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## **DOCUMENTS AVIALABLE FOR BIDDER REVIEW**

(Available at DEP Building, 401 E. State St., Trenton, NJ)

1. Final Phase I Remedial Investigation Sampling Report, dated December 1988, by Metcalf and Eddy, Inc.
2. Final Phase II Remedial Investigation Sampling Report, dated March 19, 1993, by Metcalf and Eddy, Inc.
3. Remedial Alternative Analysis Report, dated October 28, 1993, by Metcalf and Eddy, Inc.
4. Field Sampling and Testing Report, dated May 1999, by L. Robert Kimball and Associates, Inc.
5. Phase II Field Sampling and Testing Report, dated July 2000, by L. Robert Kimball and Associates, Inc.
6. Landfill Cap Evaluation Report, dated October 2000, by L. Robert Kimball and Associates, Inc.
7. Design Report for Groundwater Extraction, dated October 2006, by L. Robert Kimball and Associates, Inc.

8. "Record Drawings, Big Hill/BEMS Landfill Cap Design", by Atkinson and Walton, Inc, dated 5/28/99.

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**STATE OF NEW JERSEY**  
**NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**REMEDATION CONSTRUCTION**  
**IFB IDENTIFICATION NO. - X-37564**  
**BEMS/BIG HILL LANDFILL GROUNDWATER REMEDIATION**

**NOTICE TO BIDDERS**

Sealed Bids for construction work at the BEMS/Big Hill Landfill Site will be received by the State of New Jersey, Department of Treasury, Division of Purchase and Property, PO Box 230, 33 West State Street, 9th Floor, Trenton, New Jersey 08625, until 2:00 p.m. on February 14, 2007 at which time Bids will be publicly opened, read, and made available for inspection upon request.

The purpose of the bids is a contract for site work at the BEMS/Big Hill Landfill Site located in Southampton Township, Burlington County, New Jersey.

Documents may be examined at the office of the Division of Purchase and Property, Purchase Bureau, Toxic Waste Procurement Unit, 401 East State Street, 6th Floor, Trenton, New Jersey. Copies may be obtained from the Toxic Waste Procurement Unit upon payment of One Hundred (\$100) (non-refundable) for each set. Neither the STATE nor the ENGINEER will be responsible for the contents or completeness of any Bid Documents obtained from other sources.

Bidders wishing to bid on this project are required to attend a Site Inspection and a Bidder's Conference in accordance with Section 6 of the Instructions to Bidders.

Bid Security shall be provided in accordance with Section 8 of the Instructions to Bidders.

Bidders are advised to carefully review the Bid Documents and State bidding rules (New Jersey Administrative Code 17:12-1 et seq.) prior to preparing their Bids.

Commencement and completion of the Contract will be in accordance with Article 2 and Article 16 of the General Conditions.

State of New Jersey  
Department of Treasury  
Division of Purchase and Property

By:

Frank J. Kuzniacki  
Contract Procurement Specialist  
Date: November, 2006

Consulting Engineer:  
L. Robert Kimball & Associates, Inc.

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## **SECTION 1 - DEFINED TERMS**

1.1 Terms used in these Instructions to Bidders are defined in Article I of the General Conditions as supplemented by Article I of the Supplementary Conditions.

## **SECTION 2 - BIDS RECEIVED**

2.1 Refer to the Notice to Bidders for information on the time and place for receipt of Bids by the STATE.

2.2 STATE bidding is governed by rules designed to protect both the Bidder and taxpayer. They assure that each Bidder is treated equally and prevent favoritism. Carefully review the rules (New Jersey Administrative Code 17:12.1 et seq.) prior to preparing a Bid. Non-compliance with Bid rules will result in Bid rejection.

2.3 In order to be considered Bids must arrive at the Purchase Bureau in Trenton and be time stamped prior to the deadline in the Notice to Bidders. Appendix F, Vol. 4 includes a map of Trenton. The Bidder is expected to anticipate any potential delivery problems. No bids will be accepted after this date and time.

## **SECTION 3 - LOCATION OF PROJECT**

3.1 Refer to Appendix H, Vol. 4 for the location and description of the Project.

## **SECTION 4 - COPIES OF BIDDING DOCUMENTS**

4.1 Refer to Notice to Bidders for information on how to obtain Bid Documents.

4.2 Complete sets of Bid Documents shall be used in preparing Bids; neither STATE nor ENGINEER assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bid Documents.

4.3 STATE and ENGINEER in making copies of Bid Documents available on the above terms do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.

## **SECTION 5 - QUALIFICATIONS OF BIDDERS**

5.1 Bidders shall be experienced in the kind of Work to be performed, shall have the necessary equipment therefore, and shall possess sufficient capital to properly execute the Work within the time allowed. Bids received from Bidders who have previously failed to complete work within the time required, or who have previously performed similar work in an unsatisfactory manner, may be rejected. A Bid may be rejected if Bidder cannot show that he has the necessary ability, plant and equipment to commence the Work at the time prescribed and thereafter to prosecute and complete the Work at the rate or within the time specified. A Bid may be rejected if Bidder is already obligated for the performance of other work which would delay the commencement, prosecution or completion of the Work.

- 5.2 As evidence of his competency to perform the Work, Bidder shall complete and submit with his Bid the Bidders Qualification Statement that is Attachment #2 hereto. Low Bidders may be asked to furnish additional data to demonstrate competency.
- 5.3 Bidder must submit evidence of Bidder's qualification to do business in New Jersey prior to execution of Agreement in accordance with Section 20 of these Instructions to Bidders. All firms incorporated outside of the State must file a Certificate of Authority with the Secretary of State at the Department of State, State House, Trenton, New Jersey.

## **SECTION 6 - EXAMINATION OF CONTRACT DOCUMENTS AND SITE**

### **6.1 EXAMINATION OF DOCUMENTS**

- A. Before submitting a Bid, each Bidder shall (a) examine the Contract Documents thoroughly, (b) visit the site (as required in Section 6.2) to familiarize himself with local conditions that may in any manner affect cost, progress or performance of the Work, (c) familiarize himself with Federal, State and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the Work; and (d) study and carefully correlate Bidder's observations with the Bid Documents.
- B. Refer to Appendix H for Description of Project Sites, Site Access and Site Maps for conditions at the sites that otherwise may affect cost, progress or performance of the Work which have been utilized by ENGINEER in preparation of the drawings and specifications. Such reports are not guaranteed as to accuracy or completeness. Before submitting his Bid, each Bidder will, at his own expense, make such investigations and tests as the Bidder may deem necessary to determine his Bid for performance of the Work in accordance with the Contract Documents.
- C. The lands upon which the Work is to be performed, rights-of-way for access thereto and other lands designated for use by CONTRACTOR in performing the Work are identified in the Supplementary Conditions, Plans and Specifications, and/or Drawings.
- D. Bidders shall promptly notify the STATE of any ambiguity, inconsistency or error which they may discover upon examination of the Bid Documents or of the site and local conditions.

### **6.2 SITE INSPECTION**

- A. In order for a bid proposal to be considered for award, at least one representative of the Bidder must attend and register at the Mandatory Site Inspection. The only date and time for the Mandatory Site Inspection is indicated herein. Directions to the site are included in Volume 1.
- B. A representative of the STATE shall be on site for the Mandatory Site Inspection on the date and at the time specified below:

Date: January 5, 2007

Time: 9:30 A.M. (See Key Dates Page)

If there is any change in this date, recipients of these Instructions will be notified.

- C. The Mandatory Hazardous Waste Site Inspection and Attendance/Liability Release Form is included as Attachment #13, Vol. 2. Bidders must complete this form prior to attendance at the site inspection and return it to the procurement specialist there. Each individual attending the site inspection must fill out a separate form.
- D. The STATE advises prospective bidders and other persons that it is without complete knowledge as to the content and nature of the hazardous substances on the site, and in the soil, water, and air surrounding the site, and further that it is without complete knowledge as to the nature or the degree of the hazards which might arise therefrom. STATE further advises that the minimum level of protection recommended is indicated on Attachment #13, Vol. 2. Any persons on the site must at least have this minimum level of protection. However, any person or persons who enter upon the site, examine the site, or conduct any activity on or in the vicinity of the site do so at their own risk. STATE assumes no liability whatsoever. All persons entering the site must provide their own protective gear during the site inspection.
- E. In addition to any mandatory site inspection required in this IFB, the Bidder is encouraged to visit and perform non-intrusive investigations of the site during times set aside for such purposes.

### **6.3 BIDDERS CONFERENCE**

- A. In order for a bid to be considered for award, at least one representative of the Bidder must have been present at the Bidders Conference commencing at the time and in the place specified below. The Director of the Division of Purchase and Property or his designee may, at his sole discretion, delay the meeting for a prospective bidder who notifies the Purchase Bureau that he intends to attend but due to an emergency situation may be late. In no instance shall the Bidders Conference be delayed more than 15 minutes under this provision. Failure to attend the Bidders' Conference will result in automatic bid rejection. Bidders must complete and submit at the Bidders Conference the Mandatory Bidders Conference Attendance Form, Attachment #12, Vol. 2 hereto.
- B. The purpose of the Bidders Conference is for the STATE to respond to questions concerning the IFB. Any changes in the IFB emanating from the Bidders Conference will be issued in a written addendum to the IFB. No questions from bidders will be accepted after the seven days following the Bidders Conference and bidders may not rely on any oral answers to questions received outside of the Bidders Conference. The Conference will be transcribed and a copy of the transcription will be available to Bidders who have completed the Attendance Form upon payment of the copying costs. Should the transcription be delayed the STATE will grant a delay to the date for receipt of Bids upon written applications by at least two Bidders. The Bidders' Conference will be held:

Date: January 5, 2007

Time: 12:00 p.m.

Place: (See Key Dates Page)

### **6.4 BIDDER'S RESPONSIBILITY**

- A. The submission of a Bid will constitute an incontrovertible representation by the Bidder that he has complied with every requirement of this Section 6 and that the Bidding Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.
1. His Bid is based upon the materials, systems and equipment required by the Bidding Documents without exception.
  2. Submission of a Bid by the Bidder is a representation that said Bidding Documents are full and complete, and are sufficient to have enabled the CONTRACTOR to determine its Bid. The Bidder further acknowledges that he has investigated and satisfied himself as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads, and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. The Bidder further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done on behalf of the STATE or others, as well as from information presented by the drawings and specifications made a part of this contract. Any failure by the Bidder to acquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the work. The STATE assumes no responsibility for any conclusions or interpretations made by the contractor on the basis of the information made available by the STATE.
  3. He has taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions, which can affect the work or the cost thereof. Any failure by the contractor to do so will not relieve him from responsibility for successfully performing the work without additional expense to the STATE. The STATE assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this contract, unless such understanding or representations by the STATE are expressly stated in the contract.
  4. In connection with the foregoing, and having carefully examined all Bid Documents, as aforesaid, and having visited the site, the Bidder acknowledges and declares that it has no knowledge of any discrepancies, omissions, ambiguities, or conflicts in said Bidding Documents and that if it becomes aware of any such discrepancies, omissions, ambiguities or conflicts it shall promptly notify the STATE.
  5. Bidder recognizes the extra degree of care required due to the circumstances with respect to safety, cleanliness of the site, health and other laws, and protection of existing utilities, adjacent streets and property. In arriving at the total Contract Sum, Bidder has, as an experienced and prudent contractor, exercised its best judgment and expertise, and has included the total impact of such circumstances upon its Bid.
- B. Deviations from the Bid Documents proposed in the Bidder's submissions shall not relieve the Bidder from responsibility for compliance with the Drawings and the Specifications nor will they

be deemed a change in the requirements or terms of the Contract Documents should the Bidder be chosen. The Contract Documents supersede any bid submission by the CONTRACTOR.

## **SECTION 7 - BID INTERPRETATION AND ADDENDA**

- 7.1 This IFB is issued by the Purchase Bureau, Division of Purchase and Property. For purposes of this bidding process, the Purchase Bureau is the sole point of contact between the Bidder and the STATE. Bidders should not contact the DEP directly with questions or concerns about this IFB or the bidding process.
- 7.2 If Bidders have any questions about, or objections to, the IFB, the Division of Purchase and Property will respond to questions and exceptions posed in writing prior to or at the Bidders Conference. The Division will also respond to questions and exceptions posed orally at the Bidders Conference or by written request which shall reach the division within three (3) days following the Bidder's Conference. No questions or exceptions received after the deadline will be answered. Any objection to the IFB must be raised prior to the Bid Opening Date or else be forever waived. Unless the Division expressly accepts an objection and makes a written addendum to the IFB, the objection shall be deemed rejected, and the original provisions of the IFB shall be deemed controlling.

**In the event that it becomes necessary to clarify or revise this IFB, such clarification or revision will be by addendum. Any addendum to this IFB will become part of this IFB and part of any contract awarded as a result of this IFB.**

**ALL IFB ADDENDA WILL BE ISSUED ON THE DIVISION OF PURCHASE AND PROPERTY WEB SITE. TO ACCESS ADDENDA, SELECT THE BID NUMBER ON THE BIDDING OPPORTUNITIES WEB PAGE AT THE FOLLOWING ADDRESS:**

[HTTP://WWW.STATE.NJ.US/TREASURY/PURCHASE/BID/SUMMARY/BID.SHTML.](http://www.state.nj.us/treasury/purchase/bid/summary/bid.shtml)

**The procurement number is 07-X-37564**

There are no designated dates for release of addenda. Therefore interested bidders should check the Purchase Bureau "Bidding Opportunities" website on a daily basis from time of IFB issuance through bid opening.

It is the sole responsibility of the bidder to be knowledgeable of all addenda related to this procurement.

- 7.3 Answers to questions, explanations or instructions that are documented in writing in an addendum to the IFB will be binding on the CONTRACTOR and the STATE.
- 7.4 All written questions must be directed to the Procurement Specialist designated below in advance of or at the Bidders Conference:

Mr. Frank J. Kuzniacki, Contract Procurement Specialist  
Department of the Treasury  
Division of Purchase and Property  
Hazardous Waste Unit  
33 West State Street, P.O. Box 230

## **SECTION 8 - BID SECURITY**

- 8.1 Bidder is required to submit Bid Security with his Bid equal to five percent (5%) of the Total Amount Bid. Attachment #3, Vol. 2 Bid Security, stating the type of bid security being submitted to meet the requirements of this IFB, should be submitted with the Bid. Bid Security may be presented in the form of an Annual Blanket Bond, a certified check or a Bid Bond for this contract.
- 8.2 An Annual Blanket Bid Bond covering the period ending no sooner than 120 days after Bid Opening, and on file on or before the date and time of the Bid Opening, will be accepted as meeting the requirement for Bid Security. The Annual Blanket Bond must be in sufficient amount to cover this and previous commitments.
- 8.3 A certified check drawn to the order of the Treasurer of the State of New Jersey will be accepted as meeting the requirement of an individual Bid Bond. The check must accompany the bid. After Bid Opening the certified check may be exchanged for a Bid Bond as stipulated.
- 8.4 Any Bid Bond shall be issued in the form specified in Attachment #3A, Vol. 2 Bid Bond, and issued by a surety meeting the requirements of Article 5.1 of the General Conditions. The bid bond must accompany the bid.
- 8.5 An Irrevocable Letter of Credit payable to the Director, Division of Purchase and Property will be accepted as meeting the Bid Security requirement. The Letter of Credit must be in a form acceptable to the STATE from a reputable financial institution and must remain in effect for at least 120 days from the bid opening date. Bidders that plan to utilize a letter of credit as bid security are advised to submit the form of the Letter of Credit to the STATE for review and approval as far as possible in advance of the bid opening date. If the letter of credit submitted with the bid is in a form unacceptable to the STATE, the bid will be rejected.
- 8.6 The Bid Security of all Bidders will be retained until the Successful Bidder has executed the Agreement and furnished the required contract security, whereupon all Bid Securities will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required Contract Security within fifteen (15) days of the Notice of Intent to Award, STATE may rescind the Notice of Intent to Award and the Bid Security of that Bidder will be forfeited to the STATE for such failure.

## **SECTION 9 - SUBSTITUTE MATERIAL AND EQUIPMENT**

- 9.1 Whenever it is indicated in the Plans and Specifications and/or Drawings that a substitute or "or equal" item of material or equipment may be furnished or used by CONTRACTOR if acceptable to ENGINEER, application for such acceptance will not be considered by ENGINEER prior to the Effective Date of the Agreement. The procedure for submittal of any such application by CONTRACTOR and consideration by ENGINEER is set forth in Article 6.3 of the General Conditions which may be supplemented in the Plans and Specifications. The Contract Documents supersede any bid submissions by the CONTRACTOR.

## **SECTION 10 - SUBCONTRACTORS AND SUBSTITUTE PERSONNEL**

- 10.1 Subcontracting is allowable for purposes of this Bid. Any intent to subcontract on the part of the Bidder must be specifically described in the Bid provided that in no such event shall the CONTRACTOR's duties, obligations, or liabilities under this contract be deemed to be diminished thereby. CONTRACTOR shall refer to Article 6.4 of the General Conditions for specific requirements governing the award of subcontracts.
- 10.2 The STATE reserves the right to disapprove the use of any subcontractors and the CONTRACTOR shall procure the services of a subcontractor acceptable to the STATE at no additional expense to the STATE. If subcontracting is planned, the Bidder must submit the additional information required in the Bidder's Qualification Statement. The CONTRACTOR is responsible for assuring subcontractor compliance with all terms and conditions of this Bid. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the STATE.
- 10.3 If during the term of the contract, the CONTRACTOR cannot provide the personnel or subcontractor(s) as proposed and requests a substitution, that substitution must be equal or better in terms of qualification for services and at no extra cost. The CONTRACTOR will provide identical information as required on the original subcontractor and justification which will be forwarded to the STATE for approval of the proposed substitution of the subcontractor or personnel prior to any substitution.
- 10.4 Should the STATE disapprove substitute subcontractors or personnel, the CONTRACTOR shall submit a proposed substitution within 10 days after being notified of the disapproval.

## **SECTION 11 - PREPARATION OF BID**

### **11.1 GENERAL INSTRUCTIONS**

- A. The Bidder must follow the instructions contained in this document in preparing and submitting a Bid. Bidders are advised to thoroughly read and understand the entire Bid Document and any addenda prior to preparing and submitting their Bids.
- B. When the Bid is required to include price lists, product literature or other information, this material must be submitted concurrently with the Bid in order to be considered as part of the Bid. If submitted after the deadline, such information will be rejected and therefore will not be evaluated with the Bid.
- C. The Bid must be signed. Unsigned Bids or improperly signed Bids will be rejected as they have no binding effect upon the Bidder.
- D. The Bid Form must be typed or completed in ink. Blank spaces in the Bid Form must be filled in correctly where indicated, and the Bidder must state, both in words and numerals, the prices for which he proposes to do each and every item or work. Ditto marks shall not be used.
- E. The Bid shall contain an acknowledgment of the receipt of all Bid Addenda in the space provided on the Bid Form, Attachment #1, Vol. 2.

- F. Bid prices must be typed or written in ink. Any price change (including "white-outs") must be initialed by the signatory of the Bid.
- G. The address to which communications regarding the Bid are to be directed shall be shown.
- H. Each bidder submitting a Bid, must deliver one (1) clearly marked original and should deliver twelve (12) copies of the bid package for a total of thirteen (13) submittals.

## **11.2 EXECUTION OF BID**

A Bidder shall execute his Bid as stated below.

- A. A Bid by an individual shall show his name and official address.
- B. A Bid by a partnership must be executed in the partnership name and signed by a partner. His title must appear under his signature and the official address of the partnership shall be shown.
- C. A Bid by a corporation must be executed in the corporate name by an officer of the corporation and must be accompanied by a certified copy of a resolution of the board of directors (Attachment #6, Vol. 2 hereto) authorizing the person signing the Bid to do so on behalf of the corporation. The corporate seal shall be affixed and attested by the secretary. The State of incorporation and the official corporate address shall be shown.
- D. A Bid by a joint venture must be executed in the joint venture name by an officer of each joint venture, with board resolutions (Attachment #5, Vol. 2 hereto) from all corporate joint venturers. Each title must appear below the appropriate signatures.
- E. All names must be printed below the signature.
- F. Bidder's license or registration number shall be entered in the space provided on the Bid Form.

## **11.3 SET-ASIDE SUBCONTRACTING REQUIREMENTS**

This contract is being funded in whole by State funding. This is a contract with set-aside subcontracting requirements. The bidder must return with its bid proposal a completed Notice of Intent to Subcontract form which is included as Attachment #17, Volume 2. This form will list subcontractors that the bidder intends to utilize during the course of the contract to meet the goals pursuant to NJAC 17:13-4.1(a)2. Failure to include a completed Notice of Intent to Subcontract form will be sufficient cause to reject a bidder's proposal as non-responsive.

**All bidders** must complete the **Notice of Intent to Subcontract Form** whether or not they intend to utilize subcontractors in connection with the work set forth in this IFB. If the bidder intends to utilize subcontractor(s), then the **Subcontractor Utilization Plan** must also be submitted with the bid.

N.J.A.C. 17:13-4 and Executive Order 71 mandate that if the bidder proposes to utilize a subcontractor, the bidder must make a good faith effort to meet the set-aside subcontracting targets of awarding a total of twenty-five percent (25%) of the value of the contract to New

Jersey-based, New Jersey Commerce, Economic Growth & Tourism Commission registered small businesses, with a minimum of five (5) percent awarded to each of the three categories set forth below, and the balance of ten (10) percent spread across the three annual gross revenue categories: Category I – \$1 to \$500,000; Category II - \$500,001 to \$5,000,000; Category III - \$5,000,001 to \$12,000,000.

Should the bidder choose to use subcontractors and fail to meet the Small Business Subcontracting targets set forth above, the bidder must submit documentation demonstrating its good faith effort to meet the targets with its bid proposal or within seven (7) business days upon request.

Should the bidder propose to utilize a subcontractor(s) to fulfill any of its obligations, the bidder shall be responsible for the subcontractor's(s): (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws.

The bidder must provide a detailed description of services to be provided by each subcontractor, referencing the applicable Section or Subsection of this IFB.

#### **11.4 COMPLAINTS**

Where a Bidder or a subcontractor has a history of performance problems as demonstrated by formal complaints and/or contract cancellations for cause, a Bidder may be bypassed for this award unless the Bidder submits with his/her bid (A) an explanation of why those past performance problems occurred; and (B) an explanation of those steps which the Bidder has taken that will preclude those problems from recurring if the Bidder is awarded this Contract. The STATE intends to consider information provided by the Bidder on Attachment #11, Vol. 2 in this connection.

#### **11.5 CONFLICT OF INTEREST**

The STATE will seek recovery of the costs of the cleanup of specific sites from any and all responsible parties and must anticipate the possibility of litigation with one or more of these parties. In order to avoid a conflict of interest or the appearance of a conflict, the STATE requires that the Bidder disclose on a "Conflict of Interest Certification," Attachment #10, Vol. 2, any work he has done on the site of this Contract and any contractual or other business relationship occurring during the preceding five years between the Bidder, or any professional engineering subcontractor, and any person or entity who is or may be responsible for the cleanup costs at the site.

- A. Persons and entities who may be a responsible party are listed on Attachment #10, Vol. 2:
- B. As additional information becomes available to the STATE, The STATE reserves the right to identify, at any time additional parties who may be responsible for this site and to disqualify a bidder or terminate this Contract on that basis.
- C. A Bidder or any professional engineering subcontractor, will be deemed to have had a business relationship with one of the parties so named, for purposes of this section, if it has had such a relationship with a parent, subsidiary, predecessor or successor of such a party, or if it has been engaged by independent legal representatives on behalf of any of such

parties as so defined. The STATE will determine whether the particular circumstances of any relationship disclosed by a Bidder will preclude the award of a contract to that Bidder.

