

REQUEST FOR PROPOSAL

DEMOLITION CONSULTANT
TERM CONTRACT TC-008

DPMC PROJECT P1103-00

Date Issued: November 20, 2013

State of New Jersey
Department of Treasury
Division of Property Management & Construction
33 West State Street, 9th Floor
P.O. Box 034
Trenton, New Jersey 08625-0034

State of New Jersey
Department of Environmental Protection
Trenton, New Jersey 08625- 0420

STATE OF NEW JERSEY
DEPARTMENT OF TREASURY
DIVISION OF PROPERTY MANAGEMENT & CONSTRUCTION
P.O. BOX 034, TRENTON, NJ 08625-0034

PROJECT: P1103-00
Demolition Consultant Multiple Award Term Contract (TC-008)
State of N.J., Division of Property Management and Construction

DATE: DECEMBER 20, 2013

ADDENDUM "A"

This ADDENDUM is issued for the purpose of clarifying and amending certain requirements of the Request for Proposal as noted hereinafter, and is hereby made part of and incorporated in the Consultant's Contract. The consultant is to consider these matters when preparing their technical and fee proposals for this contract. Unless specifically noted or specified hereinafter, all work shall comply with the applicable provisions of the Contract.

Responses to Consultant Questions (Responses are in Italics)

Van Cleef Engineering Associates

Q: Are there any agreements, with NJDEP Land Use, regarding permits for removal of structures in the floodway, flood fringe or wetlands? Removing a lawfully existing structure within a floodway or flood fringe would normally require FHA permitting.

A: *No agreement has been made for the removal of structures within a floodway, flood fringe or wetlands area that would normally require a Flood Hazard Area permit. Structures that are to be removed within the flood fringe could be eligible for Permit by Rule b(2), if the activities meet all of the permit conditions. If the structure is not eligible for the Permit by Rule, then a Flood Hazard Individual Permit would be required. Removal of structures within the floodway would require a Flood Hazard Area Individual Permit, in accordance with N.J.A.C. 7:13-11.19. For the removal of structures within the wetlands, it is advised that contractors follow Best Management practices, such as no excavation of wetlands, the use of matting for equipment, and minimal temporary disturbance within the wetlands.*

URS

Q: If during the Preliminary Site Investigation a property or house is found to have an UST will the selected consultant's scope include the design of the UST removal as well as the subsequent investigation and the involvement of an LSRP?

A: *Yes. If a UST is found removal will be included in the consultant's scope. If necessary, an amended work order will be negotiated.*

The Louis Berger Group

NJDEP has developed and has made accessible to its six EAF contract-awarded private consultants a comprehensive GIS-based spatially referenced environmental and historic info database and viewing tool for use under its ongoing CDBG Environmental and Historic Preservation Review program. This database and viewing tool has many of the same environmental and historic data fields in some of the same geographic coverage areas that will

be included and applicable to the new Demolition Term Contract's SOW, and may include existing relevant data on many of the Demolition Contract's subject residences earmarked for demo design.

Q: As such and under the assumption that existing relevant info may already be readily accessible via NJDEP's environmental/historic database viewing tool, would NJDEP consider providing the new Demolition Contract's awarded consultants the same access to potentially useful viewing tool?

A: *It is possible, but not guaranteed at this time that consultants could have access to this tool. This tool screens for the purpose of DEP's environmental reviews. Consultants looking for wetlands, floodplain, piping plover species information in the nine Sandy-impacted counties may find it useful. DEP is seeking final approval on the database tool being available for use by the consultants awarded these Demolition Term Contracts.*

Distinct Engineering Solutions

Q: Since this work may be funded in whole or in part by federal sources (FEMA and HUD), are there any SBE, MBE, and/or DBE goals established for the project?

A: *No specific SBE goal requirements have been included in this RFP. It is DEP's understanding that FEMA does not have any specific SBE/MBE/DBE requirements tied to their funding and for projects funded by HUD, MWBE hiring is encouraged but not required. However, while no SBE requirements were included in this RFP, the Consultant may include NJ SBE firms in their proposed team and identify them if they choose. Section 3 low income contracting and hiring likely will apply to demolition projects associated with CDBG funding and will be required in those construction bids as necessary.*

CDM Smith

Q1: Is there an estimate of how many structures will be assigned under the demolition contract?

A: *No. However, at this time DEP estimates up to 1,300 properties are eligible for demolition but more properties could be added to the Program in the future.*

Q2: How will work be distributed between the selected consultants? Will the volume of work initially assigned to a consultant be based on their overall proposal rating? Will each of the awarded contractors receive an approximately equal amount of work with respect to dollar amount/labor hours?

A: *Refer to Paragraph 8.2 of the "Request for Proposal", dated November 20, 2013. DPMC/DEP will endeavor to distribute the work evenly among the selected consultants.*

Q3: Is the consultant required to handle any grant fund management?

A: *No.*

Q4: What is the final site plan expected to contain (for example property lines)? And is the site to be surveyed by a licensed surveyor?

A: *The site plan shall include the minimum amount of information required to describe the work and secure a UCC permit.*

Q5: Are costs for potential laboratory analyses, surveyors, permits etc to be included in the loaded labor rate?

A: *No. Laboratory analysis, surveyors, etc. will be handled by allowances if necessary. UCC permits are paid by DPMC directly to DCA.*

Q6: Please confirm that the consultant is to obtain the demolition permit. Our experience shows that this permit is better obtained by the contractor. Also who is responsible for the actual permit fees?

A: *The Consultant shall obtain the demolition permit. UCC permit fees are paid by DPMC directly to DCA.*

Q7: Can you provide more details regarding the liquidated damages to be assigned to each work order? Is the amount of liquidated damages a figure agreed upon by the Consultant and the State at the time of issuance of a work order?

A: *There is a 90 day requirement for certain federal grants for completion of the demolition work in order for the State to receive reimbursement for the State funds expended. It is anticipated that the demolition design and permit approvals should be completed in approximately 45 days and that the bidding and construction will be completed in 45 days. An extension of time may be requested by the NJ DEP from the federal agency providing fund reimbursement due to weather or other justifiable issues outside the State's or consultant's responsibility.*

Therefore, under the term of this contract liquidated damages may be levied against the Consultant for failure to deliver the demolition design and permit approvals for each property within 45 days of issuance of the notice to proceed, in the amount of \$5 per business day per property not delivered, up to a maximum of \$5,000 in total liquidated damages. Consequently, no individual liquidated damages amounts will need to be determined at the time of the issuance of a work order.

The State shall have the sole discretion to allow a grace period or toll the time periods for the completion of the demolition design and permit approvals.

The State shall assess liquidated damages and deduct the liquidated damages, if any, from any payment to be made to the Consultant.

These liquidated damages shall take precedence over any conflicting provisions in the General Conditions to the Consultant Agreement accompanying the original agency consultant RFP.

Q8 Other than erosion control, is there any stormwater permit requirements under the contract?

A: *Per the Division of Land Use Regulation, no stormwater review is needed. A stormwater review is done if over an acre of disturbance occurs for the project; the removal of a house should not meet that threshold.*

Q9: Utility service connections require written releases. Please confirm that the consultant will obtain this release for all utilities.

A: *The Consultant shall obtain all utility releases.*

Q10: Would the State please consider an extension to the proposal due date? As the addendum preparation and issuance can take some time, and with the pending holiday season, the bidder will be able to submit a more responsive proposal if the due date can be extended. We would request 2 weeks if the State would agree.

A: *No, the holiday season was considered when determining the due date and DPMC believes that the consultants will have more than sufficient time to complete their proposals as the RFP was advertised and issued on November 20.*

Q11: Will the addendum containing the answers to all written questions be posted on the link that contained the bid documents (http://www.state.nj.us/treasury/dpmc/project_major_advertisements.shtml) or will the proposal addendum be sent to the point of contact for each bidder?

A: *All addenda shall be sent to the point of contact for each bidder and shall also be posted on DPMC's web site at:
http://www.state.nj.us/treasury/dpmc/project_major_advertisements.shtml*

Q12: Is a SOI-qualified archaeologist required to review sites prior to release of bid packages to contractors?

A: *If Federal money is being used to fund the property acquisitions, then the funding agency (i.e. FEMA or HUD) would be responsible for completing a historic/environmental consultation process, which includes consideration of archaeological resources. The funding agency would identify any properties with environmental and/or historic concerns prior to acquisition. However, if a property was not purchased using Federal funds and it was determined that archaeologist review was required on a property to be demolished, the Consultant would be requested to include a qualified subconsultant for that particular assignment and include the appropriate fee/allowance in their specific work order.*

Q13: How will DPMC determine if a consultant has a conflict of interest for any work order?

A: *DPMC expects consultants to act in a professional manner and advise us if there are any potential conflicts of interest with any portion of the work or an assignment. Any situation that arises will be evaluated, discussed with the consultant and a determination made by DPMC.*

Q14: Please provide the limits for the required professional liability insurance?

A: *The required limits for Professional Liability Insurance will be \$2,000,000.*

Q15: Will the State accept project histories from "confidential clients" of the bidder?

A: *Yes. However, DPMC would expect the bidder to limit the number of "confidential clients".*

Q16: During the pre-proposal conference, the State referred to a floodplain mapping contract awarded a few years ago as the model for this RFP. Is that contract TC-007? Could the State please provide a copy of, or link to, the RFP and awarded contracts for review by potential bidders?

A: Yes, the procurement process was modeled after the floodplain mapping contract, TC007. No, the work and services are very different for this demolition contract and are not relevant.

Q17: Are there existing environmental reports for the properties that will be made available to the consultant? If so what types of environmental data is in the reports?

A: If a property has environmental issues known to DPMC/DEP all environmental reports shall be provided to the Consultant.

Q18: If a heating oil UST were discovered during the property inspection or demolition work and the tank was found to have leaked, will NJDEP require a no further action letter be obtained from the department in order to complete the consultant's work scope?

A: If a UST is found on a property the Consultant shall comply with all current UST/site remediation requirements.

