



Request for Proposal 08-X-39261

For: Asian Longhorned Beetle (ALB) Reforestation Project-DEP

| Event | Date | Time |
|--|----------------|----------|
| Bidder's Electronic Question Due Date (Refer to RFP Section 1.3.1 for more information.) | 08/01/07 | 5:00 PM |
| Mandatory Pre-bid Conference (Refer to RFP Section 1.3.3 for important details about the new electronic bid option.) | 08/01/07 | 10:00 AM |
| Mandatory Site Visit (Refer to RFP Section 1.3.3 for more information.) | Not Applicable | |
| Bid Submission Due Date (Refer to RFP Section 1.3.2 for more information.) | 08/23/07 | 2:00 PM |

Dates are subject to change. All changes will be reflected in Addenda to the RFP posted on the Division of Purchase and Property website.

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| <p>Small Business Set-Aside (Refer to RFP Section 4.4.2.2 for more information.)</p> | <p>Status</p> <p><input checked="" type="checkbox"/> Not Applicable</p> <p><input type="checkbox"/> Entire Contract</p> <p><input type="checkbox"/> Partial Contract</p> <p><input type="checkbox"/> Subcontracting Only</p> | <p>Category</p> <p><input type="checkbox"/> I</p> <p><input type="checkbox"/> II</p> <p><input type="checkbox"/> III</p> |
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RFP Issued By:

State of New Jersey
Department of the Treasury
Division of Purchase and Property
Trenton, New Jersey 08625-0230

Using Agency:

State of New Jersey
Department of Environmental Protection
Division of Parks and Forestry
Community Forestry Program

Date: 09/28/07

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1.0 INFORMATION FOR BIDDERS

1.1 PURPOSE AND INTENT

This Request for Proposal (RFP) is issued by the Purchase Bureau, Division of Purchase and Property, Department of the Treasury on behalf of the Department of Environmental Protection (DEP), Division of Parks and Forestry, Community Forestry Program (CFP). The purpose of this RFP is to solicit bid proposals for the Asian Longhorned Beetle (ALB) Reforestation Project for Public and Private Property.

The intent of this RFP is to award a contract to that responsible bidder whose bid proposal, conforming to this RFP is most advantageous to the State, price and other factors considered. However, the State reserves the right to separately procure individual requirements that are the subject of the contract during the contract term, when deemed by the Director to be in the State's best interest.

The NJ Standard Terms and Conditions version 05 09 06 will apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in this RFP and should be read in conjunction with them unless the RFP specifically indicates otherwise.

1.2 BACKGROUND

The Asian Longhorned Beetle (ALB) infestation was discovered in Carteret, New Jersey in August of 2004. Since this time, the extent of the infestation has incorporated the surrounding communities listed below. The goal of the New Jersey Department of Environmental Protection, Bureau of Forest Management, Community Forestry Program is to reforest the tree populations of these communities devastated by the ALB infestation by increasing tree species diversity so that the already affected communities will not have to suffer as great a loss in the future. The species used in the reforestation program are to be non-host species to the ALB.

The Asian Longhorned Beetle reforestation of public and private property will take place in the following communities:

- Borough of Carteret – Middlesex County
- Township of Woodbridge – Middlesex County
- City of Linden – Union County
- City of Rahway – Union County

It is possible that the municipalities listed for the ALB reforestation project will expand in the future. The contractor will be informed of these changes at least thirty (30) days prior to the start of tree planting, and will be responsible for complying with the scope of work as stated in this RFP.

There are two (2) ALB Reforestation Projects. The first project focuses on reforesting the trees that have been removed from public property. The second project focuses on reforesting trees that have been removed from private property.

A. Public Tree ALB Reforestation Project

The Community Forestry Program has planted 2,681 trees on public property including street lawns, municipal parks, public schools, and other public facilities during three (3) prior planting

seasons for the ALB reforestation project. This quantity is for information and guidance in estimating cost only, and is not a minimum guarantee or maximum limit on future plantings.

B. Private Tree ALB Reforestation Project

The Community Forestry Program has planted 996 trees on private property during three (3) prior planting seasons for the ALB reforestation project. This quantity is for information and guidance in estimating cost only, and is not a minimum guarantee or maximum limit on future plantings.

The contractor may be required to remove newly planted dead trees smaller than three inch (3") diameter for the purposes of dead tree replacement. It is estimated that fifteen percent (15%) of the trees already planted in the last three planting seasons will require this step. This quantity is for information and guidance only.

1.3 KEY EVENTS

1.3.1 ELECTRONIC QUESTION AND ANSWER PERIOD

The Purchase Bureau will accept questions and inquiries from all potential bidders electronically via web form. To submit a question, please go to Current Bid Opportunities webpage or to <http://ebid.nj.gov/QA.aspx>

Questions should be directly tied to the RFP and asked in consecutive order, from beginning to end, following the organization of the RFP. Each question should begin by referencing the RFP page number and section number to which it relates.

Bidders are not to contact the Using Agency directly, in person, by telephone or by email, concerning this RFP.

The cut-off date for electronic questions and inquiries relating to this RFP is indicated on the cover sheet. Addenda to this RFP, if any, will be posted on the Purchase Bureau website after the cut-off date (see Section 1.4.1. of this RFP for further information.)

1.3.2 SUBMISSION OF BID PROPOSAL

In order to be considered for award, the bid proposal must be received by the Purchase Bureau of the Division of Purchase and Property at the appropriate location by the required time. **ANY BID PROPOSAL NOT RECEIVED ON TIME AT THE LOCATION INDICATED BELOW WILL BE REJECTED. THE DATE AND TIME IS INDICATED ON THE COVER SHEET. THE LOCATION IS AS FOLLOWS:**

BID RECEIVING ROOM - 9TH FLOOR
PURCHASE BUREAU
DIVISION OF PURCHASE AND PROPERTY
DEPARTMENT OF THE TREASURY
33 WEST STATE STREET, P.O. BOX 230
TRENTON, NJ 08625-0230

Directions to the Purchase Bureau can be found at the following web address:
<http://www.state.nj.us/treasury/purchase/directions.htm>.

Note: Bidders using USPS Regular or Express mail services should allow additional time since USPS mail deliveries are not delivered directly to the Purchase Bureau.

