of the Rhode Island Economic Development Corporation (“RIEDC”), is issuing a Request for Proposals (“RFP”) for the design of two (2) ocean classed deck barges (“Barges”) suitable for the carriage and operation of two (2) mobile harbor cranes that will be placed into service at ProvPort, Inc. The State has issued RFP# 7457854 for two mobile harbor cranes. This RFP is attached as **Appendix A**. The cranes will be used in association with the Barges.

The Division is acting as procurement agent on behalf of the RIEDC and ProvPort Inc., the owner and operator of the Port of Providence. Additionally, the Division, on behalf of this partnership, will issue a further solicitation for the construction of the Barges, with the assistance of the bidder selected to design the Barges in accordance with this RFP. Therefore, the selected bidder, as part of the scope herein, is required to assist the RIEDC/ProvPort in the procurement for the construction of the Barges and will be consulted throughout the construction process. As a result, the bidder selected to provide the services included in this RFP will not be eligible to submit proposals for the construction of the Barges.

Each Barge shall be designed to support a rubber tired mobile harbor crane that will operate from the barge deck. The design shall allow for the easy loading and unloading of the crane from the Barge to the dock. Information provided in these specifications is to be used for purposes of supplying the design and engineering support required to enable the procurement, building and commissioning of the Barges for the State. It is further expected that each bidder will read these specifications and the sketch drawing attached to this RFP with care; since failure to meet each condition or a combination of specified conditions may invalidate any proposal.

### **General Instructions and Notifications to Bidders**

1. Potential bidders are advised to review all sections of this RFP carefully and to follow instructions completely. Failure to make a complete submission as described herein may result in a rejection of the proposal.
2. Proposals which depart from, or materially alter, the terms and requirements in this RFP may be rejected as being non-responsive. Additionally, the Division reserves the right to reject or accept any and all proposals on such a basis that the Division deems to be in its best interest.
3. In order to submit a proposal, bidders must properly register with the State of Rhode Island. For information of registering, please see the Division’s website at [www.purchasing.ri.gov](http://www.purchasing.ri.gov) and under the heading “Vendor Registration Information.”
4. Proposals will only be considered from entities which have an established reputation in the field of barge design or other equivalent fields.

5. The Purchasing Agent reserves the right to request additional information regarding the “responsibility” of any bidder and accept or reject any bid on the basis of “responsibility” in his or her discretion.
6. All costs associated with developing or submitting a proposal in response to this Invitation, or to provide oral or written clarification of its content shall be borne by the bidder. The State assumes no responsibility for costs during the RFP process.
7. Proposals are considered to be irrevocable for a period of not less than ninety (90) days following the opening date, and may not be withdrawn, except with the express written permission of the State Purchasing Agent. Any such withdrawal may result in forfeiture of the submitted bid surety.
8. All pricing submitted will be considered to be firm and fixed unless otherwise indicated herein.
9. Proposals misdirected to other state locations, or which are otherwise not present in the Division at the time of opening for any cause will be determined to be late and will not be considered. For the purposes of this requirement, the official time and date shall be that of the time clock in the reception area of the Division.
10. All proposals should include the bidder’s FEIN or Tax Identification number as evidenced by a W9, downloadable from the Division’s website at [www.purchasing.ri.gov](http://www.purchasing.ri.gov).
11. The purchase of goods under an award made pursuant to this RFP will be contingent on the availability of funds.
12. Bidders are advised that all materials submitted to the State for consideration in response to this RFP will be considered “Public Records” as defined in Title 38, Chapter 2 of the General Laws of Rhode Island, without exception, and will be released for inspection immediately upon award.
13. Interested parties are instructed to monitor the Division of Purchases website on a regular basis, as additional information or changes relating to this solicitation may be released in the form of an addendum. Potential bidders are responsible for monitoring [www.purchasing.ri.gov](http://www.purchasing.ri.gov) for any addendums.
14. Equal Employment Opportunity (G.L. 1956 § 28-5.1-1, et seq.) – § 28-5.1-1 Declaration of policy – (a) Equal opportunity and affirmative action toward its achievement is the policy of all units of Rhode Island state government, including all public and quasi-public agencies, commissions, boards and authorities, and in the classified, unclassified, and non-classified services of state employment. This policy applies to all areas where State dollars are spent, in employment, public services, grants and financial assistance, and in state licensing and regulation. For further information, contact the Rhode Island Equal Opportunity Office at (401) 222-3090 or e-mail [Raymond.lambert@hr.ri.gov](mailto:Raymond.lambert@hr.ri.gov) .

15. In accordance with Title 7, Chapter 1.2 of the General Laws of Rhode Island, no foreign corporation, shall have the right to transact business in the State until it shall have procured a Certificate of Authority to do so from the Rhode Island Secretary of State (401-222-3040). *This is a requirement only of the successful bidder.*
16. The bidder should be aware of the State's Minority Business Enterprise (MBE) requirements, which address the State's goal of ten percent (10%) participation by MBE's in all State procurements. For further information, contact the MBE Administrator at (401) 574-8253 or visit the website [www.mbe.ri.gov](http://www.mbe.ri.gov) or contact [dorinda.keene@doa.ri.gov](mailto:dorinda.keene@doa.ri.gov).
17. Questions and Proposal Submission Questions concerning this solicitation may be emailed to the Division in accordance with the terms and conditions expressed on the cover page of this solicitation. Questions received, if any, will be posted on the internet as an addendum to this solicitation. It is the responsibility of all interested parties to download this information and track the website for information and addendums.

## **PREPARATION OF PROPOSAL**

Proposals should include the following:

1. A completed and signed R.I.V.I.P. generated Bidder Certification Cover Form downloaded from the Division's Internet home page at <http://www.purchasing.state.ri.us>.
2. An original (marked "Original") plus five (5) copies of a signed and sealed **Cost Proposal**. (See template below attached as **Appendix C**.)
3. An original (marked "Original") plus five (5) copies of a separate **Technical Proposal**.
4. Two (2) copies of the technical proposal and two (2) copies of the cost proposal (clearly marked) in electronic format (CD-ROM) in a PDF. Microsoft Word/Excel or PDF is preferable.
5. A completed and signed W-9 Form downloaded from the Division's website at <http://www.purchasing.state.ri.us> (click on RIVIP, then General Information and then Standard Forms).
6. The Bidder Acknowledgment Form attached as **Appendix B**.

### **Submission Deadline: please refer to page one of this solicitation**

An original plus five (5) copies of the Technical Proposal and an original plus five (5) copies of the Cost Proposal must be either mailed and received prior to the submission deadline or hand-delivered in a sealed envelope marked "**RFP # 7457925: "RFP for Design Services for Two Barges"**" to:

Rhode Island Department of Administration  
Division of Purchases, 2<sup>nd</sup> Floor  
One Capitol Hill  
Providence, RI 02908-5855

**Note: Proposals received after the above-referenced due date and time may not be considered. Proposals misdirected to other State locations by the scheduled due date and time will be determined to be late and may not be considered. Proposals faxed or emailed to the Division of Purchases will not be considered.**

**BID SURETY** -- A bid surety (i.e. cashiers check, bank check, bid bond, treasurers' check, money order) payable to the State of Rhode Island, in the amount five percent (5%) of the contract price must be furnished by each offeror with their proposal in accordance with State Procurement Regulation 5.7 and the State's General Conditions of Purchase. Withdrawal or cancellation of a proposal after the closing date for acceptance of proposals will result in the forfeiture of the bid security. The proposal guaranty will be furnished by surety companies authorized/licensed to do business in the State of Rhode Island. The State reserves the right to retain the surety of all bidders until the successful bidder enters into the Contract or until such time as the award or cancellation of the Contract is announced at which point Sureties will be returned to all bidders by the State of Rhode Island.

### **CRITERIA USED IN EVALUATING PROPOSALS**

Proposals will be carefully evaluated for cost effectiveness, compliance with the requirements contained in the specifications, and value added by a review team commissioned by the Division. Additionally, the review team will also consider the qualifications submitted by each bidder. The contract will be awarded to the responsible bidder who submits a superior, but economical proposal based on an analysis of its compliance with the specifications, qualifications and cost in accordance with the following:

<b>Qualifications =</b>	<b>40 points</b>
<b>Additional Services =</b>	<b>20 points</b>
<b>Cost =</b>	<b><u>40 points</u></b>
	<b>100 Points</b>

**(The cost score may be calculated based on the following formula: ((lowest cost/[proposed cost of other vendor]) x cost points available).**

### **Award**

- The Division will commission a review team to evaluate and score all proposals that are complete and minimally responsive using the criteria described above. The evaluation of any item may incorporate input from sources other than the bidder's response and supplementary materials submitted by the bidder. Those other sources could include assessments made by evaluators based on findings recorded from reference checks

(including but not limited to those supplied by the bidder), prior experience with or knowledge of bidder's work, responses to follow-up questions posed by the State and/or oral presentations by the bidders if requested by the review team. The State may elect to use any or all of these evaluation tools.

- The review team may contact any, all or some of the bidders with questions and clarifications at any point during the process at its own discretion. The review team may adjust the technical score of any bidder after conducting such an interview.
- The review team will present written findings, including the results of all evaluations, to the State Purchasing Agent or designee, who will make the final selection for this solicitation on behalf of the RIEDC. When a final decision has been made, a notice will be posted on the Rhode Island Division of Purchases web site.
- In order for the Cost Proposal to be reviewed, all technical proposals must meet a minimum technical score of **40 points** out of a total of 60 points. If the proposal submitted does not achieve this minimum, the cost proposal submitted by the bidder will not be considered and the proposal will be dropped from further consideration.
- Because the evaluation takes into consideration both the technical and cost components in a value based approach, the lowest costing bidder may not necessarily be awarded the contract.
- Notwithstanding anything above, the Division reserves the right to unilaterally: 1) accept or reject any, or all, bids, proposals, and award on cost alone; 2) cancel the solicitation; 3) waive any technicality in order to act in the best interest's of the State; and 4) to conduct additional negotiations as necessary.
- Proposals found to be technically or substantially non-responsive, at any point in the evaluation process, will be rejected and not be considered further. The State, at its sole option, may elect to require presentation(s) by bidders in consideration for the award. An award will not be made to a contractor who is neither qualified nor equipped to undertake and complete the required work within the specified time.

## ***SECTION II - QUALIFICATION OF COMPANIES SUBMITTING BID (40 PTS)***

1. Bid proposals must include a description of the bidder (corporation, partnership, sole proprietorship, etc.); a listing of the names of the individual or corporate representative(s) that approved the bid proposal for submission; and a corporate background/description of bidder (i.e. experience, capacity, etc.)
2. Identify the design professional responsible for and in charge of the design(s) to be provided by the bidder, identify the members of the design team that will be assigned to this project and provide the resume of any and all members of the design team on behalf of the bidder.
3. Identify any and all current or anticipated sub-contractors that the Bidder has hired, retained or employed or intends to hire, retain or employ for the purposes of this project.