D. Any contract awarded hereunder will be subject to the following conditions:

- 1) The CONTRACTOR shall not, during the contract period, enter into or continue any contract, subcontract or business relationship of any kind, whether or not related to the subject matter of this contract, with any identified responsible party named herein or with any parent corporations, subsidiaries, or successors of the responsible party, or with any independent legal representatives acting on behalf of a responsible party, without the express written permission of the STATE.
- 2) The CONTRACTOR shall not during the period described below, enter into any contract, subcontract or business relationship of any kind with any responsible party named herein or hereafter by the STATE to provide services related to the site(s) that is the subject of this contract without the express written permission of the STATE. As to each of the potentially responsible parties identified by the STATE, the period covered by this restriction shall extend from the effective date of this contract until the later of: a) five years from the date of Final Completion of work under this contract; or b) final judgment, including all potential appeals, in a court of competent jurisdiction of any claims initiated by the State or the United States against said party provided that such claims are made in a Court of law within five years from Final Completion. This restriction shall apply only to claims which are related to the presence or former presence of hazardous substances at or near the real property referred to in the site description given in the project specific bid. This restriction shall be terminated only upon written notice from the STATE that any such claims have been finally adjudicated which notice may be requested by the CONTRACTOR.

## **11.6 MANDATORY SUBMISSION ATTACHMENTS**

**The following documents provided as attachments with these Instructions must be filled out, signed and submitted with this bid proposal.** Where documents must be filled out for subcontractors, these must also be submitted with the bid. Failure to fill out or sign the relevant portions of these documents and to submit the documents with a bid proposal shall result in rejection of that bid proposal as non-responsive to the IFB. One copy of each document is attached to the IFB. Where additional copies are required for the Bidder or any subcontractors, please photocopy the attached document or request additional copies from the Purchase Bureau. You may use this checklist as an aid in completing your bid.

### **Attachment #1, Vol. 2. The "Bid Form".**

Submitted \_\_\_\_\_

**Attachment #2, Vol. 2. The "Bidders Qualification Statement".** (NOTE: bidders must submit information for all proposed subcontractors in their qualification statement, including waste transportation and disposal subcontractors)

Submitted \_\_\_\_\_

**Attachment #3, Vol. 2. The "Bid Security Form".**

Submitted \_\_\_\_\_

**Attachment #3A, Vol. 2. The "Bid Bond"** required unless the Bidder is submitting a certified check or has already submitted a sufficient blanket bond.

Submitted. \_\_\_\_\_

**Attachment #4, Vol. 2. The "Price Schedules".**

Submitted \_\_\_\_\_

**Attachment #5, Vol. 2. A "Joint Venture Certification"** required only if the bid proposal is being submitted on behalf of a joint venture.

Submitted \_\_\_\_\_

Not Applicable \_\_\_\_\_

**Attachment #6, Vol. 2. A "Corporate Resolution of Authority to Submit Bid Proposal"** required only if the Bidder, is a corporation. A resolution must be submitted for each corporate joint venturer of a joint venture.

Submitted \_\_\_\_\_

Not Applicable \_\_\_\_\_

**Attachment #9, Vol. 2. A "Hazardous Waste Contractor Disclosure Form" and a "Consent to Investigation Form"** for the Bidder, including each joint venturer of a joint venture, and for each subcontractor proposed in the bid.

Submitted \_\_\_\_\_

**Attachment #10, Vol. 2. A "Conflict of Interest Certification"** for the Bidder.

Submitted \_\_\_\_\_

**Attachment #11, Vol. 2. An "Explanation of Past Problems"** required only if the Bidder or his subcontractors have received written complaints from the STATE about past work with the STATE.

Submitted \_\_\_\_\_

Not Applicable \_\_\_\_\_

**Attachment #17, Vol.2. "SBE Subcontractor Utilization Plan" and "Notice of Intent to Subcontract Form"** required of all bidders, even if no subcontractors are to be utilized.

Submitted \_\_\_\_\_

**Attachment #18, Vol.2. “Affirmative Action Employee Information Report”**, required of all bidders or current certificate.

Submitted \_\_\_\_\_

**Attachment #19, Vol.2. “Ownership Disclosure Form”**, required of all bidders.

Submitted \_\_\_\_\_

## **SECTION 12 - INSURANCE AND INDEMNIFICATION**

### **12.1 CONTRACTOR'S INSURANCE**

A. Coverage Required - This IFB requires the bidder at his own expense to provide comprehensive general liability insurance, automobile insurance, workers compensation and employers liability insurance as specified in Article 5.4 of the General Conditions.

1. Any bidder who does not provide this insurance will be disqualified.

B. Documentation of Required Insurance - The Bidder must document his compliance with the required insurance provisions of Article 5.4 of the General Conditions as follows:

1. Upon receipt of a Notice of Intent to Award a Contract (Section 20.1), the Bidder must submit certificates of insurance and Attachment #16, Vol. 2 "Certification of Insurance Documentation" as described in Article 5.4 of the General Conditions.

### **12.2 SUBCONTRACTORS INSURANCE**

A. Coverage Required - Except as otherwise specified below subcontractors must provide the same coverages as those required of the CONTRACTOR in Article 5.4 of the General Conditions.

1. All subcontractors must provide the specified Workers Compensation and Employers Liability Insurance.

2. All subcontractors who will do any work at the site must provide the specified comprehensive general liability insurance and automobile insurance.

3. Any subcontractor whose work will consist solely of off-site consultation services or other off-site services not affecting the site need not provide the specified CGL or auto insurance.

4. Any subcontractor whose work will consist solely of providing off-site transportation of hazardous materials and/or disposal services need not provide the specified CGL insurance but must satisfy the liability requirements of RCRA and/or the State permits or licenses under which they operate.

## B. Documentation of Subcontractors Insurance

If the Bidder proposes to use subcontractors, (including transportation and disposal subcontractors) the documentation which the bidder submits in accordance with this Section must demonstrate either that the subcontractors' work is covered by the Bidder's insurance and/or liability guarantees or that the subcontractors maintain their own insurance and/or liability guarantees.

1. For any subcontractor who will work on-site, appropriate insurance certificates for comprehensive general liability, workers compensation, employees' liability and automobile insurance will be required as a condition for execution of any contract hereunder.
2. For any subcontractor whose work merely involves off-site consultation or other such off-site services, no insurance forms need be submitted with the bid, but appropriate insurance certificates for workers compensation, employers liability and any other relevant insurance will be required as a condition for execution of any contract hereunder.
3. For any subcontractor who will provide off-site transportation of hazardous materials or disposal services, proof of compliance with RCRA and/or State licensing requirements must be submitted as a condition of contract award.
4. Upon receipt of a Notice of Intent to award a contract (Section 20.1), the Bidder must submit for his subcontractors certificates of insurance and any other documentation required in Article 5.4.

### **12.3 COST OF REQUIRED INSURANCE**

The costs of any required insurance or other liability guarantees proposed in his bid must be contained within the Bidder's bid price (as part of his unit prices, lump sum price or otherwise as appropriate) and may not be separately bid or billed.

## **SECTION 13 - SUBMISSION OF BID**

- 13.1 Bids shall be submitted at the time and place indicated in the Notice to Bidders.
- 13.2 The Bid shall be enclosed in an opaque sealed envelope plainly marked on the outside with the name of the Bidder, his address, his license or registration number, if applicable, the name of the Project, IFB Identification Number, final bid opening date and name of procurement specialist who issued the Notice to Bidders. Bid shall be submitted with bid security and other required documents.
- 13.3 If the Bid is sent through the mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in another envelope plainly marked on the outside with the notation "Bid Enclosed" including the Bid Identification Number and the Bid Opening Date. Mailed Bids shall be addressed to:

State of New Jersey  
Department of Treasury

Division of Purchase & Property  
Bid Receiving Room - 9th Floor  
33 West State Street, P.O. Box 230  
Trenton, New Jersey 08625-0230

## **SECTION 14 - MODIFICATION OR WITHDRAWAL OF BID**

### **14.1 WITHDRAWAL PRIOR TO BID OPENING:**

A Bidder may withdraw his Bid before the date and time fixed for the opening of Bids by communicating his purpose in writing to the STATE. Upon receipt of such written notice, the unopened Bid will be returned to the Bidder.

### **14.2 MODIFICATION PRIOR TO BID OPENING:**

If a Bidder wishes to modify his Bid, he must withdraw his initial Bid in the manner specified in Section 14.1 and submit a new Bid in accordance with Section 13.

## **SECTION 15 - OPENING OF BIDS**

15.1 Bids will be opened as indicated in the Notice to Bidders.

15.2 Bids received by mail or otherwise after the time specified for the opening of Bids will not be accepted and will be returned to the Bidder unopened.

## **SECTION 16 - BID CLARIFICATION**

16.1 Bidders may be required to give an oral presentation of the bid to the STATE. The STATE reserves the right to request a Bidder to explain in detail how he arrived at his bid price. This will provide an opportunity for the Bidder to clarify or elaborate on his bid but can in no way change the Bidder's original bid. The STATE will schedule the time and location of these presentations.

16.2 The STATE reserves the right to request a Bidder to explain in detail how he/she arrived at his/her bid price. Failure to provide adequate explanations may render the bid unresponsive. The determination of whether an explanation of the bid price or technical proposal is adequate is wholly within the discretion of the STATE.

## **SECTION 17 - DISQUALIFICATION OF BIDDERS**

17.1 More than one Bid for the same Work from an individual, or a firm, partnership, corporation or an association under the same or different names will not be considered. Reasonable grounds for believing that any Bidder is interested in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder is interested.

## **SECTION 18 - USE OF BIDS**

18.1 All Bids shall remain open for 90 days after the day of the opening of Bids, but the STATE may, in its sole discretion, release any Bid and return the Bid Security prior to that date.

- 18.2 The entire content-of every Bid will be publicly opened and will become a public record.
- 18.3 The contents of the Bid, as accepted by the STATE, subject to the requirements of Article 3.1 of the General Conditions, will become part of any contract awarded as a result of this Bid.
- 18.4 All Bids, being a public record, are available for public inspection. Persons who wish to inspect Bids must make an appointment with the STATE. Inspection is subject to the rules of the Purchase Bureau.

## **SECTION 19 - BID EVALUATION AND CONTRACT AWARD**

### **19.1 MANDATORY REQUIREMENTS AND MINOR FORMALITIES**

- A. In order for a bid proposal to be considered responsive to this IFB, the Bidder must comply with all of the mandatory procedures and requirements of the IFB and must agree to all of the material terms and conditions contained in the IFB. Failure to do so will result in bid proposal rejection. These mandatory requirements include, but are not limited to the grounds for automatic bid rejection listed in the rules of the Division of Purchase and Property, N.J.A.C.17:12.2.5, such as:
- Failure to sign the Bid Proposal.
  - Failure to submit the Bid Proposal on time.
  - Submission of Bid Proposal in pencil.
  - Failure to attend Mandatory Bidders Conference or Site Inspection when required.
  - Failure to file Stockholders Disclosure Form.
  - Failure to initial price alterations.
  - Inclusion of Cash on Delivery term in Bid Proposal.
- B. However, pursuant to N.J.A.C.17:12-2.4 and depending on the circumstances, the Director may determine to waive any minor deviation from the IFB and/or any deviation from a minor formality which does not materially affect the bidding process or the contract which the STATE seeks through this IFB.

### **19.2 EVALUATION CRITERIA AND PROCEDURES**

All bid proposals must meet the threshold criteria for a responsible and responsive bid as defined herein. Proposals which have met the threshold criteria will be evaluated by a committee appointed by the Director from the Department of Environmental Protection and the Department of the Treasury.

#### **A. Responsiveness**

In order for a Bid Proposal to be considered responsive, a Bidder must agree to perform the Scope of Work described in the specifications, agree to the General Conditions provided in this IFB, complete the attachments provided with this IFB and submit a bid bond where required and adequately explain its bid price or technical proposal as required in Section 16.2. Bidders are advised to read thoroughly the entire IFB and any addenda subsequently issued by the Issuing Office before preparing and submitting their Bids.

## B. Responsibility

The STATE has adopted as its test of responsibility the Federal rules at 40 CFR Part 31. A responsible bidder must have:

- a. Financial resources, technical qualifications, experience, organization and facilities adequate to carry out the project, or a demonstrated ability to obtain these.
- b. Satisfactory performance record for completion of contracts.
- c. Accounting and auditing procedures adequate to control property, funds and assets, as required in 40 CFR Part 31.
- d. Demonstrated compliance or willingness to comply with the civil rights, equal employment opportunity, labor law and other statutory requirements under 40 CFR Part 31.

## C. Evaluation Based on Price and Other Factors

The STATE intends to award this Contract to the lowest bidder that, in the opinion of the STATE, is both responsible and responsive in accordance with the criteria stated in Sections 19.2A and 19.2B of these Instructions.

The STATE reserves the right to reject any and all bids, in whole or in part as deemed to be in the best interests of the STATE.

## D. IFB Requirements, Requests and Responses

This IFB contains certain requirements, certain expectations and certain requests for goods, services and information.

1. In general any IFB provision which is preceded by "shall", "must", or "is required" is mandatory and the failure to comply with that provision will be deemed a material deviation from the IFB and will result in rejection of a bid as non-responsive.
2. In general, any provision preceded by "should" or "is expected" is directory. As such, failure to comply with the provision will be considered negatively when evaluating the quality or value of the bid and when combined with other minor deviations may result in rejection of the bid.
3. In general, any provision which is preceded by "is requested" is precatory. As such, the provision indicates something that is desired by the STATE and for which a bidder will be given favorable consideration in the evaluation of bids. However, a bid will not be penalized for failing to provide an item which is merely requested.

## E. Conflict of Interest With Respect to Responsible Parties

In evaluating bids, the STATE will consider whether and to what extent the bidders have done prior work on the site or have, or have had, business relationships with parties potentially responsible for hazardous wastes at the site covered by this contract and will determine

whether potential conflicts of interest exist sufficient to disqualify a bidder for this contract. The nature, extent, volume and time frames of any such business relationships will be considered.

#### F. Investigations

1. Information submitted on the Hazardous Waste Contractor Disclosure and Consent to Investigation Form (Attachment #9, Vol. 2) is subject to review by the State Attorney General.
2. The STATE reserves the right to obtain from sources outside the Bid any information it sees fit to determine the ability of the Bidder to supply the level of service that the STATE has a right to expect from a CONTRACTOR, including any information needed to evaluate the financial capability of the Bidder to complete the requirements of the Bid.
  - a. The STATE may contact sureties, financial institutions and prior contractors of the Bidder. The Bidder shall not obstruct STATE's reasonable requests for information.
  - b. STATE's Representatives may be assigned to visit locations presently serviced by the Bidder or to inspect Bidder's establishment/facility prior to award. Bidder shall provide all necessary access to permit such visits or inspections.
  - c. The STATE reserves the right to make announced or unannounced inspections or examinations of any laboratory which the Bidder proposes to use to provide services under this contract. Such access shall be granted whenever the laboratory is operating. The CONTRACTOR shall insert conditions adequate to provide this access to the STATE in all subcontractual agreements for laboratory services.

#### G. Bid Discrepancies

In evaluating bids, discrepancies between words and figures will be resolved in favor of words. Discrepancies between unit prices and total prices will be resolved in favor of unit prices. Discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the correct multiplied totals. In the multiplication of unit prices and units of work discrepancies between the total indicated in the Bid and the actual total will be resolved in favor of the actual total. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum of the column of figures. The STATE can waive any minor formalities or irregularities in Bids received.

#### H. Balanced Bids

The Bidder should prepare his cost proposal so that it accurately reflects the costs and profits for each task required hereunder. The STATE will not entertain any claim for additional compensation arising from the fact that a lump sum bid item or a unit price does not accurately reflect actual costs. The Bidder expressly waives the right to pursue any such claim.

#### I. Types of Bids

Types of Bids for the work specified in these Contract Documents will be unit price, lump sum, or a combination of unit price and lump sum as set forth on the Bid Form.

1. When the Bid for all or part of the work is to be submitted on a unit price basis, unit prices shall be inserted in the appropriate places. The estimate of quantities of unit price work to be done as tabulated on the Bid Form is approximate and is for the basis of calculation upon which the award of Contract may be made. Payment to the CONTRACTOR will be made on the measurement of the work actually performed by the CONTRACTOR. The STATE reserves the right to increase or diminish the amount of any class of work as may be deemed necessary during the course of construction.
2. When the Bid for all or part of the work is to be submitted on a lump sum basis, a lump sum price shall be inserted in the appropriate place. The total amount to be paid the CONTRACTOR shall be the amount of the lump sum Bid as adjusted for additions or deletions resulting from approved changes in the work. The Bidder shall provide a detailed breakdown of any lump sum price requested by the STATE within ten (10) days after such request.

### **19.3 CONTRACT AWARD**

- A. The Purchase Bureau will notify all bidders in writing of the Director's Intent to Award a Contract. Bidders not receiving an award will have ten working days to protest the award decision pursuant to the rules of the Division of Purchase and Property, N.J.A.C.17:23-3.3 et seq. For contracts involving Federal Superfund monies, bidders who have initially protested the award to the STATE may have the right to file a protest appeal with USEPA provided in the Federal rules, 40 CFR 31.36(b)(12).
- B. The STATE reserves the right to reject any and all bids, or to award in whole or in part as deemed to be in the best interests of the STATE.

### **SECTION 20 - PRECONDITIONS FOR CONTRACT EXECUTION**

- 20.1 Subsequent to the issuance of a Notice of Intent to Award a contract, the Director will formally execute a contract for the Work under this IFB. As a precondition for final execution of any contract, the apparent Successful Bidder must submit the following documents to the Purchase Bureau. Unless the time frame is shortened by the Director for good cause or is extended by the Director at his discretion, these documents must be submitted within 15 days of receipt of the Notice of Intent to Award. Failure to timely submit the documents will result in rescission of the Notice of Intent to Award and rejection of the bid as non-responsive to the IFB.
  - A. Insurance Certificates and Attachment #16, Vol. 2 "Certification of Insurance Documentation" for all insurance or other liability guarantees required by this IFB for the Bidder and any on-site subcontractors in his Bid Proposal. Subcontractors that are not doing work at the site need only submit appropriate insurance certificates.
  - B. A "SUBCONTRACTOR Statement of Responsibility" (Attachment #15, Vol. 2) for each proposed subcontractor.
  - C. A Payment Bond and a Performance Bond as described in the Section 21 of these Instructions to Bidders.

- D. Where the Bidder is an out-of-state corporation, a Certificate of Authority from the Secretary of State to do business in New Jersey.
- E. Certification that Contractor is in compliance with MacBride Principles and Northern Ireland Act of 1989. (Attachment #7, Vol. 2)
- F. Acknowledgment of set-off for State tax. (Attachment #8, Vol. 2)
- G. Any other documentation of the bidder's proposal which is required by this IFB or otherwise required by the STATE, including the requirements of N.J.S.A. 19:44A-20.13-25 and the Source Disclosure requirements.

## **SECTION 21 - CONTRACT SECURITIES**

### **21.1 PERFORMANCE SECURITY**

The successful bidder will be required to submit and maintain a one hundred percent (100%) performance security for the total amount bid on the Bid Form. Performance security shall consist of either a certified or cashier's check drawn to the order of the Treasurer of the State of New Jersey, an irrevocable letter of credit payable to the Treasurer of the State of New Jersey in a form acceptable to the STATE from a reputable financial institution, or an individual or annual performance bond issued by an insurance or surety company authorized to do business in the State of New Jersey. This requirement may also be satisfied by submitting and maintaining any combination of the above security instruments whose face values and/or penal sums add up to the total amount bid on the Bid Form. The performance security shall conform in its terms and conditions to the requirements of N.J.S.A. 2A:44-143 et seq. Performance security shall be submitted within fifteen (15) days of the date of issuance of the Notice of Intent to Award. This deadline may be extended only by written direction of the STATE.

### **21.2 PAYMENT SECURITY**

The successful bidder will be required to submit a one hundred percent (100%) payment security for the total amount bid on the bid form. The payment security shall cover all subcontractors, materialmen et al, as required by law, for all work under the contract. This requirement may also be satisfied by submitting and maintaining any combination of the above security instruments whose face values and/or penal sums add up to the total amount bid on the firm form. The payment security shall consist of a certified or cashier's check drawn to the Treasurer of the State of New Jersey, an irrevocable letter of credit payable to the Treasurer of the State of New Jersey in a form acceptable to the STATE from a reputable financial institution, or an individual or annual payment bond issued by an insurance or savings company authorized to do business in the State of New Jersey. The payment security shall conform in its terms and conditions to the requirements in N.J.S.A. 2A:44-143, et seq. Payment security shall be submitted within fifteen (15) days of date of Notice of Intent of Award. This time limit may be extended only by written direction of the STATE.

### **21.3 ADDITIONAL REQUIREMENTS**

Reference is made to Article 5.1 of the General Conditions of this IFB for additional requirements regarding Performance and Payment Security.

## **SECTION 22 - EXECUTION OF AGREEMENT**

- 22.1 The Successful Bidder, or his/her authorized representative, will be required to execute a formal Agreement, a draft copy of which is Attachment #14, Vol. 2 hereto, within twenty (20) days from the date of the Notice of Intent to Award, but not before Contract Securities specified in Section 21 have been provided to STATE.
- 22.2 The STATE will identify, in the Notice of Intent to Award, the date and, if appropriate, the location at which the documents will be executed.
- 22.3 The date of execution of the Agreement will be the date on which all parties have signed. Unless a different date has been entered in the Form of Agreement and initialed by all parties, this date will also be the effective date of the Agreement.
- 22.4 The STATE assumes no responsibility and no liability and will not pay for any and all costs incurred by Bidders prior to execution of the Agreement.

## **SECTION 23 - NOTICE TO PROCEED**

- 23.1 Following execution of the Agreement, site work will commence upon Issuance of the Notice to Proceed as stated in Article 2 of the General Conditions.

## **SECTION 24 - SPECIAL REQUIREMENTS**

### **24.1 COVENANT OF NON-COLLUSION**

- A. Pursuant to N.J.S.A. 52:34-19 and consistent with Executive Order No. 189 (1988), the Bidder, by signing the Bid does hereby warrant and represent that this Contract has not been solicited, secured, or prepared directly or indirectly, in a manner contrary to the laws and regulations of the State of New Jersey and that said laws and regulations have not been violated and shall not be violated as they relate to the procurement or the performance of the Contract by any conduct as described below, including the paying or giving of any fee, commission, compensation, gift, gratuity or consideration of any kind, directly or indirectly, to any State employee, officer or official.
- B. In connection with this contract, the Bidder shall not pay, offer to pay, or agree to pay, either directly or indirectly, in connection with this contract, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and c., in the Department of the Treasury or the Department of Environmental Protection or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
- C. The Bidder shall report in writing to the Attorney General and the Executive Commission on Ethical Standards the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any other State vendor.

- D. The Bidder shall not influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- E. The Bidder shall not cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Bidder or any other person.

#### **24.2 COVENANT AGAINST CONTINGENCY FEES**

Pursuant to N.J.S.A. 52:34-15, the Bidder assures that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the CONTRACTOR for the purpose of securing business. For breach of violation of this assurance, the RECIPIENT shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the Contract Price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

#### **24.3 FUNDING**

The STATE's obligation to award a contract hereunder is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made. No legal liability on the part of the STATE for payment of any money shall arise unless and until funds are made available each year by the Legislature. The STATE reserves the right to reject Bids which exceed the approved funding limit.

