



# Bid Solicitation # 20DPP00556

**For: T3118 – Emergency Winter Season Towing Services – NJDOT**

Event	Date	Time
<b>Vendor's {Bidder's} Electronic Question Due Date</b> (Refer to Bid Solicitation <a href="#">Section 1.3.1</a> for more information.)	1/15/21	2:00 PM
<b>Optional Pre-Quote Submission Conference</b> (Refer to Bid Solicitation <a href="#">Section 1.3.5</a> for more information.)	1/8/21	10:00 AM
<b>Mandatory/Optional Site Visit</b> (Refer to Bid Solicitation <a href="#">Section 1.3.4</a> for more information.)	N/A	N/A
<b>Quote Submission Date</b> (Refer to Bid Solicitation <a href="#">Section 1.3.2</a> for more information.)	2/5/21	2:00 PM

Dates are subject to change. All times contained in the Bid Solicitation refer to Eastern Time. All changes will be reflected in Bid Amendments to the Bid Solicitation posted on [www.njstart.gov](http://www.njstart.gov).

<input type="checkbox"/> <b>Small Business Set-Aside Category</b> <b>For Goods and Services:</b> <input type="checkbox"/> I <input type="checkbox"/> II <input type="checkbox"/> III <b>For Construction:</b> <input type="checkbox"/> IV <input type="checkbox"/> V <input type="checkbox"/> VI  <input type="checkbox"/> <b>Disabled Veteran-Owned Business Set-Aside</b>	<b>Status</b>  <input checked="" type="checkbox"/> Not Applicable  <input type="checkbox"/> Entire Blanket P.O.  <input type="checkbox"/> Partial Blanket P.O.  <input type="checkbox"/> Subcontracting Only
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Bid Solicitation Issued By:  
 State of New Jersey  
 Department of the Treasury  
 Division of Purchase and Property  
 Trenton, New Jersey 08625-0230

Using Agency/Agencies:  
 State of New Jersey  
 New Jersey Department of Transportation

Date: 12/22/20

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**Bid-Specific Documents/Attachments/Appendices:**

- State-Supplied Price Sheet
- Bid Solicitation Checklist;
- Offer & Acceptance Page;
- Ownership Disclosure Form;
- Disclosure of Investment Activities in Iran Form;
- Subcontractor Utilization Form;
- Disclosure of Investigations and Other Actions Involving the Vendor Form;
- Source Disclosure Form;
- Attachment #1 – Experience of Vendor {Bidder}; and
- Optional Pre-Quote Conference PowerPoint Presentation.

## **1.0 INFORMATION FOR VENDORS {BIDDERS}**

**NOTICE:** This Bid Solicitation is part of the **NJSTART** Procurement Program. ***The Vendor {Bidder} is advised to thoroughly read all sections, as many have been revised, and follow all instructions contained in this Bid Solicitation, including the instructions on the Bid Solicitation's Offer and Acceptance Page*** and read through all Quick Reference Guides (QRGs) located on the [NJSTART Vendor Support Page](#), before preparing and submitting its Quote.

### **1.1 PURPOSE AND INTENT**

This Bid Solicitation is issued by the Procurement Bureau, Division of Purchase and Property (Division), Department of the Treasury on behalf of the New Jersey Department of Transportation (NJDOT). The purpose of this Bid Solicitation is to solicit Quotes for emergency towing and roadside services at all locations identified on the State-Supplied Price Sheet during the Winter Season, from October 1<sup>st</sup> through April 30<sup>th</sup>. This Bid Solicitation consists of 38 Deploy to Sites, Snow Incline Task Forces, and Roving Operations with specified milepost coverage areas.

The Vendor {Contractor} shall be responsible for all services relating to the requirements of this Bid Solicitation. These services shall be on an **as needed** basis, and **there is no guaranteed minimum or maximum work provided under this Bid Solicitation.**

The intent of this Bid Solicitation is to award Master Blanket Purchase Orders (Blanket P.O.s) to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. The State may award any and all price lines. The State, however, reserves the right to separately procure individual requirements that are the subject of the Blanket P.O. during the Blanket P.O. term, when deemed by the Director of the Division of Purchase and Property (Director) to be in the State's best interest.

Quotes will be evaluated in accordance with Bid Solicitation Section 6.7, *Evaluation Criteria*. Each price line will be awarded to one (1) responsive Vendor {Bidder}.

The services provided by the Blanket P.O.s resulting from this Bid Solicitation will take effect for the 2021-2022 Winter Season. Vendors {Bidders} shall note that all pricing submitted must be held firm, regardless of the effective date of the Blanket P.O. awards.

The State of NJ Standard Terms and Conditions (SSTCs) accompanying this Bid Solicitation will apply to all Blanket P.O.s made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in this Bid Solicitation and should be read in conjunction with them unless the Bid Solicitation specifically indicates otherwise.

The State of New Jersey (State) may extend the Blanket P.O.(s) awarded to the Division's Cooperative Purchasing Program participants after Blanket P.O.(s) award. In that circumstance, the State will request that the Vendor(s) {Contractor(s)} complete the Cooperative Purchasing Form indicating willingness or unwillingness to extend State Blanket P.O. pricing and terms to Cooperative Purchasing Program participants. The Cooperative Purchasing Form is located on the [Division's website](#). These participants include quasi-State entities, counties, municipalities, school districts, volunteer fire departments, first aid squads, independent institutions of higher learning, County colleges and State colleges. Although the State, with the consent of the Vendor(s) {Contractor(s)}, may make use of any Blanket P.O. resulting from this Bid Solicitation available to non-State Agencies, the State makes no representation as to the acceptability of any State Bid Solicitation terms and conditions under the Local Public Contracts Law or any other enabling statute or regulation.

## **1.2 BACKGROUND**

This Bid Solicitation shall provide the NJDOT and the New Jersey State Police (NJSP) the necessary support to have vehicles blocking NJDOT roadways relocated to a safe location, by being towed off State maintained highways and roads. New Jersey State law (N.J.S.A. App.A:9-37) allows the Governor to declare a State of Emergency during significant weather events and natural disasters, which allows State agencies to quickly respond to the needs of citizens by reassigning personnel, and deploying vehicles, trucks, and equipment to adequately respond to the incident. A State of Emergency allows the government to act more quickly than it can during non-emergency times.

## **1.3 KEY EVENTS**

### **1.3.1 ELECTRONIC QUESTION AND ANSWER PERIOD**

The Division will electronically accept questions and inquiries from all potential Vendors {Bidders} via the “Q&A” Tab of the Bid Solicitation in [NJSTART](#).

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

Vendors {Bidders} may refer to the QRG “Submit a Quote” for additional instruction. QRGs are located on the [NJSTART Vendor Support Page](#).

A Vendor {Bidder} shall not contact the Using Agency and/or the Procurement Specialist directly, in person, by telephone or by email, concerning this Bid Solicitation, prior to the final award of the Blanket P.O.

The cut-off date for electronic questions and inquiries relating to this Bid Solicitation is indicated on the Bid Solicitation cover sheet. In the event that questions are posed by Vendors {Bidders}, answers to such questions will be issued by Bid Amendment. Any Bid Amendment to this Bid Solicitation will become part of this Bid Solicitation and part of any Blanket P.O. awarded as a result of this Bid Solicitation. Bid Amendments {Addenda} to this Bid Solicitation, if any, will be posted as a File Attachment on the “Summary” page of the Bid Solicitation in [NJSTART](#) after the cut-off date. (See Bid Solicitation Section 1.4.1 for further information.)

#### **1.3.1.1 EXCEPTIONS TO THE STATE OF NJ STANDARD TERMS AND CONDITIONS (SSTC)**

**Questions regarding the State of New Jersey Standard Terms and Conditions (SSTC) and exceptions to mandatory requirements must be posed during this Electronic Question and Answer period and shall contain the Vendor’s {Bidder’s} suggested changes and the reason(s) for the suggested changes.**

#### **1.3.2 SUBMISSION OF QUOTES**

In order to be considered for award, the Quote must be received by the Procurement Bureau of the Division at the appropriate location by the required time. Vendors {Bidders} shall submit a Quote electronically through [NJSTART](#).

**THE DATE AND TIME OF THE QUOTE OPENING ARE INDICATED ON THE BID SOLICITATION COVER SHEET AND ON THE “SUMMARY” TAB OF THE BID SOLICITATION WEBPAGE WITHIN [NJSTART](#).**



QUOTES WILL BE PUBLICLY OPENED AND ANNOUNCED BY TELEPHONE CONFERENCE ON THE DATE AND TIME OF THE QUOTE OPENING.

(DIAL-IN PHONE NUMBER: 888-204-5984 / ACCESS CODE: 2602305).

IF THE QUOTE OPENING DEADLINE HAS BEEN REVISED, THE NEW QUOTE OPENING DEADLINE SHALL BE SHOWN ON THE POSTED BID AMENDMENT AND ON THE "SUMMARY" TAB OF THE BID SOLICITATION WEBPAGE WITHIN [NJSTART](#).

QUOTES NOT RECEIVED BY THE QUOTE OPENING DEADLINE SHALL BE REJECTED.

### **1.3.3 VENDOR {BIDDER} SUPPORT**

Vendors {Bidders} are strongly encouraged to visit the [NJSTART Vendor Support Page](#), which contains Quick Reference Guides (QRGs), supporting videos, a glossary of [NJSTART](#) terms, and helpdesk contact information.

The Vendor {Bidder} should utilize the QRGs before attempting to submit its Quote using the [NJSTART](#) process. It is the Vendor's {Bidder's} responsibility to ensure that the [NJSTART](#) Quote and attachments have been properly submitted.

Inquiries concerning the use of [NJSTART](#) may be directed to [njstart@treas.nj.gov](mailto:njstart@treas.nj.gov).

The Division will not respond to substantive questions related to the Bid Solicitation or any other Blanket P.O. via this email address. For inquiries related to substantive questions refer to Section 1.3.1 (Electronic Question and Answer Period).

### **1.3.4 MANDATORY/OPTIONAL SITE VISIT**

Not applicable to this procurement.

### **1.3.5 OPTIONAL PRE-QUOTE CONFERENCE**

The date and time of the Optional Pre-Quote Conference is indicated on the Bid Solicitation cover sheet. The Optional Pre-Quote Conference will be conducted via telephone conference.

Attendees may attend the Optional Pre-Quote Conference with the following call-in details:

Dial-in Number: 888-204-5984  
Access code: 2602305

An attendee may represent only one (1) potential bidding entity.

The Optional Pre-Quote Conference may be recorded.

The purpose of the Optional Pre-Quote Conference is to address procedural questions regarding the Bid Solicitation and Vendor {Bidder} Quote Submission Requirements. No substantive questions regarding the Bid Solicitation Scope of work will be accepted or answered during the pre-Quote conference. All questions are to be submitted through the Questions and Answer period.

### **1.3.6 PRE-QUOTE DOCUMENT REVIEW**

Not applicable to this procurement.

## **1.4 ADDITIONAL INFORMATION**

### **1.4.1 BID AMENDMENTS: REVISIONS TO THIS BID SOLICITATION**

In the event that it becomes necessary to clarify or revise this Bid Solicitation, such clarification or revision will be by Bid Amendment. Any Bid Amendment to this Bid Solicitation will become part of this Bid Solicitation and part of any Blanket P.O. awarded as a result of this Bid Solicitation.

There are no designated dates for release of Bid Amendments. Those Vendors {Bidders} who are on the bid holder list either through commodity code registration in [NJSTART](#) or by acknowledging the bid in [NJSTART](#) should receive notification of any Bid Amendment(s). If a Vendor {Bidder} is not on the bid holder list to receive notifications related to a Bid Solicitation, Bid Amendments are still viewable on the “Summary” page of the Bid Solicitation in [NJSTART](#).

**BID AMENDMENTS WILL BE ISSUED AS FILE ATTACHMENTS, AND ARE VIEWABLE ON THE “SUMMARY” PAGE OF THE BID SOLICITATION IN [NJSTART](#).** Vendors {Bidders} may refer to the QRG “Submit a Quote” for additional instructions. QRGs are located on the [NJSTART Vendor Support Page](#).

It is the sole responsibility of the Vendor {Bidder} to be knowledgeable of all Bid Amendments related to this procurement. An interested Vendor {Bidder} should check the [NJSTART](#) “Open Bids” Tab on a daily basis to ensure review of the most updated information.

### **1.4.2 VENDOR {BIDDER} RESPONSIBILITY**

The Vendor {Bidder} assumes sole responsibility for the complete effort required in submitting a Quote in response to this Bid Solicitation. No special consideration will be given after Quotes are opened because of a Vendor’s {Bidder’s} failure to be knowledgeable as to all of the requirements of this Bid Solicitation.

### **1.4.3 COST LIABILITY**

The State assumes no responsibility and bears no liability for costs incurred by a Vendor {Bidder} in the preparation and submittal of a Quote in response to this Bid Solicitation.

### **1.4.4 CONTENTS OF QUOTE**

Quotes can be released to the public pursuant to N.J.A.C. 17:12-1.2(b) and (c), or under the New Jersey Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., or the common law right to know.

After the opening of sealed Quotes, all information submitted by a Vendor {Bidder} in response to a Bid Solicitation is considered public information notwithstanding any disclaimers to the contrary submitted by a Vendor {Bidder}. Proprietary, financial, security and confidential information may be exempt from public disclosure by OPRA and/or the common law when the Vendor {Bidder} has a good faith, legal/factual basis for such assertion.

When the Bid Solicitation contains a negotiation component, the Quote will not be subject to public disclosure until a notice of intent to award a Blanket P.O. is announced.

As part of its Quote, a Vendor {Bidder} may designate any data or materials it asserts are exempt from public disclosure under OPRA and/or the common law, explaining the basis for such assertion. Vendor {Bidder} must provide a detailed statement clearly identifying those sections of the Quote that it claims are exempt from production, and the legal and factual basis that supports said exemption(s) as a matter of law. The State will not honor any attempts by a Vendor {Bidder} to

designate its entire Quote as proprietary, confidential and/or to claim copyright protection for its entire Quote.

