



State of New Jersey

DEPARTMENT OF TREASURY
DIVISION OF PROPERTY MANAGEMENT & CONSTRUCTION
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October 22, 2015

Subject: DPMC PROJECT#: J0334-00
INDEFINITE DELIVERY INDEFINITE QUANTITY (IDIQ)
MULTIPLE AWARD TERM CONTRACT (CMF 003) FOR
CONSTRUCTION MANAGEMENT SERVICES (CMF 003)
ON REBUILD BY DESIGN PROJECTS AND OTHER NJ DEP FLOOD
MITIGATION AND ENVIRONMENTAL INFRASTRUCTURE PROJECTS
STATE OF NEW JERSEY, DEPARTMENT OF THE TREASURY
DIVISION OF PROPERTY MANAGEMENT & CONSTRUCTION

Enclosed are the solicitation, Instructions and Proposal Forms, Request for Proposal, and CMF 003 Term Contract Agreement for the above noted DPMC contract. Firms interested in participating must register with the DPMC. To register, please forward an email with the name, email address and phone number of your firm's contact to my attention. Interested firms may submit questions regarding this RFP and term contract to my attention at catherine.douglass@treas.nj.gov no later than 2:00 p.m., November 12, 2015. Technical proposals (an original and 5 copies) are due no later than 2:00 p.m., December 3, 2015. Proposals shall be forwarded to my attention at the Division of Property Management and Construction, Contracts and Procurement Unit, 33 W. State Street, 9th Floor, Trenton, NJ.

Table with 2 columns: Evaluation Criteria and Points. Includes Firm/Team Organization-Overall Capability and Key Personnel (20 points), CMF Experience on contracts/projects of a similar size and nature (25 points), Project Approach/Management Plan for potential projects (20 points), CPM Scheduling - Experience and Capabilities (10 points), Cost Estimating/Budget Control - Experience and Capabilities (10 points), Price/Cost Proposal Value and Competitiveness (15 points).

Please note all Joint Venture firms or sub-consultants must be prequalified with DPMC or have a 48A (prequalification application form) received by DPMC by December 3, 2015 to be considered for this project. Please visit DPMC's web site at "www.state.nj.us/treasury/dpmc" to check the DPMC prequalification status of any subconsultant you plan on including on your project team. If you should have any questions concerning this Request for Proposal (RFP), please contact me at 609-777-3094.

Sincerely,
Catherine Douglass
Catherine Douglass, Coordinator
Consultant Selection

Copy: Central File
R. Flodmand
R. Ferrara

**STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY  
DIVISION OF PROPERTY MANAGEMENT & CONSTRUCTION**

**REQUEST FOR PROPOSAL  
FOR**

**INDEFINITE DELIVERY INDEFINITE QUANTITY (IDIQ)  
MULTIPLE AWARD TERM CONTRACT (CMF 003)  
FOR CONSTRUCTION MANAGEMENT SERVICES  
ON REBUILD BY DESIGN PROJECTS AND OTHER NJ DEP FLOOD  
MITIGATION AND ENVIRONMENTAL INFRASTRUCTURE PROJECTS**

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## **1.0 PURPOSE AND INTENT**

The term contracts awarded under this Request for Proposals (RFP) will be used to solicit proposals from Construction Management Firms (CMFs) for professional, technical, administrative and clerical personnel as needed to perform required construction management services on flood mitigation and environmental infrastructure projects as designated by the Division of Property Management and Construction (DPMC) and/or NJ Department of Environmental Protection (DEP).

Among other projects, DPMC intends to utilize this contract to retain construction management firms to assist with two Rebuild by Design (RBD) projects. The RBD project concepts originated with a design competition sponsored by the U.S. Department of Housing and Urban Development (HUD) that utilized a collaborative process to find effective ways to protect people, homes, businesses and infrastructure, and to increase resilience in regions affected by Superstorm Sandy as part of recovery from the storm. At the conclusion of the RBD competition, HUD selected two winning projects for the State, with designs that will help densely populated communities with repetitive flooding challenges. The State will receive \$150 million in Community Development Block Grant-Disaster Recovery (CDBG-DR) funds to implement the first phase of the flood mitigation project known as the “[New Meadowlands, Productive City + Regional Park](#)” and \$230 million in CDBG-DR funds to implement the flood mitigation project in the Hudson River Region known as “Resist, Delay, Store, Discharge.” The successful proposals are available online at <http://www.rebuildbydesign.org/project/mit-cau-zus-urbanisten-final-proposal/> and <http://www.rebuildbydesign.org/project/oma-final-proposal/>. The NJDEP has been designated to oversee these projects on behalf of the State. The Disaster Relief Appropriations Act (Pub. L. 113-2, approved January 29, 2013) requires that funds for the RBD projects be obligated not later than September 30, 2017; this obligation is tied to approval of a CDBG-DR RBD Action Plan Amendment that only can be prepared following the completion of a Draft Environmental Impact Statement (EIS). As a result, the draft EIS for each project must be completed no later than May 30, 2017.

This is an indefinite delivery indefinite quantity (IDIQ) contract for the CMF services specified and the period(s) stated within this RFP in Section 3.0. For each contract awarded to a CMF, the maximum aggregate contract total over the term of the entire contract (initial term of two years plus four potential option years) is \$30,000,000.

Nothing in this RFP shall preclude the DPMC Contracting Officer (CO) from soliciting quotes or proposals for similar services outside of this contract for any project work when deemed appropriate by DPMC.

## **2.0 CONSULTANT QUALIFICATIONS**

### **2.1 DISCIPLINES**

The Consultant shall be a firm pre-qualified with the Division of Property Management & Construction (DPMC) in the Construction Management Discipline (P029) and have a rating of "Unlimited". The Consultant must also have in-house capabilities or sub-consultants pre-qualified with DPMC in the Critical Path Method (CPM) Scheduling (P030) and Estimating/Cost Analysis (P025) specialty disciplines. The DPMC prequalification rating required for CPM Scheduling must also be "Unlimited".

Additional subconsultants may be included on the CMF's team as necessary for a specific work order assignment. For example, subconsultants in the following areas/disciplines may also be necessary for an IDIQ assignment: Civil Engineering, Hydrology & Hydraulics, Landscape Architecture, Surveying, Environmental Assessments/EIS, Environmental Permitting, Environmental Site Investigation, Environmental Remedial Support, Archaeology Services, Construction Inspection, GIS, Historic Architecture/Preservation Surveys, Geotechnical Design, Pre-stressed/Precast Concrete Inspection, Claims Analysis support services. The CMF firm must maintain their prequalification during the term of the contract. All subconsultant firms requiring DPMC Consultant Prequalification must also have a valid prequalification to participate on the CMF's team. If the CMF or a subconsultant allows its prequalification to lapse, that firm will not be included in any competitive selections for a specific project until its prequalification is renewed and valid.

## 2.2 SUBCONTRACTING

If any part of the work covered by this Term Contract is subcontracted, the subconsultant must also be prequalified by DPMC. If there is no prequalification category for the discipline of a specific subconsultant, that firm must be approved by the DPMC Project Director prior to the CMF using the subconsultant for a specific work order.

Payment of all subconstutants and/or subcontractors is the sole responsibility of the Consultant. Nothing contained in this RFP shall create a contractual relationship between any subconsultant and the State or DPMC.

## 3.0 PERFORMANCE PERIOD

Services shall be provided under this contract from the date of award until the expiration or earlier termination of any or all options exercised under this contract.

The base period of performance of this contract shall be two years commencing on the date of the contract award, during which time work orders may be placed by the State DPMC. Actual performance of work orders may extend beyond this contract period until completion of construction contracts for which services are provided under the work orders, and the terms of this contract shall extend until completion of the service(s). The State shall have the unilateral option of extending this contract for four (4) additional one year terms, to be exercised at the discretion of the Contracting Officer, for a potential contract duration of six (6) years from the contract award date.

**Renewal Option:** The option periods shall extend the performance period of the contract commencing on the expiration of the preceding base contract performance period. DPMC

may exercise an option by issuing a written notification (regular mail, email or otherwise furnished) to the contracted CMF(s).

**Delays of Work Under Other Contracts:** If the performance of all or any part of the CMF's work is, for an unreasonable period of time, suspended, delayed, or interrupted by changes, suspensions of work, differing site conditions, or other compensable causes under the Design Consultant contract (as defined below), construction contract, or other related State contracts, an adjustment may be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance was delayed by the fault or negligence of the CMF.

#### **4.0 GENERAL INFORMATION REGARDING PROPOSAL PREPARATION & AWARD**

This RFP is issued by the Division of Property Management and Construction, located at the address listed below, which is the sole point of contract in the State for the purpose of this RFP and related communications.

**State of New Jersey  
Department of the Treasury  
Division of Property Management & Construction  
33 West State Street, 9<sup>th</sup> Floor, Plan Room  
P.O. Box 039  
Trenton, New Jersey 08625-0039  
Attention: Catherine Douglass  
Contract Procurement Unit**

Telephone inquiries regarding this RFP shall be made to: (609) 777-3094.

- 4.1 **Proposals shall be received no later than 2:00 PM, December 3, 2015.** Proposals must be submitted in the return envelope provided. If the proposal is transmitted via overnight mail, enclose the proposal in the return envelope and place within the carrier's packaging.
- 4.2 The proposal must be signed by a principal of the firm, dated and notarized. Unsigned proposals will be rejected as non-responsive and have no binding effect and will exclude the firm from consideration for this procurement.
- 4.3 CMFs are advised to thoroughly read and understand the entire RFP, including the Agreement, General Conditions and any attachments, exhibits and addenda prior to preparing and submitting their proposals.
- 4.4 Technical Proposals: CMFs shall submit a complete technical proposal in addition to the required forms listed in Item 3 of the RFP Instructions. The technical proposal shall also include a Key Team Member Project Experience Data Sheet for each proposed CMF team member Level 5 and above. The technical proposal must respond to the evaluation criteria in the cover letter and attached CMF 003 Evaluation Criteria form. The technical proposal will be evaluated by the selection committee in accordance with the evaluation criteria.

- 4.5 Price/Rate Proposals: The CMF's shall submit a complete price/rate proposal on the form provided in the RFP. This form is entitled, "CMF 003 Term Contract Rate Schedule" and includes all-inclusive, "loaded" hourly rates for the various Personnel Types/Disciplines that may be required during the term of the contract. These loaded hourly rates should include all costs required for each personnel type, including, all direct costs, overhead costs, fringe benefits, supplies, equipment, administrative costs, insurance, in-State travel, meals and lodging, professional fees and profit. The hourly rates listed by the CMF and accepted at contract award will be the rates that will be used as the basis for pricing future work orders issued under this contract. Price increases will not be granted for any alleged omissions or miscalculations of contract pricing. The base year and each option period are to be separately priced based on the CMF 003 Rate Schedule provided by the CMF.

The State will competitively solicit the majority of the work orders to be placed under the contract among the successful awardees meeting the necessary prequalification requirements. Services may be procured as firm fixed price tasks (FFP) or "time and materials (T&M) tasks and each work order may contain both FFP and T&M tasks. The fee for the work order along with a technical proposal will be requested for each competitive assignment. The fee for each work order shall include all management, supervision, direct costs, materials, supplies and equipment (except as otherwise provided). The technical proposal shall provide all information to assure effective performance of all services described in the respective work order.

However, as outlined in Section 6.2.2 of this RFP, there may be instances when the State determines that it is not in the best interest of the State to request proposals for a work order from all approved CMFs. In such an instance, the State shall have the option to negotiate with one CMF for that assignment. In these instances, the hourly rates provided by the CMF for the contract periods (base and option years) and accepted (via negotiation if necessary prior to contract award) will be used by the State to unilaterally place the work order for the services required.

- 4.6 Contract Award: CMF 003 Term Contract awards will be made to the CMF's whose technical and pricing quotes are considered most advantageous to the State based on cost and technical qualifications in accordance with the evaluation criteria listed in the cover letter and the attached evaluation criteria form. Each CMF proposal will be evaluated by the Selection Committee based on these criteria and ranked.

The State may enter into discussions and negotiations with the top-ranked firms before or after soliciting "Best and Final Offers." After the opportunity to resolve any issues or ambiguities in the proposals, Best and Final offers may be requested and evaluated and awards will be made to the responsive firms whose proposals are determined to be the most advantageous, based on cost and technical qualifications in accordance with the evaluation criteria listed in the cover letter and the attached evaluation criteria form. It is the intent of the DPMC to make approximately six (6) to eight (8) awards under this solicitation. Recipients will be notified by the DPMC CO of the awards.

- 4.7 Contract Documents: This contract is comprised of the following elements:

- 4.7.1 TERM CONTRACT REQUEST FOR PROPOSAL (RFP) including all attachments, exhibits and addenda, if any;
- 4.7.2 AGREEMENT BETWEEN THE STATE OF NEW JERSEY AND THE CMF FOR TERM CONTRACT CMF 003;
- 4.7.3 STATEMENT OF ASSURANCES, ADDITIONAL FEDERALLY FUNDED AGREEMENT PROVISIONS FOR CDBG-DR FUNDED PROJECTS;
- 4.7.4 TERM CONTRACT CMF 003 CONSULTANT PROPOSAL consisting of the CMF AFFIDAVIT, CMF 003 TERM CONTRACT RATE SCHEDULE, and CMF's TECHNICAL PROPOSAL.
- 4.7.5 NOTICE OF TERM CONTRACT CMF 003 AWARD.

Additional Contract Requirements: Alternate funding sources may be identified for a specific IDIQ work order. On those specific work orders, additional requirements may need to be met by the CMF under this IDIQ contract. These funding sources and their requirements may include HUD (including CDBG or CDBG-DR funds), the Federal Emergency Management Agency, USGA or other federal and/or State sources. As such, the CMF will be required as part of its contract responsibilities in a specific work order to comply with the specific funding source requirements. Therefore, as appropriate for the funding source, the CMF must ensure that all applicable standards of performance and requirements (federal or State prescribed) are complied with.

- 4.7 The DPMC CO reserves the right to reject all proposals when such rejection is in the best interest of the State.

## **5.0 GENERAL DESCRIPTION OF REQUIRED SERVICES**

### **5.1 OVERVIEW**

The term contracts awarded in response to this RFP will enable CMFs to provide professional management, quality control and administrative support services as required to the DPMC and DEP to supplement the State's available in-house staff in the execution of construction projects for the HUD Rebuild by Design initiatives and other flood mitigation and environmental infrastructure projects in the State.

Typical projects requiring services by the CMF generally will be bid using the State's traditional delivery process (design-bid-build) and the delivery and oversight of these projects through feasibility studies, design and/or construction projects performed by contracted consultants and contractors. HUD is providing CDBG-DR grant funding for the study, design and construction of conceptual designs selected in HUD's Rebuild by Design (RBD) competition. The design competition was a response to Superstorm Sandy's devastation and was developed to create innovative community and policy-based solutions to protect U.S. cities that are vulnerable to increasingly intense weather events. In 2014 two projects were selected by HUD for implementation in New Jersey: (1) Resist, Delay, Store, Discharge: A Comprehensive Strategy for Hoboken and (2) New Meadowlands, Productive City + Regional

Park. Additional information regarding the DEP's timeline for the oversight of the feasibility study, design and construction of this project is available in the October 16, 2014 Federal Register, Docket No. FR-5696-N-11 (available online at <http://www.gpo.gov/fdsys/pkg/FR-2014-10-16/pdf/2014-24662.pdf>). The CMF will assist the DEP in managing the implementation of these RBD initiatives. Additional projects may include storm surge and coastline/beachfront protection, flood mitigation/resistance, environmental restoration, tide control structures, landscaping, demolition and reconstruction, dams and levees, and other infrastructure improvement projects. The specific scope of services for CMFs will be contained within a brief scope of services or within the body of each individual Work Order written to the contract.

## 5.2 DEFINITIONS

The following definitions outline the basic CMF services that may be required throughout the CMF's contract term and involvement in a project:

Concept Design: The purpose of concept design is to present basic design development strategies and proposed basic engineering, landscape architectural and architectural design criteria and project requirements, taking into account functional relationships, space allocations, esthetics, environmental considerations, safety, accessibility, urban design, historic preservation (if appropriate), and corresponding impacts, costs, maintenance, and other relevant considerations.

Construction Documents: The construction documents are the plans and specifications for the work to be performed on the project. They are prepared by the Design Consultant to explain and describe, in detail, the design to potential construction contractors, for the initial purpose of bidding, and the ultimate purpose of construction.

Contract Executive (CE): The CE is the principle CMF employee responsible for the overall management, direction and accomplishment of CMF activities on this term contract. The CE shall be the principal point of contact between the CMF and the Contracting Officer, as well as the principal point of contract for work order proposal requests and contract changes or amendments by the CMF.

Construction Management Firm (CMF): The CMF is the firm selected to provide the State with project management and consulting services including, but not necessarily limited to pre-planning, feasibility, programming, procurement support, program management, design management, construction management, scheduling, cost estimating, commissioning, and post-construction support services.

Contracting Officer (CO): The DPMC Deputy Director, Contract Administration is responsible for reviewing, approving and signing design and construction contracts, work orders and agreements for various consultants, contractors and vendors. The CO may delegate certain responsibilities to authorized representatives.

Design Development: The design development phase will convey and specify materials, structures and systems to be utilized for flood protection, resiliency or



environmental infrastructure projects, including sizes, layouts, and the appearance of the facility or project.

Design Consultant: The Design Consultant is the professional services consultant responsible to DPMC for the architectural and engineering design of the project. The Design Consultant may perform additional services for DPMC during the construction phase such as construction administration and technical consultation services and submittal/shop drawing review. The CMF assists DPMC in managing and administering the Design Consultant's contract and assists in coordinating and conducting design reviews and inspections of on-going and completed work for design conformance. However, CMF participation in the design review will not relieve the Design Consultant from its responsibilities under its own contract with the State.

Design Phase: The Design Phase includes all of the various design phases of a project including the programming, schematic, design development, final document and permit phases. The Design Phase will specify materials, structures and systems to be utilized for flood protection, resiliency or environmental infrastructure projects, including sizes, layouts, and the appearance of the facility or project.

Feasibility Study and Alternatives Analysis: (as applied to flood protection, resiliency or environmental infrastructure projects): The purpose of feasibility study and alternatives analysis for these projects is to solve an infrastructure need or problem through the evaluation of the feasibility of the project given environmental and construction considerations, the evaluation of multiple design alternatives from an environmental, historical, and cost-effectiveness perspective, and the development, selection and implementation of a concept design that will solve the infrastructure need and improve flood protection and resiliency. The feasibility study and analysis may also include preparation of an Environmental Impact Statement and/or compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. §4321 *et seq.*, and HUD regulations implementing NEPA (24 C.F.R. Parts 50 & 58).

Inspector(s): CMF employed inspectors are responsible for performing field inspection work during construction; recommending approval/rejection of the construction contractor's materials, workmanship, and equipment; monitoring labor and health and safety provisions; maintaining inspection logs and records, reporting defects and omissions; and other related activities.

Partnering: A management process that promotes successful project development and execution through voluntary commitments to accomplish established agreed-upon project objectives by all involved parties to their mutual benefit.

Project Director (PD): The DPMC, DEP or agency representative designated to assist and direct the CMF with regard to the contract and project work. The PD's responsibilities include, but are not necessarily limited to, determining the adequacy of performance by the CMF in accordance with the terms and conditions of this contract; acting as the State's representative in charge of work at the project site; ensuring compliance of the work with contract requirements; and advising the CO of any factors which may cause delay in performance of the work and the project completion.

Project Manager: The CMF employee designated to manage project tasks or assist the Senior Project Manager or other CMF personnel in the supervision and coordination of the project tasks.

Project Team: Includes representatives of the State DPMC, DEP, CMF, Design Consultant or other funding agency, and contractors participating in the project.

Senior Project Manager: The CMF employee designated to manage and coordinate project tasks and supervise a Project Manager(s) or other CMF personnel assigned to the project.

### 5.3 REQUIRED DISCIPLINES AND REQUIRED MINIMUM EXPERIENCE:

Contract Executive (CE) : Principal, partner or officer of the firm responsible for assigning various projects to the different CMF personnel in the firm and overseeing the financial side of project management.

Senior Project Manager: The CMF employee designated to supervise the CMF team members and oversee project tasks with a minimum of 7 years of experience in this position managing and coordinating project activities, schedule progress, budget and costs. Experience must include preparation of EIS, compliance with NEPA, and Federal, State and local land use permitting.

Project Manager: The CMF employee designated to assist the Senior Project Manager or other CMF personnel in the supervision and coordination of the project tasks with a minimum of 5 years of experience in this position including experience in NEPA/EIS and Federal, State and local land use permitting. Project Managers shall be civil engineers.

Superintendent: The Superintendent is the CMF employee designated as the key, on-site representative of the CMF with a minimum of 7 years of experience in this position responsible for ensuring delivery of the day-to-day quality management services to be provided by the CMF under the contract and each work order.

Architect: A NJ licensed architect with a minimum of 3-5 years of design and construction experience of overall conceptual design, providing solutions for complex architectural problems.

Engineer: A NJ licensed Professional Engineer in the respective discipline having a minimum of 3-5 years design experience in the respective discipline's design and is familiar with all applicable building and environmental requirements.

Scheduler: An individual with 7 years of experience in project planning and scheduling using the most recent project management software.

Inspector: Individual with a minimum of 3 years of experience in the construction site observation and administration and is familiar with all applicable building code and environmental requirements.

Estimator: Individual with a minimum of 3 years of experience in labor and material estimating and specifications along with knowledge of value engineering techniques.

Permit Coordinator/Expeditor: Individual with a minimum of 5 years of experience in providing permit coordination, coordination of code inspections and/or other construction-related expediting or coordination tasks.

QA/QC Manager: Individual with a minimum of 3 years of experience in providing quality assessment and quality control on construction projects.

Accountant/Auditor: An individual or firm with experience in cost control reporting systems including the review of financial data required to monitor cost versus budget for the project or in performing auditing functions on various projects.

Secretary/Administrative Assistant: Individual shall possess knowledge of word processing and other computer programs, have experience in general office skills, and/or providing administrative assistance to CMF staff on construction projects.

#### 5.4 **GENERAL REQUIREMENTS OF WORK ORDER PROCESS FOR DELIVERY OF SERVICES**

General Responsibilities: Assist in managing design and construction projects for the DPMC and DEP with an emphasis on meeting goals relating to schedule, budget, scope and quality. Provide management, quality control, technical, and administrative resources to assist in achieving these goals in an expeditious and economical manner consistent with the best interests of the State. DPMC serves as the contracting agency, owner representative and will provide a Project Director for each project.

Authority: The CMF is not an agent of the State and has no contractual authority over other parties under contract to the State. The CMF shall carefully avoid taking any independent actions that would cause an obligation of State funds. Certain actions are reserved solely for the State and shall not be performed by the CMF. The CMF may not:

- Authorize deviations from construction contract documents.
- Approve or authorize substitutions of materials or equipment.
- Expedite the work of the Design Consultant or construction contractor.
- Reject work or require special inspection or testing.
- Order the Design Consultant or construction contractor to stop work or any portion thereof, except in life threatening situations.
- Grant a time extension.
- Obligate an expenditure of State funds.
- Terminate the Design Consultant or construction contracts.
- Execute change orders.

CMF Role: The CMF shall coordinate with the project participants (construction contractors, consultants, code inspectors, owner representatives, client agency representatives, etc.) for each work order and report on the various activities of the project participants and their adherence to schedule commitments, budget constraints, technical requirements and quality standards.