## **GENERAL CONDITIONS**

### **TABLE OF ARTICLES**

- Article 1.** Definitions
- Article 2.** Preliminary Matters
- Article 3.** Contract Documents: Intent, Use and Reuse
- Article 4.** Availability of Lands; Physical Conditions; Reference Points
- Article 5.** Bonds, Insurance and Indemnification
- Article 6.** CONTRACTOR'S Responsibilities
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- Article 9.** Engineer's Status during Construction
- Article 10.** Contract Time
- Article 11.** Liquidated & Additional Special Damages
- Article 12.** Changes in the Work
- Article 13.** Changes in Contract Price
- Article 14.** Changes in Contract Time
- Article 15.** Warranty and Guarantee; Tests and Inspections; Correction, Removal or Acceptance of Defective Work
- Article 16.** Payments to CONTRACTOR and Completion
- Article 17.** Suspension of Work and Termination
- Article 18.** Remedies
- Article 19.** Statutory and Regulatory Requirements
- Article 20.** Additional Requirements
- Article 21.** Environmental Requirements
- Article 22.** Miscellaneous

### **ARTICLE 1 - DEFINITIONS**

1.1 Wherever used in these General Conditions or in the other Contract Sections or Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof, and are binding for all sections of the Contract.

#### A. Defined Terms:

1. Addenda: Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bid Documents.
2. Agreement: The written agreement entitled, "Purchasing Bureau Contract" between STATE and CONTRACTOR covering the Work to be performed; and other Contract Documents which are attached to the Agreement and made a part thereof.
3. Application for Payment: The form accepted by Construction Manager which is to be used by CONTRACTOR in requesting progress or final payment and which is to include such supporting documentation as is required by the Contract Documents.
4. Bid: The offer or proposal of the Bidder submitted on the prescribed IFB form setting forth the prices for the Work to be performed and including the information required on the mandatory IFB Attachments.

5. Bidder: Any person, firm, corporation or Joint Venture submitting a Bid for the purpose of obtaining a State Contract.
6. Bid Documents: Notice to bidders or advertisement, if any, Instructions to Bidders, other bidding information and requirements, bidding forms and attachments, contract and bond forms, the proposed Contract Documents, drawings and Addenda issued prior to receipt of Bids.
7. Bonds: Bid, performance, and labor and material payment bonds and other instruments of security.
8. Change Order: A written order to CONTRACTOR signed by STATE authorizing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time issued after the Effective Date of the Agreement.
9. Construction Manager (CM): The NJDEP representative with on-site responsibility for operations who ensures CONTRACTOR compliance with provisions of the Contract; prepares daily work reports; weekly work orders and work authorization; signs and certifies invoices (Form PBPV1). In many cases the Site Manager will perform these functions instead of the Construction Manager.
10. Contract Documents: As specified in the Agreement, these may include the Instructions to Bidders, the Agreement, Addenda (which pertain to the Contract Documents), Bidding Documents, CONTRACTOR'S Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award), when attached as an exhibit to the Agreement, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications, the Drawings as the same may be more specifically identified in the Agreement, together with all Modifications issued after execution of the Agreement, subject to the requirements of Article 3.1 of the General Conditions.
11. Contract Price: The moneys payable by STATE to CONTRACTOR under the Contract Documents as stated in the Agreement.
12. Contract Time: The number of days (computed as provided in Article 10) or the date stated in the Agreement for the completion of the Work.
13. CONTRACTOR: The person, firm, corporation, or Joint Venture with whom STATE has executed the Agreement. Whenever the Project is to be constructed under multiple direct contracts, the term "CONTRACTOR" shall mean the appropriate prime CONTRACTOR. Whenever a specific prime CONTRACTOR is referred to, terms such as "General CONTRACTOR", "Electrical CONTRACTOR", etc. will be used.
14. Cost Analysis: The review and evaluation of each element on contract cost to determine reasonableness, allocability and allowability.
15. Day: A calendar day of twenty-four hours measured from eight to the next midnight.
16. Defective: An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents or

does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER'S recommendation for final payment (unless responsibility for the protection thereof has been assumed by STATE at Substantial Completion in accordance with Article 16.7).

17. Director: Director, Division of Purchase and Property, Department of Treasury; by statutory authority, contracting officer for the State of New Jersey.
18. Drawings: The Drawings which show the character and scope of the Work to be performed and which have been prepared or approved by ENGINEER and are referred to in the Contract Documents.
19. Effective Date of the Agreement: The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed by all parties.
20. Emergency: Any situation or circumstance which presents a substantial risk of imminent damage to the public health, welfare, or the environment.
21. ENGINEER: The person, firm or corporation named as such in the Agreement who is responsible for assisting NJDEP in the management and oversight of this project.
22. Evaluation Committee: A team established by the Director to review and evaluate Bid Proposals and to recommend a contract award. The committee includes employees from the Departments of Environmental Protection and Treasury.
23. Evidence Gathering CONTRACTOR: A specialist engaged separately by the STATE to perform work concerning this site for legal purposes.
24. Existing Data: All documents on file with NJDEP and EPA Region II e.g. sampling and analysis reports, site inspection reports, preliminary site assessment reports (by private consultants), Remedial Action Master Plans, and any other file notes and memos pertaining to the subject of this Invitation to Bid other than those documents specifically determined as confidential by the STATE.
25. Field Order: A written order issued by the Construction Manager which orders minor changes in the Work in accordance with Article 8.8, paragraph C, but which does not involve a change in the Contract Price or the Contract Time.
26. Final Completion: The point in the work when the ENGINEER and Construction Manager have indicated, by approval of the CONTRACTOR'S application for final payment, that all work is considered complete and all defects corrected as outlined in the final inspection report.
27. Invoice: State billing form PBPV-1.
28. Issuing Office: Purchase Bureau, Division of Purchase and Property, Department of Treasury.

29. Joint Venture: Two or more corporations or entities that form a temporary union for the purpose of this contract.
30. Key Personnel: The CONTRACTOR'S Site Manager (individual with on-site responsibility for the CONTRACTOR) and the CONTRACTOR'S Manager for Health and Safety (individual with on-site responsibility for Health and Safety).
31. Deleted
32. Modifications: (a) A written amendment of the Contract Documents signed by both parties, (b) a Change Order, or (c) a Field Order. A Modification may only be issued after the Effective Date of the Agreement.
33. NJDEP: New Jersey Department of Environmental Protection.
34. Notice: The term "notice" or the requirement to notify, means a written communication delivered in person or sent by certified or registered mail (return receipt requested) addressed to the last known business address of the intended recipient.
35. Notice of Intent to Award: The written notice by STATE to the apparent Successful Bidder stating that upon compliance by the apparent Successful Bidder with the conditions precedent enumerated therein, within the time specified, but subject to the resolution of any bid protests, STATE will sign and deliver the Agreement.
36. Notice to Proceed: A written notice given by STATE to CONTRACTOR fixing the date on which CONTRACTOR is permitted to start the performance of on-site work according to the Contract Documents.
37. Price Analysis: The process of evaluating a prospective price without regard to the CONTRACTOR'S separate cost elements and proposed profit. Price analysis determines the reasonableness of the proposed Contract Price based on adequate price competition, previous experience with similar work, established catalog or market price, law, or regulation.
38. Prime CONTRACTOR: The prime contractor shall have the same meaning as the CONTRACTOR for purpose of this IFB.
39. Procurement Specialist: The Purchase Bureau representative responsible for coordinating the procurement and execution of this contract.
40. Project: The total construction of which the Work to be provided under the Contract Documents may be the whole or a part as indicated elsewhere in the Contract Documents.
41. Purchase Bureau Supervisor: The Purchase Bureau representative responsible for the overall management and operation of the statewide procurement program.
42. Resident Project Representative: The authorized representative of ENGINEER who is assigned to the site or any part thereof.

43. Samples: Physical examples furnished by the CONTRACTOR to illustrate materials, equipment or workmanship, and to establish standards by which some portions of the Work will be judged.
44. Scope of Work (SOW): Those tasks delineated in the Plans and Specifications of these Contract Documents.
45. Shop Drawings: All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distributor and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.
46. Site: The area where all physical Construction/Remedial /Cleanup Work takes place for the Work described in these Bid Documents (generally, the area described and the immediate vicinity thereof including support areas).
47. Site Access: Sufficient legal authority to enter a site in order to perform a project. Unless otherwise specified, all legal site access will be secured by NJDEP and USEPA. However, the CONTRACTOR will have responsibility for gaining physical access to the site.
48. Deleted
49. Specifications: Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
50. STATE: State of New Jersey, acting through the Director of the Division of Purchase and Property, or his designee acting under statutory authority as contracting officer for the State of New Jersey.
51. Subcontractor: An individual, firm or corporation other than the supplier of materials or equipment having a direct contract with CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the Work on this contract.
52. Substantial Completion: For the purposes of this contract, substantial completion is defined as the point at which the CONTRACTOR'S work has been completed, the construction item can function as intended, payable items have been approved and only minor, non-billable punchlist items remain to be completed.
53. Successful Bidder: The Bidder to whom STATE makes an award based on STATE'S evaluation of bids made in response to this IFB.
54. Supplementary Conditions: Modifications and additions to the General Conditions.
55. Total Bid Price: Total firm, fixed price for the tasks covered in the bid.

56. Unit Price: A price per specified unit of measure for individual line items bid on the cost Schedules which shall incorporate all associated costs.
57. USEPA: United States Environmental Protection Agency.
58. Using Agency: Instrumentality of the State government using services furnished by the CONTRACTOR. In this instance, the using agency is NJDEP.
59. Deleted
60. Work: The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor-and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents. -
61. Deleted
62. Deleted
63. Deleted

## **ARTICLE 2 - PRELIMINARY MATTERS**

### **2.1 PRECONDITIONS FOR EXECUTION OF A CONTRACT:**

- A. Prior to the CONTRACTOR executing the Agreement with the STATE, such documentation as is required to be furnished in accordance with Article 5 of the General Conditions and Sections 19, 20 and 21 of the Instructions to Bidders shall be delivered to the STATE.

### **2.2 COPIES OF DOCUMENTS:**

- A. STATE shall furnish CONTRACTOR with ten (10) copies of the General and Supplemental Conditions, Plans, and Specifications for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

### **2.3 COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED:**

- A. The Contract Time will commence on the Effective Date of the Agreement. However, the CONTRACTOR may not proceed with work at the project site until he has obtained a Notice to Proceed from the STATE. The Notice to Proceed will be issued after submission and approval or acceptance of the Initial Submittals required in the Technical Specifications, Vol. 3. All such documents shall be submitted in approvable form within 30 days of the Effective Date of the Agreement. Failure to comply with this deadline shall constitute grounds for immediate termination.
- B. The STATE will consider a delay in commencement of on-site work and an equal extension of contract time if winter weather conditions so warrant. CONTRACTOR must make written requests for the delay and agree that it would not be entitled to any damages if the delay were granted by the STATE.

## **2.4 STARTING THE PROJECT:**

- A. CONTRACTOR shall start to perform the Work on the Effective Date of the Agreement, unless otherwise specified therein, but no Work shall be done at the site prior to the date for on-site Work indicated in the Notice to Proceed.

## **2.5 BEFORE STARTING CONSTRUCTION:**

- A. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error or discrepancy which he may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby.

### **B. Project Schedule**

#### **1. General**

In order to monitor performance of the work, the CONTRACTOR shall develop a Project CPM Schedule which incorporates the CONTRACTOR'S and all Subcontractors' Work at all tiers. The CONTRACTOR is deemed to have included in its bid all costs in connection with supplying sufficient information to generate the Project CPM Schedule.

The purpose of the Project CPM Schedule will be to assure adequate planning and execution of the work by the CONTRACTOR and each SUBCONTRACTOR to assure coordination of the work of the various Subcontractors, to assist the STATE in monitoring the progress of the work, to evaluate proposed changes to the Contract and schedule and to assist the STATE in the evaluation of the CONTRACTOR'S progress payments.

#### **2. Submittal and Acceptance**

Within 30 days after the Effective Date of the Agreement, the CONTRACTOR shall submit a copy of the Project CPM Schedule to the STATE for review. Within fifteen (15) calendar days from the time of receipt of the Project CPM Schedule, the STATE will notify the CONTRACTOR of any objections to the Project CPM Schedule. If the STATE does not notify the CONTRACTOR within the time specified, the STATE agrees to accept the Project CPM Schedule as an accurate reflection of the CONTRACTOR'S work plan.

Upon establishment of an agreed-upon schedule, the CONTRACTOR shall sign the face of the Project CPM Schedule documents which shall indicate the CONTRACTOR'S acceptance and approval of the Project Schedule sequence of activities, logic, duration estimates and times for completion. Acceptance by the STATE of the CONTRACTOR'S approved Project Schedule will be a CONDITION PRECEDENT to the making of any partial payments under the Contract after the first month of the Contract.

The CONTRACTOR may submit a progress schedule showing a shorter time of completion than that required by Article 10 of the General Conditions of the contract. If such a schedule is approved by NJDEP, the CONTRACTOR may attempt to complete the work within the shortened timeframe, however, neither the STATE nor the CONTRACTOR will be liable for delay if the shortened schedule is not met. If the shortened schedule is incorporated into the Contract, by mutual agreement of the parties through an approved Change Order, then either the CONTRACTOR or the STATE, or both, may be liable for delay under Article 11 and Article 14.4 respectively if the shortened schedule is not met.

Acceptance by the state of the CONTRACTOR'S project schedule does not relieve the CONTRACTOR of its responsibility whatsoever for the accuracy and feasibility of the project schedule, or of the contractor's ability to meet the contract completion date, nor does such acceptance warrant, acknowledge or admit the reasonableness of the logic, duration or cost loading of the contractor's accepted project schedule.

### 3. Project Schedule Updating

Following acceptance of the Project CPM Schedule, the CONTRACTOR shall update the schedule on a monthly basis throughout the Contract time and until Substantial Completion for the purpose of recording and monitoring the progress of the work. The CONTRACTOR shall, at each update, review its actual progress made to date and shall record the status of the schedule activities (on a percent complete basis) indicating, where applicable, the actual start and/or completion dates of those activities.

The monthly updating of the Project CPM Schedule shall be an integral part and basic element of the estimate upon which the CONTRACTOR'S monthly progress payments shall be made. If, in the judgment of the STATE, the CONTRACTOR fails or refuses to provide information required to accomplish a complete Project CPM Schedule update or revisions as specified, that CONTRACTOR shall not be entitled to progress payments until the CONTRACTOR has furnished the aforesaid information to the satisfaction of the STATE.

Updating the Project Schedule to reflect actual progress made up to the date of a Project Schedule Update shall not be considered revisions to the Project Schedule.

- D. Within 30 days after the Effective Date of the Agreement, CONTRACTOR shall submit other additional plans as specified in Technical Specifications Section 1.3 to the STATE. These procedures must be accepted by the STATE before the Notice to Proceed with the site work will be issued.
- E. Within 3 days after the Effective Date of the Agreement, the CONTRACTOR shall submit to the Department of the Treasury Affirmative Action Office and the Procurement Specialist their Initial Project Manning Report in accordance with Article SC.3 of the General Conditions.

## **ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, USE AND REUSE**

### **3.1 INTENT OF DOCUMENTS:**

- A. The Contract Documents comprise the entire agreement between STATE and CONTRACTOR concerning the Work. They may be altered only by a Modification authorized by the STATE.
- B. The sequence of precedence pertaining to interpretation of the Contract Documents is as follows:
  - 1. The Agreement
  - 2. The Bid Form submitted by the CONTRACTOR with his bid.
  - 3. The Specifications for this Contract contained in the IFB.
  - 4. The Drawings issued by the STATE with the IFB.
  - 5. The Supplementary Conditions contained in the IFB.
  - 6. The General Conditions contained in the IFB.
  - 7. The Instructions to Bidders in the IFB.
  - 8. The Attachments and other Bid Documents issued with the IFB.
  - 9. The CONTRACTOR'S Bid including all Attachments.
  - 10. Any other documents attached hereto pursuant to Article 2.1 of the Agreement.

The CONTRACTOR is advised that unless the formal Agreement expressly accepts any deviation from, exceptions to or alterations of the Bid Document provisions, any deviations, exceptions or alterations contained in the CONTRACTOR'S bid shall not be considered part of the Contract and the Bid Document provisions shall be deemed controlling.

- C. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If, during the performance of the Work, the CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, he shall report it to ENGINEER in writing at once and before proceeding with the Work affected thereby.

The CONTRACTOR shall not apply the precedence specified above in Article 3.1.B on his own, but shall still be required to report such conflicts, ambiguities, errors or discrepancies to the Engineer who shall interpret the intent of the contract documents pursuant to Article 3.1.B and the intent of the design.

- D. It is intended that the Specifications and Drawings describe a complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the Specifications or Drawings as being required shall be supplied whether or not it is specifically called for, at no additional cost to STATE.
- E. The Specifications may describe or the Drawings may show the general arrangement of an item of material or equipment when the actual details of said arrangement as proposed and supplied by that Contract vary with the source of the material or equipment. In such cases, CONTRACTOR shall bear all direct and indirect costs to accommodate the item of material or equipment furnished, whether the item of material or equipment is furnished by a manufacturer named in the Specifications or is furnished as an approved substitute or "or equal" item of material or equipment.
- F. When words in the Specifications or on the Drawings, which have a commonly accepted or technical or trade meaning, are used to describe Work, materials or equipment, such words shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the code of any

governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual or code in effect one week prior to the time of opening of Bids, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall change the duties and responsibilities of STATE, Construction Manager, CONTRACTOR or ENGINEER, or any of their agents or employees from those set forth in the Contract Documents. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided for in Article 9.3.

### **3.2 USE OF DOCUMENTS**

- A. The information required to be submitted with the Bid is intended to be used in evaluating the CONTRACTOR'S understanding of the project and responsiveness to the requirements of the project. Deviations from the Bid Documents proposed in the CONTRACTOR'S Bid submissions shall not relieve the CONTRACTOR from responsibility for compliance with the Drawings and the Specifications nor will they be deemed a change in the requirements or terms of the Contract Documents. The Bid Documents supersede any Bid submission by the CONTRACTOR.
  
- B. The Contract Documents will be governed by the laws of the State of New Jersey.

### **3.3 RE-USE OF DOCUMENTS:**

Neither CONTRACTOR nor any subcontractor, manufacturer, fabricator, supplier or distributor shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by the STATE or ENGINEER or bearing the seal of ENGINEER; and they shall not re-use any of them on extensions of the Project or any other project without written consent of STATE and ENGINEER and specific written verification or adaptation by ENGINEER.

## **ARTICLE 4 - AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS**

### **4.1 AVAILABILITY OF LANDS:**

- A. STATE shall furnish, as indicated in the Contract Documents the lands upon which the Work is to be performed, rights-of-way for access thereto, and such other lands which are designated in the drawings for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by STATE, unless otherwise provided in the Contract Documents. If CONTRACTOR believes that any delay in STATE'S furnishing these lands or easements entitles CONTRACTOR to an extension of the Contract Time, CONTRACTOR may make a claim therefore as provided in Articles 12, 13 and 14 of these General Conditions.
  
- B. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. CONTRACTOR shall so confine his equipment, the storage of materials and the operation of his workers to the limits of the work and areas as shown on the drawings or approved by the ENGINEER and Construction Manager.

## **4.2 PHYSICAL CONDITIONS, INVESTIGATIONS AND REPORTS:**

Reference is made to the Supplementary Conditions for identification of those reports of investigations and tests of subsurface and latent physical conditions at the site or those reports that otherwise may affect cost, progress or performance of the Work which have been utilized by ENGINEER in preparation of the Drawings and Specifications. Such reports are not guaranteed as to accuracy or completeness. The STATE assumes no liability for death or bodily injury, or property damage arising from the use of these documents. CONTRACTOR is obligated to examine the site, make his own determination of site conditions and, in accordance with Article 12.2 of these General Conditions, to promptly notify STATE of conditions differing materially from those cited in the CONTRACT documents.

## **4.3 REFERENCE POINTS:**

STATE shall provide surveyed reference points which in STATE'S judgment are necessary to enable CONTRACTOR to lay out and proceed with the Work. CONTRACTOR shall be responsible for laying out the Work (unless otherwise specified in the General Requirements), and shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of STATE. CONTRACTOR shall report to Construction Manager whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for and bear the cost of replacement or relocation-of such reference points by professionally qualified personnel.

## **ARTICLE 5 - BONDS, INSURANCE AND INDEMNIFICATION**

### **5.1 PERFORMANCE, PAYMENT AND OTHER BONDS:**

- A. CONTRACTOR shall furnish performance and payment bonds or other securities in accordance with Section 21 of the Instructions to Bidders, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all CONTRACTOR'S obligations under the Contract Documents. These Bonds shall conform to the requirements of N.J.S.A. 2A:44-143 et seq. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.
- B. All Bonds shall substantially be in the forms prescribed by N.J.S.A. 2A:44-143 et seq. and be executed by such sureties as:
1. Are licensed to conduct business in the State of New Jersey, or
  2. Are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U. S. Treasury Department.

If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where the project is located or it ceases to meet the requirements of Article 5.1.A, CONTRACTOR shall within five days

thereafter substitute another Bond and surety, both of which be offered for STATE'S approval.

- C. In lieu of a bond, the CONTRACTOR may provide a certified or cashiers check drawn to the Treasurer of the State of New Jersey or an irrevocable letter of credit payable to the Treasurer of the State of New Jersey in a form acceptable to the STATE from a reputable financial institution.
- D. The CONTRACTOR may also satisfy the Performance and Payment security requirements by submitting and maintaining any combination of the above security instruments whose face values and/or penal sums add up to the Contract Price. If the CONTRACTOR submits a combination of performance and/or payment securities the appropriate clauses must be contained in the instruments to make clear and binding which form of security takes precedence in the event the CONTRACTOR defaults on his obligations under the contract.
- E. A check or letter of credit submitted in lieu of a Payment Bond shall remain effective for a period of one-year following final completion of the Contract work. By its terms the letter of credit may not be canceled and may not lapse without 30 days prior written notice to the STATE. If at any time the CONTRACTOR procures a payment bond which satisfies the requirements of this Article the STATE will accept the bond in place of the letter of credit.
- F. A check or letter of credit submitted in lieu of a Performance Bond will only be released upon submission by the CONTRACTOR of a performance bond which satisfies the requirements of this Article. By its terms the letter of credit may not be canceled and may not lapse without 30 days prior written notice to the STATE.
- G. Subcontractors at any tier employed by the CONTRACTOR to perform work under this contract are not required by the STATE to provide payment or performance security on behalf of the STATE. The STATE looks solely to the CONTRACTOR to provide performance and payment security on the project.

## **5.2 DELETED**

## **5.3 INDEMNIFICATION BY THE CONTRACTOR**

- A. The CONTRACTOR shall defend, indemnify, protect and save harmless the STATE, its agents, servants and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind of nature arising out of or claimed to arise out of any negligent act, error, or omission of the CONTRACTOR, its agents, servants, employees, and subcontractors in the performance of this contract. The CONTRACTOR shall, at its own expense, appear, defend and pay all charges for attorneys and all costs and other expenses arising from such suit or claim or incurred in connection therewith. If any judgment shall be rendered against the STATE for which indemnification is provided under this paragraph, the CONTRACTOR shall, at his own expense, satisfy and discharge the same.
- B. The STATE 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 the suit is brought against the STATE or any of its agents, servants, and employees, the STATE shall expeditiously forward or have forwarded to the CONTRACTOR every

demand, complaint, notice, summons, pleading or other process received by the STATE or its representatives.

- C. It is expressly agreed and understood that any approval by the STATE of the services performed and/or reports, plans or specifications provided by the CONTRACTOR shall not operate to limit the obligations of the CONTRACTOR assumed in this section or in the other provisions of this contract.

#### **5.4 CONTRACTOR'S INSURANCE AND OTHER LIABILITY GUARANTEES**

The CONTRACTOR shall comply with the following insurance provisions which apply individually to both the CONTRACTOR and any subcontractors hereunder.