1.3.3 MANDATORY PRE-BID CONFERENCE

The date and time of the Mandatory Pre-Bid Conference is indicated on the cover sheet. The location of the Mandatory Pre-Bid Conference will be as follows:

**Department of the Treasury
Division of Purchase and Property
Purchase Bureau
33 West State Street-9th Floor Bid Room
Trenton, NJ 08625**

Bid proposals will be automatically rejected from any bidder that was not represented or failed to properly register at the Mandatory Pre-Bid Conference.

The purpose of the Mandatory Pre-Bid Conference is to provide a structured and formal opportunity for the State to accept questions from vendors regarding this RFP.

1.4 ADDITIONAL INFORMATION

1.4.1 ADDENDA: REVISIONS TO THIS RFP

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

ALL RFP 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)

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 RFP issuance through bid opening.

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

1.4.2 BIDDER RESPONSIBILITY

The bidder assumes sole responsibility for the complete effort required in submitting a bid proposal in response to this RFP. No special consideration will be given after bid proposals are opened because of a bidder's failure to be knowledgeable as to all of the requirements of this RFP.

1.4.3 COST LIABILITY

The State assumes no responsibility and bears no liability for costs incurred by a bidder in the preparation and submittal of a bid proposal in response to this RFP.

1.4.4 CONTENTS OF BID PROPOSAL

Subsequent to bid opening, all information submitted by bidders in response to the bid solicitation is considered public information, except as may be exempted from public disclosure by the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and the common law. If the State proposes to negotiate and/or pursue a Best and Final Offer, bid proposals will not be made public until the Letter of Intent to Award is issued.

A bidder may designate specific information as not subject to disclosure when the bidder has a good faith legal/factual basis for such assertion. The State reserves the right to make the determination and will advise the bidder accordingly. The location in the bid proposal of any such designation should be clearly stated in a cover letter. **The State will not honor any attempt by a bidder either to designate its entire bid proposal as proprietary and/or to claim copyright protection for its entire proposal.**

By signing the cover sheet of this RFP, the bidder waives any claims of copyright protection set forth within the manufacturer's price list and/or catalogs. The price lists and/or catalogs must be accessible to State using agencies and cooperative purchasing partners and thus have to be made public to allow all eligible purchasing entities access to the pricing information.

All bid proposals, with the exception of information determined by the State or the Court to be proprietary, are available for public inspection after the Letter of Intent to Award is issued. At such time, interested parties can make an appointment with the Purchase Bureau to inspect bid proposals received in response to this RFP.

1.4.5 PRICE ALTERATION

Bid prices must be typed or written in ink. Any price change (including "white-outs") must be initialed. Failure to initial price changes shall preclude a contract award from being made to the bidder.

1.4.6 BID ERRORS

In accordance with N.J.A.C. 17:12-1.22, "Bid Errors," a bidder may withdraw its bid as follows:

A bidder may request that its bid be withdrawn prior to bid opening. Such request must be made, in writing, to the Supervisor of the Business Unit. If the request is granted, the bidder may submit a revised bid as long as the bid is received prior to the announced date and time for bid opening and at the place specified.

If, after bid opening but before contract award, a bidder discovers an error in its proposal, the bidder may make written request to the Supervisor of the Business Unit for authorization to withdraw its proposal from consideration for award. Evidence of the bidder's good faith in making this request shall be used in making the determination. Some of the factors that may be considered are that the mistake is so significant that to enforce the contract resulting from the proposal would be unconscionable; that the mistake relates to a material feature of the contract; that the mistake occurred notwithstanding the bidder's exercise of reasonable care; and that the State will not be significantly prejudiced by granting the withdrawal of the proposal. Note: a PB-36 complaint form may be filed and forwarded to the Division's Contract Compliance and Administration Unit (CCAU) for handling. A record of the complaint will also be maintained in the Division's vendor performance file for evaluation of future bids submitted.

All bid withdrawal requests must include the bid identification number and the final bid opening date and sent to the following address:

Department of the Treasury

Purchase Bureau, PO Box 230
33 West State Street – 9th Floor
Trenton, New Jersey 08625-0230
Attention: Supervisor, Business Unit

If during a bid evaluation process, an obvious pricing error made by a potential contract awardee is found, the Director shall issue written notice to the bidder. The bidder will have five days after receipt of the notice to confirm its pricing. If the vendor fails to respond, its bid shall be considered withdrawn, and no further consideration shall be given it.

If it is discovered that there is an arithmetic disparity between the unit price and the total extended price, the unit price shall prevail. If there is any other ambiguity in the pricing other than a disparity between the unit price and extended price and the bidder's intention is not readily discernible from other parts of the bid proposal, the Director may seek clarification from the bidder to ascertain the true intent of the bid.

1.4.7 JOINT VENTURE

If a joint venture is submitting a bid proposal, the agreement between the parties relating to such joint venture should be submitted with the joint venture's bid proposal. Authorized signatories from each party comprising the joint venture must sign the bid proposal. A separate Ownership Disclosure Form, Disclosure of Investigations and Actions Involving Bidder, Affirmative Action Employee Information Report, MacBride Principles Certification, and Business Registration or Interim Registration must be supplied for each party to a joint venture.

2.0 DEFINITIONS

2.1 GENERAL DEFINITIONS

The following definitions will be part of any contract awarded or order placed as result of this RFP.

Addendum - Written clarification or revision to this RFP issued by the Purchase Bureau.

Amendment - A change in the scope of work to be performed by the contractor after contract award. An amendment is not effective until signed by the Director, Division of Purchase and Property or his/her designee.

Bidder – A vendor submitting a bid proposal in response to this RFP.

Contract - This RFP, any addendum to this RFP, the bidder's bid proposal submitted in response to this RFP and the Division's Notice of Acceptance.

Contractor - The contractor is the bidder awarded a contract.

Director - Director, Division of Purchase and Property, Department of the Treasury. By statutory authority, the Director is the chief contracting officer for the State of New Jersey.

Division - The Division of Purchase and Property.

Firm Fixed Price – A price that is all-inclusive of direct cost and indirect costs, including, but not limited to, direct labor costs, overhead, fee or profit, clerical support, equipment, materials, supplies, managerial (administrative) support, all documents, reports, forms, travel, reproduction and any other costs. No additional fees or costs shall be paid by the State unless there is a change in the scope of work.

Joint Venture – A business undertaking by two or more entities to share risk and responsibility for a specific project.