4. Proposals must provide a list of similar services provided by the supplier in the past along with details of barges built under their supervision using drawings supplied by bidder.
5. Three (3) references involving similar projects.

### ***SECTION III - BARGE SPECIFICATIONS AND SERVICES REQUIRED***

#### **General Requirement**

The State requires the design of two Barges each suitable for the carriage and operation of a mobile harbor crane. The Barges shall be designed to support the selected crane (crane specifications to be supplied by crane supplier).

*Start Up Meeting* - The selected firm shall have a job start up meeting with representatives of ProvPort, Inc., RIEDC, and the crane supplier to discuss modifications or changes to the barge design which result from the selected crane.

#### *The Barges*

- approximate dimensions shall be a length 300 feet, breadth 72 feet, molded depth 12 feet.
- minimum deck strength shall be not less than 30 metric tons per square meter.
- constructed so that a longitudinal bulkhead is positioned 20 feet either side of the barge center line.

A detailed set of production drawings and bid documents for the construction phase will be required. The drawing package is to incorporate all items designated within Section III of this RFP as modified to support the selected crane.

#### **General Description and Specification**

1. The barge to be Rake/Box Barge
2. Barge to be to in accordance with American Bureau of Shipping (“ABS”) Ocean Class
3. Deck Plate 9/16”
4. Side Plate 3/8”
5. Bottom Plate 1/2”
6. Headlong and Transom 1/2” Plate
7. To be of Channel Frame Construction
8. Centerline Longitudinal Bulkhead to be 5/16” Plate
9. Port and Starboard Longitudinal bulkheads to be 1/2” Plate to suit mobile harbor crane support pads
10. There should be 7 Transverse Bulkheads of 5/16” Plate
11. Barge to fitted with 45 – 24# Anodes
12. 1 - 10” x 1” Rub rail Flat bar per barge Side
13. 4 off Bollards Required 1 each Fore & Aft Port & Starboard
14. Air & Sounding Pipes in each Pontoon Compartment
15. Manhole Access to Each Pontoon Compartment
16. Sewage Tank in Hull in Proximity to Containerized Heads

17. Handrails where required, Removable Section in way of Crane Runway
18. Access Gates Midship Port and Starboard in Handrails.
19. Diesel fuel tank complete with transfer pump
20. 200Kva containerized diesel generator suitable for powering 4 in number 10t line pull line handling winches and providing domestic electrical power.
21. 4 (four) 10t line pull line handling winches with local controls
22. Truck tire fendering system port and starboard.
23. Emergency anchoring system
24. Exterior Coating to be 2 Coat Epoxy System Except for the Crane Runway which is to be Non Slip Finish.
25. Brackets for 4 in no. fairlead blocks
26. Crane Wheel Restrictor Tubular Structure with Removable Section Aft in way of Crane Runway.
27. Crane Pad Restrictor Unequal Angle and Stiffener Structure
28. 2 off Ramps For Crane Drive On and Off
29. Crane Ramp Brackets on Deck
30. Crane Ramp Brackets Under Deck Stiffening (If Required)
31. 6 off Brackets for Crane Storm Tie Down
32. Install Container Sockets to Suit Containerized Equipment Layout
33. Structure to Secure Grab Resting Place Timber (3 Locations)

Nothing specified in the forgoing section precludes the bidder from proposing any amendments that in their opinion enhance the design of the Barges.

## **DELIVERY OF SERVICES**

The successful bidder will be expected to be able to deliver the requested design and bid specifications within 60 days from the issuance of a purchase order.

### **As Built Drawings**

Upon acceptance and delivery of the Barges, bidder shall prepare and deliver as built drawings to both the Rhode Island Economic Development Corporation (“RIEDC”) and ProvPort, Inc.

### **ADDITIONAL SERVICES (20 POINTS) – *Bidder should discuss its capacity and capability to provide the following additional services:***

1. Shipyard liaison and inspections (weekly during build period).
2. Negotiation of Class with ABS
3. Production of detail drawings as required for installation of additional equipment.
4. Provision of qualified marine engineer
5. Provision of supervising Naval Architect
6. Production of operating procedures for the barge with crane installed.
7. Liaison with the Project Manager.

Additionally, the bidder should provide in its technical proposal the estimated level of effort (hours) required to provide each additional service.

## **SECTION IV – COST PROPOSAL (40 PTS)**

### **A. Fixed Price Sum – Design & Procurement Phase**

Bidders shall propose a fixed price sum for the complete design of the Barges and complete bid documents for the acquisition of a firm to construct the Barges in accordance with the attached template below as **Appendix C**. This fixed sum will include the provision of a detailed set of production drawings and complete bid documents/RFP for the construction of the Barges. The fixed sum shall be all inclusive, and include, but is not limited to, any meetings, data collection, drawings, collection of data and information, travel and drawings, etc. that may be required to complete the drawings and bid documents required for the acquisition of a firm to construct the Barges. Further, the fixed sum shall also include any consultation necessary during the procurement and the selection of the firm to construct the Barges.

The bidder should provide a total fixed sum price, but also include in their cost proposal a separate matrix listing job classifications, rates and level of effort (hours) required to complete the design and procurement phase. (Underestimating the level of effort will not result in additional funds being paid to the bidder and the bidder will be held accountable for fixed price sum and proposed level of effort provided for the design of the Barges. In other words, no “change orders” will be issued for completion of the design and procurement phase.)

The bid proposal should detail the payment terms desired by the bidder. After the award of the bid and prior to the issuance of a purchase order, the State reserves the right to negotiate payment terms.

### **B. Additional Services – Construction Phase**

The bidder should provide rates for providing the following additional services throughout the period (expected to be between 10 and 14 months) from the date of award:

1. Shipyard liaison and inspections (weekly during build period).
2. Negotiation of Class with ABS
3. Production of detail drawings as required for installation of additional equipment.
4. Provision of qualified marine engineer
5. Provision of supervising Naval Architect
6. Production of operating procedures for the barge with crane installed.

### **Currency**

All bids proposal prices are to be in US Dollars.

### **Bid Award Basis**

As stated above, the bid will be awarded on the basis of the price, ability to meet technical specifications/value added options, qualifications, and taking into consideration the proposed delivery and assembly period.

## **SECTION V - MISCELLANEOUS**

### **Performance Bond**

The successful bidder shall provide upon selection and execution of a mutually satisfactory contract and prior to the issuance of a purchase order, a performance bond covering 100% of the work to be performed under the contract and for the benefit of RIEDC and its successor. The performance bond shall run to RIEDC and any other entity or person it requires. All surety companies must be listed with the Department of Treasury, Fiscal Services, Circular 570, (Latest Revision published by the Federal Register). The Purchasing Agent reserves the right to consider and accept alternative forms.

### **DEVIATION FROM SPECIFIED REQUIREMENTS**

Bidders must specifically state each specified item that is not being included in the bid proposal. It will not be acceptable to simply refer to an enclosed specimen contract. Failure to follow this instruction will be grounds for disqualification.

### **ADDENDUMS TO REQUEST FOR PROPOSAL**

If it becomes necessary to revise any part of this request for bids, a written addendum will be posted on the Division's website. All bidders are responsible for monitoring the website on a regular basis.

### **COMPLIANCE WITH LAWS**

All bidders involved shall observe and comply with all applicable regulations, laws, ordinances, executive orders, policies, guidelines and requirements etc., of local, state, and federal governments as they apply to this bidding process, the application, acceptance and use of federal funds, and the Cargo Preference Act of 1954, 46 U.S.C. 55305 if applicable. The State's procurement laws and regulations can be found on the Division's website at [www.purchasing.ri.gov](http://www.purchasing.ri.gov).

### **AUTHORIZED SIGNATURE**

All bid proposal forms, including the Vendor Certification Cover Form, must be signed by persons who have the legal authority to bind the bidder to the equipment and services that are proposed.

### **DISQUALIFICATION AND REJECTION OF PROPOSALS**

Failure to comply with the requirements or the procedures set forth herein, or to satisfy the criteria as set forth in the specifications, may result in disqualification. It is not intended that exceptions to the specifications will, in and of themselves, result in disqualification. Additionally, the State Purchasing Agent reserves the right to reject any proposal based on a determination that the bidder is not "Responsible."

*Appendix A – RFP for Two Mobile Harbor Cranes – Attached Separately*

**Appendix B**

**Design Services – Bidder’s Acknowledgement Form**

Having carefully examined the information, notices and specifications and conditions contained in this package, the undersigned Bidder’s agent or representative hereby proposes and agrees to furnish proposed services in strict compliance with the Specification at the prices quoted. The Bidder affirms that, to the best of their knowledge, this bid proposal has been arrived at independently and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give Bidder an unfair advantage over other bidders in the award of this bid.

Addendums received:

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**Deadline for Submission:** [            ]

Vendor

Address:

Phone:

Signature of Bidder:

Position with Company:

Signature of Company Official

Authorizing this Bid Proposal:

Position with Company:



<b>B</b>	<b>Additional Services</b>	<b>Job Classification (add lines as needed)</b>	<b>Fully Loaded Hourly Rate</b>	<b>Estimated Level of Effort (Hours)</b>	<b>Total Amount</b>
	1. Shipyard liaison and inspections (weekly during build period)				
	2. Negotiation of Class with ABS				
	3. Production of detail drawings as required for installation of additional equipment.				
	4. Provision of qualified marine engineer				
	5. Provision of supervising Naval Architect				
	6. Production of operating procedures for the barge with crane installed.				



## **Solicitation Information**

**July 5, 2012**

**RFP # 7457854**

**TITLE: Two (2) Mobile Harbor Cranes**

**OPENING DATE AND TIME: July 30, 2012 at 2:00 PM (EDT)**

Questions concerning this solicitation shall be e-mailed to the Division of Purchases at [rfp.questions@purchasing.ri.gov](mailto:rfp.questions@purchasing.ri.gov) **no later than July 16, 2012 at 12 Noon**. Please reference the RFP / LOI number on all correspondence. Answers to questions received, if any, will be discussed at the pre-proposal meeting and included in the meeting summary, which will be posted on the internet at <http://www.purchasing.ri.gov>

**SURETY REQUIRED: YES**

**BOND REQUIRED: YES**

**Daniel W. Majcher, Esq.  
Assistant Director, Special Projects**

**Vendors must register on-line at the State Purchasing Website**

### **NOTE TO VENDORS:**

Offers received without the entire completed three-page RIVP Generated Bidder Certification Form attached may result in disqualification.

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## **SECTION I - GENERAL INFORMATION AND INSTRUCTIONS**

### **Introduction**

The Rhode Island Division of Purchases (“Division”), on behalf of the Rhode Island Economic Development Corporation (“RIEDC”), is issuing a Request for Proposals (“RFP”) for two (2) mobile harbor cranes that will be placed into service at ProvPort, Inc. The Division is acting as procurement agent on behalf of the RIEDC and ProvPort Inc., the owner and operator of the Port of Providence. Additionally, the Division, on behalf of this partnership, will issue solicitations for design services for two barges and ultimately the construction thereof, to be used with the mobile harbor cranes, being solicited in this RFP. The purchase of these cranes shall be governed in accordance with terms stated in this RFP and any addendums thereto, the vendor certification form, the State Procurement Regulations and the model contract attached as **Appendix A**.