The CMF's primary point of contact for each work order is the DPMC or DEP Project Director. The CMF shall provide assistance and expertise to the DPMC or DEP project team in the form of coordination, management and administration of the planning, programming, design, bidding and construction process. The CMF shall assist DPMC or DEP in achieving contract compliance by the Design Consultants and construction contractor, especially during construction. The CMF shall also provide services as a technical review source, with emphasis on quality control and constructability, and assist in CPM scheduling, cost estimating/analysis, problem solving, management of administrative details and documentation.

Disclosure of Procurement Information: If CMF employees become privy to confidential information that is either procurement and/or security-sensitive, the CMF will be required to take precautions to ensure that this information is carefully controlled. Procurement and/or security -sensitive information must not be discussed or revealed to other non-State personnel and must remain confidential. The CMF shall instruct its personnel involved in procurement actions that unauthorized disclosure of procurement or security sensitive information is prohibited, could compromise the procurement or security of the facility, and can result in the State taking remedial action against the CMF.

Conflicts: Potential conflicts of interest by any of the CMF's members or Project Team with other consultants or contractors on the same project must be brought to the attention of the CO in writing immediately.

Computer-aided design (CAD): DPMC requires the use of CAD by its Design Consultants on all projects. Project work orders may require the CMF to have the capability, and expertise to review Design Consultant deliverables developed on CAD systems and submitted in electronic media form.

Payments to CMFs: The CMF may invoice monthly based on services performed. The CMF may be requested to provide a draft to the Project Director before the invoice is prepared, so that both parties agree on the amount of work completed and the correct amount of the invoice.

Partnering Sessions: Formal partnering practices have been implemented successfully on certain DPMC projects. The CMF may be required to provide or obtain the services of a professional facilitator to conduct formal partnering sessions among the DPMC, DEP, client agencies, Design Consultants, CMF, construction contractor, and subcontractors to promote a partnering philosophy and establish cooperation and mutual respect among the team members. If required, the CMF will be requested to include the cost of this service in its work order.

Project Labor Agreement: A Project Labor Agreement (PLA) may be required on certain projects due to their dollar value or location in relation to other projects in close proximity or on the same site. The CMF may be required to provide analysis and recommendations regarding the use of a PLA, and coordinate the development, negotiation, approval and implementation of the PLA for a project managed under an approved work order as part of this contract.

CMF Personnel: For each work order request, the CMF shall submit to the CO the personnel with its proposal to accomplish the tasks included in that order. The information required is: name, proposed position on project staff and responsibilities, and a detailed resume with past experience.

Removal of CMF Employees: The Project Director, with the approval of the CO, shall have the right to effect the removal of any CMF employee at any time during the duration of a work order, if that employee is deemed not to be of the level of competence or ability that was required under the work order, or if said employee for any other reason is found to be unsuitable for the work. In such case, the CMF shall promptly submit the name and qualifications of a replacement.

Personnel Replacements: In the event that any personnel named for a work order are unable to perform their duties due to death, illness, resignation from the CMF's employ, the CO's request for removal, or similar reasons, the CMF shall promptly submit to the CO, in writing, the name and qualifications of a proposed replacement. No substitution shall be made without prior approval of the CO. Any approved substitutions shall be made at no increase in the contract price.

Failure to Provide Qualified Personnel: Repeated failure or excessive delay by the CMF to provide qualified personnel acceptable to the State, to perform services under a work order may be deemed sufficient reason to terminate work under the work order or the contract, in whole or in part, in accordance with the termination clause of the CMF Agreement.

Orientation of Personnel: The CMF shall ensure that all personnel working under the contract are knowledgeable of applicable federal and State laws and requirements, including DEP laws and requirements and all DPMC regulations, procedures, policies, and requirements of the contract affecting the conduct of their work. Orientation shall be arranged with the PD immediately after the award of each work order.

Office Facilities:

- CMF Staff: The CMF may be responsible for providing its own on-site office facilities space with heating/cooling, plumbing, toilet facilities, telephones, janitorial services, physical security, furniture, supplies, etc. as required for the CMF's staff. Where available, DPMC shall provide the CMF space & utilities for its office space.
- DPMC Staff: If necessary, the CMF shall provide on-site office space, with continuous adequate heating and cooling, for use by DPMC or DEP personnel, equipped with computer hardware and software compatible with the system used by DPMC, copier and

facsimile machines with all related maintenance and supplies, furniture, etc. Where available, DPMC or the client agency may provide the required space & utilities for its office space.

Expenses for such space and equipment to be provided by the CMF will be included in the CMF's work order in an allowance.

## **6.0 ASSIGNING AND EXECUTING WORK ORDERS**

### **6.1 PROJECT DATA**

Specific project data will be provided to the CMF for each work order including:

- Project No/Title/Location.
- CCE (Construction Cost Estimate): The CCE represents the estimated costs for the construction of the project.
- CWE (Current Working Estimate): The CWE represents the construction cost estimate and all consulting, permitting and administrative fees. The amount represents the client agency's financial budget for the project based on the Scope of Work and shall not be exceeded during the various project phases unless the Project Team members approve the proposed change.

Significant data pertaining to the scope of a project will be available to the competing CMFs at the time a work order proposal is solicited. Listed below are certain documents and information that the CMF should refer to for background information on the project:

- Design Consultant's scope of work and contract
- Site data, including as-built drawings of existing buildings, historic structures reports, environmental impact statements, and site surveys/soil borings
- Preliminary drawings and specifications
- Budget or Cost Estimates
- Proposed schedule or completion dates

### **6.2 ORDERING OF SERVICES**

The CMF shall not perform any service except as authorized by a work order issued in accordance with the CMF's contract. Work orders will be issued using the DPMC CMF-003 Form. The CMF shall furnish to the DPMC, when and if ordered, the services and general conditions items specified, up to and including the maximum amount.

Except for the order limitations outlined in this section, there is no limit on the number of orders that may be issued. The DPMC may issue a work order requiring the performance of services at multiple locations. The DPMC may elect to award a single work order or to award multiple work orders to two or more firms if necessary.

Any work order issued during the effective period of the contract and not completed within that period shall be completed within the time specified in the order. The contract shall govern the CMF's and State's rights and obligations with respect to that work order to the same extent as if the work order were completed during the contract's effective period; provided that the CMF will not be required to provide services after the established completion date of the final work order.

Each work order shall include all the services and the cost of the services required to meet the obligations of the task(s) requiring delivery or performance. The work order shall be supplemented by a proposal prepared by the CMF that includes the team organization, staffing, subconsultants included, approach to the project tasks, experience of the firm/team, and other necessary information.

The CMF's hourly personnel rates shall be used for pricing the level of effort in each work order. If specialty consultants are required to complete a work order task and were not included in the initial term contract, they will be included in the work order as an allowance. All rates and costs for these specialty consultants will be evaluated for cost reasonableness prior to approval. All work orders are subject to the terms and conditions of the contract. The CMF's fees for each work order shall be based on the hourly personnel rates established in the contract, the negotiated level of effort for each discipline, travel (if authorized), miscellaneous items, allowances for specialty consultant costs, reproduction costs, deliverables and other terms agreed by the parties. In the event of conflict between a work order and the contract, the contract shall control.

A work order is considered "issued" when the CO emails, mails or faxes the approved work order to the CMF along with a Notice to Proceed for the specific work order. When urgencies occur, the CO may unilaterally issue work orders on a not-to-exceed price basis and the CMF shall immediately proceed with performing all such work. Final pricing for such work orders shall be resolved as quickly as possible after the work order is issued through negotiations between the parties.

The DPMC reserves the right to perform work of the same type covered in this contract, with its own forces or by contract.

#### 6.2.1 Order Limitations

Minimum Order: There is no minimum order under this term contract.

Maximum Order: The maximum aggregate limitation for each CMF contract is **\$30,000,000**.

#### 6.2.2 Method of Placement of Orders Under Multiple Award Contracts

The DPMC will provide each awardee a fair opportunity to compete and be considered for each work order unless a separate determination is made to request quotations from a lesser number in accordance with (a) – (d) below.

Upon identification of a need, the DPMC will forward the scope of work and evaluation criteria to the awardees. Non-price evaluation factors which may be considered in placing an order with a particular awardee may include, but are not limited to, proposed staffing or team members for the work order assignment, past experience of firm and proposed team member(s), approach to meeting objectives of the services required, ability to provide scheduling services to monitor and meet schedule requirements, past performance on previous work orders under this contract, cost, or other factors that the DPMC believes are relevant to the award of a delivery order to an awardee under the contract.

Interviews of proposed candidates and/or project teams may be held when evaluating and selecting an awardee for a specific work order.

The DPMC need not seek competition from the awardees if:

- (a) The public exigency requires the immediate performance of the service; or
- (b) The dollar value of the services is less than the bid advertising threshold under N.J.S.A. 52:34-7; or
- (c) Only one such CMF is capable of providing such items or services required at the level of quality required because the items or services ordered are unique or highly specialized; or
- (d) Additional services are required as a logical follow-on to a work order previously issued, provided that all awardees were given a fair opportunity to be considered for the original work order.

### 6.2.3 Processing Work Orders

Each work order proposal should reference the following:

- (a) Contract Number.
- (b) Work Order Number.
- (c) Date of Order.
- (d) Place or Location of Services
- (e) Scope of work/services to be provided
- (f) Start and Completion Date. Each work order shall specify the start and completion date of the work or services. The starting date shall not be less than three (3) calendar days after the issuance of an approved work order and NTP for the work order by the CMF.
- (g) Whether the work is to be performed during normal working hours or during other than normal working hours.
- (h) The applicable hourly rates and costs in effect at the time of request for a proposal for the personnel, services and items included in the work order.
- (i) Work Order. A work order form will be provided by the DPMC for use by the CMF firms in providing technical and cost proposals for each work order. No work should be



performed under this contract until an approved work order and notice to proceed (NTP) have been issued to the selected CMF firm. For the purpose of this contract, a work order shall be deemed to be "issued" at the time the DPMC emails, mails or faxes the approved work order to the selected firm.

(j) All work order proposals shall be submitted to the DPMC Contracting Officer for approval.

### 6.3 RESPONSIBILITY FOR CONTRACT ADMINISTRATION AND PAYMENTS

- 6.3.1 Contracting Officer (CO): The Contracting Officer (CO) is the final authority in all contractual matters relating to the CMF's contract and any work order placed against the contract. The CO has overall responsibility for the administration of the contract and is authorized to take action on behalf of the State to amend, modify or deviate from the contract terms, conditions, requirements, specifications, details and or delivery schedules. The CO may delegate these responsibilities to authorized representatives.
- 6.3.2 Project Director (PD): The PD will be designated on each specific CMF work order to assist the CO in discharge of responsibilities when the CO is unable to be directly in touch with the contract work. Responsibilities of the PD include, but may not be limited to, determining the adequacy of performance by the in accordance with requirements, terms and conditions of the CMF contract; acting as the State's representative in charge of work at the site; and advising the CO of any factors which may cause delay in performance of the work. All services to be provided under this CMF contract shall be provided to the PD except for those services reserved to the CO and identified as reserved in this contract in the PD delegation of authority.
- 6.3.4 Invoicing Requirements: Invoices shall be submitted on a monthly basis on an original DPMC Invoice Form only, to the PD specified in the work order. Invoices must include all required information, signatures and supporting back-up documentation prior to acceptance, approval and processing by the DPMC.
- 6.3.5 Adjusting Payments: Upon review of the invoice, the PD may adjust the payment of the invoice if any services do not conform with the contract requirements of the work order and/or this contract or if the CMF has not provided supporting back-up documentation. The PD will inform the CMF in writing, of the type and dollar amount of the deductions prior to processing the remainder of the invoice. The CMF may, after notification of the proposed deduction, present to the PD, in writing, specific reasons why any or all of the proposed deductions are not justified. Reasons must be solidly based and must provide specific facts that justify reconsideration and/or adjustment of the amount to be deducted. Failure to respond within the 10 day period will be interpreted to mean that the CMF accepts the deductions proposed. After consideration of the CMF's reply, if any, the PD will make any adjustments in deduction which are warranted, determine the dollar amount of deductions, and notify the CMF of the decision.
- 6.3.6 Payments: Payments shall be made in accordance with the Prompt Payment Act, N.J.S.A. 52:32-32 et seq.

6.3.6 Disposition of Materials. Upon termination or completion of work under a work order, the CMF shall forward all materials produced in connection with the performance of this contract as may be directed by the PD or CO, or as specified in other provisions of the contract. All materials produced, or required to be delivered under this contract become and remain the property of the State.

## **7.0 FEASIBILITY AND DESIGN PHASE SERVICES**

### **7.1 GENERAL REQUIREMENTS**

The CMF shall assist the PD during the concept, feasibility, program or design phases by coordinating and managing feasibility, programming and design development phases, performing study and design reviews, assisting with problem resolution, performing schedule reviews and control, reviewing budget and project cost estimates and keeping the State's P D apprised of design status.

The CMF shall update and report on the project schedule monthly. The CMF shall notify DPMC of all issues brought to the attention of the Design Consultant by the CMF, and of the Design Consultant's response to each. The CMF shall notify the Design Consultant and Project Team members if the Design Consultant's submissions appear inadequate or incomplete and identify any issues that have the potential to significantly impact or jeopardize the project goals and objectives.

While the CMF makes recommendations to the Design Consultant to correct constructability issues or problems, and advises regarding potential errors and omissions discovered, the CMF shall not take any action that infringes on the Design Consultant's professional and contractual responsibility for the project design.

The CMF's primary tasks during the feasibility and/or design phases are as follows:

- Scheduling and coordinating feasibility and design progress meetings and record minutes
- Monitoring Design Consultant progress
- Reviewing design intent and general concept drawings
- Preparing, maintaining and monitoring the preliminary or master project schedule
- Preparing budget and independent cost estimates
- Reviewing/analyzing cost estimates for accuracy
- Providing cost verification and budget monitoring and control
- Preparing budget and independent cost estimates
- Reviewing Design Consultant vouchers and recommending payments
- Reviewing Design Consultant proposed contract modifications and recommending approval or disapproval
- Assisting in problem resolution
- Recommending alternate solutions when design details affect project cost or schedule
- Performing document and constructability reviews
- Performing commissioning services

- Providing analysis and recommendations regarding the use of a PLA
- Providing monthly reports to the project team
- Compiling documentation
- Invoice Review
- Document retention and management
- HUD Reporting

## 7.2 PREDESIGN CONFERENCE (IF APPROPRIATE)

The CMF shall schedule a predesign conference with the project Design Consultant soon after the design contract is awarded to review the scope of the design services required by the contract. The conference should be convened before the design effort starts. The meeting should preferably be held at the Design Consultant's office, to facilitate maximum participation by the Design Consultant's staff.

## 7.3 DESIGN PROGRESS MEETINGS

The CMF shall schedule and coordinate design progress meetings. The CMF shall prepare a complete agenda prior to each scheduled meeting. Normally design progress meetings are chaired by the Design Consultant, supported administratively by the CMF. The CMF records the minutes including action items, responsible parties, and deadlines. The agenda for meetings typically covers (1) minutes of the last meeting, (2) outstanding issues, and (3) new business. The CMF distributes the minutes to all participants in time for preparation for the next progress meeting. Meetings may be held at the DPMC, DEP or Design Consultant's offices.

## 7.4 BUDGET/COST CONTROL

The CMF shall assist the State in reviewing all Design Consultant cost estimates and submissions to verify that project costs remain within the project budget. The CMF must report any disparities discovered in the project costs to the Project Team for resolution before proceeding on to the next phase of the design.

The CMF shall establish a uniform procedure for reviewing, analyzing, and assessing each estimate submitted by the Design Consultant and preparing an independent estimate for comparison purposes.

The CMF cost review should verify that:

- Unit costs are accurate
- Quantity takeoffs are accurate
- All design elements are included
- Level of detail is appropriate to design stage
- Formats are correct
- Cost escalation factors are properly applied
- Balance of costs among building and other systems are acceptable
- Areas and other measurements are correct
- Up-to-date scope modifications are reflected

Prepare and submit an independent construction cost estimate for comparison to the Design Consultant's cost estimate on the appropriate DPMC form with accompanying detail back-up for each phase estimate prepared by the Design Consultant. Make recommendations for corrective action or project revisions if it appears that the construction cost estimate (CCE) may exceed the project budget.

## 7.5 FEASIBILITY and DESIGN SUBMISSIONS & REVIEWS

Design Submissions: Submissions shall be reviewed to determine if the project requirements are being met by the project Design Consultant. Formal design reviews are required at the completion of each design phase milestone of the project. Review all documents for clarity, consistency and completeness. Provide advice and recommendations for improvements. Refer to the Work Order for detailed requirements for each design phase, typically organized as follows:

- Feasibility Study and Programming Phase
- Schematic Design Phase
- Design Development Phase.
- Construction Documents/Final Design Phase
- Permit Phase

The CMF's design review should ensure at a minimum:

- All project deliverables are submitted
- Materials and equipment are appropriate, available, and non-proprietary
- Drawings are coordinated among disciplines and bid packages
- Areas of conflict are eliminated
- Site will accommodate access, logistics and storage requirements
- Existing conditions are shown correctly and adequately
- Selected building materials, systems and construction details are compatible and constructible, and long lead items are identified
- Construction duration, phasing, bid packages, bid options, unit prices, and labor availability are accurate, reasonable and appropriate
- Cost estimates are proper and within budget
- Permit, regulatory and code compliance requirements are met
- Documents are ready for permit review by the DCA or applicable regulatory agency
- Safety and security responsibilities are clear and appropriate in the contract documents

Design Review Meetings. The CMF shall schedule meetings with the Design Consultant to review each design submission. The meetings may be held at the Design Consultant's office to facilitate the visual review of the work-in-progress at the areas of production and minimize disruption to the Design Consultant. At times it may be expedient to conduct a design review

meeting at a consultant's office, if the scope of a particular review centers on the progress of a single consultant.

**Constructability Review:** The CMF is primarily responsible for constructability reviews. The CMF shall develop a consistent procedure for conducting design reviews, including the Design Consultant's conformance to the scope of services in the design contract, constructability, marketability, coordination among disciplines, and material usage.

**Design Review Report:** After completion of each design review, the CMF shall assemble and organize the comments from the various reviewers (DPMC PD, DEP representative, DPMC Code Review Unit, DCA UCC Unit) or other required regulatory agency and incorporate them into a consolidated design review report. The report shall contain comments on required corrections and improvements by discipline and specification section or drawing number.

The PD will formally transmit the design review report to the Design Consultant for action. The CMF and project team shall meet with the Design Consultant to present and discuss its contents. The CMF shall evaluate the Design Consultant response to all comments and develop directives resulting from the design review. The CMF shall review subsequent submissions to ensure that all directives and revisions have been incorporated into the design documents by the Design Consultant.

**Permit Phase:** The CMF shall consolidate and assemble the code comments from the Department of Community Affairs Uniform Construction Code Unit or the DPMC Code Review Unit as necessary, and forward the comments to the State's PD for transmittal to the Design Consultant.

The CMF will be responsible to review responses from the Design Consultant to ensure all code comments have been adequately revised and corrections incorporated into the plans and specifications.

## 7.6 RECORD KEEPING

During all phases of the project, the CMF shall maintain record copies of all documents and CMF reviews. These documents consist of:

- Studies
- Formal design submissions
- Corresponding design review reports
- Minutes of formal design review meetings
- Final accepted Value Engineering (VE) report
- Final cost estimate
- Modifications to the design scope of work
- Documentation of clarifications and decisions
- General Correspondence
- Other records and documents as required by HUD for CDBG-DR funded projects, and other records in a format and storage location acceptable to the DEP for a duration of time that is compliant with CDBG requirements.

## 7.7 VALUE ENGINEERING (VE)

The CMF shall provide Value Engineering (VE) comments if required by the specific work order. VE services are to be provided for mechanical systems, roofing systems, finishes, energy management systems, lighting and power systems, and site work. The CMF shall prepare a final report summarizing the VE sessions and reviews. All VE proposals must be accompanied by a rationale, including a discussion of trade-offs, and analysis of design revision impacts including subsequent project delays. Studies shall include maintainability and operability considerations. Each VE proposal developed during the workshop will be submitted through the CMF to DPMC for final decisions on acceptance or rejection. Acceptance may require a redesign of the affected work elements by the Design Consultant.

## 7.8 SITE UTILIZATION PLAN

Provide a proposed site utilization plan of the entire construction site; illustrating areas available for contractor construction access and trailer areas, access to adjacent facilities and related materials. The plan should illustrate and identify site utilization over the major construction phases of the project. Recommend the extent, location and configuration of temporary construction support facilities and coordinate with the various contractors.

## 7.9 CONSTRUCTION CONTRACTOR'S SUBMITTALS

With respect to the construction contractor's submittals, the CMF shall:

- Review the plans and specifications with the Design Consultant to establish and implement procedures for construction contractor submittals for review and/or approval of all shop drawings, catalogs and samples to the Design Consultant and DPMC;
- Develop a comprehensive listing, by contractor, of all submittals required in the contract documents, including milestone dates when each submittal must be processed; and
- Take appropriate action to insure adherence by all parties to this schedule, referring failures to do this to the DPMC, with recommendations of appropriate action to correct the situation.

## 7.10 PERMITS

The CMF shall become familiar with all of the permits and regulatory approvals required for the project. The CMF may be asked to:

- Assist in obtaining permit approvals, building permits and all special permits for permanent improvements;
- Verify that the CMF, DEP, Design Consultant or DPMC has paid applicable fees and assessments;
- Assist in obtaining approvals from authorities having jurisdiction over the project.

## 8.0. BID & AWARD PHASE SERVICES & REQUIREMENTS

## 8.1 GENERAL REQUIREMENTS

The Bid & Award Phase is the construction procurement period between design completion and construction contract award. This procurement phase consists of advertising, bidding, analysis, and award. This section assumes that procurement of construction is by advertisement, receipt of bids, and award of a firm fixed-price contract to the lowest responsible bidder. Adjustments may be necessary if alternate procurement approaches are used to procure the construction contracts.

The DPMC Contracts & Procurement Unit (CPU), under the direction of the CO, will be responsible for the majority of the procurement tasks. The CMF may be required to assist the CPU and CO and/or project team by:

- Preparing a procurement schedule: include all activities necessary to award a construction contract
- Assisting in Project Labor Agreement (PLA) discussions and approvals
- Canvassing the market to determine contractor interest
- Preparing a potential source list
- Drafting the solicitation (invitation for bids or request for proposals)
- Assembling the solicitation package (final technical specifications and drawings)

The CMF's primary tasks during the Bid and Award phase are as follows:

## 8.2 PRE-BID CONFERENCE

Coordinate, schedule and chair the construction contractor pre-bid meeting at the proposed construction site. Prepare an agenda, record minutes and questions, provide logistical or other administrative support, or assist the CO as otherwise instructed. Assist the Design Consultant to respond to technical questions asked by the bidders, discuss project logistics, project phasing requirements, CPM scheduling and mandatory milestones. Prepare and coordinate Bulletins with the Design Consultant for distribution by DPMC. On technical changes to the specifications or drawings, review the Design Consultant's work for constructability, cost and construction schedule impacts.

## 8.3 BID OPENING

Attend the bid opening at the DPMC offices and assist the PD and Design Consultant in evaluating the bids and proposals.

