

GOODS AND SERVICES BID SPECIFICATIONS

A GUIDE FOR NEW JERSEY LOCAL PUBLIC
AGENCIES

(Fourth Edition, Ver. 2, 2019)

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RUTGERS

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SPECIAL EDITION

GOODS AND SERVICES BID SPECIFICATIONS:

A GUIDE FOR NEW JERSEY LOCAL PUBLIC AGENCIES

Qualified Purchasing Agent Program

Procurement Yellow Book

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Introduction

Note to 4th Ed, Ver. 2: The sole difference between this version the the 4th Edition, 2018 is the deletion of a paragraph on page C -17, Statement of Ownership. The change deleted text that indicated the failure to submit the form could be waived. That was an oversight, as failure to submit the form is considered "fatal" to a bid pursuant to N.J.S.A. 40A:11-23.2. The forms are unaffected.

New Jersey local government procurement standards and practice is always evolving. This Guide, “Goods and Services Bid Specifications” (also known as the “Procurement Yellow Book”) is a comprehensive update to the original 1995 and 2005 revision that reflects new laws and court cases that affect New Jersey local unit contracting. It is important to note that while there are sections that might incidentally address public works/construction activities, its primary focus is goods and service contracting.

The Guide provides the basic “boilerplate” language that meets statutory requirements and sound procurement practices for procuring goods and services. It directly meets the needs of contracting units that fall under the Local Public Contracts Law. (N.J.S.A. 40A:11-1 et seq.).

For the first time, however, this edition includes references to the Public School Contracts Law (N.J.S.A. 18A:18A-1 et seq.) as many requirements now overlap (i.e., Iran Disclosure, Business Registration, and more). That noted, it does not contain all requirements of public school contracting, but what it includes applies to school contracting. This Special Edition was prepared for the Qualified Purchasing Agent education program and 2018 Rutgers Annual Purchasing Forum.

While a boilerplate document, users are cautioned not to use it without due consideration. The standard text includes many blanks that must be completed by the contracting unit and options that are only used if a box is checked to apply to a given bid. Check box use is required – without checking them, its provision is not applicable, so the document must be customized for each use.

The Guide is in three parts. Part A is the “Instructions to Bidders” section. Each section is numbered in outline form and is correlated to Part B, the “Supplement” The Supplement provides details explaining various sections of the Instructions to Bidders and reviews options available to users. It includes considerations of when to exercise options and their impact.

This edition of the Guide is currently available on the Center for Government Services website at <https://cgs.rutgers.edu/programs/publicpurchasing> . The text and individual forms can be downloaded in Microsoft Word format for local editing and revisions.

Part C is the “Standard Bid Document Reference.” The Reference includes explanatory and statutory information about the various forms as well as sample language and forms. Where appropriate, the forms should be adapted to local needs.

This revision was prepared by the Rutgers Center for Government Services as part of its training program of public purchasing professionals. It supports the mission of the Division of Local Government Services’ responsibility to provide technical advice. Thus, as technical guidance, contracting unit procurement and legal professionals should review it to ensure it meets agency needs and any local ordinance and statutory requirements.

This edition was developed and edited by Marc Pfeiffer, retired Deputy Director of the Division of Local Government Services. He was supported by Joseph A. Valenti, retired Chief of the Division’s Bureau of Local Management Services and a team of procurement professionals who are instructors in the CGS Principles of Public Purchasing courses. Mr. Pfeiffer and Mr. Valenti were the creators, developers and editors of the first two editions.

PREFACE

Although all bid documents are a matter of law and policy implemented by local officials of a contracting unit, there has long been a call to standardize "Instructions to Bidders and Statutory Requirements" or what is generally known as "boilerplate" language. General instructions and required language are the precursors to the essential part of all bid documents, the “Technical Specifications.” The basic elements of all journalism — who, what, where, when and how — are translated into the business language of public procurement and published as a document commonly referred to as SPECIFICATIONS, BID PACKAGE, REQUEST FOR PROPOSALS or BID PROPOSAL.

The difficulty of developing ideal or standard language is compounded by the nature and variety of bids, i.e., construction, service or materials, as well as the many different types of contracting units, i.e., counties, municipalities, local commissions, and local authorities. When adapting these guidelines for an agency's use, purchasing agents and legal advisors should consider these differences. Be sure to review the Supplemental Information, (previously known as the Notes on the Instructions to Bidders) and the Standard Bid Document Reference sections for detailed information and sample documents. Please remember that the statutory references used in this Guide are those of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.). If the law governing a contracting unit differs, they may need additions, modifications, or deleted statutory provisions.

The recommended language and statutory requirements are current as of this printing. Users are urged to periodically review literature and oversight agency guidance for updates and amendments. We recommend that all bid documents and revisions be reviewed by the contracting unit attorney for legal compliance.

The Instructions to Bidders are considered the basic elements of general bid instructions and incorporate generally accepted public procurement practice. It is not suggested that these are the only sections needed by a contracting unit. However, they are the foundation on which specifications can be built.

2018

GOODS AND SERVICES BID SPECIFICATIONS:
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LOCAL PUBLIC AGENCIES*

Part A

**Instructions to Bidders and
Statutory Requirements**

Instructions to Bidders and Statutory Requirements

I. SUBMISSION OF BIDS

- A. Sealed bids shall be received by the <name of contracting unit>, hereinafter referred to as “owner,” in accordance with public advertisement as required by law, with a copy of said notice being attached hereto and made a part of these specifications.
- B. Sealed bids shall be received by the designated representative at the time _____(am/pm) and _____(location of bid opening) as stated in the Notice to Bidders, and at such time and place will be publicly opened and read aloud.
- C. The bid shall be submitted in a sealed envelope: (1) addressed to the owner, (2) bearing the name and address of the bidder written on the face of the envelope, and (3) clearly marked "BID" with the contract title and/or bid # of the contract being bid. The bidder shall include one original and one copy of its proposal in its bid submission.
- D. It is the bidder's responsibility to present bids to the owner prior to or at the time and at the place designated. Bids may be hand delivered or mailed; however, the owner disclaims any responsibility for bids forwarded by regular or overnight mail. Bids sent by express mail or delivery service must either 1) include the designation in sub-section C, above on the outside of the express mail or service envelope; or 2) must be in a separate envelope inside the delivery envelope and the envelope marked as required above. Bids received after the designated time and date will be returned unopened.
- E. Sealed bids forwarded to the owner before the time of opening of bids may be withdrawn upon written application of the bidder who shall be required to produce evidence showing that the individual is or represents the principal or principals involved in the bid. Once bids have been opened, they shall remain firm for a period of sixty (60) calendar days.
- F. More than one bid from an individual, a firm or partnership, a corporation or association under the same names shall not be considered.
- G. All prices and amounts must be written in ink or preferably machine-printed. Bids containing any conditions, omissions, unexplained erasures or alterations, items not called for in the bid proposal form, attachment of additive information not required by the specifications, or irregularities of any kind, may be cause for rejection by the owner in accordance with applicable law. Any changes, whiteouts, strikeouts, etc. in the bid must be initialed in ink by the person signing the bid.
- H. Each bid proposal form must give the full business address, business phone, fax, e-mail, the contact person of the bidder, and be signed by an authorized representative as follows:
- Bids by partnerships must be signed in the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing.
 - Bids by corporations must be signed in the legal name of the corporation, followed by the name of the State in which incorporated and must contain the signature and designation of the president, secretary or other person authorized to bind the corporation in the matter.
 - Bids by sole-proprietorship shall be signed by the proprietor.
 - When requested, satisfactory evidence of the authority of the officer signing shall be furnished.
- I. Bidder should be aware of the following statutes that represent “Truth in Contracting” laws:
- N.J.S.A. 2C:21-34, et seq. governs false claims and representations by bidders. It is a serious crime for the bidder to knowingly submit a false claim and/or knowingly make material misrepresentation.
 - N.J.S.A. 2C:27-10 provides that a public servant commits a crime if said public servant solicits or receives a benefit directly or indirectly, for an official act performed or to be performed by a public servant, which is a violation of official duty.
 - N.J.S.A. 2C:27-11 provides that a bidder commits a crime if said person, directly or indirectly, confers or agrees to confer any benefit not allowed by law to a public servant.
 - Bidder should consult the statutes or legal counsel for further information.
- J. Pay-to-Play Disclosure - 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 receive 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.
- K. Official Request for Bid packages are available from the owner’s website at _____ at no cost to the prospective respondents. All addenda are posted on this site. Potential respondents are cautioned that they are responding at their own risk if a third party supplied the specifications that may or may not be complete. The owner is

not responsible for third party supplied documents. Respondents are urged to register their contact information on the website so any addenda to these specifications can be sent to them.

II. BID SECURITY AND BONDING REQUIREMENTS

The following provisions if indicated by an (X), shall be applicable to this bid and be made a part of the bid documents:

A. BID GUARANTEE

Bidder shall submit with the bid a certified check, cashier's check or bid bond in the amount of ten percent (10%) of the total price bid, but not in excess of \$20,000, payable unconditionally to the owner. When submitting a Bid Bond, it shall contain Power of Attorney for full amount of Bid Bond from a surety company authorized to do business in the State of New Jersey and acceptable to the owner. The check or bond of the unsuccessful bidder(s) shall be returned pursuant to N.J.S.A. 40A:11-24a. The check or bond of the bidder to whom the contract is awarded shall be retained until a contract is executed and the required performance bond or other security is submitted. The check or bond of the successful bidder shall be forfeited if the bidder fails to enter into a contract pursuant to N.J.S.A. 40A:11-21.

The Bid Bond shall include a valid Power of Attorney authorizing the Attorney-in-Fact to execute the documents. Failure to submit a bid guarantee shall result in rejection of the bid.

B. CONSENT OF SURETY

Bidder shall submit with the bid a Certificate (Consent) of Surety with Power of Attorney for full amount of bid price from a Surety Company authorized to do business in the State of New Jersey, and acceptable to the owner stating that it will provide said bidder with a Performance Bond in the full amount of the bid. This certificate shall be obtained in order to confirm that the bidder to whom the contract is awarded will furnish Performance and Payment Bonds from an acceptable surety company on behalf of said bidder, any or all subcontractors or by each respective subcontractor or by any combination thereof which results in performance security equal to the total amount of the contract, pursuant to N.J.S.A. 40A:11-22.

The Consent of Surety shall include a valid Power of Attorney authorizing the Attorney-in-Fact to execute the documents. Failure to submit a Consent of Surety form shall result in rejection of the bid.

C. PERFORMANCE BOND

The successful bidder shall simultaneously with the delivery of the executed contract, submit an executed bond in the amount of one hundred percent (100%) of the acceptable bid as security for the faithful performance of this contract.

The performance bond provided shall not be released until final acceptance of the whole work and then only if any liens or claims have been satisfied. The surety on such bond or bonds shall be a duly authorized surety company authorized to do business in the State of New Jersey pursuant to N.J.S.A. 17:31-5. For multi-year contracts, the Performance Bond may be resubmitted each year on the Contract Anniversary Date for the amount remaining on the contract.

Failure to submit this with the executed contract shall be cause for declaring the contract null and void pursuant to N.J.S.A. 40A:11-22.

D. LABOR AND MATERIAL (PAYMENT) BOND

The successful bidder shall with the delivery of the performance bond submit an executed payment bond to guarantee payment to laborers and suppliers for the labor and material used in the work performed under the contract.

Failure to submit a labor and material bond with the performance bond shall be cause for declaring the contract null and void.

E. MAINTENANCE BOND

Upon acceptance of the work by the owner, the contractor shall submit a maintenance bond (N.J.S.A. 40A:11-16.3) in an amount not to exceed _____% of the project costs guaranteeing against defective quality of work or materials for the period of:

_____ 1 year

_____ 2 years Fall

III. INTERPRETATIONS AND ADDENDA

- A. The bidder understands and agrees that its bid is submitted on the basis of the specifications prepared by the owner. The bidder accepts the obligation to become familiar with these specifications.
- B. Bidders are expected to examine the specifications and related bid documents with care and observe all their requirements. Ambiguities, errors or omissions noted by bidders should be promptly reported in writing to the appropriate official. Any prospective bidder who wishes to challenge a bid specification shall file such challenges in writing with the contracting agent no less than three business days prior to the opening of the bids. Challenges filed after that time shall be considered void and have no impact on the contracting unit or the award of a contract pursuant to N.J.S.A. 40A:11-13. In the event the bidder fails to notify the owner of such ambiguities, errors or omissions, the bidder shall be bound by the requirements of the specifications and the bidder's submitted bid.
- C. No oral interpretation and or clarification of the meaning of the specifications for any goods and services will be made to any bidder. Such request shall be in writing, addressed to the owner's representative stipulated in the specification. In order to be given consideration, a written request must be received at least three (3) business days prior to the date fixed for the opening of the bid for goods and services.
- D. All interpretations, clarifications and any supplemental instructions will be in the form of written addenda to the specifications and notice will be provided through an advertisement in *<name of official newspaper>*, sent to potential bidders who provided a physical *or email* address when obtaining a copy of the bid package, or had submitted a bid submission. All addenda so issued shall become part of the specification and bid documents and shall be acknowledged by the bidder in the bid by completing the Acknowledgement of Receipt of Addenda form. The owner's interpretations or corrections thereof shall be final.

Pursuant to N.J.S.A. 40A:11-23(c)(1) when issuing addenda, the owner shall provide required notice prior to the official receipt of bids to any person who has submitted a bid or who has received a bid package. They will be sent from *<name of sender>@<web address>.<domain>*. It is recommended that bidders include this address in the recipient email's contact list to ensure it is not routed to a junk email folder.

E. Discrepancies in Bids

1. If the amount shown in words and its equivalent in figures do not agree, the written words shall be binding. Ditto marks are not considered writing or printing and shall not be used.
2. In the event that there is a discrepancy between the unit prices and the extended totals, the unit prices shall prevail. In the event there is an error of the summation of the extended totals, the computation by the owner of the extended totals shall govern.

F. Optional Pre-Bid Conference

If stated in the Notice to Bidders and checked below:

A Pre-Bid Conference will not be held.

A pre-bid conference for this proposal will be held on _____.

Attendance is not mandatory but is strongly recommended. Failure to attend does not relieve the bidder of any obligations or requirements.