### **General Instructions and Notifications to Bidders**

1. Potential bidders are advised to review all sections of this RFP carefully and to follow instructions completely. Failure to make a complete submission as described herein may result in a rejection of the proposal.
2. Proposals which depart from, or materially alter, the terms and requirements in this RFP may be rejected as being non-responsive. Additionally, the Division reserves the right to reject or accept any and all proposals on such a basis that the Division deems to be in its best interest.
3. In order to submit a proposal, vendors must properly register with the State of Rhode Island. For information of registering, please see the Division’s website at [www.purchasing.ri.gov](http://www.purchasing.ri.gov) and under the heading “Vendor Registration Information.”
4. Proposals will only be considered from entities which have an established reputation in the field of crane construction. The Purchasing Agent reserves the right to request additional information regarding the “responsibility” of any vendor and accept or reject any bid on the basis of “responsibility” in his or her discretion.
5. All costs associated with developing or submitting a proposal in response to this Invitation, or to provide oral or written clarification of its content shall be borne by the bidder. The State assumes no responsibility for costs during the RFP process.
6. Proposals are considered to be irrevocable for a period of not less than sixty (60) days following the opening date, and may not be withdrawn, except with the express written permission of the State Purchasing Agent. Any such withdrawal may result in forfeiture of the submitted bid surety.
7. All pricing submitted will be considered to be firm and fixed unless otherwise indicated herein.

8. Proposals misdirected to other state locations, or which are otherwise not present in the Division at the time of opening for any cause will be determined to be late and will not be considered. For the purposes of this requirement, the official time and date shall be that of the time clock in the reception area of the Division.
9. The Division intends to award to the same vendor for both cranes.
10. All proposals should include the vendor's FEIN or Tax Identification number as evidenced by a W9, downloadable from the Division's website at [www.purchasing.ri.gov](http://www.purchasing.ri.gov).
11. The purchase of goods under an award made pursuant to this RFP will be contingent on the availability of funds.
12. Bidders are advised that all materials submitted to the State for consideration in response to this RFP will be considered "Public Records" as defined in Title 38, Chapter 2 of the General Laws of Rhode Island, without exception, and will be released for inspection immediately upon award.
13. Interested parties are instructed to peruse the Division of Purchases website on a regular basis, as additional information or changes relating to this solicitation may be released in the form of an addendum.
14. Equal Employment Opportunity (G.L. 1956 § 28-5.1-1, et seq.) – § 28-5.1-1 Declaration of policy – (a) Equal opportunity and affirmative action toward its achievement is the policy of all units of Rhode Island state government, including all public and quasi-public agencies, commissions, boards and authorities, and in the classified, unclassified, and non-classified services of state employment. This policy applies to all areas where State dollars are spent, in employment, public services, grants and financial assistance, and in state licensing and regulation. For further information, contact the Rhode Island Equal Opportunity Office at (401) 222-3090.
15. In accordance with Title 7, Chapter 1.2 of the General Laws of Rhode Island, no foreign corporation, shall have the right to transact business in the State until it shall have procured a Certificate of Authority to do so from the Rhode Island Secretary of State (401-222-3040). *This is a requirement only of the successful vendor.*
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3. An original (marked "Original") plus five (5) copies of a separate **Technical Proposal**.
4. A completed and signed W-9 Form downloaded from the Division's website at <http://www.purchasing.ri.gov> (click on RIVIP, then General Information and then Standard Forms).

A unit price must be stated for each crane as specified, either typed in or written in ink. Any exceptions or deviations from the requested products must be clearly indicated in writing and must be submitted with the proposal form. Failure to follow this instruction will be grounds for disqualification of a proposal.

### **Submission Deadline: please refer to page one of this solicitation**

An original plus five (5) copies of the Technical Proposal and an original plus five (5) copies of the Cost Proposal must be either mailed and received prior to the submission deadline or hand-delivered in a sealed envelope marked "**RFP #7457854: "Two (2) Mobile Harbor Cranes"**" to:

Rhode Island Department of Administration  
Division of Purchases, 2<sup>nd</sup> Floor  
One Capitol Hill  
Providence, RI 02908-5855

**Note: Proposals received after the above-referenced due date and time may not be considered. Proposals misdirected to other State locations by the scheduled due date and time will be determined to be late and may not be considered. Proposals faxed or emailed to the Division of Purchases will not be considered.**

**BID SURETY** -- A bid surety (i.e. cashiers check, bank check, bid bond, treasurers' check, money order) payable to the State of Rhode Island, in the amount five percent (5%) of the contract price must be furnished by each offeror with their proposal in accordance with State Procurement Regulation 5.7 and the State's General Conditions of Purchase. Withdrawal or cancellation of a proposal after the closing date for acceptance of proposals will result in the

forfeiture of the bid security. The proposal guaranty will be furnished by surety companies authorized/licensed to do business in the State of Rhode Island. The State reserves the right to retain the surety of all bidders until the successful bidder enters into the Contract or until such time as the award or cancellation of the Contract is announced at which point Sureties will be returned to all bidders by the State of Rhode Island.

## **CRITERIA USED IN EVALUATING PROPOSALS**

Proposals will be carefully evaluated for cost effectiveness, compliance with the requirements contained in the specifications, and value added by a review team commissioned by the Division. Additionally, the review team will also review the qualifications submitted by each bidder. The contract will be awarded to the responsible bidder who submits a superior but economical proposal based on an analysis of its compliance with the specifications, qualifications and cost in accordance with the following:

<b>Compliance with specifications/Value Added Options =</b>	<b>30 points</b>
<b>Qualifications =</b>	<b>20 points</b>
<b>Cost =</b>	<b><u>50 points</u></b>
	<b>100 Points</b>

**(The cost score is calculated based on the following formula: ((lowest cost/[proposed cost of other vendor]) x cost points available).**

### **Award**

- The Division will commission a review team to evaluate and score all proposals that are complete and minimally responsive using the criteria described above. The evaluation of any item may incorporate input from sources other than the bidder's response and supplementary materials submitted by the bidder. Those other sources could include assessments made by evaluators based on findings recorded from reference checks (including but not limited to those supplied by the bidder), prior experience with or knowledge of Vendor's work, responses to follow-up questions posed by the State and/or oral presentations by the vendors if requested by the review team. The State may elect to use any or all of these evaluation tools.
- The review team may contact any, all or some of the bidders with questions and clarifications at any point during the process at its own discretion. The review team may slightly adjust the technical score of any bidder after conducting such an interview.
- The review team will present written findings, including the results of all evaluations, to the State Purchasing Agent or designee, who will make the final selection for this solicitation on behalf of the RIEDC. When a final decision has been made, a notice will be posted on the Rhode Island Division of Purchases web site.
- In order for the Cost Proposal to be reviewed, all technical proposals must meet a minimum technical score of **30 points**. If the proposal submitted does not achieve this

minimum, the cost proposal submitted by the bidder will not be considered and the proposal will be dropped from further consideration.

- Because the evaluation takes into consideration both the technical and cost components in a value based approach, the lowest costing vendor may not necessarily be awarded the contract.
- Notwithstanding anything above, the Division reserves the right to unilaterally: 1) accept or reject any, or all, bids, proposals, and award on cost alone; 2) cancel the solicitation; 3) waive any technicality in order to act in the best interest's of the State; and 4) to conduct additional negotiations as necessary.
- Proposals found to be technically or substantially non-responsive, at any point in the evaluation process, will be rejected and not be considered further. The State, at its sole option, may elect to require presentation(s) by offerors in consideration for the award. An award will not be made to a contractor who is neither qualified nor equipped to undertake and complete the required work within the specified time.

## **QUALIFICATION OF COMPANIES SUBMITTING BID**

1. Bid proposals must include a description of the bidder (corporation, partnership, sole proprietorship, etc.); a listing of the names of the individual or corporate representative(s) that approved the bid proposal for submission; and a corporate background/description of bidder (i.e. experience, capacity, etc.)

2. Bid proposals must provide a list of crane on barge customers which specifies the number of cranes/barge customers similar to what is sought in this request as well as the number of cranes currently in operation in USA.

## **DEVIATION FROM SPECIFIED REQUIREMENTS**

Bidders must specifically state each specified item that is not being included in the bid proposal. It will not be acceptable to simply refer to an enclosed specimen contract. Failure to follow this instruction will be grounds for disqualification.

## **ADDENDUMS TO REQUEST FOR PROPOSAL**

If it becomes necessary to revise any part of this request for bids, a written addendum will be posted on the Division's website. All bidders are responsible for monitoring the website on a regular basis.

## **COMPLIANCE WITH LAWS**

All bidders involved shall observe and comply with all applicable regulations, laws, ordinances, executive orders, policies, guidelines and requirements etc., of local, state, and federal governments as they apply to this bidding process, the application, acceptance and use of federal

funds and to the purchase of the cranes, including but not limited to the provisions of the Davis-Bacon Act, 40 U.S.C. 3141, et seq. and the Cargo Preference Act of 1954, 46 U.S.C. 55305. The State's procurement laws and regulations can be found on the Division's website at [www.purchasing.ri.gov](http://www.purchasing.ri.gov).

### **Buy American Provision:**

RIEDC may obtain a "waiver" from the "Buy American" provision for this Project. Notwithstanding the foregoing, delivery of the Project Equipment shall be delivered in compliance with the Cargo Preference Act of 1954. If the Project and/or Project Equipment is manufactured outside of the United States, the proposal from the Bidder shall include components with alternate delivery costs of both cranes on US Flagged vessel(s), delivery of more than fifty percent of such Project Equipment on US Flagged vessel(s); and delivery on non-USA flagged vessel(s). If substantial cost savings can be achieved, RIEDC may request a waiver on the delivery of the Project however there is no guarantee that such a waiver will be granted. The proposals will be scored based on delivery on a US Flagged vessel(s).

### **AUTHORIZED SIGNATURE**

All bid proposal forms, including the Vendor Certification Cover Form, must be signed by persons who have the legal authority to bind the bidder to the equipment and services that are proposed.

### **DISQUALIFICATION AND REJECTION OF PROPOSALS**

Failure to comply with the requirements or the procedures set forth herein, or to satisfy the criteria as set forth in the specifications, may result in disqualification. It is not intended that exceptions to the specifications will, in and of themselves, result in disqualification. Additionally, the State Purchasing Agent reserves the right to reject any proposal based on a determination that the bidder is not "Responsible."