##### **5.4.1 Limits Of Liability Coverage**

###### **A. Comprehensive General Liability Insurance (CGLI)**

The CONTRACTOR and any subcontractor performing work at the site are required to procure and maintain at his own expense comprehensive general liability coverage for work under this contract of at least one (1) million dollars per occurrence and in the aggregate. This coverage may include an exclusion for pollution claims. This requirement must be satisfied by comprehensive general liability insurance with coverage as broad as the standard coverage form currently in use in the State of New Jersey which shall not be circumscribed by any endorsement limiting the breadth of coverage, other than an exclusion for pollution claims. The policy shall include operations and premises liability, CONTRACTOR'S protective liability, personal injury liability, an endorsement (broad form) for contractual liability, and an endorsement for broad form property damage coverage. The State of New Jersey shall be named as an additional insured. The policy shall be specifically endorsed to eliminate any exclusions for explosion, collapse and underground hazards (x.c.u). Any insurance policy which operates on a "claims-made" basis shall be maintained for the term of this Contract and include an extended discovery period for two years thereafter.

###### **B. Comprehensive Automobile Liability Insurance**

The CONTRACTOR and any subcontractor performing work at the site is required to obtain Comprehensive Automobile Liability insurance-covering owned, non-owned, and hired vehicles with minimum limits of one (1) million dollars per occurrence for bodily injury and property damage liability combined.

###### **C. Workers Compensation and Employers Liability Insurance**

The CONTRACTOR and any subcontractor are required to obtain Workers Compensation Insurance applicable to the laws of the State of New Jersey and any other state where the CONTRACTOR will be active under this contract, and Employers Liability Insurance with a limit of not less than: \$100,000 per occurrence for bodily injury liability; \$100,000 occupational disease each employee; and \$500,000 aggregate occupational disease. The policy shall be endorsed to include coverage under the United States Longshoremen's and Harbor Worker's Compensation Act and any other federal Workers Compensation Law to the extent that it applies to the CONTRACTOR'S operations.

#### D. RCRA and License Liability Guarantees

The CONTRACTOR or any subcontractor performing off-site transportation or disposal of hazardous materials must comply with the liability requirements of RCRA and/or other applicable federal or state license or permits required for the work.

#### 5.4.2 Certificates of Insurance

- A. Insurance shall be procured from insurance companies admitted or approved to do business in the State of New Jersey. Insurance Certificates shall be from licensed insurance brokers or agents. Insurance certificates submitted for this contract shall specify:
1. the names of the insurance companies; 2. the effective dates of the policies; 3. the levels-of coverage on a per occurrence and aggregate basis;
- B. In addition to the insurance certificates noted above, Attachment #16, Vol. 2, "Certification of Insurance Documentation" must be completed and signed by a licensed insurance broker or agent and submitted by the contractor to further document his and his on-site subcontractors' compliance with the insurance provisions of this contract.
- C. The certificates shall provide for thirty (30) days notice, in writing, to the STATE prior to any -cancellation, expiration, or non-renewal during the term the insurance is required to be maintained in accordance with this contract. The CONTRACTOR shall further be required to provide the STATE with valid certificates of renewal of the insurance upon the expiration of the policies. The CONTRACTOR shall also, upon request, provide the STATE with copies of each policy required under the contract certified by the agent or underwriter to be true copies of the policies provided to the CONTRACTOR.
- D. In the event that the CONTRACTOR provides evidence of insurance in the form of certificates of insurance, valid for a period of time less than the period during which the CONTRACTOR is required by terms of this contract to maintain insurance, said certificates shall be acceptable, but the CONTRACTOR shall be obligated to renew its insurance policies as necessary and to provide new certificates of insurance no less than 30 days prior to the expiration of the old policies.
- E. All certificates and copies of insurance policies shall be forwarded to:

Leonard J. Romino, Assistant Director  
Purchase Bureau, Hazardous Waste Procurement Unit  
Division of Purchase and Property  
Department of Treasury  
PO Box 230, 33 West State Street  
Trenton, New Jersey 08625

#### 5.4.3 Maintenance of Insurance

In the event the CONTRACTOR fails or refuses to renew any of its insurance policies to the extent required by this contract, or any policy is-canceled, terminated, or modified so that the insurance does not meet the requirements of this contract, and the CONTRACTOR does not

otherwise satisfy the liability guarantees required by this contract, the STATE may refuse to make payment of any further monies due under this contract or refuse to make payments of monies due or coming due under other Agreements between the CONTRACTOR and the STATE. The STATE, in its sole discretion, may use monies retained under this paragraph to renew the CONTRACTOR'S insurance for the periods and amounts referred to above. During any period when any required insurance is not in effect and the CONTRACTOR does not otherwise satisfy the liability guarantees required by this Contract, the STATE may at its option, either suspend work under this Contract, or proceed to default the CONTRACTOR and thereby terminate this Contract.

#### 5.4.4 Disclaimer

The CONTRACTOR expressly understands and agrees that any insurance protection or other liability guarantees required by this contract shall in no way limit the CONTRACTOR'S obligations assumed in the contract, and shall not be construed to relieve the CONTRACTOR from liability in excess of such coverage or guarantees, nor shall it preclude the STATE from taking such other actions as are available to it under any provision of this Contract or otherwise in law.

### **ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES**

#### 6.1 Supervision and Superintendent

- A. CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.

- B. CONTRACTOR shall keep on the Site at all times during working hours a competent resident superintendent, who shall not be replaced without written notice to STATE and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR'S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR. To enable a reliable degree of communication to be maintained between the STATE and CONTRACTOR through the resident superintendent, the superintendent must be able to speak, read and understand the English language and must be able to communicate effectively with all his subordinates at the site. The superintendent shall notify the STATE immediately of any visitors to the site.

The STATE shall have the right, upon notice, to demand that the resident superintendent or other key personnel retained by the CONTRACTOR on this project be replaced with or without cause. In the event of such demand, CONTRACTOR shall, within 10 days after notification and without cost to STATE replace such individual(s) with an individual(s) satisfactory to the STATE, in STATE'S sole discretion..

#### 6.2 Labor, Materials and Equipment

- A. The CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Supplementary conditions, all Work at the site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without STATE'S written consent given after prior written notice to Construction Manager.
- B. The CONTRACTOR shall furnish all materials, equipment, labor transportation, construction equipment and machinery, tools, appliances and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work. Except as otherwise specified elsewhere, CONTRACTOR shall furnish all fuel, power, light, heat, telephone, water and sanitary facilities necessary for the execution, testing, start-up and completion of the Work.
- C. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by ENGINEER or otherwise required by these contract documents, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) and any other documentation or samples required by these contract documents as to the kind and quality of materials and equipment.
- D. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to impose on ENGINEER or STATE responsibility for the means, methods, techniques, sequences or procedures of construction or for safety precautions incident thereto.
- E. The CONTRACTOR shall condition any contract for supplies, services, materials or equipment with a disclaimer of any responsibility by the STATE to satisfy that Contract. The CONTRACTOR shall be solely responsible for any payment to suppliers, materialmen, and shall hold the STATE harmless therefor.

### 6.3 "Or Equal" Materials and Equipment Value Engineering and Substitutions

#### 6.3.1 "Or Equal" Materials and Equipment

- A. Except where the specifications explicitly prohibit an alternative, the CONTRACTOR may offer an "or equal" alternative to any material or equipment which is indicated or specified by patent, proprietary name, name of manufacturer, or catalog number. Such specifications shall be deemed to establish a standard of quality and a description of the material or equipment desired, and shall not be construed as eliminating from competition the same material or similar equipment of equal quality from other manufacturers, where such alternatives are suitable. If the words "or equal" are not explicitly appended to the specification, any such specification shall, nonetheless be deemed to be followed by the words "or equal," and the CONTRACTOR may propose an "or equal" alternative to the specified material or equipment.

- B. In order to propose an "or equal" alternative, the CONTRACTOR must make written application to the Engineer. As part of the application, the CONTRACTOR must certify and demonstrate that:
1. The proposed "or equal" item will completely perform the required functions and achieve the results called for in the design specifications of the contract, is of equal substance and quality to the specified item, and is suited to the same use as the specified item. Toward this end, the CONTRACTOR must explain any differences between the proposed "or equal" item and the specified item, and must include comparative data demonstrating that the proposed "or equal" item is essentially equal in every respect, including function and quality, to the specified item.
  2. The evaluation and acceptance of the "or equal" item will not interfere with the CONTRACTOR'S timely achievement of Substantial Completion of the contract.
  3. The "or equal" item will conform with the other design specifications, and will not entail any significant design changes.
  4. The "or equal" item will not entail any additional cost to the STATE.
  5. The "or equal" item is warranted for the particular purpose for which it is proposed.
- C. Requests for "or equal" alternatives will be conditioned by the following:
1. Requests will be accepted only from the CONTRACTOR, and not from any subcontractor or supplier.
  2. The Engineer will be allowed 15 days from the date of receipt of the CONTRACTOR'S request for evaluation of the proposed "or equal" item. Prior to beginning, or during the course of, his evaluation, the Engineer may require the CONTRACTOR to furnish, at the CONTRACTOR'S expense, additional data about the proposed "or equal" item. When this occurs, the 15-day period will start from the date of receipt of the additional data
  3. The CONTRACTOR shall not use, order, or take delivery of any "or equal" item until and unless the item is approved in writing by the Engineer.
  4. The CONTRACTOR will bear the responsibility for the adequacy and performance of any "or equal" item.
  5. The ENGINEER will be the sole judge of the acceptability of any "or equal" item, and the Engineer's decision will be final. The CONTRACTOR shall have no cause of action, or claim for money or damages, against the STATE as a result of ENGINEER'S decision to reject any "or equal" items. If the ENGINEER rejects an "or equal" item, the CONTRACTOR shall proceed on schedule with the work using the specified item.

### 6.3.2 Value Engineering

- A. A value engineering proposal is a proposed change order submitted by the CONTRACTOR, for changing the plans, specifications or other requirements of the Contract, which will save

money for the STATE, and for which the CONTRACTOR will receive a share of the savings in the form of a bonus. In order to be considered a value engineering proposal, a proposed change order must meet the following conditions:

1. The proposed change must result in a reduction to the contract of at least \$50,000, not counting any value engineering bonus paid to the CONTRACTOR, and must not produce any significant increase in the projected operations, maintenance and other life-cycle costs of the project.
  2. The proposed change must not alter any essential characteristics of either the items being changed or the project, including service life, reliability, ease of maintenance, and safety.
  3. The proposed change must not extend the dates for Substantial and Final Completion of the contract.
  4. The proposed change may not be merely an "or equal" alternative, and may not consist merely of replacing materials or equipment, which are specified by a patent, proprietary name, manufacturer's name, catalog number, or similar identification, with "or equal" alternatives. Any portion of a proposal which constitutes an "or equal" alternative will not be eligible for a value engineering bonus.
- B. The CONTRACTOR must submit any value engineering proposal in writing to the ENGINEER. Any value engineering proposal must be identified as such by the CONTRACTOR, and any proposal which is not identified as such when it is submitted to the STATE or the ENGINEER will be considered a proposed substitution and not a value engineering proposal.
- C. In submitting a value engineering proposal, the CONTRACTOR must allow enough time for the ENGINEER and the STATE to evaluate the proposal, and for the CONTRACTOR to implement the proposal, without any interference with the project schedules.
- D. The CONTRACTOR must submit the following minimum information with each value engineering proposal:
1. A description of the difference between the existing contract requirements and the proposed change, with the comparative advantages and disadvantages of each.
  2. An itemized list of the contract requirements which would be changed, including any work items or quantities of work which would be modified, with an explanation and proposed language for making each change.
  3. An estimate of the costs to the STATE of proceeding with the existing contract requirements, including a detailed cost estimate for the existing requirements which would be deleted from the contract and an estimate of their operation, maintenance, and other life-cycle costs, and a detailed estimate of the cost of the proposed change, including operations, maintenance and other life-cycle costs. For purposes of estimating operation, maintenance and other life-cycle costs, the CONTRACTOR shall calculate the present worth of any annual costs based on assumptions of a life of 20 years for equipment, a life of 50 years for structures, site work and other construction, and an

interest rate of 7% per year. Finally, the CONTRACTOR should estimate the cost savings which will result from the value engineering proposal.

4. A deadline for issuing any change order adopting the proposed change, to obtain the maximum cost reduction during the remainder of the contract, noting any effect on the project schedule;
5. The date of any previous or concurrent submissions of the same or similar proposals, and any previous actions by the ENGINEER or STATE.

E. The submission of value engineering proposals is conditioned by the following:

1. The STATE is not required to consider or accept any value engineering proposal submitted by the CONTRACTOR, and the STATE will not be liable for failing to accept or act upon a proposal, nor for any delays to the work resulting ostensibly from the review of the proposal. The decisions to consider and to accept a proposal are solely within the complete discretion of the STATE, and the CONTRACTOR will have no right to any claims or damages based upon the STATE'S failure to act upon or accept a proposal.
2. Any technical or cost evaluation of the proposal will be done by the ENGINEER. The decisions of the ENGINEER, as to the eligibility of a proposal for consideration as a value engineering proposal, the technical acceptability of the proposal, the respective costs of the existing contract requirements and the proposed change, and the estimated savings from the proposed change, are final. The CONTRACTOR shall have no right to any claims or damages based on the ENGINEER'S decisions.
3. The CONTRACTOR will continue to perform the work in accordance with the requirements of the contract until the STATE issues a change order incorporating any or all of the value engineering proposal.
4. The STATE is not liable for any costs incurred by the CONTRACTOR in preparing a value engineering proposal, whether the STATE accepts, rejects or fails to consider the proposal.
5. The CONTRACTOR shall not delay the work on account of the preparation, submission or review of a value engineering proposal.

F. The acceptance of a value engineering proposal will be conditioned by the following:

1. A value engineering proposal can be authorized only through a written change order approved by the STATE. The change order will incorporate the necessary changes in the plans and specifications to permit the value engineering proposal, or any part of the proposal which has been accepted, to be implemented. If the approval of the STATE or ENGINEER is conditional, the change order will note the conditions.
2. Acceptance of a value engineering proposal, and performance of the work, will not extend the contract completion time.

3. In accepting a value engineering proposal, the STATE will thereby obtain the right to use the proposal on other contracts, without any obligation or compensation to the CONTRACTOR.

G. Payment for value engineering proposals will be conditioned on the following:

1. For value engineering proposals that are approved by the STATE, the CONTRACTOR shall be paid a bonus of one-half of the cost difference between the existing contract requirements and the proposed change, taking into account any projected increase in operations, maintenance and other life-cycle costs, as these have been determined by the ENGINEER. For purposes of calculating the bonus, the STATE will deduct the present worth of any projected increase in annual operations, maintenance and other life-cycle costs from the amount by which the proposed change reduces the contract. The CONTRACTOR'S bonus will be one-half of the remainder.
2. The ENGINEER will evaluate the CONTRACTOR'S estimated costs for the existing contract requirements and the proposed change, and will arrive at his own estimates. In determining the costs of the existing contract requirements and the proposed change, and in estimating the savings from the proposed change, the ENGINEER may disregard the contract's bid prices if, in the judgment of the ENGINEER, such prices do not represent a fair measure of the value of either the work to be performed by the CONTRACTOR, or to be deleted from the Contract. The decisions of the ENGINEER, with regard to the valuation of the existing requirements, the proposed change, and the estimated savings from the value engineering proposal, shall be final.
3. For purposes of deleting the existing requirements from the contract, the STATE will deduct either the original bid price, if there is an applicable bid price, or the ENGINEER'S estimate for the work, if there is no applicable bid price and the ENGINEER and the CONTRACTOR cannot agree on a price for the work. For purposes of adding the proposed change to the contract, the STATE will add either an amount agreed upon by the ENGINEER and the CONTRACTOR, or, if no agreement is reached, a directive for the new work to be done under the cost-of-work provisions of the contract.
4. For purposes of determining the net cost difference between the existing requirements and the proposed change, and the value engineering bonus which will be paid to the CONTRACTOR, the ENGINEER will use in calculating the cost of the existing requirements the lesser of his own estimate and the original bid price, and will use as the value of the new work either the amount added to the contract or, where no amount was agreed upon, the cost of the new work as determined under the cost-of-work provisions of the contract. In calculating both the cost of the existing requirements and the cost of the proposed change, the ENGINEER will estimate and include operations, maintenance and other life-cycle costs based on a life of 20 years for equipment, a life of 50 years for structures, site work and other construction, and an interest rate of 7% per year.
5. The CONTRACTOR'S engineering costs, development costs, review costs and any other costs incurred in connection with the submission of a value engineering proposal will not be compensable either separately or as part of any payment under the contract.

6. The CONTRACTOR will be paid the value engineering bonus upon satisfactory completion of the work ordered under the value engineering change order.

### 6.3.3 Substitutions

- A. Any proposal from the CONTRACTOR to change the contract's design specifications, which does not qualify as either an "or equal" alternative or a value engineering proposal, will be considered a proposed substitution. Any proposed substitution must be submitted in writing to the ENGINEER, with the same minimum information specified for value engineering proposals in 6.3.2.D, and -are-subject to the same conditions for submission and acceptance specified for value engineering proposals in 6.3.2.E and 6.3.2.F. The CONTRACTOR will not be paid any bonus if the STATE accepts a proposed substitution. The CONTRACTOR shall, however, bear the costs incurred by the ENGINEER and the STATE in reviewing any proposed substitution.

### 6.4 CONCERNING SUBCONTRACTORS:

- A. CONTRACTOR shall not employ any subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom STATE or ENGINEER may have reasonable objection. Acceptance of any SUBCONTRACTOR, other person or organization by STATE or ENGINEER shall not constitute a waiver of any right of STATE or ENGINEER to reject defective Work. CONTRACTOR shall submit a "Hazardous Waste CONTRACTOR Disclosure Form" and "Consent to Investigation Form" (Attachment #9, Vol. 2 hereto) and "Explanation of Past Problems" (Attachment #11, Vol. 2 hereto) for each subcontractor. The CONTRACTOR shall also submit a "SUBCONTRACTOR Statement of Responsibility" (Attachment #15, Vol. 2 hereto) for each subcontractor.

If during the term of the contract, the prime contractor cannot provide the personnel or subcontractor(s) as proposed and requests a substitution, that substitution must be equal or better in terms of qualification for services at no additional cost to the STATE. The prime contractor will provide identical information as required for the original personnel or subcontractor and justification which will be forwarded to the Construction Manager and Director of Publicly Funded Site Remediation for approval of the proposed substitution of the personnel or subcontractor prior to any substitution. If the replacement subcontractor is a DBE, a copy of the applicable certification should be submitted with the required submissions. If not, the CONTRACTOR must certify that he has made good faith efforts toward engaging a DBE as specified in SC3.1.

- B. CONTRACTOR shall be fully responsible for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that CONTRACTOR is responsible for the acts and omissions of persons directly employed by CONTRACTOR. Nothing in the Contract Documents shall create any contractual relationship between STATE or ENGINEER and any subcontractor or other person or organization having a direct contract with CONTRACTOR, nor shall it create any obligation on the part of STATE or ENGINEER to pay or to see to the payment of any moneys due any subcontractor or other person or organization, except as may otherwise be required by law. STATE or ENGINEER may furnish to any subcontractor or other person

or organization, to the extent practicable, evidence of amounts paid to CONTRACTOR on account of specific Work done.

- C. The Divisions, Articles and Paragraphs/Sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among subcontractors or delineating the Work to be performed by any specific trade.
- D. All Work performed for CONTRACTOR by a subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the subcontractor which specifically binds the subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of STATE and the ENGINEER. Such Contract shall specifically hold the STATE and ENGINEER harmless for any payments due the subcontractor and shall specify that the subcontractor is acquainted with the Contract Documents and agrees thereto. The CONTRACTOR shall provide the STATE with copies of all such subcontractor agreements.
- E. CONTRACTOR shall pay each subcontractor a just share of any insurance moneys received by CONTRACTOR on account of losses under policies carried pursuant to Article 5.

## **6.5 OWNERSHIP OF MATERIAL**

Ownership of all data, samples, material, evidence and documentation gathered, originated or prepared for the STATE by the CONTRACTOR or his subcontractors during the performance of his contractual responsibilities pursuant to this Contract shall belong exclusively to the STATE. This requirement is subject to the rights of the USEPA under any cooperative agreement. Any such data, samples, material, evidence and documentation shall be delivered to the STATE in a timely manner upon request by the STATE at the location specified in that request.

## **6.6 PATENT FEES AND ROYALTIES:**

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of STATE or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by STATE in the Contract Documents. CONTRACTOR shall indemnify and hold harmless STATE and ENGINEER and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

## **6.7 LICENSES, PERMITS AND CERTIFICATES:**

- A. Unless otherwise indicated in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction and other permits and licenses and shall maintain any other

permits necessary for this Contract. STATE shall assist CONTRACTOR, when appropriate in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bid. CONTRACTOR shall also pay all charges of utility service companies for connections to the Work, and STATE shall pay all charges of such companies for capital costs related thereto. Site specific documents (e.g., discharge permits) shall be submitted prior to the issuance of a Notice to Proceed.

- B. The CONTRACTOR will promptly notify the STATE prior to and after award, of the receipt of any communication from the Assistant Administrator for Enforcement, USEPA or his or her designee, indicating that any firm or facility which he or his subcontractors propose to use for the performance of the Contract is under consideration to be listed on the USEPA List of Violating Facilities or has been notified of a permit violation. The result of this disclosure may affect the CONTRACTOR'S right to use the firm or facilities.
- C. The CONTRACTOR shall notify the STATE of any change in the condition or status of any license or permit required hereunder and of any disciplinary proceedings regarding such licenses and permits.

#### **6.8 LAWS AND REGULATIONS:**

In performing his responsibilities under this contract, the CONTRACTOR must comply with local, STATE and Federal laws, rules and regulations applicable to this contract and to the work to be done hereunder. Failure to comply will constitute a material breach of this contract and grounds for termination.

#### **6.9 TAXES:**

- A. CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by him in accordance with the law of the jurisdiction where the work takes place.
- B. The STATE is exempt from Federal Excise Taxes and will not reimburse CONTRACTOR for taxes for which STATE is exempt. STATE'S Federal Excise Tax Number is 22-75-0050K.

#### **6.10 USE OF PREMISES:**

- A. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workmen to areas permitted by law, ordinances, permits, or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.
- B. During progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by STATE. CONTRACTOR shall restore to their original condition those portions of the site not designated for alteration by the Contract Documents.

- C. CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.
- D. CONTRACTOR shall cooperate with and not interfere with any other contractor engaged by the STATE to perform services at the site.

**6.11 RECORD DOCUMENTS:**

CONTRACTOR shall keep one record copy of all Specifications, Drawings, Addenda, Modifications, Shop Drawings and Samples at the site in good order and annotated to show all changes made during the construction process. These shall be available to ENGINEER and Construction Manager for examination and shall be delivered to STATE upon completion of the Work. Submittal of these record drawings is a required pre-requisite to final application for payment, final payment and acceptance of the project.

**6.12 SAFETY AND PROTECTION:**

- A. CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work as well as conforming to all requirements of the HASP. The CONTRACTOR and any subcontractors performing work under this Contract shall provide and utilize appropriate protective clothing and equipment which meet all applicable OSBA and other public safety standards and which otherwise meet the highest standards for safety in the industry. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
  - 1. All employees on the work site and other persons who may be affected thereby including subcontractors and their employees;
  - 2. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site; and
  - 3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- B. CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. CONTRACTOR shall cooperate with the utility owner in the protection, removal, relocation or replacement of such utility property. All damage, injury or loss to any property referred to in Paragraph A.2 or A.3 of this Article 6.12 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of STATE or ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable,

directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR). CONTRACTOR'S duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to STATE and CONTRACTOR in accordance with Article 16.9 that the Work is acceptable.