## 8.4 BIDDERS CONFERENCE

With the Design Consultant's and PD assistance, the CMF shall conduct post-bid and pre-award conferences with bidders to review contract award procedures, schedule, project staffing and other pertinent issues; assist the State in evaluating contractor bids and advise the State and Design Consultant on the acceptability of subcontractors and material suppliers proposed by the prime contractors, as well as any proposed substitutions of materials or equipment.

## 8.5 RECORD KEEPING

During the Bid & Award Phase, the CMF shall assist the PD with documentation and record keeping. The CMF may serve as the contact point for prospective bidders during the bidding period, assisting in answering written questions, resolving problems, and coordinating the activities of the project participants, particularly those of the Design Consultant if additional design services are required in connection with the bid documents.

## 9.0 CONSTRUCTION PHASE SERVICES

### 9.1 GENERAL

The construction phase commences with the award of a construction contract. The construction phase is considered complete when DPMC grants "substantial contract completion" to the construction contractor(s). However, many construction phase activities continue after the substantial completion date such as construction finish work and cleanup; correction of deficiencies and omissions; equipment turnover and operations; installation of telecommunications, furniture and other equipment; and occupancy. CMF's will continue to provide construction management services following substantial completion until contract close-out.

The primary areas of responsibility for the CMF during the construction phase are listed below and discussed in the paragraphs that follow.

- Monitor Contractor progress including on-site project/program management
- Pro-active monitoring of work
- Verification and monitoring of CPM schedule
- Record keeping and documentation
- Progress reporting
- Budget control and cost accounting/auditing
- Submittals and shop drawing receipt, cataloging and processing
- Progress payment and invoice review
- Health & Safety
- Inspection
- Testing
- Building Commissioning services
- Information requests
- Contract modifications
- Claims analysis and management
- Monitor labor issues/assist owner as requested
- Progress Photographs
- Final inspection, substantial completion, settlement and close-out
- Occupancy/Move Coordination

### 9.2 RECORD KEEPING AND DOCUMENTATION



The CMF is responsible for documenting all the major project actions and must maintain complete records of the construction contract, including correspondence, contract modifications, claims submittals, daily diaries, etc. The project files must be well organized and indexed for easy access. All project documents must be copied to the DPMC Central File during the CMF's service period for the work order. The complete project files will be turned over to DPMC at the conclusion of the project.

### 9.3 PROGRESS REPORTING

**Daily Diary:** The CMF shall maintain a daily diary to record job site conditions, weather, activities, issues, and documents communications. The daily diary shall be organized to include reports from each on-site representative. Daily diaries shall be compiled and submitted as attachments to the weekly report.

**Weekly Report:** The weekly report describes project progress during the week, highlights concerns which could impact the delivery of the project, and provides information and recommendations to the PD. The format of the weekly report should be as follows:

- An executive summary prepared by the CMF consisting of a one-page overview of the week's progress.
- Summary of the week's major milestones, planned and actual.
- A cost summary, covering base contracts, contract modifications, claims, and other cost issues.
- Critical issues or synopsis of important problems and issues DPMC should be made aware of.
- Minutes of meetings held during the week

**Project Financial Status Report:** The CMF shall be required to prepare a Financial Status Report (FSR) as necessary (monthly, quarterly, annually) on specified projects. The reporting system monitors the progress of "cost versus budget" for the project.

**Monthly Reports:** Monthly progress reports shall describe and summarize the activities and progress of the month, highlighting areas of concern, making recommendations for corrective action. They may include reports prepared for the DPMC CO, DEP, or HUD.

The monthly progress report should include:

- Master project schedule, with updates and revisions
- Key milestones (achieved and slipped), including a discussion of each slippage and other issues affecting the schedule
- Work-in-place, or percentage of construction planned and actual
- Monthly cost status, including contract modification and claims summaries
- Inspection report, including deficiencies identified and status of corrective actions
- Significant issues, problems and questions resolved and pending, including recommendations for resolution
- Monthly progress photos

- A look ahead to next month's activities
- Other related information as requested or required by HUD or the State

Certificate of Performance: The CMF shall sign the DEP “Certification of Performance” each month on DEP projects and other specified projects. The CMF certifies by its signature that the work performed by the construction contractor during the month has met any and all requirements for quality control and quality assurance as they relate to all equipment, materials, and construction systems currently being installed. Also that all equipment, materials, and construction systems are being installed in accordance with the contract specifications, contract construction drawings, and Design Consultant approved submittals. In addition, the CMF certifies that a safety oversight program has been implemented to comply with all federal, State and local safety authorities, insurance requirements, and any local, county, municipal, or union health rules and regulations.

#### 9.4 BUDGET CONTROL & COST ACCOUNTING/AUDITING

The CMF may be required to establish and maintain a construction cost accounting system for DPMC or the DEP during the construction phase. The purpose of the construction cost accounting system is to establish a consistent monitoring procedure to track project expenditures and to maintain sufficient balances to see the project through to completion.

The cost accounting system should document obligations on a monthly basis, including the amounts spent or reserved to date for construction, including base contracts, options and contract modifications. Also, the system should document outlays on a monthly basis, including expenditures to date. Expenditures are generally the sum of the progress payments.

The DPMC may also require that the CMF utilize its in-house staffing or a subconsultant to assist in the audit of contracts and payments of contractors and consultants as necessary.

#### 9.5 SCHEDULING

CMF Schedule Oversight: The CMF shall review the initial and final CPM network schedules submitted by the construction contractor and make recommendations for acceptance, revision, or rejection by the Project Director. The CMF should verify that each activity is reasonably priced, that the schedule is not front-end loaded, and that the work flow is logical, efficient, and not contrived to unfairly benefit the contractor or jeopardize the State.

The CMF shall develop a monitoring system for overseeing progress achieved by the construction contractor. The system should compare actual progress to the master project schedule. The CMF must be continuously aware of the status of actual project progress as compared to planned progress. The schedule oversight system should take into consideration progress payments, receipt of submittals, phasing, or any other time sensitive activities.

The CMF should anticipate delays and advise DPMC or the DEP PD when problems are predicted. The CMF shall highlight such matters in the CMF’s periodic progress reports. If during the construction phase, a delay in the work is identified, the CMF shall:

- Report the delay to the PD in writing
- Assess the impact of the delays
- Determine if the delay is excusable or not, and
- Recommend appropriate course(s) of action to overcome or mitigate the delay.

If delays continue and it appears that the construction contractor is not cooperating in correcting the problem, the CMF may recommend stronger contract enforcement actions such as:

- Show cause and/or cure notices
- Withholding of payments, retainage
- Full or partial termination
- Assessing liquidated damages
- Other recommendations for correcting the delay problem

## 9.6 SHOP DRAWINGS AND SUBMITTALS

The CMF shall establish a submittal control procedure to develop a uniform system for handling all construction contractor submittals. The CMF shall identify and coordinate the effort between the CMF, the PD, the construction contractor, and the Design Consultant. The CMF shall ensure that all the submittals are prepared and processed in a timely fashion, consistent with the activities planned in the construction schedule.

This submittal control process should include:

- A delineation of approval authorities
- Target time periods for review, approval or rejection, and return of submittals
- A tracking system for submittals
- A system for delivering, reviewing, approving or rejecting, and distributing submittals of each type, including re-submissions
- A monitoring mechanism to track progress

The CMF shall assume overall monitoring, receiving, cataloging, logging and processing of all contract shop drawings, samples, product data, operations manuals, warranties, project closeout paperwork and other submittals, from the contractor in conformance with the project specifications. The CMF shall review each submittal package for completeness, rejecting incomplete submittal packages and forwarding all others to the Design Consultant for review. The CMF shall return to the construction contractor(s) all Design Consultant reviewed submittal packages. The CMF shall maintain an accurate, up-to-date Submittal Log, in a form acceptable to the DPMC, which shall include, but not be limited to, a description of each submittal package by specification number, the date to be submitted by the construction contractor, the date actually received by the contractor, the date sent to the Design Consultant, the date returned by the Design Consultant, the date forwarded back to the contractor and the status of the returned submittal. The CMF shall generate a submittal log weekly for the State PD, which shall list the status of all project submittal packages and notify the contractor(s) of any overdue submittal packages.

The CMF is responsible for coordinating the submittals from their receipt through their approval and return to the construction contractor. The CMF shall review the submittal schedule, as developed by the construction contractor for reasonableness. The CMF shall monitor the construction contractor's submittal progress, reminding the contractor of pending and delinquent submittals.

The CMF shall also monitor the Design Consultant's progress in reviewing and approving submittals, reminding the Design Consultant if submittals become overdue.

## 9.7 PROGRESS PAYMENTS

The CMF shall assist DPMC in processing invoice payments by reviewing the contractor's payment invoices, and recommending to the PD the correct payment amount. The CMF shall review the contractor's invoice to determine if the amount of work completed and the amount of the invoice are accurate. The CMF shall make recommendations to the PD for disposition thereof in accordance with the DPMC's procedures, certifying same, and shall, whenever appropriate, make recommendation to the PD concerning the denial or reduction of any payment of the contractor's monthly invoice should the CMF have cause to be dissatisfied with the contractor's performance under its contract. The CMF's certification for payment shall constitute a representation to the State, based on the CMF's determinations at the site and on the data comprising the contractor's invoice, that, to the best of the CMF's knowledge, information and belief, the work has progressed to the point indicated and the quality of the work is in accordance with the contractor's contract documents. Final approval of the payment amount is by the PD.

The CMF may be required to assist DPMC to expedite the processing of the payments in order to meet the requirements of the State's Prompt Payment Act, and to avoid incurring interest charges on late payments.

## 9.8 HEALTH AND SAFETY

During the course of construction, the CMF shall monitor the construction contractor's project safety plan. The CMF shall conduct weekly inspections of the site and prepare an inspection report of the project safety conditions. Project safety shall be a key element of the CMF's daily inspections.

The CMF shall advise the construction contractor immediately of any safety hazards observed. If the remedy to a safety hazard is not apparent, the CMF may assist the construction contractor in developing a corrective action plan.

The CMF shall maintain a file of all accident and fire safety reports generated by the contractor. The CMF shall monitor the submission and processing of reports to the proper DPMC officials. The CMF is required to prepare and submit accident and fire reports in addition to the construction contractor's reports of accidents or fires, using the same forms. The CMF shall review all safety investigation reports prepared by state inspectors pertaining to the project and take appropriate measures to preclude recurrences.

The CMF shall also provide a safety plan prior to initiation of the construction work at the project site describing the preventive measures needed to protect and provide care for the CMF's employees.

Accident and Fire Reporting: In the event of an accident or fire, the CMF must notify the Project Director or Contracting Officer immediately.

The CMF shall comply with all Federal and State Health and Safety Regulations and laws and monitor consultant and contractor compliance with federal and state health and safety regulations and laws.

## 9.9 INSPECTIONS

The CMF shall provide qualified Project Managers, technical staff or Inspectors to verify that the workmanship, materials, and equipment being installed by the construction contractor meet or exceed the requirements of the contract drawings and specifications.

The CMF is responsible for the inspection of all work performed by the construction contractor, and for promptly notifying the construction contractor and the PD of discrepancies. The CMF shall plan and coordinate inspections with the construction contractor to minimize impacts on construction operations, and confirm that critical inspections occur as required. Inspections of critical activities may require that the construction contractor notify the CMF in advance of certain operations.

The CMF is responsible for requesting and coordinating any required inspections by the appropriate regulatory agency(s) and/or the DCA Code Inspection Unit (if necessary) in accordance with the State's Uniform Construction Code when requested by the contractor or Design Consultant. On flood mitigation and resiliency projects, the CMF's inspectors may be required to hold appropriate inspection and testing certifications.

The CMF is responsible for documenting inspections, for identifying items that have been satisfactorily inspected, and those that require correction. The CMF is responsible for activities that include:

- Inspecting the work daily
- Completing daily diary entry's) to record work inspected
- Notifying the construction contractor and the PD of discrepancies that are not corrected promptly
- Maintaining CMF and Design Consultant inspection records
- Maintaining records of all Inspections and Reports
- Maintaining an active list of Design Consultant errors and omissions, indicating corrective status
- Marking up a set of as-built drawings to verify the contractor's official set of as-built drawings
- Reviewing contract drawings, specifications, and approved submittals in preparation for upcoming inspections

## 9.10 TESTING

The CMF must be aware of all construction elements or activities that require tests, as reflected in the construction contract. The CMF shall prepare a complete testing schedule and monitor test results. The project work order may require the CMF to perform independent testing for DPMC. If the CMF does not have in-house testing capabilities, the CMF shall solicit competitive bids for the testing services on a reimbursable basis and award a fixed price or not-to exceed subcontract. Payments will be made from the appropriate work order allowance.

The CMF's testing responsibilities include:

- Verifying that tests are being conducted as scheduled
- Witnessing tests as directed by the PD to confirm that testing procedures are proper
- Monitoring test results for acceptability
- Retaining records of tests
- Describing testing activities in the periodic reports
- Conducting verification tests as required by PD
- Notifying the PD of test failures and planning correction and re-testing
- Overseeing corrective measures arising from test failures

## 9.11 INFORMATION REQUESTS

CMF Responsibilities: The CMF is responsible for coordinating Requests for Information (RFIs) among the Design Consultant, PD, and construction contractor. The CMF shall develop and coordinate procedures for tracking RFIs so that all parties understand and agree to their roles and responsibilities.

The CMF shall review RFIs and determine if a response can be drafted based on a review of the contract documents. The CMF may refer the RFI to the Design Consultant for technical clarifications or to DPMC for clarifications of general conditions.

The CMF shall develop procedures to notify all parties (the contractor, the Design Consultant, and the PD of RFIs responses, fully document all RFI responses, and confirm that all parties agree with the contract interpretation.

## 9.12 CONTRACT MODIFICATIONS

Special Authority: The CMF must avoid any instructions to the contractor that could be interpreted as authorizing modifications to the contract, or otherwise committing State funds. All modifications to the contract must be processed as formal contract modifications in the form of a change order on form DPMC 9. The DPMC CO has sole final authority for authorizing contract modifications after proper documentation and approvals are provided by the PD and CMF.

Contract Modification Processing System: The CMF shall establish a contract modification processing system, consistent with DPMC's change order processing procedures, for initiating, defining, coordinating, tracking, and documenting contract modifications. The system must encompass potential contract modifications, contract modifications in progress, and completed contract modifications for the Design Consultant and the construction contractor(s).

The contract modification processing system shall provide for:

- Defining the roles and responsibilities of the parties involved
- Identifying, evaluating, and justifying the need for modifications
- Defining the scope of modifications
- Tracking of potential, pending and completed modifications, including a contract modification numbering system
- Prescribing all steps necessary to process modifications
- Listing all required documents and forms
- Identifying cost impacts of modifications on the project budget
- Establishing time impacts of modifications on the project

The CMF shall evaluate potential modifications to determine if they are justified and within the scope of the contract, consulting as necessary with the Design Consultant on technical issues or the PD on general conditions.

The CMF must prepare a written justification supporting the need for the modification and recommendation for approval.

Design Deficiencies: If the reason for a contract modification appears to be a design deficiency, the CMF shall make an initial assessment of Design Consultant liability, including documentation of the deficiency and provide its findings to the PD and CO. The CMF's assessment of Design Consultant liability shall be based on a review of the contract documents and other circumstances leading to the change. The Design Consultant will be given an opportunity to rebut any determinations of apparent design deficiencies by the CO. The Design Consultant's position on the deficiency shall be provided to the PD with the proposed contract modification. The CO will make the final decision on liability and whether to pursue recovery from the Design Consultant.

Estimate: The CMF must review and prepare an independent estimate of the cost of the change, considering direct costs, time impacts, and construction contractor and subcontractors' overhead and profit. The estimate shall include a detailed breakdown of labor, material, and equipment costs for the various work elements. Markups for overhead and profit, as allowed by the construction contract, shall be shown separately. The sources of cost data must be indicated. The estimate must be signed by the preparer and dated. The CMF shall provide a detailed evaluation of the contractor's proposal with a recommendation for a negotiated and approved price.

Not to Exceed (NTE) Modification: Some modifications must be expedited to avoid delaying construction or increasing costs excessively. In such cases, the modification may be processed

as a NTE. The CMF shall review the NTE process with the PD, to determine its applicability to specific circumstances. If a modification requires immediate action, the CMF will recommend that the modification be processed as a NTE. The PD will decide if circumstances warrant expedited processing of the modification and a Letter of Direction will be issued to the construction contractor for the change order. A NTE change order is issued for a not-to-exceed price. The final price is negotiated after the contract modification is issued. The NTE process is not intended to be a "time and material" process.

**Negotiation:** The CMF shall assist the PD and CO in establishing negotiation strategies, including acceptable settlement range, and in negotiating contract change orders with the construction contractor.

**Documentation:** After negotiating a firm-fixed price, the CMF shall assist the PD by drafting a Memorandum of Negotiations that shall include:

- Purpose of the negotiation and description of the change
- Date, place, and persons involved in the negotiations
- Contractor's proposed price and the State's or independent estimate
- The recommended contract change order amount and time extensions
- A description of the considerations that led to the negotiated price, in terms of scope, unit costs, markups, and time

The CMF shall assemble and prepare the final contract change order package with all supporting documentation for the PD. The final contract modification will be issued by the CO.

### 9.13 CLAIMS ANALYSIS AND MANAGEMENT

Upon the issuance of an authorized work order, the CMF may be required to conduct an independent study and objective analysis of a specific construction project or contract issue, for the purpose of identifying and evaluating the extent and liability for additional costs and delays associated with a construction contractor or Design Consultant claim or claims. The CMF shall maintain a philosophy focused on claims avoidance, and assist DPMC in preventing adversarial situations from escalating into disputes.

If the CMF observes or suspects that a problem exists that may result in a claim, the CMF shall: (1) evaluate the risk to DPMC or DEP, (2) explore alternatives for resolving the problem with the construction contractor or Design Consultant, (3) consider preparing supplemental guidance for issuance to the construction contractor or Design Consultant to clarify contract requirements, and (4) if appropriate, initiate a change order or contract amendment to compensate the construction contractor or Design Consultant for changed conditions or additional services.

**Claims Analysis:** The CMF's role is limited to analysis of the claim and the preparation of materials for the defense of the claim. These services may be required during and after completion of the construction phase, and include:



- Analyze the progress of construction to identify the cause and duration of project delays. This may include a comparison of the planned and as-built construction schedules, the impact of differing site conditions, and an evaluation of both the State's and contractor's actions during the course of the project.
- Analyze the impact of change orders on the scheduled completion of the project.
- Analyze the impact of the State, Design Consultant, and construction contractor decision-making processes on the project schedule.
- Assess the relative liability of the State and Contractor for delays and cost increases.
- Review any actions that were or should have been taken by the construction contractor to mitigate the damages claimed.
- Evaluate any damages that the construction contractor may recover from the State, and those damages which are the result of the construction contractor's negligence, faulty conduct, or poor performance of work.
- Evaluate any liquidated damages due the State.
- Prepare a report detailing recommendations for contractor entitlement. The recommendation should take into consideration whether the cost of defending the claim exceeds the amount claimed and any impacts the decision might have on the contractor's performance of the balance of the work.
- Prepare an estimate of the entitled damages, and draft a finding of facts to support the entitlement.
- Provide technical assistance in claim negotiations.
- Act as either a testifying or non-testifying expert witness on behalf of the State.
- Create and maintain pertinent documents in a claim file.

#### 9.14 PROGRESS PHOTOGRAPHS

The CMF shall take monthly progress photographs with a digital camera. The photographs must document the general progress of the construction work and equipment installations, with multiple views of the important aspects of the project completion. Both interior and exterior views are required. At a minimum:

- Exterior photographs shall be taken each month from all quadrants, using the same camera locations
- Interior views will vary depending on the progress of construction but will usually include equipment, mechanical rooms, building systems (structural, electrical, mechanical, and plumbing) and finish work in progress.

9.15 PROJECT CLOSEOUT - FINAL INSPECTION, SUBSTANTIAL COMPLETION, AND SETTLEMENT

The CMF shall schedule and coordinate the final inspection with the PD, the CMF and Design Consultant. The CMF shall have an on-going punch list of items that can be consolidated into a final punch list. The CMF shall transmit the final punch list to the construction contractor and the PD.

Final Close-out/Completion: The CMF shall closely monitor the corrective work and update the final punch list, removing each deficiency as it is corrected. The CMF shall ensure all the construction contract requirements are met and completed before deeming the project completed and recommending the initiation of the contract close-out process to the PD for the construction contractor and the Design Consultant.

9.16 OCCUPANCY/MOVE COORDINATION/BENEFICIAL USE

The CMF may be required to assist DPMC or DEP in coordinating agency move-in and occupancy and to perform tasks required prior to occupancy or beneficial use. This may involve coordination of buildouts, installation of systems and equipment, furnishings, and/or telecommunications. It may require scheduling, tracking and/or coordinating agency moves; or may involve supporting the building manager or DPMC and DEP in coordinating moves, building or structure use, or start-up of buildings or systems and equipment. Such coordination and services will be included in the specific work order if necessary.

**END OF RFP FOR CMF 003**

# DIVISION OF PROPERTY MANAGEMENT AND CONSTRUCTION WORK ORDER FOR IDIQ MULTIPLE AWARD TERM CONTRACT - CMF 003

## REQUEST FOR TERM CONTRACT ASSIGNMENT

Project Description: (Project Title, Facility Name, Location)	Consultant Name:	
	Term Contract No. <b>J0334-00</b>	Work Order No.

### Scope of Services: (Scope, Description of Work, Fee Breakdown, Deliverables and Due Date)

Proposal Attached

**Due Date:** (check one)

Complete the work of this assignment:  within \_\_\_\_ days.  By \_\_\_\_\_.  Not Applicable

<b>Total Fee:</b>	<b>No liability shall be incurred nor payments made beyond the Total Fee amount without prior written approval by DPMC.</b>
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**Not To Exceed (NTE):** Authorized upon the DPMC review and approval of employee cards, documentation of tasks performed, and valid receipts for reimbursables.

**Lump Sum (LS):** Authorized upon the DPMC approval of percentage complete of the milestone submissions, phase completions and/or deliverables specified in the scope of services. All costs and expenses incurred by the Consultant are included in the LS payment(s).

AGREED:	APPROVED:
CONSULTANT SIGNATURE _____ DATE _____	DEPUTY DIRECTOR, DPMC _____ DATE _____

**STATEMENT OF ASSURANCES FOR**  
**INDEFINITE DELIVERY INDEFINITE QUANTITY (IDIQ)**  
**MULTIPLE AWARD TERM CONTRACT (CMF 003)**  
**FOR CONSTRUCTION MANAGEMENT SERVICES**  
**ON REBUILD BY DESIGN PROJECTS AND OTHER NJ DEP FLOOD**  
**MITIGATION AND ENVIRONMENTAL INFRASTRUCTURE PROJECTS**

The purpose of this Statement of Assurances is to list requirements applicable to programs funded in whole or in part by Community Development Block Grant-Disaster Recovery (“CDBG-DR”) funds received from the U.S. Department of Housing and Urban Development (“HUD”). Not all of the requirements listed herein shall apply to all activities or work under the Indefinite Delivery Indefinite Quantity (IDIQ) Multiple Award Term Contract (CMF 003) for Construction Management Services on Rebuild By Design Projects and Other NJ DEP Flood Mitigation and Environmental Infrastructure Projects (Contract).