### **DELIVERY OF TWO (2) MOBILE HARBOR CRANES**

It is anticipated that the successful bidder will be notified on or around the end of July 2012. The goal of the Division is to have the successful bidder deliver and assemble the requested cranes to ProvPort by **December 31, 2012**, but no later than two hundred seventy (270) days from the issuance of a purchase order. The bidder shall state the date of delivery and assembly in their proposal. **The Division reserves the right to give reasonable weight to the date of delivery and assembly provided during the bidder selection process.**

The bidders cost proposal shall include and itemize any anticipated delivery charges, including, but not limited to, any "port charges" and/or any associated Customs taxes/duty. If the Project and/or Project Equipment is manufactured outside of the United States, the proposal from the Bidder shall include components with alternate delivery costs of both cranes on US Flagged vessel(s), delivery of more than fifty percent of such Project Equipment on US Flagged vessel(s); and delivery on non-USA flagged vessel(s). If substantial cost savings can be achieved, RIEDC may

request a waiver on the delivery of the Project however there is no guarantee that such a waiver will be granted. The proposals will be scored based on delivery on a US Flagged vessel(s).

## **SECTION II – SPECIFICATIONS**

These specifications are intended to be general specifications and in no way limit the firms that can bid. If there is any specification included herein that has a chilling affect on the bidding process, potential vendors should identify any such issues during the question and answer period stated on the cover page of this solicitation.

### **General Specifications for the Two (2) Mobile Harbor Cranes**

Two (2) mobile harbor cranes optimized for bulk, which are suited for port operations in a marine environment for use with Panamax-size vessels of 105 foot beam. The cranes must be:

- A Liebherr LHM 550 series or a Gottwald Harbor Crane Model 7 series or equivalent.
- Equipped with rubber tires.
- Capable of operating from a barge of dimensions approximately 300 ft x 72 ft x 12 ft (subject to naval architect engineering), while operating from the barge the crane must operate satisfactorily when tilted up to 3 degrees from the vertical.
- Capable of climbing a maximum of 5% grade during travel.
- Feature level luffing.

Supported on outrigger pads during cargo handling operations. The outriggers and pad system must allow for the crane to self level automatically.

- Offered in four rope configuration with the following minimum capacity and corresponding radii as measured from the center of the crane tower (NOTE: Load curves shall be provided for on land and on barge with 3 degree inclination and supporting base of no more than 12m in width):
  - o Four-Rope Grab on the Ropes: 40 metric tons at 42 meters
- Capable of simultaneous and independent operations of slewing, main hoist, and boom hoist motions under full load and speed.
- Not have any proprietary electric or electronic control components that prevent the port from acquiring parts or services from third party sources.
- Equipped with 3 pinion slew ring drive.
- The crane requires the following items:
  - a. Elevated cabin which must be placed to allow the crane operator an eye-level view of approximately 23 meters minimum from ground level
  - b. Cabin monitors indicating load under hook and the working radius
  - c. Computerized overload safety device
  - d. Fulcrum point to be, at a minimum, 17 m to avoid possible collision with ship during unloading
  - e. Propping supervision to control the stability of the crane
  - f. Appropriate lighting for night-time operation
  - g. Diesel prime mover
  - h. Major machinery and electrical control equipment must be located within weather proof enclosures
  - i. Rubber tires with wheel sets that are individually controlled and steerable

- j. Cable reeling drum at jib head and rotator hook
- k. Container tilt operation controls
- l. Metered counter for the engine operating hours
- m. 3 (three) in number of the following grabs (Note to service both cranes and provide one spare)
  - 15 cbm four rope orange peel grab
  - 30cbm four rope clamshell grab for handling coal @ 0.8mt per cbm
  - 7cbm four rope clamshell grab for handling iron ore @4mt per cbm
- n. Fault-finding data recording system
- o. Remote diagnostics modem GSM with “Live and Real Time” remote diagnostics and alerting capabilities accessible from any distant web enabled device (office computer/laptop, Iphone or cellphone)
- p. Automatic lubrication system
- q. No crane motion not under the control of the operator or initiated by him shall be permitted at any time under any circumstances, including malfunctions.
- r. Tele-camera located at the following positions; boom tip, machinery room, winch compartment and diesel motor room.
- s. Heaters to be installed in diesel fuel tanks and hydraulic oil tanks.
- t. Diesel motor to be provided with cylinder block heaters for cold weather operations.
- u. A 110v power supply.
- Bidder shall describe in detail;
  - any special features included for heavy lift operations, drive system, structure and chassis design with regards to the quay loading.
  - any features related to fuel efficiency and/or options that reduce the environmental impact of the crane. Fuel consumption figures for the crane are to be supplied based on the above General Specifications.
- Bidders shall provide a turnover calculation (utilizing the 30cbm four rope clamshell grab for handling coal) and fuel consumption per ton of moved material are to be calculated using the following guidelines, with each motion/operation completed prior to commencing the next:
  - a. Fill the grab
  - b. Hoist full grab 10 meters at a outreach of 30 meters
  - c. 180° slewing with full grab
  - d. 2 meters lowering at a min outreach of 25 meter
  - e. Open grab
  - f. Hoist empty grab 2 meters
  - g. 180° slewing with empty grab and simultaneously luff to an outreach of 30 meters
  - h. Lower empty grab 10 meters

## **Warranty**

The Division is requiring a manufacturer’s warranty, to include parts and labor, of no less than one full year from the date the crane is installed and operational. The Division is requesting that should the bidder propose an extended warranty on the cranes, an attachment should be made to the bid proposal detailing extended warranties for 1 year, 3 year and 5 year periods and their related costs. The bidder can propose other extended warranty periods.

## **Delivery and Installation Requirements**

The cranes shall be delivered to the site specified by ProvPort at the Port of Providence. Delivery and installation shall be governed by the terms and conditions provided in **Appendix A**.

## **Training**

The Division requires that the bid proposal include the training and commissioning of no less than five individuals designated by RIEDC and PROVPORT on the operation and maintenance of the crane. At least four full sets of operator's manuals and service and maintenance manuals, four spare parts catalogs and four full sets of schematics and drawings must be provided.

## **Technical Assistance**

The Division requires that the bidder attach to the bid proposal a statement of what technical assistance will be provided, the location of the technicians and the location of the authorized parts distributor. The details of the level of technical assistance must be included.

## **Paint and Markings**

The Division requires that the port logo (graphics to be supplied) be painted on the crane at the bidder's expense. With the exception of high-heat components, all areas of the crane and lifting device rotator to be painted shall be coated with a system appropriate for the maritime environment. Paint system and thickness shall be described in detail in an attached document.

## **Optional Equipment**

The Division is requesting that bidders propose as separate items the following options:

- Wireless remote control system
- Any other optional systems available.

## **Currency**

All bids proposal prices are to be in US Dollars.

## **Spare Parts**

The bidder shall provide a price list of recommended spare parts for the crane. This list shall be sufficient to describe the extent of consumable spare parts required to one (1) year or 2,000 hours of service (first occurrence).

## **State and Federal Compliance**

The Division requires that the crane is to be delivered with all current certificates required by state and federal laws for operation.

### **Bid Award Basis**

As stated above, the bid will be awarded on the basis of the price, ability to meet technical specifications/value added options, qualifications, and taking into consideration the proposed delivery and assembly period.

### **Determination of Compliance with Specifications**

The Division, in consultation with RIEDC and ProvPort, will examine the cranes on the date of delivery for completeness of the order and will accept the cranes when they are assembled and tested and determined to comply with the successful bidder's bid proposal.

### **Terms of Payment**

Progress payments shall not exceed 20% of the contract cost, with the schedule due date to be not less than 45 days from the prior payment, to be adjusted based on the delivery date.

### **Performance Bond**

The successful bidder shall provide upon selection and execution of a mutually satisfactory contract and prior to the issuance of a purchase order, a performance bond covering 100% of the work to be performed under the contract and for the benefit of RIEDC and its successor. The performance bond shall run to RIEDC and any other entity or person it requires. All surety companies must be listed with the Department of Treasury, Fiscal Services, Circular 570, (Latest Revision published by the Federal Register). The Purchasing Agent reserves the right to consider and accept alternative forms.

**SECTION III - PROPOSAL SUBMISSION FORMS**

**Mobile Harbor Cranes - Bidder's Acknowledgement Form** Having carefully examined the information, notices and specifications and conditions contained in this package, the undersigned Bidder's agent or representative hereby proposes and agrees to furnish proposed cranes in strict compliance with the Specification at the prices quoted. The Bidder affirms that, to the best of their knowledge, this bid proposal has been arrived at independently and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give Bidder an unfair advantage over other bidders in the award of this bid. Addendums received:

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**Deadline for Submission:** \_\_\_\_\_

Vendor:
Address:
Phone:
Signature of Bidder:
Position with Company:
Signature of Company Official Authorizing this Bid Proposal:
Position with Company:

**Proposal Unit Cost Form**

**Crane Model:** \_\_\_\_\_

<b>Item</b>	<b>Unit Cost</b>	<b>Total Cost</b>
<b>A. Crane, as stated in specifications</b>		
<b>B. Paint and Markings</b>		
<b>C. On Site Activities</b>		
Assembly		
Training/Commissioning		
<b>D. Delivery/Related Charges</b>		
U.S. Flag Vessel (100%)		
Port Charges		
Custom Charges/Duty		
<b>Total Base Cost (A - D)</b>		
Alternative: Combination U.S. Flag/Non U.S. Flag (requires greater than 50%) specify percentage proposing	Specify Savings	
Alternative: Non U.S. Flag Vessel	Specify Savings	
<b>Optional Equipment</b>		
Wireless remote control system		
Other, specify		
<b>Spare Parts Price List</b>	Attach Separately	Attach Separately
<b>Extended Warranties</b>		
One Year		
Three Years		
Five Years		
Other extended warranty period, specify		

**Mobile Harbor Cranes - Proposal Submission Form** Attachments to this proposal which are required:

1. A completed and signed R.I.V.I.P. generated Bidder Certification Cover Form downloaded from the Division's Internet home page at <http://www.purchasing.ri.gov> .
2. A completed and signed W-9 Form downloaded from the Division's website at <http://www.purchasing.ri.gov> (click on RIVIP, then General Information and then Standard Forms).
3. An original (marked "Original") plus five (5) copies of a signed and sealed Cost Proposal using the Proposal Unit Cost Form above.
4. An original (marked "Original") plus five (5) copies of a separate Technical Proposal including:
  - a. Guaranteed number of days for delivery after issuance of purchase order.
  - b. Technical specifications
  - c. Description of the bidder, qualifications and a listing of names of the principals involved.
  - d. Bid proposals must provide a list of crane on barge customers which specifies the number of cranes/barge customers similar to what is sought in this request as well as the number of cranes currently in operation in USA.
  - e. A statement detailing any deviations from these specifications.
  - f. The technical specifications of the mobile harbor crane proposed.
  - g. Extended warranty information.
  - h. Technical support information.
  - i. Detailed description of after sales services, locations of spare parts storage & service centers and number & location of service engineers within the continental USA.
5. Bid security as detailed in the Specifications.

## Appendix A

### EQUIPMENT PURCHASE CONTRACT BETWEEN RHODE ISLAND ECONOMIC DEVELOPMENT CORPORATION AND

**THIS EQUIPMENT PURCHASE CONTRACT** ("Contract") is made and entered into as of \_\_\_\_\_, 2012 ("Execution Date"), by and between the **RHODE ISLAND ECONOMIC DEVELOPMENT CORPORATION**, a public corporation, governmental agency and public instrumentality of the State of Rhode Island with an address of 315 Iron Horse Way Providence RI 02908 (""), and \_\_\_\_\_ (hereinafter referred to as "Supplier").