- C. Pursuant to the requirements of these Contract Documents, STATE will require as condition of any of the CONTRACTOR'S and subcontractor's personnel entering the site, proof of compliance with medical surveillance program furnished as part of the Site Specific Health and Safety Plan (HASP).

### **6.13 EMERGENCIES:**

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from ENGINEER or STATE, is obligated to act to prevent threatened damage, injury or loss in accordance with the emergency procedures outlined in the HASP. CONTRACTOR shall give STATE and ENGINEER prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby.

### **6.14 SHOP DRAWINGS AND SAMPLES:**

- A. After checking and verifying all field measurements, CONTRACTOR shall submit to ENGINEER for review and approval, in accordance with the procedures and requirements specified in Section 1.2.6 of the Technical Specifications, copies of all Shop Drawings, which shall have been checked by and stamped with the approval of CONTRACTOR and identified as ENGINEER may require. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and the like to enable ENGINEER to review the information as required,
- B. CONTRACTOR shall also submit to ENGINEER for review and approval with such promptness as to cause no delay in Work, all Samples required by the Contract Documents. All Samples will have been checked by and stamped with the approval of CONTRACTOR, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended.
- C. At the time of each submission, CONTRACTOR shall in writing call ENGINEER'S attention to all deviations that the Shop Drawings or Samples may have from the requirements of the Contract Documents.
- D. The ENGINEER will review and approve or take other appropriate action upon the CONTRACTOR'S submittals. The CONTRACTOR shall submit submittals in such sequence as to cause no delay in the work or in the activities of the STATE or of separate contractors. The CONTRACTOR shall identify and submit separately from other submittals, all submittals deemed critical. The ENGINEER shall review and return these critical submittals within 15 days of receipt from the CONTRACTOR. All non-critical submittals shall be reviewed with reasonable promptness by the ENGINEER. If a shop drawing or sample is not approved on a timely basis, and if CONTRACTOR wants to reserve the right to file a claim for delay, CONTRACTOR must provide written notice to STATE in accordance with Article 14.1. STATE shall have 10 days from the receipt of written notice to cure the problem during which time no damage will accrue to STATE as a

result of the ENGINEER'S failure to approve shop drawings on a timely basis. If STATE fails to cure the problem within 10 days CONTRACTOR shall have the right to assert a claim in accordance with Articles 12 and 13. ENGINEER'S review and approval of Shop Drawings or Samples shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make all corrections required by ENGINEER and shall return the required number of corrected copies of Shop Drawings and resubmit new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals. CONTRACTOR'S stamp of approval on any Shop Drawing or Sample shall constitute a representation to STATE and ENGINEER that CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or assumes full responsibility for doing so, and that CONTRACTOR has reviewed or coordinated each Shop Drawing or Sample with the requirements of the Work and the Contract Documents.

- E. Where a Shop Drawing or Sample is required by the Specifications, no related Work shall be commenced until the submittal has been reviewed and approved by ENGINEER.
- F. ENGINEER'S review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any deviations from the Contract Documents unless CONTRACTOR has in writing called ENGINEER'S attention to such deviation at the time of submission and ENGINEER has given written concurrence and approval to the specific deviation, nor shall any concurrence and approval by ENGINEER relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or Samples.
- G. The CONTRACTOR will submit directly to the ENGINEER all shop drawings and samples in sufficient quantity and form (including reproducibles if required). Such submittals may be delivered to the ENGINEER at the job site, however, prior to site mobilization any submittals to ENGINEER shall be mailed to the ENGINEER'S home office.
- H. Shop drawings, samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the work for which submittals are required, the way the CONTRACTOR proposes to conform to the information given and the design concept expressed in the Contract Documents.
- I. The CONTRACTOR shall direct specific attention, in writing or on resubmitted Shop Drawings, samples or similar submittals to revisions other than those requested by the ENGINEER on previous submittals.
- J. Informational submittals upon which the ENGINEER is not expected to take responsive action may be identified in the Contract Documents. Submittals made by the CONTRACTOR which are not required by the Contract Documents may be returned without action.
- K. When professional certification of performance criteria of materials, systems or equipment is required of the CONTRACTOR by the Contract Documents, the ENGINEER shall be

entitled to rely in a reasonable and professional fashion upon the accuracy and completeness of such calculations and certifications; provided, however, if required under the STATE-ENGINEER Agreement or related agreements, or if ENGINEER, in ENGINEER'S reasonable and professional judgment considers it advisable, ENGINEER shall verify the accuracy and completeness of any or all such calculations or certifications, or both. If any or all such calculations or certifications, or both, are found to be inaccurate or incomplete, or both, CONTRACTOR shall assume full responsibility and bear all costs attributable or related thereto, including, without limitation, the expense of ENGINEER'S additional services associated with the verification of such calculations or certifications, or both and the expense of ENGINEER'S additional services made necessary by the failure of such calculations or certifications, or both, to be accurate or complete, or both.

#### **6.15 CONTINUING THE WORK:**

CONTRACTOR shall carry on the Work and maintain the progress schedule during all disputes or disagreements with STATE. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as CONTRACTOR and STATE may otherwise agree in writing or except as pursuant to Article 15.5 of these General Conditions.

#### **6.16 CONFLICT OF INTEREST:**

##### **A. RESPONSIBLE PARTIES**

The CONTRACTOR shall not, during the period described below, enter into or continue any contract, subcontract or business relationship of any kind, whether or not related to the subject matter of the specific engagement with any party identified by the STATE as potentially responsible for the site of this Work nor with any of their parent corporations, subsidiaries, or successors, nor with any independent legal representatives acting on behalf of said parties, without the express written permission of the STATE. As to each of the potentially responsible parties identified by the STATE, the period covered by this restriction shall extend from the effective date of this contract until the later of: 1) five years from the date of Final Completion of work under this contract; or 2) final judgment, including all potential appeals, in a court of competent jurisdiction of any claims initiated by the STATE or the United States against said party provided that such claims are made in a Court of law within five years from Final Completion. This restriction shall apply only to claims which are related to the presence or former presence of hazardous substances at or near the real property referred to in the site description given in the project specific bid. This restriction shall be terminated only upon written notice from the STATE that any such claims have been finally adjudicated which notice may be requested by the CONTRACTOR.

##### **B. STATE EMPLOYEES, OFFICERS AND AGENCIES**

The CONTRACTOR shall not, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in the CONTRACTOR to, any STATE officer or employee or special STATE officer or employee having any duties or responsibilities in connection with this contract, or with any person, firm or entity with which he is employed or associated or in which he has any interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in

writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the STATE officer or employee or special STATE officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

#### **6.17 ONGOING OBLIGATION TO INFORM**

The CONTRACTOR shall immediately inform the STATE of any material changes in the information submitted in his bid or otherwise contained in the Contract Documents. Failure to do so will be considered a material breach of Contract.

#### **6.18 ASSIGNMENT OF CONTRACT**

The contract may not be assigned by the CONTRACTOR, in whole or in part, without the prior written consent of the Director. Such consent, if granted, shall not relieve the CONTRACTOR of any of his responsibilities under the contract.

### **ARTICLE 7 - WORK BY STATE**

- 7.1 STATE may perform additional work related to the Project by himself, or have additional work performed by other contractors or by utility service companies or let others direct contracts therefor.
- 7.2 If any part of CONTRACTOR'S Work depends for proper execution or results upon the work of any such other contractor or utility service company (or STATE), CONTRACTOR shall inspect and promptly report to Construction Manager in writing any latent or apparent defects or deficiencies in such work that render it unsuitable for such proper execution and results. CONTRACTOR'S failure to so report shall constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR'S Work except for latent defects and deficiencies in the other work.
- 7.3 CONTRACTOR shall do all cutting, fitting and patching of his Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected.
- 7.4 If the performance of additional work by other contractors or utility service companies or STATE was not noted in the Contract Documents, written notice thereof shall be given to CONTRACTOR prior to starting any such additional work. If CONTRACTOR believes that the performance of such additional work by STATE or others involves additional expense or requires an extension of the Contract Time, CONTRACTOR may make a claim therefor as provided in Articles 13 and 14 provided that the CONTRACTOR will make no claim which is barred by the provisions of Article 14.3.

### **ARTICLE 8 - STATE'S RESPONSIBILITIES**

- 8.1 STATE shall issue all communications to CONTRACTOR through the Construction Manager or his designee.

- 8.2 In case of termination of the employment of ENGINEER, STATE shall appoint an engineer whose status under the Contract Documents shall be that of the former ENGINEER.
- 8.3 STATE shall furnish the data required of STATE under the Contract Documents promptly and shall make payments to CONTRACTOR as provided in Article 16 of the General Conditions.
- 8.4 STATE'S duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Articles 4.1 and 4.3. Article 4.2 refers to STATE identifying and making available to CONTRACTOR copies of reports of investigations and tests of subsurface and latent physical conditions at the site or those reports that otherwise may affect performance of the Work which have been utilized by ENGINEER in preparing the Drawings and Specifications.
- 8.5 In connection with STATE'S rights to request changes in the Work in accordance with Article 12, STATE (especially in certain instances as provided in Article 12.1) may execute Change Orders.
- 8.6 STATE'S responsibility in respect of certain inspections, tests and approvals is set forth in Article 15.3.
- 8.7 In connection with STATE'S right to stop Work or suspend Work, see Article 15.5 and Article 17.1. Article 17.2 deals with STATE'S right to terminate services of CONTRACTOR under some circumstances.
- 8.8 Construction Manager:
- A. STATE shall designate an employee to represent the STATE during the project. This employee shall be designated as Construction Manager. The duties and responsibilities and limitations of authority of Construction Manager during construction are set forth in the Contract Documents.
  - B. Construction Manager may conduct on-site inspections to check the progress, quality, and quantity of the executed work and to determine if the work is proceeding in accordance with the Contract Documents. The right to conduct on-site inspections will not alter the responsibilities of the CONTRACTOR or ENGINEER as stated herein.
  - C. Construction Manager shall have the authority to issue Field Orders which would result in a Change Order but which do not involve a change in the Contract Price or Contract Time. Examples of this type of order include, but are not limited to, a Work Stoppage Order and orders to redirect the focus of the work.
  - D. Construction Manager shall have the right of review and approval of all change orders prepared and recommended by ENGINEER.
  - E. Construction Manager shall have the authority to require special inspection or testing of the work as provided in Article 15.0 whether or not the work is fabricated, installed or completed.
  - F. Construction Manager shall review applications for progress payments and determine the amounts due the CONTRACTOR based on recommendations made by the ENGINEER.

The Construction Manager will issue the inspection findings from the project inspections taken to determine substantial completion and final acceptance of the work.

G. Neither Construction Manager's authority to act under this Article 8 or elsewhere in the Contract Documents nor any decision made by the ENGINEER or Construction Manager in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of STATE to CONTRACTOR, any subcontractor, any manufacturer, fabricator, supplier or distributor or any of their agents or employees or any other person performing any of the Work.

H. Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of Construction Manager as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that STATE, by acts of Construction Manager or otherwise, shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of Articles 8.9 and 8.10.

8.9 STATE will not be responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and STATE will not be responsible for CONTRACTOR'S failure to perform the Work in accordance with the Contract Documents.

8.10 STATE will not be responsible for the acts or omissions of CONTRACTOR or of any subcontractors, or of the agents or employees of any CONTRACTOR or subcontractor, or of any other persons at the site or otherwise performing any of the Work.

8.11 STATE will be responsible for this Contract only to the extent of annual funding made available for these purposes by the Legislature(s).

## **ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION**

### **9.1 ENGINEER'S STATUS:**

A. The duties and responsibilities and the limitations of authority of ENGINEER during construction are set forth in the Contract Documents and shall not be extended without written consent of STATE and ENGINEER.

### **9.2 VISITS TO SITE:**

A. ENGINEER will make on-site inspections to check the quality or quantity of the Work. ENGINEER may make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. On the basis of such visits and on-site observations, ENGINEER will inform Construction Manager of the progress of the Work and recommend appropriate changes.

### **9.3 CLARIFICATIONS AND INTERPRETATIONS:**

- A. ENGINEER with concurrence of Construction Manager will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as ENGINEER may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or Contract Time, CONTRACTOR may make a claim therefor as provided in Articles 13 and 14.

### **9.4 SPECIAL INSPECTIONS:**

- A. ENGINEER will be responsible for making recommendations to the Construction Manager to require special inspection or testing of the Work as provided in Article 15.0 whether or not the Work is fabricated, installed or completed.

### **9.5 PROJECT REPRESENTATION:**

- A. If STATE and ENGINEER agree, ENGINEER will designate a Resident Project Representative to assist ENGINEER in the performance of the ENGINEER'S duties. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions.
- B. The Resident Project Representative (RPR) will be the ENGINEER'S individual on site to perform on-site services including but not limited to the following:
  - 1. The RPR shall be the primary point of contact for all communications between Construction CONTRACTOR and the STATE.
  - 2. The RPR shall immediately transmit issues or questions raised by the CONTRACTOR to the STATE or ENGINEER for interpretation and resolution. The RPR shall, with the concurrence of the Construction Manager, transmit written clarifications, interpretations or other information.
  - 3. The RPR will attend and act as secretary among the CONTRACTOR, STATE and ENGINEER and be responsible for issuing memorandums of meetings.
  - 4. RPR will be primarily responsible for observation of work at the site to determine if it is conformance with the Contract Documents. RPR shall at all times have access to the work whenever it is in preparation and progress. The CONTRACTOR shall provide facilities for such access so that RPR and ENGINEER can perform this function.
  - 5. The RPR will, with the concurrence of the Construction Manager, advise the CONTRACTOR of work which is not in conformance with the CONTRACTOR Documents and which should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection of approval.
  - 6. The RPR shall receive requests for product and equipment substitutions and forward to the Construction Manager for action. The RPR shall coordinate the Engineers recommendation for substitution.

7. RPR shall have the opportunity to accompany all visitors on the site and maintain a log of all such visits.
8. RPR shall be informed of and maintain a list of CONTRACTOR'S key personnel including phone numbers and addresses and all CONTRACTOR'S subcontractors and suppliers of materials and equipment.
9. RPR shall receive and review payment applications from CONTRACTOR, evaluate the acceptability and compliance with established STATE procedures and forward such application with his recommendation to the Construction Manager.
10. RPR shall receive all operations and maintenance data from the CONTRACTOR.
11. RPR shall receive and review any request from the CONTRACTOR for determination of substantial completion, final completion or partial acceptance. RPR shall coordinate ENGINEER'S and STATE'S response or inspection.
12. RPR shall prepare a punch list of any minor item requiring completion or correction after Substantial Completion.
13. RPR shall ensure that all items on the punch list shall be satisfactorily completed.
14. RPR shall schedule major tests or inspections as required.
15. RPR shall coordinate review of potential Change Order data submitted by the CONTRACTOR. RPR may be required to transmit to the CONTRACTOR, on behalf of the STATE, final written decisions on potential Change Orders as issued by the Construction Manager.

#### **9.6 DECISIONS ON DISAGREEMENTS:**

- A. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work there under. Claims and disputes between the CONTRACTOR and STATE and/or ENGINEER relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work shall be referred initially to ENGINEER in writing with a request for a formal decision in accordance with this Paragraph, which ENGINEER will render in writing within a reasonable time. Written notice of each such claim or dispute shall be delivered by the claimant to ENGINEER and the other party to the Agreement within fifteen days of the occurrence of the event giving rise thereto, and written supporting data will be submitted to ENGINEER and the other party within forty-five days of such occurrence unless ENGINEER allows an additional period of time to ascertain more accurate data. In his capacity as interpreter and judge, ENGINEER will not show partiality to STATE or CONTRACTOR and will exercise good faith when acting in such capacity.

#### **9.7 LIMITATIONS ON ENGINEER'S RESPONSIBILITIES:**

- A. Neither ENGINEER'S authority to act under this Article 9 or elsewhere in the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not

exercise such authority shall give rise to any duty or responsibility of ENGINEER to CONTRACTOR, any subcontractor, any manufacturer, fabricator, supplier or distributor or any of their agents or employees or any other person performing any of the Work.

- B. Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that ENGINEER shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of Articles 9.7C or 9.7D.
- C. ENGINEER will not be responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and ENGINEER will not be responsible for CONTRACTOR'S failure to perform the Work in accordance with the Contract Documents.
- D. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any subcontractors, or of the agents or employees of any CONTRACTOR or subcontractor, or of any other persons at the site or otherwise performing any of the Work.

## **ARTICLE 10 - CONTRACT TIME**

- 10.1 The Contract shall be substantially completed, with the exception of Operations and Maintenance, within **320 calendar days** of the effective date of the Agreement, unless a work stoppage order or suspension requires a later completion date. All Contract Work, with the exception of Operations and Maintenance, shall be finally completed within **350 calendar days** from the effective date of the agreement.
- 10.2 The CONTRACTOR shall be subject to the liquidated damages provision of the Agreement for failure to substantially complete the Contract, with the exception of Operations and Maintenance, within **320 calendar days** from the effective date of the Agreement. The CONTRACTOR shall also be subject to liquidated damages for failure to finally complete all Contract Work, with the exception of Operations and Maintenance, within **350 calendar days** from the effective date of the Agreement.
- 10.3 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the CONTRACTOR confirms that the Contract Time is a reasonable period for performing the work.
- 10.4 The CONTRACTOR shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.
- 10.5 If the CONTRACTOR is delayed by circumstances beyond his or his subcontractor's control, then he shall notify the STATE within 15 days of the circumstance causing the delays. Requests

for extension of time must be made by the CONTRACTOR in accordance with Article 14, Change in Contract Time.

## **ARTICLE 11 - LIQUIDATED AND ADDITIONAL SPECIAL DAMAGES**

### **11.1 LIQUIDATED DAMAGES:**

- A. In the event that the CONTRACTOR fails to achieve Substantial Completion in accordance with Article 16.6A of the General Conditions (Substantial Completion) and/or fails to achieve Final completion in accordance with Article 16.10A (Final Payment and Acceptance) within the times specified in Article 10.2 above, the STATE may, at its sole option, either assess liquidated damages as set forth herein or seek other remedies at law.
- B. STATE and CONTRACTOR recognize that time is of the essence as to both Substantial Completion and Final Completion, and the STATE will suffer financial loss, apart from the costs described in Article 11.2, if Substantial Completion and/or Final Completion are not achieved within the times specified herein. STATE and CONTRACTOR also recognize that there will be delays, expenses and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the STATE if Substantial Completion or Final Completion is not achieved on time. Accordingly, instead of requiring any such proof, STATE and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay STATE \$500.00 for each calendar day that expires after the time specified for either Substantial Completion or Final Completion, however, an allowance shall be made for any extensions granted in accordance with Article 14 of the General Conditions. The foregoing liquidated damages shall be assessed on a cumulative basis, i.e., in the amount of \$500.00 should the CONTRACTOR fail to both achieve Substantial Completion and accomplish Final Completion within the requisite times.

### **11.2 ADDITIONAL SPECIAL DAMAGES:**

In addition to the amount provided for liquidated damages, CONTRACTOR shall pay STATE the actual costs reasonably incurred by STATE for engineering and inspection forces employed on the Work for each day that expires after the time specified in Article 10.1 for Substantial Completion and for each day that expires after the time specified in Article 10.2 for Final Completion, including any extensions thereof made in accordance with Article 14 of the General Conditions, until the Work is substantially complete or finally complete as applicable.

- 11.3 STATE may deduct the amount of liquidated damages and additional special damages from any monies due CONTRACTOR under this Agreement.

## **ARTICLE 12 - CHANGES IN THE WORK**

### **12.1 CHANGE ORDER**

- A. Any modifications of the price, Scope of Work or terms and conditions of the Contract must be done by written Change Order approved by the STATE.
- B. The STATE may at any time, without notice to any surety, issue a written Change Order which changes the work within the general scope of this Contract, including but not limited to changes:

1. In the specifications (including drawings and designs);
  2. In the time, method or amount of performance of the Work; and
  3. In the facilities, equipment, materials, or services which will be furnished by the STATE.
- C. The STATE may recognize as a Change Order any other written order (including direction, instruction, interpretation or determination) which has been authorized by the STATE and which the STATE determines has caused a change in the Work, provided the CONTRACTOR has given the STATE timely written notice within 5 days of the STATE'S written order stating the date, circumstances and source of the STATE'S order, why the CONTRACTOR regards the order as a change in the work, and an initial estimate of the change order. The CONTRACTOR must submit a final request for additional compensation or time with supporting data within 45 days of the written order.
- D. The STATE may also authorize a Change Order where the CONTRACTOR experiences a delay approved or caused solely by the STATE or encounters differing site conditions as discussed below or where the NJDEP has asked the CONTRACTOR to perform emergency services which could not await the execution of a written authorization from the STATE.
- E. Except for emergency services specifically authorized as such by the NJDEP pursuant to paragraph D, no services beyond the Contract's requirements for which the CONTRACTOR expects additional compensation should be furnished without the written authorization of the STATE.
- F. The CONTRACTOR may file a claim for additional compensation as a result of a change order, or a changed condition. The STATE shall make an equitable adjustment for any increase in the cost of performance of this contract necessarily caused by a change order or a changed condition. No adjustment shall be made under this clause for any change to the extent:
1. It is caused by the fault or negligence of the CONTRACTOR; or
  2. The performance would have been so changed, by any other cause, including the fault or negligence of the CONTRACTOR, or
  3. An equitable adjustment is provided for or excluded under any other provision of the Contract.
  4. The change was such as could reasonably be expected by the CONTRACTOR as part of a project of this sort and therefore should have been anticipated in his bid proposal.

No compensation under this clause shall be allowed:

1. Unless the CONTRACTOR notifies the STATE forthwith of any act or omission by the STATE which will cause an increase in costs in the CONTRACTOR'S work. If possible, notice should be given before the affected work is begun. In any case, an Initial Notice of Claims CONTRACTOR Claim Form #1 (Supplement #1, Vol. 2) must

be submitted to the Project Manager no later than five (5) days from the date of the alleged change order, changed condition or delay; and

2. Unless the CONTRACTOR justifies the claim by submitting an Analysis and Documentation of Claim, CONTRACTOR Claim Form #2 (Supplement #2. Vol. 2) within 45 days of the change order or changed condition which gave rise to the claim. This 45 day time period may be exceeded if the CONTRACTOR requests and the STATE allows an additional period of time to ascertain more accurate data.
  3. Other than for causes specified herein and in Article 14 (Changes in Contract Time), the CONTRACTOR shall not be eligible for any damages or compensation for claims under this Contract.
- G. If any Change Order under this article causes an increase or decrease in the CONTRACTOR'S cost or the time required to perform any part of the Work under this Contract, the STATE shall make an equitable adjustment of the price and/or schedule for the Contract consistent with Articles 13 and 14 below.
- H. Except as provided in this article, no order, statement or conduct of the STATE shall be treated as a Change Order or entitle the CONTRACTOR to an equitable adjustment. CONTRACTOR expressly waives the right to any claim which is not submitted in compliance with this article.
- I. No request by the CONTRACTOR for any equitable adjustment shall be allowed if made after final payment for Work under this Contract.
- J. No compensation will be paid to the CONTRACTOR for change order work until the STATE'S Contract and Modification and Proposal Form (DMW-042) has been properly completed, signed and submitted by the CONTRACTOR.

## **12.2 DIFFERING SITE CONDITIONS**

- A. The CONTRACTOR shall promptly, and before such conditions are disturbed, notify the Construction Manager in writing of:
1. Subsurface or latent physical conditions at the site differing materially from those indicated in this agreement, or
  2. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this agreement.
- B. The STATE shall promptly investigate the conditions. If it finds that conditions materially differ and will cause an increase or decrease in the CONTRACTOR'S cost or the time required to perform any part of the Work under this sub agreement, whether or not changed as a result of the condition, the STATE shall make an adjustment and modify this agreement in writing in accordance with-Articles 13 and 14.