As used herein, “**Contractor**” and “**Consultant**” refer to any Construction Management Firm (CMF) awarded a Contract and paid with CDBG-DR funds.

Contractor/Consultant agrees to comply with all *applicable* federal CDBG-DR laws, guidelines and standards in a manner satisfactory to the State and HUD, including all administration and compliance requirements set forth by this Statement of Assurances. To the extent that Contractor/Consultant utilizes any subconsultants/subcontractors, Contractor/Consultant shall require and ensure that each subconsultant/subcontractor comply with all *applicable* federal CDBG-DR laws, guidelines and standards; any subcontracts entered into by Consultant shall set forth these requirements. Contractor/Consultant also agrees to comply with all *applicable* cross-cutting statutes and regulations, subject to waivers cited in the Federal Register, Docket No. FR-5696-N-01 (March 5, 2013) (Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving CDBG - DR funds in Response to Superstorm Sandy), and all other waivers granted by HUD. The failure to list herein a legal requirement applicable to services performed by Contractor/Consultant does not relieve the Contractor/Consultant from complying with that requirement.

**A. GENERAL PROVISIONS**

1. Under provisions of the Hatch Act that limit the political activity of employees and HUD regulations governing political activity (24 CFR 570.207), CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.
2. No federally appointed funds shall be used for lobbying purposes regardless of level of government, in accordance with 2 CFR 200.450.
3. HUD rules prohibit the use of CDBG funds for inherently religious activities, as set forth in 24 CFR 570.200(j), except for circumstances specified in the Department of Housing and Urban Development Allocations, Common Application, Waivers, and Alternative Requirements for

Grantees Receiving CDBG Disaster Recovery Funds in Response, 78 FR 14329 (March 5, 2013).

4. HUD rules impose drug-free workplace requirements in Subpart B of 2 CFR part 2429, which adopts the government-wide implementation (2 CFR Part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988.
  5. Citizens will be provided with an appropriate address, phone number, and times during which they may submit complaints regarding activities carried out utilizing these CDBG-DR funds. The State will provide a written response to every citizen complaint within fifteen (15) working days of the complaint.
- B. **PERSONALLY IDENTIFIABLE INFORMATION**: To the extent the Contractor/Consultant receives personally identifiable information, it will comply with the Privacy Act of 1974 and HUD rules and regulations related to the protection of personally identifiable information. The term “personally identifiable information” refers to information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc., either alone or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc. See 2 CFR 200.79 & OMB M-07-16. Contractor/Consultant shall require all persons that have access to personally identifiable information (including subcontractors/subconsultants and their employees) sign a Non-Disclosure Agreement.

### **C. FINANCIAL MANAGEMENT AND PROCUREMENT**

1. *To the extent applicable*, Contractor/Consultant shall adhere to the principles and standards governing federal grant distribution as set forth in the OMB Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Part 200).
2. Contractor/Consultant shall comply with all *applicable* laws pertaining to financial management, including 2 CFR Part 180 and 24 CFR Part 2424, which prohibit the making of any award or permitting any award (sub grant or contract) at any tier to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs. To the extent that it uses subcontractors or subconsultants, Contractor must verify that none of them are on the List of Parties Excluded from Federal Procurement or Non-procurement Programs promulgated in accordance with Executive Orders 12549 and 12689, “Debarment and Suspension,” as set forth at 24 CFR Part 24. No Contractors or Subcontractors that are on the List may receive any CDBG funds.
3. Conflict of interest rules, as set forth in 24 CFR 570.489, 24 CFR 570.611, and 2 CFR 200.112, apply. Contractor/Consultant shall disclose in writing any potential conflict of interest to DPMC and DEP.
4. *To the extent applicable*, Contractor/Consultant shall comply with 24 CFR Part 570 regarding the management and disposition of cash, real and personal property acquired with CDBG-DR funds.
5. *To the extent applicable*, Contractor/Consultant shall comply with 24 CFR 570.489(j) regarding change of use of real property. These standards apply to real property within its control (including activities undertaken by subcontractors/subconsultants). These standards apply from the date CDBG-DR funds are first spent until five years after the close-out of the Program.

**D. RECORDS AND RECORDS RETENTION**

1. The Contractor shall be responsible for maintaining records, in accordance with N.J.A.C. 17:44-2.2(b), 24 CFR 570.506 and 570.502. Records shall be maintained for the longer of:
  - (a) a period of three (3) years from submission of the final expenditure report for the Rebuild by Design Program; and
  - (b) a period of five (5) years from the date of final payment.
2. If any litigation, claim, or audit pertaining to the Contract has been started before the expiration of the five-year record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required five-year period, whichever is later.
3. Contractor/Consultant shall provide the State and HUD, including their representatives or agents, access to and the right to examine all records, books, papers, or documents related to the Contract and the use of CDBG funds.

**E. FEDERAL LABOR STANDARDS:** *To the extent applicable, Contractor/Consultant shall comply with Federal Labor Standards, including:*

1. Section 110 of the Housing and Community Development Act of 1974, 42 U.S.C. §5310, 24 CFR §570.603 and HUD Handbook 1344.1 Federal Labor Standards Requirements in Housing and Urban Development Programs, as revised, which require that all laborers and mechanics (as defined at 29 CFR §5.2) employed by Contractor/Consultant (including its subcontractors/subconsultants) in connection with construction contracts over \$2,000, are paid wages at rates not less than those prevailing on similar construction in the locality as per the Davis-Bacon Act (40 U.S.C. §3141 *et seq.*), as amended; except that these requirements do not apply to the rehabilitation of residential property if such property contains less than 8 units;
2. The Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*), requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts of \$100,000 or greater be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty in a work-week;
3. The Federal Fair Labor Standards Act (29 U.S.C. 201 *et seq.*), requiring that covered nonexempt employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rate for all hours worked in excess of the prescribed work-week;
4. The Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3) (which apply to contracts and subcontracts for construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by Federal loans or grants and require payment of wages once a week and allows only permissible payroll deductions);
5. Department of Labor regulations in parallel with HUD requirements above:
  - a. 29 CFR part 1: Procedures for Predetermination of Wage Rates
  - b. 29 CFR part 5: Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also, Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)

- c. 29 CFR part 6: Rules of Practice for Administrative Proceedings Enforcing Labor Standards In Federal and Federally Assisted Construction Contracts and Federal Service Contracts
- d. 29 CFR part 7: Practice Before the Administrative Review Board With Regard to Federal and Federally Assisted Construction Contracts.

**F. SECTION 3 REQUIREMENTS**

1. *To the extent applicable, Contractor/Consultant shall comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (“Section 3”). Section 3 is intended to encourage recipients of HUD funding to direct new employment, training, and contracting opportunities to the greatest extent feasible to low- and very low-income persons, and to businesses that employ these persons, within their community. Section 3 applies to grantees and subrecipients that receive assistance exceeding \$200,000 in certain types of HUD funding, including CDBG funding, and to contractors and subcontractors that enter into contracts in excess of \$100,000 funded by certain types of HUD funding, including CDBG funds, for any activity that involves housing construction, rehabilitation, and demolition, or other public construction. A guide to Section 3 applicability and compliance requirements is located at HUD’s website, [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/section3/section3](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/section3/section3), under Frequently Asked Questions (FAQs).*
2. **Pursuant to 24 CFR 135.38, the following language shall be included in all contracts and subcontracts:**
  - a. *The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.*
  - b. *The parties to this contract agree to comply with HUD’s regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with 24 CFR part 135.*
  - c. *The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the contractor’s commitments under this section 3 clause, and shall post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.*
  - d. *The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor shall not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.*

- e. *The contractor shall certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.*
- f. *Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.*
- g. *With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).*

## **G. FAIR HOUSING AND NON-DISCRIMINATION**

1. *To the extent applicable, Contractor/Consultant shall comply with the following fair housing and non-discrimination laws. Any act of unlawful discrimination committed by Contractor/Consultant or failure to comply with applicable laws shall be grounds for termination of the Contract.*
  - a. *Title VI of the Civil Rights Act of 1964 and as amended in 1988, 42 U.S.C. §200d et seq., as amended, and the regulations issued pursuant thereto (24 CFR 1), which provide that no person in the United States shall on the grounds or race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which it receives federal financial assistance and shall immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of federal financial assistance extended to it this assurance shall obligate it , or in the case of any transfer of such property, and transferee, for the period during which the property or structure is used for another purpose involving the provision of similar services or benefits.*
  - b. *Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–3619), which requires administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing. Title VIII further prohibits discrimination against any person in the sale or rental of housing, or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap or familial status.*
  - c. *Title II of the Civil Rights Act of 1968 (25 U.S.C. 1301-1303).*
  - d. *Architectural Barriers Act (ABA) of 1968, 42 U.S.C. 4151 et seq. The ABA requires access to buildings designed, built, altered, or leased by or on behalf of the federal government or with loans or grants, in whole or in part, from the federal government. As used in the ABA, the term “building” does not include privately owned residential structures not leased by the government for subsidized housing programs.*
  - e. *Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in any federally funded education program or activity.*



- f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which provides that no otherwise qualified individual shall, solely by reason of his or her handicap be excluded from participation, denied program benefits or subjected to discrimination under any program or activity receiving federal funding assistance.
- g. Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794d, which requires Federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities, and applies to all federal agencies when they develop, procure, maintain or use electronic and information technology.
- h. Section 109 of Title I of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under that Part. Section 109 further prohibits discrimination to an otherwise qualified individual with a handicap, as provided under Section 504 of the Rehabilitation Act of 1973, as amended, and prohibits discrimination based on age as provided under the Age Discrimination Act of 1975. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 CFR 6.
- i. Section 104(b)(2) of the Housing and Community Development Act of 1974, 42 U.S.C. 5304(b), which requires communities receiving community development block grants to certify that the grantee is in compliance with various specified requirements.
- j. Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance.
- k. Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 *et seq.*, which prohibits discrimination against people with disabilities by public entities, which includes any state or local government and any of its departments, agencies or other instrumentalities.
- l. Housing for Older Persons Act of 1995 (“HOPA”) (42 U.S.C. 3607), which governs housing developments that qualify as housing for persons age 55 or older
- m. Accessibility requirements contained in Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181 *et seq.*).
- n. Executive Order 11063: Equal Opportunity in Housing, November 20, 1962, as amended by Executive Order 12259, and the regulations issued pursuant thereto, which pertains to equal opportunity in housing and non-discrimination in the sale or rental of housing built with federal assistance.
- o. Executive Order 11246 (Johnson), September 24, 1965, as amended by Executive Order 11375 (Johnson), October 13, 1967, as amended by Executive Order 13672 (Obama), July 21, 2014, which prohibit discrimination in employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Further contractors and subcontractors on federal and federally assisted construction contracts shall take affirmative action to insure that equal opportunity is provided in all aspects of their employment, including, but not limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training and apprenticeship.
- p. Executive Order 12086: Consolidation of contract compliance functions for equal employment opportunity, October 5, 1978.
- q. Executive Order 12892: Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing, January 17, 1994.
- r. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994.

- s. Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency (LEP), August 11, 2000; and Federal Register Notice FR-4878-N-02 (available online at <http://www.gpo.gov/fdsys/pkg/FR-2007-01-22/pdf/07-217.pdf>), which require recipients of federal financial assistance to ensure meaningful access to programs and activities by LEP persons. (The State's Language Access Plan (LAP) is available online at [http://www.renewjerseystronger.org/wp-content/uploads/2014/08/NJ-DCA-LAP\\_Version-1.0\\_2015.01.14-for-RenewJerseyStronger.pdf](http://www.renewjerseystronger.org/wp-content/uploads/2014/08/NJ-DCA-LAP_Version-1.0_2015.01.14-for-RenewJerseyStronger.pdf).)
- t. Executive Order 13217: Community-Based Alternatives for Individuals with Disabilities, June 19, 2001.
- u. Executive Order 13330: Human Service Transportation Coordination, February 24, 2004.
- v. Implementing regulations for the above:
  - i. 24 CFR part 1: Nondiscrimination in Federally Assisted Programs of HUD.
  - ii. 24 CFR part 3: Nondiscrimination on the Basis of Sex in Education Programs or Activities receiving Federal Financial Assistance.
  - iii. 24 CFR 5.105: Other Federal Requirements.
  - iv. 24 CFR 6: Nondiscrimination in Programs, Activities Receiving Assistance under Title I of the Housing and Development Act of 1974.
  - v. 24 CFR part 8: Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development.
  - vi. 24 CFR 50.4(l) and 58.5 (j): Environmental Justice.
  - vii. 24 CFR 91.225(a)(1): Affirmatively Furthering Fair Housing.
  - viii. 24 CFR 91.325(a)(1): Affirmatively Furthering Fair Housing.
  - ix. 24 CFR 91.325(b)(5): Compliance with Anti-discrimination laws.
  - x. 24 CFR 91.520: Performance Reports.
  - xi. 24 CFR part 100 - part 125: Fair Housing.
  - xii. 24 CFR part 107: Non-discrimination and Equal Opportunity in Housing under Executive Order 11063 (State Community Development Block Grant Grantees).
  - xiii. 24 CFR part 121: Collection of Data.
  - xiv. 24 CFR part 135: Economic Opportunities for Low- and Very Low-Income Persons.
  - xv. 24 CFR part 146: Non-discrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance.
  - xvi. 24 CFR 570.206(c): Fair Housing Activities.
  - xvii. 24 CFR 570.487(b): Affirmatively Furthering Fair Housing.
  - xxviii. 24 CFR 570.487(e): Architectural Barriers Act and Americans with Disabilities Act (State Community Development Block Grant Grantees).
  - xix. 24 CFR 570.490(a)-(b): Recordkeeping requirements.
  - xx. 24 CFR 570.491: Performance Reviews and Audits.
  - xxi. 24 CFR 570.495(b): HCDA Section 109 nondiscrimination.
  - xxii. 24 CFR 570.506(g): Fair Housing and equal opportunity records.
  - xxiii. 24 CFR 570.601: Affirmatively Further Fair Housing.
  - xxiv. 24 CFR 570.608 and Part 35: Lead-Based Paint.
  - xxv. 24 CFR 570.614: Architectural Barriers Act and Americans with Disabilities Act.
  - xxvi. 24 CFR 570.904: Equal Opportunity and Fair Housing Review
  - xxvii. 24 CFR 570.912: Nondiscrimination compliance

## **H. CONTRACTING WITH SMALL AND MINORITY FIRMS AND WOMEN'S BUSINESS ENTERPRISES**

1. Contractor/Consultant shall take necessary affirmative steps to ensure contracting opportunities are provided to small and disadvantaged businesses, minority business enterprises, veteran and women's business enterprises and labor surplus area firms. As used in this contract, the terms

“small business” means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and “minority and women’s business enterprise” means a business that is at least fifty-one percent (51%) owned and controlled by minority group members or women. For purposes of this definition, “minority group members” are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and Native Americans. Consultant may rely on written representations by businesses regarding their status as minority and women business enterprises in lieu of an independent investigation.

2. Affirmative steps shall include:

- a. Placing qualified small and disadvantaged businesses, minority firms, veteran- and women-owned businesses on solicitation lists;
- b. Ensuring that small and disadvantaged businesses, minority firms, veteran- and women-owned businesses are solicited whenever they are potential sources, for goods and/or services required in furtherance of Sandy recovery programs;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and disadvantaged businesses, minority firms, veteran- and women-owned businesses;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and disadvantaged businesses, minority firms, veteran- and women-owned businesses; and
- e. Using the service and assistance of the Small Business Administration, and the Minority Business Development Agency of the U.S. Department of Commerce.

**I. ENVIRONMENTAL REGULATORY COMPLIANCE**

*To the extent applicable*, Contractor/Consultant must comply with HUD regulations found at 24 CFR Parts 50 & 58, implementing the National Environmental Policy Act (“NEPA”), 42 U.S.C. §4321 *et seq.*, and other Federal environmental requirements, including but not limited to:

1. Floodplain management and wetland protection:
  - a. Executive Order 11990, Protection of Wetlands (May 24, 1977) (42 FR 26961), 3 CFR, 1977 Comp., p. 121, as interpreted by HUD regulations at 24 CFR 55, particularly sections 2 and 5 of the order;
  - b. Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order;
2. The Coastal Zone Management Act of 1972 (16 U.S.C. § 1451 *et seq.*), as amended, particularly sections 307(c) and (d) (16 U.S.C. §§1456(c) and(d));
3. In relation to water quality:
  - a. Executive Order 12088, as amended by Executive Order 12580, relating to the prevention, control and abatement of water pollution;
  - b. The Safe Drinking Water Act of 1974 (42 U.S.C. §§ 201, 300(f) *et seq.* and U.S.C. §349), as amended, particularly Section 1424(e) (42 U.S.C. §§ 300h-303(e)), which is intended to protect underground sources of water. No commitment for federal financial assistance can be entered into for any project which the U.S. Environmental Protection Agency (“EPA”) determines may contaminate an aquifer which is the sole or principal drinking water source for an area (40 CFR 149); and

- c. The Federal Water Pollution Control Act of 1972, as amended, including the Clean Water Act of 1977, Public Law 92-212 (33 U.S.C. §1251, et seq.) which provides for the restoration and maintenance of the chemical, physical and biological integrity of the nation's water.
4. Endangered Species Act of 1973 (16 U.S.C. §1531 et seq.), as amended, particularly section 7 (16 U.S.C. §1536);
5. The Fish and Wildlife Coordination Act of 1958, as amended;
6. Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.), particularly sections 7(b) and (c) (16 U.S.C. §1278(b) and (c));
7. Executive Order 11738, section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), and EPA regulations (40 CFR part 15) (applicable to contracts and subcontracts in excess of \$100,000);
8. The Clean Air Act of 1970 (42 U.S.C. § 7401 et seq.) as amended, particularly sections 176(c) and (d) (42 U.S.C. § 7506(c) and (d)), and 40 CFR 6, 51, 93, which prohibits engaging in, supporting in any way, providing financial assistance for, licensing or permitting, or approving any activity which does not conform to State or Federal implementation plans for national primary and secondary ambient air quality standards.
9. The Farmland Protection Policy Act of 1981, 7 U.S.C.A. §4201 et seq., particularly sections 1540(b) and 1541 (7 U.S.C. §4201(b) and §4202), and Farmland Protection Policy, 7 CFR 658, which require recipients of federal assistance to minimize the extent to which their projects contribute to the unnecessary and irreversible commitment of farmland to nonagricultural uses;
10. Noise abatement and control requirements at 24 CFR part 51 subpart B;
11. Explosive and flammable operations requirements at 24 CFR part 51 subpart C;
12. Requirements at 24 CFR 58.5(i) relating to toxic chemicals and radioactive materials;
13. Environmental Justice, Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859.

#### **J. EQUAL EMPLOYMENT OPPORTUNITY**

1. All federally assisted construction contracts must include the equal opportunity clause provided under 41 CFR §60-1.4(b). Federally assisted construction contracts include any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the federal government. Construction work is defined as “the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.” 41 CFR 60-1.3.
2. **Pursuant to 41 CFR §60-1.4(b), the following language shall be included in all federally assisted construction contracts and subcontracts:**

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

*(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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 setting forth the provisions of this nondiscrimination clause.*

*(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.*

*(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.*

*(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.*

*(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.*

*(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.*

*(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.*

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**STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY  
DIVISION OF PROPERTY MANAGEMENT AND CONSTRUCTION**

**GENERAL CONDITIONS**

**TO THE**

**IDIQ MULTIPLE AWARD TERM CONTRACT FOR  
CONSTRUCTION MANAGEMENT SERVICES ON  
RBD & NJ DEP FLOOD MITIGATION PROJECTS**

**TERM CONTRACT CMF 003**

STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY  
DIVISION OF PROPERTY MANAGEMENT AND CONSTRUCTION

**GENERAL CONDITIONS  
TO THE  
IDIQ MULTIPLE AWARD  
TERM CONTRACT CMF 003**

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## **1. ANTI-COLLUSION CLAUSE**

Pursuant to *N.J.S.A. 52:34-15*, the Consultant, by signing the Proposal, does hereby warrant and represent that this agreement has not been solicited, secured, or prepared directly or indirectly, in a manner contrary to the laws of the State of New Jersey and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the agreement by any conduct, 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.

## **2. CONFLICT OF INTEREST**

The Consultant shall notify to the Owner in writing of any interest in, or association with, any Contractor, subcontractor, material supplier, Consultant or manufacturer or other party which has any interest in this Project as soon as the potential for such interest is reasonably foreseeable by the Consultant.

## **3. OFFER OF GRATUITIES**

*N.J.S.A. 52:34-19* makes it a misdemeanor to offer, pay or give any fee, commission, compensation, gift or gratuity to any person employed by the Owner. It is the policy of the Owner to treat the offer of any gift or gratuity by any company, its officers or employees to any person employed by the State of New Jersey as grounds for debarment or suspension of such company from submitting proposals on and providing work or materials on State contracts.

a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, 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 *e.*, in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, 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.*

b. 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 State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.

c. No vendor may, 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 such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an 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.

d. No vendor shall 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. No vendor shall 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 vendor or any other person.

f. The provisions cited above in paragraph 3a. through 3e. shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c.

#### 4. CONFLICT OF TERMS

In the event of a conflict in contractual terms and conditions between the Documents comprising this AGREEMENT, the following order shall prevail for purposes of interpretation of this contract.

- a. Notice of Award
- b. Agreement between the State of New Jersey and the Consultant
- c. General Conditions to the Consultant AGREEMENT
- d. Consultant's Fee Proposal
- e. Addenda
- f. Scope of Work
- g. Consultant's Technical Proposal
- h. PROCEDURES FOR ARCHITECTS & ENGINEERS

#### 5. NON-DISCRIMINATION

During the performance of this contract, the contractor agrees to comply with the following Mandatory Equal Employment Opportunity Language (N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)):

**For Goods, Professional Service and General Service Contracts:** The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for

employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

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

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

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

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

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

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

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

- 1) Letter of Federal Affirmative Action Plan Approval
- 2) Certificate of Employee Information Report
- 3) Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at [ww.state.nj.us/treasury/contract\\_compliance](http://ww.state.nj.us/treasury/contract_compliance)).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.

**For Construction Contracts:** The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be

limited to the following: employment, up- grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

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

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27- 7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27- 7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5- 31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

(1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

(2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;

(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;

(5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;

(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) The contractor or subcontractor shall interview the referred minority or women worker.

(ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by

custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA 201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on- the- job and/or off- the- job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (NJAC 17:27).

## 5A. Anti-Discrimination Provisions (NJSA 10:2-1)

Every contract for or on behalf of the State or any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, for the construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or services shall contain provisions by which the contractor agrees that:

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

- c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$ 50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and
- d. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

## **6. TIME OF COMPLETION**

In the event of the failure of the Consultant to complete the work within the time specified solely due to their own cause of delay, the Consultant may be liable to the Owner for all direct losses or damages that the Owner may incur because of the delay; such as, but not limited to, added costs of the project and the cost of furnishing temporary services and facilities, if any.

Any such sums for which the Consultant is liable may be deducted by the Owner from any monies due or to become due to the Consultant.

## **7. FEES AND INVOICING**

The Consultant's fee for tasks performed during the design phase and for all technical and administrative tasks during the construction and close-out phases, such as the review of Contractor submittals, preparation and distribution of minutes, on-site observation during construction, etc., will be a lump sum amount unless stated otherwise. The Consultant's lump sum fee shall be further broken down by phase depending on the contract. In the event that any of the project phases or services are extended for reasons other than the fault of the Consultant, then the Consultant may submit an amendment for additional costs associated with the extension or additional services. Such costs shall be based on direct costs. The Consultant will not be entitled to an automatic extension of the monthly rate for that phase or any subsequent phase.

