

**State of New Jersey  
New Jersey Public Broadcasting System  
New Jersey Network  
Standard Terms and Conditions**

**1. STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT:**

Unless the bidder is specifically instructed otherwise in the Request for Proposals (RFP), the following terms and conditions shall apply to the Contract between the Contractor and the New Jersey Public Broadcasting System ("NJPBS" or the "State"). These terms are in addition to the terms and conditions set forth in the RFP and should be read in conjunction with same unless the RFP specifically indicates otherwise. In the event the Contractor has presented terms and conditions which conflict with the State's, the State's terms and conditions shall prevail, unless the Contractor is notified in writing of the State's specific acceptance of some or all of the Contractor's terms and conditions.

**2. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS:**

The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

**2.1 BUSINESS REGISTRATION:**

As a condition to entering into a State Contract, pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a Contract with an entity unless the bidder and each subcontractor named in the bid proposal has a valid Business Registration Certificate on file with the Division of Revenue.

The Contractor and any subcontractor providing goods or performing services under the Contract, and each of their affiliates, shall, during the term of the Contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.htm>.

**2.2 ANTI-DISCRIMINATION:**

All parties to any Contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A.10:5-1 et seq. and N.J.S.A.10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference.

**2.3 PREVAILING WAGE ACT:**

The New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.26 et seq. is hereby made part of every Contract entered into on behalf of the State of New Jersey except those Contracts which are not within the contemplation of the New Jersey Prevailing Wage Act. The bidder's signature on this proposal is his guarantee that neither he nor any subcontractors he might employ to perform the work covered by this proposal has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder's signature on the proposal is also his guarantee that he and any subcontractors he might employ to perform the work covered by this proposal shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

**2.4 AMERICANS WITH DISABILITIES ACT:**

The Contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L 101-336, in accordance with 42 U.S.C. 12101, et seq.

**2.5 MACBRIDE PRINCIPLES:**

The bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United

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Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

**2.6 PAY TO PLAY PROHIBITIONS:**

**a. Definitions** - For the purpose of this section, the following shall be defined as follows:

1) Contribution - means a contribution reportable as a recipient under The New Jersey Campaign Contributions and Expenditures Reporting Act., P.L. 1973, c83 (N.J.S.A. 19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq. Contributions in excess of \$300 during a reporting period are deemed "reportable" under these laws.

2) Business Entity - means any natural or legal person, business corporation, professional services corporation, Limited Liability Company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction, but does not include non profit or not for profit corporations. The definition of a business entity includes:

A. all principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate and for a for profit entity, the following:

- (i) in the case of a corporation: the corporation, any officer of the corporation, and any person or business entity that owns or controls 10% or more of the stock of the corporation;
- (ii) in the case of a general partnership: the partnership and any partner;
- (iii) in the case of a limited partnership: the limited partnership and any partner;
- (iv) in the case of a professional corporation: the professional corporation and any shareholder or officer;
- (v) in the case of a limited liability company: the limited liability company and any member;
- (vi) in the case of a limited liability partnership: the limited liability partnership and any partner;
- (vii) in the case of a sole proprietorship: the proprietor; and
- (viii) in the case of any other form of entity organized under the laws of this State or any other state or foreign jurisdiction: the entity and any principal, officer, or partner thereof;

B. any subsidiaries directly or indirectly controlled by the business entity;

C. any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and

D. if a business entity is a natural person, that person's spouse or civil union partner, or child residing in the same household provided, however, that, unless a contribution made by such spouse, civil union partner, or child is to a candidate for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides unless such contribution is in violation of section 9 of Chapter 51.

**b. Breach of Terms of Chapter 51 or EO 117 is a Breach of Retention Agreement** - It shall be a breach of the terms of the Retention Agreement for the Business Entity to do any of the following:

- 1) make or solicit a contribution in violation of the Chapter 51 or EO 117;
- 2) knowingly conceal or misrepresent a contribution given or received;
- 3) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- 4) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor, or of Lieutenant Governor, or to any State, county or municipal party committee, or any legislative leadership committee;
- 5) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of Chapter 51 or EO117;

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- 6) fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- 7) engage in any exchange of contributions to circumvent the intent of the Chapter 51 or EO 117; or
- 8) directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Chapter 51 or EO 117.

**2.10 SERVICE PERFORMANCE WITHIN U.S.:**

Pursuant to N.J.S.A. 52:34-13.2, all Contracts primarily for services shall be performed within the United States, except when the Treasurer certifies in writing a finding that a required service cannot be provided by a Contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the Contract shall be deemed a breach of Contract. If, during the term of the Contract, the Contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the Contractor shall be deemed to be in breach of its Contract, which Contract shall be subject to termination for cause pursuant to Section 3.3(b)(1) of the Standard Terms and Conditions, unless previously approved by the Treasurer.

**2.11 COMPLIANCE – LAWS:**

The Contractor must comply with all local, state and federal laws, rules and regulations applicable to this Contract and to the services performed hereunder.

**3. INDEMNIFICATION AND INSURANCE**

**3.1 INDEMNIFICATION FOR THIRD PARTY CLAIMS** - The Contractor shall indemnify and hold harmless the State of New Jersey, the NJPBA, and its employees, agents and affiliates from and against any and all damages, losses, liabilities and expenses including, without limitation, reasonable attorneys' fees, arising out of or resulting from:

a. any act or omission, event or occurrence that was or shall be caused by the Contractor, its employees, agents or affiliates relating to the business and operations of the Contractor of the NJPBA;

b. any libel, slander, illegal competition or trade practice, infringement of trademarks, trade names, or program titles, violation of rights of privacy, and infringement of copyrights and proprietary rights, including intellectual property rights, resulting from or relating to any programming produced or furnished by the Contractor; and

c. any breach by the Contractor of any of its obligations, representations, warranties, covenants or other agreements made by the Contractor in the Contract.