- C. No request of the CONTRACTOR under this clause shall be allowed unless the CONTRACTOR has given the notice required in paragraph (A) of this clause. However, the STATE may extend the time prescribed in paragraph (A).
- D. No request by the CONTRACTOR for an adjustment shall be allowed if asserted after final payment under this agreement.
- E. The CONTRACTOR must comply with the time limits for notification of this Article 12 for the issuance of any change order resulting from a differing site condition.

### **12.3 REDUCTION IN SCOPE OF WORK**

- A. The STATE shall have the option in its sole discretion to consider a project, or any task or subtask thereof, completed before all of said task or tasks have been performed, whenever in the judgment of STATE, based upon results of work already performed, the goals of the project have been successfully achieved, or can be successfully achieved through a reduced Scope of Work.
- B. Where the STATE intends to reduce the Scope of Work, the STATE shall develop a Change Order as follows:
  - 1. The STATE shall notify the CONTRACTOR in writing as to the tasks which will be reduced or eliminated.
  - 2. Upon receipt of the notice, the CONTRACTOR shall submit to STATE within 15 working days an itemization of the work effort already completed for each task, and the work effort which will be required in each task to complete any new Scope of Work.
  - 3. Thereafter, the STATE shall determine the new work effort and shall issue a written Change Order for the Work.
  - 4. The Contract Price shall be reduced consistent with Article 13.7 herein and the CONTRACTOR shall be compensated in accordance with the applicable unit prices and payment provisions of the Contract. In addition, the CONTRACTOR shall be compensated for any costs reasonably incurred by the CONTRACTOR for goods and services procured prior to the reduction in Scope of Work and for which the CONTRACTOR is legally obligated to pay. However, the additional compensation shall not include any overhead or profit anticipated on unperformed services or work or any settlement costs. The STATE shall have no further liability for any work eliminated from the CONTRACTOR'S Scope of Work.

### **ARTICLE 13 - CHANGES IN CONTRACT PRICE**

- 13.1 The Contract Price constitutes the total compensation payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.
- 13.2 The Contract Price may be increased only by a Change Order. Any request for an increase in the Contract Price shall be based on written notice of the estimated amounts of the request delivered to STATE and ENGINEER within fifteen days of the occurrence of the event giving

rise to the request. Notice of the final amount of the request with detailed supporting data shall be delivered within 45 days of such occurrence unless the STATE allows an additional period of time to ascertain accurate cost data.

- 13.3 The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the ways listed herein.
- A. At the STATE'S discretion, where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.
  - B. By mutual acceptance of a lump sum or of unit prices where none exist in the Contract or where the STATE determines that the unit prices in the Contract are not applicable to the Change Order.
  - C. On the basis of the "Cost of the Work" (determined as provided in Article 13.4) plus a CONTRACTOR'S Fee for overhead and profit (determined as provided in Article 13.5). Whenever the "Cost of the Work" is to be determined pursuant to Articles 13.4 or 13.5, CONTRACTOR will submit in a form acceptable to ENGINEER and Construction Manager, an itemized cost breakdown together with supporting data.

#### **13.4 COST OF THE WORK:**

- A. The term "Cost of the Work" means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Such costs shall be at rates and prices no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in Article 13.4 Paragraph B.
  - 1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall be limited to, salaries and wages plus the cost of social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall be limited to those involved in the direct performance and supervision of the work up to and including the level of foreman. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays shall be included in the above to the extent such overtime work was authorized by STATE.
  - 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to STATE, and CONTRACTOR shall make provisions so that they may be obtained.
  - 3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. Such payments made to subcontractors shall be on a "cost of the work" basis determined in accordance with the provisions of Articles 13.4 and 13.5 of this contract. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

4. Costs of special consultants (including, but not limited to, engineers, architects, testing laboratories and surveyors) employed for services specifically related to the Work.
5. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR (owned) or others in accordance with rental agreements (leased) approved by STATE with the advice of ENGINEER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work. Equipment rates are not to exceed rates presented in the most current Rental Rate Blue Book for Construction Equipment published by McGraw Hill Corporation, (available by subscription on Construction.com). The hourly rate used will be the monthly rate divided by 176 (unadjusted by any predominate area adjustment percentage). The Blue Book hourly, daily, and weekly rates will not be used.

Equipment costs are also subject to the following limitations:

An allowance will be made for operating costs as specified in the Blue Book for every hour the machinery or equipment is operating.

Whenever equipment had been ordered held on the project on a standby basis, half-time rates by the ENGINEER or STATE for equipment will be paid for such standby time during normal working hours not to exceed 8 hours in any 24-hour period.

All equipment used shall be in good operating condition. Transportation charges for each piece of equipment to and from the site of the work will be paid provided that:

- a. The equipment is obtained from the nearest approved source.
  - b. Return charges do not exceed delivery charges.
  - c. Haul rates do not exceed the established rate of licensed haulers.
  - d. Charges are restricted to those units of equipment not already available and on or near the project.
6. CONTRACTOR'S itemized cost breakdown shall make a clear distinction between the direct costs of work paid for under this section and the costs of other work. The CONTRACTOR shall furnish the ENGINEER with report sheets in duplicate of each day's cost of the work no later than the working day following the execution of said work. The daily reports sheets shall itemize the material used and shall cover the direct cost of labor and the charges for equipment. The daily report sheets shall provide name or identifications and classifications of workers; the hourly rates of pay and hours worked; and also the sizes, types, and identification number of equipment and hours operated. Materials charges shall be substantiated by copies of vendors' invoices. Such invoices shall be submitted with the daily report sheets, or if not available, they shall be submitted with subsequently issued daily report sheets. Said daily report sheets shall be signed by the CONTRACTOR or his authorized agent.

B. The term "Cost of the Work" shall not include any of the following:

1. Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in his principal or a branch office for general administration of the Work, all of which are to be considered administrative costs covered by the CONTRACTOR'S Fee.
2. Expenses of CONTRACTOR'S principal, branch and site offices.
3. Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the Work and charges against CONTRACTOR for delinquent payments.
4. Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for additional Bonds and insurance required because of changes in the Work).
5. Costs due to the negligence of CONTRACTOR, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
6. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Article 13.4 Paragraph A.
7. No additional allowance shall be made for general superintendence of the changed work.

### **13.5 CONTRACTOR'S FEE:**

- A. The CONTRACTOR'S Fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:
1. A mutually acceptable fixed fee; or if none can be agreed upon,
  2. A fee based on the following percentages of the various portions of the Cost of the Work:
    - a. For costs incurred under Article 13.4 Paragraph A.1 and 13.4 Paragraph A.2, the CONTRACTOR'S Fee shall not exceed a total of twenty percent.
    - b. For costs incurred under Article 13.4 Paragraph A.3 and 13.4 Paragraph A.4, the CONTRACTOR'S Fee shall not exceed a total of 5% for both overhead and profit regardless of the number of tiers of subcontractors involved in the work. No additional percentage mark-up for any additional tiers of subcontractors beyond one tier will be allowed. The subcontractor actually performing the work will be entitled to a fee in accordance with paragraph 2.a above. The 5% fee to which the

CONTRACTOR is entitled may be distributed among the various tiers of subcontractors as determined by the CONTRACTOR.

- c. These percentages shall be deemed to include but not be limited to heat, light, bond or bonds, insurance, use and upkeep of small hand tools, administration, engineering, field and office superintendence, home office and site overhead, extended general conditions, taxes, all loss, damage, risk, and expenses incidental to the work and profit. These percentages are applicable to all changes, increasing the direct cost of the work, including those changes that require an extension of time. The CONTRACTOR shall have no claim in excess of the above, such payments being in full compensation for the performance of such work and the furnishing of such materials and for all expenses in connection therewith and incidental thereto.
- d. No fee shall be payable for costs itemized under Article 13.4 Paragraph A.4, 13.4 Paragraph A.5.
- e. The amount of credit to be allowed by CONTRACTOR to STATE for any such change which results in a net decrease in cost, will be the amount of the net decrease plus a deduction in CONTRACTOR'S Fee by an amount equal to ten percent of the net decrease.
- f. When both additions and credits are involved in any one change, the adjustment in CONTRACTOR'S Fee shall be computed on the basis of the net-change in accordance with Article 13.5 Paragraph A.2.a through 13.5 Paragraph A.2.d, inclusive.

### **13.6 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA:**

The following clause applies to this Contract to any negotiated Contract Amendments or Change Orders and to any subcontract or purchase order.

- A. The CONTRACTOR and subcontractor, where appropriate, shall assure that the cost and pricing data submitted for evaluation of prices in contracts, subcontracts and change orders is based on current, accurate and complete data supported by their books and records. If the STATE -determines that any price (including profit) in this Contract, subcontract or amendment thereunder was increased by any significant sums because the data provided were incomplete, inaccurate or not current at the time of submission, then such price or cost or profit shall be reduced accordingly and the STATE shall modify the Contract in writing to reflect such action.
- B. Failure to agree on a reduction shall be subject to Article 18, Remedies, of these General Conditions.
- C. Since the Contract is subject to reduction under this Article by reason of defective cost or pricing data submitted in connection with subcontracts, the CONTRACTOR may wish to include a clause in each subcontract requiring the subcontractor to appropriately indemnify the CONTRACTOR. It is also expected that any subcontractor will be subject to such indemnification for defective cost or pricing data submitted by his subcontractors.

### **13.7 PRICE REDUCTION FOR TERMINATION OR REDUCTION IN SCOPE**

Where less than the entire Contract is performed as a result of the STATE'S determination to reduce or terminate the Contract for convenience, or the CONTRACTOR'S determination to terminate the Contract for default, then:

- A. For each lump sum, fixed price or unit price Bid Item satisfactorily completed by the CONTRACTOR, the CONTRACTOR will be paid the lump sum, fixed price or unit price designated for that Bid Item.
- B. For each lump sum, fixed price or unit price-Bid Item which has been partially completed the CONTRACTOR will be paid a percentage of the lump sum, fixed price bid or unit price equal to the percentage of work-satisfactorily completed.

#### **ARTICLE 14 - CHANGES IN CONTRACT TIME**

- 14.1 The Contract Time may only be changed by a Change Order. The CONTRACTOR must notify the STATE forthwith of any event which may give rise to a delay or delay claim, and in any event any claim by the CONTRACTOR for an extension in the Contract Time shall be based on written notice delivered to STATE and ENGINEER within 5 days of the occurrence of the event giving rise to the claim. Notice of the extent of the claim with detailed supporting data shall be delivered within 45 days of such occurrence unless the CONTRACTOR requests and the STATE allows an additional period of time to ascertain more accurate data. All claims for adjustment in the Contract Time shall be determined by STATE. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.
- 14.2 The Contract Time will be extended in an amount equal to time lost due to any delay that both could not have been anticipated by the CONTRACTOR and beyond the control of CONTRACTOR if a claim is made therefore was provided in Article 14.1. Such delays shall include, but not be limited to, acts of neglect by STATE or others performing additional work as contemplated by Article 7, or to fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of God. No extension of the Contract Time will be granted where the delay is attributable to a subcontractor, manufacturer, fabricator, supplier or distributor or any other party performing services or furnishing material or equipment on behalf of the CONTRACTOR unless such party's delay is attributable to one of the above enumerated causes. No extension shall be made where the delay is caused by the fault or negligence of the CONTRACTOR; or the performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the CONTRACTOR; or an adjustment is provided for or excluded under any other provision of the Contract; or the delay was such as could reasonably be expected by the CONTRACTOR as part of a project of this sort and therefore should have been anticipated in his bid proposal.
- 14.3 The time limits concerning Substantial Completion and final completion as stated in the Contract Documents are of the essence and the STATE shall be entitled to damages if the CONTRACTOR exceeds those time limits unless the Contract time is duly changed by Change Order.
- 14.4 An extension of the Contract time or delays of the Contract shall not entitle the CONTRACTOR to additional compensation for delay unless the delay was caused directly and

solely by the STATE'S negligence, bad faith, active interference, or other tortious conduct, and unless the delay caused the CONTRACTOR to exceed the Contract time for Substantial or Final Completion. The CONTRACTOR shall not be entitled to damages for any delay occurring as a consequence of a delay in additional work being performed by others pursuant to Article 7.1 hereof if the performance of said additional work was noted in the Contract Documents and the delay (by others) was not directly and solely caused by the fault of STATE. The CONTRACTOR shall not in any case be entitled to damages from the STATE for delays caused by the negligence of others.

- 14.5 The CONTRACTOR shall not be entitled to any additional compensation for delays or extensions of the Contract time where the delay or extension was caused by a Change Order for work paid by unit prices in the Contract or paid by prices otherwise ascertained under Article 13.3 herein.
- 14.6 Where the CONTRACTOR is entitled to additional compensation for delays or Contract extensions, the compensation shall include only the actual costs of the CONTRACTOR and shall not include any profit.
- 14.7 If abnormal weather conditions are the basis for a Request for additional time, such Request shall be documented by data substantiating that weather conditions were unusually severe for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction completion date. Extensions of time for weather conditions reasonably anticipated will not be granted.

Requests for extensions of construction time due to adverse weather conditions shall include National Oceanic and Atmospheric Administration Climatological Reports for the nearest reporting station for the months involved plus a report indicating the average precipitation, temperature, etc., for the past ten (10) years from the nearest reporting station. The 10-year average will be the basis for determining the number of adverse weather days and the effect resulting therefrom on construction which the CONTRACTOR would normally expect to encounter. Extension of time may be requested for any month of construction for days lost due to adverse weather in excess of the normally expected lost time; provided, however, if the Owner determines that the seasonal average of adverse weather days during construction is less than would be normally expected, no Change Order shall be issued and the request for extension of time shall be denied.

- 14.8 Subject to Article 14.4, 14.5 and 14.6 herein, only the following types of compensable costs caused by a delay solely attributable to the STATE are reimbursable to the CONTRACTOR:
  1. Field or site costs that are extended due to the increase in the contract time such as, but not limited to:
    - Office trailers and storage
    - Office equipment
    - Sanitary facilities
    - Utilities
    - Non-manual labor and supervision
    - Security
    - Barricades and protective equipment

2. Standby costs as defined in Article 13 for equipment already on the site, with the approval of the STATE is continued to be required at the site.
3. A mark-up of 10% on the direct costs of items listed in 1 above only. This mark-up includes all other indirect costs and overheads including requests for unabsorbed or under absorbed home (or branch) office overhead. NO OTHER COMPENSATION FOR EXTENDED HOME OFFICE OVERHEAD WILL BE ALLOWED. No profit will be allowed on costs paid under this contract provision.

14.9.A In the event of delay, STATE may direct that the work be accelerated by means of overtime, additional crews or additional shifts or re-sequencing of the Work. CONTRACTOR agrees to perform same, and if such delay shall not be the fault of CONTRACTOR, CONTRACTOR shall be entitled to reimbursement by STATE for cost as a result of such acceleration (i.e., premium portion of overtime pay, additional crew, shift or equipment cost and such other items of incremental cost requested in advance by CONTRACTOR and approved by STATE, which approval will not be unreasonably withheld) less savings or costs not incurred due to such acceleration, but contractor expressly waives any other compensation thereof. In no event shall disruption or inefficiency labor costs be compensable. In the event of any acceleration requested pursuant to this Section, CONTRACTOR shall promptly provide a plan for such acceleration, including his recommendations for the most effective and economical acceleration.

14.9.B STATE shall also have the right to direct that the Work be accelerated by means of overtime, additional crews or additional shifts or re-sequencing of the Work notwithstanding that the Work is progressing without delay in accordance with the established Project Schedule. CONTRACTOR agrees to perform same on the basis of reimbursement of direct costs (i.e., premium portion of overtime pay, additional crew, shift or equipment cost and such other items of cost requested in advance by CONTRACTOR and approved by STATE, which approval will not be unreasonably withheld) less savings or costs not incurred due to such acceleration, but contractor expressly waives any other compensation therefore unless otherwise agreed in writing in advance of performing the acceleration work. In no event shall disruption or inefficiency labor costs be compensable. Owner shall have the right reasonably to audit CONTRACTOR calculated savings or costs not incurred due to STATE'S acceleration. CONTRACTOR shall promptly provide a plan for such acceleration, including his recommendations for the most effective and economical acceleration.

14.9.C Any acceleration of the Work not specifically requested by Owner in writing shall be at CONTRACTOR'S sole cost and expense.

14.10.A No extension of time will be granted to the CONTRACTOR unless the critical path analysis required in the scheduling provision herein is-included in the supporting data.

14.10.B No subcontractor or supplier shall be entitled to separate extension of time from the STATE.

## **ARTICLE 15 - WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

### **15.1 WARRANTY AND GUARANTEE:**

- A. CONTRACTOR warrants and guarantees to STATE and ENGINEER that all Work will be in accordance with the Contract Documents and will not be defective. Notice of all defects shall be given to the CONTRACTOR by the STATE. All defective Work, whether or not in place, may be rejected or corrected by the STATE as provided in this Article 15.
- B. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality, and fit for the particular purpose for which used. The CONTRACTOR shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

**15.2 ACCESS TO WORK:**

- A. ENGINEER and ENGINEER'S representatives, Construction Manager, other representatives of STATE, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspection and testing. CONTRACTOR shall provide proper and safe conditions for such access.

**15.3 TESTS AND INSPECTIONS:**

- A. CONTRACTOR shall give Construction Manager timely notice of readiness of the Work for all required inspections, tests or approvals.
- B. If any law, ordinance, rule, regulation, code, or orders of any public body having jurisdiction requires any Work (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR (unless another party is specified in the General Requirements) shall assume full responsibility therefore, pay all costs in connection therewith and furnish Construction Manager the required certificates of inspection, testing or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required by the Specifications in connection with STATE'S or ENGINEER'S acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to CONTRACTOR'S purchase thereof for incorporation in the Work.
- C. All inspections, tests or approvals other than those required by law, ordinance, rule, regulation, code or order of any public body having jurisdiction shall be performed by organizations acceptable to STATE (or by ' ENGINEER if so specified).
- D. If any Work that is to be inspected, tested or approved is covered without written concurrence of Construction" Manager, it must, if requested by Construction Manager, be uncovered for observation. Such uncovering shall be at CONTRACTOR'S expense unless CONTRACTOR has given Construction Manager timely notice of CONTRACTOR'S intention to cover such Work and Construction Manager has not acted with reasonable promptness in response to such notice.
- E. Neither observations by ENGINEER or Construction Manager nor inspections, tests or' approvals by others shall relieve CONTRACTOR from his obligations to perform the Work in accordance with the Contract Documents.

**15.4 UNCOVERING WORK:**

- A. If any Work is covered without timely notice to the Construction Manager or contrary to the written request of Construction Manager, it must, if requested by Construction Manager, be uncovered for Construction Manager's observation and be replaced at CONTRACTOR'S expense.
- B. If any Work is covered with the knowledge of or the concurrence of the Construction Manager and if Construction Manager considers it necessary or advisable that such covered Work be observed by ENGINEER or Construction Manager or inspected or tested by others, CONTRACTOR, at Construction Manager's request, shall uncover, expose or otherwise make available for observation, inspection or testing as ENGINEER or Construction Manager may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services, and an appropriate deductive Change Order shall be issued. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction if he makes a claim therefor as provided in Articles 13 and 14.

#### **15.5 STATE MAY STOP THE WORK:**

If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workmen or suitable materials or equipment, STATE may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of STATE to stop the Work shall not give rise to any duty on the part of STATE to exercise this right for the benefit of CONTRACTOR or any other party. This clause shall not limit the right of the STATE to stop, suspend, or terminate the Contract for any lawful cause.

#### **15.6 CORRECTION OR REMOVAL OF DEFECTIVE WORK:**

If required by Construction Manager, CONTRACTOR shall promptly, without cost to STATE and as specified by Construction Manager, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Construction Manager, remove it from the site and replace it with non-defective Work.

#### **15.7 ONE YEAR CORRECTION PERIOD:**

If, within one year after the date of Final Completion or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents, any Work is found to be defective, CONTRACTOR shall promptly, without cost to STATE and in accordance with STATE'S written instructions, either correct such defective Work, or, if it has been rejected by STATE, remove it from the site and replace it with non-defective Work. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, STATE may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by CONTRACTOR.

## **15.8 ACCEPTANCE OF DEFECTIVE WORK:**

- A. If, instead of requiring correction or removal and replacement of defective Work, STATE prefers to accept it, STATE may do so. In such case, if acceptance occurs prior to ENGINEER'S recommendation of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Contract Price; or, if the acceptance occurs after such recommendation, an appropriate amount shall be paid by CONTRACTOR to STATE.
- B. STATE may require CONTRACTOR to furnish, at CONTRACTOR'S expense, a special performance guarantee or other surety prior to acceptance of defective Work.

## **15.9 STATE MAY CORRECT DEFECTIVE WORK:**

If CONTRACTOR fails within 30 days after written notice from Construction Manager to proceed to correct defective Work or to remove and replace rejected Work as required by Construction Manager in accordance with Article 15.6, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents (including any requirements of the progress schedule)' STATE may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency. To the extent necessary to complete corrective and remedial action, STATE may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR'S services related thereto, take possession of CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which STATE has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow STATE, STATE'S representatives, agents and employees such access to the site as may be necessary to enable STATE to exercise his rights under this Paragraph. All direct and indirect costs of STATE in exercising such rights shall be charged against CONTRACTOR and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Contract Price. Such direct and indirect costs shall include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR'S defective Work. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in his performance of the Work attributable to the exercise by STATE of STATE'S rights hereunder.

## **ARTICLE 16 - PAYMENTS TO CONTRACTOR AND COMPLETION**

### **16.1 RETAINAGE**

The STATE will initially retain 10% of the total amount of each invoice submitted until 50 percent of the original Contract Price is paid at which point no further retainage will be held, except that 10% will be retained from any Change Order. The STATE may release all or part of the retainage at the point of substantial completion, however, sufficient retainage will be held, as determined by STATE, to cover the cost of punchlist items and any liquidated or actual damages. Final payment will be based on satisfactory completion of all punchlist items, satisfactory resolution of any damage claims and satisfactory resolution of any audit question which may arise during the STATE'S audit of invoices.

## **16.2 APPLICATION FOR PROGRESS PAYMENT:**

- A. The ENGINEER, acting for the STATE, shall accept requests for progress payments from the CONTRACTOR not more than once per calendar month. The CONTRACTOR shall submit to the ENGINEER an application for payment, including a STATE invoice, filled out and signed by CONTRACTOR, covering the work completed as of the date of the application and accompanied by such supporting documentation as is required by the Contract Documents and also as STATE and the ENGINEER may reasonably require. CONTRACTOR shall retain the risk of loss or damage to any and all material, equipment, facilities or property of any description until the completion and acceptance of the work, and shall be liable for the cost of the repair or replacement of any such lost or damaged material, equipment, facilities or property. Each subsequent application for payment shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the work have been applied to discharge in full all prior CONTRACTOR obligations due and owing which were reflected in prior applications for payment.
- B. With each Application for Payment, the CONTRACTOR shall submit to Construction Manager an estimate of the Work to be completed in the following month.
- C. With each Application for Payment, the CONTRACTOR shall submit to the Construction Manager or his representative, the latest schedule update showing physical progress (status) within seven (7) days prior to the date of the application. Payment will not be made to the CONTRACTOR without this updated schedule.