Invoices for materials and labor expenses shall be submitted on an Invoice Form provided by the Owner, accompanied by appropriate backup as required by the Owner. Copies of all bills for reimbursables allowed by contract must be attached to the invoice form.

Invoices during the design phase may be submitted monthly to the Owner or when work is completed, reviewed and accepted by the Owner. Invoices during the construction phase may also be submitted monthly. Completed invoices must identify the Owners project number for the project and location of the project. Invoices for all work performed shall be processed only after Owner review and acceptance of the work.

Invoices will not be processed if work is found to be incomplete or unsatisfactory upon review by the Owner. The invoice, or portion of the invoice, will be held unprocessed until the Consultant makes the necessary corrections and the work is acceptable to Owner.

## **8. NJ PROMPT PAYMENT ACT**

8.1 For purposes of the State's Prompt Payment Act N.J.S.A. 2A:30A-1 et seq.:

- a. An invoice will be deemed to have been received by the Owner when it is received by the person or entity designated by the State to review and sign the invoice on the State's behalf at the address designated by the

State for receipt of contract invoices. Receipt of an invoice by such person or entity shall commence the running of the 20-day period for formal approval and certification as provided under N.J.S.A. 2A:30A-2(a).

- b. The “billing date” as that term is used in N.J.S.A. 2A:30A-2 shall be the earlier of the date upon which an invoice for payment is approved for payment or 20 days after the invoice is received, per subparagraph “A” above, unless within such 20-day period the invoice is found to be incomplete or otherwise unacceptable and returned to the Consultant with a written explanation of deficiencies.
- c. In the event that an invoice is found to be deficient and returned to the Consultant, the “billing date” shall be calculated from the date that a corrected invoice is received.
- d. Payment shall be considered to have been made on the date on which a check for such payment is dated.
- e. Payment terms (e.g. “net 20”) offered by the Consultant shall not govern the Owner’s obligation to make payment.
- f. The following periods of time will not be included in the calculation of the due date of any Consultant invoice:
  - 1) Any time elapsed between receipt of an improper invoice and its return to the Consultant, not to exceed 20 calendar days; or
  - 2) Any time elapsed between the State’s return of an improper invoice to the Consultant and the Owner’s receipt of a corrected invoice.

8.2.1 The Provisions of this Article 8 shall not govern the Owner’s payment obligations nor shall they supersede or modify any other contractual provision allowing the withholding of monies from the Consultant to the extent that the Consultant has not performed in accordance with the provisions of the contract. Nor shall this Article 8 govern the State’s payment obligations nor supersede or modify any other contractual provision governing Consultant claims for additional compensation beyond the base contract price and approved contract amendments.

### 8.3 Interest

8.3.1 Interest shall be payable on amounts due the Consultant if not paid within thirty (30) calendar days after the billing date specified in the above subparagraph 8.1 (f) as provided under the State’s Prompt Payment Act (N.J.S.A. 2A:30A-1 et seq.). Interest at a equal to the prime rate plus 1% on amounts due shall be payable to the consultant for the period beginning on the day after the required payment date and ending on the date on which the check for payment is drawn.

8.3.2 Interest may be paid by separate payment to the Consultant, but shall be paid within thirty (30) calendar days of payment of the principal amount of the approved invoice.

8.3.3 Nothing in this Article 8 shall be construed as entitling the Consultant to payment of interest on any sum withheld by the Owner for any reason permitted under the contract or applicable law, or on any claim for additional compensation, over and above sums due under the base contract or approved contract amendments.

8.4.1 Disputes regarding nonpayment of a Consultant’s invoice under this Article 8 may be submitted to non-binding Alternative Dispute Resolution (ADR) upon mutual agreement of the Owner and the Consultant. In such event, the Owner and the Consultant shall share equally the fees and expenses of the selected mediator, arbitrator, umpire or other ADR neutral. Provided, however, that nothing herein shall be construed, in whole or in part, as a waiver, release or modification of the provisions of the New Jersey Contractual Act, N.J.S.A. 59:13-1 et seq. as it governs claims against the State.

8.4.2 A Consultant not paid sums due under an approved invoice within thirty (30) days of the billing date may suspend performance without penalty for breach of contract, but only after providing the Owner with seven (7) days written notice of non-payment, and only in the event that the Owner fails to furnish the Consultant, within that seven



(7) day period, with a written statement of the amount withheld and the reasons for the withholding. Nothing herein shall be construed to excuse the Consultant's non-performance, or to limit the Owner's rights and remedies relating to such non-performance, with regard to any monies withheld from the Consultant upon the proper notice provided under this Article 8 or with regard to any Consultant claim disputed by the Owner.

## **9. WITHHOLDING PAYMENT FOR NON-DELIVERY OF DELIVERABLES**

- a. If technical data such as plans, specifications, minutes, approvals, recommendations, "Record" drawings, reports, computer disks, spare parts, lists, or instructions books, operating and maintenance manuals, or any other items required by this AGREEMENT have not been delivered when due or are found to be incomplete or deficient upon delivery, the Owner may withhold from each invoice an amount equivalent to the value of the technical data, or any part thereof not delivered or deficient.
- b. The withholding of any sums pursuant to this article shall not be construed as, or constitute in any manner, a waiver by the Owner of the Consultant's obligation to furnish the data required under this contract. In the event the Consultant fails to furnish these items, the Owner shall have those rights and remedies provided by law and pursuant to this AGREEMENT in addition to, and not in lieu of, the sums withheld in accordance with this article.

## **10. DELAY**

The Owner shall have the right to defer the beginning or to suspend the whole or any part of the work herein contracted to be done whenever, in the opinion of the Owner, it may be necessary or expedient for the Owner to do so. And, if the Consultant is delayed in the completion of the work by act, neglect, or default of the Owner, or any other Consultant or Contractor employed by the Owner upon the work or by changes ordered in the work, or by strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, or any case beyond the Consultant's control, or by any cause which the Owner shall decide to justify the delay, then for all such delays and suspensions the Consultant shall be allowed one day additional to the time herein stated for each and every day of such delay so caused in the completion of the work, the same to be determined by the Owner, and a similar allowance of extra time would be made for such other delays as the Owner may find to have been caused by the Owner. No such extension shall be made prior to the beginning of such delay, and a written request for additional time shall be filed with the Owner.

## **11. CONSULTANT'S CLAIMS FOR DAMAGES**

Any claims made by any Consultant against the Owner for damages or extra costs are governed by and subject to the *New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.* as well as all the provisions in this contract.

## **11A. MUTUAL RESPONSIBILITY OF CONSULTANT, CONTRACTORS**

Should any Consultant damage or unnecessarily delay the work of the Owner or other Consultants or Contractors sustain damages, including delay damages, then and in that event, the culpable party agrees to pay all damages incurred by the damaged Consultant or Contractor(s). The injured Consultant or Contractor or Owner shall have a right of enforcement in court directly against the culpable party. In addition, the culpable party further agrees to defend, indemnify and save harmless the Owner from all such claims and damages to the extent caused by the Consultant's intentional, reckless or negligent acts, errors or omissions. Nothing contained in this paragraph shall be construed to relieve the culpable Consultant

from any liability or damage sustained on account of its intentional, reckless or negligent acts, errors or omissions.

The Owner shall not be liable to any Consultant or Contractor for any damages or extra costs as specified in this paragraph and the Consultant's or Contractor's exclusive remedy shall be against the culpable party. The injured Consultant or Contractor agrees to make no claim for damages against the Owner when the Owner has no direct responsibility for the damages.

## **12. LIMITATIONS OF LIABILITY**

In the event of the breach of this AGREEMENT by the Owner, the Consultant shall be entitled to seek compensatory damages, but subject to the following exception; in no event shall the Owner be liable to the Consultant for any special, consequential, incidental or penal damages, including, but not limited to, loss of profit or revenues, costs of capital, interest of any nature, or attorneys' fees.

## **13. DISPUTES**

The Consultant may at any time request a Contracting Officer's Conference of any claim, dispute or matter in question arising out of or relating to this AGREEMENT. However, it shall not be a condition precedent to the Consultant's right to file a legal action upon such claim, dispute or matter that it be first considered and addressed at a Contracting Officer's Conference.

Disputes regarding whether a party has failed to make payments required under the New Jersey Prompt Payment Act, N.J.S.A. 2A:30A-1, et seq., shall be governed by the provisions of paragraph 8.4.1 of these General Conditions.

The Contractors who are working on the same project as the Consultant may also request a Contracting Officer's Conference should they have any claim, dispute or matter in question arising out of or relating to their individual contracts. The Consultant will be required to participate in such conference either as a party to the dispute or as the Owner's witness.

## **14. INDEMNIFICATION**

The Consultant shall indemnify and hold harmless the Owner, its employees, representatives, and agents from and against any and all losses, suits, claims demands, fines, penalties, awards, damages, costs and expenses as well as reasonable attorney fees and court costs to the extent caused by: (A) its negligence, default, breach, or errors or omissions by the Consultant of obligations under this AGREEMENT; or (B) violations or non-compliance with federal, State, local or municipal laws & regulations ordinances, building codes (including Americans with Disabilities Act, OSHA Environmental Protection Act) arising from the performance of this AGREEMENT or arising out of conditions created or caused to be created by the sole negligence of the Consultant, its agents, employees and subcontractors. The Consultant will defend the Owner, its employees, representatives, and agents from and against any and all suits, claims, demands, fines, penalties, awards, damages, costs and expenses as well as reasonable attorney fees and court costs, wherein any of the matters described in "A" or "B" above are alleged.

## **15. TERMINATION FOR CONVENIENCE OF THE OWNER**

The performance of work under this AGREEMENT may be terminated by the Owner in accordance with this Article in whole, or from time to time in part, whenever the Owner shall determine that such termination is in its best interest. Any such termination shall be effected by delivery to the Consultant of a Notice of Termination specifying the extent to which performance and work under the AGREEMENT is terminated and the date upon which such termination becomes effective.

The Consultant shall be entitled to a proportion of the fee which the services actually and satisfactorily performed by it shall bear to the total services contemplated under this AGREEMENT less payments previously made, together with appropriate reimbursable costs to be negotiated between the Consultant and Owner.

In addition, the Owner may negotiate with the Consultant to establish an amount of compensation for the Consultant's costs incurred in the close-out of the AGREEMENT.

## **16 TERMINATION FOR CAUSE**

If the Consultant persistently disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or otherwise has substantially breached the AGREEMENT, and fails within seven (7) days after receipt of written notice to commence and continue correction of such default, neglect or violation with diligence and promptness, the Owner may, without prejudice to any other remedy the Owner may have, terminate the employment of the Consultant and may finish the services by whatever methods the Owner may deem expedient. In such case the Consultant shall not be entitled to receive any further payment until the Project is finished. No action by the Owner under this provision shall operate to waive or release any claims that the Owner may have against the Consultant under the AGREEMENT.

## **17 SUSPENSION**

The Owner may, in its sole discretion, suspend the work. Compensation for a suspension shall be allowed only as provided in this Article.

If the Owner determines that the work of this AGREEMENT has been suspended for a period cumulatively totaling less than 90 calendar days then there shall be no AGREEMENT Modification adjusting the Consultant's compensation.

If the Owner determines that the Work of this AGREEMENT has been suspended for a period cumulatively totaling 90 calendar days, and if the Owner determines that the suspension has resulted from no fault of the Consultant, than an AGREEMENT Modification covering the remaining work to be done shall be executed.

An AGREEMENT modification shall be executed between the Owner and the Consultant providing an adjustment to the Consultant's compensation which the Owner and Consultant deem proper after reviewing submissions by the Consultant relating to increased costs which the Consultant has actually incurred as a direct result of the suspension.

None of the above provisions shall negate any other terms of this AGREEMENT.

When such a suspension is determined by the Owner to be the fault of the Consultant, the Owner may, at its option, suspend all payments to the Consultant. Payment may be reinstated by the Owner upon completion of the Work in accordance with the other provisions of the AGREEMENT. There shall be no upward adjustment in direct or indirect costs or in any other costs. Alternately, the Owner may terminate the AGREEMENT consistent with Article 16 or 17 or carry out the Work as provided for in Article 18.

## **18. OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Consultant fails to perform any obligation imposed under this AGREEMENT, and fails within seven (7) days after receipt of written notice to commence and continue correction of such failure with diligence and promptness, the Owner may, without prejudice to any other remedy the Owner may have to take steps to remedy such failure. In such case an appropriate written notice shall be issued deducting from the payments then or thereafter due the Consultant the cost of correcting such failure including compensation

for other Consultant or Contractor additional services made necessary by such failure. If the payments then or thereafter due the Consultant are not sufficient to cover such amount, the Consultant shall pay the difference to the Owner. Any action by the Owner under this provision shall be without prejudice to the Owner's rights under this AGREEMENT and shall not operate to release the Consultant from any of its obligations under the AGREEMENT.

## **19. NEW JERSEY PREVAILING WAGE ACT**

Each sub-consultant or Contractor hired by the Consultant shall comply with the New Jersey Prevailing Wage Act, *N.J.S.A. 34:11-56.25* through *56.46*, and all amendments thereto, and this Act is hereby made a part of every agreement entered into on behalf of the State of New Jersey through the Department of the Treasury, except those agreements which are not within the contemplation of the Act. Provisions of the Act include:

- a. All workers employed in the performance of every agreement in which the agreement sum is in excess of \$2,000 and work to which the Owner is a party shall be paid not less than the prevailing wage rate as designated by the Commissioner of Labor and Workforce Development or its duly authorized representatives.
  - (1) Each Consultant and sub-consultant performing public work for the Owner on behalf of the Department of the Treasury, who is subject to the provisions of the Prevailing Wage Act, shall post the prevailing wage rates for each craft and classification involved as determined by the Commissioner, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the work or at such place or places as are used by them to pay workers their wages.
  - (2) The Consultant's signature on the proposal is their guarantee that neither they nor any of their subconsultants is currently listed or on record by the Commissioner as one who has failed to pay the prevailing wages according to the Prevailing Wage Act.
- b. In the event it is found that any worker, employed by any Consultant or any sub-consultant covered by any agreement in excess of \$2,000 for any public work to which the Owner is a party, has been paid a rate of wages less than the prevailing wage required to be paid by such agreement, the Owner may terminate the Consultant's or sub-consultant's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages and may otherwise prosecute the work to completion.
- c. Nothing contained in the Prevailing Wage Act shall prohibit the payment of more than the prevailing wage rate to any worker employed on a public work.

## **20. PUBLIC ANNOUNCEMENTS**

Publicity and/or public announcements pertaining to this project shall be cleared with the Owner in writing prior to release.

## **21. PATENTS**

If the Consultant employs any design, device, material, or process covered by letters of patent or copyright, it shall provide for such use by suitable legal AGREEMENT with the patentee. The Consultant shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the work. The Consultant shall defend, indemnify and save harmless the Owner from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the Owner

for any costs, expenses and damages which it may be obliged to pay by reason of an infringement, at any time during the prosecution of or after the acceptance of the work.

## **22. OWNERSHIP OF DOCUMENTS**

Ownership of all plans, original drawings, specifications, data, samples, tests surveys, models, material, computer discs, evidence, documentation gathered, originated or prepared by the Consultant or his sub-consultants during the performance of the contractual responsibilities pursuant to this contract, shall belong exclusively to the State. Any such plans, specifications, data, samples, tests, surveys, models, material, evidence and documentation shall be delivered to the State in a timely manner upon request. The Consultant shall be permitted to retain a copy of all such materials for his own confidential files.

The ownership by the State shall commence immediately upon the date this Agreement is made, and the ownership shall commence regardless of payment by the State of any compensation to the Consultant or regardless of delivery of any such plans, specifications, data, samples, tests, surveys, models, material, computer discs, evidence and documentation to the State.

## **23. COPYRIGHTS**

If the performance of this Agreement results in books, drawings, specifications, programs or other copyrightable material, the author is free to copyright the work, but the Owner reserves a royalty-free, nonexclusive, and irrecoverable license to reproduce, publish, or otherwise use, and to authorize others to use all copyrighted and copyrightable material resulting from the performance of the agreement.

## **24. RIGHT TO AUDIT**

The Owner reserves the right to audit the records of the Consultant in connection with all matters related to this AGREEMENT. The Consultant agrees to maintain records in accordance with generally accepted accounting principles for a period of not less than five (5) years after final payment. The consultant shall also maintain all documentation related to deliverables, products, transactions or services under this contract for a period of five (5) years from the date of final payment. Such records shall be made available for audit to the New Jersey Office of the State Comptroller or any other State audit agency upon reasonable demand.

If such audit results in a finding of improper statements of hourly rates, overhead, time required, mathematical calculations, or other estimated cost of data upon which the AGREEMENT was awarded, the Owner has the authority to reduce the Consultant's invoice amount to an amount considered commensurate with the actual scope of work.

## **25. PROCEDURAL REQUIREMENTS AND AMENDMENTS**

The Consultant shall comply with all written procedural instructions that may be issued from time to time by the Owner.

During the AGREEMENT period, no change is permitted in any of the AGREEMENT conditions and specifications without express written approval from the Owner. Should the Consultant at any time find existing conditions which would make modification in requirements desirable, he shall promptly report such matters to the Owner for consideration.

The Consultant or their authorized representative(s) may be required to meet periodically with the Owner to discuss project progress.

## 26. SECURITY AND STATE REGULATIONS

All personnel must observe all regulations in effect at the project site. While on State property, employees or sub-consultants of the Consultant will be subject to control of the Owner, but under no circumstances will such persons be deemed to be employees of the State. The Consultant or their personnel will not represent themselves as employees of the State.

The Consultant will be responsible for ensuring that all articles found by their employees or sub-consultants on or near the project site are turned in at a designated place.

All Consultant and sub-consultant personnel shall be subject to such security clearance as the Owner shall require.

## 27. INSURANCE REQUIREMENTS

The Consultant shall secure and maintain in force, for the term of the contract, insurance coverage's provided herein. The Consultant shall provide the Owner with current certificates of insurance for all coverage and renewals thereof which must contain the provision that the insurance provided in the certificate shall not be canceled for any reason except after 30 calendar days written notice to the Owner.

### a. COMPREHENSIVE GENERAL LIABILITY

Comprehensive general liability insurance for the benefit of the Consultant and any sub-consultants is to be written as broad as the standard coverage form currently in use in the State of New Jersey, which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include an endorsement (broad form) for contractual liability insurance, an endorsement for completed operations insurance, and an endorsement eliminating the explosion, collapse and underground (XCU) exclusion. Limits of liability shall not be less than \$1,000,000 per occurrence for bodily injury liability and \$1,000,000 per occurrence for property damage liability.

### b. COMPREHENSIVE AUTOMOBILE LIABILITY

Comprehensive automobile liability insurance covering owned, non-owned, and hired vehicles must be carried by the Consultant and its sub-consultants. The limits of liability shall not be less than \$1,000,000 per occurrence for bodily injury liability and \$500,000 per occurrence for property damage liability.

### c. WORKERS' COMPENSATION

Worker's Compensation Insurance applicable to the laws of the State of New Jersey and other State or Federal jurisdiction is required to protect the employees of the Consultant or any sub-consultants who will be engaged in the performance of this contract. This insurance shall include employers' liability protection with a limit of liability not less than \$250,000.

### d. PROFESSIONAL LIABILITY INSURANCE

The Consultant shall maintain Professional Liability insurance with limits as established elsewhere in this Agreement. The insurance carrier shall be registered with the NJ Department of Insurance and licensed or authorized to conduct business in the State of New Jersey, as required by law. In the event of a loss, the Consultant shall be held responsible for payment of the deductible as though there were no deductible. Such insurance shall be maintained for a period of not less than six months following the actual completion and acceptance of the project by the Owner. Contractual Liability Insurance is not acceptable.

## **28. SUB-CONSULTANTS**

If any part of the work covered by this AGREEMENT is sub-contracted, the sub-consultant must be prequalified by the Owner. If there is no prequalification category for the discipline of a specific sub-consultant, they must be approved by the Owner prior to using the sub-consultant.

Payment of all sub-consultants is the sole responsibility of the Consultant. Nothing contained in this AGREEMENT shall create a contractual relationship between any sub-consultant and the Owner.

On request, the Consultant shall furnish the Owner with copies of all Agreements between the Consultant and its sub-consultants.

## **29. SUB-CONTRACTORS**

Contractors hired by the Consultant to perform exploratory work involving the normal construction trades that is not of a professional nature need not be prequalified by the Owner; however, if the work being performed requires a State license or certification, the sub-contractor must hold the appropriate license or certification. Payment of all sub-contractors is the sole responsibility of the Consultant. Nothing contained in this AGREEMENT shall create a contractual relationship between any sub-contractors and the Owner.

## **30. ASSIGNMENT**

The Consultant shall not assign the whole or any part of this AGREEMENT without written consent of the Owner. Money due to the Consultant hereunder shall not be assigned for any purpose whatsoever.

## **31. COMPLIANCE WITH LAW**

The Consultant shall comply with any and all Federal, State, or local laws in effect or hereinafter promulgated which apply to the service herein specified.

Each and every provision required by law to be inserted in this AGREEMENT shall be deemed to have been inserted therein. If any such provision has been or has not been correctly inserted, then upon application of either party, the AGREEMENT shall be physically amended to provide for such insertion or correction. If the Owner determines that the Consultant has violated or failed to comply with applicable Federal, state or local laws with respect to its performance of this Agreement, it may withhold payments for such performance and take other such action that it deems appropriate until compliance or remedial action has been accomplished by the Consultant to the satisfaction of the Owner.

## **32. SET-OFF FOR STATE TAX**

Pursuant to N.J.S.A. 54:49-19, and notwithstanding any provision of the law to the contrary, whenever any partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentality, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as shall be necessary to satisfy the indebtedness. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the tax payer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice of the set-off to the taxpayer, partner or shareholder and provide an opportunity of a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No request for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c 184 (c.52:32-32 et seq.) to the taxpayer shall be stayed.

### **33. COMPLETE AGREEMENT CLAUSE**

This AGREEMENT represents the entire and integrated AGREEMENT between the Owner and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be amended only by subsequent written agreement.

### **34. SEVERABILITY CLAUSE**

If any provision of this AGREEMENT is found invalid, it shall be considered deleted and shall not invalidate the remaining provisions of the AGREEMENT.

### **35. HAZARDOUS MATERIALS**

Should a Consultant, through the normal course of work discover previously undetected asbestos, radon, lead, PCB's or other hazardous material, the Consultant is to report their findings immediately to the Owner. The Owner will initiate remedial action, during which time the Consultant may be required to cease work on the project if so directed by the Owner. The Consultant will commence work at the direction of the Owner, and the terms and conditions of the original project AGREEMENT shall remain in force.

### **36. THIRD PARTIES**

Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of a third-party against the Consultant or the Owner, except that a third party Consultant or Contractor may file an action as described in General Conditions Article 11, Consultant's Claims for Damages

### **37. FINAL ACCEPTANCE**

Prior to final acceptance by the Owner of the project, the Consultant shall submit all of the required deliverables for the project as specified in this AGREEMENT. Upon submission of the request for final payment, the Consultant firm and its successors and assigns remise, release and forever discharge the Owner, its officers, agents and employees in their official and individual capacities of and from all liabilities, obligations and claims whatsoever in law and in equity under or arising out of this AGREEMENT.