WHEREAS, RIEDC desires to purchase from the Supplier the Cranes (as defined herein) in accordance with the terms and conditions of this Contract; and

WHEREAS, Supplier agrees to sell and deliver to RIEDC the Cranes in accordance with the terms and conditions of this Contract.

NOW, THEREFORE, in consideration of the premises and of the mutual representations, warranties and covenants herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually agree as follows:

#### **ARTICLE 1– Definitions**

Whenever used in this Contract, the following terms shall have the meaning set out below:

"Certificate of Completion" means the Certificate of Completion to be delivered by the Supplier to RIEDC in form and substance as mentioned in Annex 3.

"RIEDC" means RIEDC, a public corporation, governmental agency and public instrumentality of the State of Rhode Island with an address of 315 Iron Horse Way, Suite 110, Providence RI 02908.

"Technical Data" means the document titled \_\_\_\_\_ attached in Annex 2.

"Technical Description" means the document titled \_\_\_\_\_ attached in Annex 1-A.

"Confidential Information" has the meaning set forth in Article 9(i).

"Configuration Per Crane" means the configuration of each of the Cranes as set forth in Annex 1- attached hereto.

“CIF” means Cost Insurance Freight as defined in accordance with INCOTERMS 2010 and further defined in Article 5 of this Contract.

“Crane Documentation” has the meaning set forth in Article 12.

“Crane Manufacturer” means \_\_\_\_\_.

“Cranes” (or, individually, a “Crane”) means the two \_\_\_\_\_ Mobile Cranes to be provided in accordance with this Contract, each a Type \_\_\_\_\_ including the Configuration per Crane attached in Annex 1, the Technical Description attached in Annex 1-A, and the Technical Data attached in Annex 2.

“ex works” means the Cranes have been made ready and are available for shipment at the Crane Manufacturer’s facility, but they have not necessarily been cleared for export or loaded on a collecting vehicle. As used in this Contract, the term does not address risk of loss or passage of title.

“Handover” means the point at which the fully assembled and operational Cranes will have been tested at the Port by RIEDC and the Supplier’s service engineers, Supplier’s service engineers will have attested to RIEDC that the Crane is in workable condition and meets the Contract performance criteria by executing a Certificate of Completion Annex 3; Supplier shall have provided all required tools and spare parts; Supplier shall have provided four (4) full sets of operational manuals, service and maintenance manuals, spare parts catalogs, and schematics and drawings in the terms of this Contract.

“Party” means either RIEDC or Supplier when referred to individually.

“Parties” means RIEDC and Supplier when referred to collectively.

“Port” means ProvPort’s location within the Port of Providence located at 35 Terminal Road, Suite 200, Providence, Rhode Island 02905-5507.

“ProvPort” means ProvPort, Inc., a Rhode Island non-profit entity with an address of 35 Terminal Road, Suite 200, Providence, Rhode Island 02905-5507, or its approved sublessee.

“Purchase Price” has the meaning set forth in Article 4(a).

“Supplier” means \_\_\_\_\_

“Third Party Agency” has the meaning set forth in Article 8(d).

“Usage Fees” has the meaning set forth in Article 4(c).

“Vessel” means an ocean going vessel used to deliver the Cranes to the Port which shall be sufficient for project cargo with ship’s gears sufficient to handle and deliver the Cranes, and, subject to availability of appropriate United States flag vessel

able to carry these Cranes or to RIEDC's election under Article 4(a) to not so require, shall be a United States flag vessel.

"Warranty Period" for any Crane means a period of twenty-four (24) months following Handover or four thousand (4000) operation hours, whichever occurs first, as more particularly set forth in Annex 4 - Limited Warranty.

## **ARTICLE 2 – Purchase and Sale of Cranes**

(a) Purchase and Sale. Subject to the terms and conditions of this Contract, Supplier hereby agrees to sell the Cranes to RIEDC and RIEDC hereby agrees to purchase the Cranes from the Supplier.

(b) Supply. Subject to the terms and conditions of this Contract, Supplier agrees to deliver the Cranes to RIEDC at the Port and perform associated services as described in the term "Handover."

(c) Configuration and Specifications.

(i) The Configuration Per Crane is provided more specifically in Annex 1 of this Contract.

(ii) The Technical Description regarding each of the Cranes is provided in Annex 1-A of this Contract.

(iii) The Technical Data regarding each of the Cranes is provided in Annex 2 of this Contract.

(iv) Supplier and Crane Manufacturer will design and manufacture the Cranes in accordance with the Configuration Per Crane, Technical Description and Technical Data set forth in this Contract including Annex 1, Annex 1-A and Annex 2. All components of the Crane will be manufactured and assembled by Supplier and Crane Manufacturer in strict compliance with the terms of this Contract.

(v) No changes or substitutions by the Supplier or Crane Manufacturer shall be made with respect to the Cranes and the Configuration Per Crane, Technical Description, and Technical Data thereof set forth hereunder without RIEDC's prior written consent.

(vi) No changes or substitutions shall be made with respect to the Supplier and Crane Manufacturer regarding their respective obligations and project involvement without RIEDC's prior written consent.

(d) Services. Supplier shall provide the services described in this Contract, which shall include all services necessary to complete delivery and Handover of the Cranes to RIEDC, including the following:

(i) Technical assistance by Supplier's service engineers, at the sole cost and expense of the Supplier, during erection, commissioning, and start-up of each of the Cranes at the Port. Supplier, at its sole cost and expense, shall be responsible for all expenses related thereto including, but not limited to, travel, accommodation, and living expenses of the Supplier's service engineers.

(ii) Upon completion by the Supplier of the erection, commissioning and start-up of each of the Cranes at the Port in accordance with this Contract, evidencing that the Cranes are ready for operation at the Port, Supplier shall provide RIEDC (and RIEDC's designated operator(s) of the Cranes and the Port's maintenance staff), one (1) week of onsite training at the Port regarding the operation, maintenance and related usage of the Cranes. Training shall be provided onsite at the Port by the Supplier's service engineers.

(e) New Goods. All Cranes shall be newly manufactured goods; used or reconditioned Cranes or any parts thereof are prohibited hereunder.

(f) Warranties. All warranties for the Cranes, including special warranties, are specified herein in Annex 4 - Limited Warranty.

(g) Order of Precedence. Each of the annexes listed in Article 3 below is by this reference hereby incorporated into this Contract. In the event of any conflict, inconsistency, variation or ambiguity between any of the Contract documents, this Contract shall control; and in the event that any such issue cannot be resolved by reference to the Contract, the documents shall prevail in the following order: Annex 4, Annex 3, Annex 1, Annex 1-A, Annex 2, Annex 5.

### **ARTICLE 3– Contract Documents**

(a) Entire Contract. This Contract, including referenced documents set out above in Article 2(g), represents all the terms and conditions agreed upon by the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings between the Parties relating to the subject matter hereof. No other understandings or representations, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind either of the Parties.

(b) Approval. RIEDC and Supplier will each provide evidence to the other of such necessary municipal and corporate approval, as applicable, promptly and in any event within three (3) business days after execution hereof by the parties hereto. The Contract may be altered, amended, or waived only by a written amendment executed by authorized representatives of both Parties. The right of either Party to require strict performance by the other hereunder shall not be affected by any previous waiver, forbearance, or course of dealing.

- (c) Annexes.
  - (i) Annex One (1) - Configuration Per Crane
  - (ii) Annex One-A (1 A) - Technical Description dated \_\_\_\_\_
  - (iii) Annex Two (2) – Technical Data dated \_\_\_\_\_
  - (iv) Annex Three (3) – Certificate of Completion
  - (v) Annex Four (4) – Limited Warranty
  - (vi) Annex Five (5) - RIEDC Information

#### **ARTICLE 4– Price**

(a) RIEDC shall pay an aggregate purchase price (the “Purchase Price”) in the amount of US \$ \_\_\_\_\_ - ( \_\_\_\_\_ and 00/100 US Dollars) for the manufacture, delivery and assembly of the Cranes by the Supplier to RIEDC in accordance with the terms of this Contract and for services of the Supplier necessary or incidental to the completion of this Contract. Notwithstanding any other term set forth in this Contract, the Purchase Price shall include all costs and expenses related to shipment of the Cranes upon a Vessel with a U.S. Flag, such amount itemized at \$ \_\_\_\_\_. RIEDC shall have the option, exercisable by written notice received by Supplier no later than \_\_\_\_\_, to elect for shipment of the Cranes on a non US-Flag vessel, in which case, RIEDC may either receive a reduction in the Purchase Price equal to \$ \_\_\_\_\_ or certain additional options offered by the Supplier (at the respective prices specified by Supplier therefor), as deemed necessary by RIEDC.

(b) Except as set forth below in Article 4(d) and Article 5(f), RIEDC shall not be responsible for any other costs related to the manufacture, delivery and assembly of the Cranes on a Handover basis by the Supplier to RIEDC as set forth in this Contract. All amounts set forth in this Contract are expressed in United States Dollars. The terms of the payment of the Purchase Price are set forth in Article 6 of this Contract.

(c) The Purchase Price excludes service and facility charges, wharfage charges and any and all charges assessed or incurred for the use of the Port (“Usage Fees”). Any and all such Usage Fees shall be borne by the Port.

(d) The Purchase Price does not include any United States import, sales or use taxes or duties (“Import Fees”). RIEDC, or any third party designee, shall pay all Import Fees and all applicable United States and Providence sales and use taxes and shall be responsible for completing all related customs requirements in a timely manner. Supplier shall cooperate with RIEDC and any third party designees, in the performance of any such obligations.

(e) In addition to any other fees set forth herein, Supplier represents and warrants to RIEDC that any foreign or international taxes, duties, fees or other similar amounts (*i.e.*, non-United States) applicable to the Cranes and their components have been paid in full by the Supplier. Supplier hereby agrees to indemnify RIEDC and hold RIEDC harmless from and against any and all loss, cost, damage, liability, or expense (including court costs and attorneys' fees) which RIEDC may incur as a result of the inaccuracy of the representation and warranty of the Supplier and/or breach of the warranties set forth in this paragraph.

#### **ARTICLE 5– Time and Place for Delivery**

(a) The Cranes shall be packed for on-deck shipment and for protection during shipment and short term storage, and in accordance with the applicable specifications of this Contract. Each item shall be identified to show the (i) item number and (ii) total quantity of items in the shipment. All shipments by Supplier must include packing sheets identifying the Port number; item number; quantity and unit of measure. Shipment must be made as specified in this Contract, as it may be amended, but amended at the latest by \_\_\_\_\_.

(b) Subject to the exceptions noted in this Article 5 below, the Cranes shall be delivered CIF Port (INCOTERMS 2010) via the Vessel, in accordance with this Contract.