**THE DUE DATE FOR SUBMITTAL OF TECHNICAL PROPOSALS FOR THIS PROJECT
REMAINS 2:00PM, THURSDAY, JANUARY 9, 2014**

End of Addendum "A"

TABLE OF CONTENTS

1.0 Purpose, Intent and General Guidelines

2.0 Background

3.0 Definitions

4.0 Selection Process Procedures

4.1 Selection Process Stages

- 4.1.1 Stage 1 – Mandatory Pre-Proposal Meeting
- 4.1.2 Stage 2 - Submission of Technical Proposals

4.2 RFP and Proposal Submittal Procedures

- 4.2.1 Issuing Office
- 4.2.2 Questions, Exceptions and Answers
- 4.2.3 Proposal Clarification
- 4.2.4 Public Access to Proposal Submissions
- 4.2.5 Proposal Preparation Costs

4.3 Mandatory Requirements

- 4.3.1 Prequalification
- 4.3.2 Other Requirements

5.0 Preparation and Submission of Proposals

5.1 Proposal Package – General Requirements

- 5.1.1 Evaluation Criteria
- 5.1.2 Structure of Firm/Project Team/Joint Venture
- 5.1.3 Required Format of Technical Proposal

5.2 Proposal Package – Contents and Organization

- 5.2.1 Organization Chart/Staffing Plan
- 5.2.2 Experience on Projects of a Similar Size and Nature
- 5.2.3 Project Approach to Services on a Typical Project Assignment
- 5.2.4 Term Contract Rate Schedule by Personnel Levels
- 5.2.5 Consultant Affidavit
- 5.2.6 Administrative Forms
 - A. MacBride Principles Compliance Certification
 - B. Investment Activities in Iran
 - C. Certificate of Employee Information Report
 - D. Source Disclosure Certification
 - E. Certificates of Required Insurance coverage

6.0 Proposal Evaluation and Contract Award

- 6.1 General Criteria
 - 6.1.1 Evaluation Criteria
- 6.2 Average Rate Discrepancies
- 6.3 Deputy Director's Right of Final Bid Acceptance
- 6.4 Notice of Intent to Award
- 6.5 Joint Venture Requirements
- 6.6 Chapter 51 Requirements
- 6.7 Performance Period

7.0 Scope of Work

- 7.1 General Requirements and Basic Services By Consultant
- 7.2 Awarded Contractor's Responsibilities for Construction
 - 7.2.1 Demolition of Structures
 - 7.2.2 Site Remediation and Restoration
- 7.3 Consultant's Administrative Requirements
- 7.4 Consultant's Project Close-Out Requirements

8.0 Method of Assignment and Engagement

- 8.1 Use of the Contract
- 8.2 Order of Assignment8.3 Assigning and Executing Specific Work Orders
 - 8.3.1 Project Data
 - 8.3.2 Ordering of Services/Placement of Work Order Services
 - 8.3.3 Processing Work Orders
 - 8.3.4 Processing Work Orders
- 8.4 Responsibility for Contract Administration and Payments
 - 8.4.1 Contracting Officer
 - 8.4.2 Project Manager
 - 8.4.3 Payment Schedule
 - 8.4.4 Invoicing Requirements
 - 8.4.5 Adjusting Payments
- 8.5 Disposition of Materials

1.0 PURPOSE, INTENT AND GENERAL GUIDELINES

- A. The purpose of this Request for Proposal (RFP) is to solicit proposals from DPMC-prequalified CIVIL ENGINEERING firms for the New Jersey Departments of Environmental Protection (NJDEP) and Treasury to award a 3-year term contract to provide demolition design and construction administration services for the DEP Sandy Blue Acres Acquisition Program and other statewide demolition projects as necessary. These consulting services may be used to develop preliminary surveys, assessments, scopes of work and/or design documents and specifications for the demolition, proper disposal and disposition of buildings and structures on designated properties. The services will include disconnecting all utilities, the closing of all wells, pumping and filling of all septic systems/cesspools, removal and testing of above ground and underground storage tanks and removal of hazardous materials from the properties. The Consultant firm will be responsible for preparing the necessary design/bid documents to be advertised for bid to DPMC classified construction contractors and providing permit coordination, bidding support and construction administration services.
- B. It is the intent of the State to award 3-year term contracts to approximately 4-6 Consultant firms. It is the State's intent to engage all the Consultant firms contracted for work under this contract on a rotating basis as described in Section 8.0. It is anticipated that the consultants will be engaged on multiple assignments of varying sizes during the term of the contract.
- C. For the purpose of engagement on project assignments, the term of this contract will be three (3) years from the date of contract execution. The project assignments initiated before the completion of the term of this contract will proceed to conclusion. The State reserves the right to extend the contract for all or any part of a calendar year on the terms specified in Section 6.6 of this agreement.
- D. The State/DPMC reserves the right to perform the services described in this RFP itself or to contract out separately for these services if deemed to be in the best interest of the State.

2.0 BACKGROUND

The NJDEP Green Acres Program has been acquiring land for open space purposes since 1961. The funds for its acquisitions are derived from voter-approved bond referendums. The Green Acres, Farmland, Blue Acres, and Historic Preservation Bond Act of 2007 authorized funds for the acquisition of open space but it expanded the Green Acres Program's purview to allow for the acquisition of lands in the floodways of the Delaware River, Passaic River and/or Raritan River, and their respective tributaries for recreation and conservation purposes. Additional funds were also approved by the voters in the Green Acres, Water Supply and Floodplain Protection, and Farmland and Historic Preservation Bond Act of 2009. This subsequent set of bond monies expanded the acquisition of flood-prone properties on a State-wide scale.

Blue Acres acquisition properties (including structures) are those that have been damaged by, or may be prone to incurring damage caused by, storms or storm-related flooding, or that may buffer or protect other lands from such damage, and are eligible for acquisition from willing sellers.

In 2010, the Blue Acres Program began leveraging the dedicated open space acquisition funds by making grant applications to the Federal Emergency Management Agency (FEMA) in coordination with the New Jersey Office of Emergency Management (NJOEM) to mitigate flood-prone or flood-damaged structures by acquiring and demolishing the homes, opening up the floodplain, and deed restricting the land as open space in perpetuity. The demolition design and construction administration services outlined in this RFP are a direct result of

FEMA Hazard Mitigation Grant Program (HMGP) funds awarded to NJDEPs Sandy-Blue Acres Program following the flood devastation that resulted from Superstorm Sandy in 2012.

Under this term contract, the State/DPMC will engage consultants to produce scopes of work and bid documents for demolition, site remediation and restoration. The Consultants' assignments may include, but will not necessarily be limited to, the following tasks:

- Preliminary Site Investigations
- Project Scoping Documents
- Preparation of Designs and Bid Specifications
- Develop Specifications for Proper Removal and Disposal of Hazardous Materials
- Develop Specifications for Site Remediation (if necessary) and Restoration After Demolition
- Compliance with all Environmental Statutes and Regulations
- Project Outreach Participation
- Coordination with Federal, State and/or Local Officials
- Quality Control/Assurance
- Bid Support Services
- Construction Administration and Oversight

Additional information regarding contract scope of work requirements are included in Section 7.0 Scope of Work of this RFP.

NOTE: FEMA Requirements – The work under this contract may be funded and or reimbursed in whole or in part by FEMA. As such, the Consultant may be directed as part of its responsibilities to meet FEMA requirements in order for services/work to be funded or reimbursed by FEMA and to ensure that all applicable FEMA standards of performance are complied with in their specifications or deliverables.

Additional Requirements – The work under this contract may be funded and/or reimbursed in whole or in part by the U.S. Department of Housing and Urban Development (HUD) through the New Jersey Department of Community Affairs (NJDCA). Additionally, other federal programs (HUD-CDBG, USDA, etc.) or State programs (GSPT dedicated funds or other State sources) may also participate in funding or reimbursing the State for services or work under this contract. As such, the Consultant may be directed as part of its responsibilities to meet these other federal and/or State program requirements in order for services/work to be funded or reimbursed by the respective funding agencies or Programs, and to ensure that all applicable performance standards of these Programs are followed in their specifications or deliverables.

3.0 DEFINITIONS

Addendum - If the State decides to revise this RFP, the State will issue the revisions to all bidders in a document called an "Addendum."

Assignment – The scope of services of a specific Work Order to be completed under the requirements of this contract.

Award Letter – Notice of Contract Award letter issued to the selected consultants at the onset of the contract period.

Awarded Contractor- The construction contractor awarded a contract by the DPMC for demolition and/or site remediation/restoration on designated properties.

Consultant – The person, partnership, corporation or joint venture that has a contractual agreement with the State of New Jersey

Contract – The full agreement between the State and the successful bidder that defines the performance of the work including the RFP, consultant's proposal, award notice, Work Orders, and Notice to Proceed for individual Work Orders.

Contractor - A person, partnership, corporation or joint venture that has a contractual agreement with the State of New Jersey.

Deliverables - Items defined in the Scope of Work, Section 7.0 as products or proof of services rendered under this contract.

Director - Director of the Division of Property Management & Construction, Department of the Treasury, or its designee, who by statutory authority is the Contracting Officer for the State of New Jersey.

DPMC – Division of Property Management & Construction, a division of the New Jersey Department of the Treasury.

Evaluation Committee - A committee established by the DPMC Director to review and evaluate bid proposals and to recommend contract awards. The committee for this RFP shall include representatives of the Departments of Environmental Protection and Treasury.

FEMA – Federal Emergency Management Agency.

General Conditions – The General Conditions to the Demolition Consultant Term Contract TC-008 which describes additional terms and conditions of the contract.

HUD – U.S. Department of Housing and Urban Development.

Issuing Office - Division of Property Management & Construction, Department of the Treasury.

Joint Venture - Two or more companies, individuals, corporations, partnerships or other entities that form a temporary union for the purpose of performing the work of this RFP. Both joint venture firms must be prequalified by DPMC in the civil engineering discipline to be eligible for consideration on this contract.

Key Personnel – Consultant's assigned project personnel, defined by the level of expertise, dedicated to each project phase.

Loaded Rates – All inclusive rates submitted by the Consultant for use during the term of this contract. These loaded rates should include all anticipated costs for travel, overhead, administrative costs, insurance, reproduction, printing, mail and messenger services, office equipment, phone costs, meals and lodging, professional fees, and profit.