The State reserves the right to make the determination as to what is proprietary or confidential, and will advise the Vendor {Bidder} accordingly. Any proprietary and/or confidential information in a Quote will be redacted by the State. Copyright law does not prohibit access to a record which is otherwise available under OPRA.

In the event of any challenge to the Vendor's {Bidder's} assertion of confidentiality with which the State does not concur, the Vendor {Bidder} shall be solely responsible for defending its designation, but in doing so, all costs and expenses associated therewith shall be the responsibility of the Vendor {Bidder}. The State assumes no such responsibility or liability.

A Vendor {Bidder} shall not designate any price lists and/or catalogs submitted as exempt from public disclosure as the same must be accessible to State Using Agencies and Cooperative Purchasing Program participants (if the Bid Solicitation has been extended to these participants) and thus must be made public to allow all eligible purchasing entities access to the pricing information.

In order not to delay consideration of the Quote or the State's response to a request for documents, the State requires that Vendor {Bidder} respond to any request regarding confidentiality markings within the timeframe designated in the State's correspondence regarding confidentiality. If no response is received by the designated date and time, the State will be permitted to release a copy of the Quote with the State making the determination regarding what may be proprietary or confidential.

See Bid Solicitation Section 4.4.2.4 *Confidentiality/Commitment to Defend* for additional information.

#### **1.4.5 ANNOUNCEMENT OF QUOTE INFORMATION**

On the date and time Quotes are due under the Bid Solicitation, all information concerning the Quotes submitted may be publicly announced and shall be available for inspection and copying except as noted below:

- A. Information appropriately designated as proprietary and/or confidential shall not be available for inspection and copying; and
- B. Where negotiation is contemplated, only the names and addresses of the Vendors {Bidders} submitting Quotes will be announced, and the contents of the Quotes shall not be available for inspection and copying until the Notice of Intent to Award is issued by the Director.

#### **1.4.6 PRICE ALTERATION IN QUOTES**

Any price changes including hand written revisions or "white-outs" must be initialed. Failure to initial price changes shall preclude a Blanket P.O. award from being made to the Vendor {Bidder} pursuant to N.J.A.C. 17:12-2.2(a)(8).

#### **1.4.7 QUOTE ERRORS**

In accordance with N.J.A.C. 17:12-2.11 "Proposal errors," a Vendor {Bidder} may withdraw its Quote as described below.

##### **1.4.7.1 QUOTE WITHDRAWAL PRIOR TO QUOTE OPENING**

A Vendor {Bidder} may withdraw its Quote submission in **NJSTART** prior to the Quote opening; however, Vendors {Bidders} should note that while withdrawn **NJSTART** Quotes remain viewable

by the Vendor {Bidder} on its Vendor Profile Homepage, they are removed from the Division's view and cannot be considered for Blanket P.O. award. The Vendor {Bidder} may submit a revised Quote as long as the Quote is received prior to the announced date and time for Quote submission. Vendors {Bidders} may refer to the QRG "Submit a Quote" for additional instruction. QRGs are located on the [NJSTART Vendor Support Page](#).

#### **1.4.7.2 QUOTE WITHDRAWAL AFTER QUOTE OPENING, BUT PRIOR TO BLANKET P.O. AWARD**

If, after the Quote opening, but before Blanket P.O. award, a Vendor {Bidder} discovers an error in its Quote, the Vendor {Bidder} may make a written request to the Procurement Bureau to withdraw its Quote, or a portion thereof, from consideration for award. If the Vendor's {Bidder's} request to withdraw is made in good faith, and the State will not be significantly prejudiced by granting the withdrawal of the Quote beyond the loss of the benefit of the bargain to the State of the withdrawing Vendor's {Bidder's} offer, the request shall be granted. Evidence of the Vendor's {Bidder's} good faith in making this request can be demonstrated by one (1) or more of the following factors: A mistake is so significant that to enforce the Blanket P.O. resulting from the Quote would be unconscionable; that the mistake relates to a material feature or term of the Blanket P.O.; and that the mistake occurred notwithstanding the Vendor's {Bidder's} exercise of reasonable care. After Quote opening, while pursuant to the provisions of this section a Vendor {Bidder} may request to withdraw its Quote and the Director may in his/her discretion allow said Vendor {Bidder} to withdraw it, the Division also may take notice of repeated or unusual requests to withdraw by a Vendor {Bidder} and take those prior requests to withdraw into consideration when evaluating the Vendor's {Bidder's} future Quotes.

The Quote withdrawal request must include the Bid Solicitation Number, Bid Solicitation Title, the Quote submission date and should be sent to [Procurement.Bureau@treas.nj.gov](mailto:Procurement.Bureau@treas.nj.gov).

If during a Quote evaluation process, an obvious pricing error made by a potential Blanket P.O. awardee is found, the Director or his/her designee shall issue written notice to the Vendor {Bidder}. The Vendor {Bidder} will have up to five (5) business days after receipt of the notice to confirm its pricing. If the Vendor {Bidder} fails to respond, its Quote shall be considered withdrawn, and no further consideration shall be given to it.

#### **1.4.8 JOINT VENTURE**

If a Joint Venture is submitting a Quote, the agreement between the parties relating to such Joint Venture should be submitted with the Joint Venture's Quote. Authorized signatories from each party comprising the Joint Venture must sign the Offer and Acceptance Page. Each party to the Joint Venture must individually comply with all the forms and certification requirements in Sections 4.4.1 and 4.4.2 of this Bid Solicitation.

#### **1.4.9 RECIPROCITY FOR JURISDICTIONAL VENDOR {BIDDER} PREFERENCE**

In accordance with [N.J.S.A. 52:32-1.4](#) and [N.J.A.C. 17:12-2.13](#), the State of New Jersey will invoke reciprocal action against an out-of-State Vendor {Bidder} whose state or locality maintains a preference practice for its in-state Vendors {Bidders}. The State of New Jersey will use the annual surveys compiled by the Council of State Governments, National Association of State Procurement Officials, or the National Institute of Governmental Purchasing or a State's statutes and regulations to identify States having preference laws, regulations, or practices and to invoke reciprocal actions. The State of New Jersey may obtain additional information as it deems appropriate to supplement the stated survey information.

A Vendor {Bidder} may submit information related to preference practices enacted for a State or Local entity outside the State of New Jersey. This information may be submitted in writing as part of the Quote response, including name of the locality having the preference practice, as well as identification of the county and state, and should include a copy of the appropriate documentation,

i.e., resolution, regulation, law, notice to Vendor {Bidder}, etc. It is the responsibility of the Vendor {Bidder} to provide documentation with the Quote or submit it to the Director within five (5) business days after the deadline for Quote submission. Written evidence for a specific procurement that is not provided to the Director within five (5) business days of the public Quote submission date may not be considered in the evaluation of that procurement, but may be retained and considered in the evaluation of subsequent procurements.

#### **1.4.10 QUOTE ACCEPTANCES AND REJECTIONS**

N.J.A.C. 17:12-2.7(d), the Director's right to waive minor irregularities or omissions in a Quote and N.J.A.C. 17:12-2.2 which defines causes for Quote rejection, apply to all Quotes.

#### **1.4.11 ELECTRONIC SIGNATURES**

Vendors {Bidders} submitting Quotes through **NJSTART** may sign the forms listed in Section 4.4.1 (Forms, Registrations and Certifications Required with Quote) and Section 4.4.2 (Forms, Registrations and Certifications Required Before Blanket P.O. Award and That Should Be Submitted with the Quote) of this Bid Solicitation electronically by typing the name of the authorized signatory in the "Signature" block as an alternative to downloading, physically signing the form, scanning the form, and uploading the form to **NJSTART**.

## **2.0 DEFINITIONS**

### **2.1 CROSSWALK**

#### ***NJSTART* Term**

Bid/Bid Solicitation  
Bid Amendment  
Change Order  
Master Blanket Purchase Order (Blanket P.O.)  
Offer and Acceptance Page  
Quote  
Vendor

#### **Equivalent Statutory, Regulatory and/or Legacy Term**

Request For Proposal (RFP)/Solicitation  
Addendum  
Contract Amendment  
Contract  
Signatory Page  
Proposal  
Bidder/Contractor

### **2.2 GENERAL DEFINITIONS**

The following definitions will be part of any Blanket P.O. awarded or order placed as a result of this Bid Solicitation.

**Acceptance** – The written confirmation by the Using Agency that Vendor {Contractor} has completed a Deliverable according to the specified requirements.

**All-Inclusive Hourly Rate** – An hourly rate comprised of all direct and indirect costs including, but not limited to: labor costs, overhead, fee or profit, clerical support, travel expenses, per diem, safety equipment, materials, supplies, managerial support and all documents, forms, and reproductions thereof. This rate also includes portal-to-portal expenses as well as per diem expenses such as food.

**Best and Final Offer or BAFO** – Pricing timely submitted by a Vendor {Bidder} upon invitation by the Bureau after Quote opening, with or without prior discussion or negotiation.

**Bid or Bid Solicitation** – This series of documents, which establish the bidding and Blanket P.O. requirements and solicits Quotes to meet the needs of the Using Agencies as identified herein, and includes the Bid Solicitation, State of NJ Standard Terms and Conditions (SSTC), State-Supplied Price Sheet, attachments, and Bid Amendments.

**Bid Amendment** – Written clarification or revision to this Bid Solicitation issued by the Division. Bid Amendments, if any, will be issued prior to Quote opening.

**Business Day** – Any weekday, excluding Saturdays, Sundays, State legal holidays, and State-mandated closings unless otherwise indicated.

**Calendar Day** – Any day, including Saturdays, Sundays, State legal holidays, and State-mandated closings unless otherwise indicated.

**Change Order** – An amendment, alteration, or modification of the terms of a Blanket P.O. between the State and the Vendor(s) {Contractor(s)}. A Change Order is not effective until it is signed and approved in writing by the Director or Deputy Director, Division of Purchase and Property.

**Commercial Off the Shelf (COTS)** – Software provided by Vendor {Contractor} that is intended for general use.

**Cooperative Purchasing Program** – The Division’s intrastate program that provides procurement-related assistance to New Jersey local governmental entities and boards of education, State and county colleges and other public entities having statutory authority to utilize select State Blanket P.O.s issued by the Division, pursuant to the provisions of N.J.S.A. 52:25-16.1 et seq.

**Custom Software** – Software and Work Product that is developed by Vendor {Contractor} at the request of the Using Agency to meet the specific business requirements of the Using Agency and is intended for its use.

**Customized Software** – COTS that is adapted by Vendor {Contractor} to meet specific business requirements of the Using Agency that differ from the standard requirements of the base product.

**Days After Receipt of Order (ARO)** – The number of calendar days ‘After Receipt of Order’ in which the Using Agency will receive the ordered materials and/or services.

**Deliverable** – Goods, products, Services and Work Product that Vendor {Contractor} is required to deliver to the State under the Blanket P.O.

**Director** – Director, Division of Purchase and Property, Department of the Treasury, who by statutory authority is the Chief Contracting Officer for the State of New Jersey.

**Disabled Veterans’ Business** - means a business which has its principal place of business in the State, is independently owned and operated and at least 51% of which is owned and controlled by persons who are disabled veterans or a business which has its principal place of business in this State and has been officially verified by the United States Department of Veterans Affairs as a service disabled veteran-owned business for the purposes of department contracts pursuant to federal law. N.J.S.A. 52:32-31.2.

**Disabled Veterans’ Business Set-aside Blanket P.O.** - means a Blanket P.O. for goods, equipment, construction or services which is designated as a Blanket P.O. with respect to which bids are invited and accepted only from disabled veterans’ businesses, or a portion of a Blanket P.O. when that portion has been so designated. N.J.S.A. 52:32-31.2.

**Discount** – The standard price reduction applied by the Vendor {Bidder} to all items.

**Division** – The Division of Purchase and Property.

**Evaluation Committee** – A committee established or Division staff member assigned by the Director to review and evaluate Quotes submitted in response to this Bid Solicitation and recommend a Blanket P.O. award to the Director.

**Firm Fixed Price** – A price that is all-inclusive of direct cost and indirect costs, including, but not limited to, direct labor costs, overhead, fee or profit, clerical support, equipment, materials, supplies, managerial (administrative) support, all documents, reports, forms, travel, reproduction and any other costs.

**Hardware** – Includes computer equipment and any Software provided with the Hardware that is necessary for the Hardware to operate.

**Internet of Things (IoT)** - the network of physical devices, vehicles, home appliances and other items embedded with electronics, software, sensors, actuators, and network connectivity which enables these objects to connect and exchange data.

**Joint Venture** – A business undertaking by two (2) or more entities to share risk and responsibility for a specific project.

**Master Blanket Purchase Order (Blanket P.O.)** – The Blanket P.O. consists of the State of NJ Standard Terms and Conditions (SSTC), the Bid Solicitation, the responsive Quote submitted by a responsible Vendor {Bidder} as accepted by the State, the notice of award, any Best and Final Offer, any subsequent written document memorializing the agreement, any modifications to any of



these documents approved by the State and any attachments, Bid Amendment or other supporting documents, or post-award documents including Change Orders agreed to by the State and the Vendor {Contractor}, in writing.

**May** – Denotes that which is permissible or recommended, not mandatory.

**Must** – Denotes that which is a mandatory requirement.

**No Bid** – The Vendor {Bidder} is not submitting a price Quote for an item on a price line.

**No Charge** – The Vendor {Bidder} will supply an item on a price line free of charge.

**Personally Identifiable Information or PII** - as defined by the U.S. Department of Commerce, National Institute of Standards and Technology, means any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

**Primary Form** – An electronic form contained within a Vendor's {Bidder's} **NJSTART** profile designated by the Vendor {Bidder} as the primary or principal version of the required form.

**Procurement Bureau (Bureau)** – The Division unit responsible for the preparation, advertisement, and issuance of Bid Solicitations, for the tabulation of Quotes and for recommending award(s) of Blanket P.O.(s) to the Director and the Deputy Director.