(c) Subject to the exceptions and extensions(s) of time as elsewhere provided in this Contract and to Contract approval in accordance with Article 3(b), the Cranes will be delivered ex works within five (5) months after receipt of the down payment specified in Article 6(a)(i) below.

(d) Upon arrival of the Vessel at the Port, Supplier, at its sole cost and expense, will be responsible to provide its own labor, crane, and related equipment necessary to discharge the Cranes and their respective parts from the Vessel.

(e) Upon arrival of the Vessel at the Port, Supplier, at its sole cost and expense, shall provide its own labor and equipment necessary to assemble the Cranes while at the discharge wharf, including, but not limited to, any and all heavy lift cranes capable of assembling the chassis, slewing platform and tower.

(f) RIEDC is responsible for procuring the necessary test weights to perform the required certification for each of the Cranes (such certification to be in accordance with the terms of this Contract) once the Cranes have been assembled by the Supplier at the discharge wharf.

(g) After ex works delivery, Supplier shall secure prompt transportation of the Cranes from European port to the Port. However, it is understood that the date of final delivery to Port, is subject to the availability of shipping and weather conditions.

(h) Subject to the limitations set forth below, Supplier shall be entitled to a reasonable extension of the time for delivery of the Cranes to the Port in the following cases:

(i) If RIEDC requests material modifications or alterations of the specified design.

(ii) If such failure or delay is caused by an Act of God, strike, lockout, or other labor difficulty affecting production, manufacture, transportation, or the delivery of the Cranes or by other causes beyond the reasonable control of Supplier including, without limitation, any Acts of God, earthquakes, fire, flood or the elements, war, revolution, riot, civil commotion, accidents not the result of Supplier's negligence or willful acts, any applicable governmental or judicial law or regulations, order or decree, or any shortage of transportation or any interruption of transportation, or by the refusal or inability of carriers, upon request, to furnish such transportation, or delay, or shortages of or inability to obtain fuel, or any other causes beyond Supplier's reasonable control, whether or not similar to the foregoing ("Force Majeure").

(iii) In the event of delayed payment pursuant to Article 6.

(i) Supplier shall give RIEDC reasonable prior notice of any interruption or reduction in shipments to RIEDC resulting from the causes set forth in subsections (g) and (h) above and a written estimate of the period of time the same is reasonably expected to continue.

(j) Supplier shall be entitled to an extension of time equal to the total accumulated time of all such delays.

(k) Supplier shall be entitled to effect partial deliveries.

(l) Supplier's compliance with the time of delivery is subject to RIEDC fulfilling its contractual obligations.

#### **ARTICLE 6– Terms of Payment**

(a) Payment of the Purchase Price shall be made in USD in accordance with the Payment Schedule in Annex 6 which shall provide, inter alia, progress payments shall not to exceed 20% of the contract cost, with the schedule due date to be no less than 45 days from the prior payment.

Invoices for each of the above scheduled payments shall be sent in duplicate to RIEDC at: 315 Iron Horse Way Providence RI 02908, ATTN: \_\_\_\_\_ and ProvPort Inc., 25 Terminal Road, Suite 200, Providence, Rhode Island 02905, Attn: William G. Brody, Esquire. Invoices shall include the invoice total amount and all other applicable information. RIEDC shall pay properly submitted invoices immediately after receipt.

## **ARTICLE 7– Delivery of Title Documents**

(a) Upon receipt of full payment of the Purchase Price, Supplier shall immediately provide RIEDC with such documents of title as may be reasonably necessary to demonstrate ownership of the Cranes within the meaning of the law of the State of Rhode Island, the United States and any other governmental agencies and thereafter the Cranes shall become the property of RIEDC free of any encumbrance or lien created by Supplier.

(b) Supplier agrees to execute, or cause others to execute, such documents as RIEDC may reasonably request and prepare at Supplier's expense, to further evidence that title to the Cranes fully vests in RIEDC.

## **ARTICLE 8–Delivery, Erection, Testing and Inspection of the Cranes**

(a) As stated in Article 5, Supplier will provide and pay for cranes to discharge the parts for each Crane from the Vessel and cramage necessary for the assembly of the Cranes. The Port, at its sole cost and expense, will provide manpower without charge to Supplier during the unloading, erection and commissioning phases. Except as set forth in Article 5(d) and Article 5(e), RIEDC shall be responsible for any Port related charges.

(b) Supplier undertakes to provide, at its sole cost and expense, the necessary number of service engineers to complete erection and commissioning of the Cranes at the Port.

(c) At the time of completion of erection of the Cranes at the Port, the Cranes will be subject to further inspection and will be tested by qualified Supplier service engineers and by RIEDC pursuant to the terms of the Certificate of Completion, Annex 3.

(d) RIEDC shall acknowledge that the Cranes are in workable condition by signing the Certificate of Completion which acknowledgement shall not be unreasonably withheld or delayed. In case the Certificate of Completion as set forth in Annex 3 has not been signed by RIEDC within a period of ten (10) working days after it has received notice that the Cranes will be ready for Handover, Supplier shall be entitled to invite a third party agency (e.g., Lloyds Register of Shipping, the "Third Party Agency") to inspect the Cranes according to the Technical Data provided in Annex 2. If the Third Party Agency confirms that the Cranes will meet the Technical Data, the approval shall be binding and final for both Parties, and the Parties shall execute the Certificate of Completion immediately upon such confirmation. The costs of the Third Party Agency shall be borne by RIEDC if the Cranes pass the inspection successfully. The Supplier shall pay the costs of the Third Party Agency if the Cranes do not pass the inspection by the Third Party Agency.

(e) Acceptance by RIEDC of the Cranes shall not be construed to waive any warranty rights RIEDC may have at law or in equity by express reservation in this Contract with respect to nonconformity.

(f) In performing work under the Contract at the Port, Supplier shall conform to any specific safety requirements of the Port or as required by law or regulation. Supplier shall take any additional precautions as RIEDC, State of Rhode Island, United States or otherwise may reasonably require for safety and accident prevention purposes. Any violation of rules and requirements shall be promptly corrected.

(g) Supplier shall provide RIEDC with copies of all testing reports and certifications performed hereunder no later than five (5) days after the conclusion of any such tests and certifications.

### **ARTICLE 9–Supplier Warranties; Compliance with Laws**

(a) Supplier warrants that it has full power and authority to grant the rights herein granted and will hold RIEDC harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Supplier covenants that it will not enter into any arrangement with any third party which abridge any rights of RIEDC under this Contract.

(b) Supplier covenants that in the performance of its obligations under the Contract it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of Rhode Island, RIEDC and the Port, and shall defend, indemnify and hold RIEDC harmless against any loss, cost, damage or liability by reason of Supplier's violation of this provision.

(c) Supplier swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Supplier within the immediately preceding two year period because of Supplier's failure to comply with an order of the National Labor Relations Board.

(d) Supplier warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Supplier, or any agent or representative of Supplier, to any officer or employee of RIEDC with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, RIEDC shall have the right to terminate this Contract, either in whole or in part, and any loss or damage sustained by RIEDC in procuring on the open market any items which Supplier agreed to supply shall be borne and paid for by Supplier. The rights and remedies of RIEDC provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

(e) During the performance of the Contract, Supplier and its subcontractors (as approved by RIEDC) shall comply with all applicable federal, state, and local laws, rules and regulations in regard to nondiscrimination in employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability,

medical condition, age, marital status, and denial of family care leave. Supplier shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

(f) Supplier certifies under penalty of perjury that Supplier will provide a drug free workplace.

(g) Supplier certifies that that it is insured against liability for Workers' Compensation and affirms that it will comply with the provisions of Article 16(b)(i) before commencing the performance of work under the Contract.

(h) Supplier represents and warrants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict with the supply of the Cranes required under this Contract. Without limitation, Supplier represents to and agrees with RIEDC that Supplier has no present, and will have no future conflict of interest between providing RIEDC the Cranes hereunder and any interest the Supplier may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state agency) which, to Supplier's knowledge, has an interest adverse or potentially adverse to RIEDC.

(i) Information that is (i) not in Supplier's possession prior to disclosure or otherwise in the public domain, (ii) identified by RIEDC as confidential prior to disclosure, and (iii) disclosed to Supplier by RIEDC during the performance of or in connection with the Contract ("Confidential Information") will be kept confidential and, except as may be required by law, not disclosed to any other person. Supplier will immediately notify RIEDC in writing if it is requested to disclose any Confidential Information. These confidentiality provisions and limitations shall remain in effect for three (3) years after Supplier's Handover.

(j) Supplier warrants to RIEDC that Supplier will comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et. seq.).

(k) Supplier is an independent contractor and does not act as RIEDC's agent in any capacity whatsoever. Supplier (together with any employees, agents and representatives) is not entitled to any benefits that RIEDC provides RIEDC employees, including, without limitation, worker's compensation benefits or payments, pension benefits, health benefits or insurance benefits. Supplier shall pay all applicable payroll taxes imposed by any United States or foreign governmental entity and will pay all other taxes related to the transactions contemplated in this Contract and not specifically identified in this Contract as RIEDC's responsibility.

(l) Supplier represents and warrants that as of the Execution Date there are no claims or suits of any kind pending, threatened, or, to Supplier's knowledge, asserted, against the Supplier including, but not limited to, any suits or claims for patent or license infringement or any other proprietary right relating to the Cranes, any component or part thereof, or any process embodied therein, which would materially and adversely affect Supplier's ability to perform its obligations under this Contract.

(m) Supplier has the unencumbered and unrestrained right and ability to perform and complete its obligations under this Contract.

The representations and warranties set forth above shall be restated as of the date of the Handover and survive termination of this Contract.

#### **ARTICLE 10-Limited Warranty**

(a) Equipment Warranty. Neither the Supplier nor the Crane Manufacturer make any warranty of any kind with respect to the Cranes sold pursuant to this Contract, expressed or implied, except as set out in the limited warranty (the "Limited Warranty") attached hereto as Annex 4. The foregoing does not relieve Supplier of its obligation to deliver crane in accordance with Article 2(a) of this Contract, subject to subparagraph 4(l) of Annex 4.

The exclusive remedies of RIEDC under the Limited Warranty shall be as set forth in Annex 4.

ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED. THE SUPPLIER AND THE CRANE MANUFACTURER SHALL HAVE NO LIABILITY ARISING OUT OF THE SALE, USE, OR OPERATION OF THE CRANES WHETHER UNDER THEORIES OF WARRANTY, CONTRACT, NEGLIGENCE OR OTHERWISE FOR LOSS OF PROFITS, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, DELAYS, WORK STOPPAGE, OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ATTRIBUTABLE TO DEFECTS OR MALFUNCTIONS IN THE CRANES PURCHASED UNDER THIS CONTRACT

(b) Services Warranty. Supplier warrants that the services provided by Supplier pursuant to this Contract shall be performed in a workmanlike manner.

The sole remedy for any breach of this warranty for such services shall be the re-performance of such services by Supplier without additional charge.