NJDEP-New Jersey Department of Environmental Protection.

Notice to Proceed - A written notice given by the State DPMC to the Consultant fixing the date on which the Consultant is permitted to start the performance of work under this contract following the issuance of approved Work Orders.

Project Manager-The DPMC representative with overall responsibility for overseeing the services to be performed for each assignment under this contract.

Proposal - The submittal required at the second stage of the selection process, including a technical proposal, completed "Term Contract Rate Schedule by Personnel Levels" form, and all required administrative forms as outlined in Section 5.0 of this RFP.

RFP - Request for Proposal.

SOW - Scope of Work.

State—The Director of the Division of Property Management & Construction, Department of the Treasury or its designee, acting for the State/DPMC or NJ DEP under statutory authority as Contracting Officer for the State of New Jersey.

Work Order – Following contract award, the Consultant shall receive from the DPMC/NJDEP a brief scope of work for each individual demolition assignment. An assignment may involve one or more properties. The Consultant shall prepare a proposal using the pre-established rates submitted in its proposal, on a Work Order form (Form xxx). The Work Order form shall include the number of hours and labor rate for each proposed task. If acceptable, the Work Order form shall be signed by NJDEP and authorized by the DPMC Contracting Officer, or his designee, signifying the State's acceptance of the Consultant's proposed price.

4.0 SELECTION PROCESS PROCEDURES

This RFP is being issued by the Department of the Treasury, DPMC on behalf of the NJDEP Sandy-Blue Acres Acquisition Program. The RFP is part of a competitive bidding process which is governed by statutory law, see N.J.S.A. 52:34-6 et seq.; N.J.S.A. 52:34-9.1 -9.7, and N.J.S.A. 52:34-12 et seq. The procedures and submissions required herein are necessary to comply with the statutes and other laws applicable to this procurement, and to ensure a full, fair and informed competition and contract award resulting in the best value to the State. Read the instructions in this RFP carefully. **Failure to comply with the mandatory requirements of the RFP will result in proposal rejection.**

4.1 SELECTION PROCESS STAGES

There are two stages in the selection process for this contract:

Stage 1 – Mandatory Pre-Proposal Meeting

Stage 2 - Submission of Technical Proposal & Hourly Rate Schedule by Personnel Level

4.1.1 STAGE 1 - MANDATORY PRE-PROPOSAL MEETING

There will be a mandatory pre-proposal meeting. In order for a proposal to be considered for award, one representative of the Consultant must be present at the mandatory pre-proposal meeting commencing at the time and in the place specified below. Any Consultant who fails to have a representative attend this mandatory meeting will be disqualified from submitting a proposal. The purpose of the pre-proposal meeting is for the State to explain the RFP requirements and entertain questions about the RFP. Questions submitted in writing from the interested consultants and responded to in writing by the DPMC to all the firms. The pre-proposal meeting will be held as follows:

➤ **Date: TUESDAY, DECEMBER 10, 2013**
➤ **Time 10:00 AM**
➤ **Place: PRUDENCE HALL, THOMAS EDISON STATE COLLEGE, TRENTON, NJ**

If there is any change in this date or meeting details, recipients of this RFP will be notified by e-mail and on the DPMC website.

4.1.2 STAGE 2 - SUBMISSION OF TECHNICAL PROPOSAL & TERM CONTRACT RATE SCHEDULE

As discussed in RFP Section 5.0 below, the technical proposal and rate schedule must include all required information pertaining to the Consultant's experience and hourly rates, and any other information required by the State for this contract. **An original and five (5) copies of the proposal must be submitted by the due date and time.**

In order to be considered for award, the proposal and all required attachments and information must be received by the DPMC at the appropriate location by the required time. **Any proposal not received on time will be rejected.**

➤	Date:	THURSDAY, JANUARY 9, 2014
➤	Time:	No Later than 2:00 PM
➤	Location:	Plan Room - 9th Floor Department of Treasury, Division of Property Management & Construction Contracts & Procurement Unit 33 West State Street, P.O. Box 034 Trenton, New Jersey 08625-0034 ATTENTION: CATHERINE DOUGLASS

NOTE: Consultants using USPS Regular or Express mail services should allow additional time since USPS mail is not delivered directly to the DPMC

4.2 RFP AND PROPOSAL SUBMITTAL PROCEDURES

The following procedures apply to this RFP.

4.2.1 ISSUING OFFICE

This RFP is issued by the DPMC. It is being issued in accordance with N.J.S.A. 52:34-6, N.J.S.A. 52:34-9.1 - 9.7 and N.J.S.A. 52:34-12. For purposes of this selection process, the DPMC is the sole point of contact between the Consultant and the State. Consultants should not contact the NJDEP directly with questions or clarification requests about this RFP or the selection process. **All questions must be submitted in writing to the DPMC.**

4.2.2 QUESTIONS, EXCEPTIONS AND ANSWERS

If consultants have any questions about or objections to the RFP prior to the question cut-off date, the DPMC will respond to questions and exceptions posed in writing. Answers to questions submitted in writing prior to the stipulated question cut-off date will be provided as an Addendum to the RFP. All answers documented in an Addendum will be binding on consultants and the State unless subsequently modified by the DPMC in writing. **Any oral explanations or instructions not covered by an Addendum shall not be binding on the State.**

4.2.3 PROPOSAL CLARIFICATION

Proposals will be reviewed by an Evaluation Committee appointed by the DPMC Deputy Director. Where the Evaluation Committee reviewing the proposals determines that any or all of the proposals require some clarification, the Evaluation Committee may require any or all of the consultants to clarify their proposals through an oral presentation or through written responses to written questions. At such an oral presentation or in such written questions, the Committee may request the Consultant to clarify or explain items in its proposal. However, the oral or written presentation may not be used to supplement or to change the original proposal. The DPMC will schedule the time and place of any such oral presentations.

4.2.4 PUBLIC ACCESS TO SUBMISSIONS

Pursuant to State Open Records law, following award of this contract, all firms are welcome to review all technical proposals, score sheets, and all other contract documents. Firms can schedule a review appointment by contacting the DPMC Selection Coordinator Catherine Douglass at (609) 777-3094 to schedule an appointment.

In addition, the following notice will apply to all successful proposals submitted under this RFP:

Notice of Executive Order 125 Requirement for Posting of Winning Proposal and Contract Documents

Pursuant to Executive Order No. 125, signed by Governor Christie on February 8, 2013, the Office of the State Comptroller ("OSC") is required to make all approved State contracts for the allocation and expenditure of federal reconstruction resources available to the public by posting such contracts on an appropriate State website. Such contracts are posted on the New Jersey Sandy Transparency website located at:
<http://nj.gov/comptroller/sandytransparency/contracts/sandy/>.

The contract resulting from this RFP is subject to the requirements of Executive Order No. 125. Accordingly, the OSC will post a copy of the contract, including the RFP, the winning bidder's proposal and other related contract documents for the above contract on the Sandy Transparency website.

In submitting its proposal, a bidder may designate specific information as not subject to disclosure. However, such bidder must have a good faith legal and/ or factual basis to assert that such designated portions of its proposal (i) are proprietary and confidential financial or commercial information or trade secrets or (ii) must not be disclosed to protect the personal privacy of an identified individual. The location in the proposal of any such designation should be clearly stated in a cover letter, and a redacted copy of the proposal should be provided.

The State reserves the right to make the determination as to what is proprietary or confidential, and will advise the winning bidder accordingly. The State will not honor any attempt by a winning bidder to designate its entire proposal as proprietary, confidential and/or to claim copyright protection for its entire proposal. In the event of any challenge to the winning bidder's assertion of confidentiality with which the State does not concur, the bidder shall be solely responsible for defending its designation.

4.2.5 PROPOSAL PREPARATION COSTS

Consultants are responsible for the preparation and submission of their proposals. The State of New Jersey assumes no responsibility or liability for any costs incurred by any consultant in the preparation of the submissions.

4.3 MANDATORY REQUIREMENTS

4.3.1 PREQUALIFICATION REQUIREMENTS

In order for a proposal to be considered responsive to this RFP, the Consultant must have a current DPMC prequalification in the "CIVIL ENGINEERING" discipline with a rating of \$10 million and have in-house capabilities or Sub-Consultants preq-qualified with DPMC in the following professional disciplines:

- P011 Environmental Engineering that also has a NJDEP -Licensed Site Remediation Professional (LSRP) on staff
- P037 Asbestos Management & Design
- P065 Lead Paint Evaluation

- P025 Estimating/Cost Analysis

Consultants shall also have in-house capabilities or Sub-Consultants pre-qualified with DPMC in all other Architectural, Engineering and Specialty Disciplines necessary to complete the project as described in this RFP. Additionally, if a sub-consultant is proposed for a discipline for which no DPMC prequalification exists, the sub-consultant's acceptability will be determined by the DPMC.

For a joint venture, both firms must have a current DPMC prequalification in "Civil Engineering" and at least one firm must have a rating of \$10 million.

The Consultant agrees to keep its DPMC prequalification in the "Civil Engineering" discipline in good standing throughout the term of this contract and to assure that any subconsultant's prequalification is also kept in good standing. If the Consultant's prequalification or subconsultant's prequalification lapses, it will not be assigned any additional work until the time that its prequalification is satisfactorily restored.

4.3.2 OTHER REQUIREMENTS

The Consultant must comply with all of the mandatory procedures and requirements of the RFP and must agree to all of the material terms and conditions contained in this RFP including the standard General Conditions to the Consultant Agreement included as an attachment to this RFP. Failure to do so will result in proposal rejection.

5.0 PREPARATION AND SUBMISSION OF PROPOSALS

In order for a proposal to be considered responsive, a Consultant must agree to perform the Scope of Work described in this RFP, agree to the terms and conditions provided in this RFP, complete the attachments provided with this RFP, and provide the information as required below. Consultants are advised to read the entire RFP and any addenda subsequently issued by the DPMC before preparing and submitting their proposals.

5.1 PROPOSAL PACKAGE – GENERAL REQUIREMENTS

5.1.1 EVALUATION CRITERIA

Consultants shall submit a complete technical proposal outlining their past experience and qualifications to perform this contract. The technical proposal must be prepared to respond to the items listed in the attached "Evaluation Criteria" form. The technical proposal will be evaluated by the selection committee in accordance with the evaluation criteria.

