

**SUPPLEMENTARY**

**INSTRUCTIONS TO BIDDERS**

**AND**

**GENERAL CONDITIONS**

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**SUPPLEMENTARY  
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AND  
GENERAL CONDITIONS**

The following Supplementary to Instructions to Bidders and General Conditions reinstate, delete, modify or change the Instructions to Bidders and General Conditions of the State of New Jersey, Department of Treasury, Division of Building and Construction, amended January 1995. If no mention is made of an Article, Paragraph or Subparagraph, these clauses remain in force in their entirety.

SUPPLEMENTARY INSTRUCTIONS TO BIDDERS

GENERAL

All references in the specifications and drawings to the Division of Building & Construction (DBC) shall be changed to Division of Property Management and Construction (DPMC)

IB1 Bid Proposals

IB1.1 [Replace the first sentence ONLY with the following:]

Sealed proposals for the work described herein must be received and time-stamped in the Plan Room, Division of Property Management and Construction (DPMC), 9<sup>th</sup> floor, 33 West State Street, P O Box 034, Trenton, NJ 08625-0034. ...

IB1.2 [Delete this paragraph in its entirety and replace with the following:]

Bids may be accepted on the following branches of work, as applicable:

- 1 – Lump Sum All Trades
- 2 – General Construction
- 3 – Structural Steel
- 4 – Plumbing
- 5 – Heating, Ventilating and Air Conditioning
- 6 – Electrical
- 7 – Special Categories as may be required

IB1.8 [Delete this paragraph in its entirety and replace with the following:]

The Prime bidder must include in the bid envelope: (1) the proposal signed by the bidder, (2) the executed affidavit of non-collusion, (3) the executed Certification and Disclosure Form as further described in section IB1.11, (4) the executed Source

Disclosure Certification Form as further described in section IB1.11, and (5) bid security as further described in section IB6.

#### IB1.11 [New] PROCUREMENT REFORM

- a. RESTRICTIONS ON POLITICAL CONTRIBUTIONS – In accordance with Public Law 2005, Chapter 51 (formerly Executive Order 134) all bidders submitting a bid on or after October 15, 2004, shall be required to submit a Certification and Disclosure Form and Ownership Disclosure Form for all Business Entities on the forms attached to the bid proposal.

Public Law 2005, Chapter 51 prohibits State departments, agencies and authorities from entering into a contract that exceeds \$17,500 with an individual or entity that has made a contribution to a political party committee. Public Law 2005, Chapter 51 further requires the disclosure of all contributions to any political organization organized under section 527 of the Internal Revenue Code that also meets the definition of a “continuing political committee” within the meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The successful bidder shall also be required to adhere to all continuing obligations contained in Public Law 2005, Chapter 51 regarding contributions and disclosures as required in Public Law 2005, Chapter 51.

- b. Pursuant to Public Law 2005, Chapter 92, (N.J.S.A. 52:34-13.2 et seq., superseding Executive Order 129(2004)) all bidders submitting a proposal shall be required to complete a Source Disclosure Certification that all services will be performed in the United States. The bidder shall disclose the location by country where services under the contract will be performed and any subcontracting of services under the contract and the location by country where any subcontracted services will be performed. The Source Disclosure Certification will be attached to the bid proposal.

#### IB4 Awards

IB4.5 [New] The successful bidder and all of its subcontractors are required to comply with the requirements of N.J.S.A. 10:5-31 et seq., regarding Equal Employment Opportunity in Public Works Contracts.

#### IB5 Qualification of Bidders

IB5.5 [New] At the time of the bid due date, the bidder and the subcontractors must be registered in accordance with “The Public Works Contractor Registration Act” (N.J.S.A. 34:11-56.48 et seq.) All questions regarding registration shall be addressed to:

Contractor Registration Unit  
New Jersey Department of Labor  
Division of Wage and Hour Compliance  
P O Box 389  
Trenton NJ 08625-0389  
Telephone: 609-292-9464  
FAX: 609-633-8591

IB5.6 [New] In accordance with Public Law 2001, Chapter 134, all contractors and Subcontractors providing goods/services to State agencies and authorities are required to provide the contracting agency or authority with proof of registration with the Department of Treasury, Division of Revenue. The basic registration process involves the filing of Form NJ-Reg., which can be filed online at [www.state.nj.us/njbgs/services.html](http://www.state.nj.us/njbgs/services.html) or by calling (609)292-7077 or (609)292-1730.

IB6 Deposit and Bid Bond

[Delete this section in its entirety and replace with the following:]

IB6.1 The Proposal, when submitted shall be accompanied by a Bid Bond satisfactory to the Director, for a sum of not less than fifty percent (50%) of the Total Bid.

IB6.2 The Bid Bond shall be properly filled out, signed, and witnessed.

IB6.3 The Bid Bond shall be accompanied by a copy of the power of attorney executed by the surety company or companies. The power of attorney shall set forth the authority of the attorney-in-fact who has signed the bond on behalf of the surety company to bind the company and shall further certify that such power is in full force and effect as of the date of the bond.

IB6.4 If the bidder whose proposal is accepted is unable to provide the performance and payment bonds or fails to execute a contract, then such bidder and the bid bond surety, where applicable, shall be obligated to pay to the State the difference between the amount of the bid and the amount which the State contracts to pay another party to perform the work. The bidder and the surety shall pay, upon demand, the entire amount of the State's difference in cost. Should there be a deficiency in excess of the bid deposit, the bidder shall make immediate payment to the State for any such deficiency. Nothing contained herein shall be construed as a waiver of any other legal remedies that the State may have against the contractor.

SUPPLEMENTARY GENERAL CONDITIONS

ARTICLE 2 - DIRECTOR

2.5 [New] TERMINATION BY THE DIRECTOR FOR CONVENIENCE

2.5.1 The Director may, at any time, terminate the Contract in whole or in any part for the State's convenience and without cause when the Director in his sole discretion views termination is in the public interest.

2.5.2 Upon receipt of an order of Termination for Convenience, the Contractor shall not proceed with any item of work, which is not specified in the Order of Termination. The Contractor shall complete all items of work specified in the termination order. Such work shall include punch list items and all work necessary to ensure the safety of the public, to properly secure existing work already constructed or partially constructed and to secure the Project site.

This work so ordered shall be performed in accordance with the Contract Documents, and may include items of work not in the original contract. The Contract shall be considered substantially complete upon completion and acceptance of all items of work specified in the Order, except punch list items. After completion of the punch list items and all documents required by the Contract, the Contract shall terminate upon issuance of a Final Certificate and payment. The Director reserves the right to declare in default a contractor whom fails to carry out the conditions set forth in an Order of Termination for Convenience.

When the State orders termination of the Contract for Convenience, all completed items of work as of that date will be paid for at the Contract price. Payment for partially completed work will be paid for at agreed prices. Items which are eliminated in their entirety by such termination will be paid for only to the extent provided in Paragraph 2.5.3. Payment for new items, if any, will be made either at agreed prices or in accordance with Article 14.

Materials obtained by the Contractor for the Work but which have not been incorporated therein may, at the option of the State, be purchased from the Contractor at actual cost delivered to a prescribed location, or otherwise disposed of as mutually agreed.

Within sixty (60) days of the effective termination date, the Contractor shall submit claims for additional costs actually incurred, not covered above or elsewhere in the Contract. Such claims may include such cost items as reasonable mobilization efforts, overhead expenses attributable to the Work performed, subcontractor costs not otherwise paid for, actual idle labor cost if Work is stopped in advance of the termination date. Costs, which are prohibited under provisions of the Contract and anticipated profits on work not performed, are not allowed.

2.5.3 If acceptable material is ordered by the Contractor for the eliminated item prior to the date of notification of such elimination and if orders for such material cannot be canceled, it will be paid for at the actual cost to the Contractor. In such case, the material paid for becomes the property of the State and the actual cost of any further handling will be paid for. If the material is returnable to the vendor, and if the State so directs, the material shall be returned and the Contractor will be paid for the actual cost or charges made by the vendor for returning the material. The actual costs of handling returned material will be paid for.

The actual costs or charges will be computed in the same manner as if the work were to be paid for as provided in the Contract. However, no profit will be allowed.

#### ARTICLE 4 THE CONTRACTOR

4.5.12 [New] Immediately upon receipt of the contract award documents from the Division of Property Management and Construction, the contractor shall notify all utility companies involved regarding utility services required for completion of the Work.

4.5.13 [New] The Contractor will establish an approved Silica Health and Safety Program when tasks generating crystalline silica dust are being performed. This

program shall include engineering, work practice, and respiratory protection controls to reduce worker exposure to airborne respirable crystalline dust to levels that are as low as reasonably achievable. When tasks are performed that generate airborne crystalline dust, the Contractor will minimize worker exposure to dust by one, or a combination of the following methods: 1) dust suppression with water, 2) local exhaust ventilation to a high-efficiency dust collector, and/or 3) appropriate respiratory protection devices. The Contractor shall provide a trained, competent person, as defined by OSHA 29 CFR 1926, on site at all times to implement the Silica Health and Safety Program when tasks generating crystalline silica dust are being performed.

## ARTICLE 10 PAYMENTS

### 10.1 Contractor Payment Process

#### 10.1.3 [Delete Paragraph 2 under this section in its entirety. Replace with:]

The contractor may, after fifty percent (50%) of the contract work is in place and if such work is proceeding on schedule, apply for a reduction in the amount to be retained by the State for the duration of the contract. Such application must be in writing and accompanied by documentation denoting formal consent of surety to the reduction in retainage. If the Director determines that the contractor's performance has been satisfactory and that the reduction is warranted and appropriate, the State may, with the next progress payment, release any portion of the accumulated retainage in excess of five percent (5%) of the work in place and retain an amount equal to five percent (5%) of the work in place for the duration of the contract. If progress of the work is not maintained in accordance with the approved schedule, the Director may elect to re-institute retainage of ten percent (10%) of the work in place for the duration of the contract.

#### 10.1.6 [Strike last sentence only.]

#### 10.2.2 [Strike everything after the first sentence and replace with the following:]

No invoice shall be deemed to be formally submitted and received for payment until all dollar amounts and completion percentages for all line items to be included in the invoice have been determined and agreed upon by the State and the contractor.

#### 10.2.4 [Strike and replace with the following:]

For purposes of the State's Prompt Payment of Contractors and Subcontractors Act (N.J.S.A. 2A:30A-1, et seq.:

a. An invoice will be deemed to have been received by the owner when it is received by the person or entity designated by the State to review and sign the invoice on the State's behalf at the address designated in the pre-construction conference for receipt of invoices. Receipt of an invoice by such person or entity shall commence the running of the 20-day period for formal approval and certification as provided under N.J.S.A. 2A:30A-2(a).

b. The "billing date" as that term is used in N.J.S.A. 2A:30A-2 shall be the earlier of the date upon which an invoice for payment is approved for payment or

20 days after the invoice is received, per subparagraph “a” above, unless within such 20-day period the invoice is found to be incomplete or otherwise unacceptable and returned to the contractor, with a written explanation of deficiencies

c. In the event that an invoice is found to be deficient and returned to the contractor, the “billing date” shall be calculated from the date that a corrected invoice is received.

d. Payment shall be considered to have been made on the date on which a check for such payment is dated

e. Payment terms (e.g., “net 20”) offered by the contractor shall not govern the State’s obligation to make payment

f. The following periods of time will not be included in the calculation of the due date of any contractor invoice:

(1) Any time elapsed between receipt of an improper invoice and its return to the contractor, not to exceed 20 calendar days; or

(2) Any time elapsed between the State’s return of an improper invoice to the contractor and the State’s receipt of a corrected invoice.

10.2.5 [New] The Provisions of this Article 10 shall not govern the State’s payment obligations nor shall they supersede or modify any other contractual provision allowing the withholding of monies from the contractor to the extent that the contractor has not performed in accordance with the provisions of the contract. Nor shall this Article 10 govern the State’s payment obligations nor supersede or modify any other contractual provision governing contractor claims for additional compensation beyond the base contract price and approved change orders.

10.3 Interest [Strike and replace with the following:]

10.3.1 Interest shall be payable on amounts due the contractor if not paid within thirty (30) calendar days after the billing date specified in the above subparagraph 10.2.4 (f), as provided under the State’s Prompt Payment of Contractors and Subcontractors Act (N.J.S.A. 2A:30A-1, et seq.) Interest on amounts due shall be payable to the contractor for the period beginning on the day after the required payment date and ending on the date on which the check for payment is drawn.

10.3.2 [New] Interest may be paid by separate payment to the contractor, but shall be paid within 30 calendar days of payment of the principal amount of the approved invoice.

10.3.3 [New] Nothing in this Article 10 shall be construed as entitling the contractor to payment of interest on any sum withheld by the State for any reason permitted under the contract or applicable law, or on any claim for additional compensation, over and above sums due under the base contract or approved change orders.

10.3.4 [Replace with old paragraph 10.3.9]

10.3.5 [Replace with old paragraph 10.3.10]

10.4 Miscellaneous [New]

10.4.1 Disputes regarding nonpayment of a contractor's invoice under this Article 10 may be submitted to non-biding Alternative Dispute Resolution (ADR) upon mutual agreement of the State and the contractor. In such event, the State and the contractor shall share equally the fees and expenses of the selected mediator, arbitrator, umpire or other ADR neutral. Provided, however, that nothing herein shall be construed, in whole or in part, as a waiver, release or modification of the provisions of the New Jersey Contractual Act, N.J.S.A. 59:13-1, et seq., as it governs claims against the State.

10.4.2 A contractor not paid sums due under an approved invoice within thirty (30) days of the billing date may suspend performance without penalty for breach of contract, but only after providing the State with seven (7) days written notice of non-payment, and only in the event that the State fails to furnish the contractor, within that seven-day period, with a written statement of the amount withheld and the reasons for the withholding. Nothing herein shall be construed to excuse the contractor's nonperformance, or to limit the State's rights and remedies relating to such non-performance, with regard to any monies withheld from the contractor upon the proper notice provided under this Article 10, or with regard to any contractor claim disputed by the State.

## ARTICLE 13 INSURANCE AND INDEMNITY

13.2.4 Loss Reporting and Loss Adjustment [Replace the first sentence ONLY with:]

The Contractor will receive a Loss Reporting Form whenever Builders' Risk Insurance is written. This form includes appropriate loss reporting instructions.

In the event of loss, the Contractor shall immediately notify the State of New Jersey, Division of Property Management and Construction, through the Architect/Engineer, in writing, and take any other appropriate steps as may be required under the standard builders' risk insurance policy in effect. ...

## ARTICLE 16 AFFIRMATIVE ACTION REQUIREMENTS

[Strike entire article and replace with the following:]

### 16.1 Policy Statement

The laws of the State of New Jersey (N.J.S.A. 10:5-31 et seq.) provide that no public agency shall award a contract or pay money to any contractor or subcontractor which has not agreed and guaranteed to afford equal employment opportunity in performance of the contract in accordance with an affirmative action program approved by the State Treasurer. The law applies to each political subdivision and agency of the State and includes procurement and service contracts as well as construction contracts.

### 16.2 Mandatory Language

During the performance of this contract, the contractor agrees as follows:

- a The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race,

creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, up-grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

- b The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.
- c The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.
- e When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the applicable employment goal prescribed by N.J.A.C. 17:27-7.3; provided, however, that the Division may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Division is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Division, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the applicable employment goal established in accordance

with N.J.A.C. 17:27-7.3. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

- (1) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to attempt to hire or schedule minority and women workers directly, consistent with the applicable employment goal. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with the applicable employment goal, the contractor or subcontractor agrees to be prepared to hire or schedule minority and women workers directly, consistent with the applicable employment goal, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines or is so notified by the Division that the union is not referring minority and women workers consistent with the applicable employment goal.
- (2) If the hiring or scheduling of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions consistent with the applicable county employment goals:
  - (a) To notify the public agency compliance officer, the Division, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;
  - (b) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
  - (c) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a

referral agreement or arrangement with a union for the construction trade;

- (d) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area until such time as the workforce is consistent with the employment goal;
- (e) If it is necessary to lay off some of the workers in a given trade on the construction site, to assure, consistent with the applicable State and Federal statutes and court decisions, that sufficient minority and women employees remain on the site consistent with the employment goal; and to employ any minority and women workers laid off by the contractor on any other construction site on which its workforce composition is not consistent with an employment goal established pursuant to rules implementing N.J.S.A. 10:5-31 et. seq.;
- (f) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:
  - (i) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall determine the qualifications of such individuals and if the contractor's or subcontractor's workforce in each construction trade is not consistent with the applicable employment goal, it shall hire or schedule those individuals who satisfy appropriate qualification standards. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Division. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.
  - (ii) If the contractor's or subcontractor's workforce is consistent with the applicable employment goal, the name of any interested women or minority individual shall be maintained on a waiting list for the first consideration, in the event the contractor's or subcontractor's workforce is no longer consistent with the applicable employment goal.

- (iii) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Division.
  - (g) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Division and submitted promptly to the Division upon request.
- (3) The contractor or subcontractor agrees that nothing contained in e(2) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to e(2) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of e(2) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.
- (4) After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Division an initial project workforce report (Form AA 201) provided to the public agency by the Division for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division and to the public agency compliance officer.

- f The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women.
- g The contractor and its subcontractors shall furnish such reports or other documents to the Division of Contract Compliance & EEO as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (NJAC 17:27).

END OF  
SUPPLEMENTARY INSTRUCTIONS TO BIDDERS  
AND GENERAL CONDITIONS