**Project** – The undertakings or services that are the subject of this Bid Solicitation.

**QRGs** – Quick Reference Guides.

**Quote** – Vendor's {Bidder's} timely response to the Bid Solicitation including, but not limited to, technical Quote, price Quote, and any licenses, forms, certifications, or other documentation required by the Bid Solicitation.

**Retainage** – The amount withheld from the Vendor {Contractor} payment that is retained and subsequently released upon satisfactory completion of performance milestones by the Vendor {Contractor}.

**Revision** – A response to a BAFO request or a requested clarification of the Vendors {Bidders} Quote.

**Services** – Includes, without limitation (i) Information Technology (IT) professional services, (ii) Software and Hardware-related services, including without limitation, installation, configuration, and training, and (iii) Software and Hardware maintenance and support and/or Software and Hardware technical support services.

**Shall** – Denotes that which is a mandatory requirement.

**Should** – Denotes that which is permissible or recommended, not mandatory.

**Small Business** – Pursuant to N.J.S.A. 52:32-19, N.J.A.C. 17:13-1.2, and N.J.A.C. 17:13-2.1, "small business" means a business that meets the requirements and definitions of "small business" and has applied for and been approved by the New Jersey Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit as (i) independently owned and operated, (ii) incorporated or registered in and has its principal place of business in the



State of New Jersey; (iii) has 100 or fewer full-time employees; and has gross revenues falling in one (1) of the six (6) following categories:

- For goods and services - (A) 0 to \$500,000 (Category I); (B) \$500,001 to \$5,000,000 (Category II); and (C) \$5,000,001 to \$12,000,000, or the applicable federal revenue standards established at 13 CFR 121.201, whichever is higher (Category III).
- For construction services: (A) 0 to \$3,000,000 (Category IV); (B) gross revenues that do not exceed 50 percent of the applicable annual revenue standards established at 13 CFR 121.201 (Category V); and (C) gross revenues that do not exceed the applicable annual revenue standards established at CFR 121.201, (Category VI).

**Small Business Set-aside Blanket P.O.** – “means (1) a [Blanket P.O.]for goods, equipment, construction or services which is designated as a [Blanket P.O.] with respect to which bids are invited and accepted only from small businesses, or (2) a portion of a [Blanket P.O.] when that portion has been so designated.” N.J.S.A. 52:32-19.

**Software** – Includes, without limitation, computer programs, source codes, routines, or subroutines supplied by Vendor {Contractor}, including operating software, programming aids, application programs, application programming interfaces and software products, and includes COTS, Customized Software and Custom Software, unless the context indicates otherwise.

**State** – The State of New Jersey.

**State Confidential Information** - shall consist of all information or data contained in documents supplied by the State, any information or data gathered by the Vendor {Contractor} in fulfillment of the Blanket P.O. and any analysis thereof (whether in fulfillment of the Blanket P.O. or not);

**State Contract Manager or SCM** – The individual, as set forth in Section 8.0, responsible for the approval of all deliverables, i.e., tasks, sub-tasks or other work elements in the Scope of Work. The SCM cannot direct or approve a Change Order.

**State Intellectual Property** – Any intellectual property that is owned by the State. State Intellectual Property includes any derivative works and compilations of any State Intellectual Property.

**State-Supplied Price Sheet** – the bidding document created by the State and attached to this Bid Solicitation on which the Vendor {Bidder} submits its Quote pricing as is referenced and described in Bid Solicitation Section 4.4.5.

**Subtasks** – Detailed activities that comprise the actual performance of a task.

**Subcontractor** – An entity having an arrangement with a Vendor {Contractor}, whereby the Vendor {Contractor} uses the products and/or services of that entity to fulfill some of its obligations under its State Blanket P.O., while retaining full responsibility for the performance of all [the Vendor's {Contractor's}] obligations under the Blanket P.O., including payment to the Subcontractor. The Subcontractor has no legal relationship with the State, only with the Vendor {Contractor}.

**Task** – A discrete unit of work to be performed.

**Third Party Intellectual Property** – Any intellectual property owned by parties other than the State or Vendor {Contractor} and contained in or necessary for the use of the Deliverables. Third Party Intellectual Property includes COTS owned by Third Parties, and derivative works and compilations of any Third Party Intellectual Property.

**Unit Cost or Unit Price** – All-inclusive, firm fixed price charged by the Vendor {Bidder} for a single unit identified on a price line.

**US CERT** – United States Computer Emergency Readiness Team.

**Using Agency[ies]** – A State department or agency, a quasi-State governmental entity, or a Cooperative Purchasing Program participant, authorized to purchase products and/or services under a Blanket P.O. procured by the Division.

**Vendor {Bidder}** – An entity offering a Quote in response to the Division’s Bid Solicitation.

**Vendor {Contractor}** – The Vendor {Bidder} awarded a Blanket P.O. resulting from this Bid Solicitation.

**Vendor Intellectual Property** – Any intellectual property that is owned by Vendor {Contractor} and contained in or necessary for the use of the Deliverables or which the Vendor {Contractor} makes available for the State to use as part of the work under the Blanket P.O. Vendor Intellectual Property includes COTS or Customized Software owned by Vendor {Contractor}, Vendor’s {Contractor’s} technical documentation, and derivative works and compilations of any Vendor Intellectual Property.

**Work Product** – Every invention, modification, discovery, design, development, customization, configuration, improvement, process, Software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Vendor {Contractor} or Vendor’s {Contractor’s} subcontractors or a third party engaged by Vendor {Contractor} or its subcontractor pursuant to the Blanket P.O. Notwithstanding anything to the contrary in the preceding sentence, Work Product does not include State Intellectual Property, Vendor Intellectual Property or Third Party Intellectual Property.

### **2.3 BLANKET P.O. SPECIFIC DEFINITIONS/ACRONYMS**

**American National Standards Institute (ANSI)** – The organization that oversees the development of technology standards in the United States.

**Call-Out** – Telephone call from the NJDOT informing the Vendor {Contractor} to report for Operations at a specified time and location.

**Commercial Driver’s License (CDL)** – A State-issued, commercially endorsed, photographic identification, which illustrates the class of vehicle the driver is legally permitted to drive.

**Deploy to Site** – A location where the Vendor {Contractor} shall remain on standby until notified by the NJDOT or NJSP to begin Roving Operations or be dismissed as a result of the Winter Event concluding.

**Flatbed (Roll-back) Truck** – A type of tow truck with the capability to lift and secure an entire vehicle off the roadway onto a flat (bed) surface, which removes the vehicle from the roadway.

**Gross Vehicle Weight Rating (GVWR)** – The maximum operating weight/mass of a vehicle as specified by the manufacturer including the vehicle’s chassis, body, engine, engine fluids, fuel, accessories, driver, passengers and cargo, but excluding that of any trailers.

**Heavy Duty Tow Truck** – Truck capable of towing over 11,500 lb. GVWR.

**Highway Operations Crew** – A group of personnel assigned to a particular NJDOT yard for the purpose of Highway Operations.

**Highway Operations Jurisdiction** – A geographic area as defined by the NJDOT Highway Operations coverage.

**Lane Miles** – The number of miles considered drivable roadway in the New Jersey transportation system. There are approximately 13,000 lane miles of interstate, US, and State routes under NJDOT jurisdiction that it strives to keep open and passable at all times during winter weather.

**Medium Duty Tow Truck** – Truck capable of towing under 11,500 lb. GVWR.

**Minimum Compensation** – The four (4) hour payable time that the Vendor {Contractor} is guaranteed if all required towing vehicles and drivers/operators arrive within the two (2) hour reporting timeframe specified by this Bid Solicitation. This shall only apply in the event that Operations for a specific Winter Event do not exceed more than four (4) hours. The moment that Operations for a specific Winter Event does exceed four (4) hours, then the Vendor {Contractor} shall be paid for the actual hours worked. NOTE: this is not supplemental pay to the already established hourly rates. Vendors {Contractors} are not guaranteed Minimum Compensation if any of its towing trucks and/or drivers/operators are unprepared and/or late to begin Operations later than the two (2) hour reporting time. This is calculated in the same manner that normal payment is done. Minimum Compensation is determined for a Vendor {Contractor} on a line by line basis and per Winter Event.

**National Fire Protection Association (NFPA)** – The organization responsible for establishing and updating fire protection and prevention safeguards.

**No Pay Status** – The status that a Vendor's {Contractor's} vehicle enters into should the vehicle become unable to perform the duties for which it is assigned.

**Occupational Safety and Health Administration (OSHA)** – A federal organization that ensures safe and healthy working conditions by enforcing standards and providing workplace safety training.

**Operating Time** – The period of time that the Vendor {Contractor} spends performing towing Operations, including, but not limited to, Roving Operations.

**Operations** – The performance of any work pursuant to this Bid Solicitation.

**Roving Operations** – The service provided by a Vendor {Contractor} under this Bid Solicitation, where it is patrolling awarded price line(s)/designated section(s), performing vehicle removal and relocation as necessary and reporting activities to the NJDOT. This form of service is in place when the Snow Incline Task Force is not activated.

**Safe Haven Location** – A location where broken-down motorists and their vehicles can be brought to that is not blocking any lanes of travel within a Tow Section. These locations shall be considered a secure storage site, where the towed vehicles are safe from theft or vandalism.

**Snow Incline Task Force** – A group of individuals comprising of NJDOT crews, NJDOT plowing contractors, NJDOT spreading contractors, and towing Vendors {Contractors} that are specifically assigned to address incline sections of roadway where traction becomes a problem. These groups use dedicated radio channels for coordination to keep roadways passable where previous storms have resulted in motorists trapped for long hours.

**Tow Section** – A geographic area as defined by this Bid Solicitation, requiring towing services.

**Underwriters Laboratories (UL)** – A not-for-profit testing laboratory responsible for conducting safety and quality tests on a broad range of products.

**Winter Event** – The period of time that the services provided under this Bid Solicitation are deployed for Operations.

**Winter Season** – The part of the year that the services provided under this Bid Solicitation will be utilized for, beginning October 1st through April 30th.

**Wrecker Truck** – A type of tow truck with a lift arm capable of lifting a portion of a broken-down vehicle off the roadway.

### **3.0 SCOPE OF WORK – REQUIREMENTS OF THE VENDOR {CONTRACTOR}**

#### **3.1 GENERAL INFORMATION**

The Vendor {Contractor} is advised that the requirements specified in this Bid Solicitation shall apply to towing services.

The Vendor {Contractor} shall be capable of performing one (1) or both, of the following tow services for the awarded locations listed on the State-Supplied Price Sheet for:

- A. Vehicles with a 11,500 lb. Gross Vehicle Weight Rating (GVWR) and under; and
- B. Vehicles over 11,500 lb. GVWR.

#### **3.2 WINTER SEASON**

The Vendor {Contractor} shall be prepared and fully able to provide the subject services during the yearly Winter Season period, beginning October 1<sup>st</sup> through April 30<sup>th</sup>.

#### **3.3 HIGHWAY OPERATIONS CREW, JURISDICTION, & TOWING SECTIONS**

A Highway Operations Jurisdiction (Jurisdiction) consists of specific State highways, including but not limited to, ramps, turnarounds, or any other areas identified by the NJDOT. Each Jurisdiction is broken down into Towing Sections and assigned to a Highway Operations Crew (Crew).

#### **3.4 TOWING SECTIONS**

There are a total of 32 Mile Post Coverage Areas. Each Mile Post Coverage Area requires one (1) Medium Duty Tow Truck and one (1) Heavy Duty Tow Truck.

These 32 Mile Post Coverage Areas or Towing Sections are listed as follows:

<b>DEPLOY TO SITE</b>	<b>ADDRESS</b>	<b>MILE POST COVERAGE AREA</b>
COLUMBIA MAINTENANCE YARD	SIMMSON RD OFF RT 80 WB, MILEPOST 3.7, COLUMBIA	RT 180; MP 0 to 15
HAMILTON MAINTENANCE YARD	2779 KUSER RD OFF OF RT 130 BY I-195, MILEPOST 61.5, HAMILTON	RT 195; MP 0.0 to 16.7
FREEHOLD MAINTENANCE YARD	140 DANIELS WAY OFF OF RT 79, MILEPOST 0.35, FREEHOLD	RT 195; MP 16.7 to 34.2
SUMMIT MAINTENANCE YARD	RT 24 EB @ 46 SPRINGFIELD AVE, MILEPOST 10.0, SUMMIT	RT 24; MP 0 to 10.2
WEST ORANGE MAINTENANCE YARD	1255 PLEASANT VALLEY WAY OFF 280, MILEPOST 22.6 BEHIND THE ARMORY, WEST ORANGE	RT 280; MP 0 to 9
WEST ORANGE MAINTENANCE YARD	1255 PLEASANT VALLEY WAY OFF 280, MILEPOST 22.6 BEHIND THE ARMORY, WEST ORANGE	RT 280; MP 9 to 17
POMPTON LAKES WINTER YARD	RT 287 SOUTH MP 61.1, POMPTON LAKES	RT 287: MP 53.9 to NY State line