5.1.2 STRUCTURE OF FIRM/PROJECT TEAM/JOINT VENTURE

In the proposal, the Consultant shall delineate the structure of its project organization, and shall describe its approach to the management of this project as defined below. For a Joint Venture, only one of the members shall act as the lead member in dealing with the State regarding negotiations of scope of work and costs for the site-specific engagements under the contract.

5.1.3 REQUIRED FORMAT OF PROPOSAL PACKAGE

The proposal package, an original and five (5) copies, which must be completed and returned **before 2:00 PM, THURSDAY, JANUARY 9, 2014**, consists of the following components:

- Cover Letter summarizing the firm's understanding of the project based upon the Scope of Work, past experience, etc.;
- Organization Chart/Staffing Plan (Section 5.2.1);
- "Project Key Personnel List" (form attached);

- Resumes of Project Key Personnel;
- Relevant team experience on similar projects (Section 5.2.2);
- “Key Team Members Project Experience Data Sheets” (form enclosed);
- Project Approach (Section 5.3.2);
- Term Contract Rate Schedule by Personnel Level (form enclosed);
- Consultant Affidavit (form enclosed);
- Required Administrative forms (McBride Principles Investment Activities in Iran, Compliance Certification, Certificate of Employee Information Report, Public Law 2005 Chapter 92 (Source Disclosure form), Certificate(s) of required insurance coverage.

Please ensure that all of the above items are addressed in your proposal in the same order as stated above.

5.2 PROPOSAL PACKAGE – CONTENT & ORGANIZATION

5.2.1 ORGANIZATION CHART/STAFFING PLAN.

The Consultant shall furnish information on the management and technical staff who will be directly engaged in the activities under this contract. A chart which delineates the Consultant’s project organization, including the program and project manager(s) and the other professional and technical personnel, and describes the roles of the various personnel, should be included in the technical proposal. No personnel substitutions are permitted without the consent of the DPMC.

The Consultant must demonstrate its capability to support its existing obligations while undertaking the work in this contract.

The Consultant shall identify key personnel and project managers, including those of any Sub-consultants, who will be assigned to work under this contract, and their respective roles. The number and disciplines of the staff that will be available to accomplish the various tasks within the contract assignments should be included.

The Consultant shall complete and include the attached “Project Key Personnel List.” The Consultant shall indicate generally the respective percentages of time that each key individual will be dedicated to perform each phase of work on a typical residential demolition assignment based on a 40-hour workweek.

5.2.2 EXPERIENCE ON PROJECTS OF A SIMILAR SIZE AND NATURE

The Consultant shall demonstrate through examples of past projects its experience in completing projects involving the demolition services required under this contract. The example shall cover all aspects of these tasks, including but not limited to: preliminary surveys and site investigations; project scoping documents; preparation of designs and bid specifications; proper removal of hazardous materials; site remediation and restoration; and other tasks outlined in Sections 2.0 and 7.0 of this RFP. Also, personnel presented in the proposed organization chart/staffing plan should be identified with the project history examples in their resumes. The Consultant shall also specify past working experience with State and/or Federal government. The Consultant shall limit past project descriptions to a maximum of five (5) past projects which best reflect the tasks to be required on this contract and are similar in scope to the work described in this RFP.

The Consultant shall complete the attached “Key Team Member Project Experience Data Sheet” for each team member. The form must be reproduced as needed.

5.2.3 PROJECT APPROACH TO SERVICES ON A TYPICAL PROJECT ASSIGNMENT

The Consultant shall describe its approach to providing services for typical demolition assignments, including the following:

- A. The Consultant's procedures in completing typical demolition assignments, including approaches used on similar contract assignments, etc.
- B. Identification of the individuals/Subconsultants on the Consultant's team who will be responsible for the various tasks associated with the demolition assignments, including those who will oversee the work, who serve as the liaison with the State, and provide procedures for selecting and managing sub-consultants, etc.
- C. The Consultant's contingency plans for dealing with problems and correcting errors that occur.
- D. The Consultant's policies and procedures for maintaining quality control and conducting inspections and oversight of the work.
- E. The Consultant's understanding and knowledge of DPMC and NJDEP procedures and processes. Also, the Consultant's knowledge and familiarity with the FEMA and HUD requirements noted in Section 2.0.

5.2.4 TERM CONTRACT RATE SCHEDULE BY PERSONNEL LEVELS

The Consultant shall submit a completed "Term Contract Rate Schedule by Personnel Level" on the form provided in this RFP.

The form shall provide all-inclusive, fully "loaded" rates for the various Personnel Levels that may be required during the term of the contract. These loaded rates must include all costs required for each Personnel Level including all anticipated costs for travel, overhead, administrative costs, insurance, reproduction and printing, mail and messenger services, office equipment and phone costs, meals and lodging, professional fees and profit.

Loaded rates must be submitted for all Personnel Levels from 1 through 7, for each contract period. The "base" period is the original three year term of this contract. Should the State opt to extend the contract, the rates for "Option One" will apply for the initial one-year extension, and the "Option Two" rates will apply for the optional second year extension. The rates must be typed or written in ink; the State will not accept rates prepared in pencil. **PLEASE DO NOT LEAVE ANY BLANKS, AS THIS WILL RESULT IN YOUR PROPOSAL BEING CONSIDERED NON-RESPONSIVE AND REJECTED BY THE STATE.**

Attached to the "Term Contract Rate Schedule by Personnel Level" form is a guide that describes the seven Personnel Levels for which hourly rates are to be submitted. This guide, "Personnel Levels with Examples" note some specific job duties, qualifications and experience levels that apply to the various Personnel Levels. These Personnel Levels are considered typical professional and technical levels required to accomplish the work specified in the Scope of Work and are to be used for establishing a rate schedule.

All seven Personnel Levels must be filled in for each term contract period. Failure to submit a complete rate schedule for each contract period will result in the proposal being deemed non-responsive and rejected.

Following the completion of rate schedules for each of the three contract periods, the Consultant shall enter the "average rate" for each contract period at the bottom of the form (under "Level 1" rates). These average rates shall be derived by calculating the mathematical average of the rates for all seven Personnel Levels, for

each contract period. These average rates are used by the State as a comparative tool to evaluate the respective rates for each Consultant.

All personnel listed at or above "Level 4" shall be designated as key personnel and considered a contractual commitment by the Consultant. Subsequent to contract award, any change in key personnel will require written approval from the DPMC.

The "Term Contract Rate Schedule by Personnel Level" form must be signed in ink by an authorized person and submitted with the bid proposal. Typed, stamped or penciled signatures are not acceptable. For a proposal by a joint venture, the rate schedule sheet must be signed by an officer of each joint venturer. Unsigned "Term Contract Rate Schedule by Personnel Level" forms will be deemed nonresponsive and rejected by the State.

5.2.5. CONSULTANT AFFIDAVIT

The attached "Demolition Consultant Multiple Award Term Contract Consultant Affidavit" must be signed, dated, notarized and returned as part of the proposal. This form signifies acceptance of all terms, General Conditions, and specifications set forth and included with this RFP. All signatures must be in ink.

5.2.6. ADMINISTRATIVE FORMS

The Consultant must include the following completed forms with their proposal:

- A. **MacBride Principles Compliance Certification** (Complete form, sign and date)
- B. **Investment Activities in Iran** (Complete form, sign and date)
- C. **Certificate of Employee Information Report** – Pursuant to N.J.A.C. 17:27-1.1 et seq., all firms contracting with the State of New Jersey must comply with P.L. 1975, c. 127, regarding non-discrimination in employment. For your information, a copy of "Exhibit A" detailing these requirements has been attached. Also attached for your information is the State contract policy with respect to the Americans with Disabilities Act.

All firms contracting with the State of New Jersey must provide a copy of the firm's Certificate of Employee Information Report, issued by the New Jersey Division of Contract Compliance and Equal Employment Opportunity. Please attach a copy of this certificate with your technical proposal. If your firm has not applied for a Certificate of Employee Information Report, please do so using the attached form (AA302). Send the form to:

**N.J. Department of the Treasury
Division of Purchase and Property
Contract Compliance Audit Unit
P.O. Box 026
Trenton, NJ 08625-026
Phone: 609-292-2146**

- D. **Public Law 2005, Chapter 92 Certification (Source Disclosure Certification)** – In accordance with P.L.2005, c. 92, all consultants submitting a proposal shall be required to submit a completed Source Disclosure Certification (form attached), certifying that all services under this contract will be performed in the United States. The Consultant shall disclose the location by country where services under the contract will be performed, and the

location by country where any sub-consulting of services will be performed. For more information, please visit the following website:
www.state.nj.us/infobank/circular/eom129.htm.

- E. **Certificates of required insurance coverage** – During the project, the Consultant is required to secure and maintain in force insurance coverage for: Comprehensive General Liability; Comprehensive Automobile Liability (if applicable); Workers Compensation; and Professional Liability. Proof of this coverage must be submitted with your proposal.

Following receipt and review of the proposals, the DPMC will review the material to see if any further information is necessary in order for the State to make a determination as to the Consultant's qualifications and responsibility. If any further information is needed, the DPMC will request it in writing from the Consultant. A Consultant may be asked to clarify or elaborate on the information submitted, but they will not be permitted to substitute or change the submitted information, including their proposed rate schedule.

6.0 PROPOSAL EVALUATION AND CONTRACT AWARD

6.1 GENERAL CRITERIA

Proposals will be evaluated by an Evaluation Committee convened by the Deputy Director of DPMC, comprised of representatives from the NJDEP and the Department of the Treasury.

Consistent with N.J.S.A. 52:34-6, N.J.S.A. 52:34-9.1 - 9.7 and N.J.S.A. 52:34-12, award shall be made with reasonable promptness by written notice to the responsible Consultant(s) whose proposals, confirming to the project solicitation, will be most advantageous to the State, price, and other factors considered. Any or all proposals may be rejected when the Deputy Director of the DPMC determines that it is in the public interest so to do.