IV. BRAND NAMES, STANDARDS OF QUALITY AND PERFORMANCE

- A. Brand names and/or descriptions used in these specifications are to acquaint bidders with the types of goods and services desired and will be used as a standard by which goods and services offered as equivalent will be evaluated.
- B. When a specification uses "brand name or equivalent," the listed brand name shall serve as a reference or point of comparison for the functional or operational characteristic desired for the good or service being requested. Where a bidder submits an equivalent, it shall be the responsibility of the bidder to document the equivalence claim. Failure to submit such documentation shall be grounds for rejection of the claim of equivalence.
- C. In submitting its bid, the bidder certifies that the goods and services to be furnished will not infringe upon any valid patent or trademark and that the successful bidder shall, at its own expense, defend any and all actions or suits charging such infringement, and will save the owner harmless from any damages resulting from such infringement.
- D. The contractor shall guarantee any or all goods and services supplied under these specifications. Defective or inferior goods shall be replaced at the expense of the contractor. The contractor will be responsible for return freight or restocking charges.

V. INSURANCE AND INDEMNIFICATION

The insurance documents indicated by an (X) shall include but are not limited to the following coverages. The successful bidder shall provide coverage so that all insurance coverage must be in effect no later than 12:01 A.M. EST at the start of the day of the contract and remain in effect for the duration of the contract, including any extensions.

A. INSURANCE REQUIREMENTS

1. Worker's Compensation Insurance

Worker's Compensation insurance shall be maintained in full force during the life of the contract, covering all employees engaged in performance of the contract pursuant to N.J.S.A. 34:15-12(a) and N.J.A.C. 12:235-1.6.

2. General Liability Insurance

General Liability insurance shall be provided with limits of not less than \$_____ any one person and \$_____ any one accident for bodily injury and \$_____ aggregate for property damage, and shall be maintained in full force during the life of the contract.

3. Automotive Liability Insurance

Automotive Liability insurance covering contractor for claims arising from owned, hired and non-owned vehicles with limits of not less than \$_____ any one person and \$_____ any one accident for bodily injury and \$_____ each accident for property damage, shall be maintained in full force during the life of the contract.

4. Other Forms of Insurance Required

B. CERTIFICATES OF THE REQUIRED INSURANCE

Certificates of Insurance for those policies required above shall be submitted with the contract. Such coverage shall be with an insurance company authorized to do business in the State of New Jersey and shall name the owner as an additional insured.

Self-insured contractors shall submit an affidavit attesting to their self-insured coverage and shall name the owner as an additional insured.

C. INDEMNIFICATION

The contractor shall indemnify and hold harmless the owner, its officers, agents, servants, and employees from all claims, suits or actions, and damages or costs of every name and description to which the owner may be subjected or put by reason of injury to the person or property of another, or the property of the owner, resulting from:

- a) negligent acts or omissions on the part of the contractor, the contractor's agents, servants or subcontractors in the delivery of goods and services, or in the performance of the work under the contract; and,
- b) the use of any copyrighted or copyrighted composition, valid trademark, secret process, patented or unpatented invention or article furnished or used in the performance of this contract.

VI. PRICING INFORMATION FOR PREPARATION OF BIDS

A. The owner is exempt from any local, state or federal sales, use or excise tax. The owner will not pay for N.J. State Sales and Use Tax that are included in any invoices.

B. Estimated Quantities (Open-End Contracts): The owner has attempted to identify the item(s) and the estimated amounts of each item bid to cover its requirements; however, past experience shows that the amount ordered may be different than that submitted for bidding. The right is reserved to decrease or increase the quantities specified in the specifications pursuant to N.J.A.C. 5:30-11.2 and 11.10. NO MINIMUM PURCHASE IS IMPLIED OR GUARANTEED.

C. Contractor shall be responsible for obtaining any applicable permits or licenses from any government entity that has jurisdiction to require the same. All bids submitted shall have included this cost.

- D. Bidders shall insert prices for furnishing goods and services required by these specifications. Prices shall be net, including any charges for packing, crating, containers, etc. All transportation charges shall be fully prepaid by the contractor, F.O.B. destination and placement at locations specified by the owner. As specified, placement may require inside deliveries. No additional charges will be allowed for any transportation costs resulting from partial shipments made for the contractor's convenience.
- E. In the event of a public emergency declared at the local, state or federal level prior to the expiration of the contract, if the owner opts to extend terms and conditions of the contract, the contractor agrees to extend the terms and conditions of this specification, whether existing or expiring for no longer than six months, for goods and/or services for the duration of the emergency.

VII. STATUTORY AND OTHER REQUIREMENTS

The following are mandatory requirements of this bid and contract.

A. MANDATORY AFFIRMATIVE ACTION CERTIFICATION

No firm may be issued a contract unless it complies with the affirmative action provisions of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27-1 et seq. as administered by the Division of Purchase & Property Contract Compliance and Audit Unit (Division) and provided below. The contract will include the language included as Attachment A in this specification.

1. Goods, Professional Services and General Service Contracts

Each contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

- i. A Letter of Federal Approval indicating that the vendor is under an existing federally approved or sanctioned affirmative action program. A copy of the approval letter must be provided by the vendor to the Public Agency and the Division. This approval letter is valid for one year from the date of issuance.
- ii. A Certificate of Employee Information Report (hereafter "Certificate"), issued in accordance with N.J.A.C. 17:27 et seq. The vendor must provide a copy of the Certificate to the Public Agency as evidence of its compliance with the regulations. The Certificate represents the review and approval of the vendor's Employee Information Report, Form AA-302 by the Division.
- iii. The successful bidder shall complete an Initial Employee Report, Form AA-302 and submit it to the Division with a check or money order for \$150.00 made payable to "Treasurer, State of NJ" and forward a copy of the Form to the Public Agency. Upon submission and review by the Division, the Report shall constitute evidence of compliance with the regulations

B. NEW JERSEY ANTI-DISCRIMINATION

The contract for this bid shall require that the contractor agrees not to discriminate in employment and agrees to abide by all anti-discrimination laws including but not limited to N.J.S.A. 10:2-1 as included in Attachment B of this document.

C. AMERICANS WITH DISABILITIES ACT OF 1990

Discrimination on the basis of disability in contracting for the purchase of goods and services is prohibited. If awarded the contract, the contractor is required to comply with requirements related to the Americans with Disabilities Act as provided in this specification as Attachment C. The contractor is obligated to comply with the Act and to hold the owner harmless for any violations committed under the contract.

D. STATEMENT OF OWNERSHIP

N.J.S.A. 52:25-24.2 provides that no business organization, regardless of form of ownership shall be awarded any contract for the performance of any work or the furnishing of any goods and services, unless, **prior to the receipt of the bid or accompanying the bid** of said business organization, bidders shall submit a statement setting forth the names and addresses of all persons and entities that own ten percent or more of its stock or interest of any type at all levels of ownership. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member exceeding the ten percent ownership, has been listed.

The included Statement of Ownership shall be completed and attached to the bid proposal. This requirement applies to all forms of business organizations, including, but not limited to, corporations and partnerships, publicly-owned corporations, limited partnerships, limited liability corporations, limited liability partnerships, sole proprietorship, and Subchapter S corporations. Failure to submit a disclosure document shall result in rejection of the bid as it cannot be remedied after bids have been opened.

Not-for-profit entities should fill in their name, check the not-for-profit box, and certify the form. No other information is necessary.

E. PROOF OF BUSINESS REGISTRATION

Pursuant to N.J.S.A. 52:32-44, _____ (“Contracting Agency”) is prohibited from entering into a contract with an entity unless the bidder/proposer/contractor, and each subcontractor that is required by law to be named in a bid/proposal/contract has a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services within the Department of the Treasury.

Prior to contract award or authorization, the contractor shall provide the Contracting Agency with its proof of business registration and that of any named subcontractor(s). Subcontractors named in a bid or other proposal shall provide proof of business registration to the bidder, who in turn, shall provide it to the Contracting Agency prior to the time a contract, purchase order, or other contracting document is awarded or authorized.

During the course of contract performance:

- (1) the contractor shall not enter into a contract with a subcontractor unless the subcontractor first provides the contractor with a valid proof of business registration.
- (2) the contractor shall maintain and submit to the Contracting Agency a list of subcontractors and their addresses that may be updated from time to time.
- (3) the contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall 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, (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Taxation at (609)292-6400. Form NJ-REG can be filed online at www.state.nj.us/treasury/revenue/busregcert.shtml.

Before final payment is made under the contract, the contractor shall submit to the Contracting Agency a complete and accurate list of all subcontractors used and their addresses.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration as required, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000, for each proof of business registration not properly provided under a contract with a contracting agency.

Emergency Purchases or Contracts

For purchases of an emergent nature, the contractor shall provide its Business Registration Certificate within two weeks from the date of purchase or execution of the contract or prior to payment for goods or services, whichever is earlier.

F. DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

N.J.S.A. 52:32-55 prohibits State and local public contracts with persons or entities engaging in certain investment activities in energy or finance sectors of Iran. Bidders must indicate if they comply with the law by certifying the form. Pursuant to N.J.S.A. 40A:11-2.1 the owner is required to notify the New Jersey Attorney General if it determines a false certification has been submitted.

G. AMERICAN GOODS AND PRODUCTS TO BE USED WHERE POSSIBLE

Only manufactured and farm products of the United States, wherever available, shall be used pursuant to N.J.S.A. 40A:11-18.

If boxes of the following items are checked, they are mandatory requirements of the bid proposal and contract.

H. DOCUMENT CHECKLIST

Bidder shall complete and sign the Bid Submission Document Checklist and include it in the bid submission. For construction bids, failure to submit the checklist is a fatal defect and the bid will be rejected. This document serves as a guide to bidders of the documents that are required to be submitted with the bid.

I. NON-COLLUSION AFFIDAVIT

The Affidavit shall be properly executed and submitted with the bid proposal.

J. NEW JERSEY WORKER AND COMMUNITY RIGHT TO KNOW ACT

The manufacturer or supplier of chemical substances or mixtures shall label them in accordance with the N.J. Worker and Community Right to Know Law (N.J.S.A. 34:5A-1 et seq., and N.J.A.C 8:59-1.1 et seq.). All direct use containers shall bear a label indicating the chemical name(s) and Chemical Abstracts Service number(s) of all hazardous substances in the

container, and all other substances which are among the five most predominant substances in the container, or their trade secret registry number(s) pursuant to N.J.A.C. 8:59-5. "Container" means a receptacle used to hold a liquid, solid or gaseous substance such as bottles, bags, barrels, cans, cylinders, drums and cartons. (N.J.A.C. 8:59-1.3). Further, all applicable Material Safety Data Sheets (MSDS) - hazardous substance fact sheet - must be furnished. All containers which are stored at an owner's facilities by the contractor or subcontractors shall display RTK labeling. Vendors with questions concerning labeling should contact the New Jersey Department of Health and Senior Services Right to Know Program for assistance in developing proper labels. www.nj.gov/health/workplacehealthandsafety/right-to-know/

K. PREVAILING WAGE ACT

Pursuant to N.J.S.A. 34:11-56.25 et seq., contractors on projects for public work shall adhere to all requirements of the New Jersey Prevailing Wage Act. The contractor shall be required to submit a certified payroll record to the owner within ten (10) days of the payment of the wages. In the event it is found that any worker, employed by the contractor or any subcontractor has been paid a rate of wages less than the prevailing wage required to be paid, 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 prosecute the work to completion.

The contractor is also responsible for obtaining and submitting all subcontractors' certified payroll records within the aforementioned time period. The contractor shall submit said certified payrolls in the form set forth in N.J.A.C. 12:60-6.1(c). It is the contractor's responsibility to obtain any additional copies of the certified payroll form to be submitted by contacting the New Jersey Department of Labor and Workforce Development, Division of Workplace Standards. Additional information is available at http://lwd.dol.state.nj.us/labor/wagehour/wagerate/pwr_construction.html

L. PUBLIC WORKS CONTRACTOR REGISTRATION ACT

N.J.S.A. 34:11-56.48 et seq. requires that a general or prime contractor and any listed subcontractors named in the contractor's bid proposal shall possess a certificate *at the time the bid proposal is submitted*. After bid proposals are received and prior to award of contract, the successful contractor shall submit a copy of the contractor's certification along with those of all listed subcontractors. All non-listed subcontractors and lower tier sub-subcontractors shall be registered prior to starting work on the project. It is the general contractor's responsibility that all non-listed subcontractors at any tier have their certificate prior to starting work on the job.

Under the law a "contractor" is "a person, partnership, association, joint stock company, trust, corporation or other legal business entity or successor thereof who enters into a contract" which is subject to the provisions of the New Jersey Prevailing Wage Act [N.J.S.A. 34:11-56.25, et seq.] It applies to contractors based in New Jersey or in another state.

To register, a contractor must provide the State Department of Labor with a full and accurately completed application form. The form is available online at www.state.nj.us/labor/lss/lspubcon.html.

N.J.S.A. 34:11-56.55 specifically prohibits accepting applications for registration as a substitute for a certificate of registration.