BEDMINSTER MAINTENANCE YARD	455 ROUTE 202 & 206, MILEPOST 31.0, PLUCKEMIN	RT 287; MP 13.5 to 30.2
HANOVER MAINTENANCE YARD	211 EDEN LANE OFF RT 10 AND JEFFERSON AVE, MILEPOST 13.3, EAST HANOVER TWP.	RT 287; MP 30.2 to 37.9
HANOVER MAINTENANCE YARD	211 EDEN LANE OFF RT 10 AND JEFFERSON AVE, MILEPOST 13.3, EAST HANOVER TWP.	RT 287; MP 37.9 to 46
RIVERDALE MAINTENANCE YARD	RT 23 @ 1 RIVERDALE RD (BEHIND THE ARMORY), MILEPOST 12.6. BUTLER	RT 287; MP 46 to 53.8
DEEPWATER MAINTENANCE YARD	RT 259 NB AND HOOK RD NEAR TP&295NB	RT 295; MP 0.95 to 15
WEST DEPTFORD MAINTENANCE YARD	RT 130 SOUTH @ CROWN POINT RD, MILEPOST 24.0, WEST DEPTFORD	RT 295; MP 15 to 28
MOUNT LAUREL MAINTENANCE YARD	RT 38 1/ 2 MILES EAST OF I-295, MILEPOST 10.8, MT. LAUREL TWP	RT 295; MP 28 to 40
BORDENTOWN MAINTENANCE YARD	DUNN MILL RD AND RT 206, MILEPOST 34.6, BORDENTOWN	RT 295; MP 40 to 58
LAWRENCE MAINTENANCE YARD	2798 BRUNSWICK PIKE RT 1 BUSINESS, MILEPOST 2.3, LAWRENCE TWP.	RT 295; MP 58 to 68
WEST TRENTON MAINTENANCE YARD	780 BEAR TAVERN RD. EXIT 75 OFF I-295, WEST TRENTON	RT 295; MP 68 to 76
KEASBEY MAINTENANCE YARD	90 CROWS MILL RD AND SMITH ST, MILEPOST 1.5, KEASBEY	RT 440; MP 0.0-4.0 & RT 287; MP 0-13.5
GLASSBORO MAINTENANCE YARD	GROVE ST. WEST OF RT 47, MILEPOST 62.0, GLASSBORO	RT 55; MP 39 TO 60
DEPTFORD MAINTENANCE YARD	RT 41 & RT 42 SUPERIOR HWY, MILEPOST 3.3, DEPTFORD	RT 76; MP 0.0 to 1.9, RT 676; MP 0.0 to 3.7
CLINTON MAINTENANCE YARD	84 BEAVER AVE RT 626 NE OF RT 31/78, MILEPOST 32.1, CLINTON	RT 78; MP 16.2 to 30.1
BEDMINSTER MAINTENANCE YARD	455 ROUTE 202 & 206, MILEPOST 31.0, PLUCKEMIN	RT 78; MP 30.1 to 42.7
BLOOMSBURY MAINTENANCE YARD	RT 173 EB W.PORT AL, MILEPOST 4.0, BLOOMSBURY	RT 78; MP 4.0 to 16.2
SUMMIT MAINTENANCE YARD	RT 24 EB @ 46 SPRINGFIELD AVE, MILEPOST 10.0, SUMMIT	RT 78; MP 42.7 to 58
NETCONG MAINTENANCE YARD	90 ROUTE 183 N, MILEPOST .2, NETCONG	RT 80; MP 15.1 to 30

HANOVER MAINTENANCE YARD	211 EDEN LANE OFF RT 10 AND JEFFERSON AVE, MILEPOST 13.3, EAST HANOVER TWP.	RT 80; MP 30 to 45
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Interstate 280		
DEPLOY TO SITE	CREW NUMBER	MILE POST COVERAGE AREA
HANOVER YARD	(TASK FORCE #1)	MP 1.0-7.0
WEST ORANGE YARD	(TASK FORCE #2)	MP 7.0-1.0
WEST ORANGE YARD	(TASK FORCE #3)	MP 7.0-13
WEST ORANGE YARD	(ROVING TOW #1)	MP 1.0-13

Interstate 78		
Deploy To Site	Crew Numer	Mile Post Coverage Area
BLOOMSBURY MAINTENANCE YARD	(TASK FORCE #4)	MP 3.0-12.0
BLOOMSBURY MAINTENANCE YARD	(ROVING TOW #2)	MP 3.0-12.0

### **3.5 VENDOR {CONTRACTOR} REQUIREMENTS**

#### **3.5.1 GENERAL REQUIREMENTS**

The Vendor {Contractor} shall:

- A. Possess, at a minimum, two (2) years' of experience performing towing services on public roadways;
- B. Comply with all applicable Federal, State, and local laws, rules, and regulations;
- C. Supply all manpower, vehicles, and as required, equipment necessary to perform services;
- D. Be available to work seven (7) days a week, 24-hours a day, including State Holidays during the Winter Season;
- E. Be responsible for any and all damage caused by the Vendor {Contractor} while performing the services related to the activities of this Bid Solicitation, including, but not limited to, damage to the following:
  - 1. State roadways;
  - 2. Government facilities including guidrails;
  - 3. Bridge railings;
  - 4. Signs;
  - 5. Delineators; and
  - 6. All other construction.

The Vendor {Contractor} shall also ensure:

- F. That vehicle towing services are provided in accordance with the vehicle manufacturer's standards with the use of Wrecker Truck or Flatbed (Roll-back) Truck. **Tow bars and towing chains are only permitted for vehicles that are over 11,500 lb. GVWR;**
- G. All Wrecker Trucks are to be equipped with the necessary equipment to perform emergency towing and recovery according to industry standards. All towing Wrecker Trucks shall have dollies, brooms, shovels, and fire extinguishers;
- H. That its drivers and/or operators perform towing Operations only on designated roadways, in accordance with the instructions provided by the NJDOT Site Supervisor;
- I. That all trucks are installed with the proper equipment and are fully operational and ready to report for towing Operations beginning October 1<sup>st</sup> of each year;
- J. That it arrives at the designated Deploy to Site, with its required towing truck within the timeframe specified in Bid Solicitation Section 3.5.3;
- K. That all vehicles used for towing Operations comply with the safety requirements as specified in this Bid Solicitation;
- L. That all vehicles are properly registered and fully insured;
- M. That its drivers and/or operators assigned to perform towing Operations possess and maintain a valid Commercial Driver's License (CDL);
- N. That it is responsible for, but not limited to, providing the following for each tow truck:
  - 1. Fuel;
  - 2. Repairs;
  - 3. Safety lighting; and
  - 4. Other items necessary for the successful operation of its tow trucks.
- O. That all equipment is refueled with a minimum loss of Operating Time; and
- P. Remain on standby at its Deploy to Site until notified by the NJDOT or the NJSP to:
  - 1. Begin Roving Operations;
  - 2. Attend to a service call received by the NJDOT or the NJSP; or
  - 3. Be dismissed as a result of the Winter Event concluding.

**Please note:** Vendors {Contractors} who are awarded price lines that service specifically Interstates 280 and 78 will be working with the plow trucks as part of the Snow Incline Task Force(s). For all other price lines, these Vendors {Contractors} will be providing Roving Operations independently.

### **3.5.2 VENDOR {CONTRACTOR} READINESS AND CALL-OUT**

The Vendor {Contractor} shall:

- A. Ensure that its tow truck is fully operational, and is ready to report for a Call-Out by October 1<sup>st</sup> of each year of the Blanket P.O.;
- B. Upon receipt of a Call-Out, assemble the required tow truck at the Deploy to Site, designated by the awarded Towing Section or the NJDOT;
- C. Be prepared to begin Operations with a properly prepared tow truck within two (2) hours of receiving the Call-Out; and



- D. Upon arrival at the Deploy to Site with a fully equipped tow truck, immediately notify the NJDOT Site Supervisor that it is present and prepared to commence operations.

**Please note:** The arrival time at the Deploy to Site and the release time shall be verified with NJDOT authorized personnel for each Winter Event.

### **3.5.3 TWO (2) HOUR REPORTING TIMEFRAME**

The Vendor {Contractor} must report within two (2) hours to its assigned location with a fully prepared and manned tow truck to begin Operations. This two (2) hour reporting time frame commences as soon as the Vendor {Contractor} receives a Call-Out from the NJDOT; and ends two (2) hours after receiving the Call-Out.

### **3.5.4 WINTER SEASON KICK-OFF MEETING**

Each term year of the Blanket P.O., and prior to the beginning of the Winter Season start date (October 1<sup>st</sup>), the NJDOT will schedule a Winter Season Kick-Off Meeting with all Vendors {Contractors} to review communication protocols with NJDOT personnel during Operations. A date and time for the Winter Season Kick-Off Meeting(s) will be provided to the Vendors {Contractors} by the State Contract Manager (SCM).

All Vendors {Contractors} must attend the Winter Season Kick-Off Meeting each year. If a Vendor {Contractor} cannot attend the Winter Season Kick-Off Meeting due to an unexpected emergency, it must then in writing request if it may be excused from the Winter Season Kick-Off Meeting, which may be granted at the discretion of the SCM. If a Vendor {Contractor} cannot attend the Winter Season Kick-Off Meeting, it is the Vendor's {Contractor's} responsibility to acquire all information that was provided during the meeting.

**Please note:** The SCM shall have final say on any matters regarding the absence or a request from a Vendor {Contractor} to be excused from the Winter Season Kick-Off Meeting.

### **3.6 VENDOR {CONTRACTOR} PERSONNEL REQUIREMENTS**

The Vendor {Contractor} shall ensure that at least one (1) member of the towing services crew is able to effectively communicate in English with the NJDOT and the NJSP.

Additionally, the Vendor {Contractor} shall:

- A. Ensure that its personnel observe all applicable State, local, and federal laws, rules, and regulations;
- B. Be fully responsible for the conduct of its personnel; and
- C. Ensure that its personnel comply with all NJDOT instructions relative to towing services.

#### **3.6.1 VENDOR {CONTRACTOR} DRIVER/OPERATOR REQUIREMENTS**

The Vendor {Contractor} shall provide a sufficient number of drivers and/or operators to effectively and continuously perform towing operations, 24-hours per day, seven (7) days a week, during the Winter Season, when necessary.

The Vendor {Contractor} shall ensure that its personnel:

- A. Comply with all Commercial Driver License (CDL) regulations;

- B. Possess and maintain a valid CDL throughout the term of the Blanket P.O.;
- C. Do not violate "Maggie's Law" P.L. 2003 c.143/N.J.S.A. 2C:11:5 or any other CDL regulation or requirement;
- D. Possess, at a minimum, two (2) years' of experience performing towing services on public roadways;
- E. Upon request by the NJDOT, furnish copies of drivers' licenses and vehicle registrations.

**Please note:** The Vendor {Contractor} and its drivers/operators shall be held responsible for any and all accidents attributed to a driver/operator's negligence or the Vendor's {Contractor's} negligence.

The Vendor {Contractor} shall be familiar with the "State of New Jersey Highway Incident Guidelines for Emergency Responders" that can be found at: <http://www.njsp.org/info/pdf/hwincsafeprocedures.pdf>.

The Vendor {Contractor} is encouraged to attend incident management meetings held by the NJDOT and the NJSP to remain current on updated response procedures.

### **3.7 MEALS**

Time for meals when taken by the Vendor's {Contractor's} personnel, shall be deducted from the total hours worked.

### **3.8 VENDOR {CONTRACTOR} CONTACT INFORMATION**

Within five (5) business days of the Blanket P.O. award date, the Vendor {Contractor} shall provide the SCM with names and cellular phone numbers of all key operational personnel.

Vendor {Contractor} key operational personnel shall include, but not be limited to:

- A. All of the owners/partners of the business;
- B. All drivers assigned to towing operations; and
- C. All dispatchers assigned to this Blanket P.O., if applicable.

Any changes to the employment status of any key operational personnel must be reported in writing to the SCM no later than five (5) business days after the change. Changes to any of the contact information for key operational personnel, such as a new phone number, must also be reported to the SCM no later than five (5) business days after the change.

The Vendor {Contractor} is responsible and required to keep this information current and updated throughout the Blanket P.O. term. If this information is not provided to the NJDOT within the above referenced allotted amount of time, or is not current and updated, then a formal complaint will be filed against the Vendor {Contractor} with the Division's Contract Compliance and Audit Unit (CCAU). If a second instance occurs, the State reserves the right to terminate the Vendor's {Contractor's} Blanket P.O.

### **3.9 COMMUNICATION DEVICES**

#### **3.9.1 COMMUNICATION DEVICES – GENERAL INFORMATION**

It is the intent of the NJDOT that every towing vehicle shall be equipped with a radio that will be provided by the NJDOT, and/or equivalent device for both communication and vehicle tracking capability during Operations. The device shall remain on, audible, and in the vehicle at all times during Operations.

The Vendor {Contractor} shall be required to sign for each assigned device.

In cases where radios are not provided by the NJDOT, each driver must have a working cell-phone with which to communicate with the NJDOT and/or the Vendor's {Contractor's} dispatch personnel, for regular and ongoing contact regarding activities and assignment.

#### **3.9.2 COMMUNICATION DEVICES – FAILING TO MAINTAIN COMMUNICATION WITH THE DEVICE**

Failure to maintain communication, including, but not limited to, loss of GPS signal due to power failure caused by an uncharged device, during Operations may be deemed a breach of the Blanket P.O. The Vendor {Contractor} will not be paid for any time during which the device is not in use, or non-operational due to the actions of the Vendor {Contractor}, its employees, or its subcontractors.

#### **3.9.3 COMMUNICATION DEVICES – LOST, STOLEN, DESTROYED, ETC.**

In the event that any of the assigned devices are lost, stolen, destroyed, or damaged beyond repair due to the Vendor's {Contractor's} negligence, the Vendor {Contractor} shall be responsible to reimburse the NJDOT for the actual cost of the device for replacement. This cost shall be deducted from the payment to be received by the Vendor {Contractor} for the event in which the device was lost, stolen, destroyed, or damaged beyond repair. Additionally, a complaint may be filed with CCAU.

### **3.10 INCIDENT REPORTING**

The Vendor {Contractor} is responsible to submit vehicle and driver information for every incident which includes the following circumstances, but is not limited to:

- A. Crashes;
- B. Abandonment;
- C. Straightening-out trapped vehicles; and
- D. Vehicle relocation.

Information provided shall include license plate number and driver name (if available). How this information is to be provided will be reviewed at the Kick-Off Meeting.

Every crash must be reported to the NJSP and/or the local police, regardless if anyone is injured. For crashes only involving property damage, the tow truck driver must let the NJDOT know so that the NJDOT can notify the police, therefore, allowing the tow truck driver to return to work.

Vehicles that are abandoned, stuck, or have experienced failure do not require an accident report. In any case, the Vendor {Contractor} is fully responsible for towing of the vehicle in question and must still submit vehicle and driver information to the NJDOT.

The Vendor {Contractor} shall record the address or identify the location of the pick-up point on its invoice. All vehicles towed must be stored in a Safe Haven.