## TERM CONTRACT CMF 003

### INSTRUCTIONS AND PROPOSAL FORMS

This package consists of the following Term Contract CMF 003 documents:

- (a) CMF TERM CONTRACT RATE SCHEDULE INSTRUCTIONS AND GUIDELINES
- (b) CONSULTANT AFFIDAVIT (Page 1 of 9)
- (c) CONSULTANT TERM CONTRACT CMF 003 RATE SCHEDULE (Pages 2 thru 6)
- (d) OTHER REQUIRED FORMS (Pages 7 thru 9)
- (e) TERM CONTRACT CMF 003 REQUEST FOR PROPOSAL
- (f) AGREEMENT BETWEEN THE STATE OF NEW JERSEY AND THE CMF CONSULTANT FOR TERM CONTRACT CMF 003
- (g) GENERAL CONDITIONS TO CMF-003
- (h) STATEMENT OF ASSURANCES FOR IDIQ MULTIPLE AWARD TERM CONTRACT CMF 003

#### INSTRUCTIONS

1. Read the entire TERM CONTRACT CMF REQUEST FOR PROPOSAL, including all instructions, terms, conditions and specifications.
2. Submit questions regarding the RFP and associated contract documents to: [Catherine.Douglass@treas.nj.gov](mailto:Catherine.Douglass@treas.nj.gov) **no later than 2:00 pm, November 12, 2015.**
3. Complete and return the following **no later than 2:00 pm, December 3, 2015** : One (1) original and five (5) copies of:
  - (a) CONSULTANT AFFIDAVIT, CMF 002 RATE SCHEDULES (PAGES 1 THRU 7)
  - (b) OTHER REQUIRED FORMS (Pages 7 thru 9)
  - (c) TECHNICAL PROPOSAL
4. **The Consultant Affidavit must be signed by a principal of the firm having contracting authority.** Unsigned affidavits will be rejected as non-responsive.
5. Retain for your files:
  - (a) A copy of your firm's TECHNICAL PROPOSAL
  - (b) A copy of your completed CONSULTANT AFFIDAVIT
  - (c) A copy of your completed CONSULTANT TERM CONTRACT RATE SCHEDULES
  - (d) A copy of your all OTHER REQUIRED FORMS
  - (e) TERM CONTRACT CMF 003 REQUEST FOR PROPOSAL
  - (f) AGREEMENT BETWEEN THE STATE OF NEW JERSEY AND THE CONSULTANT FOR TERM CONTRCT CMF 003
  - (g) GENERAL CONDITIONS TO CMF-003
  - (h) STATEMENT OF ASSURANCES FOR IDIQ MULTIPLE AWARD TERM CONTRACT CMF 003
  - (i) DPMC NOTICE OF TERM CONTRACT AWARD FOR CMF 003 (This will be sent to you upon receipt and acceptance of the Consultant proposal)

**THIS PROPOSAL MUST BE RECEIVED NO LATER THAN 2:00 P.M., DECEMBER 3, 2015 AND WILL BE CONSIDERED UNRESPONSIVE IF RECEIVED LATER THAN THE DATE AND TIME SPECIFIED. IF THE PROPOSAL IS TRANSMITTED VIA OVERNIGHT MAIL PLACE WITHIN THE CARRIER'S PACKAGING AND MAIL TO:**

State of New Jersey  
Department of Treasury  
Attn: Catherine Douglass  
Division of Property Management & Construction  
Contracts and Procurement Unit  
33 W. State Street, 9<sup>th</sup> Floor  
Trenton, New Jersey 08625-0034

## **CMF 003 TERM CONTRACT RATE SCHEDULE - INSTRUCTIONS AND GUIDELINES**

### **SERVICES AND PRICES/COSTS**

#### **A. Contract Hourly Rates**

- (a) The DPMC has specified certain Personnel Levels as labor categories for contract performance, (see attached Personnel Type/Level Description/Examples sheet). These Personnel Levels are indicated on the CMF Term Contract Rate Schedule for the base period and four (4) option years at the end of Section C. The CMF is to propose hourly rates for each Personnel Level/Labor Category in the Rate Schedules. The hourly rates for each Personnel Level will be used for pricing task orders in each of the respective performance periods. Note the DPMC estimated man-hours are solely for evaluation of the hourly rates contained in each CMF proposal and do not guarantee the actual work to be performed for each Personnel Level.
- (b) The hourly rates proposed by the CMF and accepted at contract award for each respective performance period, i.e., the base period or one of the four option years, are to be fixed for the duration of that period, including any extensions for the last option. Hourly rates are to be listed in whole numbers, no cents please.
- (c) In developing the required all inclusive, "loaded" hourly rates for the various Personnel Levels, the CMF should include all costs required for each personnel type, including, all direct labor costs, overhead costs, fringe benefits, supplies, equipment, communication services, administrative costs, insurance, in-State travel, meals and lodging, professional fees and profit associated with this contract as defined in Section 4.5 of the RFP. Price increases will not be granted for any alleged omissions or miscalculations of contract pricing.
- (d) The hourly rates listed by the CMF and accepted at contract award will be the rates that will be used as the basis for pricing future task orders issued under this contract. The base period and each option year period are to be separately priced based on the CMF 003 Term Contract Rate Schedule provided by the CMF.

#### **B. Additional Instructions**

- (a) Firms are cautioned that any proposal/offer may be rejected as non-responsive if it is materially unbalanced as to prices for the base and/or the four optional contract periods. An offer is unbalanced when it is based on prices/rates that are significantly understated for some service levels and prices/rates that are significantly overstated for other service levels.
- (b) Neither the CMF nor its employees will be required to prepare, sign or seal any drawings or specifications as part of the contract scope of work.
- (c) Firms must propose prices/rates for all Personnel Levels in order to be considered for award. CMF's may not use pricing alternatives, which differ from these instructions.

## **SERVICES AND PRICES/COSTS (con't)**

- (d) The CMF is required to provide its own computer equipment and software adequate to fully satisfy all operational requirements of this contract and work orders requiring field office operation requirements. This should be considered in developing the price proposal as no reimbursement is authorized for such equipment after award of the contract. This contract requires computerized capabilities of the CMF.

### **C. Evaluated Prices**

- (a) The total evaluated price for each Personnel Level in the following rate schedules is equal to the DPMC estimated man-hours multiplied by the CMF's proposed hourly rate.
- (b) The DPMC estimated man-hours for each Personnel Level are solely for evaluation of the CMF proposals under this Term Contract and do not guarantee a specific level of effort to be purchased by the State.

## CMF 003 PERSONNEL LEVEL – DESCRIPTIONS / EXAMPLES

### LEVEL 7

**Title:** **Principal, partner or officer of the firm**  
**Duties:** Overall contract responsibility for the legal, technical and financial obligation of the firm.  
**Qualifications:** Current License in applicable discipline, if required by law.  
**Experience:** N/A

### LEVEL 6

**Title:** **Project Executive; Senior Project Manager/Construction Manager; Superintendent**  
**Duties:** Under direct leadership of principal, controls project scheduling and management.  
**Qualifications:** Current license in applicable discipline, if required by law.  
**Experience:** Minimum 7 years.

### LEVEL 5

**Title:** **Project Manager/Construction Manager; CPM Scheduler; Permit Coordinator, QA/QC Mgr.**  
**Duties:** Under direction of Project Executive, directs day-to-day operations of the project, scheduling deadlines, group work activities, etc.  
**Qualifications:** BA, BS degree or equivalent experience.  
**Experience:** Minimum 5 years.

### LEVEL 4

**Title:** **Senior Designer; Senior Engineer; Senior Estimator**  
**Duties:** Under supervision of Project Manager, reviews project elements to conform to project requirements, directs designer and others on projects, prepares estimates.  
**Qualifications:** BA, BS degree or equivalent experience.  
**Experience:** Minimum 5 years

### LEVEL 3

**Title:** **Designer; Engineer; Estimator; Field Inspector**  
**Duties:** Under supervision of Designer or Engineer takes designed systems and layout data and sketches and translates into usable information on construction documents or feasibility studies.  
**Qualifications:** BA, BS degree or equivalent experience; AST certification, if required.  
**Experience:** Minimum 3-5 years

### LEVEL 2

**Title:** **Designer/Draftsperson; Site Administrator**  
**Duties:** Takes simple systems and layout data and sketches and translates into usable information; performs drafting as required for construction documents, etc.  
**Qualifications:** High School Graduate, Technical School, or equivalent, with courses in discipline.  
**Experience:** Minimum 3 years direct work experience within discipline.

### LEVEL 1

**Title:** **Draftsperson, Secretary, Office Assistant**  
**Duties:** Performs all entry level tasks: Assembles tracings for review, printing; keeps logs of tracings, shop drawings; performs tracing and drafting chores, etc.  
**Qualifications:** High School Graduate, Technical School or equivalent with courses in discipline.  
**Experience:** N/A

**CMF 003 TERM CONTRACT**

**CONSULTANT AFFIDAVIT**

**IMPORTANT - PLEASE READ, SIGN AND PROVIDE INFORMATION REQUESTED BELOW**

Affidavit: I, being duly sworn upon my oath, hereby represent and state the foregoing information contained in the Term contract Proposal and any attachments thereto the best of my knowledge are true and complete. I acknowledge that the State of New Jersey (Owner) is relying on the information contained herein and thereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the Owner, or its contractors, to notify the Owner in writing of any changes to the answers or information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreements(s) with the Owner and that the Owner, at its option, may declare any contract(s) or sub-contract(s) resulting from this certification void and unenforceable.

Signature of the consultant below attests that the Consultant has read, understands and agrees to all terms, conditions and specifications set forth in the CMF 003 Term Contract Request for Proposal (RFP). Signature of the Consultant signifies that a contract is established immediately upon notice of award by the State of New Jersey for any or all of the items and the length of time indicated in the proposal. Failure to accept a contract award, to hold prices or to meet any other terms or conditions as defined in the request for proposal and agreement, and subsequently the Notice of Award, during the term of the contract, shall constitute a breach of contract and may result in suspension or debarment from further contractual agreements with the Owner.

Signature and Title of Principle or Individual of the firm authorized to sign contractual documents:

Firm Name:

Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

ATTESTED: Sworn and subscribed to before me on the \_\_\_\_\_ day of \_\_\_\_\_, 1998.

Signature: \_\_\_\_\_  
(Notary Public-Not an Officer of the Firm)

**RETURN THIS COMPLETED DOCUMENT TO DPMC  
(PAGE 1 OF 9)**

**CMF 003 TERM CONTRACT RATE SCHEDULE  
BASE PERIOD (EST. 1/1/16 – 12/31/17)**

NAME OF FIRM: \_\_\_\_\_

**INSTRUCTIONS**

Give an hourly rate (\$ per hour; no cents please) below for all Personnel for each of the years listed. Please refer to the RFP for a description of each of the personnel types. Your proposal may be considered unresponsive if you leave blanks. Provided and hourly rate for ALL Personnel Levels even though you may not at the present time have staff for some of these levels.

<b>PERSONNEL TYPE</b>	<b>Estimated Man Hrs.</b>	<b>CMF Proposed Hourly Rate</b>	<b>Evaluated Price</b>
<b>LEVEL 7</b>	1250	\$	\$
<b>LEVEL 6</b>	2500	\$	\$
<b>LEVEL 5</b>	2000	\$	\$
<b>LEVEL 4</b>	1750	\$	\$
<b>LEVEL 3</b>	2400	\$	\$
<b>LEVEL 2</b>	1500	\$	\$
<b>LEVEL 1</b>	1000	\$	\$
<b>TOTAL EVALUATED PRICE</b>			\$

**RETURN THIS COMPLETED DOCUMENT TO DPMC  
(PAGE 2 OF 9)**

**CMF 003 TERM CONTRACT RATE SCHEDULE  
OPTION YEAR 1 (Est. 1/1/18 - 12/31/18)**

NAME OF FIRM: \_\_\_\_\_

**INSTRUCTIONS**

Give an hourly rate (\$ per hour; no cents please) below for all Personnel for each of the years listed. Please refer to the RFP for a description of each of the personnel types. Your proposal may be considered unresponsive if you leave blanks. Provided and hourly rate for all Personnel Levels even though you may not at the present time have staff for some of these levels.

<b>PERSONNEL TYPE</b>	<b>Estimated Man Hrs.</b>	<b>CMF Proposed Hourly Rate</b>	<b>Evaluated Price</b>
<b>LEVEL 7</b>	1250	\$	\$
<b>LEVEL 6</b>	2500	\$	\$
<b>LEVEL 5</b>	2000	\$	\$
<b>LEVEL 4</b>	1750	\$	\$
<b>LEVEL 3</b>	2400	\$	\$
<b>LEVEL 2</b>	1500	\$	\$
<b>LEVEL 1</b>	1000	\$	\$
<b>TOTAL EVALUATED PRICE</b>			\$

**RETURN THIS COMPLETED DOCUMENT TO DPMC  
(PAGE 3 OF 9)**

**CMF 003 TERM CONTRACT RATE SCHEDULE  
OPTION YEAR 2 (Est. 1/1/19 - 12/31/19)**

NAME OF FIRM: \_\_\_\_\_

**INSTRUCTIONS**

Give an hourly rate (\$ per hour; no cents please) below for all Personnel for each of the years listed. Please refer to the RFP for a description of each of the personnel types. Your proposal may be considered unresponsive if you leave blanks. Provided and hourly rate for all Personnel Levels even though you may not at the present time have staff for some of these levels.

<b>PERSONNEL TYPE</b>	<b>Estimated Man Hrs.</b>	<b>CMF Proposed Hourly Rate</b>	<b>Evaluated Price</b>
<b>LEVEL 7</b>	1250	\$	\$
<b>LEVEL 6</b>	2500	\$	\$
<b>LEVEL 5</b>	2000	\$	\$
<b>LEVEL 4</b>	1750	\$	\$
<b>LEVEL 3</b>	2400	\$	\$
<b>LEVEL 2</b>	1500	\$	\$
<b>LEVEL 1</b>	1000	\$	\$
<b>TOTAL EVALUATED PRICE</b>			\$

**RETURN THIS COMPLETED DOCUMENT TO DPMC  
(PAGE 4 OF 9)**



**CMF 002 TERM CONTRACT RATE SCHEDULE  
OPTION YEAR 3 (Est. 1/1/20 - 12/31/20)**

NAME OF FIRM: \_\_\_\_\_

**INSTRUCTIONS**

Give an hourly rate (\$ per hour; no cents please) below for all Personnel for each of the years listed. Please refer to the RFP for a description of each of the personnel types. Your proposal may be considered unresponsive if you leave blanks. Provided and hourly rate for all Personnel Levels even though you may not at the present time have staff for some of these levels.

<b>PERSONNEL TYPE</b>	<b>Estimated Man Hrs.</b>	<b>CMF Proposed Hourly Rate</b>	<b>Evaluated Price</b>
<b>LEVEL 7</b>	1250	\$	\$
<b>LEVEL 6</b>	2500	\$	\$
<b>LEVEL 5</b>	2000	\$	\$
<b>LEVEL 4</b>	1750	\$	\$
<b>LEVEL 3</b>	2400	\$	\$
<b>LEVEL 2</b>	1500	\$	\$
<b>LEVEL 1</b>	1000	\$	\$
<b>TOTAL EVALUATED PRICE</b>			\$

**RETURN THIS COMPLETED DOCUMENT TO DPMC  
(PAGE 5 OF 9)**

**CMF 003 TERM CONTRACT RATE SCHEDULE  
OPTION YEAR 4 (Est. 1/1/21 – 12/31/21)**

NAME OF FIRM: \_\_\_\_\_

**INSTRUCTIONS**

Give an hourly rate (\$ per hour; no cents please) below for all Personnel for each of the years listed. Please refer to the RFP for a description of each of the personnel types. Your proposal may be considered unresponsive if you leave blanks. Provided and hourly rate for all Personnel Levels even though you may not at the present time have staff for some of these levels.

<b>PERSONNEL TYPE</b>	<b>Estimated Man Hrs.</b>	<b>CMF Proposed Hourly Rate</b>	<b>Evaluated Price</b>
<b>LEVEL 7</b>	1250	\$	\$
<b>LEVEL 6</b>	2500	\$	\$
<b>LEVEL 5</b>	2000	\$	\$
<b>LEVEL 4</b>	1750	\$	\$
<b>LEVEL 3</b>	2400	\$	\$
<b>LEVEL 2</b>	1500	\$	\$
<b>LEVEL 1</b>	1000	\$	\$
<b>TOTAL EVALUATED PRICE</b>			\$

**RETURN THIS COMPLETED DOCUMENT TO DPMC  
(PAGE 6 OF 9)**

## MAC BRIDE PRINCIPLES COMPLIANCE CERTIFICATION

*Pursuant to Public Law 1995, c.134, a responsible consultant selected, after public bidding, by the Director of the Division of Property Management and Construction, pursuant to N.J.S.A. 52:32-2, must complete the certification below by checking one of the two representations listed and signing where indicated. If a consultant who would otherwise be awarded a contract or agreement does not complete the certification, then the Director may determine, in accordance with applicable law and rules, that it is in the best interest of the State to award the contract or agreement to another consultant who has completed the certification and has submitted a fee proposal within five (5) percent of the most advantageous fee proposal. If the Director finds the consultant to be in violation of the principles which are the subject of this law, he shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the consultant in default and seeking debarment or suspension of the consultant.*

I certify, pursuant to N.J.S.A. 52:34-12.2, that the entity for which I am authorized to bid:

\_\_\_\_\_ has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein through the operation of offices, plants, factories, or similar facilities, either directly or indirectly, through intermediaries, subsidiaries or affiliated companies over which it maintains effective control; or

\_\_\_\_\_ will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.8 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

\_\_\_\_\_  
Signature of Consultant

Dated:

**RETURN THIS COMPLETED DOCUMENT TO DPMC  
(PAGE 7 OF 9)**

**STATE OF NEW JERSEY**  
**DIVISION OF PROPERTY MANAGEMENT AND CONSTRUCTION**  
**DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN**

PROJECT NUMBER \_\_\_\_\_ BIDDER \_\_\_\_\_

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

PLEASE CHECK THE APPROPRIATE BOX:

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

OR

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

Part 2: PLEASE PROVIDE FURTHER INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN

You must provide a detailed, accurate and precise description of the activities of the bidding person/entity, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran outlined above by completing the box(es) below.

Name \_\_\_\_\_ Relationship to Bidder/Offeror \_\_\_\_\_  
Description of Activities \_\_\_\_\_  
Duration of Engagement \_\_\_\_\_ Anticipated Cessation Date \_\_\_\_\_  
Bidder/Offeror Contract Name \_\_\_\_\_ Contact Phone Number \_\_\_\_\_

List Additional Activities on Separate Sheet

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

Full Name (Print): \_\_\_\_\_ Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**RETURN THIS COMPLETED DOCUMENT TO DPMC**  
**(PAGE 8 OF 9)**

**Public Law 2005, Chapter 92**

Formerly: Executive Order 129

**SOURCE DISCLOSURE CERTIFICATION FORM**

Bidder: \_\_\_\_\_

I hereby certify and say:

I have personal knowledge of the facts set forth herein and am authorized to make this Certification on behalf of the Bidder.

The Bidder submits this Certification as part of a bid proposal in response to the referenced solicitation issued by the State of New Jersey, Department of Treasury, Division of Property Management and Construction (DPMC), in accordance with the requirements of Public Law 2005, Chapter 92, (N.J.S.A. 52:34-13.2 et seq., superseding Executive Order 129 (2004)).

The following is a list of every location where services will be performed by the bidder and all subcontractors.

<u>Bidder or Subcontractor</u>	<u>Description of Services</u>	<u>Performance Location(s) by Country</u>
--------------------------------	--------------------------------	---

Any changes to the information set forth in this Certification during the term of any contract awarded under the referenced Project Number will be immediately reported by the Bidder to the Contract Compliance Unit in the DPMC, Department of Treasury, State of New Jersey, PO Box 034, Trenton, NJ 08625.

I understand that, after award of a contract to the Bidder, it is determined that the Bidder has shifted services declared above to be provided within the United States to sources outside the United States, prior to a written determination by the Director, Division of Property Management and Construction, that extraordinary circumstances require the shift of services or that the failure to shift the services would result in economic hardship to the State of New Jersey, the Bidder shall be deemed in breach of contract, which contract will be subject to termination for cause under its contract with DPMC.

I further understand that this Certification is submitted on behalf of the Bidder in order to induce DPMC to accept a bid proposal, with knowledge that the State of New Jersey and DPMC are relying upon the truth of the statements contained herein.

I certify that, to the best of my knowledge and belief, the foregoing statements by me are true. I am aware that if any of the statements are willfully false, I am subject to punishment.

Bidder: \_\_\_\_\_  
[Name of Organization or Entity]

By: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**RETURN THIS COMPLETED DOCUMENT TO DPMC  
(PAGE 9 OF 9)**

**STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY  
DIVISION OF PROPERTY MANAGEMENT AND CONSTRUCTION**

**AGREEMENT  
BETWEEN THE STATE OF NEW JERSEY  
AND THE  
CMF CONSULTANT  
FOR  
TERM CONTRACT CMF 003**



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  - A.1 General
  - A.2 Design and Bid Phase
  - A.3 Construction Phase
  - A.4 Field Office Technical and Administrative Support
  - A.5 CPM Schedule Services
- B. Owners Rights and Responsibilities
  - B.1 Owners Rights
  - B.2 Owners Responsibilities
- C. Construction Cost
- D. Consultant Compensation

**Attachment**

General Conditions to the Consultant Agreement

In this AGREEMENT made upon notice of acceptance by the Owner of the CMF Consultant's

Proposal BETWEEN the Owner : State of New Jersey, by and through its  
Contracting Officer, the Deputy Director of the  
Division of Property Management and Construction  
in the Department of the Treasury

and the Construction Management Firm (CMF) for the TERM CONTRACT CMF 003.

The Owner and the CMF agree for any project assignment for which the CMF is selected and issued a work order pursuant to the selection process set forth in the CMF 003 Request for Proposal (RFP), the CMF may be required to provide all or some of the following services as set forth below:

**A. CONSULTANT RESPONSIBILITIES**

**A.1 GENERAL**

A.1.1 The CMF will act as the Owner's authorized representative during the performance of the CMF services provided on work order assignments as described in this CMF AGREEMENT and the RFP.

A.1.2 The CMF accepts the relationship of trust and confidence established by this CMF AGREEMENT, and shall make available to the Owner its knowledge, skills, ideas, experience and abilities with respect to all matters within the scope of its services, as described in this CMF AGREEMENT.

A.1.3 The CMF is responsible to provide construction management services, as described in this CMF AGREEMENT, for all work relating to each project it is contracted to manage via an approved work order. The CMF shall only direct the work of any of the contractors on a project after the CMF obtains the concurrence of the Owner's Project Director. The CMF in the performance of its duties and obligations under this CMF AGREEMENT is not authorized to act as the Owner's agent with authority to bind the Owner, nor shall the acts and omissions of the CMF be imputed to the Owner.