Following receipt, proposals will be evaluated in accordance with the following procedure:

1. First, proposals will be checked against the criteria listed under Section 4.3 (Mandatory Requirements). Those proposals that are automatically rejected will not be further reviewed.
2. Second, the "Term Contract Rate Schedule by Personnel Level" of each proposal will be checked to ensure the "average rate" for each contract period is correct. Any mathematical errors will be corrected in accordance with Section 6.3.
3. Third, the Evaluation Committee will evaluate and score the proposals on their technical merit and review of proposed hourly rates, based upon the criteria and relative weights predetermined on the "Evaluation Criteria" form. This qualitative technical evaluation, along with the acceptability of the rate schedule, will be the primary determining factors of the firms whose proposals are most advantageous to the State, and of the subsequent selection of consultants to be awarded a term contract.

Key components in the determination of a Consultant's responsiveness and responsibility include:

6.1.1. EVALUATION CRITERIA

The proposals of those Consultants who have been determined to be responsive and responsible will be ranked according to the technical quality of their proposal and acceptability of proposed hourly rates. The qualitative factors to be used in this evaluation are as follows:

1. The relative strengths of the Consultant's proposed project organizational plan and personnel/staffing capability including sub-consultants included in their proposal (25%).
2. The relative strengths of the Consultant's and sub-consultant's proposed project personnel and its qualifications and experience on projects/contracts of a similar size and nature (35%).
3. The Consultant's proposed approach to completing all required activities and tasks on project assignments as described in section 2.0 and to successfully complete multiple and concurrent demolition assignments(25%).
4. The value and competitiveness of the Consultant's proposed hourly rates per the "Term Contract Rate Schedule by Personnel Level," both for the seven levels of personnel type/disciplines listed, and for the average rates derived from those disciplines (15%).

Consistent with N.J.S.A. 52:34-6, N.J.S.A. 52:34-9.1 - 9.7 and N.J.A.C. 52:34-12, and this RFP, the State will award term contracts to the most responsive, responsible consultants whose proposals are determined to be the most advantageous value to the State, price and other factors considered. Consultants are advised that a contract will not necessarily be issued strictly to the lowest priced, responsive, responsible Consultant who has met the minimum established requirements. The final ranking of the firms by the Committee will determine the rotational order of the awarded contracts. The top-ranked firm will be ranked first and will be the first assigned Work Orders under the contract, followed in order, second, third and so on, in accordance with each firm's score and rank.

6.2 AVERAGE RATE DISCREPANCIES

In evaluating bids, discrepancies between the indicated average rates for any contract period and the correct average thereof will be resolved in favor of the correct average of the submitted rates for the contract period.

6.3 DEPUTY DIRECTOR'S RIGHT OF FINAL PROPOSAL ACCEPTANCE

The DPMC Deputy Director, Contract Administration, on behalf of the Director, reserves the right to reject any and all proposals, or to award contracts to those firms deemed to be in the best interest of the State. The Deputy Director shall have authority to award a contract to the consultants that best meet the contract specifications and proposal conditions, and that are determined to have offered the most advantageous bids to the State, price and other factors considered.

6.4 NOTICE OF INTENT TO AWARD

The DPMC will notify all competing consultants in writing of the Director's intent to award term contracts. If a Consultant firm determines that they will seek a hearing or file a protest regarding the award, they must submit a letter setting forth their specific grounds for protesting the intended awards or rejection within five (5) days of issuance of the intent to award letter. The Director will review the request in accordance with N.J.A.C.17:19-5.2. After the contracts are awarded, all firms may review the proposals and evaluation documents regarding this contract. Firms can schedule a document review appointment for this RFP by contacting the DPMC at (609) 777-3094.

6.5 JOINT VENTURE REQUIREMENTS

In the event that the award-winning proposal is from a Joint Venture, a copy of the proposed joint venture agreement between the venture partners shall be submitted for review and approval by the State. This agreement shall address issues such as: 1) the management structure of the Joint Venture and the duties and authorities of the singular program manager who shall interface with the State on all contractual and technical matters; 2) the organization functioning to control all financial matters in interaction with the State and flow of payments between the Joint Venture partners under the contract; and 3) the partner/corporate function assigned the lead position for quality control under the contract.

6.6 CHAPTER 51 REQUIREMENTS

In accordance with P.L. 2005, Chapter 51 (formerly Executive Order 134), all consultants with which the State intends to contract must complete and submit the "Contractor Certification and Disclosure of Political Contributions" form (Form DPPc51, copy and instructions attached). All firms selected for this contract must be in compliance with Chapter 51 requirements, and must agree to adhere to all continuing obligations contained in this law regarding contributions and disclosures as required. For more information on Public Law 2005, Chapter 51, please visit the following website: <http://www.state.nj.us/treasury/purchase/forms.htm#eo134>.

6.7 PERFORMANCE PERIOD

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

6.6.1. BASE PERIOD

The base period of performance of this contract shall be three years commencing on the date of the contract award, during which time Work Orders may be issued by the State. Actual performance of work orders may extend beyond this contract period until completion of all services are provided under the approved Work Orders, and the terms of this contract shall extend until completion of the service(s).

6.6.2. RENEWAL OPTIONS

The State shall have the unilateral option of extending this contract for one additional period of one (1) year, and shall have one last unilateral extension option of one (1) year with the same terms and conditions as are contained in this contract at the time said option(s), if any, are exercised.

The option period shall extend the performance period of the contract commencing on the expiration of the preceding base contract performance period. The State may exercise an option to extend by issuing a written notification (mailed or otherwise furnished) to the Consultant(s) at least 30 calendar days prior to the expiration date of the preceding base or option performance period.

7.0 SCOPE OF WORK (SOW)

7.1 GENERAL REQUIREMENTS & BASIC SERVICES BY CONSULTANT

This section is intended to provide the Consultant with the general requirements of the various demolition services for which design services are needed under this contract. The Consultant will be required under each contract assignment to produce construction documents for bidding and for obtaining the necessary permits for the demolition, removal and disposal of all structures on the property and for the restoration of the site to a natural state. The Consultant services under each assignment may include, but will not be limited to, the following tasks:

- Preliminary Site Investigations
- Project Scoping Documents
- Preparation of Designs and Bid Specifications
- Compliance with all Environmental Statutes and Regulations
- Permit Coordination/Approvals
- Coordination with State, Federal and/or Local Officials
- Bid/Award Support Services to DPMC
- Quality Control/Assurance
- Construction Administration and Oversight of Contractor's Work

For each assignment, one or more Work Orders consisting of the required task(s) as described above, will be performed by the Consultant for the structures to be demolished and/or the site remediation/restoration work required under each term contract assignment.

7.2 AWARDED CONTRACTOR'S RESPONSIBILITIES FOR CONSTRUCTION

The following will be required and specified by the Consultant to the Awarded Contractor in accordance with the Consultant's bid documents and specifications prepared for a designated property or properties under each assignment:

Demolition of Building and Site Improvements
Obtaining any necessary Permit Approvals
Soil Erosion Controls and Site Protection
Rodent Control
Removal of utility service connections
Excavation, Backfilling and Grading
Removal and Disposal of Site and Demolition Debris
ACM and Lead Paint Abatement
Removal of AST
Decommissioning of Water Wells
Closing of Sewerage Disposal Systems

For each assignment, one or more Work Orders consisting of the required task(s) as described in this SOW, will be performed by the Consultant for the structures to be demolished and/or the site remediation/restoration work required. The following will be required by the Consultant and/or specified to the Awarded Contractor in accordance with the Consultant's bid specifications prepared for the demolition of structures or site remediation/restoration on a designated property or properties:

7.2.1 Demolition of Structures:

1. Construction permits are required to be obtained for the properties to be demolished. Permits shall be filled out by the Consultant and shall include all required information and the name of the Awarded Contractor of record. The construction permits will be submitted to the DPMC Plan & Code Review Unit. The Consultant shall provide personnel to inspect/oversee the demolition work and will coordinate with NJ DEP and DPMC regarding contract execution.
2. The Consultant will be responsible to notify and obtain the written a release of all utilities having service connections within the structure, such as water, electric, gas, sewer, cable television, and other connections. The approval to demolish any structure will not be given until such release is submitted and approved by Consultant. The written release shall state that the respective service connections and appurtenant equipment, such as meters and regulators, have been removed and sealed or plugged in a safe manner. Pursuant to FEMA's Best Practices for Lower Impact Debris Removal and Demolitions (LIDRD), all utility lines must be disconnected and capped. In cases where there are no shut-off valves, limited excavation within the utility rights-of-way will be required to cap the service lines. The Awarded Contractor should be encouraged to shear off at the ground surface to minimize further soil disturbance.
3. The Consultant will be responsible to verify if asbestos-containing material (ACM) is present in any building structure. If ACM is present, the Awarded Contractor shall be required to provide all equipment, labor, and material necessary to properly remove, handle, and dispose of all ACM. All work, including disposal, must be conducted in accordance with all applicable local, State, and Federal regulations, including those of the New Jersey Department of Labor and Workforce Development (NJDOLEWD), the NJDEP, the Environmental Protection Agency (EPA), the National Emission Standards for Hazard Air Pollutants (NESHAP), and the Occupational Safety and Health Administration (OSHA) prior to demolition of any structure.
4. The Awarded Contractor will be responsible for the proper management and disposal of lead-based paint debris, which is regulated by NJDEP. If the debris generated from abatement, renovation, and remodeling activities meets the classification of "household waste" in accordance with the United States Environmental Protection Agency (USEPA) memorandum dated July 31, 2000, entitled "Regulatory Status of Waste Generated by Contractors and Residents from Lead-Based Paint Activities Conducted in Households," then under the NJDEP's Solid Waste Rules (specifically at N.J.A.C. 7:26-2.13(g)), the debris will be considered solid waste, identified as ID 13C Construction and Demolition Waste. In that instance, the debris waste must be transported by a NJDEP-licensed solid waste transporter and must be disposed of at a permitted solid waste landfill. If the debris does not meet the classification of "household waste" and is generated from demolition activities, the generator must classify the material to determine whether same is hazardous waste (i.e. USEPA Hazardous Waste Number D008) or ID 13C Construction and Demolition Waste. For further information concerning waste classification, NJDEP's Division of Solid and Hazardous Waste, Bureau of Resource Recovery and Technical Programs can be reached at 609-292-8341. For further information concerning lead-based paint debris disposal in New Jersey landfills, NJDEP's Division of Solid and Hazardous Waste, Bureau of Landfill and Recycling Management can be reached at 609-984-6650.
5. The DPMC Plan & Code Review Unit will be responsible for submitting the required permit application package including all prior approvals to the Department of Community Affairs (DCA) for processing and approval.
6. The Awarded Contractor shall be responsible for providing pre-demolition notice to adjoining property owners and providing proof of such notice to the DPMC Plan & Code Review Unit as a prior approval with the permit package. A mandatory pre-construction meeting may be required by the DPMC and NJDEP prior to beginning the demolition work.