### **3.11 STORAGE REQUIREMENTS**

The Vendor {Contractor} shall abide to the following procedures regarding storing towed vehicles:

- A. Within the bounds of this Bid Solicitation, if the NJDOT requests the Vendor {Contractor} to tow a vehicle off the roadway, the Vendor {Contractor} shall place the vehicle in a secure storage location, also known as a Safe Haven location, safe from theft or vandalism;
- B. Once vehicle storage has been completed, the Vendor {Contractor} shall provide the necessary information (license plate number and driver name) to NJDOT so that the vehicle owner can retrieve the vehicle; and
- C. If a vehicle needs to be towed to a storage facility and storage fees are applicable, the fee must be negotiated with the vehicle owner. The Vendor {Contractor} shall allow a minimum grace period of 48 hours before a storage charge can be invoiced against the vehicle owner. The State and/or the NJDOT will not compensate for any storage costs.

**Please note:** The SCM shall have final say on any matters regarding the release and costs of all vehicles towed by the Vendors {Contractors} under this Bid Solicitation. Should the SCM determine that any unreasonable actions have occurred by said Vendors {Contractors}, a complaint may be filed against the Vendor {Contractor} with CCAU. All Vendors {Contractors} are expected to release all towed vehicles to its owners within a timely manner. It is expected that all Vendors {Contractors} communicate efficiently and cooperate with the SCM, the NJDOT, and the vehicle owners so that vehicles can be claimed as quickly as possible. The Vendor {Contractor} shall be prohibited from double charging or overcharging the vehicle owner. If requested by the vehicle owner, the Vendor {Contractor} must provide the SCM information to resolve any issues that have or will arise.

### **3.12 VENDOR {CONTRACTOR} EQUIPMENT**

#### **3.12.1 EQUIPMENT REQUIREMENTS**

All equipment must be maintained in good operating condition and must conform to the following requirements:

- A. National Fire Protection Association (NFPA);
- B. Underwriters' Laboratories (UL);
- C. American National Standards Institute (ANSI);
- D. Occupational Safety and Health Administration (OSHA); and
- E. All other safety standards in effect at the time of use.

#### **3.12.2 EQUIPMENT INSPECTIONS**

All vehicles and equipment provided by the Vendor {Contractor} shall be subject to inspection at any time during the Blanket P.O. term and/or a Call-Out. Vendor {Contractor} vehicles and equipment may not be permitted to operate if a Call-Out inspection reveals that the vehicle(s) and/or equipment fail to comply with the requirements set forth in this Bid Solicitation. If this results in the Vendor's {Contractor's} vehicle(s) and equipment not being utilized for that event, the Vendor {Contractor} shall reimburse the State for any costs incurred to the State as a result of these deficiencies. This cost shall be deducted from the payment to be received by the Vendor

{Contractor} for the event in which the deficiencies were discovered by NJDOT personnel. Additionally, a complaint may be filed with CCAU against the Vendor {Contractor}.

### **3.12.3 EQUIPMENT BREAKDOWN AND REPAIRS**

Should any equipment experience a breakdown during a Winter Event, the NJDOT will allow the Vendor {Contractor} to repair the aforementioned equipment. During the time the equipment is being repaired, it shall be set to a No-Pay Status until the equipment is fully operational again. If the equipment is considered unrepairable, then that piece of equipment is taken off the clock for the rest of that event.

The Vendor {Contractor} must provide the NJDOT Site Supervisor with immediate notification when equipment is down for repair. Additionally, the Vendor {Contractor} must provide immediate notification to the NJDOT Site Supervisor when the equipment is repaired and operational, or when the equipment is deemed to be unrepairable and removed from Operations.

No repairs shall be made along roadways in locations that impact traffic flow or are determined to be unsafe by the NJDOT Site Supervisor, the NJSP, or local police. Vehicles in such locations shall be removed as soon as possible.

### **3.12.4 PROCEDURES FOR CLEANING UP AFTER ANY BREAKDOWN OR REPAIR WORK**

The Vendor {Contractor} shall be responsible for cleaning up and removing any and all fluids, debris, spills, etc., resulting from any breakdown or repair work of the vehicle(s) and/or equipment that it is utilizing, regardless if the aforementioned is owned by the Vendor {Contractor}.. If a spill is a reportable condition to the New Jersey Department of Environmental Protection (NJDEP), the Vendor {Contractor} shall be responsible for notifying the NJDEP and the NJDOT Site Supervisor. The Vendor {Contractor} shall perform any necessary remediation work to satisfy all applicable State and federal regulations at its own expense.

## **3.13 THE MINIMUM COMPENSATION**

### **3.13.1 ELIGIBILITY FOR RECEIVING THE MINIMUM COMPENSATION**

The Vendor {Contractor} shall be entitled to the Minimum Compensation for each Winter Event as long as it reports to the Deploy to Site:

- A. Within the two (2) hour reporting timeframe with its required truck, equipment, and driver/operator; and
- B. Is fully prepared to begin Operations within the two (2) hour reporting timeframe.

### **3.13.2 INELIGIBILITY FOR RECEIVING THE MINIMUM COMPENSATION**

If the Vendor {Contractor} fails to provide a fully prepared tow truck, within the two (2) hour reporting timeframe, the Vendor {Contractor} shall not be eligible for the Minimum Compensation and shall only be paid for the actual number of hours worked for each truck. The SCM shall have the final say on any matters regarding if a Vendor {Contractor} is ineligible for the Minimum Compensation.

**Please note:** Ineligibility for receiving the Minimum Compensation is determined on a price line by price line basis per Winter Event.

### **3.13.3 CALCULATING THE MINIMUM COMPENSATION**

If during an event where Operations do not exceed four (4) hours, the Vendor {Contractor} will be paid four (4) hours of work, regardless of how long Operations were performed. If during an event where Operations do exceed four (4) hours, the NJDOT will pay the Vendor {Contractor} its awarded hourly rate for all hours worked for that respective price line. The Minimum Compensation shall consist of the same hourly rate that the Vendor {Contractor} was awarded to perform the services for that respective price line.

**Please note:** The SCM shall have final say on any matters regarding how the Minimum Compensation is calculated.

### **3.14 VENDOR {CONTRACTOR} TEMPORARY REASSIGNMENT**

Should the need arise, the NJDOT Site Supervisor reserves the right to temporarily reassign tow trucks to an alternate location. If the alternate location is a significant distance away from the original location, the Vendor's {Contractor's} response time may be waived, at the discretion of the NJDOT Site Supervisor on a case by case basis.

Payment for a temporary reassignment shall be governed by the same Operating Time rate of pay and guaranteed minimums that the Vendor {Contractor} would have received had the tow truck been working on the section originally assigned.

If a Vendor {Contractor} is temporarily reassigned, payment shall begin from the moment it reports to its originally assigned location. Payment shall end when it returns back to its originally assigned location after Operations have ceased. Payment shall include travel time from the originally assigned location to the alternate location and back. The SCM reserves the right to reduce payment if travel time is deemed to be unreasonable or excessive.

The driver/operator shall report to and accept direction and supervision from the NJDOT Site Supervisor assigned to the alternate location. The SCM shall have final say on any matters regarding temporary reassignment.

### **3.15 EXPANSION OF A TOWING SECTION**

A Towing Section may be mutually expanded during the Winter Season at the request of the SCM or the NJDOT Site Supervisor, and the agreement of a Vendor {Contractor}. A Towing Section may be expanded if new lane miles are added, or if a section of the roadway adjacent to an already contracted Towing Section is not being serviced by the awarded Vendor {Contractor}. Please note that the same rates and guaranteed minimums shall apply.

### **3.16 ADDITIONAL BLANKET P.O. REQUIREMENTS**

The following sections apply to all Blanket P.O services provided by the Vendor {Contractor}.

#### **3.16.1 ACCIDENT REPORTING PROCEDURE**

In the case of an accident involving the Vendor {Contractor}, the Vendor {Contractor} shall:

- A. Immediately report the accident to the proper authorities, including but not limited to, the NJSP, local police, and local fire department;
- B. Report the accident to the appropriate NJDOT Site Supervisor. This shall be done as soon as possible (during the same shift), but only after contacting the proper authorities; and
- C. Within 48 hours, submit a written report to the SCM of the accident, regardless of how minor, arising out of or in connection to the services provided under this Blanket P.O.

**Please note:** In the event of death, serious injury, or property damage resulting from an accident, the Vendor {Contractor} shall notify the NJDOT Site Supervisor and SCM by telephone immediately after notifying the proper authorities.

### **3.16.2 LICENSES , REGISTRATION, AND INSURANCE REQUIREMENTS**

During the term of the Blanket P.O., the Vendor {Contractor} shall:

- A. Maintain a current vehicle registration for each vehicle;
- B. Ensure that all vehicles are legally insured, meeting at a minimum, the requirements set forth in Section 4.2 of the SSTCs (Bid Solicitation Section 9.0);
- C. Ensure that each of its drivers/operators possess and maintain a valid CDL; and
- D. Report the loss, revocation, or suspension of any of its drivers/operators licenses throughout the term of the Blanket P.O.

Please note: The use of any unlicensed driver/operator shall be considered a breach of the Blanket P.O. and may lead to a formal complaint filed with CCAU.

### **3.16.3 PAYEMENT PROCEDURE**

The Vendor {Contractor} will receive an electronic timesheet via email from the NJDOT, also known as an MT89. The MT89 outlines all the times worked, as well as any deductions for a previous Winter Event.

Upon receipt of the MT89, the Vendor {Contractor} shall review it for accuracy. If according to the Vendor's {Contractor's} records the MT89 is accurate, the Vendor {Contractor} shall electronically sign the MT89 and submit it to the two (2) email addresses provided on the MT89. If according to the Vendor's {Contractor's} records there is a discrepancy between the hours listed on the MT89 and the Vendor's {Contractor's} records, the Vendor {Contractor} is to contact the NJDOT Site Supervisor to discuss and/or rectify the discrepancy.

All instructions for the proper completion of the MT89 will be included in the Vendor's {Contractor's} email package.

The NJDOT will attempt to deliver the MT89 to the Vendor {Contractor} within five (5) business days after a Winter Event; however, it should be noted that this is not guaranteed. Be advised, the Vendor {Contractor} is responsible for contacting either the NJDOT Site Supervisor or the SCM if it does not receive its MT89.

**Please note:** Under this Bid Solicitation, payment will not be made by the NJDOT to a Vendor {Contractor} for towing services unless authorized by an NJDOT employee.

### **3.16.4 PERFORMANCE**

The services required by this Bid Solicitation are essential to the safety and welfare of all roadway users. As such, all services must be provided promptly, efficiently, and without delay.

The Vendor {Contractor} shall ensure that its employees demonstrate professionalism when interacting with the public.

The performance of the Vendor {Contractor} shall be evaluated by either the SCM or the NJDOT Site Supervisor for each Winter Event, based on the following criteria and possible infractions:

- A. Response time;
- B. Reporting with less than the minimum required amount of trucks and/or equipment;
- C. Unsafe plowing/spreading practices;
- D. No show;
- E. Vehicle safety markings;
- F. Usage of ill-equipped and/or faulty equipment;
- G. Compliance with the NJDOT Site Supervisor instructions;
- H. Damage caused to State property due to the Vendor's {Contractor's} personnel's negligence;
- I. Use of an unlicensed driver/operator; and
- J. Violation of any NJDOT guidelines.

**Please note:** Two (2) or more documented violations of one (1) or any of the above referenced infractions, may result in the termination of the awarded towing section in question from the Vendor's {Contractor's} Blanket P.O., and/or the termination of the Vendor's {Contractor's} entire Blanket P.O.

#### **3.16.5 PROHIBITED ACTIONS**

The Vendor {Contractor} shall be prohibited from using any of its trucks and/or equipment on any other towing services contract, if such use will hinder or conflict with the requirements of this Blanket P.O.



## **4.0 QUOTE PREPARATION AND SUBMISSION – REQUIREMENTS OF THE VENDOR {BIDDER}**

Failure to submit information as indicated below may result in your Quote being deemed non-responsive.

### **4.1 GENERAL**

A Vendor {Bidder} may submit additional terms as part of its Quote. Quotes including Vendor {Bidder} proposed terms and conditions may be accepted, but Vendor {Bidder} proposed terms or conditions that conflict with those contained in the Bid Solicitation, as defined in Section 2.0 of this Bid Solicitation, or that diminish the State's rights under any Blanket P.O. resulting from the Bid Solicitation, may render a Quote non-responsive. It is incumbent upon the Vendor {Bidder} to identify and remove its conflicting proposed terms and conditions prior to Quote submission. Where additional terms are submitted they may be accepted, rejected, or negotiated, in whole or in part, at the State's sole discretion where the terms do not conflict with material terms of the Bid Solicitation or do not diminish the State's rights under the Blanket P.O. resulting from the Bid Solicitation.

In the event that a Vendor {Bidder} intends to propose terms and conditions that conflict with the Bid Solicitation, those Vendor {Bidder} proposed terms and conditions shall only be considered if submitted and agreed to pursuant to the electronic question and answer procedure set forth in Section 1.3.1 of this Bid Solicitation. Vendors {Bidders} shall not submit exceptions in the Quote or on the "Terms and Conditions" Tab through [NJSTART](#).

After award of the Blanket P.O., if a conflict arises between a Vendor's {Bidder's} additional terms included in the Quote and a term or condition of the Bid Solicitation, the term or condition of the Bid Solicitation will prevail.

Use of URLs in a Quote should be kept to a minimum and shall not be used to satisfy any material term of a Bid Solicitation. If a preprinted or other document included as part of the Quote contains a URL, a printed copy of the URL page shall be provided and will be considered as part of the Quote.