May - Denotes that which is permissible, but not mandatory.

Project – The undertaking or services that are the subject of this RFP.

Request for Proposal (RFP) - This document, which establishes the bidding and contract requirements and solicits bid proposals to meet the purchase needs of [the] Using Agency[ies], as identified herein.

Shall or Must - Denotes that which is a mandatory requirement.

Should - Denotes that which is recommended, but not mandatory.

State - State of New Jersey

State Contract Manager – The individual responsible for the approval of all deliverables, i.e., tasks, sub-tasks or other work elements in the Scope of Work as set forth in Sections 8.1, 8.1.1 and 8.1.2.

Subcontractor – An entity having an arrangement with a State contractor, where the State contractor uses the products and/or services of that entity to fulfill some of its obligations under

its State contract, while retaining full responsibility for the performance of all of its [the contractor's] obligations under the contract, including payment to the subcontractor. The subcontractor has no legal relationship with the State, only with the contractor.

Task – A discrete unit of work to be performed.

Using Agency[ies]- The entity[ies] for which the Division has issued this RFP.

2.2 CONTRACT SPECIFIC DEFINITIONS

Caliper – The diameter of a tree at six (6) inches from the root flare.

Date of Tree Planting Acceptance – The date within thirty (30) days after the last day of tree planting for any season that trees are finally accepted by the State Contract Manager. Prior to that date, any tree planted that season may be rejected if it does not meet contract specifications.

Department – The Department of Environmental Protection (DEP)

Foreman – Contractor's employee who is fluent in the English language and who leads and/or is responsible for the tree planting crew.

Permits – Any required documentation that the contractor needs to proceed with scope of work, i.e. watering permit.

PR MG – Per one thousand gallons.

Private Property – All include all property owned by private entities, including but not limited to businesses and residences.

Public Property – All publicly owned municipal, county or state properties, including but not limited to public parks, libraries, schools, and road and highway rights-of-way.

Services – For purposes of this RFP, the definition of services shall be expanded to include not only time, labor and effort, but also materials, supplies, equipment or other tangible items necessary to complete the scope of work required in a satisfactory manner.

State Representative – Authorized representative of the Community Forestry Program (CFP).

Stop Work Order – Document issued by the State Representative to terminate all tasks on the project for a specified amount of time until certain issues have been resolved.

Tamp - To pat down soil around the base of a new plant.

Tree Material – All necessary items required to plant the tree to project specifications including: tree, mulch, stakes, wire, initial watering, guaranteed tree replacements, and other items that are necessary for tree planting.

USDA-APHIS – United States Department of Agriculture, Animal and Plant Health Inspection Service

3.0 COMMODITY DESCRIPTION/SCOPE OF WORK

3.1 NURSERY STOCK

Trees shall be nursery grown specimens of top quality as defined below, and grown within 300 miles of Trenton, N.J. Tree materials may be inspected by the State Representative where they are growing.

The State Representative shall supply an approved list of tree species, quantities and planting locations for the public and private property planting projects prior to the start of the planting season.

3.1.1 Tree Selection – Public Property

All trees for the public planting project shall be non-ALB host species between 2.0"–2 ½" caliper for single stemmed species, or 8'-10' for multi stemmed, evergreen, or certain ornamental species as measured by industry standards for height. Trees shall be of street tree form (the trunk shall be free of branches a minimum of six (6) feet from the ground prior to digging) unless otherwise identified by the State Representative. There shall be no more than twenty percent (20%) of one genera of trees and no more than ten percent (10%) of one species of trees planted per season. The contractor shall be responsible for staying within these ranges.

3.1.2 Tree Selection – Private Property

All trees for the private planting project shall be non-ALB host species between 2.0"–2 ½" caliper for single stemmed species and 8'-10' for multi stemmed, evergreen, or certain ornamental species as measured by industry standards for height. Trees shall be of street tree form (the trunk shall be free of branches a minimum of six (6) feet from the ground prior to digging) unless otherwise identified by the State Representative.

3.1.2.1 The contractor will not be compensated for planting trees on an incorrect property, planting an inappropriate quantity of trees on a property, or planting a species susceptible to ALB. The contractor will be responsible for rectifying these issues with the private property owner. The ALB Host Species list of trees that are not to be planted will be provided at the mandatory pre-bid conference. The contractor shall not plant trees that were dug in the fall and are listed as fall-dig hazard trees during the fall planting season. The fall-dig hazard list will be provided to all bidders at the mandatory pre-bid conference.

3.1.2.2 The State Representative shall sign up private property owners for trees and provide the contractor with a copy of the Reforestation Agreement. The Reforestation Agreement will have the location of the private property, contact information, planting location(s) and the quantity and species of trees the contractor shall plant. The Reforestation Agreement outlines that the contractor and the State Representative have permission to enter the private property on all occasions relating to the planting of trees in agreed upon locations, and that the private property owner shall be solely responsible for the care of the tree including watering, mulching, and other tree maintenance requirements after the initial planting. The initial planting requirements remain the responsibility of the contractor.

3.1.2.3 Tree location(s) will be marked by the State Representative with conspicuous markings such as paint or flagging. The marking(s) allows for the contractor to easily locate the planting location. It also allows for a visible marking for the private property owner.

3.1.3 Tree Specifications for Both Public and Private Property

Tree materials shall be trees of all descriptions conforming to the American Standard for Nursery Stock sponsored by the American Nursery and Landscape Association (formerly the American Association of Nurserymen). Trees must be free from defects, disease and damage. Trees shall

be healthy and vigorous with well-developed branch and root systems, a balanced crown and shall be free from disfiguring knots and gall, sunscald injuries, bark abrasions and other objectionable disfigurements. Tree materials that are not free from these disfigurements, weak and thin, or which have been cut back from larger grades to meet certain specified requirements will be rejected. All tree materials shall conform to State and Federal laws relating to inspection for diseases and infestation.

3.1.4 Tag Trees

The State or its designee may tag tree material in the ground at the nursery for specific tree planting projects. Certain items selected will be marked with a seal furnished by the Department.

3.1.5 Rejected Tree Material

Any tree material that is initially rejected, or not accepted after planting due to quality standards, improper planting, incorrect tree species, incorrect tree delivery or an issued Stop Work Order shall be replaced by the end of the planting season in kind, quantity, and size as originally specified by the contractor at no additional cost to the State.

3.1.6 Unavailable Tree Material

Alternates for unavailable tree materials may be permitted according to the following conditions:

The contractor shall supply written verification to the State Representative that a good faith attempt was made to locate the contract item at a minimum of six (6) different nursery sources that would normally supply the item and the contractor found that item to be unavailable for planting before the project completion date. The State Representative may provide additional sources and shall approve substitutes in writing.

3.2 CONTRACTOR RESPONSIBILITY

3.2.1 Permits and Licenses

The contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this contract. The contractor shall supply the State Representative with evidence of all such license, permits and authorizations prior to the start of work. This evidence shall be submitted subsequent to the contract award. No work will commence until all appropriate licenses and permits are submitted to the State Representative. All costs associated with any such license, permits and authorizations must be included in the pricing offered by the bidder in its bid proposal.

3.2.2 Supervision

At least one experienced and responsible foreman shall be on-site at all times during performance of any work, with a crew large enough to carry out all contract services for the day. The foreman is the contractor's employee who is fluent in the English language and who leads and/or is responsible for the tree planting crew. The foreman must be accessible at all times on site, either in person or by cellular phone.

3.2.3 Maintenance and Protection of Traffic

The maintenance and protection of traffic with minimum interference is of prime importance and shall be provided by the contractor and is included in the costs of tree material. The contractor is responsible for providing traffic safety equipment and personnel when affecting the normal flow of vehicular traffic. The contractor is also responsible for abiding by traffic laws. The contractor must adhere to State and local laws pertaining to traffic control and maintenance. Any fines or dues summoned to the contractor as a result of traffic law violations are the responsibility of the contractor.

3.2.4 The contractor is required to complete a one (1) hour ALB Compliance Training administered by the USDA-APHIS Compliance officer, prior to the start of planting. Details of the Compliance Training will be presented at the mandatory pre-bid conference.

3.2.5 The contractor may be required to attend meetings at any time during the contract period. Meetings may include but not be limited to additional training on tree planting services.

3.3 TREE PLANTING

3.3.1 Tree Delivery and Inspection

3.3.1.1 Specific projects shall require a State Representative to inspect tree material upon arrival at the site before planting begins. All tree materials will be thoroughly inspected, whether they have Department tags or not. Any tree material that does not meet the quality standards will not be accepted. Materials arriving with broken or loose balls, extremely dry balls, insufficient protection, or which have been damaged in transit will not be accepted. The State Representative maintains the right to reject any tree material if deemed unacceptable. The contractor shall send the rejected tree material back to the nursery and replace that tree with one that is undamaged by the end of the planting season.

3.3.1.2 All tree material shall arrive on site with tree wrap material intact around the trunk for protection. All wrapping materials shall be removed immediately after planting.

3.3.1.3 The delivery of tree material from the specific nurseries to the cities to be planted must be coordinated with the State Representative. Notice shall be given not less than twenty-four (24) hours to the State Representative before the tree material is to arrive on the project site, otherwise the State Representative may cancel the tree material or postpone the delivery of the tree material.

3.3.1.4 Random inspection of the root system of the plant material may be made by the State Representative by breaking open the earth balls. Necessary assistance shall be given when inspections are made.

3.3.1.5 Material that is shipped in open vehicles shall be thoroughly protected from drying out due to exposure to the wind and sun. Material shipped in enclosed vans or boxcars shall be adequately ventilated.

3.3.1.6 A packing slip giving the date and origin of shipment, the botanical names, sizes, and the quantities of plants shall accompany each shipment. A copy of the packing slip shall be furnished to the State Representative at the time of delivery or the delivery will be rejected. If the State Representative is unavailable on the day of delivery, the packing slip shall be faxed to the State Representative the next business day.

3.3.1.7 Materials used for burlapping shall be biodegradable. Non-biodegradable materials such as plastic or nylon shall not be used. Any non-biodegradable materials used for tying such as plastic or nylon, shall be completely removed from the root ball and planting pit, and disposed of properly.

3.3.1.8 Work shall be coordinated to prevent delays in planting that may expose the roots of plant materials to the air, sun or freezing conditions.

3.3.2 Transporting Trees

Tree material shall be carefully handled and packed to prevent injuries during transit. Tree material shall be protected during the loading and unloading process to prevent bark damage,

broken branches, or dropping the tree. Trees that, in the opinion of the on-site State Representative, have been damaged during the loading, transporting or unloading process to the point where it will affect the establishment or long-term survival of the tree will be rejected.

3.3.3 Tree Placement

Before planting the tree, the tree shall be placed next to the assigned pit location with care to prevent injury during the move.

3.3.4 Utility Mark-Outs

The contractor is responsible for utility mark-outs prior to planting as specified in New Jersey One Call rules and regulations. The physical One Call ticket numbers must be provided to the on-site State Representative with the date that the ticket comes into effect. If One Call ticket numbers with the effective date are not provided upon request, the State Representative reserves the right to stop work until the One Call tickets are provided.

The New Jersey One Call center can be reached at 1-800-272-1000 or at the following website www.nj1.call.org.

3.3.5 Trees Will Be Planted the Same Day as Delivered

All tree material must be planted the same day as delivered. Leaving unplanted trees on site is unacceptable and any unplanted tree will subsequently be rejected. These trees must be removed or moved off site by the end of the day and replaced within the current planting season. The contractor is responsible for calculating the number of trees their work crew is capable of planting each day and only deliver a quantity of trees that the work crew is able to plant. If for an unforeseen reason such as weather conditions, emergencies, etc., the contractor is unable to plant all tree material by the end of that work day, the contractor has the option to seek the approval of the State Representative to stay later in the day to finish the planting and properly clean-up, or the unplanted tree material must be moved off site to a protected area that has been pre-approved by the State Representative. In these specific cases, with approval from the State Representative, unplanted trees from the previous day must be planted before planting new tree materials.

Damage, vandalism, or theft of unplanted trees is the responsibility of the contractor. If the contractor is unable to plant the daily load more than once in a ten (10) day period, the contractor must stop the next tree delivery until all tree material is planted.

3.3.6 Property Damage

During the planting process, if any public or private property is damaged it is the contractors responsibility to repair the property at no cost to the State. Repairs must take place no later than five (5) days after the incident. The contractor shall perform necessary measures to make sure the damaged site is safe until repair is made. The repairs must be acceptable to the affected private property owner or municipality.

Photographs and written documentation are necessary to prove that the repair was completed. Payment will be held until satisfactory documentation or proof that the repair was completed is provided to the State Representative.

3.3.7 Planting the Tree

3.3.7.1 Site Preparation: Prior to planting, the contractor shall be responsible for all soil preparation, when directed by the State Representative. Preparation may include removal of any of the existing vegetation, i.e. small trees, grasses, weeds, and small undesirable shrubs, within the proposed planting area. All undesirable vegetation shall be removed and disposed by the contractor and included in the cost of tree material.

3.3.7.2 Planting Pit: Excavate the planting pit to 1.5 times the diameter of the root ball size to ensure sufficient depth and width for proper planting. The bottom of the plant pit shall be firm, original ground, absent of standing water, large rocks, concrete, vegetation, and other material deemed inappropriate by the State Representative. At the completion of planting, the root flare shall be flush with the ground level. Trees planted too deeply, too shallowly or too high shall be rejected.

3.3.7.2.1 Planting pits shall not remain open beyond the close of the working day.

3.3.7.3 All strings and tags must be removed from the crown of the tree.

3.3.7.4 The tree must be gently placed in the plant pit. Sufficient topsoil must be placed and tamped in the pit to sufficiently prevent the root ball from shifting or leaning.

3.3.7.5 The entire wire basket must be removed prior to installing the backfill in a manner that does not compromise the integrity of the root ball and the tree or cut off at least two-thirds of the wire basket and crush the remaining one-third flat in the bottom of the planting pit.

3.3.7.6 The burlap must be removed from B&B material with a knife and/or fold and tuck into plant pit after backfilling to ½ depth of the root ball. Remove all non-biodegradable strings or wrapping from the root ball and trunk and out of the planting pit.

3.3.7.7 A water retaining polymer must be added, i.e. hydrogell, to the planting pit per manufacture's specifications.

3.3.7.8 Backfilling must be completed, tamping soil periodically.

3.3.7.9 Excess soil debris must be removed and cleaned up by the end of each planting day. The finished grade above the planting pit shall be even with the surrounding ground surface. No mounding or welling of soil around the filled planting pit shall be done. All excess soil and debris must be disposed of properly

3.3.8 Hand Digging

On occasion conflicts with certain aspects of the area where the tree is to be planted require that the tree planting pit be dug by hand. This includes but is not limited to plantings that take place within sixteen (16) inches of a utility marking or line. This precaution may be deemed necessary by the State Representative and shall be included in the cost of tree materials.

3.3.9 Watering

Each tree shall be watered at a rate of fifteen (15) gallons per square yard of planting pit area the same day that the tree is planted. The initial watering of the tree shall be included in the cost of the tree materials. During periods of excessive dryness, the State Representative may notify the contractor of additional watering needs. The contractor shall water the specified trees, ten (10) gallons each, within three (3) days of notification from the State Representative. The contractor shall be compensated for additional tree watering per 1,000 gallons. A metered truck will be used to water the trees, and the contractor is responsible for submitting a log of watering, including the date and location where watering took place. Watering shall be done using a low pressure hose to prevent damage to the soil in the planting site using a watering probe, or other watering methods approved by the State Representative. The contractor is responsible for obtaining the proper permits for obtaining water from city facilities, i.e. fire hydrants. The contractor shall not take water from such facilities without the proper permits.

3.3.10 Mulch

Wood mulch shall then be placed at a depth of between two (2) - four (4) inches high, leaving six (6) inches away from the trunk free of mulch. The beds shall be neatly edged. Mulch shall be shredded bark or chips from hardwood trees and shall not be decomposed and shall not exceed two (2) inches in any dimension. All individual tree material shall have mulch applied the same day that the tree is planted, and payment is included in the bid price for the tree material. Mulch shall cover the entire planting area, including the area exposed as a result of concrete cutouts, but not overflow into the street or sidewalk.

3.3.11 Stake

All individual tree material shall be staked with two stakes, wire and hose, or an acceptable substitute. Stakes shall be installed the same day that the tree is planted, and shall be removed within two weeks after the conclusion of the one-year tree establishment period. Any tree that is not stable at the end of this time shall be rejected. The contractor must use a minimum of two (2) stakes spaced equidistant from each other. Wooden stakes shall be nominal size two (2) by two (2) inch hardwood lumber that is reasonably knot-free. The stakes shall be pointed on the thinner end. The removal of stakes and staking wires shall be included in the cost of the tree material.

3.3.12 Clean Up and Disposal

The contractor shall be responsible for the removal of surplus soil and waste material, including excess subsoil, unsuitable soil, unearthed grass, concrete, trash and debris, and legally dispose of them off site by the end of the working day.

3.4 TREE PLANTING SEASON

3.4.1 Public Property Tree Planting Season

The spring planting season shall begin no sooner than March 15th and conclude no later than June 15th. The fall planting season shall begin no sooner than September 1st and conclude no later than December 1st. These dates can only be extended with the prior written approval from the State Representative. The workweek is defined as Monday through Friday between the hours of 7:00 AM and 3:30 PM. All work must be completed prior to 3:30 PM unless the State Representative approves other arrangements in writing. The start time may change in accordance with local noise ordinances. Any work performed outside of these times is subject to a Stop Work Order.

3.4.2 Private Property Tree Planting Season

The spring planting season shall begin no sooner than March 15th and conclude no later than June 15th. The fall planting season shall begin no sooner than September 1st and conclude no later than December 1st. These dates can only be extended with the prior written approval from the State Representative. The workweek is defined as Monday through Friday between the hours of 7:00 AM and 3:30 PM. Work shall be completed prior to 3:30 PM unless the State Representative approves other arrangements in writing. The State Representative may approve planting on Saturdays under certain circumstances. Any such planting shall be approved in writing by the State Representative in writing prior to the actual date. The start time may change in accordance with local ordinances. Any work performed outside of these times is subject to a Stop Work Order.

3.4.3 There shall be days when a State Representative will be unavailable for contact or assistance to the contractor. The State Representative will not be available during the New Jersey Arbor Day Celebration in April, the New Jersey Shade Tree Federation Conference held in October and State observed holidays. Any public tree planting done on these days will not be accepted and the contractor shall be responsible for the removal and replacement of all trees moved or planted on these days. There may be other days where a State Representative is

unavailable for contact or assistance and written notice shall be given to the contractor at least five (5) business days in advance. The contractor is allowed to plant trees on private property on these days, the contractor is not permitted to plant tree on public property when a State Representative is not available.

3.5 TREE GUARANTEE

Trees planted by the contractor shall be guaranteed for one (1) year from the date of planting. All trees that are not alive and/or healthy at each replacement period shall be replaced in kind, quantity, and size with acceptable live, healthy trees installed as originally specified. The State Representative may permit substitute varieties of trees to be used. The contractor must replace the tree in kind within three (3) weeks of notice by the State Representative. The contractor shall not be liable for trees damaged by vandalism after the tree has been planted.

3.6 REPLACEMENT PERIOD

Guaranteed trees will require mandatory tree replacements. There shall be two (2) periods for mandatory replacement of unhealthy tree material. Mandatory tree replacements shall be included in the cost of the tree material. The replacement period will take place in six (6) months and again one (1) year from the date of tree planting acceptance. The mandatory replacement trees shall be planted within three (3) weeks of receiving a replacement list from the State Representative. All trees that are not alive and/or not in a healthy condition at the stated intervals of replacements shall be replaced in kind, quantity, and size with acceptable live, healthy trees installed as originally specified. The State Representative may permit substitute varieties of trees to be used.

3.6.1 Replacement planting shall conform to the requirements for initial planting except as follows:

3.6.1.1 Existing wood chips shall be removed and may be reused if salvageable and approved by the State Representative. Replacement plantings shall be made at no cost to the State.

3.7 SUBCONTRACTING

The contractor shall perform all tree planting work by its own firm. There shall be no subcontracting of the work.

4.0 BID PROPOSAL PREPARATION AND SUBMISSION

4.1 GENERAL

The bidder is advised to thoroughly read and follow all instructions contained in this RFP, including the instructions on the RFP's signatory page, in preparing and submitting its bid proposal.

Note: Bid proposals shall not contain URLs (Uniform Resource Locators, i.e., the global address of documents and other resources on the world wide web) or web addresses. Inasmuch as the web contains dynamically changing content, inclusion of a URL or web address in a bid response is indicative of potentially changing information. Inclusion of a URL or web address in a bid response implies that the bid's content changes as the referenced web pages change.

4.2 BID PROPOSAL DELIVERY AND IDENTIFICATION

In order to be considered, a bid proposal must arrive at the Purchase Bureau in accordance with the instructions on the RFP signatory page

<http://www.state.nj.us/treasury/purchase/bid/summary/08x39261.shtml>. Bidders are cautioned to allow adequate delivery time to ensure timely delivery of bid proposals. **State regulation mandates that late bid proposals are ineligible for consideration. THE EXTERIOR OF ALL BID PROPOSAL PACKAGES ARE TO BE LABELED WITH THE BID IDENTIFICATION NUMBER AND THE FINAL BID OPENING DATE OR RISK NOT BEING RECEIVED IN TIME.**

4.3 NUMBER OF BID PROPOSAL COPIES

The bidder must submit **one (1) complete ORIGINAL bid proposal**, clearly marked as the "ORIGINAL" bid proposal. The bidder should submit **two (2) full, complete and exact copies and one (1) unbound, complete and exact copy** of the original. The copies requested are necessary in the evaluation of the bid proposal. A bidder failing to provide the requested number of copies will be charged the cost incurred by the State in producing the requested number of copies. It is suggested that the bidder make and retain a copy of its bid proposal.

4.4 BID PROPOSAL CONTENT

4.4.1 FORMS THAT MUST BE SUBMITTED WITH BID PROPOSAL

4.4.1.1 SIGNATORY PAGE

The bidder shall complete and submit the Signatory page provided on the Advertised Solicitation, Current Bid Opportunities webpage

<http://www.state.nj.us/treasury/purchase/bid/summary/08x39261.shtml>. The Signatory page shall be signed by an authorized representative of the bidder. If the bidder is a limited partnership, the Signatory page must be signed by a general partner. If the bidder is a joint venture, the Signatory page must be signed by a principal of each party to the joint venture. Failure to comply will result in rejection of the bid proposal.

4.4.1.2 OWNERSHIP DISCLOSURE FORM

In the event the bidder is a corporation, partnership or sole proprietorship, the bidder must complete the attached Ownership Disclosure Form. A current completed Ownership Disclosure Form must be received prior to or accompany the bid proposal. Failure to do so will preclude the award of a contract.

The Ownership Disclosure Form is located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/08x39261.shtml>.

4.4.1.3 DISCLOSURE OF INVESTIGATIONS/ACTIONS INVOLVING BIDDER

The bidder shall provide a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five years including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. The bidder shall use the Disclosure of Investigations and Actions Involving Bidder form located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/08x39261.shtml>.

4.4.2 PROOFS OF REGISTRATION THAT MUST BE SUBMITTED WITH THE BID PROPOSAL

4.4.2.1 BUSINESS REGISTRATION CERTIFICATE FROM THE DIVISION OF REVENUE

FAILURE TO SUBMIT A COPY OF THE BIDDER'S BUSINESS REGISTRATION CERTIFICATE (OR INTERIM REGISTRATION) FROM THE DIVISION OF REVENUE WITH THE BID PROPOSAL MAY BE CAUSE FOR REJECTION OF THE BID PROPOSAL.

The bidder may go to www.nj.gov/njbgs to register with the New Jersey Division of Revenue or to obtain a copy of an existing Business Registration Certificate.

Refer to Section 1.1. of the NJ Standard Terms and Conditions version 05 09 06 located on the Advertised Solicitation, Current Bid Opportunities webpage
<http://www.state.nj.us/treasury/purchase/bid/summary/08x39261.shtml>.

4.4.3 FORMS THAT MUST BE SUBMITTED BEFORE CONTRACT AWARD AND SHOULD BE SUBMITTED WITH THE BID PROPOSAL.

4.4.3.1 MACBRIDE PRINCIPLES CERTIFICATION

The bidder is required to complete the attached MacBride Principles Certification evidencing compliance with the MacBride Principles. The requirement is a precondition to entering into a State contract. The MacBride Principles Certification Form is located on the Advertised Solicitation, Current Bid Opportunities webpage:
<http://www.state.nj.us/treasury/purchase/bid/summary/08x39261.shtml>.

4.4.3.2 AFFIRMATIVE ACTION

The bidder is required to submit a copy of Certificate of Employee Information or a copy of Federal Letter of Approval verifying that the bidder is operating under a federally approved or sanctioned Affirmative Action program. If the bidder has neither document of Affirmative Action evidence, then the bidder must complete the attached Affirmative Action Employee Information Report (AA-302). This requirement is a precondition to entering into a State contract. The Affirmative Action Employee Information Report (AA-302) is located on the Advertised Solicitation, Current Bid Opportunities webpage:
<http://www.state.nj.us/treasury/purchase/bid/summary/08x39261.shtml>.

4.4.4 SUBMITTALS

4.4.4.1 BIDDER EXPERIENCE - DATA SHEETS

The bidder must provide all of the information requested in the Bidder's Data Packet located on the Advertised Solicitation, Current Bid Opportunities webpage:
<http://www.state.nj.us/treasury/purchase/bid/summary/08x39261.shtml>.

4.4.5 FINANCIAL CAPABILITY OF THE BIDDER

In order to provide the State with the ability to judge the bidder's financial capacity and capabilities to undertake and successfully complete the contract, the bidder should submit two years of certified financial statements that include a balance sheet, income statement and statement of cash flow, and all applicable notes for the most recent calendar year or the bidder's most recent fiscal year. If certified financial statements are not available, the bidder should provide either a reviewed or compiled statement from an independent accountant setting forth the same information required for the certified financial statements, together with a certification from the Chief Executive Officer and the Chief Financial Officer, that the financial statements and

other information included in the statements fairly present in all material respects the financial condition, results of operations and cash flows of the bidder as of, and for, the periods presented in the statements. In addition, the bidder should submit a bank reference.

If the information is not supplied with the bid proposal, the State may still require the bidder to submit it. If the bidder fails to comply with the request within seven (7) business days, the State may deem the proposal non-responsive.

The bidder may designate specific financial information as not subject to disclosure when the bidder has a good faith legal/factual basis for such assertion. The bidder may submit specific financial documents in a separate, sealed package clearly marked "Confidential-Financial Information" along with its Bid Proposal.

The State reserves the right to make the determination whether to accept the bidder's assertion of confidentiality and will advise the bidder accordingly.

4.4.6 PRICING

The bidder must submit its pricing using the format set forth in the State supplied price sheet(s) attached to this RFP. Failure to submit all information required will result in the bid being considered non-responsive. Each bidder is required to hold its prices firm through issuance of contract.

4.4.7 METHOD OF BIDDING

The bidder must submit its pricing using the format set forth in the State supplied price sheet(s).

There will be one price line for tree material. Bidder must submit an all-inclusive price to include all labor, tree material and tree planting requirements as specified in the RFP. Unit price shall be based on a B&B, 2"-2 ½ " caliper tree from the approved tree species list located in Appendix 1-Tree Species List.

5.0 SPECIAL CONTRACTUAL TERMS AND CONDITIONS

5.1 PRECEDENCE OF SPECIAL CONTRACTUAL TERMS AND CONDITIONS

The contract awarded as a result of this RFP shall consist of this RFP, addendum to this RFP, the contractor's bid proposal and the Division's Notice of Award.

Unless specifically stated within this RFP, the Special Contractual Terms and Conditions of the RFP take precedence over the NJ Standard Terms and Conditions version 05 09 06 located on the Advertised Solicitation, Current Bid Opportunities webpage:

<http://www.state.nj.us/treasury/purchase/bid/summary/08x39261>.

In the event of a conflict between the provisions of this RFP, including the Special Contractual Terms and the NJ Standard Terms and Conditions version 05 09 06, and any Addendum to this RFP, the Addendum shall govern.

In the event of a conflict between the provisions of this RFP, including any Addendum to this RFP, and the bidder's bid proposal, the RFP and/or the Addendum shall govern.

5.2 CONTRACT TERM AND EXTENSION OPTION

The term of the contract shall be for a period of **three (3) years**. The anticipated "Contract Effective Date" is provided on the signatory page of this RFP: <http://www.state.nj.us/treasury/purchase/bid/summary/08x39261.shtml>. If delays in the procurement process result in a change to the anticipated Contract Effective Date, the bidder agrees to accept a contract for the full term of the contract. The contract may be extended for all or part of **two (2) one-year periods**, by the mutual written consent of the contractor and the Director.

5.3 CONTRACT TRANSITION

In the event that a new contract has not been awarded prior to the contract expiration date, as may be extended herein, it shall be incumbent upon the contractor to continue the contract under the same terms and conditions until a new contract can be completely operational. At no time shall this transition period extend more than ninety (90) days beyond the expiration date of the contract.

5.4 CONTRACT AMENDMENT

Any changes or modifications to the terms of the contract shall be valid only when they have been reduced to writing and signed by the contractor and the Director.

5.5 CONTRACTOR'S WARRANTY

- a) The Contractor is responsible for the quality, technical accuracy, timely completion and delivery of all deliverables and other services to be furnished by the Contractor under the Contract. The Contractor agrees to perform in a good, skillful and timely manner all services set forth in the Contract.
- b) The Contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its services and deliverables furnished under the Contract. The approval of interim deliverables furnished under the Contract shall not in any way relieve the Contractor of fulfilling all of its obligations under the Contract. The acceptance or payment for any of the services rendered under the Contract shall not be construed as a waiver by the State or Agency, of any rights under the agreement or of any cause of action arising out of the Contractor's performance of the Contract.
- c) The acceptance of, approval of or payment for any of the services performed by the Contractor under the Contract shall not constitute a release or waiver of any claim the State or Agency, has or may have for latent defects or errors or other breaches of warranty or negligence.

5.6 ITEMS ORDERED AND DELIVERED

Not applicable to this procurement.

5.7 REMEDIES FOR FAILURE TO COMPLY WITH MATERIAL CONTRACT REQUIREMENTS

In the event that the contractor fails to comply with any material contract requirements, the Director may take steps to terminate the contract in accordance with the State administrative code and/or authorize the delivery of contract items by any available means, with the difference between the price paid and the defaulting contractor's price either being deducted from any monies due the defaulting contractor or being an obligation owed the State by the defaulting contractor.

5.8 MANUFACTURING/PACKAGING REQUIREMENTS

Not applicable to this procurement.

5.9 CLAIMS

All claims asserted against the State by the contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1.1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

5.10 CONTRACT ACTIVITY REPORT

Not applicable to this procurement.

