

**NEW JERSEY DIVISION OF PURCHASE AND PROPERTY WAIVERED SERVICES CONTRACTS STANDARD
TERMS AND CONDITIONS**

June 29, 2011

By submitting a proposal in response to the Agency Request for services, the bidder certifies that it understands and agrees that all of the following terms, conditions and definitions (collectively, "Standard Terms and Conditions") are part of any contract(s) awarded or order(s) placed as a result of the Agency Request unless specifically and expressly modified by reference in the Agency Request or in a writing executed by the Director, Division of Purchase and Property or the designee thereof.

- I. **DEFINITIONS:** As used in these Standard Terms and Conditions the following terms shall have the definitions set forth in this paragraph. These definitions shall also apply to the entire contract unless otherwise defined therein.

"Agency" means the entity on whose behalf the Division of Purchase and Property entered into the Contract. The Agency is the intended beneficiary of the Contract.

"Agency Request" means a request made by an Agency for offers or proposals to provide the sought after goods and/or services as specified herein.

"Bidder" means any person or entity submitting a proposal in response to the Agency Request for the purpose of obtaining a contract to provide the tangible items and/or services specified in the Agency Request.

"Contract" means a mutually binding legal relationship obligating the Contractor to furnish supplies and/or services and the buyer to pay for them, subject to appropriation where the Agency derives its annual budget by means of appropriation from the State Legislature. The Contract consists of these Standard Terms and Conditions, the Agency Request, the proposal submitted by the Contractor, the subsequent written document memorializing the agreement (if any), any amendments or modifications and any attachments, addenda or other supporting documents of the foregoing.

The Contract and/or its terms cannot be modified or amended by conduct or by course of dealings. Thus, the "contract" does not include the aforementioned actions and such actions, or reliance thereon, afford no rights whatsoever to any party to the Contract. The Contract can only be modified or amended by the Director; using Agencies have no authority to modify or amend the Contract. The State will not be bound by any attempt to modify or amend the Contract without the prior written approval of the Director.

"Contractor" means the person or entity which submits a proposal in response to the Agency Request and to whom (or which) the Contract is awarded.

"Designee" means the representative of a specific public official or Agency, as defined above, duly authorized by same to conduct specific activities and who also has the power to legally bind the official or Agency within the scope of the Contract. Actions taken by an unauthorized designee or which are beyond the scope of the designee's authorization or beyond the scope of the Contract are ultra vires and have no legal or equitable effect.

"Director" means the Director of the New Jersey Division of Purchase and Property or the designee thereof.

"Division" means the New Jersey Division of Purchase and Property.

"Fixed-Price Contract" means a contract that provides for a firm price for the entire term of the Contract (including all extensions), subject to any contractual conditions allowing price adjustment, under which the contractor bears the full responsibility for profit or loss.

"Project" means the initiative, enterprise, undertaking or services for which the Contractor was contracted.

"Shall" denotes a mandatory condition.

"State" means the State of New Jersey and its agencies.

II. **APPLICABILITY AND INCORPORATION OF STANDARD TERMS AND CONDITIONS:**

These Standard Terms and Conditions will apply to all services contracts made by the Director on behalf of the Agency. These Standard Terms and Conditions are automatically incorporated into the Contract unless the Contractor is specifically instructed otherwise in the Agency Request or in any amendment thereto. These Standard Terms and Conditions are in addition to the terms and conditions set forth in the Agency Request and should be read in conjunction with same unless the Agency Request specifically indicates otherwise.

III. **CONTRACTOR'S STATUS AND RESPONSIBILITIES:**

- A. **CONTRACTOR'S STATUS:** The Contractor's status shall be that of an independent contractor and not that of an employee of the State.
- B. **CONTRACTOR'S CERTIFICATION AS TO ITS REPRESENTATIONS:** The Contractor certifies that all representations made by it in its proposal or other related and/or supporting materials are true, subject to penalty of law. Further, the Contractor agrees that its violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact in the proposal, award or performance of the Contract may be cause for rescission of the contract award. In addition, the Contractor's violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact in the proposal, award or performance of the Contract shall serve as a legal bar to the Contractor's enforcement of its rights under the Contract including any and all claims at law or equity.
- C. **CONTRACTOR'S PERFORMANCE:** The Contractor agrees to perform in a good, skillful and timely manner all services set forth in the Contract. To perform these services, the Contractor shall employ or engage the services of qualified persons and/or entities at its own expense except as otherwise specified in the Contract. The Contractor has an affirmative obligation to promptly notify, in writing, the State of any changes in circumstances which might affect the Contractor's ability to be awarded or to perform its obligations under the Contract.

D. **RESPONSIBILITIES OF CONTRACTOR:**

- 1) The Contractor is responsible for the quality, technical accuracy and timely completion and delivery of all deliverables and other services to be furnished by the Contractor under the Contract. If circumstances beyond the control of the Contractor result in a late delivery, it is the responsibility and obligation of the Contractor to make the details known immediately to the Division and Agency.
- 2) The Contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its services and deliverables furnished under the Contract. The approval of interim deliverables furnished under the Contract shall not in any way relieve the Contractor of fulfilling all of its obligations under the Contract. The acceptance or payment for any of the services rendered under the Contract shall not be construed as a waiver by the State or Agency, of any rights under the agreement or of any cause of action arising out of the Contractor's performance of the Contract.
- 3) The acceptance of, approval of or payment for any of the services performed by the Contractor under the Contract shall not constitute a release or waiver of any claim the State or Agency, has or may have for latent defects or errors or other breaches of warranty or negligence.
- 4) Should the Contractor hire, employ or otherwise engage subcontractors, the Contractor shall be considered the prime Contractor and the sole point of contact with regard to contractual matters. The Contractor assumes sole and full responsibility for the complete performance contemplated by the Contract including the performance of all subcontractors.
- 5) When the Contractor intends to subcontract for any work under the Contract, the subcontractor must be approved by the Director in writing. It is understood, however, that consent of the Director for the subcontracting of any work under the Contract in no way relieves the Contractor from its full obligations under the Contract. In addition, the Contractor must notify and receive the approval of the Agency Project Manager before hiring any sub-contractor for the contract work. The Contractor shall at all times give due attention to the fulfillment of the Contract and shall keep the work under its control. Consent to the subcontracting of any part of the work by the Director in writing shall not be construed to be an approval of said subcontract or of any of its terms, but shall operate only as an approval of the subcontractor. The Contractor, shall be responsible for all work performed by the subcontractor, which shall conform to the provisions of the Contract and all requirements of law. The failure of any subcontractor to adhere to the terms of the Contract or requirements of law may, in the Director's discretion, be cause for rescission of the contract award.
- 6) All payments for services under the Contract will be made only to the Contractor. The Contractor assumes sole and full responsibility for any payments due to its subcontractors under the Contract.
- 7) Nothing herein or in the Contract shall be construed as creating a contractual relationship between any subcontractor and the State and/or the Agency.
- 8) The Contractor's obligations under this clause are in addition to the Contractor's other expressed or implied assurances under the Contract or law and in no way diminish any other rights that the State or Agency may have against the Contractor.

- E. **INVESTIGATION:** By submitting a proposal in response to the Agency Request, the bidder certifies and warrants that it has satisfied itself, from its own investigation, of the conditions to be met and that it fully understands its obligations and if awarded the Contract agrees that it will not make any claim for, or have right to, cancellation or relief from the Contract without penalty because of its misunderstanding or lack of information.
- F. **PRICE FLUCTUATION DURING CONTRACT:** Unless otherwise set forth in writing by the Director, or the Director's designee, all prices quoted shall be firm and not be subject to increase during the duration of the Contract. However, in the event of a manufacturer's price or contractor's cost decrease during the Contract period, the State shall receive the full benefit of such price/cost reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified in writing of any price reduction within five (5) days of the effective date. Failure to report and/or pass on price reductions may result in the rescission of the contract award for cause.
- G. **COST LIABILITY:** The State assumes no responsibility and no liability for costs incurred by the bidder prior to the award of the Contract and thereafter only as specifically provided in the Contract.
- H. **INDEMNITY/LIABILITY TO THIRD PARTIES:**
- 1) The Contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract. This indemnification obligation is not limited by, but is in addition to the insurance obligations contained in this agreement.
 - 2) The Contractor shall hold and save the State of New Jersey, its officers, agents, servants and employees, harmless from liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.
 - 3) The Contractor further agrees that:
 - a) any approval by the State or Agency of the work performed and/or reports, plans or specifications provided by the Contractor shall not operate to limit the obligations of the Contractor assumed in the Contract;
 - b) the State and Agency assume no obligation to indemnify or save harmless the Contractor, its agents, servants, employees or subcontractors for any claim which may arise out of its performance of the Contract; and
 - c) the provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in the Contract, nor shall they be construed to relieve the Contractor from any liability, nor preclude the State or Agency from taking any other actions available to it under any other provisions of the Contract or otherwise at law or equity.
- I. **INSURANCE:** The Contractor shall procure and maintain at its own expense, until at least two years after the completion of all work performed under the Contract, extensions and/or modifications thereto, liability insurance for damages imposed by law and assumed under the Contract, of the kinds and in the amounts hereinafter provided, from insurance companies admitted or approved to do business in the State of New Jersey. By submitting a proposal in response to the Agency Request, the Contractor expressly agrees that any insurance protection required herein or by the Contract shall in no way limit the Contractor's obligations assumed in the Contract and shall not be construed to relieve the Contractor from liability in excess of such coverage nor shall it preclude the State from taking such other actions as are available to it under other provisions of the Contract or otherwise in law or equity.
- 1) The insurance to be provided by the contractor shall be as follows:
 - a. a Commercial General Liability policy as broad as the standard coverage forms in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breadth of coverage.

The limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit.
 - b. Automobile liability insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit.

- c. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than

\$1,000,000 BODILY INJURY, EACH OCCURRENCE
\$1,000,000 DISEASE EACH EMPLOYEE
\$1,000,000 DISEASE AGGREGATE LIMIT

- d) Professional Liability Insurance: When it is common to the Contractor's profession to do so, the Contractor shall carry Errors and Omissions, Professional Liability Insurance and/or Professional Liability Malpractice Insurance sufficient to protect the Contractor from any liability arising out the professional obligations performed pursuant to the requirements of the Contract. The insurance shall be in the amount of not less than \$5,000,000 and in such policy forms as shall be approved by the State. If the Contractor has claims-made coverage and subsequently changes carriers during the term of the Contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.
- 2) The Contractor shall, prior to commencement of the work required under the Contract, provide the Director with a valid original Certificates of Insurance (and a copy thereof to the Agency) as evidence of the Contractor's insurance coverage in accordance with the foregoing provisions. Such certificates of insurance shall specify that the insurance provided is of the types and is in the amounts required in 1(a), (b), (c) and (d) above.

The certificates shall provide for thirty (30) days written notice to the Director and Agency prior to any cancellation, expiration or non-renewal of insurance during the term required in the Contract, extensions and/or modifications thereto. The Contractor shall further be required to provide the Director with valid original certificates of renewal of the insurance (and a copy thereof to the Agency) upon the expiration of the policies. The Contractor shall also, upon request, promptly provide the Division and/or Agency with copies of each policy required under these Standard Terms and Conditions and the Contract, certified by the agent or underwriter to be true copies of the policies provided to the Contractor. All certificates and copies of insurance policies shall be forwarded to the State's address as listed herein.

In the event that the Contractor provides evidence of insurance in the form of certificates of insurance valid for a period of time less than the period during which the Contractor is required by the terms of these Standard Terms and Conditions and the Contract to maintain insurance, i.e. two (2) years after the expiration of the Contract, said certificates shall be acceptable, but the vender shall be obligated to renew its insurance policies as necessary and to provide new certificates of insurance from time to time, so that the Agency is continuously in possession of evidence of the Contractor's insurance in accordance with the foregoing provisions.

In the event the Contractor fails or refuses to renew any of its insurance policies as necessary, or any policy is canceled, terminated or modified so that the insurance does not meet the requirements of these Standard Terms and Conditions or the Contract, the State and/or Agency may refuse to make payment of any further amounts due under the Contract or refuse to make payments due or coming due under other agreements between the Contractor and the State. The State, in its sole discretion, may use funds retained under this paragraph to renew the Contractor's insurance for the periods and amounts referred to above. During any period when the required insurance is not in effect, the Director may, at the Director's option, either suspend work under the Contract or proceed to default the Contractor and thereby rescind the contract award.

- J. **AVAILABILITY OF RECORDS:** The Contractor shall maintain and retain weekly payroll, overhead, cost and accounting records and all other records related to the services performed on the Project, including expenses pertaining to additional services required by the State on the Project. Such records shall be maintained and available for the State's and/or Agency's inspection as to all aspects of the work, whether performed by the Contractor or any independent firms. These records shall be kept in accordance with generally accepted accounting principles and practices for a period of three (3) fiscal years after the expiration of the State's fiscal year in which the Contract expires or in which final payment is received by the Contractor under the Contract, whichever occurs later. (The State's fiscal year is from July 1 through June 30). The Director has the right to request, and Contractor agrees to furnish free of charge, all information and copies of all records which the Director requests. The Contractor shall allow the Director and/or Agency to visit the office(s) of the Contractor periodically, upon reasonable notice, in order to review any document related to the Contract or to otherwise monitor work being performed by the Contractor pursuant to the Contract. Any failure by the Contractor to maintain or produce such records or to otherwise cooperate with the Director and/or Agency may be, at the Director's discretion, cause for rescission of the contract award and/or suspension or debarment of the Contractor from State contracts.

- K. **DATA CONFIDENTIALITY:** All data contained in documents supplied by the State or Agency after the award of the Contract, any data gathered by the Contractor in fulfillment of the Contract and any analysis thereof (whether in fulfillment of the Contract or not) are to be considered confidential and shall be solely for the use of the provider of the information. The Contractor is required to use reasonable care to protect the confidentiality of the data including, but not limited to, requiring incorporation of this term into its contract with its subcontractor(s), if any. Any use, sale or offering of this data in any form by the Contractor, its employees, subcontractors or assignees will be considered a violation of this contract and will cause the infraction to be reported to the State Attorney General for possible prosecution. Penalties for violations of such guarantees include, but are not limited to, rescission of the contract award and/or legal action without the State being liable for damages, costs and/or attorney fees. The Contractor shall be liable for any and all damages arising from its breach of this confidentiality provision.
- L. **NO WAIVER OF WARRANTIES OR REMEDIES AT LAW OR EQUITY:** Nothing in the Contract shall be construed to be a waiver by the State or Agency of any warranty, expressed or implied, except as specifically and expressly stated in a writing executed by the Director. Further, nothing in the Contract shall be construed to be a waiver by the State or Agency of any remedy available to the State or Agency under the Contract, at law or equity except as specifically and expressly stated in a writing executed by the Director.
- M. **OWNERSHIP OF MATERIAL:** All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the contract, including but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the services required under this contract shall be and remain the property of the State of New Jersey and shall be delivered to the State of New Jersey upon 30 days notice by the State. With respect to software computer programs and/or source codes developed for the State, the work shall be considered "work for hire", i.e. the State, not the contractor or subcontractor, shall have full and complete ownership of all software computer programs and/or source codes developed. To the extent that any of such materials may not, by operation of law, be a work made for hire in accordance with the terms of this Agreement, contractor or subcontractor hereby assigns to the State all right, title and interest in and to any copyright, and the State shall have the right to obtain and hold in its own name any copyrights, registrations and any other proprietary rights that may be available.
- N. **PUBLICITY:** Publicity and/or public announcements pertaining to the project shall be approved by the Agency prior to release.

IV. **CONTRACTUAL RELATIONSHIP:**

- A. **ASSIGNMENT:** The Contractor shall not assign or transfer its obligations or rights under the Contract without the prior written consent of the Director. Any assignment or transfer of the Contractor's rights under the Contract without the prior written consent of the Director shall not relieve the Contractor of any duty, obligation or liability assumed by it under the Contract and shall be cause for rescission of the contract award.
- B. **MERGERS, ACQUISITIONS AND DISSOLUTION:**
- 1) Merger or Acquisition: If, subsequent to the award of any contract resulting from the Agency Request, the Contractor shall merge with or be acquired by another firm, for purposes of this contract only, the documents set forth below must be submitted to the Director for approval within thirty (30) days of completion of the merger or acquisition. Failure to do so may result in rescission of the contract award for cause. Any such merger or acquisition will require the assignment of the Contract pursuant to the provisions related thereto set forth herein.
 - a) Corporate resolutions prepared by the awarded Contractor and new entity ratifying acceptance of the Contract terms, conditions and prices, as may be amended.
 - b) State of New Jersey Bidders Application reflecting all updated information including ownership disclosure, pursuant to the provisions contained herein.
 - c) Vendor Federal Employer Identification Number.
 - d) Ownership Disclosure: Within thirty (30) days after any merger or acquisition, the Contractor must disclose the names and addresses of all of its owners and potential owners which hold or may acquire 10% or more of its stock or interest. The Contractor has the continuing obligation to notify the Division of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed. Compliance with this provision does not give rise to any rights to the Contract to the acquirer or resulting entity (in the case of a merger) without the written consent of the Director.

- 2) **Dissolution:** If, during the term of the Contract, the Contractor's partnership, joint venture or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved partnership or corporation must submit to the Director, in writing, the names of the parties proposed to perform the contract and the names of the parties to whom payment should be made. No payment will be made until all parties to the dissolved partnership, joint venture or corporation submit the required documents to the Director. If the Contractor is (1) a corporation, it must provide a copy of the corporate resolution to dissolve; (2) a partnership, the written statement of the partnership, general partner, receiver or custodian thereof that the partnership has dissolved; and (3) a joint venture, the written agreement of the principal parties thereto to dissolve the joint venture.

- C. **NOTICE:** The Contractor shall promptly provide notice to the Director and Agency of all information related to its merger, acquisition and/or dissolution.

V. **ADDITIONAL TERMS:**

- A. **CONTRACT AMOUNT:** The estimated amount of the contract(s), when stated in the Agency Request, shall not be construed as either the maximum or minimum amount which the State and/or the Agency shall be obligated to order or expend as the result of the Agency Request or any contract entered into as a result of the Agency Request.

- B. **PERFORMANCE SECURITY:**

- 1) **Performance Security:** If performance security is required in the Agency Request, the successful bidder shall furnish performance security in such amount on any award of the Contract or line item purchase. See, N.J.A.C. 17:12-2.5. Acceptable forms of performance security are as follows:
 - a) an irrevocable security in the amount listed in the Agency Request payable to the Treasurer, State of New Jersey, binding the Contractor to provide faithful performance of the Contract; and
 - b) a properly executed individual or annual performance bond issued by an insurance or security company authorized to do business in the State of New Jersey, a certified or cashier's check drawn to the order of the Treasurer, State of New Jersey, or an irrevocable letter of credit drawn naming the Treasurer, State of New Jersey, as beneficiary issued by a federally insured financial institution.
 - c) the amount of the performance security will be stated on the cover sheet to the Agency Request. If the requirement for performance security is expressed as a percentage, security will be required only if the total amount of the Contract exceeds \$250,000.

The Performance Security must be submitted to the Director within thirty (30) days of the effective date of the contract award and cover the period of the Contract and any extensions thereof. Failure to submit performance security may result in rescission of the contract award for cause and nonpayment for work performed.

- C. **TIME PERIODS:** The Director may extend or shorten any time period specified in the Contract for good cause. Moreover, when, in the discretion of the Director, non-performance by the Contractor may affect the health, safety or welfare of the State, the Director may dispense with any time period specified Paragraph VII B herein.
- D. **TAX CHARGES:** The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

- VI. **MANDATORY COMPLIANCE WITH LAW:** The Contractor's compliance with the legal requirements set forth in this paragraph as well as any other applicable laws, regulations or codes is mandatory and cannot be waived by the State, the Director, the Division or the Agency. The list of laws, regulations and/or codes cited herein is not intended to be an exhaustive list and is available for review at the State Library, 185 W. State Street, Trenton, New Jersey 08625.

A. **BUSINESS REGISTRATION:**

- 1) All New Jersey and out of State Corporations must obtain a Business Registration Certificate (BRC) from the Department of the Treasury, Division of Revenue prior to conducting business in the State of New Jersey.
- 2) Proof of valid business registration with the Division of Revenue, Department of the Treasury, State of New Jersey, shall be submitted by the bidder and, if applicable, by every subcontractor of the bidder, with the bidder's bid. No contract will be awarded without proof of business registration with the Division of Revenue. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG. can be filed online at www.state.nj.us/njbgs/services.html
- 3) Before performing work under the contract, all sub-contractors of the contractor must provide to the contractor proof of New Jersey business registration. The contractor shall forward the business registration documents on to the using agency.

B. **AFFIRMATIVE ACTION:** The Contractor shall not discriminate in employment and agree to abide by all antidiscrimination laws including those contained within N.J.S.A. 10:2-1 thorough N.J.S.A. 10:2-4, inclusive, N.J.S.A. 10:5-1, et seq., and N.J.S.A. 10:5-38 and all rules and regulations issued thereunder as set forth in the attached Supplement to Bid Specifications.

C. **AMERICANS WITH DISABILITIES ACT:** The Contractor shall abide by the provisions of the Americans With Disabilities Act, 42 U.S.C. §12101, et seq.

D. **PREVAILING WAGE ACT** - The New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.26 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The bidder's signature on this proposal is his guarantee that neither he nor any subcontractors he might employ to perform the work covered by this proposal has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder's signature on the proposal is also his guarantee that he and any subcontractors he might employ to perform the work covered by this proposal will comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

- 1) **PUBLIC WORKS CONTRACTOR REGISTRATION ACT** - The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractors who bid on or engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464 or <http://www.nj.gov/labor/lsse/lspubcon.html>.

E. **OWNERSHIP DISCLOSURE:** Pursuant to N.J.S.A. 52:25-24.2, contracts for any work, goods or services cannot be issued to any corporation or partnership unless prior to or at the time of the bid submission, the bidder disclosed the names and addresses of all of its owners holding 10% or more of the corporation or partnership's stock or interest during the term of the Contract. The Contractor has the continuing obligation to notify the Division of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed.

F. **BIDDER'S WARRANTY:** By submitting a proposal in response to the Agency Request, the bidder warrants and represents that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. The penalty for breach or violation of this provision may result in rescission of the contract award without the State being liable for damages, costs and/or attorney fees or, in the Director's discretion, a deduction from the Contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

G. **MACBRIDE PRINCIPLES:** The Contractor shall comply with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:34-12.2.

H. **CODES:** The Contractor shall comply with the requirements of the New Jersey Uniform Commercial Code, the latest National Electrical Code, Building Officials & Code Administrators International, Inc. (B.O.C.A.) Basic Building Code and Occupational Safety and Health Administration to the extent applicable to the Contract.

- I. **P.L. 2004, C.57.** The contractors and its subcontractors must comply with P.L. 2004, C.57, which requires the contractor and its subcontractors to collect and remit applicable State use tax to the New Jersey Division of Taxation on the sale of all goods and services in the State of New Jersey subject to the provisions of the "Sales and Use Tax Act," P.L. 1966, C.30 (N.J.S.A. 54:32B-1 et seq.).
- J. **COMPLIANCE WITH NJSA 19:44A-20.13 ET SEQ.** All contractors are required to comply with the "pay to play" disclosure requirements set forth in the statutes. Compliance requires the contractor to submit the Executive Order 134 Certification and Disclosure (DPP134-C & D). In addition, the contractor is under a continuing duty to disclose during the time of the contract all contributions made during the term of the contract covered under the statute. Towards satisfying that duty, the contractor shall submit the Continuing Disclosure of Political Contributions (DPP134-CD) when required under the statute. Failure to comply with any of the requirements of the statute may result in the termination of the contract. All forms and instructions are available on the Division of Purchase and Property web-site: <http://www.state.nj.us/treasury/purchase/forms.htm>.
- K. **COMPLIANCE WITH REQUIREMENTS OF NJSA 52:34-13.2.**
- 1) NJSA 52:34-13.2 requires that all contracts that are "primarily for the performance of services" shall be performed within the United States. This provision applies to all contractors and sub-contractors performing such contracts for the State. This provision is not applicable to a contract that is "primarily for the performance of services" if:
 - a) the Director, Division of Purchase and Property or the Director, Division of Property Management and Construction certifies in writing a finding that a service is required by the Executive Branch of the State and that the service cannot be provided by a contractor or sub-contractor within the United States and the certification is approved by the State Treasurer; or
 - b) the Director, Division of Purchase and Property, or the Director, Division of Property Management and Construction, certifies in writing that the inclusion of the provision set forth within the statute for a contract would violate the terms, conditions, or limitations of any grant, funding or financial assistance from the federal government or any agency thereof, and the certification is approved by the appropriate approval officer.
 - 2) **SOURCE DISCLOSURE REQUIREMENTS**
 Pursuant to NJSA 52:34-13.2, all vendors seeking a contract with the State of New Jersey must disclose:
 - a) The location by country where services under the contract will be performed; and
 - b) The location by country where any subcontracted services will be performed.

Accordingly, the vendor should submit the Source Disclosure Certification Form filled out with the sourcing information required for it and any proposed subcontractor under the contract with the State. If the information is not submitted with the vendor's proposal, it shall be submitted within five (5) business days of the State's request for the information.

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

- 3) **BREACH OF CONTRACT**

A SHIFT TO OUTSOURCED SERVICES DURING THE TERM OF THE CONTRACT SHALL BE DEEMED A BREACH OF THE CONTRACT.

If, during the term of the contract, the contractor or subcontractor, who had on contract award declared that services would be performed in the United States, proceeds to shift the performance of the services outside of the United States, the contractor shall be deemed in breach of the contract, which contract shall be subject to termination for cause pursuant to Section VII B (3) (c). of the Waivered Contracts Standard Terms and Conditions, unless the Director shall have first determined in writing that the service can not be performed in the United States.

- L. **SET-OFF FOR STATE TAXES AND CHILD SUPPORT:** Pursuant to N.J.S.A. 54:49-19, if the Contractor is entitled to payment under the Contract at the same time as it is indebted for any State tax (or is otherwise indebted to the State) or child support, the State Treasurer may set off that payment by the amount of the indebtedness.
- M. **STANDARDS PROHIBITING CONFLICTS OF INTEREST:** The following prohibitions on vendor activities shall apply to all contracts and purchase agreements made with the State or Agencies:
- 1) No Contractor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such Contractor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i of any such officer or employee, or partnership, firm or corporation with which they are employed or associated or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
 - 2) The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.
 - 3) No Contractor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Contractor to, any State officer or employee or special State officer or employee or having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding the present or proposed relationship does not present the potential, actual or appearance, of a conflict of interest.
 - 4) No Contractor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
 - 5) No Contractor shall cause or influence, or attempt to cause or influence, any State officer or employees or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
 - 6) The provisions cited in this paragraph shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with the Contractor under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines in the Executive Commission on Ethical Standards may promulgate under the provisions contained herein.
- N. **SUBCONTRACTORS:** A vendor that will subcontract any of the work or services to be provided under the contract shall submit with its proposal to the agency a **Notice of Intent to Subcontract** form located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/forms/SubContracting.pdf>
- O. **P.L. 2005, C 271.** Contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to P.L. 2005, c. 271, section 3 if the contractor receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the contractor's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elect.state.nj.us/

VII. PROJECT SUSPENSION AND RESCISSION OF THE CONTRACT AWARD:

- A. **SUSPENSION OF PROJECT:** If, for any reason, the project for which the Contractor's services were contracted should be suspended, the Director may suspend this contract upon seven (7) days written notice to the Contractor. Upon receipt of such notice, unless otherwise directed in writing by the Director, the Contractor shall immediately discontinue all work under the Contract. Upon such notification the Contractor shall be paid a proportion of the fee which the services actually and satisfactorily performed by it shall bear to the total services completed under the Contract, less payments previously made. The State may order that the work on the project be stopped temporarily, and upon seven (7) days written notice from the Director, the Contractor shall cease all work on the project except as necessary to properly secure the project. If the State directs that the work on the project resume within six (6) months, the Contractor shall be obliged to complete the project for the basic fee provided for in this contract, plus additional compensation for any work necessitated by the stop order as approved by the Director in writing.

However, in the event that services are scheduled to end either by contract expiration or by rescission of the contract award by the Director (at the State's discretion), it shall be incumbent upon the Contractor to continue the service if requested by the Director to do so, until new services, if any, are completely operational. At no time shall this transitional period extend more than ninety (90) days beyond the expiration or rescission date of the existing contract, except by agreement of the parties. The Contractor will be reimbursed for this service at the rate in effect when this transitional period clause is invoked by the Director.

- B. **RESCISSION OF THE CONTRACT AWARD:** The Director may rescind the contract award at any time during the duration of the Contract, without penalty, subject to the following provisions:
- 1) For Convenience: Notwithstanding any provision or language in this contract to the contrary, the Director may terminate at any time, in whole or in part, any contract entered into as a result of this Agency Request for the convenience of the State, upon no less than 30 days written notice to the contractor.
 - 2) For Cause:
 - a) Where a Contractor fails to perform or comply with the Contract and/or fails to comply with the complaints procedure set forth in N.J.A.C. 17:12-4.1, et seq., the Director may rescind the contract award upon ten (10) days notice to the Contractor with an opportunity to protest said rescission and/or request an informal hearing. If the Contractor protests, the Director will complete the informal hearing, if necessary, and issue a final agency decision regarding rescission of the contract.
 - b) Where a Contractor continues to perform a contract poorly as demonstrated by one or more formal complaints resolved against it, the Director, or the Director's designee, may issue a Notice of Intent to Rescind the Contract Award with a ten (10) day opportunity for the Contractor to protest such rescission and/or request an informal hearing. If the Contractor protests, the Director will complete the hearing, if necessary, and issue a final agency decision regarding rescission and related issues including, but not limited to, damages payable to the State, subject to Paragraph VII B(5).
 - c) The Director's right to rescind the contract award for cause includes any reason set forth in any other provision contained in the Contract.
 - d) The failure of a Contractor to respond to the Director's notice of intent to rescind the contract award within the ten (10) day period automatically converts said notice into a final agency decision without further action of the Director.
 - e) The Director's right to rescind the contract award for cause includes the Contractor's performance on any other State contract, a violation of state or federal law (as demonstrated by the Contractor's admissions of same or a final decision of an appropriate decision-making body), or any reason related to the ability of the contractor to fulfill its contractual obligations. The Director may also rescind any contract with a federally debarred contractor or a contractor which is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.
 - 3) In cases of emergency, the Director may shorten the time periods of notification and may dispense with an opportunity to respond.
 - 4) Upon a rescission of the contract award under this or any other paragraph herein, the Contractor shall be entitled to receive as full compensation for services rendered to the date of rescission that portion of the fee which the services actually and satisfactorily performed by it, as determined by the Director, shall bear to the total services contemplated under this contract, less payments previously made.

- 5) Except for termination of the contract by the Director for convenience, upon rescission of the contract award, the Director may acquire the services which are the subject of the Contract from another source and may charge the Contractor whose contract award has been rescinded the difference in price, and the said Contractor shall be liable for same.
- 6) All protests of the Director's intent to rescind a contract award must be accompanied by a statement of the factual and/or legal basis of the protest and copies of all documents which the Contractor believes support its position.
- 7) If Director determines that an informal hearing is required, said informal hearing shall be conducted by the Director, or the designee thereof, prior to the issuance of the final agency decision regarding the interpretation of the Contract, Contractor performance and/or rescission of the contract award.

VIII. CONTRACTOR COMPENSATION:

- A. **PAYMENT TO CONTRACTOR:** The Contractor is authorized to submit invoices monthly for tasks and/or sub-tasks satisfactorily completed. However, payment for goods and/or services purchased by the State or Agency will only be made against Official New Jersey Payment Voucher along with supporting documentation substantiating that the work has been satisfactorily completed. Invoices must reference the tasks and/or sub-tasks detailed in the scope of work and must be in strict accordance with the firm fixed prices submitted for each task and/or sub-task of the Contract and shall otherwise be in accordance with the terms of the Contract. The State bill form in duplicate together with the original Bill of Lading, express receipt or other related papers must be sent to the consignee on the date of each delivery. Responsibility for payment rests with the Agency. Notwithstanding Section VIII B, payment will not be made until the Agency has approved payment.
- B. **NEW JERSEY PROMPT PAYMENT ACT:** The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32, et seq. requires State agencies to pay for goods and services within sixty (60) days of the Agency's receipt of a properly executed New Jersey Payment Voucher or within sixty (60) days of receipt and acceptance of goods and services, which ever is later. Properly executed performance security, when required, must be received by the Division prior to processing any payments for goods and services accepted by the State and/or the Agency. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest will not be paid unless it exceeds \$5.00 per properly executed invoice. A good faith dispute creates an exception to the Prompt Payment Act. Except as noted above, cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.
- C. **AVAILABILITY OF FUNDS:** The State's obligation to make payment under the Contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are made available each fiscal year to the using agency by the State Legislature.
- D. **RETAINAGE:** If retainage is required on the Contract, the State and/or Agency will retain the stated percentage or retainage from each invoice. Payment of retainage will be authorized after satisfactory completion and submission of all services, deliverables or work products by the Contractor and acceptance by the Agency of all services, deliverables or work products required by the Contract.

For ongoing term contracts, the Agency will retain the stated percentage of each invoice submitted. At the end of the three (3) month period after payment of each invoice, the Agency will review the Contractor's performance and if performance has been satisfactory, the Agency will release the retainage for the preceding three (3) month period. Following the expiration of the Contract, retained fees will be released to the Contractor after certification by the Agency's project manager, if any, that all services have been satisfactorily performed.

- IX. **NOTICES:** All notices required under this contract shall be in writing and shall be validly and sufficiently served by the Agency and/or Division upon the Contractor, and vice versa, if addressed and mailed by certified mail to the addresses set forth in the Contract.
- X. **CLAIMS:** The following shall govern claims made by the Contractor against the State concerning interpretation of the Contract, Contractor performance and/or rescission of the contract award:

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

XI. **APPLICABLE LAW:** This agreement and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles.

I HEREBY ACCEPT THE TERMS AND
CONDITIONS OF THIS AGREEMENT

NAME Matthew (Cohen ES)

TITLE Member

COMPANY NAME TWO RIVERS TITLE

DATE 10-4-13

SOURCE DISCLOSURE CERTIFICATION FORM

Contractor: Two Rivers Title Co, LLC Solicitation Number: _____

I hereby certify and say:

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

The Contractor submits this Certification in response to the referenced contract issued by the Division of Purchase and Property, Department of the Treasury, State of New Jersey (the "Division"), in accordance with the requirements of N.J.S.A. 52:34-13.2.

Instructions:

List every location where services will be performed by the Contractor and all Subcontractors. If any of the services cannot be performed within the United States, the Contractor shall state, with specificity the reasons why the services cannot be so performed. Attach additional pages if necessary.

Contractor and/or Subcontractor	Description of Services	Performance Location[s] by Country	Reasons why services cannot be performed in US
<u>Two Rivers Title Co</u>	<u>title Examinations/Polices</u>	<u>NJ / USA</u>	<u>N/A</u>
<u>Independent Search</u>	<u>county searches</u>	<u>NJ / USA</u>	↓
<u>Signature Infranch Solutions</u>	<u>Tax / Upper Courts / UCC</u>	<u>NJ / USA</u>	
<u>Revision Abstract</u>	<u>Tax / Assess and County searches / UCC</u>	<u>NJ / USA</u>	
<u>Greater Atlantic Legal</u>	<u>Chancery Abstract</u>	<u>NJ / USA</u>	

Any changes to the information set forth in this Certification during the term of any contract awarded under the referenced solicitation or extension thereof will be immediately reported by the Vendor to the Director, Division of Purchase and Property (the "Director").

The Director shall determine whether sufficient justification has been provided by the Contractor to form the basis of his certification that the services cannot be performed in the United States and whether to seek the approval of the Treasurer.

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

I further understand that this Certification is submitted on behalf of the Contractor in order to induce the Division to accept a bid proposal, with knowledge that the Division is relying upon the truth of the statements contained herein.

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

Contractor: TWO RIVERS TITLE
 [Name of Organization or Entity]

By: [Signature] Title: MEMBER

Print Name: MATTHEW A. COHEN Date: 10-9-13