**The forms discussed herein and required for submission of a Quote in response to this Bid Solicitation are available on the [Division's website](#) unless noted otherwise.**

### **4.2 QUOTE DELIVERY AND IDENTIFICATION**

A Quote must arrive at the Division in accordance with this Bid Solicitation's instructions within the time frames noted on the Bid Solicitation cover sheet and on the "Summary" page of the Bid Solicitation in [NJSTART](#), or as indicated on the posted Bid Amendment if the Quote Opening Date has been changed. Vendors {Bidders} submitting electronic Quotes via [NJSTART](#) are cautioned to allow adequate time to ensure timely uploads of all Quote documents to mitigate unforeseen delays or issues. **State regulation mandates that late Quotes are ineligible for consideration.**

### **4.3 [NJSTART](#) ELECTRONIC SUBMISSION**

#### **4.3.1 [NJSTART](#) SUBMISSION OF QUOTE**

Vendors {Bidders} may refer to the "Vendor Registration" and "Submit a Quote" QRGs for additional instructions detailing how to enroll in [NJSTART](#) and submit a [NJSTART](#) electronic Quote. QRGs are located on the [NJSTART Vendor Support Page](#).

When submitting a [NJSTART](#) Quote, do not use any symbols (i.e., #, @, \$, &, \*) in the filename.

Uploaded files should be compatible with Microsoft Office and/or Adobe software applications. DO NOT UPLOAD files with extensions such as .zip, .numbers, or .pages.

The Vendor {Bidder} should select the “Confidential” option in **NJSTART** for attachments on the “Attachments” Tab to request that the documents not be displayed publicly through **NJSTART**.

Note: Marking an attachment as "Confidential" in **NJSTART** shall not constitute the Vendor's {Bidder's} designation of the attachment as exempt from public disclosure under OPRA and/or the common law as outlined in Section 1.4.4.

#### **4.4 QUOTE CONTENT**

The Quote should be submitted with the content of each section as indicated below.

- Section 1 - Forms (Sections 4.4.1 and 4.4.2).
- Section 2 - Vendor {Bidder} Demonstration of its Ability to Complete the Scope of Work (Section 4.4.3);
- Section 3 - Financial Capability of the Vendor {Bidder} (Section 4.4.4); and
- Section 4 - Any other miscellaneous documents to be included by the Vendor {Bidder}.
- Section 5 – State-Supplied Price Sheet (Section 4.4.5).

A Vendor {Bidder} must complete the State-Supplied Price Sheet accompanying this Bid Solicitation and upload it as an attachment on the “Attachments” Tab (See Section 4.4.5 of this Bid Solicitation).

The Vendor {Bidder} must enter a Unit Cost of \$1.00 for each price line item on the “Items” Tab in **NJSTART**. The Vendor {Bidder} is instructed to do so only as a mechanism to comply with Bid Solicitation Section 6.8 and prevent all pricing from being publicly displayed in **NJSTART**.

In the event that a Vendor {Bidder} uploads a State-Supplied Price Sheet and completes the Items Tab in **NJSTART** (instead of entering a Unit Cost of \$1.00 as instructed), the State-Supplied Price Sheet attachment will govern.

#### **4.4.1 FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED WITH QUOTE**

Vendors {Bidders} should refer to the QRGs “Vendor Forms” and “Attaching Files” for instructions on submitting the forms required by this section of the Bid Solicitation through **NJSTART**. Vendors {Bidders} may also refer to the QRG “Vendor Categories and Certifications” for additional instructions on completing shortened versions of required forms by completing certifications on the “Maintain Terms and Categories” Tab within its profile in **NJSTART**. QRGs are located on the [NJSTART Vendor Support Page](#).

In the event that a Vendor {Bidder} fails to attach a required form, or the attached form is deemed deficient, the Division may access the Primary Form to be considered as part of the Quote.

Vendors {Bidders} are under a continuing obligation to report updates to the information contained in its required forms.

Unless otherwise specified, forms must contain an original, physical signature, or an electronic signature pursuant to Section 1.4.11 of this Bid Solicitation.

#### **4.4.1.1 OFFER AND ACCEPTANCE PAGE**

The Vendor {Bidder} shall complete and submit the Offer and Acceptance Page accompanying this Bid Solicitation prior to the initiation of negotiation. The Vendor {Bidder} should submit the Offer

and Acceptance Page with the Quote. All information requested on the Offer and Acceptance Page must be submitted.

If the Offer and Acceptance Page is not submitted with the Quote or is incomplete, the State will require the Vendor {Bidder} to submit the Offer and Acceptance Page. If the Vendor {Bidder} fails to comply with the requirement within seven (7) business days of the demand, the State may deem the Quote non-responsive.

The Offer and Acceptance Page must be signed by an authorized representative of the Vendor {Bidder}. If the Vendor {Bidder} is a limited partnership, the Offer and Acceptance Page must be signed by a general partner. If the Vendor {Bidder} is a joint venture, the Offer and Acceptance Page must be signed by a principal of each party to the joint venture.

#### **4.4.1.1.1 MACBRIDE PRINCIPLES CERTIFICATION**

The Vendor {Bidder} must certify pursuant to N.J.S.A. 52:34-12.2 that it is in compliance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of its compliance with those principles. See Section 2.5 of the SSTC and N.J.S.A. 52:34-12.2 for additional information about the MacBride principles.

By signing the Bid Solicitation Offer and Acceptance Page, the Vendor {Bidder} is automatically certifying that either:

- A. The Vendor {Bidder} has no operations in Northern Ireland; or
- B. The Vendor {Bidder} has business operations in Northern Ireland and is committed to compliance with the MacBride principles.

A Vendor {Bidder} electing not to certify to the MacBride Principles must nonetheless sign the Bid Solicitation Offer and Acceptance Page AND must include, as part of its Quote, a statement indicating its refusal to comply with the provisions of this Act.

#### **4.4.1.1.2 NON-COLLUSION**

By submitting a Quote and signing the Bid Solicitation Offer and Acceptance Page, the Vendor {Bidder} certifies as follows:

- A. The price(s) and amount of its Quote have been arrived at independently and without consultation, communication or agreement with any other Vendor {Contractor, Bidder} or any other party;
- B. Neither the price(s) nor the amount of its Quote, and neither the approximate price(s) nor approximate amount of this Quote, have been disclosed to any other firm or person who is a Vendor {Bidder} or potential Vendor {Bidder}, and they will not be disclosed before the Quote submission;
- C. No attempt has been made or will be made to induce any firm or person to refrain from bidding on this Blanket P.O., or to submit a Quote higher than this Quote, or to submit any intentionally high or noncompetitive Quote or other form of complementary Quote;
- D. The Quote of the firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Quote; and

- E. The Vendor {Bidder}, its affiliates, subsidiaries, officers, directors, and employees are not, to Vendor's {Bidder's} knowledge, currently under investigation by any governmental agency for alleged conspiracy or collusion with respect to bidding on any Blanket P.O./public contract and have not in the last five (5) years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction involving conspiracy or collusion with respect to bidding on any Blanket P.O./public contract.

#### **4.4.1.1.3 NEW JERSEY BUSINESS ETHICS GUIDE CERTIFICATION**

The Treasurer has established a business ethics guide to be followed by Vendors {Bidders/Contractors} in its dealings with the State. The guide provides further information about compliance with Section 2.7 of the SSTC. The guide can be found at: <https://www.state.nj.us/treasury/purchase/ethics.shtml>

By signing the Bid Solicitation Offer and Acceptance Page, the Vendor {Bidder} is automatically certifying that it has complied with all applicable laws and regulations governing the provision of State goods and services, including the Conflicts of Interest Law, N.J.S.A. 52:13D-12 to 28.

#### **4.4.1.2 NJ STANDARD BID SOLICITATION FORMS REQUIRED WITH THE QUOTE**

Vendor's {Bidder's} failure to complete, sign and submit the forms in Section 4.4.1.2 shall be cause to reject its Quote as non-responsive.

##### **4.4.1.2.1 OWNERSHIP DISCLOSURE FORM**

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, partnership or limited liability company, the Vendor {Bidder} must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote. A Vendor's {Bidder's} failure to submit the completed and signed form with its Quote will result in the rejection of the Quote as non-responsive and preclude the award of a Blanket P.O. to said Vendor {Bidder} unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote.

In the alternative, to comply with this section, a Vendor {Bidder} with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

Vendors {Bidders} using **NJSTART** to submit a Quote shall make the appropriate certification on the "Maintain Terms and Categories" Tab within its profile by checking the applicable box and, if required, completing and attaching the shortened Ownership Disclosure Form. Vendors {Bidders} not using **NJSTART** to submit a Quote must complete the full Ownership Disclosure Form located on the [Division's website](#).

Vendors {Bidders} may refer to the QRGs "Vendor Forms" and "Attaching Files" for instructions on submitting the forms required by this section of the Bid Solicitation through **NJSTART**. Vendors {Bidders} may also refer to the QRG "Vendor Categories and Certifications" for additional instructions on completing shortened versions of required forms by completing certifications on the

“Maintain Terms and Categories” Tab within its profile in [NJSTART](#). QRGs are located on the [NJSTART Vendor Support Page](#).

Vendors {Bidders} utilizing [NJSTART](#) should designate one (1) version of the Ownership Disclosure Form as the Primary Form. In the event that a Vendor {Bidder} fails to attach an Ownership Disclosure Form, or the attached Ownership Disclosure Form is deemed deficient, the Division may access the Primary Form and consider it as part of the Quote. Note: The Primary Form must have a Date Created within six (6) months of the Quote submission deadline to be considered valid.

#### **4.4.1.2.2 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM**

Pursuant to [N.J.S.A. 52:32-58](#), the Vendor {Bidder} must utilize this Disclosure of Investment Activities in Iran form to certify that neither the Vendor {Bidder}, nor one (1) of its parents, subsidiaries, and/or affiliates (as defined in [N.J.S.A. 52:32-56\(e\)\(3\)](#)), is listed on the Department of the Treasury’s List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Vendor {Bidder}, nor one (1) of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in [N.J.S.A. 52:32-56\(f\)](#). If the Vendor {Bidder} is unable to so certify, the Vendor {Bidder} shall provide a detailed and precise description of such activities as directed on the form. A Vendor’s {Bidder’s} failure to submit the completed and signed form with its Quote will result in the rejection of the Quote as non-responsive and preclude the award of a Blanket P.O. to said Vendor {Bidder}.

Vendors {Bidders} using [NJSTART](#) to submit a Quote shall make the appropriate certification on the “Maintain Terms and Categories” Tab within its profile by checking the applicable box and, if required, completing and attaching the shortened Disclosure of Investment Activities in Iran form. Vendors {Bidders} not using [NJSTART](#) to submit a Quote must complete the full Disclosure of Investment Activities in Iran form located on the [Division’s website](#).

Vendors {Bidders} may refer to the QRGs “Vendor Forms” and “Attaching Files” for instructions on submitting the forms required by this section of the Bid Solicitation through [NJSTART](#). Vendors {Bidders} may also refer to the QRG “Vendor Categories and Certifications” for additional instructions on completing shortened versions of required forms by completing certifications on the “Maintain Terms and Categories” Tab within its profile in [NJSTART](#). QRGs are located on the [NJSTART Vendor Support Page](#).

Vendors {Bidders} utilizing [NJSTART](#) should designate the most current version of the Disclosure of Investment Activities in Iran form as the Primary Form. In the event that a Vendor {Bidder} fails to attach a Disclosure of Investment Activities in Iran form, or the attached Disclosure of Investment Activities in Iran form is deemed deficient, the Division may access the Primary Form, as designed in the Vendor {Bidder} profile, to be considered as part of the Quote.

#### **4.4.1.3 SUBCONTRACTOR UTILIZATION PLAN**

Please note that the State of New Jersey will not be utilizing the “Subcontractor” Tab in [NJSTART](#). Vendors {Bidders} intending to use a Subcontractor shall submit a Subcontractor Utilization Plan form. The Subcontractor Utilization Plan form is located on the [Division’s website](#). Vendors {Bidders} may refer to the QRGs “Vendor Forms” and “Attaching Files” for instructions on submitting the forms required by this section of the Bid Solicitation through [NJSTART](#). QRGs are located on the [NJSTART Vendor Support Page](#).

**NOTE:** If the Blanket P.O. is a small business subcontracting set-aside, the Vendor {Bidder} certifies that in engaging Subcontractors, it shall make a good faith effort to achieve the subcontracting set-aside goals, and shall attach to the Subcontractor Utilization Plan documentation of such efforts in accordance with N.J.A.C. 17:13-4.1 et seq.

For a Quote that does NOT include the use of any Subcontractors, by signing the Bid Solicitation Offer and Acceptance Page, the Vendor {Bidder} is automatically certifying that in the event the award is granted to the Vendor's {Bidder's} firm and the Vendor {Bidder} later determines at any time during the term of the Blanket P.O. to engage Subcontractors to provide certain goods and/or services, pursuant to Section 5.8 of the SSTC, the Vendor {Bidder} shall submit a Subcontractor Utilization Plan form for approval to the Division in advance of any such engagement of Subcontractors.

**4.4.1.4 SMALL BUSINESS SUBCONTRACTING SET-ASIDE BLANKET P.O.**

Not applicable to this procurement.

**4.4.1.5 DISABLED VETERANS' BUSINESS SET-ASIDE BLANKET P.O.**

Not applicable to this procurement.

**4.4.1.6 SMALL BUSINESS AND/OR DISABLED VETERANS' BUSINESS SUBCONTRACTING SET-ASIDE BLANKET P.O.**

Not applicable to this procurement.

**4.4.1.7 BID SECURITY**

Not applicable to this procurement.

**4.4.2 FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED BEFORE BLANKET P.O. AWARD AND THAT SHOULD BE SUBMITTED WITH THE QUOTE**

Unless otherwise specified, forms must contain an original, physical signature, or an electronic signature pursuant to Section 1.4.11 of this Bid Solicitation.

**4.4.2.1 BUSINESS REGISTRATION**

In accordance with N.J.S.A. 52:32-44(b), a Vendor {Bidder} and its named Subcontractors must have a valid Business Registration Certificate ("BRC") issued by the Department of the Treasury, Division of Revenue and Enterprise Services prior to the award of a Blanket P.O. To facilitate the Quote evaluation and Blanket P.O. award process, the Vendor {Bidder} should submit a copy of its valid BRC and those of any named Subcontractors with its Quote. See Section 2.1 of the SSTC.