M. EQUIPMENT CERTIFICATION

Bidder shall certify on the Equipment Certification form that they control or have access to equipment necessary to do the required work if awarded the contract. If the bidder does not own or lease the equipment, a certification from the owner of the equipment that the bidder will have access to the equipment is required with the bid. (N.J.S.A. 40:11-20)

VIII. METHOD OF CONTRACT AWARD

- A. The length of the contract shall be stated in the technical specifications. Pursuant to requirements of N.J.A.C. 5:30-5.1 et seq., any contract resulting from this bid shall be subject to the availability and appropriation of sufficient funds annually. Please see Section X, Termination of Contract, Sub-section E, for additional information.
- B. If the award is to be made on the basis of a base bid only, it shall be made to that responsible bidder submitting the lowest base bid.
- C. If the award is to be made on the basis of a combination of a base bid with selected options, it shall be made to that responsible bidder submitting the lowest net bid.
- D. The owner may also elect to award the contract on the basis of unit prices.
- E. The form of contract shall be submitted by the owner to the successful bidder. Terms of the specifications/bid package prevail. Bidder exceptions must be formally accepted by the owner; material exceptions shall not be approved.
- F. Successful bidder/respondent shall complete W-9 Form and submit to the owner prior to contract award. The form is available at the following link: www.irs.gov/pub/irs-pdf/fw9.pdf

IX. CAUSES FOR REJECTING BIDS

Bids may be rejected for any of the following reasons:

- A. All bids pursuant to N.J.S.A. 40A:11-13.2;
- B. If more than one bid is received from an individual, firm or partnership, corporation or association under the same name;
- C. Multiple bids from an agent representing competing bidders;
- D. The bid is inappropriately unbalanced;
- E. The bidder is determined to possess, pursuant to N.J.S.A. 40A:11-4b, Prior Negative Experience; or,
- F. If the successful bidder fails to enter into a contract within 21 days, Sundays and holidays excepted, or as otherwise agreed upon by the parties to the contract. In this case at its option, the owner may accept the bid of the next lowest responsible bidder. (N.J.S.A. 40A:11-24b)

X. TERMINATION OF CONTRACT

- A. If, through any cause, the contractor shall fail to fulfill in a timely and proper manner obligations under the contract or if the contractor shall violate any of the requirements of the contract, the owner shall there upon have the right to terminate the contract by giving written notice to the contractor of such termination and specifying the effective date of termination. Such termination shall relieve the owner of any obligation for balances to the contractor of any sum or sums set forth in the contract. Owner will pay only for goods and services accepted prior to termination.
- B. Notwithstanding the above, the contractor shall not be relieved of liability to the owner for damages sustained by the owner by virtue of any breach of the contract by the contractor and the owner may withhold any payments to the contractor for the purpose of compensation until such time as the exact amount of the damage due the owner from the contractor is determined.
- C. The contractor agrees to indemnify and hold the owner harmless from any liability to subcontractors/suppliers concerning payment for work performed or goods supplied arising out of the lawful termination of the contract by the owner under this provision.
- D. In case of default by the contractor, the owner may procure the goods or services from other sources and hold the contractor responsible for any excess cost.
- E. Continuation of the terms of the contract beyond the fiscal year is contingent on availability of funds in the following year's budget. In the event of unavailability of such funds, the owner reserves the right to cancel the contract.
- F. It is understood by all parties that if, during the life of the contract, the contractor disposes of his/her business concern by acquisition, novation, merger, sale and or/transfer or by any means convey his/her interest(s) to another party, all obligations are transferred to that new party. In this event, the new owner(s) will be required to submit all documentation/legal instruments that were required in the original bid/contract. Any change shall be approved by the Owner.
- G. The contractor will not assign any interest in the contract and shall not transfer any interest in the same without the prior written consent of the owner.
- H. The owner may terminate the contract for convenience by providing 60 calendar days advanced notice to the contractor.
- I. The contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.
- J. For contracts that exceed one year, each fiscal year payment obligation of the owner is conditioned upon the availability of owner funds appropriated or allocated for the payment of such an obligation. If funds are not allocated and available for the continuance of any services performed by the bidder awarded the contract (contractor) hereunder, whether in whole or in part, the owner at the end of any particular fiscal year may terminate such services. The owner will notify the contractor in writing immediately of any services that will be affected by a shortage of appropriated funds. This provision shall not be construed so as to permit the owner to terminate the contract during the term, or any service hereunder, merely in order to acquire identical services from another contractor.
- K. Neither party shall be responsible for any resulting loss or obligation to fulfill duties as specified in any of the terms or provisions of a contract if the fulfillment of any term or provision of the contract is delayed or prevented by any revolutions, insurrections, riots, wars, acts of enemies, national emergencies, strikes, floods, fires, acts of God, or by any cause not within the control of the party whose performance is interfered with which by the exercise of reasonable

diligence such party is unable to prevent. Additionally, if the fulfillment of any of the terms and provisions of the contract is delayed or prevented by any court order, or action or injunction or other such agreement, the contract shall become voidable by the owner by notice to the parties.

XI. PAYMENT

- A. No payment will be made unless duly authorized by the owner's authorized representative and accompanied by proper documentation.
- B. Payment will be made in accordance with the owner's policy and procedures. Invoices shall specify, in detail, the period for which payment is claimed, the services performed during the prescribed period, the amount claimed and correlation between the services claimed and this proposal.
- C. The owner may withhold all or partial payments on account of subsequently discovered evidence including but not limited to the following:
 - 1. Deliverables not complying with the project specification;
 - 2. Claims filed or responsible evidence indicating probability of filing claims;
 - 3. A reasonable doubt that the contract can be completed for the balance then unpaid.

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

- D. Public funds may be used to pay only for goods delivered or services rendered. The owner shall not pay penalties and/or interest on overdue bills unless otherwise required by law. No employee is authorized to sign a letter of credit or any other document that represents a legal commitment on the part of the owner to pay additional fees.

XII. OTHER PROVISIONS

- A. Both parties agree to comply with all requirements of the Federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as maybe amended from time to time, and the corresponding HIPAA regulations for the confidentiality and security of medical information. If awarded the bid, the contractor shall:
 - 1. Not use or disclose protected health information other than as permitted or required by law
 - 2. Use appropriate safeguards to protect the confidentiality of the information
 - 3. Report any use or disclosure not permitted

The contractor, by execution of the contract, shall thereby indemnify and hold the owner harmless from any and all liabilities, claims, actions, costs and penalties which may be incurred as the result of the failure of the contractor to comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) or any other statute or case law protecting the privacy of persons using its services.

- B. The owner shall retain all of its rights and interest in any and all documents and property both hard copy and digital furnished by the owner to the successful bidder (contractor) for the purpose of assisting the contractor in the performance of this contract. None of the documents and/or property shall, without the written consent of the owner, be disclosed to others or used by the contractor or permitted by the contractor to be used by their parties at any time except in the performance of the resulting contract.

The contractor shall not have the right to use, sell, or disclose the total of the interim or final work products, or make available to third parties, without the prior written consent of the owner. Any information supplied to the owner may be required to be supplied on CD/DVD or USB flash drive media compatible with Microsoft Windows, and Microsoft Office Suite 2010 or greater.

- C. Under state and federal statutes, certain government records are protected from public disclosure. The owner, the contractor and any subcontractors have a responsibility and an obligation to safeguard from public access an employee's personal information with which it has been entrusted when disclosure thereof would violate the employee's reasonable expectation of privacy. All payroll, personnel and health insurance related files are confidential. Additionally, the contractor and any subcontractors may be privy to sensitive law enforcement information or investigations during their review which must remain confidential. The owner retains the right to make any public disclosure under the law. Also, among government records deemed confidential are administrative or technical information regarding computer hardware, software and networks that, if disclosed, would jeopardize computer security. The contractor and any subcontractor(s) are prohibited from the sale or distribution of all supplied information to any third party.
- D. Proof of licensure for any activity regulated by the State of New Jersey and required to do the work required under this specification, for either the firm or the person responsible for the work, shall be provided as required by the owner.

ATTACHMENT A – EXHIBIT A
MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq. (P.L.1975, c.127) and N.J.A.C. 17:27 et seq.

GOODS, GENERAL SERVICES, AND PROFESSIONAL SERVICES CONTRACTS

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

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 ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, 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 equal employment opportunity shall include, but not be limited to the following: employment, upgrading, 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.

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.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval;

Certificate of Employee Information Report; or

Employee Information Report Form AA-302 (electronically provided by the Division and distributed to the public agency through the Division's website at: http://www.state.nj.us/treasury/contract_compliance).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office 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 Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

ATTACHMENT B – NEW JERSEY ANTI-DISCRIMINATION PROVISIONS

N.J.S.A. 10:2-1 ET SEQ.

Pursuant to N.J.S.A. 10:2-1, if awarded a contract, the contractor agrees that:

a. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;

b. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;

c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

d. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

No provision in this section shall be construed to prevent a board of education from designating that a contract, subcontract or other means of procurement of goods, services, equipment or construction shall be awarded to a small business enterprise, minority business enterprise or a women's business enterprise pursuant to P.L.1985, c.490 (C.18A:18A-51 et seq.).

ATTACHMENT C
AMERICANS WITH DISABILITIES ACT OF 1990
Equal Opportunity for Individuals with Disability

The contractor and the owner do hereby agree that the provisions of Title 11 of the Americans with Disabilities Act of 1990 (the "Act") (*42 U.S.C. 5121 01 et seq.*), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant there unto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the owner pursuant to this contract, the contractor agrees that the performance shall be in strict compliance with the Act. In the event that the contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the contractor shall defend the owner in any action or administrative proceeding commenced pursuant to this Act. The contractor shall indemnify, protect, and save harmless the owner, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages, of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the owner's grievance procedure, the contractor agrees to abide by any decision of the owner which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the owner, or if the owner incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the contractor shall satisfy and discharge the same at its own expense.

The owner shall, as soon as practicable after a claim has been made against it, give written notice thereof to the contractor along with full and complete particulars of the claim, if any action or administrative proceeding is brought against the owner or any of its agents, servants, and employees, the owner shall expeditiously forward or have forwarded to the contractor every demand, complaint, notice, summons, pleading, or other process received by the owner or its representatives.

It is expressly agreed and understood that any approval by the owner of the services provided by the contractor pursuant to this contract will not relieve the contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the owner pursuant to this paragraph.

It is further agreed and understood that the owner assumes no obligation to indemnify or save harmless the contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the contractor's obligations assumed in this Agreement, nor shall they be construed to relieve the contractor from any liability, nor preclude the owner from taking any other actions available to it under any other provisions of the Agreement or otherwise at law.

2018

GOODS AND SERVICES BID SPECIFICATIONS:
*A GUIDE FOR NEW JERSEY
LOCAL PUBLIC AGENCIES*

PART B

**Supplemental Information to
“Instructions to Bidders and Statutory
Requirements”**

Supplemental Information to Instructions to Bidders and Statutory Requirements

Goods and Services Specifications

USE OF THIS MATERIAL

This section follows the order in Part A – “Instructions to Bidders and Statutory Requirements, often referred to in a bid specification as “terms and conditions,” or T&C. This text also refers to Part C, “Document Reference.” Section numbers used below relate to the numbering in Part A.

This material should be considered as minimum standards. No single version of terms and conditions can serve all contracting units for all goods and services, not to mention public works construction, or competitive contracting. Given a specific procurement, the purchasing agent may find it valuable to modify or adapt language to meet that need. T&C’s may also warrant modification to reflect a contracting unit’s policies such as a lawfully approved set-aside program for certain classes of vendors.

In addition, since the T&Cs become the core of a contract with a successful bidder, a contracting unit’s legal counsel may want to add or modify individual terms to meet what is felt to be in the best interest of the client in total, or for a particular procurement. Legal counsel can also keep the document up-to-date given changes in state law. The purchasing agent and legal counsel should consult as needed to ensure that the T&C’s meet the contracting unit’s needs.

Finally, this material can generally be used for Competitive Contracting Request for Proposals as the terms and conditions will generally apply to an RFP. However, it requires substitution of “proposals” for “bid” and “proposers” for “bidders” and a careful review to ensure that provisions reflect the RFP process.

I. SUBMISSION OF BIDS

Copies of Bids

The owner should decide how many copies of the bid proposal they want, and if they want an electronic copy (i.e., on a CD/DVD). Multiple copies may be useful if there are more than one agency reviewer. At least one copy, in addition to the original, should always be available for OPRA purposes.

Due to potential information security problems, the use of USB/memory sticks as a submission medium is NOT recommended.

Bid Specifications

New Jersey public procurement practice has long provided that bid specifications are provided to potential bidders for no cost, unless the contracting unit incurs fees for reproducing copies. If charged, fees are subject to the Open Public Records Law provisions regarding charges for copies of public records. Fees are most often used to offset the costs of reproduction of plans and specifications requiring special printing (i.e., construction plans or engineering drawings) and cannot be used as a barrier or a way to limit the number of bidders. The T&C (Section 1-K) notes that fees are not charged, and this should be changed if fees are being charged.

Section 1-K also refers to the practice of providing access to bid specifications and addenda through the owner’s website. This practice is expected to expand over time. However, if the owner does not use this approach for vendors to access documents, the section should be revised accordingly.

A sample bid proposal form is in *Part A, Section 3 “Bid Proposal Form.”*

If the contracting unit requires the use of pre-printed envelopes or labels, Section I, “Submission of Bids” would be the appropriate location to add the additional requirement.

Contemporary procurement practices sometimes involve third parties providing bid specifications to potential bidders. The Model T&C has provisions (I-K) that note the official contracting unit website as the source for obtaining bids. Contracting units not using a website should remove this provision.

Change in Submission Date

See N.J.A.C. 5:34-9.3 if circumstances require a postponement of receipt of bids (i.e. weather related) or cancellation due to a change in specifications that cannot be addressed by a timely addendum (see below).

State law requires (N.J.S.A. 40A:11-23b) that bids shall be received at a specified time, date and place, unsealed and announced. Deviations to this standard are rare, fact sensitive, and narrow in the application of the statutory provisions of the law. It is strongly recommended that the owner consult with legal counsel on the application of the statutory provisions of law and reported court cases impacting N.J.S.A. 40A:11-23b.

Timing of Bid Submissions

Honoring requests for bid withdrawal **prior** to bid opening should be dictated by local policy. It is generally acceptable policy that there be no determination of an award or rejection of bids after the bids are opened. Any information divulged at the bid opening is not a final determination and is subject to the final action of the governing body. If the bids are open at a governing body’s meeting with the intent to award a contract, the bids should be carefully reviewed by the appropriate local officials to ensure compliance with all statutory, regulatory, and specification requirements.

Dealing with Bidder Deviations and Failure to Submit Documents

Bids must be properly submitted and executed in accordance with the owner's instructions. *Material deviations or alterations shall* be grounds for rejection. In *P&A Construction, Inc. v. Township of Woodbridge*, 365 N.J. Super. 164 (App. Div. 2004), it was concluded that N.J.S.A. 40A:11-23.2 should be construed as a legislative directive that a bidder’s failure to submit any of the *five mandatory items set forth* in the statute shall automatically be considered a non-waivable defect. Any other bid defect is subject to *case law criteria of materiality*. See *Township of River Vale v. R.J. Longo Construction Co.*, 127 N.J. Super.207, 216 (Law Div. 1974). In this definitive case, the court articulated two criteria for determining whether a bid defect constitutes a material and hence non-waivable irregularity:

1. Whether the effect of a waiver would be to deprive the municipality of its assurance that the contract will be executed, performed and guaranteed according to its specified requirements.
2. Whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

In these cases, attorney advice and careful review of case law is usually warranted.

Political Contribution Disclosure Compliance (Pay to Play)

N.J.S.A. 19:44A-20.27 establishes a disclosure requirement for business entities. It requires that, when a business entity has received in any calendar year \$50,000 or more in public contracts with public entities, it must file an annual report with the Election Law Enforcement Commission (ELEC).

While the contracting unit has no role in this process, bid or proposal specifications and contracts should include language notifying business entities of their potential obligation under the law. This website, www.nj.gov/dca/divisions/dlgs/resources/poli_contri_discl.html has detailed information on Pay-to-Play laws. If the contracting unit has adopted its own pay-to-play regulations, this section should be revised to reflect that.

II. BID GUARANTEE AND PERFORMANCE BONDING REQUIREMENTS

A. Bid Guarantees

Bid guarantees are mandatory for construction contracts over \$100,000 and optional for all others. A bid guarantee may be submitted as a certified check, cashier's check, or a bid bond, except that a bid bond and performance bond (see below) is required for covered construction projects.

If a bid guarantee is required on an open-end unit priced contract, the owner should specify in the instructions to bidders the amount or formula to be used as an estimate for determining the ten (10%) percent. Care should be used in deciding which non-construction contracts warrant a bid guarantee. Bid bonds or checks add costs to a bidder and may deter some bidders from participating.

Bid bonds that provide only for an amount that would be between the amount bid and the next lowest bidder is not accepted and should be carefully reviewed by a contracting unit's legal counsel. If a bid bond is submitted, it must include a Power of Attorney affidavit from the insurance company that issued the bond authorizing the individual signing the bond (usually an Attorney-in-Fact) to execute the bid bond on behalf of the company.

The LPCL requires "The guarantee shall be in the amount of 10% of the bid, but not in excess of \$20,000." On contracts of \$200,000 and up this equates to a \$20,000 bid bond. The only exception to the amount is in the event a funding agency, i.e., a federal agency requires a different amount. In that case the amount required by the funding agency is used.

The check or bond of the unsuccessful bidder(s) shall be returned pursuant to N.J.S.A. 40A:11-24a (i.e., all except the apparent three lowest bidders). The check or bond of the bidder to whom the contract is awarded shall be retained until a contract is executed and the required performance bond or other security is submitted.

B. Performance Bonding

Performance bonds (N.J.S.A. 40A:11-21/22) have been traditionally used to protect a contracting unit against risks presented by a contractor. Contracting units have the option of requiring performance bonding for contracts with a value of less than \$100,000; they are required over that amount. Performance bonding for non-construction projects is optional and their use depends on how much risk and exposure the owner is willing to assume for a specific contract.

A performance (aka, "contract") bond is represented by a surety guaranteeing to the owner the cost of completing the project in the event the contractor fails to do so. In an ideal situation, the owner is assured that it will obtain a completed project for the amount it agreed to pay. The amount of a performance bond on many projects equals the full contract amount, but it can be adjusted for less than the full amount for projects that take many years.

As with bid guarantees, care should be used in deciding which non-construction contracts warrant a performance bond. A Consent of Surety for a performance bond adds cost to a bid and may deter some bidders from participating

There are three important points to remember when considering bonding requirements:

- The surety company can be a great help in resolving difficulties that may arise between the contractor and the owner.
- Be sure that bonding is required in a sufficient amount.
- Be sure specifications are written in sufficient detail so they can be relied upon in case of default.

Bond requirements depend on the nature and complexity of the work to be performed. Owners should review the appropriate statutes for their particular contracting units. Remember that all bond documents must be evaluated for their completeness and compliance. It is also important to note the primary purpose for each type of bond document required.

For the bid, the performance bond requirement is fulfilled by the submission of a “Consent of Surety” document. A Consent of Surety is a written legal relationship between a surety and a contractor. If the contractor is awarded the contract, the surety will provide to the contractor a bond, payable to the contracting unit for the faithful performance of all provisions of the specifications and/or all matters relating to the performance of the contract.

A Consent of Surety must include a Power of Attorney affidavit from the insurance company that issued the bond authorizing the individual signing the bond (usually an Attorney-in-Fact) to execute the surety bond on behalf of the company.

N.J.S.A. 40A:11-22 allows a bidder to offer a personal (individual) surety instead of a surety (corporate) company. The owner may reject any bid if it is not satisfied with the sufficiency of the personal (individual) surety offered. It is important for an owner to establish standards and procedures for the receipt of such personal sureties. It is because of the uncertainty of this process that personal sureties are rarely used.

A labor and material bond (N.J.S.A. 2A:44-143) is given by a contractor to guarantee payment to certain laborers and suppliers for the labor and materials used in the work performed under a contract. This liability is usually part of the performance bond.

A maintenance bond guarantees against defective work or materials. The bond cannot be longer than two years and can be less than, but not more than 100% of the project cost.

It should be noted that statutes require all surety companies to be licensed by the state in order to transact business as a surety. Standards for surety companies are at N.J.S.A. 2A:44-143. A current listing of licensed companies can be found at www.state.nj.us/dobi/division_insurance/surety.htm. Any bond submitted as part of a bid or contract should be checked against the listing of licensed companies to make sure it complies with the law.

III. INTERPRETATIONS

Any bidder requesting interpretation of the specifications should do so in writing. (*See Part A, Section III “Interpretation and Addenda.”*)

Any vendor challenge to the specifications must be submitted in writing not less than three (3) business days prior to the scheduled bid opening.

In addition, as part of a bid submission a bidder must submit an Acknowledgement of Receipt of Addenda form. This ensures that the bidder is aware of any addenda issued by the owner.

No oral interpretation should be given to any potential bidder. Contracting units can consider posting questions and answers on their website and provide a link to the page in their specifications so all potential bidders are made aware of interpretations and clarifications.

Contracting units that choose to use email to distribute addenda should be sure to substitute the appropriate email address in III-D. Those not choosing to use email should eliminate the last two sentences.

IV. BRAND NAMES, STANDARDS OF QUALITY AND PERFORMANCE

The use of “brand name or equivalent” in a bid specification allows a vendor to submit the brand-named item or one that is equivalent to that item. Public contracting laws and regulations provide a procedure to follow when deciding to use the phrase. Use of these procedures at N.J.A.C. 5:34-9.2 encourages free, open, and competitive bidding.

Before using “brand name or equivalent” in bid specifications, the following procedures shall be considered initially:

- The contracting agent should consider the use of a specification based on a standard issued by a national or international testing or standards setting organization.
- The contracting agent should consider using generic specifications available through commercial or non-commercial services.
- The contracting agent should consider using a specification based on specialized programs.

If the above procedures are not used, a contracting unit can decide to use “brand name or equivalent” if the contracting agent knows that at least one equivalent exists. If the contracting agent does not know if at least one equivalent exists, the item is proprietary and the rules for use of proprietary items must be used. [N.J.S.A. 40A:11-13(d) and N.J.A.C. 5:34-9.1 and 9.2]

Prior to advertising for receipt of bids that includes proprietary goods or services, the contracting agent or purchasing agent shall certify, in writing to the chief executive officer of the contracting unit, an explanation of why goods or services are of a specialized nature and necessary for the conduct of the affairs of the local contracting unit. The resolution awarding the contract shall include a description of why goods or services are of a specialized nature and necessary for the conduct of the affairs of the local contracting unit. In both these cases, when making the explanation, do not paraphrase the statute or regulations, be precise as to the situation being addressed [N.J.A.C. 5:34-9.1(b) and (c)]

If the “brand name or equivalent” is used and a bidder proposes an equivalent, the burden rests with the bidder to demonstrate equivalency through the submission of documentation. Mere submission of company or product literature is unacceptable and can be used as a basis for rejection of the claim of equivalence and the bid.

Pre-approval or pre-qualification of equivalent products by the contracting unit before submission of bids is an anti-competitive practice and not allowed [N.J.A.C. 5:34-9.2(d)]. This does not absolve the owner of the need to determine compatibility and suitability.

It is recommended that inspection be made upon delivery, installation or performance of service. Owner should serve written notice to the vendor/contractor upon discovery of defect or non-performance, a copy of which should be forwarded to the surety if a performance bond has been required. Request for payment should not be processed until the matter is satisfactorily resolved.

Use of American Goods, Where Possible (N.J.S.A.40A:11-18): Long a contentious provision of law, the provision does not reflect the changes in the economy since enacted in the late 1960’s and amended in 1982. (Part A, IV-E).

The provision endures in bid specifications, but the challenges of changes in product sourcing, products made of components produced in a foreign country but assembled in the U.S., and the impact

of federal trade agreements that prohibit states from imposing their own standards, makes strict enforcement of this law challenging at best. It pops up as an issue periodically when products are easily identifiable as to origin and bid prices reflect that.

V. INSURANCE & INDEMNIFICATION

Insurance requirements and dollar limitations are determined by individual specialized needs of the owner and may vary by type of project or service. Consult your local risk manager or insurance consultant for current or required limits. Such requirements must be reasonable and related to the estimate of exposure. The owner should also consider what “other” insurance may be required for a specific circumstance; for example, Professional Liability insurance might be warranted when a contract calls for professional advice or is part of the required services.

Indemnification and insurance should not be confused with bonding coverage.

VI. PRICING INFORMATION FOR PREPARATION OF BIDS

If fixed quantities are used in a bid specification, open-ended language must be omitted from the boilerplate.

If the owner waives the cost of permits or other fees, it should be noted in this section of Instructions to Bidders.

“FOB destination” should be the preferred method for local contracting units. When “F.O.B. destination” is specified, title or ownership of the goods passes to the buyer (owner) upon delivery to the owner's designated point. The seller must pay all freight and incidental charges required to effect delivery and is responsible for any loss or damage up to time of delivery.

When “free on board (F.O.B.) shipping point” is used, the title or ownership of the goods passes from the seller to the buyer (owner) at the moment of delivery to the carrier. Goods are put into the hands of the carrier or loaded in the carrier's vehicle free of expense to the buyer, with delivery to the carrier constituting delivery to the buyer. The buyer must pay all freight and incidental charges required to effect delivery and bears the burden of recovering the value for loss or damage incurred after delivery to the carrier.

When dealing with materials or equipment that requires the contractor to unpack or install what is delivered, the owner should consider including language in the technical specification requiring the contractor to remove and dispose of any debris, shipping and packing material related to the delivery or installation. If appropriate the technical specification can also call for existing equipment or material to be removed and disposed of by the contractor, in accordance with law (i.e., if related to environmental disposal considerations).

VII. STATUTORY AND OTHER REQUIREMENTS

Statutory requirements may differ according to the type of contracting unit. While certain statutory requirements are not found specifically in purchasing laws, they are requirements that must be addressed in bid specifications. The Instructions to Bidders contains several them and others are self-explanatory. The Document Reference (Part C) includes elaboration on those that require form; the following description goes into additional detail for one of them.

A. State Equal Employment Opportunity/Affirmative Action rules require a careful reading and any questions concerning compliance should be directed to New Jersey Department of the Treasury, Division of Purchase and Property Contract Compliance and Audit Unit. See Instructions, Section VII-A “Mandatory Affirmative Action Certification” for “mandatory language” that must appear in bid specification.

The mandatory language for the specification is the same language that must be part of the contract. This language is found in the Part C, Section 7 for Goods and Services contracts (including professional services), and Section 17 for Construction. The Instructions to Bidders document (VII-A) references and includes the language for goods and services as Attachment A. Users can modify this structure as long as the specification includes the appropriate mandatory language. **If these T&C are used for public construction, the text in VII-A and Attachment A must be amended to reflect the public construction language found in Part C-17.**

In addition, all contracting units must retain the affirmative action evidence in their files for review by the state's EEO Monitoring Program. The program also has rules concerning emergency contracts which essentially require that there be documentation of the emergency, that the vendor be required to comply with document filing prior to payment, and that the vendor be provided the appropriate Exhibits.

Contracting units are required to appoint a "Public Agency Compliance Officer" (PACO) to administer the provisions of the law as it applies to the agency. Full details about the program are online at www.state.nj.us/treasury/contract_compliance/.

VIII. METHODS OF AWARD

The provisions in Section VIII describe methods of award. The owner must carefully determine in advance the method and process that will be used and clearly state it in the technical specifications.

IX. CAUSES FOR REJECTING BIDS

The provisions in Section IX describe causes for rejection. Any statement reserving the right to reject all bids for reasons other than those statutorily stated is prohibited. See also "Dealing with Bidder Deviation..." in Section I above.

X. TERMINATION OF CONTRACT

Owner should carefully develop and review appropriate language with its attorney. Language provided in this document is only for guidance.

XI. PAYMENT

Payment will be made in accordance with the owner's policy and procedures. It is in the owner's interest to include voucher submission and payment schedules.

XII. OTHER PROVISIONS

B. Ownership of material. Given the nature of an individual procurement, the purchasing agent and legal advisors should carefully consider the need to provide for appropriate control of intellectual property created or used under a contract for the goods or services. The T&C provides general information but it might be appropriate to modify it for certain types of contracts.

Related Bid Specification Provisions of the Local Public Contracts Law

A. Number of Working Days (N.J.S.A. 40A:11-17):

This provision requires all bid specifications for “public work” (generally construed as construction projects) to set a date or number of days for completion of work. It also requires that all such contracts contain provisions for deductions from the price for work that exceeds that limit.

In practice, this section has often been ignored or rendered moot by use of extensions as in the current environment (it dates to the late 1960’s) makes such practices impractical given the myriad of circumstances that can delay a project. Where appropriate, bid specifications can provide for incentives if it is completed earlier than a date set in the contract.

B. Liquidated Damages (N.J.S.A. 40A:11-19)

This provision which occasionally is found in specifications, but more often found in contracts, allows the contracting unit to collect monetary damages related to the costs of a contractor failing to fulfill contract requirements.

It also prohibits any contract language that limits a contractor’s remedy to an extension of time if the contracting unit is found to have engaged in negligence, bad faith, tortious conduct or other reasons unanticipated by the parties that delay the work. It is intended to keep a contracting unit’s officials “honest” in dealing with actions that could delay a contractor and add to the contractor’s costs.

Individuals drafting bid specifications should consult with legal advisors to determine how this provision is treated in the Instructions to Bidders and/or contracts.

C. Standardized Changed Conditions Clauses (N.J.S.A. 40A:11-16.7 and 16.8)

This 2017 law establishes standardized changed conditions clauses for construction contracts awarded under the Local Public Contracts Law. It requires that these clauses be included in local public construction contracts without change or modification. It provides that they apply even if they are not expressly included in such a contract. The specific clauses cover differing site conditions, suspensions of contract work, changes in the character of the contract work, and changes in the quantity of work to be performed by a contractor. It establishes a standard process for the handling of changed conditions on local public construction projects. The language must be included in all construction contracts. Ideally, it should be included in bid specifications as well.

At the time this handbook was written, formal rules implementing this section were pending with the Department of Community Affairs. Contracting unit legal counsel should be consulted on construction contract documents to ensure this section is properly addressed.

2018

GOODS AND SERVICES BID SPECIFICATIONS:
*A GUIDE FOR NEW JERSEY
LOCAL PUBLIC AGENCIES*

PART C

**STANDARD BID
DOCUMENT REFERENCE**

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STANDARD BID DOCUMENT REFERENCE						Section 1
Name of Form:	NOTICE OF ADVERTISEMENT FOR BIDS			Instruction References:		I-A
Applicability		Y/N		Mandatory	Optional	N/A
	LPCL	Y	Goods and Services	X		
	PSCL	Y	Construction	X		
Source References:	<ul style="list-style-type: none"> ▪ Generally - N.J.S.A. 40A:11-23 and 18A:18A-21 ▪ Competitive Contracting - 40A:11-4.5a and 18A:18A-4.5 ▪ Solid Waste - 40A:11-23a 					
Supplement Reference:	Section 1					
Description:	<p>Prior to receipt, legal advertisement shall appear in the owner's official newspaper(s) no less than the number of days indicated and may be made part of specifications.</p> <ul style="list-style-type: none"> ▪ Goods & Services and Construction – 10 days ▪ Solid Waste – 60 days ▪ Competitive Contracting – 20 days <p>Bids are prohibited from being received on Mondays and the day after State holidays. See Local Finance Notice 2013-1 for general guidance.</p>					

Owners should provide the following information in the text for each bid:

- Who is requesting bids?
- When will bids be opened?
- Where will bids be opened?
- Where will bids be submitted?
- What is being bid?
- Will there be a pre-bid conference? Where? When? (State law does not permit mandatory attendance at a pre-bid conference. The term "strongly encouraged" is advised.)
- Where can specifications be obtained (include a website address if available)
- How are bids to be submitted?
- Is there a cost for specifications?

Bid ads may include other related information at the contracting unit's option.

The mandatory Equal Employment Opportunity in Public Contracts Statement must appear in all legal advertisements.

The Notice to Bidders on the next page is a sample.

NOTICE TO BIDDERS

NOTICE IS HEREBY GIVEN that sealed bids will be received by the *(title of individual)*, for the *(proper name of agency)*, County of *(county name)*, State of New Jersey on *(Date)* at *(am/pm)* prevailing time at *(full description of the location for the receipt of bids)* at which time and place bids will be opened and read in public for:

(description of goods or services/project that serves as the title and contract # if any)

Specifications and other bid information may be obtained at the *(name of the location where information is available and website address if used)* during regular business hours *(hours of operation)* or online at _____. Bids must be made on the proposal forms included with the bid specification, be enclosed in a sealed package bearing the name and address of the bidder and "BID TITLE, NAME & CONTRACT #" on the outside, addressed to *(name of official)*, at the address above.

(OPTIONAL: A NON-REFUNDABLE fee of [insert specification cost if applicable] in the form of a check payable to the [name of agency] will be required for each set of specifications.)

(OPTIONAL: If pre-bid conference will be held, date, time and location.)

Bidders are required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27-1 et seq.

Name & Title (of appropriate official)

Publication date:

STANDARD BID DOCUMENT REFERENCE					Section 2
Name of Form:	BID SUBMISSION DOCUMENT CHECKLIST			Instruction References:	VII-F
Applicability		Y/N		Mandatory	Optional
	LPCL	Y	Goods and Services		X
	PSCL	N	Construction	X	
Source References:	N.J.S.A. 40A:11-23.1 and 11-23.2				
Supplemental Reference:	1, regarding failure to submit documents.				
Description:	Summarizes all required documentation to be provided by prospective bidders.				

This form provides bidders a checklist to assure submission of all required documents or information. While not required for public schools, its optional use is encouraged as a way of ensuring bids are complete.

A checklist is mandatory for construction bids and must be signed by the bidder and submitted with the bid. It is optional for goods and services. It may be expanded or customized depending upon owner's requirements and the specific bid.

For construction projects, refer to N.J.S.A. 40A:11-23.2 for those items that are statutorily deemed "fatal" to a bid, meaning the bid is summarily rejected if the documents are not included and cannot be cured by the governing body. Failure to submit other forms may also be fatal. See Section 1 of the Supplemental Reference.

Contracting units should expand upon the form to reflect requirements of individual bid specifications, such as adding lines for submission of manufacturer specifications, copies of warranties, product samples, etc.

**(Name of Contracting Unit)
BID DOCUMENT CHECKLIST**

Checked if Required	Submission Requirement	Initial each required entry and if required, submit the item
<input type="checkbox"/>	Ownership Disclosure Certification	
<input type="checkbox"/>	Non-Collusion Affidavit	
<input type="checkbox"/>	Bid Proposal Form	
<input type="checkbox"/>	Bid Guarantee (with Power of Attorney for full amount of <i>Bid Bond</i>)	
<input type="checkbox"/>	Consent of Surety for Performance Bond (with Power of Attorney for full amount of <i>Bid Price</i>)	
<input type="checkbox"/>	<i>Evidence of Affirmative Action Compliance*</i>	
<input type="checkbox"/>	<i>Proof of Business Registration (BRC)*</i>	
<input type="checkbox"/>	Acknowledgement of Receipt of Revisions or Addenda	
<input type="checkbox"/>	Disclosure of Investment Activities in Iran	
<input type="checkbox"/>	References	
<input type="checkbox"/>	Status of Present Contracts	
<input type="checkbox"/>	Equipment Certification	
<input type="checkbox"/>	Public Works Contractor Registration Certificate	
<input type="checkbox"/>	Subcontractor Listing	

****Statutorily allowed to be provided with bid OR prior to execution of contract.***

Full Name (Print):		Title:	
Signature:		Date:	

STANDARD BID DOCUMENT REFERENCE					Section 3
Name of Form:	BID PROPOSAL FORM			Instruction Reference:	I-G
Applicability		Y/N		Mandatory	Optional
	LPCL	Y	Goods and Services	X	
	PSCL	Y	Construction	X	
Source References:					
Supplemental Reference:					
Description:		Bid specifications should use a clearly designed form for submittal of prices by bidders. Depending on the bid, a narrative document that shows a single total, form with tables showing line item pricing, or more detailed documents may be appropriate.			

The form must be completed and signed by the bidder or its authorized agent.

While the LPCL goes into detail about the requirement for what seems to be an obvious form, there is no parallel language in the PSCL. However, the form is still by nature necessary for any PSCL bid.

A sample single price type form is shown.

BID PROPOSAL FORM

(Contract Title and Bid Number, if applicable)

(Description of goods/services being bid)

The undersigned, being authorized, proposes to furnish and deliver the above goods/services pursuant to the bid specification and made part hereof:

Amount in words

\$ _____
Amount in numbers

Company Name

Address

Signature of Authorized Agent

Type or Print Name

Title: _____

Telephone Number

Date

Fax Number

Email address

STANDARD BID DOCUMENT REFERENCE				Section 4		
Name of Form:	ACKNOWLEDGEMENT OF RECEIPT OF REVISIONS OR ADDENDA		Instruction Reference:	III-C		
Applicability		Y/N		Mandatory	Optional	N/A
	LPCL	Y	Goods and Services		X	
	PSCL	N	Construction	LPCL Only		
Source References:	N.J.S.A. 40A:11-23(c) and (d) In part: N.J.S.A. 18A:18A-21(c) and (d)					
Supplemental Reference:	III					
Description:	Recommended administrative method for securing Acknowledgment of Receipt of Addenda by bidders.					

This form is required for **LPCL** public works/construction bids and is **highly recommended for any LCPL and PSCL bid** that might be subject to specification changes. Because of the requirement to provide notice to bidders in some cases, it is highly recommended that contracting units keep lists of individuals who obtain copies of bid specifications and their contact information for updates. The included form is an example, subject to local modification.

While email was not an option at the time the law was passed, it is arguable today that the use of an email address obtained from the requester could be used in lieu of a fax notice, as long as an email delivery receipt is required (as it would be with a fax).

Publishing & Notice Requirements for Bid Addenda N.J.S.A. 40A:11-23(c) and (d) and 18A:18A-21(c) and (d)			
Action	TYPE OF BID SOLICITATION		
	Goods & Services	Construction Work	Municipal Solid Waste Collection and Disposal
Publish in an official newspaper of the contracting unit	Yes	Not required	Publishing in a newspaper and in at least one of general circulation published in the state
Publication date and time for addenda	No later than 7 business days, Saturdays, Sundays and holidays excepted prior to acceptance and opening of bids	A notice to any person or organization who has submitted a bid, requested or received a bid package, no later than 7 business days, Saturdays, Sundays and holidays excepted prior to acceptance and opening of bids	No later than 7 business days, Saturdays, Sundays and holidays excepted prior to acceptance and opening of bids
In writing by certified mail, facsimile or delivery service	Yes	Yes	LPCL does not specifically provide for it, but using any of these is appropriate

(Name of Contracting Unit)

ACKNOWLEDGMENT OF RECEIPT OF ADDENDA

This form must be submitted whether or not addenda were issued. If no addenda were issued, check the "No Addenda were received box" and complete the signature section.

The undersigned Bidder hereby acknowledges receipt of the following Addenda:

Addendum Number/Description	Dated	Acknowledge Receipt (initial)

No addenda were received

Name of Bidder:	
By:	
(Signature of Authorized Representative)	
Name:	
Title:	
Date:	

STANDARD BID DOCUMENT REFERENCE					Section 5
Name of Form:	BID GUARANTEE			Instruction References:	II-A
Applicability:		Y/N		Mandatory	Optional
	LPCL	Y	Goods and Services		X
	PSCL	Y	Construction	X*	
Source References:	N.J.S.A. 40A:11-21 and 11-23.2 N.J.S.A. 18A:18A-24				
Supplemental Reference:	Bid Guarantee II-A				
Description:	<p>* This is mandatory for construction projects valued in excess of \$100,000.</p> <p>A 10% deposit (guarantee) of the amount bid (but not to exceed \$20,000) is intended to ensure that the bidder enters into a contract if they receive the award and will provide a performance bond (if required).</p> <p>Failure to enter into an awarded contract results in forfeiture of the deposit. Failure to provide a required bid guarantee is a fatal defect that cannot be cured and must result in rejection of the bid.</p>				

A bid guarantee (N.J.S.A. 40A:11-21) is used to ensure that a bidder, if awarded a contract within the time stipulated, will enter into a contract. The guarantee can be provided in any one of three forms (a contracting unit cannot choose between them), all payable unconditionally to the owner.

1. A certified check in the full amount of 10% of the amount bid
2. A cashier’s check in the full amount of 10% of the amount bid
3. A bid bond for the full amount of 10% of the amount bid from a surety company authorized to do business in the State of New Jersey. A bid bond without this Consent of Surety should be carefully reviewed as to its legality by a contracting unit’s legal counsel.

The following is an example of a construction bid bond. A bid bond should be carefully examined by legal counsel to ensure it is issued consistent with state law. This includes checking with the Department of Banking and Insurance’s listing of approved sureties at www.state.nj.us/dobi/division_insurance/surety.htm.

If a bid bond is submitted, the Consent of Surety must be accompanied by a Power of Attorney affidavit from the insurance company that issued the bond authorizing the individual signing the bond (usually an Attorney-in-Fact) to execute the bid bond on behalf of the company. A Power of Attorney is *not shown* on the attached sample.

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____ as
Principal, and _____ as Surety, is

hereby held and firmly bound unto _____ as Owner, in the Penal Sum of
_____ (\$ _____) for the payment of which, well and
truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed this _____ day of _____ 20_____

The condition of the above obligation is such that whereas the Principal has submitted to

a certain bid, attached hereto and hereby made a part of hereof, to enter into a contract in writing for the

NOW THEREFORE,

- A) If said bid shall be rejected or in the alternative,
- B) If said bid shall be accepted and the Principal shall execute and deliver a contract properly completed in accordance with said bid and shall furnish a bond for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in the connection therewith, and shall in all other respects perform the agreement created by the acceptance of said bid,

Then this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such bid; and Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Principal

BY: _____
Witness

Surety

BY: _____
Witness

Attorney-in-Fact

STANDARD BID DOCUMENT REFERENCE					Section 6
Name of Form:	PERFORMANCE BOND/CONSENT OF SURETY			Instruction Reference:	II-B
Applicability		Y/N		Mandatory	Optional
	LPCL	Y	Goods and Services		X
	PSCL	Y	Construction	X*	
Source References:	<i>Consent of Surety</i>			<i>Performance Bonds</i>	
	N.J.S.A. 40A:11-22 N.J.S.A. 18A:18A-25			N.J.S.A. 2A:44-143 through 147	
Supplemental Reference:	II-B				
Description:	<p>*A Performance Bond is mandatory for all construction projects in excess of \$100,000. It is optional for all other contracts.</p> <p>A Consent of Surety is a financial obligation provided by a 3rd party insurance company (a “surety”) that is licensed to do business in New Jersey. It guarantees the company will provide a bidder a performance bond in the full amount (100%) of the amount bid that guarantees completion of the contract as specified.</p>				

When required, a Consent of Surety is a non-curable defect (N.J.S.A. 40A:11-23.2) if not included with the bid and cannot be waived by the governing body. Such bids must be rejected.

Once the bid is awarded, the bidder must provide the required bonds prior to execution of the contract. The issue of the bond should be checked with the Department of Banking and Insurance listing of approved sureties at www.state.nj.us/dobi/division_insurance/surety.htm to ensure compliance with state law.

The Consent of Surety that follows is a sample; any such consent should be similar in nature and not include exceptions. Any certificate that is submitted should be carefully reviewed by legal counsel for compliance.

A Consent of Surety must be accompanied by a Power of Attorney affidavit from the insurance company that issued the bond authorizing the individual signing the bond (usually an Attorney-in-Fact) to execute the surety bond on behalf of the company. A Power of Attorney is *not shown* on the attached sample.

CONSENT OF SURETY

A performance bond will be required from the successful contractor on this project, and consequently, all bidders shall submit, with their bid, a consent of surety in substantially the following form:

To: _____
(Owner)

Re: _____
(Contractor)

(Project Description)

This is to certify that the _____
(Surety Company)

will provide to _____ a performance bond in
(Owner)

the full amount of awarded contract in the event that said contractor is awarded a contract for the above project.

(CONTRACTOR)

(Authorized Agent of Surety Company)

Date: _____

**CONSENT OF SURETY MUST BE SIGNED BY AN AUTHORIZED AGENT
OR REPRESENTATIVE OF A SURETY COMPANY AUTHORIZED TO DO BUSINESS
IN NEW JERSEY AND NOT BY THE
INDIVIDUAL OR COMPANY REPRESENTATIVE SUBMITTING THE BID.**

STANDARD BID DOCUMENT REFERENCE						Section 7
Name of Form:	EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE: GOODS, GENERAL SERVICES AND PROFESSIONAL SERVICES			Instruction Reference:	VII-A	
Applicability:		Y/N		Mandatory	Optional	N/A
	LPCL	Y	Goods and Services	X		
	PSCL	Y	Construction	X		
Source References:	N.J.S.A. 10:5-31 (P.L 1975, c.127) and N.J.A.C 17:27-1 et seq. See also NJ Public Contracting Equal Employment Opportunity website: www.state.nj.us/treasury/contract_compliance/ Included					
Supplemental Reference:	VII-A					
Description:	Requires that all bid specifications include mandatory language requiring contractors to report on efforts to meet equal opportunity/affirmative action in employment goals. Successful bidders must be registered with, and report to the state agency on employment related data.					

This section reflects information regarding goods and services contracts. Section 16 covers this requirement for public works/construction contracts.

Details on the following items are online in a handbook titled “Public Agency Guidelines for Administering EEO in Public Contracts” on the EEO Monitoring Program website at www.state.nj.us/treasury/contract_compliance/

1) All advertisements for bids or RFPs must include the following sentence:

“Bidders are required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 et seq.”

2) For contracts in excess of bid threshold but not publicly advertised, any solicitation must include the following sentence:

“If awarded a contract, your company/firm shall be required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 et. seq.”

3) All contracts in excess of a contracting unit’s bid threshold must include mandatory language in their specifications and/or contract documents (“Exhibits”). There are different language requirements for goods/general services/professional services contracts (Exhibit A) and construction contracts (Exhibit B). The most recent Exhibits (2016) for Goods, General Services and Professional Services is reprinted on the following page. The Guidelines also require that bid specifications provide direction on what documents must be filed with the contracting agency prior to execution of a contract.

EXHIBIT A

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L.1975, c.127) and N.J.A.C. 17:27 et seq.

GOODS, GENERAL SERVICES, AND PROFESSIONAL SERVICES CONTRACTS

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

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 ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, 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 equal employment opportunity shall include, but not be limited to the following: employment, upgrading, 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.

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.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval;

Certificate of Employee Information Report; or

Employee Information Report Form AA-302 (electronically provided by the Division and distributed to the public agency through the Division's website at: http://www.state.nj.us/treasury/contract_compliance).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office 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 Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

STANDARD BID DOCUMENT REFERENCE						Section 8
Name of Form:	AMERICANS WITH DISABILITIES ACT OF 1990			Instruction Reference:		VII-C
Applicability:		Y/N		Mandatory	Optional	N/A
	LPCL	Y	Goods and Services	X		
	PSCL	Y	Construction	X		
Source References:	Title II of the Americans with Disabilities Act of 1990 (42 <u>U.S.C.</u> S121 01 et seq.)					
Supplemental Reference:	VII-C					
Description:	<p>The Act prohibits discrimination on the basis of disability by public entities in all services, programs and activities provided or made available by public entities. “In providing any aid, benefit, or service on behalf of the Owner pursuant to this contract, the contractor agrees that the performance shall be in strict compliance with the Act.”</p> <p>No action is required by the bidder. The law requires the language to be part of any publicly bid contract. Language in Section A references this requirement and reprints it as Attachment C.</p>					

By inclusion in the contract, the successful bidder will be indemnifying, protecting and saving harmless the owner and its employees from and against any and all suits, claims, losses or damages. (See Instructions, Section VII-C, “Mandatory Language – Americans with Disabilities Act of 1990”).

AMERICANS WITH DISABILITIES ACT OF 1990

Equal Opportunity for Individuals with Disability

The contractor and the owner do hereby agree that the provisions of Title 11 of the Americans with Disabilities Act of 1990 (the "Act") (*42 U.S.C. 5121 01 et seq.*), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant there unto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the owner pursuant to this contract, the contractor agrees that the performance shall be in strict compliance with the Act. In the event that the contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the contractor shall defend the owner in any action or administrative proceeding commenced pursuant to this Act. The contractor shall indemnify, protect, and save harmless the owner, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages, of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the owner's grievance procedure, the contractor agrees to abide by any decision of the owner which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the owner, or if the owner incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the contractor shall satisfy and discharge the same at its own expense.

The owner shall, as soon as practicable after a claim has been made against it, give written notice thereof to the contractor along with full and complete particulars of the claim, if any action or administrative proceeding is brought against the owner or any of its agents, servants, and employees, the owner shall expeditiously forward or have forwarded to the contractor every demand, complaint, notice, summons, pleading, or other process received by the owner or its representatives.

It is expressly agreed and understood that any approval by the owner of the services provided by the contractor pursuant to this contract will not relieve the contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the owner pursuant to this paragraph.

It is further agreed and understood that the owner assumes no obligation to indemnify or save harmless the contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the contractor's obligations assumed in this Agreement, nor shall they be construed to relieve the contractor from any liability, nor preclude the owner from taking any other actions available to it under any other provisions of the Agreement or otherwise at law.

STANDARD BID DOCUMENT REFERENCE					Section 9
Name of Form:	STATEMENT OF OWNERSHIP			Instruction Reference:	VII-D
Applicability:		Y/N		Mandatory	Optional
	LPCL	Y	Goods and Services	X	
	PSCL	Y	Construction	X	
Source References:	N.J.S.A. 52:25-24.2 (also known as "Chapter33" from the laws of 1977) LFN AU-2002-03 and 2016-19				
Supplemental Reference:					
Description:	Fulfills statutory criteria for disclosure of bidder's ownership that exceeds 10%. Failure to supply is cause for automatic rejection for a construction contract (N.J.S.A. 40:11-23.2)				

N.J.S.A. 52:25-24.2 provides that no business organization, regardless of form of ownership shall be awarded any contract for the performance of any work or the furnishing of any goods and services, including construction bids, unless, **prior to the receipt of the bid or accompanying the bid** of said business organization, bidders shall submit a statement setting forth the names and addresses of all persons and entities that own ten percent or more of its stock or interest of any type at all levels of ownership. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member, exceeding the ten percent ownership, has been listed. Disclosure must also be provided for individual stockholders who own more than 10 percent, if the business is owned by a publicly owned corporation. In this case, disclosure is met by providing a web link or reference to a US Security Exchange Commission (or similar foreign regulator for a non-US corporation) ownership filing statement.

State law does not mandate the form of the Statement, as a result, contracting units have used a variety of forms: one issued by the DLGS and other locally developed ones. Included here are two samples, one released by the Division (page 18) and one based on the State Division of Purchase and Property (page 20). Both comply with the law.

Users should be sure to review the form they use and edit them accordingly to fill in the name of their contracting unit (shown as **<name/type of contracting unit>**).

STATEMENT OF OWNERSHIP DISCLOSURE

N.J.S.A. 52:25-24.2 (P.L. 1977, c.33, as amended by P.L. 2016, c.43)

This statement shall be completed, certified to, and included with all bid and proposal submissions. Failure to submit the required information is cause for automatic rejection of the bid or proposal.

Name of Organization: _____

Organization Address: _____

Part I Check the box that represents the type of business organization:

- Sole Proprietorship (skip Parts II and III, execute certification in Part IV)
- Non-Profit Corporation (skip Parts II and III, execute certification in Part IV)
- For-Profit Corporation (any type) Limited Liability Company (LLC)
- Partnership Limited Partnership Limited Liability Partnership (LLP)
- Other (be specific): _____

Part II

The list below contains the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. **(COMPLETE THE LIST BELOW IN THIS SECTION)**

OR

No one stockholder in the corporation owns 10 percent or more of its stock, of any class, or no individual partner in the partnership owns a 10 percent or greater interest therein, or no member in the limited liability company owns a 10 percent or greater interest therein, as the case may be. **(SKIP TO PART IV)**

(Please attach additional sheets if more space is needed):

Name of Individual or Business Entity	Home Address (for Individuals) or Business Address

Part III DISCLOSURE OF 10% OR GREATER OWNERSHIP IN THE STOCKHOLDERS, PARTNERS OR LLC MEMBERS LISTED IN PART II

If a bidder has a direct or indirect parent entity which is publicly traded, and any person holds a 10 percent or greater beneficial interest in the publicly traded parent entity as of the last annual federal Security and Exchange Commission (SEC) or foreign equivalent filing, ownership disclosure can be met by providing links to the website(s) containing the last annual filing(s) with the federal Securities and Exchange Commission (or foreign equivalent) that contain the name and address of each person holding a 10% or greater beneficial interest in the publicly traded parent entity, along with the relevant page numbers of the filing(s) that contain the information on each such person. **Attach additional sheets if more space is needed.**

Website (URL) containing the last annual SEC (or foreign equivalent) filing	Page #'s

Please list the names and addresses of each stockholder, partner or member owning a 10 percent or greater interest in any corresponding corporation, partnership and/or limited liability company (LLC) listed in Part II **other than for any publicly traded parent entities referenced above.** The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member exceeding the 10 percent ownership criteria established pursuant to N.J.S.A. 52:25-24.2 has been listed. **Attach additional sheets if more space is needed.**

Stockholder/Partner/Member and Corresponding Entity Listed in Part II	Home Address (for Individuals) or Business Address

Part IV Certification

I, being duly sworn upon my oath, hereby represent that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I acknowledge: that I am authorized to execute this certification on behalf of the bidder/proposer; that the **<name of contracting unit>** is relying on the information contained herein and that I am under a continuing obligation from the date of this certification through the completion of any contracts with **<type of contracting unit>** to notify the **<type of contracting unit>** in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I am subject to criminal prosecution under the law and that it will constitute a material breach of my agreement(s) with the, permitting the **<type of contracting unit>** to declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print):		Title:	
Signature:		Date:	

STATEMENT OF OWNERSHIP

This statement is a mandatory requirement of bid submission pursuant to
N.J.S.A. 52:25-24.2. **Failure to complete and submit will result in disqualification of the bid.**

Page 1 of 2

Part A – Check the Yes or No boxes for questions #1 and #2 as appropriate

Name of Bidder/Proposer Organization:		Yes	No
1. Are there any individuals, corporations or partnerships, or other business entities that own a 10% or greater interest in the bidder/proposer?			
2. Is the bidder/proposer incorporated as a not-for-profit organization?			
If the answer to question #1 is NO or the answer to question #2 is YES, execute the certification in Part D. No other information is required. All others continue with Part B.			

Part B: Disclose the identifying information related to all individuals, partnerships and/or corporations owning a 10% or greater interest in the bidder/proposer. Use the reverse side if more space is needed. If the owner of 10% or more is:

- An individual, insert only the person’s name under Name of Individual and their home address.
- Any other entity, insert the entity’s name and business address. For any parent entity that is publicly traded, “interest” includes beneficial interest; see also Part C.

If any 10% or more owner, including if the bidder has a direct or indirect parent entity at any level of ownership who owns more than 10%, that owner must also be listed.

Questions concerning ownership disclosure should be considered by the bidder’s legal advisors and review of the statute and its related case law. Use Page 2 if additional space is needed. When complete, execute the Certification in Part D.

Name of Individual or Business Entity	Home (for individuals) or Business Address

Part C: Publicly Traded Parent Company Disclosure. Ownership disclosure (name and address) can be met by submitting the last annual filing of an SEC or similar foreign regulator document or providing the website link to such documents, and include relevant page numbers. See N.J.S.A 52:25-24.2. Continue on Page 2 if more space is needed.

Title of Attached Document or Weblink	Page #

Part D: Certification. I, being duly sworn upon my oath, hereby represent that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I acknowledge: that I am authorized to execute this certification on behalf of the bidder/proposer; that the <name of contracting unit> is relying on the information contained herein and that I am under a continuing obligation from the date of this certification through the completion of any contracts with <type of contracting unit> to notify the <type of contracting unit> in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I am subject to criminal prosecution under the law and that it will constitute a material breach of my agreement(s) with, and permitting the <type of contracting unit> to declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print):		Title:	
Signature:		Date:	

STANDARD BID DOCUMENT REFERENCE					Section 10
Name of Form:	BUSINESS REGISTRATION CERTIFICATE			Instruction Reference:	VII-E
Applicability:		Y/N		Mandatory	Optional
	LPCL	Y	Goods and Services	X	
	PSCL	Y	Construction	X	
Supplemental Reference:	N.J.S.A. 52:32-44 (as amended in 2009 by P.L. 2009, c.315) Local Finance Notices 2004-24 and 2005-12 (do not reflect the 2009 changes)				
Instructions Reference:	www.nj.gov/dca/divisions/dlgs/programs/lpcl.html#1				
Description:	The state-issued certificate is mandatory, but doesn't have to be submitted until prior to award of the contract. It does not need to be submitted with the bid and failure to submit with the bid is not fatal.				

This law requires all contractors and subcontractors to be registered with the state for payment of sales and use tax and provide the contracting unit proof of that registration. That proof is known as a "Business Registration Certificate" and is issued by the New Jersey Division of Taxation.

The Business Registration Certificate (BRC) is mandatory for Individual purchases, and aggregate purchases from the same contractor, exceeding 15% of the units bid threshold. Once on file, the BRC does not have to be resubmitted for subsequent purchases until the next procurement cycle.

Information on this requirement is found in Division of Local Government Services Local Finance Notices 2004-17 (8/6/04), 2004-24 (11/1/04), 2005-12 (4/27/05) and on the Division web site at www.nj.gov/dca/divisions/dlgs/programs/lpcl.html#1.

Not reflected in the Local Finance Notices or on the DLGS website (as of 3/18) are the following 2009 statutory changes:

- 1) Instead of the submission being required at the time of the bid and being fatal to the bid if not submitted, it can now be submitted prior to award of the contract.
- 2) Alternatively, the contracting agency may permit the contractor to provide information that the contracting agency can use to obtain the information from the state's BRC database.
- 3) A BRC is only required when goods or services are provided within the geographic boundaries of New Jersey.
- 4) BRC's are required: 1) for a contract for goods or services, any subcontractor who is knowingly providing goods or services; or 2) for a construction contract, all subcontractors who are named in a bid or response to a request for proposals to the contracting agency.
- 5) The contractor shall maintain the names and addresses of subcontractors that may be updated from time to time during the course of contract performance. A complete and accurate list shall be submitted before final payment, and the contractor shall attest to same before final payment is made. If no subcontractors are used the contractor shall attest to that prior to final payment.

The law requires that all contracts include specific language approved by the Department of Treasury. The language describes the responsibilities of contractors and subcontractors to collect and pay all required taxes to the state. It also requires contractors to notify their subcontractors of their responsibilities and to notify the contracting unit of the names and provide BRC's of all subcontractors (as defined in #4 above). The required contract language follows on the next page.

New Jersey Business Registration Requirements

Pursuant to N.J.S.A. 52:32-44, _____ (“Contracting Agency”) is prohibited from entering into a contract with an entity unless the bidder/proposer/contractor, and each subcontractor that is required by law to be named in a bid/proposal/contract has a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services within the Department of the Treasury.

Prior to contract award or authorization, the contractor shall provide the Contracting Agency with its proof of business registration and that of any named subcontractor(s).

Subcontractors named in a bid or other proposal shall provide proof of business registration to the bidder, who in turn, shall provide it to the Contracting Agency prior to the time a contract, purchase order, or other contracting document is awarded or authorized.

During the course of contract performance:

- (1) the contractor shall not enter into a contract with a subcontractor unless the subcontractor first provides the contractor with a valid proof of business registration.
- (2) the contractor shall maintain and submit to the Contracting Agency a list of subcontractors and their addresses that may be updated from time to time.
- (3) the contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall 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, (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Taxation at (609)292-6400. Form NJ-REG can be filed online at www.state.nj.us/treasury/revenue/busregcert.shtml.

Before final payment is made under the contract, the contractor shall submit to the Contracting Agency a complete and accurate list of all subcontractors used and their addresses.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration as required, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000, for each proof of business registration not properly provided under a contract with a contracting agency.

Emergency Purchases or Contracts

For purchases of an emergent nature, the contractor shall provide its Business Registration Certificate within two weeks from the date of purchase or execution of the contract or prior to payment for goods or services, whichever is earlier.

STANDARD BID DOCUMENT REFERENCE					Section 11	
Name of Form:	DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN			Instruction Reference:	VII-F	
Applicability		Y/N		Mandatory	Optional	N/A
	LPCL	Y	Goods and Services	X		
	PSCL	Y	Construction	X		
Source References:	N.J.S.A. 52:32-55 et seq. N.J.S.A. 40A:11-2.1 N.J.S.A. 18A:18A-49.4					
Supplemental Reference:						
Description:	P.L. 2012, c.25 prohibits State and local public contracts with persons or entities engaging in certain investment activities in energy or finance sectors of Iran. Bidders must indicate if they comply with the law by certifying the form.					

A 2016 Superior Court decision concluded that failure to submit the Iran Disclosure with a bid was a “material defect, is not waivable and cannot be cured post bid.” In the absence of review by a higher court, it is recommended that the disclosure be treated in that manner.

The Certification form requires the insertion of contracting unit identification information which should be filled in (in italics on the form) prior to its use.

Disclosure of Investment Activities in Iran

Bidder Name:	
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Part 1: Certification

BIDDERS ARE TO COMPLETE PART 1 BY CHECKING **EITHER BOX**.

Pursuant to Public Law 2012, c. 25, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must complete the certification below to attest, under penalty of perjury, that neither the person or entity, nor any of its parents, subsidiaries, or affiliates, is identified on the Department of Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. The Chapter 25 list is found on the Division's website at www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf. Bidders must review this list prior to completing the below certification. Failure to complete the certification may render a bidder's proposal non-responsive. If the Director finds a person or entity to be in violation of law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party

CHECK THE APPROPRIATE BOX:

I certify, pursuant to Public Law 2012, c. 25, that neither the bidder listed above nor any of the bidder's parents, subsidiaries, or affiliates is listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to P.L. 2012, c. 25 ("Chapter 25 List"). I further certify that I am the person listed above, or I am an officer or representative of the entity listed above and am authorized to make this certification on its behalf. I will skip Part 2 and sign and complete the Certification below.

OR

I am unable to certify as above because the bidder and/or one or more of its parents, subsidiaries, or affiliates is listed on the Department's Chapter 25 list. I will provide a detailed, accurate and precise description of the activities in Part 2 below sign and complete the Certification below. Failure to provide such will result in the proposal being rendered as nonresponsive and appropriate penalties, fines and/or sanctions will be assessed as provided by law.

Part 2 – Additional Information

PLEASE PROVIDE FURTHER INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN. You must provide a detailed, accurate and precise description of the activities of the bidding person/entity, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran on additional sheets provided by you.

Part 3: Certification

I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments there to the best of my knowledge are true and complete. I attest that I am authorized to execute this certification on behalf of the above-referenced person or entity. I acknowledge that the *<name of contracting unit>* is relying on the information contained herein and thereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the *<reference to contracting unit>* to notify the *<reference to contracting unit>* in writing of any changes to the answers of information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the *<name of contracting unit>* and that the *<reference to contracting unit>* at its option may declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print):		Title:	
Signature:		Date:	

STANDARD BID DOCUMENT REFERENCE						Section 12
Name of Form:	NON-COLLUSION AFFIDAVIT				Instruction Reference:	VII-H
Applicability		Y/N		Mandatory	Optional	N/A
	LPCL	Y	Goods and Services		X	
	PSCL	Y	Construction		X	
Source References:	N.J.S.A. 52:34-15					
Supplemental Reference:						
Description:	The contracting unit's use of this form is optional. It is used to ensure that the bidder has not participated in any collusion with any other bidder or contracting unit representative or otherwise taken any action in restraint of free and competitive bidding.					

A Non-Collusion Affidavit is not statutorily required. If required by the owner, bidder non-compliance may be cause for rejection.

NON-COLLUSION AFFIDAVIT

State of New Jersey
County of _____

I, _____ residing in _____
(name of affiant) (name of municipality)

in the County of _____ and State of _____, of full age,
being duly sworn according to law on my oath depose and say that:

I am _____ of the firm of _____
(title or position) (name of firm)

_____ the bidder making this Proposal for the bid
entitled _____, and that I executed the said proposal with
(title of bid proposal)

full authority to do so; that said bidder has not, directly or indirectly entered into any agreement,
participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in
connection with the above named project; and that all statements contained in said proposal and in
this affidavit are true and correct, and made with full

knowledge that the _____ relies upon the truth of
(name of contracting unit)
the statements contained in said Proposal and in the statements contained in this affidavit in awarding
the contract for the said project.

I further warrant that no person or selling agency has been employed or retained to solicit or secure
such contract upon an agreement or understanding for a commission, percentage, brokerage, or
contingent fee, except bona fide employees or bona fide established commercial or selling agencies
maintained by _____.
(name of firm)

Subscribed and sworn to before me this day, _____, 2____:

Signature of affiant

Type or print name of affiant

Notary public of

My Commission expires _____

(Seal)

STANDARD BID DOCUMENT REFERENCE						Section 13
Name of Form:	NEW JERSEY ANTI-DISCRIMINATION PROVISIONS				Instruction Reference:	VII-B
Applicability:		Y/N		Mandatory	Optional	N/A
	LPCL	Y	Goods and Services	X		
	PSCL	Y	Construction	X		
Source References:	N.J.S.A. 10:2-1 et seq.					
Supplemental Reference:	VII-B					
Description:	<p>Obligates a contractor, their subcontractors or employees from engaging in discrimination of various types against any person qualified and available to work on the contract.</p> <p>No action is required by the bidder. The law requires the language to be part of any publicly bid contract. Language in Section A references this requirement and the full text is included as Attachment B.</p>					

By inclusion in the bid specification, if the bidder is awarded a contract or subcontract for the purposes of the contract, the bidder or anyone working for the bidder or contractor or subcontractor, agrees that they will not discriminate against any person who is qualified and ready to perform the work or, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex. The law provides for various penalties.

The law also allows a board of education to award contracts to small, minority, or women’s business enterprise pursuant to N.J.S.A. 18A:18A-51 et seq. The concluding paragraph on the form should only be included in board of education bid specifications.

NEW JERSEY ANTI-DISCRIMINATION PROVISIONS
N.J.S.A. 10:2-1 ET SEQ.

Pursuant to N.J.S.A. 10:2-1, if awarded a contract, the contractor agrees that:

a. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;

b. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;

c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

d. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

(Include the following only for boards of education)

No provision in this section shall be construed to prevent a board of education from designating that a contract, subcontract or other means of procurement of goods, services, equipment or construction shall be awarded to a small business enterprise, minority business enterprise or a women's business enterprise pursuant to P.L.1985, c.490 (C.18A:18A-51 et seq.).

STANDARD BID DOCUMENT REFERENCE						Section 14
Name of Form:	PREVAILING WAGE DETERMINATION			Instruction Reference:		VII-K
Applicability		Y/N		Mandatory	Optional	N/A
	LPCL	Y	Goods and Services			X
	PSCL	Y	Construction	X		
Source References:	N.J.S.A. 34:11-56.25 et seq. for the law generally N.J.S.A. 34:11-56.28 for improvements to leased property N.J.A.C. 12:60 and 12:60-2A.1					
Supplemental Reference:						
Description:	Used for public work/construction contracts on agency owned or leased property where the threshold requiring the use of prevailing wages has been exceeded, the contracting unit must obtain trade employee wage determinations prior to commencing bid process. Certifications of the minimum wages paid by contractors are requested through the N.J. Department of Labor and Workforce Development website.					

The New Jersey State Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. requires contractors on public works/construction projects to follow laws related to the payment of minimum wages to employees and the reporting of those wages. Such bid specifications must expressly state that all workers employed in the performance of these projects shall be paid not less than the prevailing wage rate. Bid specifications are required to include other specific requirements that comply with the Act; this language is reflected in Part A, VII-K. The law is administered by the NJ Department of Labor and Workforce Development. The home page for information about the Act is found here: http://lwd.dol.state.nj.us/labor/wagehour/wagerate/pwr_construction.html

Contracts for “public work” defined by the law require contractors to pay the prevailing wage for each trade craft covered under the law. The term “public work” means construction, reconstruction, demolition, alteration, or repair work, or maintenance work, including painting and decorating, done under a contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. This also includes off-site workers who custom fabricate plumbing, heating, cooling, ventilation, or exhaust duct systems and mechanical insulation as part of a public works project.

Information on covered work and cost thresholds for different contracting units is found here: http://lwd.dol.state.nj.us/labor/wagehour/regperm/public_contracts_general.html. Contracting units must apply to the Department’s Division of Wage and Hour Compliance to obtain an official wage rate determination. They must advise bidders of the prevailing wage requirement and to contact the Division of Wage and Hour Compliance for the wage rates that cover the contracting unit.

The covered wage rate determinations must be **included in the formal contract**. The contracting unit should be sure to include the correct wage rate determination for the trades related to the work to be performed under the contract in their geographic region. Nothing however, prohibits the owner from including the wage rate determination in the bid specification.

The online application for official New Jersey Prevailing Wage Rate Determinations can be obtained at: <https://lwd.state.nj.us/labor/wagehour/content/prevwageapplication.html>. This page allows contracting unit officials to apply for and download an official determination.

A sample trade craft wage rate determination is shown on the next page.

STANDARD BID DOCUMENT REFERENCE					Section 15
Name of Form:	PUBLIC WORKS CONTRACTOR REGISTRATION			Instruction Reference:	VII-K
Applicability:		Y/N		Mandatory	Optional
	LPCL	Y	Goods and Services		
	PSCL	Y	Construction	X	
Source References:	N.J.S.A. 34:11-56.48 et seq., and N.J.A.C. 12:62 Local Finance Notice 2004-09				
Supplemental Reference:					
Description:	Contractors must be registered with the state to engage in public works contracting for contracts over a contracting unit's prevailing wage threshold.				

This law requires that all contractors, general, or prime (or named) subcontractors, working on public projects subject to prevailing wage laws to register as a Public Works Contractor (N.J.S.A. 34:11-56.51). The registration is known as a Public Works Contractor Registration (PWCR).

It prohibits contractors from bidding on any contract for public work unless the contractor is registered *at the time bids were received*. It also prohibits contractors from naming/listing a subcontractor in a bid or proposal for a contract unless that subcontractor is also registered *at the time bids are received*.

At or after a bid is opened, but prior to award, general and prime contractors must provide proof of PWCR showing that they were registered **prior** to date bids were opened for themselves and all named/listed subcontractors. Non-listed lower-tier subcontractors must also provide proof through the general or prime contractor that they were registered prior to the start of work on the contract.

STANDARD BID DOCUMENT REFERENCE						Section 16
Name of Form:	EQUIPMENT CERTIFICATION			Instruction Reference:		VII-L
Applicability		Y/N		Mandatory	Optional	N/A
	LPCL	Y	Goods and Services		X	
	PSCL	Y	Construction		X	
Source References:	N.J.S.A.40A:11-20 N.J.S.A. 18A:18A-23					
Supplemental Reference:						
Description:	This form is optional for public works contracts when the contracting unit wants to ensure that the contractor has access to the equipment needed to perform the work.					