7. The Awarded Contractor shall be required during the demolition of a structure to keep the premises free of all unsafe or hazardous conditions. This includes the period during the restoration of established grades and the erection of temporary safety fences and silt fences.
8. The Awarded Contractor must have all vacant structures baited for rodents. The Contractor must supply written verification of the rodent baiting to the DPMC Plan & Code Review Unit.
9. Wells may be decommissioned prior to the Awarded Contractor initiating the demolition work. However, if included as part of its bid requirements, the Awarded Contractor shall be responsible to have any existing private wells properly decommissioned by a New Jersey-licensed well driller, pursuant to "Well Construction and Maintenance; Sealing of Abandoned Wells, N.J.A.C. 7:9D." and to provide written verification of the well decommissioning to the DPMC Plan & Code Review Unit. A well abandonment report must be filed with NJDEP's Bureau of Water System and Well Permitting. An official copy of this report must be filed before payment will be processed.
10. The Awarded Contractor shall be responsible for determining the location of and for the proper closure of any existing, on-site drywells, cisterns, shallow wells (i.e. points, cesspools, or any subsurface disposal system for either sewage or laundry waste) and any drainage collection system for storm water. The awarded Contractor shall provide written proof of the proper closure of any existing drywells, cisterns, shallow wells, or drainage collection systems to the DPMC Plan & Code Review Unit. The awarded Contractor shall be responsible for providing written verification of the required disposal of any regulated solid waste or hazardous substances encountered on the property. The awarded Contractor shall ensure, to the fullest extent possible, that the fill required in the decommissioning of septic tanks is from an approved, established source.
11. The Awarded Contractor shall be responsible for the proper disposal of any and all unregulated solid and hazardous waste, including but not limited to household chemicals, consumer packaged pesticides, oils, paints, or other related items found on the project site.
12. Floodplains have a high potential for Native American archaeological deposits in the soil and subsoil. Prior to any soil disturbing activities, all properties shall be reviewed by the Consultant and/or their subconsultants using known historic properties and archaeologically sensitive areas. Any identified archaeological sites on or adjacent to the property will have a buffer created by an SOI-qualified archaeologist to avoid impacting the known site. If debris removal activities disturb archaeological artifacts (e.g. old bricks, ceramic pieces, historic bottle glass or cans, coins, beads, stones in the form of tools, pieces of crude clay pottery, etc.), archaeological features (e.g. grave markers, house foundations, cisterns, etc.), or human remains, the Awarded Contractor shall immediately stop work in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm to the finds. At that time, the Awarded Contractor shall promptly contact the DPMC Plan & Code Review Unit, FEMA representatives and the New Jersey Historic Preservation Office (NJHPO) (as well as local law enforcement, county coroner/medical examiner, and county Office of Emergency Management representative for human remains, if applicable) for further discussion and guidance. The Awarded Contractor shall not proceed with work in the area(s) of concern until FEMA staff has completed consultation with the NJHPO and other interested parties, as necessary.

7.2.2 Site Remediation and Restoration:

1. After removing any and all site improvements i.e. dwellings, foundations, structures, tanks, fences, walks/driveways, etc. (whether concrete or asphalt/bituminous), accumulated materials, and/or debris, the Awarded Contractor shall be responsible to leave the site in a clean, finished, graded, and stabilized (i.e. grass growth covering the site) condition. Masonry materials from any foundations, footings, sidewalks, etc., may be used as excavation backfill, provided that all basement slabs are broken up to prevent the trapping of water, and all masonry materials are broken up into pieces no larger than one foot (1') in any dimension and mixed with a sufficient

quantity of clean soil, so as to permit complete filling of all voids and proper compaction. The Awarded Contractor shall limit excavation to within two feet (2') of the foundation perimeter and will not excavate more than six inches (6") below the depth of the foundation to minimize soil disturbance. With respect to the removal of slabs, driveways, and sidewalks, the Awarded Contractor shall limit excavation to within two feet (2') of the slab/driveway/sidewalk perimeter and will not excavate more than six inches (6") below the depth of the asphalt/concrete to minimize soil disturbance. All on-site concrete fill material shall be placed no less than three feet (3') below the proposed finished grade, including the removal of footings, foundations, walls, etc., which must be removed to a minimum depth of three feet (3') below proposed finished grade. Asphalt/bituminous materials must be removed from the site and properly disposed of by the Awarded Contractor. Proper documentation from the disposal facility shall be submitted to the DCA code inspector.

2. When using heavy equipment, the Awarded Contractor shall work from hard or firm surfaces to the fullest extent possible to avoid sinking into soft soils. The Contractor will ensure, to the fullest extent possible, that it will minimize soil disturbance when operating heavy equipment on wet soils (6 inches or less). Excavation and burial of debris on site is prohibited, except as noted below.
3. The Awarded Contractor shall ensure, to the fullest extent possible, that removal of uprooted trees, limbs, and branches from public rights of way and areas, as well as the transport and disposal of such waste to existing, licensed waste facilities or landfills. This includes the temporary establishment and expansion of non-hazardous debris staging, reduction, and disposal areas at licensed transfer stations, or existing hard-topped or graveled surfaces (e.g. parking lots, roads, athletic courts) but not the creation of new or temporary access roads. Debris is to be removed from private property, provided that buildings are not affected, ground disturbance is minimal, and in-ground elements (i.e. driveways, walkways, or swimming pools) are left in place. The chipping and disposal of woody debris is to be by broadcasting within existing rights-of-way. The removal of uprooted trees and woody debris from the following areas will require additional historic review: cemeteries; battlegrounds; historic landscapes; historic parks; undisturbed ground; and historic districts (but not along public rights-of-way).
4. The Awarded Contractor shall fill any voids posing a risk to public health and safety with fill from an approved, established source.
5. The Awarded Contractor shall import an adequate quantity of clean fill and top soil, sufficient to fill in all excavations and/or foundations and grade the site, so as to prevent the accumulation or trapping of storm water runoff. The source of the clean soil (i.e. free of concrete, asphalt, brick, cinder/cement block, wood, trees, roots, branches, non-decomposed vegetative matter, metal, plastic or any other form of construction debris; and free of any hydrocarbons/hazardous/controlled materials) shall be as approved by the DCA code inspector and NJDEP. The quantity of imported soil shall be the minimum amount required to achieve the proper site grading. However, the awarded contractor shall limit site grading to within the first six (6) inches of the existing surface elevation (e.g. sidewalk level, driveway level, slab level, etc.). Filling and backfilling shall consist of depositing, spreading, and compacting of approved materials. All work to be performed shall comply with the provisions of Sections 202, 203, 204, 207 and 208 of the "New Jersey Department of Transportation (NJDOT) Standard Specification for Road and Bridge Construction, 1989." A certificate shall be provided by the Awarded Contractor from an approved testing agency approved by the Consultant that the fill material meets this specification. The minimum density to be obtained in the earth backfill and soil aggregate base course shall be 95% of "maximum density" as defined in ASTM D-1557, Moisture Density Relations of Soil (Standard Proctor Compaction Test), Method, including Note 2. Compacted fill not meeting required density when tested in place shall be replaced or removed until additional tests, to be performed at the awarded Contractor's expense, indicate compliance with this density specification.

6. Acknowledging that these properties are all located within the floodplain, the Awarded Contractor shall be required to take all appropriate precautions to prevent erosion or washout of the placed soil until proper stabilization is achieved. Should such erosion or washout occur before stabilization is complete, the Contractor will be required to re-grade/refill, seed, and/or re-stabilize the site. Any erosion or failure of turf, grasses or other plantings which have not established themselves within one year of completion and acceptance shall be required to be replaced by the awarded Contractor.

Removal of Above-Ground Oil Tanks: (NOTE: All known Underground Storage Tanks are to be remediated by property owners prior to the transfer of title to NJDEP.)

1. A construction permit will be required. A separate fire subcode technical section is required for the tank and shall be included with the permit application for the building demolition.
2. Awarded Contractors are responsible for the following:
 - a. Removal of oil from tank
 - b. Cutting oil tank in half by removing top
 - c. Removal of sludge after squeegeeing
 - d. Hand wipe inside of tank
 - e. Removal of tank and all associated piping and disposal at a proper facility
 - f. Disposal of all sludge, water, etc. at licensed facility.
 - g. Have oil reclaimed or disposed of at a licensed facility.

Should any unusual situation arise during demolition work causing any possible concerns, the awarded Contractor shall immediately contact the DPMC project manager.

7.3 CONSULTANT'S BIDDING & ADMINISTRATIVE REQUIREMENTS

1. Demolition contracts will be advertised for bid by the DPMC based on the specifications provided by the Consultant. Demolition contracts will be awarded to the lowest responsible bidder. The Consultant will be required to attend any preproposal meetings, respond to questions from bidders, review the bids received, including the apparent lowest responsible bidder, and provide a Recommendation of Award to the DPMC Project Manager.
2. The Consultant shall provide construction inspections and oversight of the work progress on projects awarded to an Awarded Contractor. The Consultant will be required to attend project meetings during the design and construction phases as required by DPMC..

7.4 CONSULTANT'S PROJECT CLOSE-OUT REQUIREMENTS

At the completion of demolition, Consultant will provide five (5) copies of a bound manual containing the following documents.

1. Final Site Plan
2. Copies of Waste Manifests, bills of lading, or other applicable disposable documentation
3. Copies of Well Closure reporting form completed by licensed well driller
4. Copies of Board of Health Approval for Wastewater Disposal System
5. Recycling Plan (if required)
6. Copies of Test Reports
7. Pre-Demolition and Post-Demolition Photographs
8. Documentation regarding the source and quantity of imported clean fill
9. Copies of NJDCA Inspection Reports
10. Copies of NJDCA Permits and Certificate of Acceptance

8.0 METHOD OF ASSIGNMENT AND ENGAGEMENT

8.1 USE OF THE CONTRACT

- A. The award of this Term Contract establishes that the contracted Consultant firms have represented that they can provide personnel with the necessary experience, qualifications, and capabilities to provide demolition and site remediation services to DPMC on multiple project assignments. The award also indicates that the Consultant's proposed professional and technical rates are accepted for the period(s) of the term contract.
- B. The site-specific work engaged under this RFP may involve one Work Order of one or more scope of work tasks, or if necessary to develop the project it may involve multiple Work Orders, with each subsequent Work Order dependent on the results and findings of the previous Work Orders. No work shall commence until the Consultant is issued an approved Work Order for the required tasks.

8.2 ORDER OF ASSIGNMENT

The State intends to award from four (4) to six (6) term contracts. Additional contracts may be awarded if the volume of work/need for services is determined to necessitate such action by the State. The DPMC will present each demolition assignment to one of the contracted consultants on a rotating basis in order of technical ranking as described in Section 6.6.1.1. If the State determines that, because of a conflict of interest, its inability to satisfactorily perform the services, or if the services required are related to a previously approved Work Order and a term contract consultant is unable to undertake an assignment under this contract, the work will be re-assigned to the consultant that is next in the rotational order.

If the Consultant is engaged with five (5) simultaneous site specific work order assignments under this contract, the Consultant may refuse any more work order assignments until the project workload decreases to under five simultaneous work order assignments. Upon the Consultant's refusal, the State has the option to engage the Consultant that is next in the rotational order.

If the Consultant's performance during the course of an engagement is not satisfactory, the DPMC and/or the NJDEP will notify the Consultant's Project Manager of the issues requiring immediate resolution. Failure to correct problems in a reasonable time will result in the State taking further action with the Consultant which may end in termination of the contract and awarding of future engagements to the next ranked Consultant.

If required by the federal funding source (FEMA or CDBG grant, etc.), the State may impose liquidated damages on the Consultant in the event its performance is not timely and the State is harmed and the project delayed. Such actual damage amounts will be determined at the time of the Work Order assignment and included in the Work Order scope of work. The Consultant agrees that it shall be liable for liquidated damages as provided in the Work Order documents. The State shall have the sole discretion to allow a grace period or toll the time periods for the failure by the Consultant to meet designated schedules and completion dates. The State shall assess liquidated damages and deduct the liquidated damages, if any, from any payment made to the Consultant. If so imposed in the Work Order, these liquidated damages shall take precedence over any conflicting provisions in the General Conditions to the Consultant Agreement accompanying this RFP.

8.3 ASSIGNING AND EXECUTING SPECIFIC WORK ORDERS

8.3.1 Project Data

Specific project data will be provided to the Consultant for each Work Order, including:

- DPMC Project Number/Title/Location
- Scope of Work – General information regarding the scope of the assignment will be provided to the
- Consultant at the time a Work Order is solicited. This may include information regarding existing site data, assignment specifications, proposed schedule or completion dates and any specific services required.

8.3.2 Ordering of Services/Placement of Work Order Services

Delivery or performance of services by the Consultant shall be made only as authorized by Work orders issued in accordance with this contract. There is no limit on the total number of Work Orders that may be issued to one Consultant under this contract. The DPMC may issue a Work Order requiring the performance of services involving multiple properties. The DPMC may elect to award a single Work Order assignment, or to award multiple Work Order assignments for the services required.

Any Work Order issued during the term of this contract and not completed within that period shall continue and be completed by the Consultant within the time specified in the Work Order. This contract shall govern the Consultant's and State's rights and obligations with respect to that Work Order to the same extent as if the order were completed during the contract's effective period.

Each Work Order shall include all of the services to meet the obligations of the task(s) requiring delivery or performance. The Work Order may be supplemented by a proposal that includes the team organization, staffing, sub-consultants included, approach to the project tasks, experience of the firm/team, and other necessary information. All Work Orders are subject to the terms and conditions of this contract. In the event of a conflict between a Work Order and this contract, the contract shall control. A Work Order is considered "issued" when the DPMC emails or faxes the approved Work Order to the firm along with a Notice to Proceed for the specific Work Order assignment.

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

8.3.3 Processing Work Orders

Work orders may be considered by DPMC for all services under this contract, provided that they are in accordance with the terms and conditions of this contract.

Each Work Order 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 Dates – 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 Notice to Proceed for the work. It is anticipated that demolition design work will be required to be initiated and completed within approximately 30 days from the issuance of the Notice to Proceed. Bidding and construction will follow within 60 days in most cases.
- G. The applicable hourly rates in effect at the time of request for a proposal, for the personnel, services and any other cost items included in the Work Order. The hourly rates must correspond with those submitted by the consultant in the "Term Contract Rate Schedule by Personnel Level." Each Work Order must total the hourly rates and any required subconsultant/subcontractor costs and be issued for a lump sum or not-to-exceed amount.

- H. Written Work Order – A DPMC Work Order form will be provided for use by the Consultant in providing a proposal for services and costs for each assignment.
- I. Approvals – Following submission of the Work Order by the Consultant, the Work Order must be approved by NJDEP and by the DPMC Deputy Director (or his designee).
- J. No work shall be performed under this contract until an approved Work Order and Notice to Proceed have been issued to the Consultant. This Notice to Proceed will only be issued following approval of the Work Order by both NJDEP and DPMC and receipt of funding for the assignment. For the purpose of this contract, a Work Order shall be deemed to be “issued” at the time the DPMC authorizes the Notice to Proceed and emails or faxes it to the consultant.

8.4 RESPONSIBILITY FOR CONTRACT ADMINISTRATION AND PAYMENTS

8.4.1 Contracting Officer (CO)

The Contracting Officer (CO) is the final authority in all contractual matters relating to this contract and any Work Order placed against this contract as well as to any design, construction or other type of contract associated with this contract. The CO has overall responsibility for the administration of this contract and is authorized to take action on behalf of the State to amend or modify an approved Work Order assignment. The CO may delegate certain other responsibilities to authorized representatives.

8.4.2 Project Manager (PM) (to be named for each Work Order)

A Project Manager will be designated on each specific Work Order assignment to assist the CO in the delegation of responsibilities when the CO is unable to be directly in touch with the contract work. Responsibilities of the PM include, but are not limited to, determining the adequacy of performance by the Consultant in accordance with terms and conditions of the contract, acting as the State’s representative in charge of overseeing work at the site(s), ensuring compliance with contract requirements insofar as the work is concerned; and advising the CO of any factors or issues which may cause delay in performance of the work.

8.4.3 Payment Schedule

Payments for Consultant services under individual work orders will be paid in monthly installments, scheduled by and agreed to by the Consultant and the CO. The payment schedule will be developed based on anticipated outlays by the Consultant. If requested by the CO, the Consultant will provide evidence to support anticipated outlays. The CO may require that the schedule of payments be linked to specific deliverables, the completion of certain activities, or the achievement of specified goals or schedule milestones. Payments for any supplemental services will be invoiced separately.

8.4.4 Invoicing Requirements

Invoices shall be submitted to the Project Director specified in the Work Order on an original DPMC Invoice Form (DPMC-11). Invoices must include all proper information completed, signatures and supporting back-up documentation prior to acceptance, approval and processing by the State.

8.4.5 Adjusting Payments

Upon review of the invoices, the PD may adjust the payment of the invoice if any services do not conform to the contract requirements of the Work Order and/or this contract. The PD will inform the Consultant in writing of the type and dollar amount of the deductions prior to processing the remainder of the invoice. The Consultant 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 ten (10) day period will be interpreted to mean that the Consultant accepts the deductions proposed. After consideration of the consultant’s reply, if any, the PD will make any

adjustments in deduction which are warranted, determine the dollar amount of deductions, and notify the consultant of the decision.

8.5 DISPOSITION OF MATERIALS

Upon termination or completion of work under a Work Order assignment, the Consultant shall forward all materials produced in connection with the performance of this contract as may be directed by the CO or PD, or as specified in other provisions of this contract. All documents and materials produced, or required to be delivered under this contract will become and remain the property of the State. The Consultant shall 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 to the New Jersey Office of the State Comptroller or other State audit agency upon request.

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

**GENERAL CONDITIONS
TO THE
DEMOLITION CONSULTANT
TERM CONTRACT TC-008**

TABLE OF CONTENTS

1. ANTI-COLLUSION CLAUSE	3
2. CONFLICT OF INTEREST.....	3
3. OFFER OF GRATUITIES	3
4. CONFLICT OF TERMS.....	3
5. NON-DISCRIMINATION	4
6. TIME OF COMPLETION	7
7. FEES AND INVOICING	7
8. NJ PROMPT PAYMENT ACT.....	8
9. WITHHOLDING PAYMENT FOR NON-DELIVERY OF DELIVERABLES	9
10. NO DAMAGE FOR DELAY.....	9
11. CONSULTANT’S CLAIMS FOR DAMAGES	9
12. LIMITATIONS OF LIABILITY	10
13. DISPUTES.....	10
14. INDEMNIFICATION	10
15. TERMINATION FOR CONVENIENCE OF THE OWNER.....	11
16. TERMINATION FOR CAUSE	11
17. SUSPENSION	11
18. OWNERS RIGHT TO CARRY OUR THE WORK.....	12
19. NEW JERSEY PREVAILING WAGE ACT	12
20. PUBLIC ANNOUNCEMENTS	13

21. PATENTS	13
22. OWNERSHIP OF DOCUMENTS	13
23. COPYRIGHTS.....	13
24. RIGHT TO AUDIT.....	13
25. PROCEDURAL REQUIREMENTS AND AMENDMENTS	14
26. SECURITY AND STATE REGULATIONS	14
27. INSURANCE REQUIREMENTS.....	14
28. SUB-CONSULTANTS	15
29. SUB-CONTRACTORS	15
30. ASSIGNMENT.....	15
31. COMPLIANCE WITH LAW	15
32. SET-OFF FOR STATE TAX.....	16
33. COMPLETE AGREEMENT CLAUSE.....	16
34. SEVERABILITY CLAUSE	16
35. HAZARDOUS MATERIALS.....	16
36. THIRD PARTIES	16
37. FINAL ACCEPTANCE	17

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.