A.1.4 The CMF services consist of those services outlined in the CMF's technical proposal submission to CMF 003 and the specific work order proposal to be performed by the CMF, the CMF's employees, and the CMF's sub-consultants. The CMF shall utilize the key staff members identified in its technical proposal and work order proposal for a specific assignment. The CMF shall notify the Owner in advance of any proposed change in its key staff members identified in its technical proposal or subsequent work order. The CMF shall submit to the Owner for approval the name and qualifications of a proposed replacement with equal or superior qualifications at no additional cost to the Owner. No change shall take effect unless the Owner approves the change in writing. If the CMF and Owner cannot agree on an acceptable

replacement for a key staff member, the Owner may determine, in the Owners sole discretion, to terminate the Project, and/or to terminate the CMF AGREEMENT, and/or claim all damages against the CMF resulting from the Project termination or from the CMF AGREEMENT termination.

- A.1.5 The CMF shall be responsible for satisfying all of the listed obligations required by the work order regardless of when they occur during the assigned project. The CMF shall assume responsibility for day-to-day project management including cost estimating, Critical Path Method (CPM) Scheduling, purchase of equipment, resident engineering, facility testing and staff training. In addition, the CMF shall provide technical support for Owner decisions regarding contractor selection, change order control and contractor(s) claims, progress payments and final acceptance and contractor(s) claims management as set forth in section *B.3.1.15*.
- A.1.6 The CMF shall be responsible for satisfying all of the obligations described in this CMF AGREEMENT, even if such obligations are not addressed in the CMF's work order proposal. The obligations of the CMF established in this Agreement may be supplemented by the CMF in its technical proposal and/or project work order. If the services promised in the CMF's technical proposal or project work order exceed those described in this CMF AGREEMENT, then the CMF shall be responsible for satisfying the additional obligations described in its technical proposal.
- A.1.7 The CMF shall report directly to the Owner's Project Director. The CMF shall provide its services under the supervision of the Owner's Project Director and in conjunction with the services of the Design Consultant. The CMF shall establish and implement a comprehensive management program with procedures for coordination among the Owner, the Design Consultant, the contractor and the CMF with respect to all aspects of the Project.
- A.1.8 The CMF AGREEMENT contemplates personal services by the CMF. The CMF shall not assign or transfer its obligations or rights under this CMF AGREEMENT without the prior written consent of the Owner.
- A.1.9 The CMF agrees to maintain and retain payroll, cost and accounting records with respect to this project as they customarily retain and produce them for their business generally, and in accordance with generally accepted accounting principles and practices. Upon three days written notice, all such records shall be available to the Owner for inspection for a period of five (5) years after final payment is received by the CMF. No CMF claims for additional compensation shall be payable unless supporting cost records are furnished upon request and claimed costs are substantiated and approved.
- A.1.10 The CMF shall retain copies of the cost records for a period of five (5) after final payment is received by the CMF. After this period, the CMF may dispose of these records after first offering them to the Owner in writing, at no cost and the Owner accepts within 30 working days.



- A.1.11 The CMF shall promptly notify the Owner of any changes to the scope of services, which increase or decrease the CMF's services, or both. No such change in scope shall be performed by the CMF, absent prior written approval by the Owner. Notice of request for additional compensation shall be given to the Owner within 30 working days of the event giving rise to such a request with accompanying justification for the change and a detailed breakdown of the basis for the costs.
- A.1.12 The CMF shall assign a Senior Project Manager or Project Manager (as appropriate) who shall attend all meetings as required under the CMF AGREEMENT. The CMF shall otherwise provide sufficient executive, supervisory and management personnel in the field and home office to carry out the requirements of the CMF AGREEMENT in an expeditious and economical manner consistent with the interests of the OWNER.
- A.1.13 If requested, the CMF shall assist the Owner in selecting and retaining the professional services of surveyors, special consultants and testing laboratories and coordinate their services.
- A.1.14 Reproduction costs for CMF produced reports, logs, charts, etc. shall be at the CMF's expense. The CMF may anticipate producing a maximum of ten (10) copies of each report.
- A.1.15 The CMF shall prepare and, after Owner approval, issue a project manual which sets forth in detail the procedures and administrative provisions necessary to accomplish the project described in an approved work order in accordance with the intent of the terms of the CMF's, Design Consultant's' and Prime Contractors' contracts. The procedures and provisions discussed in the project manual shall include, at a minimum, payment requests, proposed change orders, submittals, requests for information (RFI), contractor responsibility for their subcontractors, contractor coordination, quality control, progress meetings, contractor coordination meetings, daily reporting procedures and meeting minutes.
- A.1.16 The CMF shall develop and monitor a Design CPM Schedule and/or a Construction CPM Schedule that provides information on project milestones which includes coordination efforts required between the Design Consultant, the various contractors, the Owner, their client, outside agencies and all regulatory agencies.
- A.1.17 The CMF shall, through the use of generally acceptable accounting procedures, develop a cost control reporting system including financial data required to monitor progress of cost versus budget for the project.
- A.1.18 The CMF shall provide cash flow reports and forecasts for the project that include variances between actual and budgeted or estimated costs.
- A.1.19 The CMF shall develop a computerized program information system which incorporates scope, budget, schedule control and resource allocation. The system must be compatible with the Owner's accounting system.

- A.1.20 The CMF shall keep accurate and detailed written records of the project assignment as described in the work order and its progress during all stages of design and construction.
- A.1.21 The CMF shall prepare and maintain a daily log of work on the project assignment and submit a copy to the Owner's Project Director daily.
- A.1.22 The CMF shall maintain a computerized data base recording and reporting on all project correspondence addressed to CMF or Owner, including information concerning subject matter and resolution, all in a manner approved by the Owner. Issue status reports as directed, but at least monthly.
- A.1.23 The CMF shall submit monthly written progress reports to the Owner and Design Consultant by the 1st of each month, including, at a minimum, information concerning the adequacy of the work and site manpower of each of the contractors, the percentage of completion, submittal status, the number and amount of change orders, the updated CPM schedule with reports, and construction cost summary reports. Additionally, the monthly progress report shall include current and potential problems deemed of sufficient import to require Owner monitoring or action during the forthcoming month and a recommended course of action to achieve resolution of each of these problems.
- A.1.24 The CMF shall review, execute and submit the updated Financial Status Report (FSR) to the Owner by the first of each month.
- A.1.25 On a monthly basis the CMF shall track, recommend for approval and forward to the Owner, the invoicing of consultants hired by the Owner. The CMF shall assist the Owner in any disputes or negotiations with the Owners consultant's.

## A.2 FEASIBILITY, DESIGN AND BID PHASE SERVICES

- A.2.1 The CMF shall review feasibility studies, design documents and bid documents for clarity, consistency and completeness. Advise the Owner and the Design Consultant regarding site use and improvements, selection of materials, building systems and equipment, and methods of project delivery. Provide recommendations to the Owner and the Design Consultant on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and of factors related to cost including, but not limited to, cost of alternative designs or materials, preliminary budget and possible economies.
- A.2.2 The CMF shall make recommendations to the Owner and the Design Consultant regarding the division of work in the drawings and specifications to facilitate the bidding and awarding of construction contracts, allowing for phased construction and taking into consideration such factors as the legal requirements of the Owner's construction contracting methods, time of performance, availability of labor,

availability of work areas, overlapping trade jurisdictions and provisions for temporary facilities.

- A.2.3 The CMF shall review studies and contract documents as they are being prepared and shall recommend to the Owner alternate solutions whenever design details affect project cost, constructability and bidability without, however, assuming any of the Design Consultant's responsibilities to provide sound design and properly prepared contract documents.
- A.2.4 The CMF shall review the drawings and specifications with the Design Consultant to eliminate areas of conflict and overlapping in the work to be performed by the various contractors.
- A.2.5 The CMF shall provide recommendations and information to the Owner and the Design Consultant regarding the assignment of responsibilities for safety and security precautions and programs; general hoisting and crane operations, temporary project facilities; access to the construction work; and equipment, materials and services for common use of the contractor. Verify that the requirements and assignment of responsibilities are included in the proposed contract documents.
- A.2.6 The CMF shall provide a proposed site utilization plan of the entire site prior to the bidding of the construction project(s) illustrating areas available for construction access and trailer areas, access to adjacent Owner facilities, and related material. The plan should illustrate the varying site utilization over the major construction phases of the project.
- A.2.7 The CMF shall provide recommendations on the extent, location and configuration of temporary construction support facilities after reviewing the Design Consultant's drawings and specifications. Coordinate these among the various construction contractors.
- A.2.8 The CMF shall prepare and submit formal confirmation of the construction cost estimates to the Owner with accompanying detailed back-up documents prepared by the Design Consultant. Make recommendations for corrective action if it appears that the Construction Cost Estimate (CCE) may exceed the project budget. The Design Consultant maintains the responsibility to design the Project in accordance with the approved budget. Estimates are to be in sufficient detail appropriate to the design phase of the project as recommended by the American Society of Professional Estimators or similar Association and are to be provided to the Owner within 5 to 25 working days, as appropriate to the type of estimate, after all documentation upon which the estimate is based is provided to the CMF.
- A.2.9 The CMF shall provide Value Engineering services for the project described in the approved work order at appropriate times in their design cycle. These will be performed in accordance with the recommendations of the Society of American Value Engineers (SAVE). These are to include mechanical systems, roofing systems,

finishes, energy management systems, lighting and power systems, and site work. Such studies shall include maintainability and operability considerations.

- A.2.10 The CMF shall review the plans and specifications with the Design Consultant to establish and implement procedures for contractor submittals for review and/or approval of all shop drawings, catalogs and samples to the Design Consultant and Owner. Develop a comprehensive listing, by contractor, of all submittals required in the contract documents, including milestone dates when each submittal must be processed. Take appropriate action to insure adherence by all parties to this schedule, referring failures to do this to the Owner, with recommendations of appropriate action to correct the situation.
- A.2.11 During the design phase, but prior to bidding of the construction project, the CMF shall evaluate the project to determine the labor needs of the project and assist the Owner in determining if a Project Labor Agreement (PLA) is recommended to be implemented with the various construction trades for the construction phase of the project. The CMF may be requested to submit a formal report of its findings to the Owner. Additionally, the CMF may be required to assist the Owner in negotiating the PLA with the construction trade representatives in the appropriate geographic area.
- A.2.12 When required by the specific work order, the CMF shall develop a plan for construction contract packaging which best meets the overall needs of the Project.
- A.2.13 The CMF shall review the pre-bid construction contract scopes of work and bid documents prepared by the Design Consultant and make recommendations for corrections for Owner approval.
- A.2.14 With the Design Consultant's assistance, the CMF shall conduct post-bid and pre-award conferences with bidders to review contract award procedures, schedule, project staffing and other pertinent issues; assist the Owner in evaluating contractor bids and proposals and; assist the Owner in preparing construction contracts and advise the Owner and Design Consultant on the acceptability of subcontractors and material suppliers proposed by the Prime Contractors, as well as any proposed substitutions.
- A.2.15 The CMF shall assist the Owner and Design Consultant in conducting the contractors pre-bid meetings. At the pre-bid meeting the CMF shall discuss topics including, but not limited to, project logistics, project-phasing requirements, CPM scheduling and mandatory milestones.

### A.3 CONSTRUCTION PHASE

- A.3.1 The CMF shall provide administrative, management and related services as required to monitor that the contractors complete the project work referenced in an approved work order in accordance with their contractual obligations and the Owner's objectives for cost, time and quality. The CMF shall develop and implement procedures for the following tasks and/or programs:

- A.3.1.1 Administration of Contracts - Provide administration of construction contracts, contracts for furniture, fixtures, equipment and other contracts and purchase orders.
- A.3.1.2 Contractor Performance - Monitor the work of the contractor and keep the Owner informed on the progress of the work on a weekly basis, and of any changes required to accomplish the current approved estimates of the project cost or completion dates on a monthly basis, so the Owner will have the appropriate knowledge to make timely changes in the project at its option. Provide sufficient, qualified personnel on-site to monitor that construction is in compliance with the contractors' contract documents, and according to the schedule and within budget. On the basis of on-site inspections, the CMF shall endeavor to guard the Owner against defects and deficiencies in the work and to achieve satisfactory performance of the work by the contractor. Recommend courses of action to the Owner when contract requirements are not being fulfilled and the non-performing party does not take the corrective action.
- A.3.1.3 Pro-Active Monitoring – The CMF shall provide pro-active participation in monitoring and verification that all CPM activities are occurring in accordance with the approved CPM Schedule. Pro-active verification may include phone calls to suppliers or vendors in order to confirm the placement of orders, obtaining invoice documentation, shipping data and any other actions required to insure all CPM activities are occurring in accordance with the approved CPM schedule.
- A.3.1.4 Contractor Payments – Through the use of the approved cost loaded Construction CPM Schedule and monthly updating of same, the CMF shall review all applications and/or invoices submitted by the contractor for progress payments, reduction in retainage, final payment and all other requests for payment in accordance with the requirements of the contractor's contract. Following such review, the CMF shall make recommendations to the Owner for disposition thereof in accordance with the Owner's procedures, certifying same, and shall whenever appropriate, make specific recommendation to the Owner concerning the denial or reduction of any payment of the contractor's monthly requisition or other request for payment should the CMF have cause to be dissatisfied with the contractor's performance under its contract. The CMF's certification for payment shall constitute a representation to the Owner, based on the CMF's determinations at the site and on the data comprising the contractor's application for payment, that, to the best of the CMF's knowledge, information and belief, the work has progressed to the point indicated and the quality of the work is in accordance with the contractor's contract documents. The CMF shall utilize the cost loaded Construction CPM Schedule monthly updates to create computer-generated invoices for each contractor. These invoices shall conform to the standard Owner's cover sheet format, and contain the same information and signature times or the back-up breakdown sheets.
- A.3.1.5 Change Orders – The CMF shall review, evaluate and make specific written recommendations regarding change orders. The CMF shall assess change orders for validity; merit, cost, and utilizing the approved CPM schedule, perform a schedule impact analysis to determine the effect, if any, the change order will have on the

milestones and completion date of the project. The CMF will forward the change orders with a recommendation and assist in the negotiation of any disputed change order; Track progress of all change orders and ensure timely processing thereof; and publish, in the monthly report, the status of change orders and submit it to the OWNER. Upon the Owner's request, analyze any and all claims or requests for extensions of time and costs, using available project records, and make specific recommendations regarding same. The CMF shall attend and actively participate at administrative hearings and conferences or settlement conferences in connection with such claims upon request by the Owner. The CMF shall upon request by the Owner assist the Owner in the preparation and presentation of its defense, counterclaim or other position in connection with any claim by or against the Owner during any lawsuit.

- A.3.1.5.1 The CMF shall review, evaluate and make specific written recommendations regarding Owner amendments and/or changes in the contractor's scope of work. The CMF shall, utilizing the approved CPM schedule, perform a schedule impact analysis to determine the effect, if any, the amendments and/or changes in the contractor's scope of work will have on the milestones and completion date of the project
- A.3.1.6 Coordination of Revisions to the Contract Documents - The CMF shall provide coordination of revisions or changes to the Contract Documents to be made by the Design Consultant as required in response to unexpected site conditions or scope changes.
- A.3.1.7 Quality Assurance and Quality Control (QA/QC) - The CMF shall develop a QA/QC program including methods and frequency of inspections. Provide all supervisory and inspection staff at the job site necessary to verify that the project is properly constructed in strict accordance with the contract documents, the CPM Schedule and within budget. On the basis of on-site inspections, the CMF shall recommend rejection of work that does not conform to the requirements of the contract documents. As part of this task, the CMF shall also monitor the Construction contractor's quality control operations/inspections. Staff the necessary field offices with qualified personnel assigned to carry out QA/QC on each work package or trade. The CMF shall coordinate and participate in the required code inspections with the contractor and/or other State Agencies. The CMF shall immediately notify the Owner of any code inspection failures and schedule the necessary corrective action and re-inspection of the work to minimize the impact, if any, to the progress of the work and completion of the project as scheduled.
- A.3.1.8 Safety Oversight - The CMF shall review the safety program developed by the contractor and insure that it complies with Federal and State laws or regulations, insurance company requirements, local county or municipal health regulations or other requirements and local union rules. The CMF shall, on a regular basis, monitor the contractor's site safety program to insure compliance. If it is found the contractor is not in compliance with said program then the CMF shall immediately notify the contractor and the Owner in writing of the deficiencies. The CMF shall meet with the Owners Representative to review the non-compliance issues and proceed in a manner

as directed by the Owner to insure compliance with the site safety program. The CMF will maintain a complete record of all safety related incidents and submit monthly safety reports to the Owner.

- A.3.1.9 Security – The CMF shall develop and implement a security program to ensure that unauthorized individuals do not enter the site and that the construction project is not vandalized.
- A.3.1.10 Labor Relations – The CMF shall monitor overall labor issues and agreements, including any PLA and render assistance to the Owner upon the Owners request as may be appropriate in labor issues affecting the project.
- A.3.1.11 Shop Drawings and Submittal Packages – The CMF Shall assume overall monitoring, receiving, cataloging, logging and processing of all Contract shop drawings, samples, product data, operations manuals, warranties, project closeout paperwork and other submittals, in the form of submittal packages in conformance with the project specifications, from the contractor. The CMF shall review each submittal package for completeness, rejecting incomplete submittal packages and forwarding all others to the Design Consultant for review. The CMF shall return to the contractor all Design Consultant reviewed submittal packages. The CMF shall maintain an accurate, up to date submittal log, in a form acceptable to the Owner, which shall include, but not be limited to, a description of each submittal package by specification number, the date to be submitted by the contractor, the date actually received by the contractor, the date sent to the Design Consultant, the date returned by the Design Consultant, the date forwarded back to the contractor and the status of the returned submittal. The CMF shall generate a submittal log weekly for the Owner, which shall list the status of all project submittal packages and notify the contractor of any overdue submittal packages.
- A.3.1.12 Job Records and Documentation – The CMF shall establish and maintain project files of records and technical documentation including but not limited to, design plans, drawings, specifications, shop drawings, samples, accounting records, contracts, change orders, correspondence, tests and inspections, and safety records; and provide a system of retrieving data quickly. The CMF shall make all records available to the Owner and upon completion of the project shall deliver them to the Owner.
- A.3.1.13 The CMF shall maintain monthly cash flow reports, forecasts and a Financial Status Report (FSR), in a form acceptable to the Owner, for the project and advise the Owner as to variances between actual and budgeted or estimated costs.
- A.3.1.14 Reproduction costs for CMF produced management reports, including but not limited to schedules and cost reports, shall be at the CMF's expense. The exact amount of copies to be required will depend on the type of report being submitted.
- A.3.1.15 Construction Claims Management - Establish and maintain an active program to avoid or minimize the number of claims from the contractor and/or Design Consultants. Upon the Owner's request, analyze any and all claims or requests for

extensions of time and costs, using available project records, the approved Design CPM Schedule and/or Construction CPM Schedule, and make specific recommendations regarding same. The CMF shall attend and actively participate at administrative hearings and conferences or settlement conferences in connection with such claims upon request by the Owner. The CMF shall upon request by the Owner assist the Owner in the preparation and presentation of its defense, counterclaim or other position in connection with any claim by or against the Owner during any lawsuit.

- A.3.1.16 Construction Site Monitoring – The CMF shall provide project monitoring at the site of all activities of all contractors so that construction is accomplished with a minimum of duplication of effort and interference.
- A.3.1.17 Job Meetings – The CMF shall schedule and conduct weekly, biweekly and monthly progress meetings as required by the Owner to be attended by the contractors, representatives of the Owner and the Design Consultant to discuss such matters as procedures, progress, quality of construction, problems, and scheduling. The CMF will take, transcribe, and distribute minutes of such meetings within five (5) working days after the meeting. The CMF’s Project Manager shall meet with the Owners Project Director at the jobsite on a daily basis to discuss the projects current status, any new issues and the contractor(s) work to be performed that day.
- A.3.1.18 Availability of Material and Equipment – The CMF shall analyze project requirements for critical material and equipment availability. Work with the contractor to achieve timely deliveries and installations.
- A.3.1.19 Compliance with Laws – The CMF shall require each contractor to comply with all governmental laws, ordinances, rules and regulations and notify the Owner of a contractor’s non- compliance.
- A.3.1.20 Interpretation – The CMF shall consult with the Design Consultant whenever any contractor requests interpretations of the meaning and intent of the Drawings and Specifications, and assist in the resolution of questions or disputes which may arise.
- A.3.1.21 Owner Pre-purchased Equipment – The CMF shall coordinate the contractor’s obligations relating to Owner furnished or pre-purchased equipment, and/or building systems.
- A.3.1.22 As-Built Drawings – The CMF shall monitor the contractor’s timely updating and the final submission of a complete set of record “As-Built” marked-up drawings to the Design Consultant for review and approval. The As-Built Drawings shall be monitored with the project closeout documentation.
- A.3.1.23 Correspondence - At the request of the Owner’s Project Director, the CMF shall prepare detailed and accurate written correspondence to the contractor( and/or others.



- A.3.1.24 Photographs- The CMF shall provide photographic documentation during the course of the Construction Phase of this project. The CMF is to provide the Owner with four (4) sets (one set in color) size 8x10, minimum of 10 views per month. The cost of this documentation is to be included in the CMF's cost proposal.
- A.3.1.25 Code Inspection Scheduling – The CMF shall schedule and assist the State's Construction Inspection Group with their required inspections to insure construction is in compliance with the New Jersey Uniform Construction Code and the contract documents. Require that the corrective actions are implemented where needed.
- A.3.1.26 Inspections – The CMF shall inspect work in progress, and take action to avoid or prevent installation of defective or non-conforming work by the contractor(s). Maintain a continuing list of nonconforming work as determined from time to time by CMF, Owner or Design Consultant; publish this list to the responsible contractor, require timely resolution of the nonconforming work, and report on resolution.
- A.3.1.27 Punchlist and Correction of Defective Work – The CMF shall inspect the project described in the approved work order prior to the time the Owner is to occupy and operate any part or all of the project. In conjunction with the Design Consultant, and the Owner, prepare a punchlist of incomplete or defective work to be performed by any contractor prior to beneficial occupancy. Monitor and maintain an updated punchlist and insure the responsible contractor takes prompt action to correct incomplete and defective work necessary to complete all work as required in the contract documents.
- A.3.1.28 Start-up Testing & Training – The CMF shall prepare and issue a project start-up and occupancy plan for approval by the Owner. With the Design Consultant and the Owner's maintenance personnel, observe the contractor's checkout of utilities, operational systems and equipment for readiness, and assist in their initial start-up and testing. Coordinate operational testing and staff training - (1) prepare a start-up program to test, start and bring the facility to an operational level; (2) witness the test of all equipment to determine its compliance with codes, plans and specifications; (3) plan and assist in the training of the Owner's operating staff; and (4) supervise initial operations under the control of a start-up engineer until final acceptance by the Owner for operations. The CMF shall submit written reports on this coordination.
- A.3.1.29 Project Close-Out –During the Project Close-Out phase the CMF shall (1) develop specific criteria for determining the final acceptability of contractor's work (whether determination is by CMF or by others); (2) establish dates for equipment testing, acceptance periods, warranty dates and instructional requirements; (3) conduct frequent inspections throughout the finishing stages; (4) obtain close-out documentation including guarantees, warranties, samples, test reports and certifications, Owner Close-Out forms, operating and maintenance manuals, keys and completed as-built drawings from the contractor and vendors; and (5) jointly with the Design Consultant, certify final completion of the facility for acceptance by the Owner.

The CMF shall monitor and track the progress of the contractor's timely submission of project close-out documentation. The CMF shall send all project closeout documents to the Design Consultant for review and approval. The CMF shall periodically produce a project closeout documentation report sorted by contractor for the Owner and contractors until all documentation has been received.