## **16.3 REVIEW OF APPLICATIONS FOR PROGRESS PAYMENTS:**

- A. Construction Manager and ENGINEER will, within ten days after receipt of each Application for Payment consider each Application pursuant to the terms of the contract and either indicate in writing their recommendation of payment and present the Application to STATE, or return the Application to CONTRACTOR indicating in writing Construction Manager's and ENGINEER'S reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.
- B. By recommending any payment, the Construction Manager and ENGINEER will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work, or that the means, methods, techniques, sequences, and procedures of construction have been reviewed, or that any examination has been made to ascertain how or for what purpose CONTRACTOR has used the moneys paid or to be paid to CONTRACTOR on account of the Contract Price, or that title to any Work, materials or equipment has passed to STATE free and clear of any Liens.
- C. Construction Manager and ENGINEER may refuse to recommend the whole or any part of any payment if, in Construction Manager's or ENGINEER'S opinion, it would be incorrect to make such recommendations to STATE. Construction Manager may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in Construction Manager's opinion to protect STATE from loss because:

1. The Work is defective, or completed Work has been damaged requiring correction or replacement,
  2. Written claims have been made against STATE or Liens have been filed in connection with the Work,
  3. The Contract Price has been reduced because of Modifications,
  4. STATE has been required to correct defective Work or complete the Work in accordance with Article 15.9,
  5. Of CONTRACTOR'S unsatisfactory prosecution of the Work in accordance with the Contract Documents,
  6. CONTRACTOR'S failure to make payment to subcontractors for labor, materials or equipment.
  7. CONTRACTOR'S failure to comply with the project schedule, updating requirements specified in the General Conditions and failure to furnish a listing of items together with its latest expected delivery dates.
- D. STATE may refuse to pay the whole or any part of subsequent progress payments if the CONTRACTOR fails to complete the Work according to the Project Schedule and fails after 15 days notice from the STATE either to justify a Change of Contract Time consistent with Article #14 or to propose -corrective measures satisfactory to STATE which will return the project to the required Schedule.

#### **16.4 CONTRACTOR'S WARRANTY OF TITLE:**

- A. CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to STATE at the time of payment free and clear of all liens, claims, security interests and encumbrances (hereafter in these General Conditions referred to as "Liens").

#### **16.5 PROMPT PAYMENT**

- A. The New Jersey Prompt Payment Act (P.L. 1987, C. 184) mandates that STATE agencies pay invoices within sixty (60) days of either receipt of a properly executed STATE Invoice or receipt and acceptance of the goods/services, whichever is later. Failure of the STATE to process payment within this time frame may entitle the vendor to daily interest payments upon the unpaid obligation at a rate established by the STATE Treasurer.
- B. The Prompt Payment Act covers any person who is engaged in a trade or business, including private, non-profit entities operating as contractors and who has a STATE contract requiring either single or multiple payments. The Act does not cover public utilities, government instrumentalities and third party contractors.
- C. Any interest payments calculated on delinquent accounts as defined in Prompt Payment Act will be paid by the appropriate STATE agencies on a separate Invoice Form and shall be paid within thirty (30) days of payment of the original invoice. Interest will not be paid until

it exceeds \$5.00 per properly executed invoice. Vendor signatures are not required on STATE invoices processed for interest payments.

- D. It is the intention of NJDEP to expeditiously process for payment all properly executed invoices. STATE agencies will notify contractors in writing within thirty (30) days of any defect or impropriety in any STATE invoice submitted or goods or services provided which would prevent the running of the time period specified sixty (60) days. The cooperation of vendors is required not only to assure that properly executed invoices are submitted, but to ensure that any other associated documentation (e.g. change order) is also executed in a timely fashion.
- E. The following are typical defects or improprieties which would prevent the running of the time specified, sixty (60) days. The list includes, but not limited to:
- . wrong contract price(s)
  - . discrepancies between DWM-014's and DWM-24's or any other backup documentation
  - . billed for non-contract items
  - . poor job performance
  - . audit/questions retainage
  - . disposal problems (no ultimate manifest, etc.)
  - . legal problems
  - . payee signature missing
  - . additional documentation required by Construction Manager
  - . payment not yet due per contract terms (such as payment due at task completion)
  - . duplicate billing
  - . incorrect unit price or quantity
  - . deliverables not yet received or approved
  - . billed for goods or services never provided
  - . site name cannot be determined from invoice or backup
  - . incorrect work performance dates

If an invoice contains an error or discrepancies, a meeting may be held with the CONTRACTOR or to resolve errors or discrepancies.

## **16.6 SUBSTANTIAL COMPLETION:**

- A. When CONTRACTOR considers the entire Work ready for its intended use, CONTRACTOR shall, in writing to STATE and ENGINEER, certify that the Work is Substantially Complete and request that Construction Manager issue a certificate of Substantial Completion. Within a reasonable time thereafter, STATE, CONTRACTOR and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER or Construction Manager does not consider the Work substantially complete, Construction Manager will notify CONTRACTOR in writing giving his reasons therefor. If ENGINEER and Construction Manager consider the Work Substantially Complete, Construction Manager will within fourteen days execute and deliver to CONTRACTOR a definitive certificate of Substantial Completion. At the time of delivery of the definitive certificate of Substantial Completion, ENGINEER will deliver to STATE and CONTRACTOR a written recommendation including a punchlist as to division of responsibilities between STATE and CONTRACTOR with respect to security, operation,

safety, maintenance, heat, utilities and insurance. ENGINEER'S recommendation will be utilized by STATE while considering CONTRACTOR'S application for final payment.

- B. STATE shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but STATE shall allow CONTRACTOR reasonable access to complete or correct items on the punchlist and to perform Operation and Maintenance work for up to two years.

#### **16.7 PARTIAL UTILIZATION:**

- A. Use by STATE of completed portions of the Work may be accomplished prior to Substantial Completion of all the Work subject to the following:
1. STATE at any time may request CONTRACTOR in writing to permit STATE to use any part of the Work which STATE believes to be substantially complete and which may be used without significant interference with construction of the other parts of the Work. If CONTRACTOR agrees, CONTRACTOR will certify to STATE and ENGINEER that said part of the Work is substantially complete and request Construction Manager to issue a certificate of Substantial completion for that part of the Work. Within a reasonable time thereafter, STATE, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If Construction Manager does not consider that part of the Work to be substantially complete, Construction Manager will notify CONTRACTOR in writing giving his reason therefor. If Construction Manager considers that part of the Work to be substantially complete, Construction Manager will execute and deliver to STATE and CONTRACTOR a certificate to that effect, fixing the date of Substantial Completion as to that part of the Work, attaching thereto a punchlist of items to be completed or corrected before final payment. Prior to issuing a certificate of Substantial Completion as to part of the Work, ENGINEER will deliver to STATE and CONTRACTOR a written recommendation as to the division of responsibilities pending final payment between STATE and CONTRACTOR, with respect to security, operation, safety, maintenance, utilities and insurance for that part of the Work. STATE shall have the right to exclude CONTRACTOR from any part of the Work which STATE has so certified to be substantially complete, but STATE shall allow CONTRACTOR reasonable access to complete or correct items on the punchlist.
  2. In lieu of the issuance of a Certificate of Substantial Completion as to part of the Work, STATE may take over operation of a facility constituting part of the Work whether or not it is substantially complete if such facility is functionally and separately usable; provided that prior to any such take over, STATE and CONTRACTOR have agreed as to the division of responsibilities between STATE and CONTRACTOR for security, operation, safety, maintenance, correction period, heat, utilities and insurance with respect to such facility.
  3. Even if the STATE uses or partially accepts work prior to substantial or final completion, the one year correction period shall be effective as specified in Article 15.7 herein.

#### **16.8 FINAL INSPECTION**

- A. Construction Work: Upon written notice from CONTRACTOR that the Construction Work is complete, ENGINEER and Construction Manager will make a final inspection with the CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Construction Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies in the Construction Work.
- B. Operation and Maintenance Work: Upon written notice from CONTRACTOR that the Operation and Maintenance Work (O&M) is complete, ENGINEER and Construction Manager will make a final inspection with the CONTRACTOR, and will notify CONTRACTOR, in writing, of all particulars in which his inspection reveals that the O&M Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies in the O&M Work.

#### **16.9 FINAL APPLICATION FOR PAYMENT:**

- A. Construction Work: After CONTRACTOR has completed all such corrections to the Construction Work to the satisfaction of ENGINEER and Construction Manager and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked up record documents, and other documents all as required by the Contract Documents, and after ENGINEER and Construction Manager have indicated that the Work is acceptable (subject to the provisions of Article 16.10) CONTRACTOR may make application for final payment for the Construction Work by submitting to STATE and ENGINEER a final Application for Payment. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents and such other data and schedules as ENGINEER or STATE may reasonably require, together with complete and legally effective releases or waivers (satisfactory to STATE) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by STATE, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which STATE or his property might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment. If any SUBCONTRACTOR, manufacturer, fabricator, supplier or distributor fails to furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to STATE to indemnify STATE against any Lien as STATE permits.
- B. Operation and Maintenance Work: After CONTRACTOR has completed all such corrections to the Operation and Maintenance (O&M) Work to the satisfaction of ENGINEER and Construction Manager and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked up record documents, and other documents all as required by the Contract Documents, and after ENGINEER and Construction Manager have indicated the Work is acceptable (subject to the provisions of Article 16.10) CONTRACTOR may make application for final payment for the O&M Work by submitting to STATE and ENGINEER a final Application for Payment. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents and such other data and schedules as ENGINEER or STATE may reasonably require, together with complete and legally effective releases or waivers (satisfactory to STATE) of all Liens arising out of or filed in connection with the

Work. In lieu thereof and as approved by STATE, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which STATE or his property might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment. If any Subcontractor, manufacturer, fabricator, supplier or distributor fails to furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to STATE to indemnify STATE against any Lien as STATE permits.

**16.10 FINAL PAYMENT AND ACCEPTANCE:**

- A. If, on the basis of ENGINEER'S observation of the Work during construction and final inspection and ENGINEER'S review of the final Application for Payment and accompanying documentation -- all as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR has fulfilled all of his obligations under the Contract Documents, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing his recommendation of payment and present the Application to STATE for payment. Thereupon ENGINEER will give written notice to STATE and CONTRACTOR that he deems the Work to be acceptable subject to the provisions of Article 16.11. Otherwise, ENGINEER will return the Application to CONTRACTOR indicating in writing the reasons for refusing to recommend final payment in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. If the Application and accompanying documentation are appropriate as to form and substance, and acceptable to the STATE, STATE shall pay CONTRACTOR the amount recommended by ENGINEER.
  
- B. If, through no fault of CONTRACTOR, final completion is materially delayed and if STATE so confirms, STATE shall, upon receipt of CONTRACTOR'S final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by STATE for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in Article 5.1, the written consent of the Surety, if any, to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with his Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**16.11 CONTRACTOR'S CONTINUING OBLIGATION:**

- A. CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by Construction Manager, nor the issuance of a certificate of Substantial Completion, nor any payment by STATE to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by STATE, nor any act of acceptance by STATE nor any failure to do so, nor the issuance of a notice of acceptability by ENGINEER pursuant to Article 16.10, nor any correction of defective Work by STATE shall constitute an acceptance of Work not in accordance with the

Contract Documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents.

#### **16.12 WAIVER OF CLAIMS:**

- A. Upon satisfactory project completion, the CONTRACTOR shall as a condition before final payment or as a termination settlement under this Contract, execute and deliver to the STATE a release of all claims against the STATE arising under or by virtue of this Contract except claims which are specifically exempted by the CONTRACTOR to be set forth therein. Unless otherwise specified or by New Jersey Law or otherwise expressly agreed to by the parties to this Contract, final payment under this contract or settlement upon termination of this Contract shall not constitute a waiver of the STATE claims against the CONTRACTOR or his sureties under this Contract or the OWNER'S right to continued performance of the CONTRACTOR'S obligations pursuant to the Contract. The final payment will be for the release of the retainage only (including any audit adjustments) upon receipt of the release of all claims against the STATE.

### **ARTICLE 17 - SUSPENSION OF WORK AND TERMINATION**

#### **17.1 SUSPENSION OF WORK:**

- A. The STATE may orally direct the CONTRACTOR to suspend all or any part of the Work for up to 72 hours and the reason for any such order shall thereafter be confirmed in writing. The STATE may order the CONTRACTOR in writing to suspend all or any part of the Work for such period of times as the STATE may determine to be appropriate either for the convenience of the STATE or at the fault and negligence of the CONTRACTOR.
- B. If the performance of all or any part of the Work is suspended, for an unreasonable period of time merely at the convenience of the STATE, the STATE shall make an adjustment for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by such unreasonable suspension and modify the Contract through a written Change Order. However, no adjustment shall be made under this Article for any suspension to the extent (1) that performance is or would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the CONTRACTOR, or (2) for which an adjustment is provided for or excluded under any other provisions of this Contract.
- C. No claim under Article 17.1B above shall be allowed (1) for any costs incurred more than 15 days before the CONTRACTOR notified the STATE in writing that the CONTRACTOR would file a claim with respects to the suspension and (2) unless the amount claimed is asserted in writing 30 days after the termination of such suspension.
- D. Any adjustment paid for by the STATE under this contract provision shall be limited to the same extent as specified in Article 14.8 and 14.9 herein.

#### **17.2 TERMINATION OF WORK:**

- A. STATE may terminate the Contract, with written notice to the CONTRACTOR, upon the occurrence of any one or more of the following events:
1. If CONTRACTOR is adjudged a bankrupt or insolvent,

2. If CONTRACTOR makes a general assignment for the benefit of creditors,
  3. If a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR'S property,
  4. If CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws,
  5. If CONTRACTOR repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment,
  6. If CONTRACTOR repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment,
  7. If CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction,
  8. If CONTRACTOR fails to comply with local, STATE or Federal laws, rules or regulations applicable to this contract and the work to be done hereunder,
  9. If CONTRACTOR disregards the authority of ENGINEER or Construction Manager, or
  10. If CONTRACTOR fails to comply with the Complaint Procedure in N.J.A.C. 17:12-4.2 et seq.
- B. This Contract may also be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.
- C. This Contract may also be terminated, in whole or in part in writing by the STATE for its convenience, provided that the CONTRACTOR is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.
- D. If termination for default is effected under A or B above by the STATE an equitable adjustment in the price provided for in this contract shall be made consistent with Article 13.7 herein, but (1) no amount shall be allowed for anticipated costs or profit on unperformed services or other work, (2) no amount shall be allowed for termination settlement costs incurred by the CONTRACTOR on commitments which had become firm prior to the termination and (3) any payment due to the CONTRACTOR at the time of termination may be adjusted to cover any additional costs to the STATE because of the CONTRACTOR'S default.
- E. If termination for default is effected by the CONTRACTOR, or if termination for convenience is effected by the STATE, the equitable adjustment for termination shall

provide payment to the CONTRACTOR for services rendered prior to the termination consistent with Article 13.7 herein and for settlement costs reasonably incurred by the CONTRACTOR for goods and services procured prior to the termination for which the CONTRACTOR is legally obligated to pay. However, the equitable adjustment shall not include any overhead or profit anticipated on unperformed services or work or any settlement costs.

F. After receipt of a Notice of Termination and except as otherwise directed by the STATE the CONTRACTOR shall:

1. Stop work under the contract on the date and to the extent specified in the Notice of Termination;
2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of the work under the contract which is not terminated;
3. Terminate all orders and subcontracts to the extent that they relate to the performance of the work terminated by the Notice of Termination.
4. Assign to the STATE, in the manner, at the times, and to the extent directed by the STATE, all of the right, title and interest of the CONTRACTOR under the orders and subcontractors so terminated. The STATE shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the STATE to the extent he may require. The STATE'S approval or ratification shall be final for all the purposes of this clause.
6. Transfer title to the STATE and deliver in the manner at the items, and to the extent, if any, directed by the STATE, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination; and (ii) the completed or partially completed plan, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the STATE.
7. Take such action as may be necessary, or as the STATE may direct, for the protection and preservation of the property related to this contract which is in possession of the CONTRACTOR and in which the STATE has or may required an interest.
8. Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.
9. Take no action which will increase the amounts payable by the STATE under this contract.

After receipt of a Notice of Termination, the CONTRACTOR shall submit to the STATE his termination adjustment request. Such request shall be submitted promptly, but in no

event later than forty-five (45) days from the effective date of the termination, unless one or more extensions in writing are granted by the STATE upon request of the CONTRACTOR within such forty-five (45) day period.

- G. Upon termination, the STATE may take over the Work and may award another party a contract to complete the Work under this Contract.
- H. If, after termination for failure of the CONTRACTOR to fulfill contractual obligations, it is determined that the CONTRACTOR had not failed to fulfill contractual obligations, then termination shall be deemed to have been for the convenience of the STATE. In such event, adjustment of the Contract Price shall be made as provided in Paragraph E of this Article 17.2.
- I. Where CONTRACTOR'S services have been terminated by STATE, the termination shall not affect any rights of STATE against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by STATE will not release CONTRACTOR from liability.

## **ARTICLE 18 – REMEDIES**

### **18.1 DISPUTES**

Unless otherwise provided in this Contract, all claims, disputes and other matters in question between the STATE and the CONTRACTOR arising out of, or relating to, this Contract or the breach of it will proceed as follows:

- A. The CONTRACTOR must submit all requests for extra time and compensation, claims and disputes to the STATE within the timeframes specified in this Contract (for example; see Article 13, Changes in Contract Price and Article 14, Changes in Contract Time .
- B. The CONTRACTOR shall initially submit any questions, concerns, disputes, claims, and requests to the NJDEP Construction Manager.
- C. Failing informal resolution through the Construction Manager, the CONTRACTOR shall submit the matter to the Director, Division of Publicly Funded Site Remediation, Department of Environmental Protection for informal administrative proceedings conducted through either the NJDEP or the Department of Treasury, Division of Purchase and Property.
- D. The conduct of any informal resolution or administrative proceeding shall not stay the operation of the statute of limitations for claims contained in the Contractual Liability Act NJS 59:13-5.
- E. In the event that any claim or dispute arises during the performance of the Contract, the CONTRACTOR shall, unless otherwise ordered by the STATE, continue to perform the Contract and any Change Orders pending final resolution of the claim or dispute.

## **18.2 PERSONAL LIABILITY OF PUBLIC OFFICIALS**

In carrying out any of the provisions of the Contract, or exercising any power of Attorney within the Contract, there shall be no liability on the STATE, ENGINEER or their authorized representatives, either personally or as representatives of the STATE, it being understood that they act solely as agents for the STATE.

## **18.3 RESIDUAL RIGHTS AND DUTIES**

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the STATE, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR, by Articles 6.15, 15.1, 15.6, 15.7, 15.9, 16.3, 17.1 and 17.2 and all of the rights and remedies available to STATE and ENGINEER thereunder, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Paragraph shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties and guarantees made in the Contract Documents shall survive final payment and termination or completion of this Agreement.

## **18.4 IMPROPER SOLICITATION OF CONTRACT**

- A. If the STATE finds after a notice and hearing that the CONTRACTOR or any of the CONTRACTOR'S agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the STATE in an attempt to secure a contract or favorable treatment in awarding, amending or making any determinations related to the performance of this Contract, or finds that the STATE employed someone to solicit this contract on a contingent fee, the STATE may, by written notice to the CONTRACTOR terminate this Contract. The STATE may also pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which the STATE bases such findings shall be an issue and may be reviewed in proceedings under the Remedies clause of the Contract.
- B. In the event this Contract is terminated as provided above, the STATE may pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the Contract by the CONTRACTOR, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the STATE) which shall be not less than three nor more than ten times the costs the CONTRACTOR incurs in providing any such gratuities to any such officer or employee. Nothing herein shall limit the STATE from pursuing any criminal or quasi-criminal remedy against the CONTRACTOR, or from taking any action to debar, suspend or disqualify the CONTRACTOR from STATE of New Jersey contracting.

## **ARTICLE 19 - STATUTORY AND REGULATORY REQUIREMENTS**

### **19.1 GENERAL:**

- A. This Contract shall be governed and construed, and the rights and obligations of the parties hereto shall be determined, in accordance of the laws of the STATE of New Jersey including but not limited to the Contractual Liability Act.
- B. Deleted
- C. This Article contains portions of certain STATE and Federal laws and regulations which, by provision of law, ordinance, rule or regulation, are required to be included in the Contract Documents. The material included in this Article is for information purposes and may not be complete or current. CONTRACTOR'S obligation to comply with all current laws, ordinances, rules and regulations applicable to the Work is absolute as set forth in Article 6.8 of these General Conditions.

### **19.2 PREVAILING WAGE ACT:**

- A. New Jersey Prevailing Wage Act. P.L. 1963, Chapter 150 (NJSA 34:11-56.2 et seq. is made part of every contract entered into by the STATE where applicable. The Bidder's signature on the Bid is his/her guarantee that neither he/she nor any subcontractors he/she might employ to perform the work covered by this Bid are listed or are on record in the Office of the Commissioner of the Department of Labor as one who has failed to pay prevailing wages in accordance with the provisions of this Act. See Appendix #3 (Volume 2) for wage determination.
- B. N.J.A.C. 12:60-2.1 and 6.1 of the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-55.25 et seq. requires that all public works employers shall submit a certified payroll record to the public body or lessor which contracted for the public work project each payroll period within ten (10) days of the payment of wages. The public body shall receive, file and make available for inspection during normal business hours the certified payroll records.
- C. The CONTRACTOR agrees to make this provision part of any subcontract hereunder.

### **19.3 NON-DISCRIMINATION:**

- A. There shall be no discrimination against any employees who are employed in the Work covered by this agreement or against any applicant for such employment because of sex, race, religion, color-or national origin. This provision shall include, but will not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONTRACTOR must also comply with NJSA 10:2-1 through 10:2-4 and 10:5-31 through 10:5-38 and all rules and regulations issued thereunder.
- B. The CONTRACTOR shall insert this provision in all subcontracts for services covered by this agreement.

### **19.4 DELETED**

## **19.5 CLEAN AIR, WATER AND RCRA CERTIFICATION:**

The STATE requires that the CONTRACTOR and his/her subcontractors are presently in compliance with (and shall continue in compliance with for the term of this Contract) all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(b), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, the USEPA Recovery Act (RCRA) 42 U.S.C. 6901, Subtitle C of October 21, 1976, 40 CFR, Parts 260 through 267 and 121 through 124 as amended. The CONTRACTOR shall include provisions in any subcontractor agreements imposing the same requirements on the subcontractor.

## **19.6 DELETED**

## **19.7 FOREIGN CORPORATION:**

Pursuant to N.J.S.A. 14A: 13-3, if the CONTRACTOR is a corporation incorporated outside of New Jersey, the CONTRACTOR must obtain a Certificate of Authority to do business in New Jersey from the Secretary of STATE.

## **19.8 PARTIES:**

- A. Deleted
- B. The CONTRACTOR'S status shall be that of an independent principal and not as an agent or employee of the STATE.

Nothing contained in the Contract shall be construed to create, either expressly or by implication, the relationship of agency between the STATE and the CONTRACTOR or his subcontractors.

## **ARTICLE 20 - ADDITIONAL REQUIREMENTS**

### **20.1 ASSISTANCE ON LEGAL ACTION:**

- A. For a period of six years after the Contract is completed or terminated, or until cost recovery action related to the site is completed, which ever is longer, the CONTRACTOR, its personnel and the personnel of its subcontractors shall be required to provide assistance to the STATE when requested by the STATE, in the form of participation in legal actions against alleged responsible parties for violation of STATE and/or Federal environmental laws regarding any of the operations said Bidder or its subcontractors is involved in under the Contract that arises out of this Bid. This assistance may include the preparation of reports, assisting STATE and/or Federal attorneys in preparation of the government's case, testimony in court (expert and/or other types of testimony), testimony at depositions and the preparation and execution of interrogatory responses and affidavits, the preparation of the record and other similar activities.
- B. The STATE will reimburse the CONTRACTOR for such assistance as described above at the prevailing hourly rate for the employee's primary classification at the time of request. CONTRACTOR shall insert an identical obligation in all subcontractual agreements, if applicable. Failure to meet these requirements shall be considered a Breach of Contract.