The full statute is instructive. It is reprinted verbatim below, but formatted to assist in understanding:

“There may be required from any bidder submitting a bid on public work to any contracting unit, duly advertised for in accordance with law, **a certificate showing that he owns, leases, or controls all the necessary equipment required by the plans, specifications and advertisements under which bids are asked for;**

and **if the bidder is not the actual owner or lessee** of any such equipment, his certificate shall **state the source from which the equipment** will be obtained, and shall be **accompanied by a certificate from the owner or person in control of the equipment definitely granting to the bidder the control of the equipment** required during such time as may be necessary for the completion of that portion of the contract for which it is necessary.”

It is important to understand that if the bidder does not control the equipment, the entity that does needs to document that it is available to the bidder.

The following form is consistent with the law and can serve the purpose.

EQUIPMENT CERTIFICATION

The undersigned Bidder hereby certifies as follows:

The bidder owns, controls, or has proof of lease of all the necessary equipment required to accomplish the work described in the specifications. To the extent that said equipment is not currently owned or under lease by the bidder, attached hereto is documentation from that owner or leasing organization that states the equipment will be available as required by the bidder upon award of a contract.

Check here if documentation is attached.

Name of Bidder:	
By:	
(Signature of Authorized Representative)	
Name:	
Title:	
Date:	

STANDARD BID DOCUMENT REFERENCE						Section 17
Name of Form:	EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE - CONSTRUCTION CONTRACTS				Instruction Reference:	VII-A
Applicability:		Y/N		Mandatory	Optional	N/A
	LPCL	Y	Goods and Services			X
	PSCL	Y	Construction	X		
Source References:	N.J.S.A. 10:5-31 (P.L 1975, c.127) and N.J.A.C 17:27-1 et seq. See also NJ Public Contracting Equal Employment Opportunity website: www.state.nj.us/treasury/contract_compliance/					
Supplemental Reference:	VII-A					
Description:	Requires that all bid specifications include mandatory language requiring contractors to report on efforts to meet equal opportunity/affirmative action in employment goals. Successful bidders must be registered with, and report to the state agency on employment related data.					

This section reflects information regarding construction contracts. Section 7 covers this requirement for goods, general services and professional services.

Details on the following items are online in a handbook titled "Public Agency Guidelines for Administering EEO in Public Contracts" on the EEO Monitoring Program website at www.state.nj.us/treasury/contract_compliance/

1) All advertisements for bids or RFPs must include the following sentence:

"Bidders are required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 et seq."

2) For contracts in excess of bid threshold but not publicly advertised, any solicitation must include the following sentence:

"If awarded a contract, your company/firm shall be required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 et. seq."

3) All contracts in excess of a contracting unit's bid threshold must include mandatory language in their specifications and/or contract documents ("Exhibits"). The most recent Exhibit (2016) for Construction Contracts is reprinted on the following page. The Guidelines also require that bid specifications provide direction on what documents must be filed with the contracting agency prior to execution of a contract. Sample language for this follows:

Construction Contracts:

The successful construction contractor(s) shall complete and submit an N.J. EEO Monitoring Program Initial Project Workforce Report (Form AA-201) upon notification of award. Proper completion and submission of this Report shall constitute evidence of the contractor's compliance with the regulations. Failure to submit this form may result in the contract being terminated. The contractor also agrees to submit a copy of the Monthly Project Workforce Report (Form AA-202) once a month thereafter for the duration of the contract to the Dept. of LWD and to the Public Agency Compliance Officer.

The EEO/AA evidence must be submitted after notification of award, but prior to signing a construction contract.

EXHIBIT B
MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq. (P.L.1975, c.127) and N.J.A.C. 17:27-1.1 et seq.
CONSTRUCTION CONTRACTS

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

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 ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, 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 equal employment opportunity shall include, but not be limited to the following: employment, upgrading, 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.

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.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, 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.

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.

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 targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program, 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 Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) 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 afford equal employment opportunities minority and women workers directly, consistent with this chapter. 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 affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, 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 that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met 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:

- (1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, 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;
- (2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;

- (3) 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;
- (4) 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;
- (5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and nondiscrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;
- (6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:
 - (i) The contractor or subcontractor shall interview the referred minority or women worker.
 - (ii) 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 in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. 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 Dept. of LWD, Construction EEO Monitoring Program. 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.
 - (iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.
 - (iv) 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 Dept. of LWD, Construction EEO Monitoring Program.
- (7) 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 Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) 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 targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) 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 (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA-201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, 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 Dept. of LWD, Construction EEO Monitoring Program, and to the public agency compliance officer.

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.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program 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 Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

STANDARD BID DOCUMENT REFERENCE						Section 18
Name of Form:	STANDARD CHANGED CONDITIONS CLAUSES				Reference:	B-8C
Applicability		Y/N		Mandatory	Optional	N/A
	LPCL	Y	Goods and Services			X
	PSCL	N	Construction	Y		
Source References:	N.J.S.A. 40A:11-16.7 and 16.8					
Instructions Reference:	Noted in Section B, page 8, item, C					
Description:	State law requires language to appear in all construction contracts concerning what happens when conditions change during the course of construction.					

N.J.S.A. 40A:11-16.7 provides that:

“All construction contracts issued by a contracting unit for bids which were advertised on or after the effective date of P.L.2017, c.317 (C.40A:11-16.7 et seq.) shall include the changed conditions contract provisions set forth in this section, which provisions shall be deemed to be a part of any such contract even if not expressly incorporated therein, and which provisions may not be modified in any manner by the contracting unit.”

The provisions referred to above follow on the next two pages. The law took effect upon enactment on January 16, 2018.

When this publication was issued, the Commissioner of Community Affairs had not yet proposed rules and regulations that were required to be adopted 90 days after enactment that are “necessary to standardize the forms and procedures throughout the State for the new changed conditions process.” (N.J.S.A. 40A:11-16.8).

Implementation of this section should be referred to local legal counsel for guidance on any bids and contracts awarded until such rules and regulations are adopted.

Provisions Concerning Changed Conditions in Construction Contracts

(N.J.S.A. 40A:11-16.7)

(1) If the contractor encounters differing site conditions during the progress of the work of the contract, the contractor shall promptly notify the contracting unit in writing of the specific differing site conditions encountered before the site is further disturbed and before any additional work is performed in the impacted area.

(2) Upon receipt of a differing site conditions notice in accordance with paragraph (1) of this subsection, or upon the contracting unit otherwise learning of differing site conditions, the contracting unit shall promptly undertake an investigation to determine whether differing site conditions are present.

(3) If the contracting unit determines different site conditions that may result in additional costs or delays exist, the contracting unit shall provide prompt written notice to the contractor containing directions on how to proceed.

(4) (a) The contracting unit shall make a fair and equitable adjustment to the contract price and contract completion date for increased costs and delays resulting from the agreed upon differing site conditions encountered by the contractor.

(b) If both parties agree that the contracting unit's investigation and directions decrease the contractor's costs or time of performance, the contracting unit shall be entitled to a fair and equitable downward adjustment of the contract price or time of performance.

(c) If the contracting unit determines that there are no differing site conditions present that would result in additional costs or delays, the contracting unit shall so advise the contractor, in writing, and the contractor shall resume performance of the contract, and shall be entitled to pursue a differing site conditions claim against the contracting unit for additional compensation or time attributable to the alleged differing site conditions.

(5) Execution of the contract by the contractor shall constitute a representation that the contractor has visited the site and has become generally familiar with the local conditions under which the work is to be performed.

(6) As used in this subsection, "differing site conditions" mean physical conditions at the contract work site that are subsurface or otherwise concealed and which differ materially from those indicated in the contract documents or are of such an unusual nature that the conditions differ materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the contract.

b. A contract subject to this section shall include the following suspension of work provisions:

(1) The contracting unit shall provide written notice to the contractor in advance of any suspension of work lasting more than 10 calendar days of the performance of all or any portion of the work of the contract.

(2) If the performance of all or any portion of the work of the contract is suspended by the contracting unit for more than 10 calendar days due to no fault of the contractor or as a consequence of an occurrence beyond the contracting unit's control, the contractor shall be entitled to compensation for any resultant delay to the project completion or additional contractor expenses, and to an extension of time, provided that, to the extent feasible, the contractor, within 10 calendar days following the conclusion of the suspension, notifies the contracting unit, in writing, of the nature and extent of the suspension of work. The notice shall include available supporting information, which information may thereafter be supplemented by the contractor as needed and as may be reasonably requested by the contracting unit. Whenever a work suspension exceeds 60 days, upon seven days' written notice, either party shall have the option to terminate the contract for cause and to be fairly and equitably compensated therefor.

(3) Upon receipt of the contractor's suspension of work notice in accordance with paragraph (2) of this subsection, the contracting unit shall promptly evaluate the contractor's notice and promptly advise the contractor of its determination on how to proceed in writing.

(4) (a) If the contracting unit determines that the contractor is entitled to additional compensation or time, the contracting unit shall make a fair and equitable upward adjustment to the contract price and contract completion date.

(b) If the contracting unit determines that the contractor is not entitled to additional compensation or time, the contractor shall proceed with the performance of the contract work, and shall be entitled to pursue a suspension of work claim against the contracting unit for additional compensation or time attributable to the suspension.

(5) Failure of the contractor to provide timely notice of a suspension of work shall result in a waiver of a claim if the contracting unit can prove by clear and convincing evidence that the lack of notice or delayed notice by the contractor actually prejudiced the contracting unit's ability to adequately investigate and defend against the claim.

c. A contract subject to this section shall include the following change in character of work provisions:

(1) If the contractor believes that a change directive by the contracting unit results in a material change to the contract work, the contractor shall so notify the contracting unit in writing. The contractor shall continue to perform all work on the project that is not the subject of the notice.

(2) Upon receipt of the contractor's change in character notice in accordance with paragraph (1) of this subsection, the contracting unit shall promptly evaluate the contractor's notice and promptly advise the contractor of its determination on how to proceed in writing.

(3) (a) If the contracting unit determines that a change to the contractor's work caused or directed by the contracting unit materially changes the character of any aspect of the contract work, the contracting unit shall make a fair and equitable upward adjustment to the contract price and contract completion date. The basis for any such price adjustment shall be the difference between the cost of performance of the work as planned at the time of contracting and the actual cost of such work as a result of its change in character, or as otherwise mutually agreed upon by the contractor and the contracting unit prior to the contractor performing the subject work.

(b) If the contracting unit determines that the contractor is not entitled to additional compensation or time, the contractor shall continue the performance of all contract work, and shall be entitled to pursue a claim against the contracting unit for additional compensation or time attributable to the alleged material change.

(4) As used in this subsection, "material change" means a character change which increases or decreases the contractor's cost of performing the work, increases or decreases the amount of time by which the contractor completes the work in relation to the contractually required completion date, or both.

d. A contract subject to this section shall include the following change in quantity provisions:

(1) The contracting unit may increase or decrease the quantity of work to be performed by the contractor.

(2) (a) If the quantity of a pay item is cumulatively increased or decreased by 20 percent or less from the bid proposal quantity, the quantity change shall be considered a minor change in quantity.

(b) If the quantity of a pay item is increased or decreased by more than 20 percent from the bid proposal quantity, the quantity change shall be considered a major change in quantity.

(3) For any minor change in quantity, the contracting unit shall make payment for the quantity of the pay item performed at the bid price for the pay item.

(4) (a) For a major increase in quantity, the contracting unit or contractor may request to renegotiate the price for the quantity in excess of 120 percent of the bid proposal quantity. If a mutual agreement cannot be reached on a negotiated price for a major quantity increase, the contracting unit shall pay the actual costs plus an additional 10 percent for overhead and an additional 10 percent for profit, unless otherwise specified in the original bid.

(b) For a major decrease in quantity, the contracting unit or contractor may request to renegotiate the price for the quantity of work performed. If a mutual agreement cannot be reached on a negotiated price for a major quantity decrease, the contracting unit shall pay the actual costs plus an additional 10 percent for overhead and an additional 10 percent for profit, unless otherwise specified in the original bid; provided, however, that the contracting unit shall not make a payment in an amount that exceeds 80 percent of the value of the bid price multiplied by the bid proposal quantity.

(5) As used in this subsection, the term "bid proposal quantity" means the quantity indicated in the bid proposal less the quantities designated in the project plans as "if and where directed."

STANDARD BID DOCUMENT REFERENCE						Section 19
Name of Form:	STATE COMPTROLLER REQUIREMENTS				Reference:	X-I
Applicability		Y/N		Mandatory	Optional	N/A
	LPCL	Y	Goods and Services	Y		
	PSCL	N	Construction	Y		
Source References:	N.J.S.A. 52:15C-10					
Instructions Reference:	X-I					
Description:	1) Required bid specification language 2) Contracting unit responsibilities to submit documents to the State Comptroller					

- 1) N.J.A.C. 17:44-2.2 requires that bid specifications shall include the following language that requires contractors to maintain all documents related to the contract for five years from date of final payment and to make them available to the Comptroller’s office upon request.

<Insert name of Contractor/Vendor> shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

- 2) Contracting units have statutory responsibility to the State Comptroller’s office as follows.

Instructions and forms for compliance with the following responsibilities are found at

www.nj.gov/comptroller/divisions/procurement/forms/

A. Notification for contracts valued at \$10M or more

Pre-Award Notification: In accordance with N.J.S.A 52:15C-10, contracting units must notify OSC as early as practicable, but no later than 30 days before advertisement, of any negotiation or solicitation of a contract that may exceed \$10 million.

- [Pre-Advertisement Notice for Contracts \\$10 million or more](#)

Post-Award Notification: Within 20 days after the award of a contract of \$10 million or more, complete and email the required form and applicable documents.

- [Post-Award Notice for Contracts \\$10 million or more](#)

B. Notification for contracts valued at \$2M or more

Post-Award Notification for Contracts valued at more than \$2 million but less than \$10 million: Contracting units must provide post-award notification for any contract for an amount exceeding \$2 million. Notification must be given within 20 days of the award.

- [Post-Award Notice for Contracts Valued At More Than \\$2 million but Less Than \\$10 million](#)

*Post-Award Notification for **Emergency** Contracts valued at more than \$2 million:* Contracting units must provide post-award notification for any contract issued pursuant to public exigency or emergency for an amount exceeding \$2 million. Notification must be given within 30 business days of the award.

- [Post-Award Notice for Emergency Contracts Valued at \\$2 million or More](#)