The Contractor's indemnification and liability under this section is not limited by, but is in addition to the insurance obligations contained in Section 3.2 of these Terms and Conditions.

**3.2 INSURANCE** - The Contractor shall secure and maintain in force for the term of the Contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best & Company. The Contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof, naming the State as an Additional Insured and shall contain the provision that the insurance provided in the certificate shall not be canceled for any reason except after sixty (60) days written notice to the Treasurer of the State of New Jersey.

The insurance to be provided by the Contractor shall be as follows:

- a. Comprehensive General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Comprehensive General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as Additional Insureds. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic, unamended, and unendorsed Comprehensive General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage.

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- b. Automobile liability insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit. State of New Jersey, its officers and employees shall be named Additional Insureds. Physical damage insurance covering automobiles shall name the State of New Jersey Loss Payee to any State owned vehicles.
- c. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:
  - \$2,000,000 BODILY INJURY, EACH OCCURRENCE
  - \$2,000,000 DISEASE EACH EMPLOYEE
  - \$2,000,000 DISEASE AGGREGATE LIMIT
- d. Broadcast libel and errors/omissions insurance of at least \$5,000,000. The State of New Jersey shall be named Additional Insured by endorsement to this policy. The policy must be endorsed to cover Cyber Risk Multimedia/Technology Errors and Omissions. Any exclusion of coverage for actions by a governmental authority must be amended to exclude the State of New Jersey in their capacity as owner.
- e. All Risk property insurance covering real and personal property of the State, including property in vehicles and while in transit, for the replacement cost of the property. State shall be named loss payee under the property insurance.
- f. Umbrella Liability Insurance in an amount not less than \$10 million per occurrence and in the aggregate naming the State of New Jersey as Additional Insured.

**4. TERMS GOVERNING OPERATING CONTRACT(S)**

**4.1 CONTRACTOR IS INDEPENDENT CONTRACTOR:**

The Contractor's status shall be that of any independent Contractor and not as an employee of the State.

**4.2 TERMINATION OF CONTRACT**

a. For Cause

The NJPBA may terminate the Contract (i) immediately by giving written notice if, in the reasonable good faith discretion of the NJPBA, the Station is operated by the Contractor in a manner contrary to the best interests of NJPBA, the public interest, convenience and necessity, FCC rules and regulations, the Communications Act of 1934, as amended, or other applicable law; or (ii) if Contractor otherwise breaches its obligations under the Contract and the Contractor fails to cure such breach within thirty (30) days of written notice from the PBA.

b. Upon termination of the Contract, NJPBA shall assume complete operational responsibility for the Station, and the Contractor shall be relieved of all obligations under the Contract except for: obligations incurred prior to the effective date of the termination; the obligation to provide a final accounting pursuant to the Contract and the obligation to cooperate with NJPBA to wind up Contractor's operation of the Station in an orderly fashion.

c. In the event of termination under this section, the Contractor shall be compensated for work performed in accordance with the Contract, up to the date of termination. Such compensation may be subject to adjustments.

**4.3 SUBCONTRACTING OR ASSIGNMENT:**

The Contractor may not subcontract other than as identified in the Contractor's proposal or assigns its responsibilities under the Contract, in whole or in part, without the prior written consent of the NJPBA. Such consent, if granted, shall not relieve the Contractor of any of his responsibilities under the Contract.

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**4.4 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND STATE:**

Nothing contained in any of the Contract documents, including the RFP and vendor's bid or proposal shall be construed as creating any Contractual relationship between any subcontractor and the State.

**4.5 MERGERS, ACQUISITIONS:**

If, during the term of this Contract, the Contractor shall merge with or be acquired by another firm, the Contractor shall give notice to the NJPBA as soon as practicable and in no event longer than 30 days after said merger or acquisition. The Contractor shall provide such documents as may be requested by the NJPBA which may include but need not be limited to the following:

- a. Corporate resolutions prepared by the awarded Contractor and new entity ratifying acceptance of the original Contract, terms, conditions and prices.
- b. State of New Jersey Bidders Application reflecting all updated information including ownership disclosure, pursuant to provision 1.5.
- c. Vendor Federal Employer Identification Number.

The documents must be submitted within 30 days of the request. Failure to do so may result in termination of the Contract for cause.

If, at any time during the term of the Contract, the Contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the NJPBA must be so notified. All responsible parties of the dissolved business entity must submit to the NJPBA in writing, the names of the parties proposed to perform the Contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the NJPBA.

**4.6 APPLICABLE LAW AND JURISDICTION:**

This Contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court. The State does not consent to federal court jurisdiction.

**4.7. CONTRACT AMENDMENT:**

The Contract may only be amended by written agreement of the State and the Contractor.

**4.8 MAINTENANCE OF RECORDS:**

The Contractor shall maintain records for products and/or services delivered against the Contract for a period of three (3) years from the date of final payment unless otherwise specified in the RFP. Such records shall be made available to the State upon request.

**4.9 AVAILABILITY OF FUNDS:** The State's obligation to make any payment under the Contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for Contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenues.