

SECTION IB

INFORMATION FOR BIDDERS
New Jersey Public Works Contracts
July 2011

IB. INFORMATION FOR BIDDERS

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INFORMATION FOR BIDDERS

IB.1 RECEIPT AND OPENING OF PROPOSALS

IB.1.1. OWNER AND PROJECT

The Owner as identified in the Notice to Bidders and/or in the Special Provisions, (hereinafter called the "OWNER") invites proposals for the project identified in the Notice to Bidders and described in these Contract Documents.

IB.1.2. TIME AND PLACE OF OPENING OF PROPOSALS

Proposals will be received by the OWNER at the time and place set forth in the Notice to Bidders and/or in the Special Provisions, and at such time and place will be publicly opened and read aloud.

IB.1.3. UNRESPONSIVE PROPOSALS

The OWNER may consider unresponsive and reject any proposal not conforming in all material respects to the terms and conditions, specifications, legal requirements and other provisions of these documents and may, so far as permitted by law, waive any non-conformity when, in the absolute judgment of the OWNER, reasonably exercised, the non-conformity is not material and waiver is permitted by Law and is in the OWNER'S best interest.

IB.2 QUALIFICATION OF BIDDERS

IB.2.1. BIDDERS MUST BE RESPONSIBLE

Bidders must be able to complete the contract in accordance with all requirements of these documents including, but no limited to, requirements pertaining to experience, moral integrity, operating capacity, financial capacity credit, workforce, equipment and facilities available and any other requirements proscribed in the New Jersey Local Public Contracts Laws, N.J.S.A. 40A:11-1 et seq. Proposals will not be accepted from bidders which are suspended or debarred by any agency of the State of New Jersey.

IB.2.2. BIDDERS MUST DEMONSTRATE RESPONSIBILITY

Upon request by the OWNER or Engineer, the Bidder must provide documentation sufficient for the Engineer and OWNER to reasonably determine that the Bidder is responsible. Such documentation may include, but is not limited to, a complete statement of experience and technical and financial qualifications.

IB.2.3. UNSATISFACTORY PAST PERFORMANCE

A Bidder which has otherwise been determined to be the lowest responsive and responsible bidder may be disqualified pursuant to N.J.S.A. 40A:11-4 if a majority of the governing body of the OWNER finds a history of prior negative experience with the Bidder.

IB.2.4. BIDDERS MUST BE REGISTERED

The Bidder and all Subcontractors listed pursuant to N.J.S.A. 40A:11-16 must be registered with the New Jersey Department of the Treasury as required by N.J.S.A. 52:32-44 at the time of bidding.

The Bidder must provide a copy of its Business Registration Certificate prior to Notice of Award.

A copy of a Business Registration Certificate must also be provided prior to the Notice of Award for all subcontractors listed by the Bidder in the Bid..

Each Subcontractor, as defined by N.J.S.A. 52:32-44 a, which was not listed in the Proposal pursuant to NJSA 40A:11-16, shall provide a copy of its business registration to the CONTRACTOR prior to entering into a contract. The CONTRACTOR shall forward it to the OWNER. No subcontract shall be entered into by the CONTRACTOR unless the Subcontractor provides proof of valid business registration as required by N.J.S.A. 52:32-44c.

The CONTRACTOR shall maintain and submit to the OWNER a list of Subcontractors and their addresses that may be updated from time to time during

the course of performance of this contract. CONTRACTOR shall submit a complete and accurate list of all Subcontractors and their addresses before final payment is made under this contract.

CONTRACTOR shall notify all Subcontractors by written notice to comply with N.J.S.A. 52:32-44 c. This written notice must include the identification of this contract, and the following statements:

"Each Subcontractor, as defined by N.J.S.A. 52:32-44 a, with respect to this contract shall provide a copy of its business registration to [name of contractor], who shall forward it to [contracting agency]. No contract shall be entered into by [name of contractor] under this contract with [contracting agency] unless the subcontractor first provides proof of valid business registration as required by N.J.S.A. 52:32-44c."

CONTRACTOR shall comply fully with all applicable provisions and requirements of N.J.S.A. 40A11-23.2 and N.J.S.A. 52:32-44, and any and all administrative regulations thereunder, and shall provide any and all documents and information requested by the OWNER pertaining thereto. Anything to the contrary in these contract documents notwithstanding, the OWNER shall not be responsible for any failure of CONTRACTOR to comply with N.J.S.A. 52:32-44.

For the term of this contract, the CONTRACTOR and any and all of its Subcontractors, and their respective affiliates, shall collect and remit to the Director of the Division of Taxation in the New Jersey Department of Treasury the use tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (C. 54:32B-1 et seq.)" on all of its sales of tangible personal property delivered into New Jersey to the extent required by N.J.S.A. 52:32-44g.

IB.2.5. BIDDERS MUST COMPLY WITH PUBLIC WORKS CONTRACTORS REGISTRATION ACT

If the Prevailing Wage Act is applicable to this Contract (see IB.5), the Public Works Contractor Registration Act (N.J.S.A. 34:11-56.46 et seq.) also applies and the Bidder and all first and lower tier Subcontractors must be registered in accordance with the Act and must maintain their registration during the period of the Contract.

The Bidder must be registered at the time of bidding and evidence of the Bidder's registration pursuant to N.J.S.A. 34:11-56.48 et seq., should be submitted with the Proposal.

Evidence of the registration of all Subcontractors listed in the Proposal pursuant to N.J.S.A. 40A:11-16 must be submitted prior to the award of a Contract.

Evidence of the registration of all other Subcontractors must be submitted prior to said Subcontractor engaging in the performance of any work.

No Contractor or first or lower tier Subcontractor shall engage in or continue the performance of any work unless said Contractor or Subcontractor is properly registered pursuant to the Act.

IB.3 TIME FOR COMPLETION OF WORK

IB.3.1 TIME ALLOWED/SUBSTANTIAL COMPLETION

All work stipulated in the Contract shall be fully completed within the time set forth in the Special Provisions, normally within a specified number of calendar days of the date of mailing, by certified mail or of receipted delivery, by hand or facsimile, of a Notice of Award. If the award was conditional, the date for determining time for completion shall be the later of the date of mailing of a Notice of Award as described above or the date that all conditions of award are satisfied. The OWNER will not assess liquidated damages pursuant to subsection IB.4.3 for any day after the date of substantial completion.

Substantially completed or substantial completion means the point at which the performance of all Work on the Project has been completed except final cleanup, and repair of unacceptable Work, and provided the Engineer has solely determined that:

1. The Project is safe and convenient for use by the public; and
2. Failure to complete the Work and repairs excepted above, does not result

in the deterioration of other completed Work; and provided further, that the value of repairs, and cleanup is less than two percent of the Total Adjusted Contract Price.

If and when the Engineer determines that the Project is substantially complete, the Engineer will prepare a written determination of the date of substantial completion and establish, in the Engineer's sole judgment, a reasonable time for the Contractor to perform final cleanup and repair unacceptable work, which time may be prior to the time originally allowed for completion of work. If the Contractor fails to fully complete the work within the time originally allowed for completion, subject to any approved extension of time, or such earlier time for final cleanup and repair of unacceptable work as may be determined by the Engineer pursuant to this subsection, the OWNER may seek the remedies provided by these Contract Documents and proscribed by law for the CONTRACTOR'S failure to complete on time.

IB.3.2 NOTICE OF AWARD

A Notice of Award will normally be issued to the successful Bidder by the Engineer within five (5) calendar days, Sundays and Holidays excepted, of the date the OWNER awards the contract, or, if the OWNER's action to award is conditional, of the date that all conditions of award are satisfied. The Notice of Award shall usually be accompanied by contracts and related documents prepared for execution by the successful Bidder and will designate a date for a preconstruction meeting, if one is to be held, and identify any other submissions by and/or actions of the successful Bidder precedent to starting work. Failure to issue a Notice of Award within the time set forth above and/or a Notice to Proceed within the time set forth in Subsection IB.3.3 will result in an equitable extension of time allowed for completion of work as the contractor's sole remedy.

IB.3.3 NOTICE TO PROCEED

The Engineer will issue a Notice to Proceed to the CONTRACTOR within five (5) working days of the completion of the following:

1. The CONTRACTOR has properly executed and returned the Contract;
2. The CONTRACTOR has provided any required bonds and insurance certificates;
3. The OWNER has approved the bonds and insurance certificates and has consented to starting work;
4. A pre-construction conference, if required, has been held; and
5. The CONTRACTOR has provided any other submission and/or taken any other action required by the Contract Documents as a condition precedent to starting work.

When provided for by the Contract Documents, or in emergency situations, the Engineer may, with the consent of the OWNER, issue a Notice to Proceed without completion of one or more of the conditions listed in the first paragraph of this section.

Within seven (7) calendar days of receiving a written request from the CONTRACTOR requesting authorization to proceed, the Engineer shall respond by: (1) issuing a Notice to Proceed; or (2) issuing a written response detailing why a Notice to Proceed cannot be issued.

IB.4 DAMAGES

IB.4.1. DIRECT DAMAGES

The CONTRACTOR shall be liable to the OWNER for all expenses, losses or damages, as determined by the Engineer, incurred as a consequence of any action or omission of the CONTRACTOR, his subcontractors, agents or employees, or for the making good thereof.

IB.4.2. COSTS OF ENGINEERING AND INSPECTION

There will be deducted from any payments due the CONTRACTOR and retained by the OWNER an amount to defray the amount paid by the OWNER to inspect the work and/or administer the CONTRACT during any or any combination of these periods: a) after the completion time stipulated; b) in excess of ten (10) hours on any day or c) on Sundays or Legal Holidays.

Unless a different rate is specified in the Special Provisions, this amount shall be determined at the rate of Eighty-Five Dollars (\$85.00) per hour for each person employed on the site or in the Engineer's office except that costs of administering the contract in the Engineer's office, which are not increased by the expansion of the time of completion or the work schedule, shall not be deducted.

IB.4.3. LIQUIDATED DAMAGES FOR NONCOMPLETION

If the CONTRACTOR is permitted to finish the work after the specified period of completion, the OWNER shall have full authority to deduct and retain from any payments to the CONTRACTOR a sum calculated at the rate set forth in the Special Provisions for each calendar day after the required date of full completion that the work is not substantially completed, all as liquidated damages and not as a penalty, to defray loss to the OWNER due to the failure to substantially complete the work in the stipulated time. It is mutually agreed that the sum stated for liquidated damages is fair and reasonable and not disproportionate to the actual damages, which are not readily susceptible to exact ascertainment and proof as of the time of the making of this contract; however, nothing contained herein shall be construed to prevent recovery by the OWNER of the costs of any damages in excess of the liquidated damages provisions herein, sustained as a result of the CONTRACTOR'S failure to substantially complete said work within the specified period of completion. Likewise, nothing contained herein shall be construed so as to create an option on the part of the CONTRACTOR to either complete the work on time or pay liquidated damages. Refer to IB.3.1 for a definition of substantial completion. The liquidated damages provided for in this subsection may be assessed for each calendar day between the completion date established by IB.3.1 and the date of substantial completion.

IB.5 PREVAILING WAGES

IB.5.1. REQUIREMENTS OF LAW

If required in this Contract and so stated in the Notice to Bidders (advertisement), the CONTRACTOR will be required to comply with the provisions of the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., setting forth requirements for the payment of prevailing wages and for the proper documentation of such payments. Prior to final payment, the CONTRACTOR shall be required to execute and deliver an Affidavit of Compliance in a form provided by the Engineer, as required by the Act.

IB.5.2. WAGE RATE DETERMINATION ON FILE

Copies of the Act cited above and of the New Jersey Department of Labor & Industry Wage Rate Determination for this project are available at the office of the Engineer and may be inspected during regular business hours.

The CONTRACTOR is required to obtain and post a copy of the Wage Rate Determination at the site of the work pursuant to N.J.S.A. 34:11-56.32.

IB.5.3. WAGE RATES, A CONDITION OF CONTRACT

Bidders should familiarize themselves with the above cited Act and the particular wage rate determination for this project, since they will be attached to and made a condition of this Contract to be executed for this project. In the event it is found that any workmen, employed by the CONTRACTOR or any subcontractor, on this project, has been paid rate of wages less than the prevailing wages required, the OWNER may terminate the CONTRACTOR'S or subcontractor's right to proceed with the work, or such part of the work, as to which there has been a failure to pay required wages and to prosecute the work to

completion, or otherwise, the CONTRACTOR and his surety(ies) shall be liable to the OWNER for any excess cost occasioned thereby.

IB.6 PREPARATION OF PROPOSALS

IB.6.1. INCOMPLETE OR INFORMAL PROPOSALS

No bids will be considered in which all of the items given in the Proposal are not filled out. Bidders are cautioned not to revise nor attach any conditions, limitations, or provisos to the Proposal as such conditions, limitations or provisos will render their bid informal and may cause its rejection.

IB.6.2. COMPLETION AND SUBMISSION OF PROPOSALS

All prices and amounts must be filled out in ink or, preferably, typewritten. All erasures or corrections must be initialed by a signatory to the Proposal.

Bids must be enclosed in sealed envelopes, addressed to the OWNER, bearing on the outside the name and address of the Bidder, the name of the project and the prominent identification as a "sealed bid" and must be delivered at the place and time set in the advertisement. Bids received after the hour herein named or in unsealed envelopes or not properly identified as required above will not be considered. Bids delivered by mail or messenger service must meet the above criteria and be mailed or delivered in an outer mailing or delivery envelope separate from the bid envelope or they will not be considered.

IB.6.3. ERRORS IN PROPOSALS

For Unit Price Proposals, the unit price provided for each item by the Bidder shall be dispositive of the Bidder's intent. The unit price is normally provided only in numerals. The Bidder is cautioned to confirm that the unit price provided is the price intended. If there is a discrepancy between the unit price multiplied by the Proposal quantity for the item and the item amount inserted in the Proposal by the Bidder, the item amount shall be corrected during bid review. If there is a discrepancy between the correct sum of the item amounts (corrected as and if necessary) and the total amount bid inserted in the Proposal by the Bidder, the correct sum shall be determined during bid review and shall govern.

For Lump Sum Proposals, the Lump Sum amount provided by the Bidder shall be dispositive of the Bidder's intent. If the Proposal requires that the Lump Sum Amount Bid is provided both in numerals and written out in words, and there is a discrepancy between the written amount and the amount in numerals, the written amount shall govern.

Any errors in Proposals corrected by striking out, whiting out, erasing or by any other method, must be clear and must be initialed by the Bidder. If such corrections are not clear or not initialed, the bid will be considered unresponsive.

IB.6.4. MATERIALS TO BE BID IN PLACE

Unless otherwise specified, the price bid for each of the items in the Proposal shall be for the material in place. Any and all costs necessary to construct, erect or place such material in the work shall be estimated and included in the unit price of each item.

IB.6.5. ESTIMATED QUANTITIES

In the case of unit price bids, it has been the endeavor to estimate the approximate quantity of each item in the Proposal to cover the requirements of the Contract. However, it is usually expected that the quantity finally paid for will be different than that quantity estimated for bidding purposes. Some items scheduled in the Proposal may include small amounts of "If and Where Directed" quantities in addition to the quantities shown on the plans or actually anticipated to complete the project. These small amounts may be provided to "round" the Proposal quantities or to provide a contingency when the quantity of the item required cannot be precisely determined during design. In case a

greater or lesser quantity than those provided in the Proposal is required to finally complete the work, or in case an item scheduled is not used, the CONTRACTOR agrees to make no claim for the variation, but will accept final payment based on the actual amount of work performed at the unit price bid.

IB.6.6. "IF AND WHERE DIRECTED" ITEMS

The Proposal may include items for which the OWNER has established only "If and Where Directed" quantities. The items are presented for the purpose of obtaining a representative unit price for additional or supplemental work. The presence of these items does not indicate the OWNER's intent to incorporate them in the project. The CONTRACTOR will perform work using "If and Where Directed" items as directed by the Engineer.

IB.6.7. WITHDRAWAL OF BIDS DUE TO MISTAKE

In accordance with N.J.S.A 40A:11-23.3 a bidder request withdrawal of bid, due to mistake on the part of the bidder, within 5 days business days after bid opening. "Mistake" shall have the same meaning as provided in paragraph 42 of section 2 of P.L.1971,c.198 (C.40A:11-2) which is "a clerical error that is an unintentional and substantial computational error or an unintentional omission of a substantial quantity of labor, material, or both, from the final bid computation".

To request the withdrawal of a public works bid, a bidder shall submit a request for withdrawal in writing by certified or registered mail to the address to which the bid was submitted. The request will be effective upon mailing. The request shall include evidence, including pertinent documents, demonstrating that a mistake was made and was so great a consequence that:

- (1) Enforcement of the contract, if actually made, would be unconscionable;
- (2) The mistake relates to a material feature of the bid;
- (3) The mistake occurred notwithstanding the fact that the bidder exercised reasonable care in preparation of the bid, and;
- (4) The bidder making the mistake is able to get relief by way of withdrawing the bid without serious prejudice to the contracting unit, except for the loss of the bargain to the contracting unit.

A purchasing agent qualified pursuant to subsection b. of section 9 of P.L.1971,c.198 (C.40A:11-9), or legal counsel for the contracting unit, or the chief administrative officer of the contracting unit, shall review the request for the bid withdrawal. No later than the next meeting of the governing body (Owner) of the contracting unit following the receipt of the withdrawal request, the individual for reviewing the request shall make a recommendation to the governing body of the contracting unit concerning the disposition. The governing body of the contracting unit shall act upon the request to withdraw the bid no later than at its regular meeting.

A contracting unit whose governing body (Owner) grants a request to withdraw a bid shall return the bid guarantee to the bidder. Once the decision to approve the withdrawal is made, the contracting unit shall continue the award process with the remaining bids.

If a bidder withdraws a bid, the bidder shall be disqualified from future bidding on the same project, including whenever all bids are rejected pursuant to section 21 of P.L.1999,c.440 (C.40A:11-13.2).

IB.7 PROPOSAL SECURITY

IB.7.1. SECURITY REQUIRED

Each proposal must be accompanied by a bid guarantee in accordance with N.J.S.A. 40A:11 et seq. Said guarantee may, at the Bidder's option, be in the form of a cashier's check or a certified check drawn on a New Jersey bank or trust company or a bid bond from a surety company holding a Certificate of Authorization to do business in the State of New Jersey and complying with N.J.S.A. 2A:44-143, and, if so required and noted in Notice to Bidders and

Special Provisions, listed in the current U.S. Treasury Department Circular 570, in the amount of at least ten percent (10%) of the amount of the bid, but not in excess of \$20,000.

IB.7.2. RETURN OF PROPOSAL SECURITY

Bid bonds will not be returned unless return is requested by an unsuccessful bidder within ten (10) working days after contract award. Other Proposal Security will be returned to all except the three (3) lowest formal bidders, unless otherwise requested by the Bidder, within ten (10) working days after the opening of bids and the bids of such bidders shall be considered withdrawn; the remaining Proposal Securities, except that of the Bidder to whom the Contract is awarded, shall be returned within three (3) working days of the date of the Contract award. The Proposal Security of the Bidder to whom the Contract is awarded shall be retained until the Contract is executed and all required bonds and other security is submitted and approved. If bid proposals are rejected, the Proposal Securities of all bidders will be returned within five (5) working days thereafter.

IB.8 CONSENT OF SURETY

In addition to the Proposal Security, each Proposal must be accompanied by a statement, similar in form to that annexed to the Proposal, of a surety company authorized to do business in the State of New Jersey and conforming with N.J.S.A. 2A:44-143, and, if so required and noted in the Notice to Bidders and Special Provisions, listed in the current U.S. Treasury Department Circular 570, agreeing, in the event that the Bidder is awarded the Contract, to execute and deliver a Payment and Performance Bond, in the penal sum of one hundred percent (100%) of the amount of the Proposal, including any alternates to be selected by the OWNER.

IB.9 PAYMENT AND PERFORMANCE SECURITY

IB.9.1. SECURITY REQUIRED

Simultaneously with delivery of the executed Contract, the CONTRACTOR shall furnish a Payment and Performance bond of face value equal to one hundred percent (100%) of the amount of the Contract Award, including any alternates to be selected by the OWNER, as security for faithful performance of this Contract and for the payment of all persons performing labor on the project under this Contract and furnishing materials in connection with this Contract, as specified in the Contract Documents, annexed hereto. The surety on such bond or bonds shall be a surety company holding a Certificate of Authorization to do business in the State of New Jersey and conforming with N.J.S.A. 2A:44-143, and, if so required and noted in the Notice to Bidders and Special Provisions, listed in the current U.S. Treasury Department Circular 570. The Surety Disclosure Statement and Certification required by N.J.S.A. 2A:44-143, shall be attached to all bonds.

IB.9.2. RELEASE OF PERFORMANCE SECURITY

The OWNER'S right to assert a claim under the Payment and Performance Bond shall expire upon completion of the Contract, acceptance by the OWNER and final payment by OWNER to CONTRACTOR. The rights of claimants under the payment guarantee provided by the Payment and Performance Bond shall continue until one year after completion, acceptance and final payment. At that time, the Payment and Performance Bond shall be released, provided all liens or claims have been satisfied and any maintenance bond required has been previously provided and approved by the OWNER.

IB.9.3. FORM OF PAYMENT AND PERFORMANCE BOND

The CONTRACTOR and surety will execute a bond of the form provided by the OWNER or of a similar form containing language in accordance with N.J.S.A. 2A:44-147. Copies of such bond forms are available for inspection at the office of the Engineer.

IB.10 AWARD AND EXECUTION OF CONTRACT

IB.10.1. BASIS OF CONTRACT AWARD

Bids will be received under these specifications for the completion of the whole work. The lowest correct responsive bid from a responsible and qualified Bidder will govern in the awarding of the Contract. If scheduled in the Proposal, alternate bid amounts may be added to or deducted from the base bid to determine the total amount bid. For unit price bids the CONTRACTOR must give separate prices per unit measure for each of the several items of work to be performed as set forth in the Proposal. The sum of the estimated quantities multiplied by the prices per unit of measure should equal the total amount bid for the entire work.

IB.10.2 TIME FOR AWARD OF CONTRACT

The Contract shall be awarded or all bids therefore rejected within sixty (60) days after the opening of bids, except that the bids of any bidders who consent thereto may, at the request of the OWNER, be held for consideration for such longer period as may be agreed. All security delivered with the bids, except the check or bond of the Bidder to whom the Contract is awarded, shall be returned within three (3) working days thereafter.

IB.10.3. BIDDER TO EXECUTE CONTRACT

The individual, firm or corporation to whom or to which the Contract is awarded, shall sign the necessary documents, shall provide the required bond and insurance certificates, and shall return them, to the OWNER within twelve (12) calendar days, Sundays and Holidays excepted, of the date the OWNER awards the Contract (see IB.3.2) or, if the OWNER's action to award was conditional, of the date that all conditions of award are satisfied.

IB.10.4. AWARD NOT BINDING PRIOR TO NOTICE TO PROCEED

No award of Contract shall be binding upon the OWNER unless and until the Contract has been executed by the CONTRACTOR, the required insurance certificates have been provided and the Contractor's surety has been approved by the OWNER and a Notice to Proceed has been issued (see IB.3.3).

IB.10.5. FAILURE OR REFUSAL TO EXECUTE CONTRACT

The successful bidder, upon his or their failure or refusal to execute and deliver the Contract, insurance certificates and bonds required within the twelve (12) calendar days, Sundays and Holidays excepted, hereinabove specified (IB.10.3), shall forfeit to the OWNER, as liquidated damages and not as a penalty, for such failure or refusal, the Proposal Security deposited with the Proposal.

If successful bidder fails to enter into the contract, as herein provided, the award may be annulled and the contract let to the next lowest qualified bidder in the opinion of the Owner; and such bidder shall fulfill every stipulation required herein as if he were the original party to whom the award was made.

IB.10.6 OWNER TO EXECUTE CONTRACT

Provided the CONTRACTOR returns properly executed documents on schedule as provided by IB.10.3, the OWNER shall execute the Contract and thereafter provide a copy to the Contractor within twenty-one (21) calendar days, Sundays and Holidays excepted, of the date that the OWNER acts to award the Contract or, if the OWNER's action to award was conditional, of the date that all conditions of award are satisfied.

IB.10.7 EXTENSION OF TIME TO EXECUTE CONTRACT

The OWNER and CONTRACTOR may agree to extend the time set forth in Sections IB.10.3 and IB.10.6 to execute the Contract. The OWNER may, in its discretion, waive its rights under Section IB.10.5 and agree to extend the time for the

CONTRACTOR to deliver executed documents, bonds and insurance certificates. In such case, the CONTRACTOR agrees to waive any obligation of the OWNER to execute the Contract within twenty-one (21) calendar days, Sundays and Holidays excepted, of the date of award.

IB.10.8. FORM CONTRACT

The Owner will provide the form of contract for execution by the successful bidder.

The Contract may only be signed by:

1. If a Partnership, all General Partners.
2. If a Corporation, the President and at least one other officer.
3. If a Sole Proprietorship, the Proprietor.
4. An authorized agent of the Contractor. In this case evidence that the agent is authorized to bind the Contractor, in the form of a Power-of-Attorney or equivalent document, for the Partnership, Corporation or Sole Proprietorship must be provided.

IB.11 REJECTION OF PROPOSALS & WAIVER OF INFORMALITIES

IB.11.1. MULTIPLE PROPOSALS NOT ALLOWED

More than one Proposal from an individual, a firm or partnership, a corporation or association of principals under the same or different names or from an Agent representing competing bidders shall not be considered.

IB.11.2. UNBALANCED PROPOSALS

The amount bid for each Pay Item in the Proposal shall reflect the actual cost which the Bidder reasonably anticipates that performance of that Pay Item will entail, together with a proportional share of the cost to perform work for which no separate Pay Item is provided and a proportional share of the Bidder's anticipated overhead and profit. Proposals which are, in the sole discretion of the OWNER, materially unbalanced, will be considered unresponsive. Materially unbalanced means that the Proposal is structured on the basis of nominal prices for some items and inflated prices for other items creating, in the sole judgment of the OWNER, reasonably exercised, the possibility that: 1) progress payments for items completed early may result in the unpaid project balance being insufficient to complete the project and/or 2) award to the Bidder will not result in the lowest ultimate cost to the OWNER, taking into consideration the reasonable potential for adjustment of quantities including, but not limited to, "If and Where Directed" items and quantities.

IB.11.3. RIGHT TO REJECT PROPOSALS RESERVED

The right is reserved to reject any and/or all Proposals for reasons permitted by law, if the OWNER, in its sole judgment, reasonably determines that such action is in the OWNER'S best interest. Reasons for rejection include, but are not limited to:

1. Those listed in N.J.S.A. 40A:11-13.2;
2. The bid is determined by the OWNER not to be responsive as defined in N.J.S.A. 40A:11-2(33);
3. The OWNER cannot determine the Bidder to be responsible as defined in N.J.S.A. 40A:11(32);
4. The Bidder is suspended or debarred by any agency of the State of New Jersey;
5. The Bidder is determined to possess, pursuant to N.J.S.A. 40a:11-4d, prior negative experience;

6. The provisions of Subsection 1 of this Section (IB.11.1) are violated;
7. The provisions of Subsection 2 of this Section (IB.11.2) are violated;
8. The successful Bidder fails to enter into a Contract within 21 days, Sundays and Holidays excepted, or within such time as otherwise agreed to by the Bidder and the OWNER. The OWNER may then, at its option, accept the next lowest responsive bid from a responsible Bidder (N.J.S.A. 40A:11-24b).

IB.11.4. RIGHT TO WAIVE INFORMALITIES RESERVED

The OWNER expressly reserves the right to, in its discretion, waive any legally waivable informality in any Proposal, and to accept the Proposal which, in the OWNER'S judgment, serves the OWNER'S best interests.

IB.11.5. PROPOSALS MUST BE FROM QUALIFIED AND RESPONSIBLE BIDDERS

If pre-qualification is required, the OWNER reserves the right to reject any Proposal submitted by a Bidder who has not properly pre-qualified or to reject any bid which exceeds the amount of the pre-qualification currently possessed by a Bidder.

If pre-qualification is not required, the OWNER reserves the right to reject any Proposal from a Bidder who cannot produce documentation of the Bidder's qualifications sufficient to allow the Engineer and OWNER to determine that the Bidder is qualified and responsible. This documentation shall include, but not be limited to, the Bidder's financial capabilities, adequacy of plant and equipment, experience on projects of a similar nature and the experience of personnel proposed for the project. If the OWNER, after affording the Bidder an opportunity for a hearing, is not satisfied that the Bidder is responsible, the OWNER may reject the Proposal.

IB.12 PERMITS TO BE SECURED BY CONTRACTOR

The CONTRACTOR shall secure all permits, licenses and bonds, and shall pay all necessary fees required for: 1) Permits related to the CONTRACTOR'S means and methods of construction and 2) any other permits not obtained by the OWNER. Copies of the permits that have been (or will be) obtained by the OWNER are noted in the Special Provisions and are on file in the office of the Engineer and may be inspected by prospective bidders during normal business hours. The Bidder shall be aware of the terms and any conditions of said permits and shall include all costs necessary to comply therewith in the unit prices bid for the work.

IB.13 BIDDERS REFERRED TO LAWS

The attention of the Bidders is especially directed to the provisions of Federal, State, County and Municipal laws, statutes and regulations that may apply to the work, particularly with regard to safety regulations. Such provisions refer to obstruction of streets, maintaining of signals, storing and handling of explosives, etc. Particular note is to be taken also of those provisions affecting the CONTRACTOR or his employees in the prosecution of the work or his relation to any political subdivision or person. All pertinent laws, statutes, ordinances and regulations shall be obeyed and complied with.

IB.14 BIDDERS TO EXAMINE SITE AND CONDITIONS

IB.14.1. BIDDERS TO VISIT SITE

All bidders or their representative(s) are required to visit the site of work of this Contract and examine the means of access to the site. Bidders shall make all necessary investigations in order to become thoroughly informed as to the character and magnitude of all work involved in the complete execution of the Contract, including facilities for delivery and handling of material, obstructions, if any, at site, and conditions and difficulties that will be

encountered in the performance of the work specified herein. The OWNER and/or Engineer will cooperate with the Bidder to allow reasonable investigations. All examinations and investigations will be made prior to submission of bids.

IB.14.2. BIDDERS TO DETERMINE CONDITIONS

Each bidder must be fully informed as to the conditions under which the work is to be performed. These conditions shall include problems of construction, availability of labor and equipment, transportation, and all else necessary to perform and complete the project as specified herein. Failure to do so will not relieve the successful bidder of any obligation to furnish all material, labor and equipment necessary to complete the work as specified, for the consideration set forth in his bid.

IB.14.3. BIDDERS EXAMINATION OF CONTRACT DOCUMENTS AND RESPONSIBILITY

Bidders are expected to read and become thoroughly familiar with the contract documents, including specifications, all addenda, and to evaluate all difficulties attending the execution of the proposed contract. In no case will

IB.15 LAYING OUT THE WORK

IB.15.1. ENGINEER TO ESTABLISH CONTROLS

The Engineer shall establish bench marks as shown on the Plans. The Engineer shall also establish the position of control points or traverse points as shown on the Plans. The Engineer shall establish such controls within three (3) working days of the CONTRACTOR'S request.

IB.15.2. CONTRACTOR TO PROVIDE CONSTRUCTION STAKES

From the established controls, the CONTRACTOR shall establish all baselines, offset lines, set and drive stakes, set batter boards, and take all other measurements in order to lay out the work in accordance with the intent of the Contract drawings.

IB.15.3. ENGINEER MAY CHECK CONTRACTOR'S LAYOUT

After the CONTRACTOR has erected batter boards, or forms, and set line and elevations for the grading, paving or structures, the Engineer may check such work for obvious errors in alignment and grade. If the Engineer elects to make such checks, the CONTRACTOR may only proceed with permanent construction of the work after approval of the Engineer is obtained.

IB.15.4. CONTRACTOR RESPONSIBLE FOR ERRORS

Notwithstanding the Engineer's election to check (or not check) the CONTRACTOR's layout of the work for obvious errors or omissions, the basic responsibility for laying out the work remains the CONTRACTOR's and he shall be responsible to the OWNER for the rectifying, or for the cost of rectifying, any errors resulting from his layout of the work.

IB.15.5. CONTRACTOR TO ASSIST ENGINEER

When requested by the Engineer, the CONTRACTOR shall make available a competent person from his construction force to assist the Engineer in any manner which may be necessary to check the grades and alignment as well as other features of the work. No extra payment will be made for the services of such assistant, and payment for the assistance shall be deemed to be included in the various unit prices bid. Failure to comply with this provision shall be sufficient cause for the Engineer to recommend to the OWNER that the work on the unchecked sections be stopped.

IB.15.6. CONTRACTOR TO PROTECT CONTROL POINTS

The CONTRACTOR shall adequately protect all monuments, stakes and marks set by the Engineer. If they are disturbed or obliterated by the CONTRACTOR during the progress of the work, they shall be replaced by the Engineer at the

CONTRACTOR'S expense, and the amount thereof may be withheld from any payment due or becoming due.

IB.16 MAINTENANCE PERIOD REQUIRED

The Bidder's attention is directed to the provisions hereinafter in the Contract Documents which require, unless otherwise provided, the maintenance of all work and materials furnished under this Contract for a period of two (2) years after completion, acceptance and final payment of the work.

IB.17 NORMAL WORKING HOURS REQUIRED

Unless otherwise specified, the CONTRACTOR will be expected to accomplish all of the work of this project during normal working hours. No work will be performed on Saturdays, Sundays or Legal Holidays, or prior to 7:00 A.M. or after 7:00 P.M. on any normal working day, without the knowledge of the Engineer and the consent of the OWNER.

IB.18 AMERICAN PRODUCTS

The products to be provided under this Contract shall be only manufactured and farm products of the United States, wherever available.

IB.19 ADDENDA AND INTERPRETATIONS (PRE-BID)

No interpretation of the meaning of the plans, specifications, or other pre-bid documents will be made to any bidder orally. However, the Engineer, at his sole discretion, may advise prospective bidders on where certain information may be found in the Contract Documents.

Every request for such interpretation should be in writing addressed to the Engineer at the address given in the Notice to Bidders (Advertisement) and to be given consideration must be received at least ten (10) working days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be mailed by certified mail to all prospective bidders (at the respective addresses furnished for such purposes), or sent by certified fax transmission, where the sender's fax machine produces a receipt showing the date and time of transmission, and verification that the transmission was successful; or delivered by a delivery service that provides certification of delivery to the sender, not later than seven (7) days, Saturdays, Sundays and Holidays excepted, prior to the date fixed for the opening of bids. No interpretation nor addenda may be issued within seven (7) days, Saturdays, Sundays and Holidays excepted, of the date fixed for the opening of bids unless the time for receipt of bids is extended to a date not less than ten (10) calendar days after the last such addenda or interpretation is issued. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the Contract Documents.

IB.20 DISCLOSURE OF OWNERSHIP

In accordance with N.J.S.A. 52:25-24.2, all bidders shall submit with their bid a statement setting forth the names and addresses of all stockholders in the corporation (or partnership) who own 10% or more of its stock, of any class (or of any individual partners in the partnership who own a 10% or greater interest therein, as the case may be). If one or more such stockholder (or partner) is itself a corporation (or partnership), the stockholders holding 10% or more of that corporation's stock (or the individual partners owning 10% or greater interest in that partnership, as the case may be), shall also be listed. The disclosure shall be continued until names and addresses of every non-corporate stockholder, and individual partner, exceeding the 10% ownership criteria has been listed.

Bidders may utilize the forms provided with the proposal for this purpose or may submit their own statement forms provided the necessary information is

disclosed. If the Bidder's own forms are used, they shall be executed and attested in the same form as the Proposal.

IB.21 "AFFIRMATIVE ACTION" AGAINST DISCRIMINATION

IB.21.1. BIDDER REFERRED TO LAW

The Bidder is specifically referred to N.J.S.A. 10:5-33 et seq., and the Regulations adopted pursuant thereto, relating to affirmative action in relation to discrimination.

IB.21.2. MANDATORY LANGUAGE REQUIRED

The mandatory language required by N.J.A.C. 17:27-3.5A, current as of the date of execution, will be incorporated in the Contract.

IB.21.3. CONTRACT PROCEDURES

The CONTRACTOR must sign a contract containing the mandatory language of IB.21.2. The construction goals and related contract obligations and procedures, as described in the regulations, do not apply to any construction contractor or subcontractor which submits appropriate evidence that it is operating under a federally approved or sanctioned affirmative action plan or to any subcontractor with four (4) or fewer employees.

If the CONTRACTOR refuses to sign a contract containing the mandatory affirmative action contract language at the time the contract is submitted for signing by the OWNER, then the OWNER will reject the CONTRACTOR'S bid as non-responsive. When such a rejection occurs, the same affirmative action requirements shall apply to any other contractor selected by the OWNER in accordance with contracting laws and procedures.

If, prior to or at the time the OWNER submits a contract for signing, the CONTRACTOR does not submit to the OWNER evidence, acceptable to the Division of Contract Compliance and Equal Employment Opportunity in Public Contracts (The Division), of an existing federally approved or sanctioned Affirmative Action

Program, then, prior to signing the contract, the contractor shall complete and submit the Initial Project Workforce Report AA201 to the OWNER and the Division.

Forms and information concerning submission procedures and monthly reporting requirements can be found on the website of the New Jersey Department of the Treasury at: <http://www.state.nj.us/treasury>.

IB.21.4 SUBCONTRACTORS

All provisions of this section (IB.21) shall apply to subcontractors, except for certain exceptions for subcontractors with less than five employees, the OWNER will not approve any subcontract for a subcontractor, unless the subcontractor meets the requirements of the regulations.

IB.22 PAY TO PLAY COMPLIANCE

This Contract is subject to N.J.S.A. 19:44A-20.4 et seq. Unless otherwise noted in the Special Provisions, this Contract was awarded through a "Fair and Open" process.

Starting in January 2007, all business entities are advised of their responsibility to file an annual disclosure statement of political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.27 if they received contracts in excess of \$50,000 from public entities in a calendar year. Business entities are responsible for determining if filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.