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. Consultant Affidavit
- b. Notice of Award
- c. Request for Proposal, Demolition Consultant Term Contract TC-008 including all Addenda(s)
- d. General Conditions to the Demolition Consultant Term Contract TC-008
- e. Consultant's Fee Proposal
- f. Consultant's Technical Proposal
- g. PROCEDURES FOR ARCHITECTS & ENGINEERS

5. NON-DISCRIMINATION

The Consultant agrees not to discriminate in employment and to abide by all anti-discrimination laws, including those contained within *N.J.S.A. 10:2-1* through *N.J.S.A. 10:2-4*, *N.J.S.A. 10:5-1 et seq.* and *N.J.S.A. 10:5-31* through *10:5-38*, and all rules and regulations issued thereunder are hereby incorporated by reference. The laws of New Jersey (*N.J.S.A. 10:5-31 et seq.*) provide that no public works Contractor

or Consultant can be awarded nor any monies paid until the prospective Contractor/Consultant has agreed to contract performance which complies with the approved Affirmative Action Regulations of the State and includes procurement and service contracts as well as construction contracts. This section was prepared to explain the affirmative action requirements and procedures for public agencies awarding contracts and for Contractors bidding on contracts.

To assure effective application of the affirmative action law while allowing the business operations of government to proceed efficiently, these regulations (see *N.J.A.C. 17:27*) are designed to minimize administrative paperwork and delays.

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

- A. The Consultant or its sub-consultants, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, or affectional or sexual orientation. The Consultant will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, or affectional or sexual orientation. 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 Consultant 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 non-discrimination clause.
- B. The Consultant or its sub-consultants, where applicable, will in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex or affectional or sexual orientation.
- C. The Consultant or its sub-consultants, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Public Agency Compliance Officer, advising the labor union under this act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Consultant or its sub-consultants, where applicable, agrees to comply with any and all regulations promulgated by the Treasurer pursuant to *N.J.S.A. 10:5-31 et seq.*, as amended and supplemented from time to time.
- E. When hiring workers in each trade, the Consultant or sub-consultant agrees to attempt in good faith to employ minority and female workers in each trade consistent with the applicable employment goal prescribed by *N.J.S.A. 17:27-7.3*; provided, however, that the Affirmative Action Office may, in its discretion, exempt a Consultant or sub-consultant from compliance with the good faith procedures prescribed by the following provisions (1), (2) and (3), as long as the Affirmative Action Office is satisfied that the Consultant is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Affirmative Action Office, that its percentage of active "card carrying" members who are minority and female workers is equal to or greater than the applicable employment goal prescribed by *N.J.A.C. 17:27-7.3* promulgated by the Treasurer pursuant to *N.J.S.A. 10:5-31 et seq.*, as amended and supplemented from time to time. The Consultant or sub-consultant agrees that a good faith effort shall include compliance with the following procedures:
 1. If the Consultant or sub-consultant has a referral agreement or arrangement with a union, the Consultant or sub-consultant shall, within three working days of the contract award, seek assurances from the union that it will cooperate or sub-consultant shall, within three working days of the contract or sub-consultant as it fulfills its affirmative action obligations under the contract and in accordance with the regulations promulgated by the Treasurer pursuant to *N.J.S.A. 10:5-31 et seq.*, as supplemented and amended from time to time. If the Consultant or

sub-consultant is unable to obtain said assurances from the union at least five working days prior to the commencement of work, the Consultant or sub-consultant agrees directly to attempt to hire minority and female workers consistent with the applicable employment goal. If the Consultant's or sub-consultant's prior experience with a union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and female workers consistent with the applicable employment goal by complying with the following hiring procedures prescribed under (2) below; and the Consultant or sub-consultant further agrees immediately to take said action if it determines or is so notified by the Affirmative Action Office that the union is not referring minority and female workers consistent with the applicable employment goal.

2. If the hiring of a work force consistent with the employment goal has not or cannot be achieved for each individual position by adhering to the procedures of (1) above, or if the Consultant or sub-consultant does not have a referral agreement or arrangement with a union, the Consultant or sub-consultant agrees to take the following actions consistent with the applicable county employment goals:
 - a. To notify the Public Agency Compliance Officer, Affirmative Action Office and at least one approved minority referral organization of its manpower needs, and request referral of minority and female workers;
 - b. To notify any minority and female workers who have been listed with it as awaiting available vacancies.
 - c. Prior to commencement of work, to request the local union, if the Consultant or sub-consultant has a referral agreement or arrangement with a union to refer minority and female workers to fill job openings.
 - d. To leave standing requests for additional referral of minority and female workers with the local union, if the Consultant or sub-consultant has a referral agreement or arrangement with a union the State Training and Employment Service and other approved referral sources in the area, until such time as the work force is consistent with the employment goal.
 - e. If it is necessary to lay off some of the workers in a given trade to assure, consistent with the applicable State and Federal statutes and court decisions, that sufficient minority and female employees remain on the site consistent with the employment goal; and to employ any minority and female workers so laid off by the Consultant in the area on which its work force composition is not consistent with an employment goal established pursuant to *N.J.A.C. 17:27*.
 - f. To adhere to the following procedure when minority and female workers apply or are referred to the Consultant or sub-consultant:

(1) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required, the Consultant or sub-consultant shall determine the qualifications of such individuals, and if the Consultant's or sub-consultant's work force is not consistent with the applicable employment goal, it shall employ such persons which satisfy appropriate qualification standards provided, however, that Consultant or sub-consultant shall determine that the individual at least possesses the skills and experience recognized by any worker's skills and experience classification determination which may have been made by a Public Agency Compliance Officer, union apprentice program or a referral agency, provided the referral agency is acceptable to the Affirmative Action Office and provided further that, if necessary, the Consultant or sub-consultant shall hire

minority and female workers who qualify as trainees pursuant to these regulations. All of the requirements of this paragraph, however, are limited by the provisions of paragraph (3) below.

(2) If the Consultant's or sub-consultant's work force is consistent with the applicable employment goal, the name of said female or minority group individual shall be maintained on a waiting list for the first consideration in the event the Consultant's or sub-consultant's work force is no longer consistent with the applicable employment goal.

(3) If, for any reason, said Consultant or sub-consultant determines that a minority individual or a female is not qualified or if the individual is an advanced trainee or apprentice, the Consultant or sub-consultant shall inform the individual in writing with the reasons for the determination, maintain a copy in its files, and send a copy to the Public Agency Compliance Officer and to the Affirmative Action Office.

- g. To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract and on forms made available by the Affirmative Action Office which shall be submitted promptly to that office upon request.
- 3. The Consultant or sub-consultant agrees that nothing contained in the preceding provision (2) shall preclude the Consultant or sub-consultant from complying with the hiring hall or apprenticeship provisions in any applicable bargaining agreement or hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program or admission, pursuant to such agreement or arrangement; provided, however, that where the practices of a union or apprenticeship program will result in the exclusion of minorities and females consistent with the county employment goal, the Consultant or sub-consultant shall consider for employment persons referred pursuant to said provision (2) without regard to such agreement or arrangement; provided further, however, that the Consultant or sub-consultant shall not be required to employ minority and female advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total work force 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. Also, the Consultant or sub-consultant agrees that in implementing the procedures of the proceeding provision (2), it shall, where applicable, employ minority and female workers residing within the geographical jurisdiction of the union.
- 4. The Consultant and its sub-consultants agree to complete an initial Project Manning Report on forms provided by the Affirmative Action Office or in the form prescribed by the Affirmative Action Office and submit a copy of said form no later than three working days after signing a contract; and to submit a completed copy of a Monthly Project Staffing Report to the Affirmative Action Office and to the public agency compliance officer once a month (by the seventh work day of each month) thereafter for the duration of the contract. The Consultant agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary for on-the-job programs for outreach and training of minority and female trainees employed on the construction project.
- 5. The Consultant and its sub-consultants shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to *N.J.A.C. 17:27-10.1 et seq.*

Provisions (e) and (f) are not required for sub-consultants with four or fewer employees in the company or a sub-consultant which has presented evidence of a federally approved or sanctioned affirmative action program.

- F. In accordance with N.J.S.A. 10:2-1 every contract for or on behalf of the State 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 Consultant agrees that:
1. 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;
 2. 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;
 3. There may be deducted from the amount payable to the Consultant 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
 4. 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 and consequential 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 deficient upon delivery, the Owner may withhold from each invoice an amount (in equivalent to the value of the technical data, or any part thereof deficiently delivered.
- 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. NO DAMAGE FOR 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 Agreement.

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. Nothing contained in this paragraph shall be construed to relieve the culpable Consultant from any liability or damage sustained on account of its 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. This limitation of liability shall not be applicable to any claims by the Consultant against the Owner for contribution or indemnity arising from any negligence of other claims instituted by third parties which seek any such special, consequential, incidental or penal damages against the Consultant.

13. DISPUTES

The Owner shall be, in the first instance, the interpreter of the requirements of this AGREEMENT and the impartial judge of the Consultant's performance hereunder. The parties should attempt to resolve disputes through the established administrative policies and procedures. The first step in this process is to request, in writing, a Contracting Officer's Conference. The Contracting Officer may appoint a duly authorized representative to act on his behalf. If the decision rendered by the Contracting Officer as a result of the conference is not accepted by the parties concerned, the next step that may be taken is to litigate the matter in the Superior Court of New Jersey.

The parties shall attempt to resolve disputes through the Owner's established administrative policies and procedures. However, neither of the parties shall be required to exhaust any or all administrative remedies before filing an action in the Superior Court of New Jersey.

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.

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 will indemnify and hold harmless the Owner, its employees, representatives, and agents from and against any and all losses, suites, 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 sole 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 Industry 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 P.L. 1995, c. 159, 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.