## **20.2 EVIDENCE DOCUMENTATION:**

If, during the performance of its responsibilities on-site pursuant to the Contract, the CONTRACTOR or any of its subcontractors locates any documents, labels, drums, bottles, boxes any other containers, and any other physical materials that could establish or aid in establishing the identity of the party or parties responsible for the presence of hazardous substances at this site, the CONTRACTOR shall immediately advise the STATE of its finding. Until the STATE arrives at the site of the located potential-evidence, the CONTRACTOR or subcontractor shall not act unless action is required to protect the safety of its workers, or to prevent the release of the hazardous substance into the ambient environment. The CONTRACTOR may also move or disturb the potential evidence in order to preserve same if leaving it at its point of discovery until the STATE arrives would cause its deterioration or destruction or loss.

## **20.3 CONFIDENTIALITY:**

A. It is agreed that the CONTRACTOR shall hold in trust and not reveal to any third party except as provided in this Contract between the STATE and the CONTRACTOR, any and all "confidential information" as defined herein. The CONTRACTOR shall require its employees and subcontractors to comply with the provisions of the Contract as it pertains to confidentiality. This section shall be included by CONTRACTOR in all subcontracts.

1. Confidential information shall include:

- a. The entire work product and results involved in this contract including results and opinions of the CONTRACTOR.

Any and all communications between the STATE and any of his representatives or between such representatives and the CONTRACTOR concerning the conduct, preparation, theory, strategy, or opinions relating to or supporting any legal or administrative procedure which arises or may arise therefor, as well as any of the objects for which services may be performed under this contract.

B. It is further agreed that:

1. The CONTRACTOR may release such information to third parties only-to the extent it has obtained the written consent of the STATE. It is the intention of the parties that the confidentiality matters coming within this attachment shall continue beyond the completion of all the work involved in this Contract, unless specifically waived in writing by the STATE as specified herein.
2. The following shall not be considered "confidential information": information that was already known to the CONTRACTOR prior to its disclosure to the CONTRACTOR by the STATE; information that is or becomes publicly available; information that is rightfully received by the CONTRACTOR from third parties without any accompanying secrecy obligation; or information that is approved in writing by STATE for the CONTRACTOR to release.

3. Upon request by the STATE, termination or expiration of this Contract, the CONTRACTOR shall deliver to the STATE all documents including drawings, blueprints, descriptions, or other paper or documents which may contain any confidential information. The CONTRACTOR shall be permitted to retain a copy of all returned materials for its own confidential files.
4. Nothing contained herein shall be interpreted to interfere with or impose any limitation on the expression of professional judgment by the CONTRACTOR within the content of its reports to the STATE, nor shall it restrict any disclosures required of the CONTRACTOR by STATE or Federal Law.

Notwithstanding any other provisions of the Contract Documents, the CONTRACTOR shall not publish, permit to be published, or distribute for public consumption, any information oral or written, concerning the results or conclusions made pursuant to the performance of this Contract, without the prior written consent of the STATE.

#### **20.4 ACCESS TO RECORDS AND AUDIT:**

- A. The CONTRACTOR shall maintain books, records documents and other evidence directly pertinent to performance on work under this Contract in accordance with generally accepted accounting principles and practices consistently applied, and 40 CFR Part 30 in effect on the date of execution of this contract. The CONTRACTOR shall also maintain the financial information and data used in the preparation or support of the cost submission required under 40 CFR 33.290 for any negotiated contract or change order and a copy of the costs summary submitted to the STATE. Notwithstanding relevant terms of these Federal regulations, all such materials will be maintained for a period of not less than 10 years from the date of Final Payment. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, the STATE, or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. The CONTRACTOR will provide proper facilities for such access and inspection.
- B. If this is a formally advertised, competitively awarded, fixed price contract, the CONTRACTOR agrees to make paragraphs (A) through (G) of this Article applicable to all negotiated change orders and subcontract amendments affecting the Contract Price. In the case of all other types of prime contracts, the CONTRACTOR agrees to make paragraphs (A) through (G) applicable to all subagreements he awards in excess of \$10,000, at any tier, and to make paragraphs (A) through (G) of this clause applicable to all change orders directly related to project performance.
- C. Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency(ies).
- D. The CONTRACTOR agrees to disclose all information and reports resulting from access to records under paragraphs (A) and (B) of this Article to any of the agencies referred to in paragraph (A).

- E. Records under paragraphs (A) and (B) above shall be maintained by the CONTRACTOR during performance on this agreement and for the time periods specified in 40 CFR Part 30 or in accordance with paragraph (A) above, whichever is longer.
- F. Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (A) of this clause shall have access to records at any reasonable time for as long as the records are maintained.
- G. This right of access Article applies to financial records pertaining to all subagreements (except formally advertised, competitively awarded, fixed price contract) and all contract change orders regardless of the type of contract, and all contract amendments regardless of the type of contract. In addition this right of access applies to all records pertaining to all contract, contract change orders and contract amendments:
  - 1. To the extent the records pertain directly to contract performance;
  - 2. If there is any indication that fraud, gross abuse or corrupt practices may be involved; or
  - 3. If the contract is terminated for default or for convenience.

## **ARTICLE 21 - ENVIRONMENTAL REQUIREMENTS**

### **21.1 ENVIRONMENTAL PROTECTION:**

- A. The CONTRACTOR shall control all discharges caused by him or encountered, due to the excavation and field condition at and/or near the construction sites. The CONTRACTOR shall comply with the ordinance to provide for the abatement and prevention of pollution by regulating and controlling the quantity and quality of sewage, landfill leachate, site run-off and industrial/construction wastes admitted to or discharged into the local sewer systems and waters. The CONTRACTOR shall also comply with the water pollution regulations of New Jersey, established by the New Jersey Department of Environmental Protection and with the U.S. Environmental Protection Agency's Federal Water Pollution Control act and all amendments thereof.
- B. Compliance with air pollution requirements established by local agencies, the New Jersey Department of Environmental Protection and Energy, and the U.S. Environmental Protection Agency is also the CONTRACTOR'S responsibility.
- C. Noise pollution due to the work performed under this contract and the equipment installed and used by the CONTRACTOR shall be within limits established by local, STATE, and Federal agencies. Noise levels at the construction site property lines shall comply with all local requirements.
- D. The CONTRACTOR shall be responsible for dust control at the construction site. When directed by the ENGINEER, CONTRACTOR shall increase his effort of dust control at no additional cost to the STATE. Dust control at the construction site is a requirement of the specifications.

### **21.2 METHODS OF DISPOSAL:**

To the maximum extent practicable, it is the policy of the DEP to encourage incineration, treatment, and methods of resource recovery that render hazardous and toxic wastes harmless or less harmful to the environment, as the preferred methods of disposal as mandated by the Solid Waste Management Act of 1975 Chapter 326 (N.J.S.A. 12: 1E-58).

### **21.3 STATE ENERGY CONSERVATION PLAN:**

The CONTRACTOR(S) shall comply as applicable with the mandatory standards and policies relating to energy efficiency which are contained in any STATE energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163). The CONTRACTOR shall include provisions in any subcontract imposing the same requirements on the subcontractor.

## **ARTICLE 22 - MISCELLANEOUS**

### **22.1 GIVING NOTICE:**

- A. Whenever any provision of the Contract Documents requires the giving of written notice to the CONTRACTOR it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address of the officer or corporation known to the giver of notice.
- B. Written notice shall be deemed to have been validly given to the STATE if delivered in person to the Construction Manager or if delivered or sent by registered or certified mail, postage prepaid, to the Construction Manager or to the DEP Commissioner.

### **22.2 COMPUTATION OF TIME:**

When any period of time is referred to in the Contract Documents by days, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation.

### **22.3 HEADINGS:**

The Article and Paragraph headings are inserted for convenience only and do not constitute part of these General Conditions.

### **22.4 REFERENCE TO NEW JERSEY DEPARTMENT OF TRANSPORTATION (NJDOT) SPECIFICATIONS:**

- A. Where reference is made in the Plans and Specifications to the "NJDOT Specifications," it shall be understood to mean the Standard Specifications for roads published by the Department of Transportation. Those sections and paragraphs of the Highway Specifications to which reference is made shall be as much a part of these Specifications as though they were herein attached. A copy of these Highway Specifications shall be kept on the job site at all times for reference by the CONTRACTOR.

## **SUPPLEMENTARY CONDITIONS**

(These Supplementary Conditions amend or supplement the General Conditions and other provisions of the Contract Documents as indicated below. All provisions of the General Conditions which are not so amended or supplemented remain as is and in full force and effect.)

### **ARTICLE SC-1 - DEFINITIONS**

SC-1.1 The terms used in these Supplementary Conditions, with the exception of those items defined below, which are defined in the General Conditions have the meanings assigned to them in the General Conditions.

- A. Construction Work: All work required by these contract documents.
- B. Final Payment: For the purposes of this Contract, specifically Article 16, Payments to CONTRACTOR and Completion, Final Payment is for all construction work.
- C. Owner: STATE - as defined in the General Conditions (Article 1, A, 49)
- D. Site: The site, as defined in the General Conditions (Article 1, A, 45) includes easements to lands of site taken to facilitate the Work described in the Bid Documents.
- E. OSC: On-Scene Coordinator - now called the Construction Manager, and defined in the General Conditions (Article 1, A, 9).
- F. RP: Responsible Party - the party identified by the judicial system as legally responsible for some or all of the cleanup.
- G. DOT: Department of Transportation.
- H. CPM: Critical Path Method
- I. CLP: Contract Lab Procedures.
- J. Intrusive Activities: Activities requiring penetration of existing ground within the work area.
- K. On-Site: Areas within the site boundary, work limits, and easement lines indicated on drawings.
- L. Off-Site: Areas outside the boundary, work limits, and easement lines indicated on the drawings.

### **SC-3.2 AFFIRMATIVE ACTION COMPLIANCE**

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

- a. The CONTRACTOR or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status or sex. The CONTRACTOR will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status or sex. Such action 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;
- b. The CONTRACTOR or SUBCONTRACTOR, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status or sex;
- c. The CONTRACTOR or SUBCONTRACTOR, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the CONTRACTOR'S commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The CONTRACTOR or SUBCONTRACTOR, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.
- e. When hiring workers in each construction trade, the CONTRACTOR or SUBCONTRACTOR agrees to attempt in good faith to employ minority and female workers in each construction trade consistent with the applicable employment goal prescribed by N.J.A.C. 17:27-7.3; provided, however, that the Affirmative Action Office 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 Affirmative Action Office is satisfied that the CONTRACTOR is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Affirmative Action Office, that is percentage of active "card carrying" members who are minority and female workers is equal to or greater than the applicable employment goal prescribed by N.J.A.C. 17:27-7.3, promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time. 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 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 P.L. 1975, c. 127, as supplemented and amended from time to time. If the CONTRACTOR or SUBCONTRACTOR is unable to obtain said assurances from the construction trade union at least five days prior to the commencement of construction work, the CONTRACTOR or SUBCONTRACTOR agrees directly to attempt to hire minority and female workers consistent with the applicable employment goal. If the CONTRACTOR'S or SUBCONTRACTOR'S prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and female workers consistent with the applicable employment goal, the CONTRACTOR or SUBCONTRACTOR agrees to be prepared to hire minority and female workers directly, consistent with the applicable employment goal, by complying with the hiring procedures prescribed under (B) below; and the CONTRACTOR or SUBCONTRACTOR further agrees to immediately take said action if it determines or is so notified by the Affirmative Action Office that the union is not referring minority and female workers consistent with the applicable employment goal.

- (B) If the hiring of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of (b) above, or if the CONTRACTOR does not have a referral agreement or arrangement with a union for a construction trade, the CONTRACTOR or SUBCONTRACTOR agrees to take the following actions consistent with the applicable county employment goals:
- (1) To notify the Public Agency Compliance Officer, Affirmative Action Office, and at least one approved minority referral organization of its manpower needs, and request referral of minority and female workers;
  - (2) To notify any minority and female workers who have been listed with it as awaiting available vacancies;
  - (3) Prior to commencement of work, to request the local construction trade union, if the CONTRACTOR or SUBCONTRACTOR has a referral agreement or arrangement with a union for the construction trade, to refer minority and female workers to fill job openings;
  - (4) To leave standing requests for additional referral to minority and female workers with the local construction trade union, if the CONTRACTOR or SUBCONTRACTOR has a referral agreement or arrangement with a union for the construction trade, the STATE Training and Employment Service and other approved referral sources in the area until such time as the workforce is consistent with the employment goal;
  - (5) If it is necessary to lay off some of the workers in a given trade on the construction site, to assure, consistent with the applicable State and Federal statutes and court decisions, that sufficient minority and female employees remain on the site consistent with the employment goal; and to employ any minority and female workers so laid off by the CONTRACTOR on any other construction site in the area on which its workforce composition is not consistent with an employment goal established pursuant to rules implementing P.L. 1975, c. 127;

- (6) To adhere to the following procedure when minority and female workers apply or are referred to the CONTRACTOR or SUBCONTRACTOR:
- (i) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required, the CONTRACTOR or SUBCONTRACTOR shall determine the qualifications of such individuals and if the CONTRACTOR'S or Sub-CONTRACTOR'S workforce in each construction trade is not consistent with the applicable employment goal, it shall employ such persons which satisfy appropriate qualification standards; provided however, that a CONTRACTOR or SUBCONTRACTOR shall determine that the individual at least possesses the skills and experience recognized by any worker's skills and experience classification determination which may have been made by a Public Agency Compliance Officer, union, apprentice program or a referral agency, provided the referral agency is acceptable to the Affirmative Action Office and provided further, that, if necessary, the CONTRACTOR or SUBCONTRACTOR will hire minority and female workers who qualify as trainees pursuant to these regulations. All of the requirements of this paragraph, however, are limited by the provisions of (C) below.
  - (ii) If the CONTRACTOR'S or SUBCONTRACTOR'S workforce is consistent with the applicable employment goal, the name of said female or minority group individual shall be maintained on a waiting list for the first consideration, in the event the CONTRACTOR'S or SUBCONTRACTOR'S workforce is no longer consistent with the applicable employment goal.
  - (iii) If, for any reason, said CONTRACTOR or SUBCONTRACTOR determines that a minority individual or a female is not qualified or if the individual qualifies as an advanced trainee or apprentice, the CONTRACTOR or SUBCONTRACTOR shall inform the individual in writing with the reasons for the determination, maintain a copy in its files, and send a copy to the Public Agency Compliance Officer and to the Affirmative Action Office.
- (7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract and on forms made available by the Affirmative Action Office and shall be submitted promptly to that office upon request.
- (C) The CONTRACTOR or SUBCONTRACTOR agrees that nothing contained in (B) preceding provision shall preclude the CONTRACTOR or SUBCONTRACTOR from complying with the hiring hall or apprenticeship provisions in any applicable collective bargaining agreement or 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; provided, however, that where the practices of a union or apprenticeship program will result in the exclusion of minorities and females or the failure to refer minorities and females consistent with the county employment goal, the CONTRACTOR or SUBCONTRACTOR shall consider for employment persons referred pursuant to said provisions (b) without regard to such agreement or arrangement; provided further, however, that the CONTRACTOR or SUBCONTRACTOR shall not be required to employ female 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 the preceding provisions (B) it shall, where applicable, employ minority and female workers residing within the geographical jurisdiction of the union.

- (D) The CONTRACTOR agrees to complete an Initial Project Manning Report on forms provided by the Affirmative Action Office or in the form prescribed by the Affirmative Action Office and submit a copy of said form no later than 3 days after signing a construction contract; provided, however, that the public agency may extend in a particular case the allowable time for submitting the form to no more than 14 days, and to submit a copy of the Monthly Project Manning Report once a month (by the seventh work day of each month) thereafter for the duration of this contract to the Affirmative Action Office 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 off-the-job programs for outreach and training of minority and female trainees employed on the construction projects.
- (E) The CONTRACTOR and its Subcontractors shall furnish such reports or other documents to the Affirmative Action Office 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 affirmative action office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (NJAC 17:27).

### **SC-3.3 Working Hours:**

- A. Construction activities of the CONTRACTOR on and around the project sites shall be limited to 7:00 a.m. - 5:00 p.m. prevailing time, from Monday through Friday. For work from dawn until dusk outside normal working hours on weekdays, Saturday, Sundays and State legal holidays, the CONTRACTOR must obtain, in writing from the STATE, written authorization to proceed with the Work.
- B. If it should be necessary, in order to complete the work within the time stipulated or to complete any portion of the work in its various stages in time to avoid delaying the work, due to no fault of the STATE, or ENGINEER, the CONTRACTOR shall resort to overtime only if permitted by the STATE and shall be done so at no additional cost to STATE or ENGINEER.

### **SC-3.4 CONSTRUCTION CONFERENCES:**

- A. Prior to the issuance of the Notice to Proceed, a Post Award Conference shall be held between the CONTRACTOR, the STATE, and the ENGINEER. Attendance by the CONTRACTOR 'S-quality control personnel, safety personnel, and any major subcontractor *will* be required. The purpose of the Post Award Conference is to discuss and develop a mutual understanding of the Contract prior to initiation of work. The meeting *will* specifically address permit status, safety and emergency response procedures, schedules for the Site Preparation and any questions.

B. The ENGINEER will schedule Progress Meetings weekly throughout the duration of the Work. The CONTRACTOR will be required to attend these meetings.

1. Attendance: Job superintendent, major subcontractors and major suppliers or fabricators, if requested, ENGINEER, STATE and others as appropriate to agenda topics for each.
2. The CONTRACTOR or his designee will be required to meet with the ENGINEER prior to the start of the days activities to prepare all necessary paperwork and outline the daily objectives. Also, the CONTRACTOR or his designee will be required to meet with the ENGINEER at the completion of the days activities to discuss the work performed. These pre-work and post-work meetings will be conducted prior to and after the crews workday and shall be summarized weekly in writing.

### **SC-3.5 LICENSES, PERMITS, AND CERTIFICATES**

A. Unless otherwise indicated in the Supplementary conditions, CONTRACTOR shall obtain and pay for all construction and other permits and licenses and shall maintain any other permits necessary for this contract. STATE shall assist CONTRACTOR, when appropriate, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of Opening of Bid. CONTRACTOR shall also pay all charges of utility service companies for connection to the Work for capital costs related thereto, except for phone service. Site specific documents (e.g., discharge permits) shall be submitted prior to the issuance of a Notice to Proceed.

### **SC-3.6 FURNISHING OF DOCUMENTS**

A. The STATE reserves the right to require the CONTRACTOR to furnish up to 6 copies of any document provided by the CONTRACTOR to the Construction Manager, ENGINEER or STATE during the course of the Construction Work.

### **SC-3.7 REQUIREMENTS OF N.J.S.A. 19:44A-20.13-25 (FORMERLY EXECUTIVE ORDER 134)**

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the negotiation and award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, the Legislature enacted N.J.S.A. 19:44A-20.13 – 25 on March 22, 2005 the “Legislation”), retroactive to October 15, 2004, superseding the terms of Executive Order 134. Pursuant to the requirements of the Legislation, the terms and conditions set forth in this section are material terms of any contract resulting from this RFP:

#### **3.7.1 Definitions**

For the purpose of this section, the following shall be defined as follows:

a) Contribution – means a contribution reportable as a recipient under “The New Jersey Campaign Contributions and Expenditures Reporting Act.” P.L. 1973, c. 83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq. Through December 31, 2004, contributions in excess of \$400 during a reporting period

were deemed "reportable" under these laws. As of January 1, 2005, that threshold was reduced to contributions in excess of \$300.

b) **Business Entity** – means any natural or legal person, business corporation, professional services corporation, Limited Liability Company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. The definition of a business entity includes (i)all principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate; (ii)any subsidiaries directly or indirectly controlled by the business entity; (iii)any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and (iv)if a business entity is a natural person, that person’s spouse or child, residing in the same household.

### **3.7.2 Breach of terms of the legislation**

It shall be a breach of the terms of the contract for the Business Entity to (i)make or solicit a contribution in violation of the Legislation, (ii)knowingly conceal or misrepresent a contribution given or received; (iii)make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv)make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor, or to any State or county party committee; (v)engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation; (vi)fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii)engage in any exchange of contributions to circumvent the intent of the Legislation; or (viii)directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

### **3.7.3 Certification and disclosure requirements**

a) The State shall not enter into a contract to procure from any Business Entity services or any material, supplies or equipment, or to acquire, sell or lease any land or building, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor, or to any State or county political party committee during certain specified time periods

b) Prior to awarding any contract or agreement to any Business Entity, the Business Entity proposed as the intended awardee of the contract shall submit the Certification and Disclosure form, certifying that no contributions prohibited by the Legislation have been made by the Business Entity and reporting all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C.527 of the Internal Revenue Code that also meets the definition of a “continuing political committee” within the mean of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The required form and instructions, available for review on the Purchase Bureau website at

<http://www.state.nj.us/treasury/purchase/forms.htm#eo134> , shall be provided to the intended awardee for completion and submission to the Purchase Bureau with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Contract, the intended awardee shall submit to the Division, in care of the Purchase Bureau Buyer, the Certification and Disclosure(s) within five (5) business days of the State's request. Failure to submit the required forms will preclude award of a contract under this RFP, as well as future contract opportunities.

c) Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the contract, and any extension(s) thereof, at the time any such contribution is made. The required form and instructions, available for review on the Purchase Bureau website at <http://www.state.nj.us/treasury/purchase/forms.htm#eo134>, shall be provided to the intended awardee with the Notice of Intent to Award.

#### **3.7.4 State Treasurer Review**

The State Treasurer or his designee shall review the Disclosures submitted pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended awardee, prior to award, or during the term of the contract, by the contractor. If the State Treasurer determines that any contribution or action by the contractor constitutes a breach of contract that poses a conflict of interest in the awarding of the contract under this solicitation, the State Treasurer shall disqualify the Business Entity from award of such contract.

#### **3.7.5 Additional Disclosure Requirement of P.L. 2005, c. 271**

Contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to P.L. 2005, c. 271, section 3 if the contractor receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the contractor's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at [www.elec.state.nj.us](http://www.elec.state.nj.us).

### **SC 3.8 SOURCE DISCLOSURE REQUIREMENTS**

#### **3.8.1 REQUIREMENTS OF N.J.S.A. 52:34-13.2**

Under the referenced statute, effective August 3, 2005, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

#### **3.8.2 SOURCE DISCLOSURE REQUIREMENTS**

Pursuant to the statutory requirements, the intended awardee of a contract primarily for services with the State of New Jersey must disclose the location by country where services under the contract, including subcontracted services, will be performed. The Source Disclosure

Certification form is located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/07x39201.shtml>.

**FAILURE TO SUBMIT SOURCING INFORMATION WHEN REQUESTED BY THE STATE SHALL PRECLUDE AWARD OF A CONTRACT TO THE BIDDER.**

If any of the services cannot be performed within the United States, the bidder shall state with specificity the reasons why the services cannot be so performed. The Director shall determine whether sufficient justification has been provided by the bidder to form the basis of his certification that the services cannot be performed in the United States and whether to seek the approval of the Treasurer.

### **3.8.3 BREACH OF CONTRACT OF EXECUTIVE ORDER 129**

**A SHIFT TO PROVISION OF SERVICES OUTSIDE THE UNITED STATES DURING THE TERM OF THE CONTRACT SHALL BE DEEMED A BREACH OF CONTRACT.**

If, during the term of the contract, the contractor or subcontractor, who had on contract award declared that services would be performed in the United States, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 3.5b.1 of the Standard Terms and Conditions version 05 09 06 of the RFP, unless previously approved by the Director and the Treasurer.