A.3.1.30 Final Inspection – The CMF shall following the issuance of a certificate of substantial completion of the work or a designated portion thereof, the CMF shall in conjunction with the Design Consultant evaluate the completion of the work of the contractors and make recommendations to the Owner when the work is ready for final inspection. The CMF shall in conjunction with the Design Consultant and the Owner conduct final inspection(s) of the contracted work of the contractor prior to final acceptance by the Owner. The CMF shall in conjunction with the Design Consultant forward to the Owner a final project application for payment upon compliance with the requirements of the contractor's contract documents.

A.3.1.31 Warranty Inspection – The CMF shall, approximately 6 to 9 months after project occupancy or 60 days prior to expiration of warranties on the project described in a work order, schedule and conduct a site inspection with the Owner's staff; the purpose of this inspection will be to identify warranty work which may need to be done.

#### A.4 FIELD OFFICE TECHNICAL AND ADMINISTRATIVE SUPPORT

A.4.1 The CMF shall be on site within 5 days of the issuance of the Notice to Proceed unless otherwise directed by the Owner.

A.4.2 It is the Owner's intent to have the CMF provide the field construction office complex if included in the CMF's project work order. One single complex will be utilized to house under one roof the Owner's representatives, which includes the CMF. Unless noted elsewhere, the CMF shall be responsible for providing and connecting all utilities to the field office. The contractor will be responsible for providing telephone service up to within approximately 15 feet of the complex.

A.4.3 The CMF shall be responsible for the final tie-in of the phone service to the field office and for providing the internal office phones and associated services for both its operations and those of the Owner Project Director. The CMF shall pay all fees for the telephone service and equipment throughout the duration of the Project. It is anticipated that the Owner will require phone service/equipment for one full-time field staff member (unless the project work order calls for additional service and equipment), along with dedicated lines for a FAX machine and computer modem. The CMF will be responsible for janitorial service and the maintenance of the field office complex during the life each project.

A.4.4 The CMF shall provide and pay for its own office furniture, equipment (compatible with the Owners systems and equipment) and supplies that it deems necessary to

manage the project. These costs shall be included in the CMF's fee as an allowance amount and paid for by the CMF.

- A.4.5 The CMF shall provide the equipment, material furnishings and services listed in each work order for the Owner's use. All costs whether for purchase or for lease, associated with these items shall be included in the CMF's fee and paid for by the CMF.
- A.4.5.1 The CMF shall carry any and all service contracts and provide supplies for all items listed in Sections B.4.4 – B.4.5.4.
- A.4.5.11 At the completion of the project, all of the provided equipment shall remain the custody and control of the CMF.
- A.4.5.12 The CMF shall provide the Owner with computer disks containing all the information required in this agreement in a format compatible to that used by the Owner.

## A.5 PROJECT SCHEDULING SERVICES

### A.5.1 GENERAL

- A.5.1.1 The CMF will be required to develop a state-of-the-art detailed Critical Path Method (CPM) scheduling system. Additionally, the CMF may be requested to provide a summary, CPM schedule or a simple bar chart schedule as necessary for management reporting to provide a simple overview of the project tasks and phases. The CMF shall produce design schedules and/or construction schedules as stated in the specific project work order.

The development of the CPM Schedules by the CMF must reflect the following:

- A. For Design CPM Schedules, activities must use calendar day durations and must take state holidays into account as being "non-work" days.
- B. For Construction CPM Schedules, activities will use calendar day durations but will consider state holidays as "work-days".

For the purpose of the above, State Holidays are New Years Day, Martin Luther King Jr.'s Birthday, Lincoln's Birthday, Washington's Birthday, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, General Election Day, Veterans' Day, Thanksgiving Day, Christmas Day and, at the option of the Governor, the day after Thanksgiving.

- A.5.1.2 Each project's design phase and/or construction phase shall be monitored by the CMF utilizing a detailed CPM scheduling system. This system shall be the basis for the evaluation for the performance and progress payments of the Design Consultant and contractor. The Design Consultant and the contractor will utilize the cost loaded CPM Schedule monthly updates to prepare computer-generated invoices. The CMF

shall also utilize the CPM Schedule to identify potential and actual causes for delay and the responsible parties.

A.5.1.3 The CMF shall provide the Owner's Project Director with recommendations as to the progress of the work. Whenever the CMF becomes aware of any inefficiencies or delays, it shall report them to the Owner's Project Director, along with the CMF recommendations for resolving the inefficiencies or delays.

#### A.5.2 THE DESIGN CPM SCHEDULE

A.5.2.1 Within ten (10) days of Notice to Proceed the CMF shall commence development of the preliminary Design CPM Schedule. The CMF shall chair all schedule development meetings and meet with the Owner, Using Agencies, the Design Consultant and other Owner Consultants to develop the network logic and diagrams for the Design CPM Schedule.

A.5.2.2 The CPM Schedule shall illustrate all the required activities, relationships, intermediate milestones and major milestones demonstrating the complete fulfillment of the Design Consultants contractual requirements as defined in their agreement with the Owner.

A.5.2.3 The Design CPM Schedule shall illustrate in detail the Design Consultant activity sequencing including, at a minimum, the schematic planning phase, 30% design development drawings, 60% design development drawings, 90% design development drawings, 100% construction drawings, bid document creation, permitting, the bidding phase and a summary of the construction phase of the project with the anticipated final completion date of the project. If the Design Consultant fails to provide required information during the Design CPM Schedule preparation, the CMF shall immediately notify the Owner and proceed in a manner as directed by the Owner to complete the Design CPM Schedule.

A.5.2.4 The Design CPM Schedule shall also illustrate the Owner's, State using agencies' and regulatory agencies' activity sequencing including, but not limited to, program study requirements, Owner reviews, using agency reviews, regulatory agency reviews, local municipality reviews, financing requirements, permitting requirements and approvals.

A.5.2.5 Upon completion of the network logic diagrams for the project, the CMF shall generate a computer-based preliminary Design CPM Schedule and submit to the Owner and the Design Consultant for review the following reports, charts and diagrams:

- 1) Schedule Activity Report
- 2) Early Start / Total Float Report
- 3) Total Float / Early Start Report
- 4) Detailed Predecessor / Successor Report
- 5) Detailed CPM Schedule Bar Chart
- 6) Summary CPM Schedule Bar Chart

## 7) Pure Logic Network Diagrams

- A.5.2.6 The CMF shall meet with the Owner and Design Consultant for a joint review meeting of the preliminary Design CPM Schedule for corrections and adjustments to the preliminary CPM Schedule. The CMF shall revise the CPM Schedule in accordance with the agreements reached during the joint review meeting and submit the revised Design CPM Schedule reports, charts and diagrams to the Design Consultant for approval.
- A.5.2.7 Upon the Design Consultant's approval of the preliminary Design CPM Schedule, the CMF shall meet with the Design Consultant to develop the cost loading of the preliminary Design CPM Schedule. Utilizing the Design Consultant's approved bid item breakdown as a basis; the CMF and the Design Consultant shall develop a detailed activity cost loading of each Design Consultant activity on the preliminary Design CPM Schedule. All individual activity dollar values will total the approved Design Consultant contract value, and subtotals will reflect the Design Consultants approved bid item breakdown.
- A.5.2.8 The CMF shall analyze the Design Consultant's bid item breakdown in order to assess the reasonableness of the Design Consultant's proposed cost distribution and evaluate any unacceptable areas of "frontloading".
- A.5.2.9 Upon completion of the cost loading analysis of the preliminary Design CPM Schedule, the CMF shall submit a detailed activity cost loading report to the Design Consultant for review and approval. The Design Consultant shall certify that the Design CPM Schedule and cost loading breakdown represent their own plan for completing the project and shall be the basis for all progress payments.
- A.5.2.10 Once the detailed activity cost loading and the preliminary Design CPM Schedule is approved by the Design Consultant, the CMF shall submit the preliminary Design CPM Schedule containing all reports, charts and diagrams (as stated in paragraph A.5.2.5) and the detailed activity cost loading report to the Owner for approval.
- A.5.2.11 After the Design CPM Schedule has been approved by the Owner and Design Consultant and signed by all parties; the CMF shall forward (6) copies of the documents to the Owner and (1) one copy to the Design Consultant.
- A.5.2.12 Once each month the CMF shall attend a status update meeting with the Design Consultant and the Owner to gather the information necessary for the CMF's preparation of a revised (updated) Design CPM Schedule. The Owner and Design Consultant shall provide the status of all activities worked on during the update period and identify those activities started by date and those completed by date during the update period, show estimated time required to complete each activity started but not yet completed, show activity percent completed, and reflect any Owner approved changes in the Design CPM Schedule. After completion of the joint review meeting and the Owner's approval of all entries, the CMF shall update the Design CPM Schedule.

A.5.2.13 The CMF shall, within (5) five working days of the status update meeting, submit to the Owner and Design Consultant the progress payment information for the update period, in a form acceptable to the Owner.

A.5.2.14 The CMF shall, within (10) ten working days of the status update meeting, submit to the Owner and Design Consultant the updated Design CPM Schedule containing all reports, charts and diagrams (as stated in paragraph A.5.2.5) along with a narrative report on the progress of the project design phase. The narrative report will include a description of the Design Consultant and other Owner's Consultants progress during the previous month in terms of completed activities in the plan currently in effect, a description of problem areas, current and anticipated delaying factors and their estimated impact on the performance of other activities and completion dates, and recommendations on corrective action. The monthly narrative report shall also include a description of approved changes made to the schedule, a review of the current project critical path through to project completion, and a comparison of this critical path with previous months' critical paths. The narrative report shall be in bound booklets, indexed and separated as stated herein.

### A.5.3 THE CONSTRUCTION CPM SCHEDULE

A.5.3.1 Upon issuance of the contractor's Notice to Proceed, the CMF shall commence development of the preliminary Construction CPM Schedule. The CMF shall chair all schedule development meetings and meet with the Owner and contractor to develop the network logic and diagrams for the CPM Schedule. The CPM Schedule shall illustrate all required activities, relationships, intermediate milestones and major milestones demonstrating the complete fulfillment of the contractor contractual requirements stated in their agreement with the Owner. When preparing the Construction CPM Schedule, the CMF, in coordination with the contractor, shall establish network activities and their relationships for the entire construction and close-out effort, utilizing time duration generally not exceeding 14 calendar days or associated costs generally not exceeding \$10,000.00. Exceptions to this general rule may include the preparation and submittal of shop drawings, review and approval of submittals and the fabrication and delivery of long lead items etc.

A.5.3.2 In developing the Construction CPM Schedule, the CMF shall establish the appropriate logic and durations which are consistent with the contract requirements for major milestones, intermediate milestones, and overall contract completion and which is reflective of efficient coordination between the contractor responsible for the various network activities. If the contractor fails to provide required information during the Construction CPM Schedule preparation, the CMF shall immediately notify the Owner and proceed in a manner as directed by the Owner to complete the Construction CPM Schedule

A.5.3.3 Upon completion of the network logic diagrams for the project, the CMF shall generate a computer-based preliminary Construction CPM Schedule cost loaded in accordance with the bid item breakdown of each contractor. The Construction CPM

Schedule shall show the starting and completion dates for each work item. All completion dates shown shall be within the period specified for contract completion or portion thereof and in compliance with all intermediate milestones. The CPM Schedule shall show such activities as the submittal of design documents, shop drawings, templates and equipment material fabrication, delivery of equipment and material, and the delivery of Owner-furnished equipment, if applicable.

The CMF shall submit to the Owner, the Design Consultant and contractor for review and approval the following reports, charts and diagrams:

- 1) Schedule Activity Report
- 2) Early Start / Total Float Report, sorted by contractor
- 3) Total Float / Early Start Report sorted by contractor
- 4) Detailed Predecessor / Successor Report
- 5) Detailed CPM Schedule Bar Chart
- 6) Summary CPM Schedule Bar Chart
- 7) Pure Logic Network Diagrams

A.5.3.4 Seasonal weather conditions shall be considered in the planning and scheduling of all work influenced by high or low ambient temperatures for the completion of all contract work within the allotted contract time. In addition, appropriate allowance shall be made for anticipated time losses due to normal rain and snow conditions by statistically expanding the estimated time duration for weather sensitive activities.

A.5.3.5 Should the preliminary Construction CPM Schedule require a substantial change because of the action or non-action of the Owner, using agency, Design Consultant(s) and/or contractor, the CMF shall develop a revised preliminary CPM Schedule that incorporates the substantial change, at no additional cost to the Owner.

A.5.3.6 Within ten (10) working days after receipt by the Owner's Project Director of the preliminary Construction CPM Schedule, the Owner's Project Director shall meet with the Design Consultant, contractor and CMF for joint review, correction, or adjustment of the initial plan and schedule. The CMF shall revise the CPM Schedule in accordance with the agreements reached during the joint review meeting and submit the revised preliminary Construction CPM Schedule reports, charts and diagrams to the contractor for approval.

A.5.3.7 Upon the contractor's approval of the preliminary Construction CPM Schedule, the CMF shall meet with the contractor to develop the cost loading of the preliminary Construction CPM Schedule. Utilizing the contractor's approved bid item breakdown as a basis, the CMF and the contractor shall develop a detailed activity cost loading of each contractor activity on the preliminary Construction CPM Schedule. All individual activity dollar values will total the approved contractor's contract value, and subtotals will reflect the contractor's approved bid item breakdown.

- A.5.3.8 The CMF shall analyze the contractor's bid item breakdown in order to assess the reasonableness of the contractor's proposed cost distribution and evaluate any unacceptable areas of "frontloading".
- A.5.3.9 Upon completion of the cost loading analysis of the preliminary Construction CPM Schedule, the CMF shall submit a detailed activity cost loading report to the contractor for review and approval. The contractor shall certify that the Construction CPM Schedule and cost loading breakdown represent their own plan for completing the project and shall be the basis for all progress payments.
- A.5.3.10 Once the detailed activity cost loading and the preliminary Construction CPM Schedule is approved by the contractor, the CMF shall submit the preliminary Construction CPM Schedule containing all reports, charts and diagrams (as stated in paragraph A.5.3.3) and the detailed activity cost loading report to the Owner for approval.
- A.5.3.11 After the documents have been approved by the Owners Project Director and signed by all parties, the CMF shall forward (6) six copies of the documents to the Owners Project Director, and one copy each to the Design Consultant and the contractor.
- A.5.3.12 Once each month the CMF shall chair a status update meeting with the Owner, Design Consultant and the contractor to gather the update period status information necessary for the CMF's preparation of the revised (updated) Construction CPM Schedule. The contractor shall provide the status of all activities worked on during the update period and identify those activities started by date and those completed by date during the update period, show estimated time required to complete each activity started but not yet completed, show activity percent completed, and reflect any Owner approved changes in the Construction CPM Schedule. After completion of the joint review meeting and the Owner's approval of all entries, the CMF shall update the cost loaded Construction CPM Schedule.
- A.5.3.12.1 During the updating of the Construction CPM Schedule, the CMF shall revise the schedule to include all Owner approved changes in the work and all Owner approved changes in the contractor's activity logic sequencing. The CMF shall also provide schedule recovery analyses to determine what corrective activity sequencing could be used by the contractor to recover lost time from delays and/or change orders, to complete the project as per the approved project completion date.
- A.5.3.13 The updated CPM Schedule shall show:
1. Recommended changes in activity sequencing;
  2. Changes in activity duration for not started or partially completed activities, where agreed upon;
  3. The effect to the network of any delays in any activities in progress, and/or the impact of known delays, which are expected to affect future work;
  4. The effect to the network of the modifications (activity duration, logic and cost estimates);



5. Changes for the purposes of regaining lost time or improving progress; and
6. Changes to milestones, due dates, and the overall contract completion and Project completion date, which have been agreed upon by the Project Director since the last revision of the CPM Schedule.

A.5.3.14 All changes made to the Construction CPM Schedule shall be subject to approval by the Owners Project Director. If the Owners Project Director and the contractor are unable to agree as to the amount of time to be allowed for change order work, or the manner in which the work is to be reflected on the Pure Logic Network Diagrams, the CMF shall reflect the logic and time duration furnished by the contractor for the change order work pending a final decision by the Owners Project Director. When this final decision has been made the CPM Consultant shall revise the CPM schedule in accordance with such decision and issue a final analysis of the effect of the change on the project.

A.5.3.15 The CMF shall, within (5) five working days of the status update meeting, submit to the Owner, Design Consultant and contractor the progress payment information for the update period, in a form acceptable to the Owner.

A.5.3.16 The CMF shall, within (10) ten working days of the status update meeting, submit to the Owner, Design Consultant and contractor the updated Construction CPM Schedule containing all reports, charts and diagrams (as stated in paragraph A.5.3.3) along with a narrative report on the progress of the project construction phase. The narrative report shall include a description of the Design Consultant's and other Owner's consultants' progress during the previous month in terms of completed activities in the plan currently in effect, a description of problem areas, current and anticipated delaying factors and their estimated impact on the performance of other activities and completion dates, and recommendations on corrective action. The monthly narrative report shall also include a description of approved changes made to the schedule, a review of the current project critical path through to project completion, and a comparison of this critical path with previous months' critical paths. The narrative report shall be in bound booklets, indexed and separated as stated herein.

A.5.3.17 Upon final approval of the Owner, the CMF shall forward (6) six copies of the Construction CPM Schedule update documents (as stated in paragraph A.5.3.3) to the Owners Project Director, and one copy each to the Design Consultant and the contractor.

#### A.5.4 BI-WEEKLY PROGRESS MEETINGS

A.5.4.1 Commencing upon submission and approval by the Owner's Project Director of the Construction CPM Schedule and every two weeks thereafter or as required by the Request for Proposal (RFP), the CMF shall conduct a Progress Meetings to discuss and coordinate jobsite issues including, but not limited to, procedures, progress of the work, quality control, site safety, submittals, requests for information, problems and the Construction CPM Schedule. At this meeting, the CMF shall provide bar charts

for the upcoming two weeks based on the detailed information provided in the Construction CPM Schedule.

**B. OWNER'S RIGHTS AND RESPONSIBILITIES**

**B.1 OWNER'S RIGHTS**

- B.1.1 The Owner shall have the right to perform work related to each project and to award contracts in connection with each project that are not part of the CMF's responsibilities under the CMF AGREEMENT. The CMF shall notify the Owner in writing if any such independent actions will in any way compromise the CMF's ability to meet the CMF's responsibilities under the CMF AGREEMENT.
- B.1.2 The Owner shall have the right to accept or reject personnel proposed by the CMF for a project. The CMF shall make a timely and prompt resubmittal to provide other personnel required to replace any that are rejected by the Project Director, both at the initial submittal or any subsequent rejection or substitution of personnel.
- B.1.3 The Owner shall have the right to effect the removal of any of the CMF's employees at any time during the duration of the CMF AGREEMENT if that employee is deemed not to be of the level of competence or ability required under the CMF AGREEMENT, or said employee is for any reason found to be unsuitable for the work. In such case, the CMF shall promptly submit the name and qualifications of a replacement.
- B.1.4 The Owner shall have the right to assign the administration of any or all contracts related to the project from the Owner to any other State Agency or Authority at any time during the life of the project. In doing so, the CMF agrees to continue to perform all contractual work under the CMF AGREEMENT. The CMF shall make no claim against the Owner in the event of such assignment.
- B.1.5 The Owner may make changes, adding to or deducting from the scope of services in the general scope of the CMF AGREEMENT. The Owner may also make changes to the scope of the project, which may give rise to changes in the scope of CMF services.
- B.1.6 The Owner will rely upon the organization, management, skill, cooperation and efficiency of the CMF to provide all facets of contract administration, including monitoring, expediting, reporting and providing all necessary and required construction management services as described in the CMF AGREEMENT.
- B.1.7 Upon presentation by the CMF of a request in writing, the Contracting Officer may review any decision or determination of the Owner as to any claim, dispute or any other matter in question relating to the execution or progress of the CMF's work or the interpretation of the CMF AGREEMENT. Consistent with the intent of the CMF AGREEMENT, the Contracting Officer may schedule a conference for the purpose of settling or resolving such claims, disputes or other matters. Where such a conference

is conducted, the CMF shall be afforded the opportunity to be heard on the matter in question. Following review of the CMF's request, the Owner and the CMF may settle or resolve the disputed matter, provided, however, that any settlement or resolution shall be subject to all requirements imposed by law, including, where applicable, the New Jersey Contractual Liability Act, *N.J.S.A. 59:13-1 et seq.*

## **B.2 OWNER'S RESPONSIBILITIES**

B.2.1 The Contracting Officer (CO) is employed by the State Department of Treasury and is responsible for the administration of the work of the Owner. The CO represents the Owner, either directly or through an appointed representative, in all dealings with the CMF.

B.2.2 The Owner will provide to the CMF information regarding the requirements of each project, including a scope of work, which shall set forth the Owner's objectives, constraints and criteria, including space requirements, special equipment, systems and site requirement, budget constraints and the required date of completion.

B.2.3 The Owner will designate a Project Director authorized to act on the Owner's behalf with respect to each project work order. The Owner's representative has only those duties that are required of an Owner. The responsibility for completion of the project pursuant to the contract documents remains that of the contractor. The responsibility for performance of the CMF's contractual obligations remains with the CMF.

B.2.4 The Owner will retain a Design Consultant whose services, duties, and responsibilities are described in an Agreement, which will be furnished to the CMF upon request.

B.2.5 The Owner will furnish the CMF with one set of all related contract documents as they become available. This includes one set of approved plans and specifications.

B.2.6 The services, information and reports required in the above paragraphs in this Article will be furnished at the Owner's expense.

## **C. CONSTRUCTION COST**

C.1 The limit of funds available for construction (CCE) exclusive of permits, land costs, furnishing, contingencies and professional fees will be provided to the CMF at the time of the work order solicitation.

## **D. CONSULTANT COMPENSATION**

D.1 The CMF will be compensated for professional services in accordance with the specific project work order and with the following terms and conditions:

D.1.1 The lump sum payable to the CMF as established in the work order shall compensate the CMF in full for services as described in the project data, scope and work order.

The start of compensation shall commence with the issuance of the CMF's Notice-to-Proceed for the specific work order and shall terminate as defined in paragraph D.1.4 below.

- D.1.2 The CMF shall submit a payment schedule to the Owner's Project Director for approval prior to submittal of the CMF's first invoice. The schedule should be in detail, assigning a dollar value for each phase of work anticipated on a monthly basis throughout the entire contract.
- D.1.3 The monthly compensation to the CMF shall be paid in accordance with the payment schedule submitted by the CMF and approved by the Owner.
- D.1.4 Duration of services for the CMF regarding this contract shall be as listed in the CMF 003 RFP commencing on the date of the issuance of a Notice of Award. Duration of services by the CMF for each work order shall be listed in the work order, commencing on the date of the issuance of the Notice-to-Proceed for that work order. Unless otherwise ordered by the Owner in writing, the CMF shall initiate its contract work no later than five (5) working days after its receipt of the Notice-to-Proceed. A Notice-to-Proceed may be issued by the Owner at its convenience.
- D.1.5 Should the duration of a project be extended and the Owner provides a request for the continuation of CMF services beyond the contracted duration provided in the specific work order, the CMF agrees to furnish services in accordance with the terms of the RFP and this AGREEMENT for the additional period required to complete the specific project. The Owner shall reimburse the CMF for such additional services in accordance with the approved payment schedule provided in the CMF's amended work order.

**END OF AGREEMENT**