Any Vendor {Bidder}, inclusive of any named Subcontractors, not having a valid business registration at the time of the Quote opening, or whose BRC was revoked prior to the submission of the Quote, should proceed immediately to register its business or seek reinstatement of a revoked BRC. Vendors {Bidders} should verify its BRC status on the "Maintain Terms and Categories" Tab within its profile in **NJSTART**. In the event of an issue with a Vendor's {Bidder's} BRC, **NJSTART** provides a link to take corrective action.

The Vendor {Bidder} is cautioned that it may require a significant amount of time to secure the reinstatement of a revoked BRC. The process can require actions by both the Division of Revenue and Enterprise Services and the Division of Taxation. For this reason, a Vendor's {Bidder's} early attention to this requirement is highly recommended. The Vendor {Bidder} and its named Subcontractors may register with the Division of Revenue and Enterprise Services, obtain a copy of an existing BRC or obtain information necessary to seek re-instatement of a revoked BRC online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

A Vendor {Bidder} otherwise identified by the Division as a responsive and responsible Vendor {Bidder}, inclusive of any named Subcontractors, but that was not business registered at the time



of submission of its Quote must be so registered and in possession of a valid BRC by a deadline to be specified in writing by the Division. A Vendor {Bidder} failing to comply with this requirement by the deadline specified by the Division will be deemed ineligible for Blanket P.O. award. Under any circumstance, the Division will rely upon information available from computerized systems maintained by the State as a basis to verify independently compliance with the requirement for business registration.

A Vendor {Bidder} receiving a Blanket P.O. award as a result of this procurement and any Subcontractors named by that Vendor {Bidder} will be required to maintain a valid business registration with the Division of Revenue and Enterprise Services for the duration of the executed Blanket P.O., inclusive of any Blanket P.O. extensions.

#### **4.4.2.2 DISCLOSURE OF INVESTIGATIONS AND OTHER ACTIONS INVOLVING BIDDER FORM**

The Vendor {Bidder} should submit the Disclosure of Investigations and Other Actions Involving Bidder Form, with its Quote, to provide a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five (5) years, including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. If a Vendor {Bidder} does not submit the form with the Quote, the Vendor {Bidder} must comply within seven (7) business days of the State's request or the State may deem the Quote non-responsive.

Vendors {Bidders} using [NJSTART](#) to submit a Quote shall make the appropriate certification on the "Maintain Terms and Categories" Tab within its profile by checking the applicable box and, if required, complete and attach the shortened [NJSTART](#) form. Vendors {Bidders} not using [NJSTART](#) to submit a Quote must complete the full version of the form located on the [Division's website](#).

Vendors {Bidders} may refer to the QRGs "Vendor Forms" and "Attaching Files" for instructions on submitting the forms required by this section of the Bid Solicitation through [NJSTART](#). Vendors {Bidders} may also refer to the QRG "Vendor Categories and Certifications" for additional instructions on completing shortened versions of required forms by completing certifications on the "Maintain Terms and Categories" Tab within its profile in [NJSTART](#). QRGs are located on the [NJSTART Vendor Support Page](#).

#### **4.4.2.3 SOURCE DISCLOSURE**

Pursuant to [N.J.S.A. 52:34-13.2](#), prior to an award of Blanket P.O., the Vendor {Bidder} is required to submit a completed Source Disclosure Form. The Vendor's {Bidder's} inclusion of the completed Source Disclosure Form with the Quote is requested and advised. See Bid Solicitation Section 7.1.2 for additional information concerning this requirement.

The Source Disclosure Form is located on the [Division's website](#). Vendors {Bidders} may refer to the QRGs "Vendor Forms" and "Attaching Files" for instructions on submitting the forms required by this section of the Bid Solicitation through [NJSTART](#). QRGs are located on the [NJSTART Vendor Support Page](#).

#### **4.4.2.4 CONFIDENTIALITY/COMMITMENT TO DEFEND**

Vendor {Bidder} should submit a completed and signed Confidentiality /Commitment to Defend form with the Quote. In the event that Vendor {Bidder} does not submit the Confidentiality form with the Quote, the State reserves the right to request that the Vendor {Bidder} submit the form after Quote submission.

See Bid Solicitation Section 1.4.4 *Contents of Quote* for additional information.

#### **4.4.3 EXPERIENCE OF VENDOR {BIDDER}**

The Vendor {Bidder} must fill out in its entirety Attachment #1 – Experience of Vendor {Bidder} accompanying this Bid Solicitation. This form must be filled out by the Vendor {Bidder} and submitted with its Quote. Failure to fill out, complete, and submit the form with the Quote will result in rejection of the Quote.

Attachment #1 – Experience of Vendor {Bidder} will be used by the Division to evaluate whether or not each Vendor {Bidder} meets the minimum experience requirements specified by Bid Solicitation Section 3.5.1, *General Requirements*. The Vendor {Bidder} must have at least two (2) years of experience performing towing services on public roadways in order to be considered for award. Vendors {Bidders} not meeting the experience requirements shall be deemed non-responsive.

#### **4.4.4 FINANCIAL CAPABILITY OF THE VENDOR {BIDDER}**

The Vendor {Bidder} should provide sufficient financial information to enable the State to assess the financial strength and creditworthiness of the Vendor {Bidder} and its ability to undertake and successfully complete the Blanket P.O. In order to provide the State with the ability to evaluate the Vendor's {Bidder's} financial capacity and capability to undertake and successfully complete the Blanket P.O., the Vendor {Bidder} should submit the following:

- A. For publicly traded companies the Vendor {Bidder} should provide copies or the electronic location of the annual reports filed for the two most recent years; or
- B. For privately held companies the Vendor {Bidder} should provide the certified financial statement (audited or reviewed) in accordance with applicable standards by an independent Certified Public Accountant which include a balance sheet, income statement, and statement of cash flow, and all applicable notes for the most recent calendar year or the Vendor's {Bidder's} most recent fiscal year.

If the information is not supplied with the Quote, the State may still require the Vendor {Bidder} to submit it. If the Vendor {Bidder} fails to comply with the request within seven (7) business days, the State may deem the Quote non-responsive.

A Vendor {Bidder} may designate specific financial information as not subject to disclosure when the Vendor {Bidder} has a good faith legal/factual basis for such assertion. A Vendor {Bidder} may submit specific financial documents in a separate, sealed package clearly marked "Confidential-Financial Information" along with the Quote.

The State reserves the right to make the determination to accept the assertion and shall so advise the Vendor {Bidder}.

#### **4.4.5 STATE-SUPPLIED PRICE SHEET**

The Vendor {Bidder} must submit its pricing using the State-Supplied Price Sheet accompanying this Bid Solicitation and located on the "Attachments" Tab.

Vendors {Bidders} may refer to the QRG "Submit a Quote" for instructions detailing how to submit a **NJSTART** electronic Quote. QRGs are located on the [NJSTART Vendor Support Page](#).

##### **4.4.5.1 NJSTART PRICING SUBMISSION INSTRUCTIONS**

If the Vendor {Bidder} is submitting a **NJSTART** Quote, the Vendor {Bidder} must enter a Unit Cost of \$1.00 for each price line item on the "Items" Tab in **NJSTART**. The Vendor {Bidder} is instructed



to do so only as a mechanism to comply with Bid Solicitation Section 6.8 and prevent all pricing from being publicly displayed in **NJSTART**.

#### **4.4.5.2 STATE-SUPPLIED PRICE SHEET INSTRUCTIONS**

The Vendor {Bidder} must submit its pricing using the State-Supplied Price Sheet accompanying this Bid Solicitation. Each price line description on the State-Supplied Price Sheet contains information relative to that price line that the Vendor {Bidder} should consider prior to submitting a Quote.

- A. The Vendor {Bidder} may bid on one (1) price line or multiple price lines;
- B. The Vendor {Bidder} may bid on price lines for one (1) truck weight category or both truck weight categories;
- C. The Vendor {Bidder} does not have to bid on both truck weight categories for the same mile post coverage area/Deploy to Site to be considered for award of those price lines;
- D. The Vendor {Bidder} shall provide an all-inclusive hourly rate for all pricing submitted. The all-inclusive hourly rate shall reflect all costs including, but not limited to the Roving Operations, hook-up costs, and the towing rate. The all-inclusive hourly rate shall NOT include travel time to or from the Vendor's {Contractor's} place of business to the Deploy to Site;
- E. Pricing shall be provided in the Unit Cost field of the State-Supplied Price Sheet for each price line. Failure to do so, will result in the Quote being deemed non-responsive for that respective price line; and
- F. All price lines will be awarded separately.

An all-inclusive hourly rate shall be provided per towing vehicle, per price line. The all-inclusive hourly rate shall reflect all costs including, but not limited to the Roving Operations, hook-up costs, and the towing rate.

**Please note:** The hourly rate shall NOT include travel time to or from the Vendor's {Contractor's} place of business to the Deploy to Site, except in instances of a temporary reassignment (see Section 3.14, *Vendor {Contractor} Temporary Reassignment*).

Vendors {Bidders} shall only provide unit pricing for the price lines that the Vendor {Bidder} is willing and fully able to provide, including all services specified by this Bid Solicitation, as applicable.

Vendors {Bidders} are cautioned that usage will vary based upon the needs of the State.

In the event that a Vendor {Bidder} using **NJSTART** to submit a Quote uploads a State-Supplied Price Sheet and completes the "Items" Tab in **NJSTART** (instead of entering a Unit Cost of \$1.00 as instructed), the State-Supplied Price Sheet will govern.

#### **4.4.5.3 USE OF "NO BID" VERSUS "NO CHARGE" ON THE STATE-SUPPLIED PRICE SHEET**

All price lines must be filled out in accordance with Section 4.4.5.2. If the Vendor {Bidder} is not submitting a price for an item on a price line, the Vendor {Bidder} must indicate "No Bid" on the State-Supplied Price Sheet accompanying this Bid Solicitation. If the Vendor {Bidder} will supply an item on a price line free of charge, the Vendor {Bidder} must indicate "No Charge" on the State-

Supplied Price Sheet accompanying this Bid Solicitation. The use of any other identifier may result in the Vendor's {Bidder's} Quote being deemed non-responsive.

#### **4.4.5.4 DELIVERY TIME AND COSTS**

Unless otherwise noted elsewhere in the Bid Solicitation, all delivery times are 30 calendar days after receipt of order (ARO) and prices for items in Quotes shall be submitted Freight On Board (F.O.B.) Destination (30 calendar days ARO/F.O.B.). Quotes submitted other than 30 calendar days ARO/F.O.B. may be deemed non-responsive. The Vendor {Contractor} shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to the State's Using Agency or designated purchaser. 30 calendar days ARO/F.O.B. does not cover "spotting" but does include delivery on the receiving platform of the Using Agency at any destination in the State of New Jersey unless otherwise specified.

No additional charges will be allowed for any additional transportation costs resulting from partial shipments made at the Vendor's {Contractor's} convenience when a single shipment is ordered.

The weights and measures of the State's Using Agency receiving the shipment shall govern.

#### **4.4.5.5 COLLECT ON DELIVERY (C.O.D.) TERMS**

C.O.D. terms are not acceptable as part of a Quote and shall be deemed non-responsive.

#### **4.4.5.6 CASH DISCOUNTS**

The Vendor {Bidder} is encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts, but discounts will not be considered in determining the price rankings of Quotes.

Should the Vendor {Bidder} choose to offer cash discounts the following shall apply:

- A. Discount periods shall be calculated starting from the next business day after the Using Agency has accepted the goods or services, received a properly signed and executed invoice and, when required, a properly executed performance security, whichever is latest; and
- B. The date on the check issued by the State in payment of that invoice shall be deemed the date of the State's response to that invoice.

## **5.0 SPECIAL CONTRACTUAL TERMS AND CONDITIONS APPLICABLE TO THE BLANKET P.O.**

### **5.1 PRECEDENCE OF SPECIAL CONTRACTUAL TERMS AND CONDITIONS**

This Blanket P.O. awarded, and the entire agreement between the parties, as a result of this Bid Solicitation shall consist of this Bid Solicitation, SSTC, Bid Amendment to this Bid Solicitation, the Vendor's {Contractor's} Quote, any Best and Final Offer, and the Division's Notice of Award.

In the event of a conflict in the terms and conditions among the documents comprising this Blanket P.O., the order of precedence, for purposes of interpretation thereof, listed from highest ranking to lowest ranking, shall be:

- A. Executed Offer and Acceptance Page;
- B. Bid Solicitation Section 5, as may be amended by Bid Amendment;
- C. The State of NJ Standard Terms and Conditions (SSTC) included in this Bid Solicitation at Section 9;
- D. All remaining sections of the Bid Solicitation, as may be amended by Bid Amendment;
- E. The Vendor's {Contractor's} final submitted Best and Final Offer; and
- F. The Vendor's {Contractor's} Quote as accepted by the State.

**Note:** In the event of conflicting information between the Bid Solicitation and fields contained in **NJSTART**, the Bid Solicitation will govern and **NJSTART** will be updated via Bid Amendment or Change Order.

### **5.2 BLANKET P.O. TERM AND EXTENSION OPTION**

The base term of this Blanket P.O. shall be for a period of **three (3) years**. The anticipated "Blanket P.O. Effective Date" is provided on the "Summary" page the Bid Solicitation in **NJSTART**. If delays in the procurement process result in a change to the anticipated Blanket P.O. Effective Date, the Vendor {Bidder} agrees to accept a Blanket P.O. for the full term of this Blanket P.O.

This Blanket P.O. may be extended up to **two (2) years** with no single extension exceeding one (1) year, by the mutual written consent of the Vendor {Contractor} and the Director at the same terms, conditions, and pricing at the rates in effect in the last year of this Blanket P.O. or rates more favorable to the State or as per SSTC Section 6.1.

### **5.3 BLANKET P.O. TRANSITION**

In the event that a new Blanket P.O. has not been awarded prior to this Blanket P.O. expiration date, including any extensions exercised, and the State exercises this Blanket P.O. transition, the Vendor {Contractor} shall continue this Blanket P.O. under the same terms, conditions, and pricing until a new Blanket P.O. can be completely operational. At no time shall this transition period extend more than **180 days** beyond the expiration date of this Blanket P.O., including any extensions exercised.