AS TO THE PROVISION OF ANY SERVICES UNDER THIS CONTRACT, (A) NO WARRANTY OF ANY KIND OTHER THAN THAT SET FORTH IN THIS SUBSECTION, EXPRESS OR IMPLIED, ORAL OR WRITTEN, SHALL APPLY, AND (B) ALL OTHER WARRANTIES ARE DISCLAIMED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES REGARDING RESULTS TO BE OBTAINED, MAINTENANCE PERFORMED OR REPAIRS MADE.

(c) Estimates not a Guarantee. All information provided by Supplier or the Crane Manufacturer about the Cranes with regard to estimated or expected production or performance ("Estimates") is based upon expected performance under normal operating and site conditions, including without limitation the use of an experienced operator, and such Estimates are provided without guaranty or warranty of any kind. Neither Supplier nor the Crane Manufacturer shall have any liability for any Estimates

that Supplier or Crane Manufacturer provides, including without limitation Estimates regarding the selection of the Cranes, wear rates of any consumable parts, or operating methods

#### **ARTICLE 11–Supplier Liability and Indemnification**

(a) Supplier shall indemnify and hold harmless RIEDC, its officers, agents and employees, from and against all tort liabilities to third parties for claims, demands, causes of action, loss, or expense (including reasonable attorneys' expenses) for physical injuries to any person (including death) or damage to any tangible property (including environmental damage or pollution) to the extent such injury or damage results from Supplier's negligence and results directly from Supplier's operations performed for RIEDC.

(b) Supplier shall indemnify, defend and hold harmless RIEDC, its officers, agents and employees from any and all claims and losses to any and all of Supplier's contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supply work, services, materials or supplies, in each case in connection with the performance of Supplier's obligations under the Contract.

(c) **Patent, Copyright and Trade Secret Indemnity.**

(i) Supplier, at its own expense, shall defend any action brought by a third party against RIEDC, its officers, agents and employees, to the extent that such action is based upon a claim that the Cranes supplied by Supplier or the operation of such Cranes pursuant to a current version of Supplier supplied operating software infringes a patent or copyright or violates a trade secret. Supplier shall pay those costs and damages finally awarded against RIEDC, its officers, agents and employees, in any such action.

(ii) Supplier shall defend or settle, at its own expense, any claim or suit brought by a third party against RIEDC based upon a claim of infringement of a United States patent or copyright resulting from the sale or use of the Cranes and shall pay all costs, settlements or damages finally awarded as a result of such claim or suit. Should the Cranes, or the operation thereof, become subject to a final judgment regarding a claim of infringement of a patent or copyright or a trade secret, RIEDC shall permit Supplier, at Supplier's sole cost and expense, (A) to procure for RIEDC the right to continue using the Cranes; (B) to replace or modify the same so that they become non infringing provided that such replacement is consistent with the specifications of this Contract and otherwise compliant with the terms hereof; or (C) to take back any infringing Cranes in RIEDC's possession and refund the Purchase Price less a reasonable charge for use.

(iii) Supplier shall have no liability or obligation to RIEDC under this subsection to the extent any claim of infringement is based upon the use of the Cranes in connection with or in combination with any equipment, devices, or software not

supplied by Supplier or use of the Cranes in a manner other than as specified in the Crane Documentation.

(iv) THE FOREGOING STATES SUPPLIER'S ENTIRE LIABILITY FOR PATENT, COPYRIGHT AND TRADE SECRET INFRINGEMENT CLAIMS BASED UPON THE SALE OR USE OF THE CRANES.

(d) Notwithstanding anything contained in this Contract to the contrary, Supplier's indemnity obligations under this Contract do not apply to liabilities due, in whole or in part, to the negligence or more culpable conduct of any indemnified party.

(e) Supplier's indemnification obligations under this Contract are expressly conditioned on: (1) RIEDC's prompt notification to Supplier of any such claim or suit; (2) RIEDC's reasonable cooperation with Supplier in the defense and/or settlement of any such claim or suit; and (3) RIEDC allowing Supplier sole control over the defense and/or settlement of any such claim or suit, including without limitation the selection of counsel. Supplier shall have no liability for any settlement or compromise made without its express written consent.

(f) Supplier certifies that it has appropriate systems and controls in place to ensure that RIEDC funds will not be used in the performance of the Contract for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

#### **ARTICLE 12-Technical Documentation**

Supplier shall provide, at the time of Handover, the following technical documents ("Crane Documentation"):

- (a) Operation and Maintenance Manual – four (4) copies in English.
- (b) Spare parts lists - four (4) copies in English.

#### **ARTICLE 13-Liquidated Damages for Delay in Delivery**

In the event that delivery of the Cranes ex works are delayed beyond the due date for delivery ex works and any extensions of time as provided for in Article 5, plus an agreed grace period of \_\_\_\_\_ days, RIEDC shall be entitled to liquidated damages at the rate of USD \_\_\_\_\_ per day, up to a maximum of \_\_\_\_\_ of the Purchase Price of the delayed Crane(s). Such liquidated damages are RIEDC's sole remedy for delay.

#### **ARTICLE 14-Termination, Breach and Default**

- (a) Termination for RIEDC's Convenience.

(i) Upon not less than thirty (30) days' advanced written notice to Supplier, RIEDC may terminate performance of work under the Contract for its

convenience in whole or, from time to time, in part, if it determines that a termination is in RIEDC's interest or for no reason at all. RIEDC shall terminate by delivering to Supplier a written notice of termination ("Notice of Termination") specifying the extent of termination and the effective date thereof. The parties agree that, as to the terminated portion of the Contract, the Contract shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the Contract shall not be void.

(ii) After receipt of a Notice of Termination, and except as directed by RIEDC, Supplier shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. Supplier shall:

(A) Stop work as specified in the Notice of Termination. Place no further subcontracts for materials, services, or facilities.

(B) Terminate all subcontracts to the extent they relate to the work terminated.

(C) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts provided that RIEDC shall have the right to approve or ratify the same.

(iii) In the event of termination as provided herein the Supplier shall place at the disposal of RIEDC all work completed or partially completed and RIEDC shall pay to the Supplier the value of such work as reasonably determined by Supplier together with any reasonable amount due in respect of services less all amounts previously paid by RIEDC to the Supplier in respect of such work. RIEDC shall, at its sole option, have the right to take possession of any materials completed or partially completed as a result of such work.

(b) Termination for Default.

(i) RIEDC may, by written notice of default ("Notice of Default") to Supplier, terminate the Contract in whole or in part if Supplier fails to:

(A) Deliver the Cranes or to perform the services within the time specified in the Contract or any amendment thereto; or

(B) Perform any of the other provisions of the Contract.

(ii) RIEDC's right to terminate the Contract under the above provisions of Article 14(c)(i) may be exercised if Supplier does not cure such failure within ninety (90) days after its receipt of notice reasonably describing the default (or if a cure cannot reasonably be accomplished in such time, if Supplier does not initiate such cure within such time and thereafter diligently pursue such cure).

(iii) Notwithstanding any other provision set forth herein, in the event of a termination by RIEDC for default by Supplier, RIEDC shall have the right to obtain a

full refund of any monies paid hereunder (together with any additional fees and expenses related thereto including, but not limited to, attorneys' fees) and return to Supplier, at Supplier's sole cost and expense, any portion of the Cranes previously delivered.

(iv) If the Contract is terminated for default, RIEDC may require Supplier to transfer title and deliver to RIEDC, as directed by RIEDC, any of the following provided that RIEDC has paid the entire Purchase Price, pursuant to Article 7(a), or the applicable portion thereof:

(A) Completed Cranes, and

(B) Partially completed Cranes that Supplier has specifically produced or acquired for the terminated portion of the Contract.

Upon direction of RIEDC, Supplier shall also protect and preserve property in its possession in which RIEDC has an interest.

(v) RIEDC's rights and remedies in this clause are in addition to any other rights and remedies provided by law or in equity or under the Contract.

(c) Other RIEDC Rights and Remedies Following Supplier Default.

(i) In addition to any other rights and remedies RIEDC may have, but subject to the limitations and procedures provided in Article 8 and Article 10 hereof, in the event any Cranes furnished or services provided in the performance of the Contract should fail to conform to Contract requirements at or prior to Handover, RIEDC may reject the same, and it shall become Supplier's duty to reclaim and remove the item promptly or to correct the performance of services, without expense to RIEDC, and immediately replace all such rejected items with others conforming to the Contract.

(ii) In addition to any other rights and remedies RIEDC may have, RIEDC may require Supplier, at Supplier's expense, to ship the Cranes or any equipment thereof via air freight (only if practical) or expedited routing to avoid or minimize actual or potential delay if the delay is Supplier's fault.

(iii) In the event of the termination of the Contract prior to Handover, either in whole or in part, by reason of default or breach by Supplier, any loss or damage sustained by RIEDC in procuring any items which Supplier agreed to supply shall be borne and paid for by Supplier.

(iv) RIEDC reserves the right to offset the reasonable cost of all damages caused to RIEDC against any outstanding invoices or amounts owed to Supplier or to make a claim against Supplier therefore.

## **ARTICLE 15-Limitation of Liability**

(a) **Direct Damages.** NOTWITHSTANDING ANYTHING IN THIS CONTRACT TO THE CONTRARY, THE MAXIMUM LIABILITY, IF ANY, OF SUPPLIER, THE CRANE MANUFACTURER AND THEIR COMPONENT SUPPLIERS FOR ALL DIRECT DAMAGES, INCLUDING WITHOUT LIMITATION CONTRACT DAMAGES AND DAMAGES FOR INJURIES TO PERSONS OR PROPERTY, WHETHER BASED ON WARRANTY, CONTRACT, INDEMNITY, BREACH OF AN OBLIGATION TO REPAIR, REPLACE, OR OVERHAUL, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY OR OTHERWISE, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PRICE OF THE PARTICULAR DEFECTIVE COMPONENT OR SERVICES.

(b) **Consequential Damages.** NOTWITHSTANDING ANYTHING IN THIS CONTRACT TO THE CONTRARY, IN NO EVENT SHALL SUPPLIER, THE CRANE MANUFACTURER OR THEIR COMPONENT SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF THE DESIGN, MANUFACTURE, SALE, DELIVERY, SERVICE OR USE OF THE CRANES OR THE PROVISION OF REPAIR, OVERHAUL OR OTHER SERVICES, DELAY, DEFECTS, MALFUNCTIONS OR OTHERWISE, WHETHER BASED ON WARRANTY, CONTRACT, INDEMNITY, BREACH OF AN OBLIGATION TO REPAIR, REPLACE, OR OVERHAUL, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY OR OTHERWISE, FOR LOSS OF PROFITS, LOSS OF USE, DELAYS, OR ANY INDIRECT, SPECIAL, OTHER CONSEQUENTIAL OR INCIDENTAL DAMAGES.