5.11 STATE'S OPTION TO REDUCE SCOPE OF WORK

The State has the option, in its sole discretion, to reduce the scope of work for any task or subtask called for under this contract. In such an event, the Director shall provide advance written notice to the contractor.

Upon receipt of such written notice, the contractor will submit, within five (5) working days to the Director and the State Contract Manager, an itemization of the work effort already completed by task or subtask. The contractor shall be compensated for such work effort according to the applicable portions of its price schedule.

5.12 SUSPENSION OF WORK

The onsite State Representative shall for valid reason, issue a stop work order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Representative may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director and the contractor shall negotiate an equitable adjustment, if any, to the contract price.

The contractor and their work crews must stop work immediately when instructed by the State Representative (see Appendix 2 - Stop Work Order example). A valid reason includes, but is not limited to severe weather conditions, periods of rain or saturated soils where conditions are detrimental to nursery stock and planting site, damage to public utilities, unacceptable watering practices, or incidences where the contractor does not comply with the contract. In less serious incidents, the State Representative may stop work for a period of time long enough to gather the work crew together informing them of errors and methods in which to correct them. Reasons may include but are not limited to improper cutting of concrete slabs, poor planting procedures and lack of cleanup by the end of the day. Any tree material planted during the Stop Work Order time frame will be rejected.

5.13 CONTRACTOR RESPONSIBILITIES

The contractor shall have sole responsibility for the complete effort specified in the contract. Payment will be made only to the contractor. The contractor shall have sole responsibility for all payments due any subcontractor.

The contractor is responsible for the professional quality, technical accuracy and timely completion and submission of all deliverables, services or commodities required to be provided under the contract. The contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its deliverables and other services. The approval of

deliverables furnished under this contract shall not in any way relieve the contractor of responsibility for the technical adequacy of its work. The review, approval, acceptance or payment for any of the services shall not be construed as a waiver of any rights that the State may have arising out of the contractor's performance of this contract.

6.0 PROPOSAL EVALUATION

6.1 EVALUATION CRITERIA

The following criteria will be used to evaluate all bid proposals that meet the requirements of this RFP. The criteria are not necessarily listed in order of importance:

6.1.1 Price

6.1.2 Experience of the bidder

6.1.3 The bidder's past performance under similar contracts, including if applicable, the Division's vendor performance database.

For evaluation purposes, a model will be developed in which bidders will be price ranked according to the lowest total cost of predetermined price lines. The model will be developed prior to the receipt of bid proposal and be made available to the bidders at the public bid opening.

6.2 ORAL PRESENTATION AND/OR CLARIFICATION OF BID PROPOSAL

Prior to contract award and with the exception of scheduling a review of submitted bids, unless requested by the State, contact with the State is limited to status inquiries only and such inquiries are only to be directed to the buyer. Any further contact or information about the proposal with the buyer or any other State official connected with the solicitation will be considered an impermissible supplementation of the bidder's bid proposal.

The bidder may be required to give an oral presentation to the State concerning its bid proposal. The State may also require the bidder to submit written responses to questions regarding its bid proposal.

The purpose of such communication with the bidder, either through an oral presentation or a letter of clarification, is to provide an opportunity for the bidder to clarify or elaborate on its bid proposal. Original bid proposals submitted, however, cannot be supplemented, changed, or corrected in any way. No comments regarding other bid proposals are permitted. Bidders may not attend presentations made by their competitors.

It is within the State's discretion whether to require the bidder to give an oral presentation or require the bidder to submit written responses to questions regarding its bid proposal. Action by the State in this regard should not be construed to imply acceptance or rejection of a bid proposal. The Purchase Bureau buyer will be the sole point of contact regarding any request for an oral presentation or clarification.

6.3 BID DISCREPANCIES

In evaluating bids:

- Discrepancies between words and figures will be resolved in favor of words.

- Discrepancies between unit prices and totals of unit 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 unit prices.
- Discrepancies between the indicated total of multiplied unit prices and units of work 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 corrected sum of the column of figures.

7.0 CONTRACT AWARD

7.1 DOCUMENTS REQUIRED BEFORE CONTRACT AWARD

7.1.1 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:

7.1.1.1 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.

7.1.1.2 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.

7.1.1.3 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.

7.1.1.4 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.

7.1.1.5 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.

7.2 FINAL CONTRACT AWARD

Contract award[s] shall be made with reasonable promptness by written notice to that responsible bidder(s), whose bid proposal(s), conforming to this RFP, is(are) most advantageous to the State, price, and other factors considered. Any or all bid proposals may be rejected when the State Treasurer or the Director determines that it is in the public interest to do so.

7.3 INSURANCE CERTIFICATES

The contractor shall provide the State with current certificates of insurance for all coverages required by the terms of this contract, naming the State as an Additional Insured.

8.0 CONTRACT ADMINISTRATION

8.1 CONTRACT MANAGER

The State Contract Manager is the State employee responsible for the overall management and administration of the contract.

The State Contract Manager for this project will be identified at the time of execution of contract. At that time, the contractor will be provided with the State Contract Manager's name, department, division, agency, address, telephone number, fax phone number, and email address.

8.1.1 STATE CONTRACT MANAGER RESPONSIBILITIES

For an agency contract where only one State office uses the contract, the State Contract Manager will be responsible for engaging the contractor, assuring that Purchase Orders are issued to the contractor, directing the contractor to perform the work of the contract, approving the deliverables and approving payment vouchers. The State Contract Manager is the person that the contractor will contact **after the contract is executed** for answers to any questions and concerns about any aspect of the contract. The State Contract Manager is responsible for coordinating the use and resolving minor disputes between the contractor and any component part of the State Contract Manager's Department.

If the contract has multiple users, then the State Contract Manager shall be the central coordinator of the use of the contract for all Using Agencies, while other State employees engage and pay the contractor. All persons and agencies that use the contract must notify and coordinate the use of the contract with the State Contract Manager.

8.1.2 COORDINATION WITH THE STATE CONTRACT MANAGER

Any contract user that is unable to resolve disputes with a contractor shall refer those disputes to the State Contract Manager for resolution. Any questions related to performance of the work of the contract by contract users shall be directed to the State Contract Manager. The contractor may contact the State Contract Manager if the contractor can not resolve a dispute with contract users.