## **ARTICLE 16–Insurance**

(a) Supplier will obtain and maintain at its sole cost and expense, and with established insurance companies rated at least \_\_\_\_ by \_\_\_\_\_, and as are reasonably acceptable to RIEDC, for the period commencing with the Execution Date through Handover, insurance coverage against all risks including but not limited to, fire, vandalism, theft or any other loss or damage to any of the Cranes or any component thereof. All such policies shall cover the Cranes or any component thereof in an amount equal to the full insurable value thereof, and Supplier will provide RIEDC with a certificate of such insurance as of the Execution Date.

(b) Supplier will maintain at all times from the Execution Date through the final day of the Warranty Period with established insurance companies rated at least \_\_\_\_ by \_\_\_\_\_ and as are reasonably acceptable to RIEDC, insurance of the following kinds and amounts:

(i) Worker’s Compensation and Employer’s Liability in accordance with federal or state laws as may be applicable to the project contemplated hereby;

(ii) Comprehensive General Liability insurance that includes coverage for Contractual Liability, Personal Injury, Products and Completed Operations Liability and a Broad Form Property Damage endorsement with the limits of liability at: Bodily Injury, \$1,000,000 per person/\$10 million per occurrence and Property Damage at \$10 million per occurrence;

(iii) If the Supplier anticipates the use of any motor vehicles on or at the Port, Comprehensive Motor Vehicle insurance with limits of: Bodily Injury, \$250,000 per person/\$500,000 per accident and Property Damage, \$500,000 per occurrence;

(iv) Unless provided by the above, all other insurance required by applicable law and regulations.

(c) Supplier agrees to perform the work described in this Contract and its attached exhibits as an independent contractor and not as a subcontractor, agent, or employee of RIEDC or any of its subsidiaries.

#### **ARTICLE 17-Applicable Law/Arbitration**

(a) Governing Law. This Contract shall be deemed to have been entered into in the State of Rhode Island, and all questions concerning the validity, interpretation or performance of any of its terms or provisions, or of any rights or obligations of the parties hereto, shall be governed by and resolved in accordance with the laws of the State of Rhode Island, without reference to its choice of law rules or to the laws of any other jurisdiction.

(b) Exclusive Jurisdiction. Each Party, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, (i) submits to personal jurisdiction in the State of Rhode Island over any suit, action or proceeding by any person arising from or relating to this Contract, (ii) agrees that any such action, suit or proceeding may be brought in any state or federal court of competent jurisdiction sitting in Providence, Rhode Island, (iii) submits to the jurisdiction of such courts, and (iv) except as specifically set forth in this Article, to the fullest extent permitted by law, agrees that it will not bring any action, suit or proceeding in any other forum. Each Party further consents and agrees to service of any summons, complaint or other legal process in any such suit, action or proceeding by registered or certified U.S. Mail, postage prepaid, to such Party at the address for notices set forth in this Contract, and consents and agrees that such service shall constitute in every respect valid and effective service (but nothing herein shall affect the validity or effectiveness of process served in any other manner permitted by law).

(c) Waiver of Jury Trial. Each Party, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, waives, relinquishes and forever forgoes the right to a trial by jury in any action or proceeding based upon, arising out of, or in any way relating to this Contract or any conduct, act or omission of Supplier, the Crane Manufacturer, RIEDC, or any of their directors, officers, partners, members, employees, agents or attorneys, or any other persons affiliated with such entities, in each of the foregoing cases, whether sounding in contract, tort or otherwise, and regardless of what relief is sought. If this waiver is ineffective as to one or more causes of action for any reason, this waiver will remain effective as to all other causes of action.

(d) Arbitration. Except as set forth under Article 17(d)(i) below, any dispute or any controversy between the Parties or between RIEDC and the Crane Manufacturer involving the construction or application of any terms, covenants, or conditions of this Contract, or transactions under it, or any claim arising out of or relating to this Contract, or transactions under it, may be submitted to binding arbitration in the arbitrator's office who is in closest proximity to Providence, Rhode Island, in accordance with the provisions set forth below and the commercial arbitration rules of the American Arbitration Association then in effect, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

(i) Limitations on Arbitration Requirement.

(A) No provision of, nor the exercise of any rights under this Section regarding arbitration shall limit the right of either Party to join the other Party or Crane Manufacturer in litigation (1) in the event of any litigation or proceeding commenced by any third party against a Party to this Contract or Crane Manufacturer in which the other Party or Crane Manufacturer is an indispensable party or potential third party defendant, or (2) in the event of a suit by a Party on a bond or guaranty for the other Party's obligations, if the terms of such bond or guaranty provide that such other Party shall be a necessary or indispensable party to such action.

(B) No provision of, nor the exercise of any rights under this Section regarding arbitration shall limit the right of either Party to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, protecting or foreclosing upon any equipment which is involved in a dispute, or which is subject to, or described in, the Contract, including, without limitation, rights and remedies relating to foreclosing against the Cranes or other security by the exercise of a power of sale under a security agreement or instrument, or applicable law, exercising self-help remedies (including setoff rights) or obtaining provisional or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any Party, including the plaintiff, to submit to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

(C) In disputes involving indebtedness or other monetary obligations, each Party agrees that the other Party may proceed against all liable persons, jointly and severally, or against one or more of them, or less than all, without impairing rights against other liable persons. A Party shall not be required to join the principal obligor or any other liable persons (*e.g.*, Sureties or guarantors) in any proceeding against a particular person. A Party may release or settle with one or more liable persons as the Party deems fit without releasing or impairing rights to proceed against any persons not so releases.

(D) All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding.

(ii) Arbitration Rules. The arbitrators shall resolve all disputes in accordance with the applicable substantive law. Any arbitrators shall be practicing attorneys licensed to practice law in the State of Rhode Island and shall be knowledgeable in the subject matter of the dispute. With respect to a dispute in which the claim or amount in controversy does not exceed \$500,000, a single arbitrator (who shall have authority to render a maximum award of \$500,000, including all damages of any kind and costs, fees and the like) shall be chosen and shall decide the dispute. With respect to a dispute in which the claim or amount in controversy exceeds \$500,000, the dispute shall be decided by a majority vote of three arbitrators. The arbitrators may grant any remedy or relief that the arbitrators deem just and equitable and within the scope of this arbitration agreement. The arbitrators may also grant such ancillary relief as is necessary to make effective the award. In all arbitration proceedings in which the amount in controversy exceeds \$500,000 in the aggregate, the arbitrators shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings in which the amount in controversy exceeds \$500,000 in the aggregate, the parties shall have in addition to the limited statutory right to seek vacation or modification of any award pursuant to applicable law, the right to seek vacation or modification of any award that is based in whole, or in part, on an incorrect or erroneous ruling of law by appeal to an appropriate court having jurisdiction; provided, however, that any such application for vacation or modification of an award based on an incorrect ruling of law must be filed in a court having jurisdiction over the dispute within 30 days from the date the award is rendered. The arbitrator's findings of fact shall be binding on all parties and shall not be subject to further review except as otherwise allowed by applicable law.

### **ARTICLE 18–Notices**

Unless otherwise specified herein, all notices, requests and other communications to any Party shall be in writing (including telexes, telecopies facsimile transmissions, and similar writings) and shall be given to such Party at its address, telecopier or facsimile number set forth below or such other address or facsimile number as such Party may hereafter specify for that purpose by notice to the other Party.

If to Supplier:

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If to RIEDC:

Rhode Island Economic Development Corporation  
315 Iron Horse Way, Suite 101  
Providence RI 02908  
Attn: \_\_\_\_\_  
Facsimile No.: (401) 273-8270

With a copy to:

ProvPort Inc.  
25 Terminal Road, Suite 200  
Providence, Rhode Island 02905  
Attn: William G. Brody, Esquire  
Facsimile No.: (401) 461-6240

Each such notice, request or other communication shall be effective (a) if given by telecopier facsimile, when such telecommunication is transmitted and confirmation of receipt obtained, (b) if given by regular mail, five (5) days after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid or (c) if given by any other means, when delivered at the address specified in this Section (including refusal of delivery in the case of registered or certified mail and overnight or other personal courier).

#### **ARTICLE 19–Successors and Assigns**

This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns but it shall not be assigned by Supplier without the prior written consent of RIEDC. Any attempt of an assignment other than that permitted by the preceding sentence shall be null and void and of no effect without the prior written consent of RIEDC.

#### **ARTICLE 20–Bankruptcy**

In the event that Supplier or Crane Manufacturer makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding in bankruptcy, insolvency or reorganization pursuant to the bankruptcy or similar laws and such proceeding is not finally dismissed within thirty (30) days from the date of the filing of any such proceeding, or if Supplier shall suffer the entry of an order for relief under Title 11 of the United States Code, RIEDC, at its option, may either treat any such event as a breach of this Contract and, in addition to any remedies available under applicable law, either (i) pay any balance then due on such of the Cranes as may be identifiable and allocated to this Contract, assert its free and clear title to the work-in-process and take delivery, possession and full and complete title thereto, or (ii) give written notice to Supplier terminating this Contract, obtain a full refund of any monies paid hereunder (together with any additional fees and expenses related thereto including, but not limited to, attorneys' fees) and return to Supplier, at Supplier's sole cost and expense, any portion of the Cranes previously delivered.

### **ARTICLE 21-Miscellaneous**

If any provisions of this Contract conflicts with any statute or rule of law of any jurisdiction wherein it may be sought to be enforced, then such provisions shall be deemed null and void to the extent that they may conflict therewith, but without invalidating the remaining provisions hereof. The paragraph captions provided herein are merely for convenience and shall not be construed to limit or otherwise modify the terms hereof.

### **ARTICLE 22-Counterparts**

This Contract may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement. In addition, this Contract may be executed through the use of counterpart signature pages. The signature of any Party on any counterpart agreement or signature page shall be deemed to be a signature to, and may be appended to, any other counterpart.

### **ARTICLE 23-Execution by Facsimile**

This Contract may be executed and delivered by exchange of facsimile copies showing the signatures of RIEDC and Supplier and those signatures need not be affixed to the same copy. The facsimile copies showing the signatures of RIEDC and Supplier will constitute originally signed copies of the same agreement requiring no further execution.

**[THIS SPACE INTENTIONALLY LEFT BLANK - SIGNATURE PAGE FOLLOWS.]**

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date first written above.

On behalf of the:	On behalf of the:
RIEDC:	SUPPLIER:
Name: Title:	Name: Title:
Date:	Date:

## Appendix A

### ANNEX 1 – CONFIGURATION PER CRANE

# Appendix A

## ANNEX 1-A

## Appendix A

### ANNEX 2

**ANNEX 3**  
**Certificate of Completion**

**Appendix A**

**ANNEX 4**

**Limited Warranty**

**Appendix A**

**ANNEX 5**

**RIEDC Information**

**Information for Financing Statements**

**RIEDC's exact name: RHODE ISLAND DEVELOPMENT CORPORATION**

- (a) RIEDC's State of Organization: Rhode Island
- (c) RIEDC's Entity Type: a public corporation, governmental agency and public instrumentality of the State of Rhode Island
- (d) RIEDC's Organizational ID number/Federal Tax ID .....

ANNEX 6  
Payment Schedule