### **5.4 CHANGE ORDER**

Any changes or modifications to the terms of this Blanket P.O. shall be valid only when they have been reduced to writing and signed by the Vendor {Contractor} and the Director.

## **5.5 VENDOR {CONTRACTOR} RESPONSIBILITIES**

The Vendor {Contractor} shall have sole responsibility for the complete effort specified in this Blanket P.O. Payment will be made only to the Vendor {Contractor}. The Vendor {Contractor} shall have sole responsibility for all payments due any Subcontractor.

The Vendor {Contractor} is responsible for the professional quality, technical accuracy and timely completion and submission of all deliverables, services or commodities required to be provided under this Blanket P.O. The Vendor {Contractor} shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its deliverables and other services. The approval of deliverables furnished under this Blanket P.O. shall not in any way relieve the Vendor {Contractor} of responsibility for the technical adequacy of its work. The review, approval, acceptance or payment for any of the services shall not be construed as a waiver of any rights that the State may have arising out of the Vendor's {Contractor's} performance of this Blanket P.O.

## **5.6 SUBSTITUTION OF STAFF**

If it becomes necessary for the Vendor {Contractor} to substitute any management, supervisory or key personnel, the Vendor {Contractor} shall identify the substitute personnel and the work to be performed. The Vendor {Contractor} must provide detailed justification documenting the necessity for the substitution. Resumes must be submitted evidencing that the individual(s) proposed as substitute(s) have qualifications and experience equal to or better than the individual(s) originally proposed or currently assigned.

The Vendor {Contractor} shall forward a request to substitute staff to the State Contract Manager for consideration and approval. No substitute personnel are authorized to begin work until the Vendor {Contractor} has received written approval to proceed from the State Contract Manager.

## **5.7 SUBSTITUTION OR ADDITION OF SUBCONTRACTOR(S)**

This Subsection serves to supplement but not to supersede Sections 5.8 and 5.9 of the SSTC accompanying this Bid Solicitation.

The Vendor {Contractor} may not subcontract other than as identified in the Vendor's {Contractor's} proposal without the prior written consent of the Director. The Vendor {Contractor} shall forward a written request to substitute or add a Subcontractor or to substitute its own staff for a Subcontractor to the State Contract Manager for consideration. If the State Contract Manager approves the request, the State Contract Manager will forward the request to the Director for final approval. No substituted or additional Subcontractors are authorized to begin work until the Vendor {Contractor} has received written approval from the Director.

If it becomes necessary for the Vendor {Contractor} to substitute a Subcontractor, add a Subcontractor, or substitute its own staff for a Subcontractor, the Vendor {Contractor} will identify the proposed new Subcontractor or staff member(s) and the work to be performed. The Vendor {Contractor} must provide detailed justification documenting the necessity for the substitution or addition.

The Vendor {Contractor} must provide detailed resumes of its proposed replacement staff or of the proposed Subcontractor's management, supervisory, and other key personnel that demonstrate knowledge, ability and experience relevant to that part of the work which the Subcontractor is to undertake.

The qualifications and experience of the replacement(s) must equal or exceed those of similar personnel proposed by the Vendor {Contractor} in its Quote.

## **5.8 OWNERSHIP OF MATERIAL**

All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of this Blanket P.O., 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 Blanket P.O. 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, except those modifications or adaptations made to Vendor's {Bidder's/Contractor's} Background IP as defined below, the work shall be considered "work for hire", i.e., the State, not the Vendor {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 the law, be a work made for hire in accordance with the terms of this Blanket P.O., Vendor {Contractor} or Subcontractor hereby assigns to the State all right, title and interest in and to any such material, and the State shall have the right to obtain and hold in its own name and copyrights, registrations and any other proprietary rights that may be available.

Should the Vendor {Bidder} anticipate bringing pre-existing intellectual property into the project, the intellectual property must be identified in the Quote. Otherwise, the language in the first paragraph of this section prevails. If the Vendor {Bidder} identifies such intellectual property ("Background IP") in its Quote, then the Background IP owned by the Vendor {Bidder} on the date of this Blanket P.O., as well as any modifications or adaptations thereto, remain the property of the Vendor {Bidder}. Upon Blanket P.O. award, the Vendor {Bidder/Contractor} shall grant the State a nonexclusive, perpetual royalty free license to use any of the Vendor's {Bidder's/Contractor's} Background IP delivered to the State for the purposes contemplated by this Blanket P.O.

## **5.9 CONFIDENTIALITY**

- A. The obligations of the State under this provision are subject to the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq., the New Jersey common law right to know, and any other lawful document request or subpoena;
- B. By virtue of this Blanket P.O., the parties may have access to information that is confidential to one another. The parties agree to disclose to each other only information that is required for the performance of their obligations under this Blanket P.O. Vendor's {Contractor's} Confidential Information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure and Vendor Intellectual Property ("Vendor {Contractor} Confidential Information"). Notwithstanding the previous sentence, the terms and pricing of this Blanket P.O. are subject to disclosure under OPRA, the common law right to know, and any other lawful document request or subpoena;
- C. The State's Confidential Information shall consist of all information or data contained in documents supplied by the State, any information or data gathered by the Vendor {Contractor} in fulfillment of the Blanket P.O. and any analysis thereof (whether in fulfillment of the Blanket P.O. or not);
- D. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party, except that if the information is personally identifying to a person or entity regardless of whether it has become part of the public domain through other means, the other party must maintain full efforts under the Blanket P.O. to keep it confidential; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by

a third party without restriction on the disclosure; or (d) is independently developed by the other party;

- E. The State agrees to hold Vendor's {Contractor's} Confidential Information in confidence, using at least the same degree of care used to protect its own Confidential Information;
- F. In the event that the State receives a request for Vendor {Contractor} Confidential Information related to this Blanket P.O. pursuant to a court order, subpoena, or other operation of law, the State agrees, if permitted by law, to provide Vendor {Contractor} with as much notice, in writing, as is reasonably practicable and the State's intended response to such order of law. Vendor {Contractor} shall take any action it deems appropriate to protect its documents and/or information;
- G. In addition, in the event Vendor {Contractor} receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, Vendor {Contractor} shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Vendor's {Contractor's} intended response to such order of law. The State shall take any action it deems appropriate to protect its documents and/or information; and
- H. Notwithstanding the requirements of nondisclosure described in this Section 5.9, either party may release the other party's Confidential Information:
  - (i) if directed to do so by a court or arbitrator of competent jurisdiction; or
  - (ii) pursuant to a lawfully issued subpoena or other lawful document request:
    - (a) in the case of the State, if the State determines the documents or information are subject to disclosure and Vendor {Contractor} does not exercise its rights as described in Section 5.9(F), or if Vendor {Contractor} is unsuccessful in defending its rights as described in Section 5.9(F); or
    - (b) in the case of Vendor {Contractor}, if Vendor {Contractor} determines the documents or information are subject to disclosure and the State does not exercise its rights described in Section 5.9(G), or if the State is unsuccessful in defending its rights as described in Section 5.9(G).

#### **5.10 NEWS RELEASES**

The Vendor {Contractor} is not permitted to issue news releases pertaining to any aspect of the services being provided under this Blanket P.O. without the prior written consent of the Director.

#### **5.11 ADVERTISING**

The Vendor {Contractor} shall not use the State's name, logos, images, or any data or results arising from this Blanket P.O. as a part of any commercial advertising without first obtaining the prior written consent of the Director.

#### **5.12 LICENSES AND PERMITS**

The Vendor {Contractor} shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this Blanket P.O. Notwithstanding the requirements of the Bid Solicitation, the Vendor {Contractor} shall supply the State Contract Manager with evidence of all such licenses, permits and authorizations. This evidence shall be submitted subsequent to this Blanket P.O. award. All costs associated with any such licenses, permits, and authorizations must be considered by the Vendor {Bidder} in its Quote.

## **5.13 CLAIMS AND REMEDIES**

### **5.13.1 CLAIMS**

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

### **5.13.2 REMEDIES**

Nothing in this Blanket P.O. shall be construed to be a waiver by the State of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in a writing executed by the Director.

### **5.13.3 REMEDIES FOR FAILURE TO COMPLY WITH MATERIAL BLANKET P.O. REQUIREMENTS**

In the event that the Vendor {Contractor} fails to comply with any material Blanket P.O. requirements, the Director may take steps to terminate this Blanket P.O. in accordance with the SSTC, authorize the delivery of Blanket P.O. items by any available means, with the difference between the price paid and the defaulting Vendor's {Contractor's} price either being deducted from any monies due the defaulting Vendor {Contractor} or being an obligation owed the State by the defaulting Vendor {Contractor}, as provided for in the State administrative code, or take any other action or seek any other remedies available at law or in equity.

## **5.14 LIQUIDATED DAMAGES**

Not applicable to this procurement.

## **5.15 RETAINAGE**

Not applicable to this procurement.

## **5.16 ADDITIONAL WORK AND/OR SPECIAL PROJECTS**

The Vendor {Contractor} shall not begin performing any additional work or special projects without first obtaining the State Contract Manager's recommendation and the Director's written approval.

In the event of additional work and/or special projects, the Vendor {Contractor} must present a written Quote to perform the additional work to the State Contract Manager. The Quote should provide justification for the necessity of the additional work. The relationship between the additional work and the base Blanket P.O. work must be clearly established by the Vendor {Contractor} in its Quote.

The Vendor's {Contractor's} written Quote must provide a detailed description of the work to be performed broken down by task and subtask. The Quote should also contain details on the level of effort, including hours, labor categories, etc., necessary to complete the additional work.

The written Quote must detail the cost necessary to complete the additional work in a manner consistent with this Blanket P.O. The written price schedule must be based upon the hourly rates, unit costs or other cost elements submitted by the Vendor {Contractor} in the Vendor's {Contractor's} original Quote submitted in response to this Bid Solicitation. Whenever possible, the price schedule should be a firm, fixed price to perform the required work. The firm, fixed price should specifically reference and be tied directly to costs submitted by the Vendor {Contractor} in its original Quote. A payment schedule, tied to successful completion of tasks and subtasks, must be included.

Upon receipt and approval of the Vendor's {Contractor's} written Quote, the State Contract Manager shall forward same to the Director for the Director's written approval. Complete documentation from the Using Agency, confirming the need for the additional work, must be submitted. Documentation forwarded by the State Contract Manager to the Director must include all other required State approvals, such as those that may be required from the State of New Jersey's Office of Management and Budget and Office of Information Technology.

In the event the Vendor {Contractor} proceeds with additional work and/or special projects without the Director's written approval, it shall be at the Vendor's {Contractor's} sole risk. The State shall be under no obligation to pay for work performed without the Director's written approval.

#### **5.17 MODIFICATIONS AND CHANGES TO THE STATE OF NJ STANDARD TERMS AND CONDITIONS (SSTC)**

Not applicable to this procurement.

#### **5.18 ACCESSIBILITY COMPLIANCE**

The Vendor {Contractor} acknowledges that the State may be required to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. The Vendor {Contractor} agrees that any information that it provides to the State in the form of a Voluntary Product Accessibility Template (VPAT) about the accessibility of the Software is accurate to a commercially reasonable standard and the Vendor {Contractor} agrees to provide the State with technical information available to support such VPAT documentation in the event that the State relied on any of Vendor's {Contractor's} VPAT information to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. In addition, Vendor {Contractor} shall defend any claims against the State that the Software does not meet the accessibility standards set forth in the VPAT provided by Provider in order to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794 and will indemnify the State with regard to any claim made against the State with regard to any judgment or settlement resulting from those claims to the extent the Provider's Software provided under this Blanket P.O. was not accessible in the same manner as or to the degree set forth in the Vendor's {Contractor's} statements or information about accessibility as set forth in the then-current version of an applicable VPAT.

#### **5.19 BLANKET P.O. ACTIVITY REPORT**

The Vendor {Contractor} must provide, on a biannual basis, a record of all purchases made under this Blanket P.O. resulting from this Bid Solicitation. This reporting requirement includes sales to State Using Agencies, political sub-divisions thereof and, if permitted under the terms of this Blanket P.O., sales to counties, municipalities, school districts, volunteer fire departments, first aid squads and rescue squads, independent institutions of higher education, State and county colleges and quasi-State entities. Quasi-State entities include any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member.

This information must be provided in Microsoft Excel such that an analysis can be made to determine the following:

- A. Vendor's {Contractor's} total sales volume, with line item detail, to each purchaser under this Blanket P.O.;
- B. Subtotals by product, including, if applicable, catalog number and description, price list with appropriate page reference, and/or Blanket P.O. discount applied; and
- C. Total dollars paid to Subcontractors.



Submission of purchase orders, confirmations, and/or invoices do not fulfill this Blanket P.O. requirement for information. Failure to report this mandated information may be a factor in future award decisions.

The Vendor {Contractor} must submit the required information in Microsoft Excel format to [NJSupplierReports@treas.nj.gov](mailto:NJSupplierReports@treas.nj.gov).

Reports are due:

January 1<sup>st</sup> through June 30<sup>th</sup> – due by July 30<sup>th</sup>; and  
July 1<sup>st</sup> through December 31<sup>st</sup> – due by January 30<sup>th</sup>.

## **5.20 ELECTRONIC PAYMENTS**

With the award of this Blanket P.O., the successful Vendor(s) {Contractor(s)} will be required to receive its payment(s) electronically. In order to receive your payments via automatic deposit from the State of New Jersey, you must complete the EFT information within your NJSTART Vendor Profile. Please refer to Section 5.2 of the QRG entitled “Vendor Profile Management – Company Information and User Access” for instructions. QRGs are located on the [NJSTART Vendor Support Page](#).

## **5.21 PROGRAM EFFICIENCY ASSESSMENT FOR STATE USING AGENCIES**

The Program Efficiency Assessment shall not be charged against the winning Vendor {Contractor} and therefore is not to be included in the Vendor’s {Bidder’s} pricing. The State Using Agencies shall be charged an assessment equal to one-quarter of one (1) percent (0.25%) of the value of all transactions under this Blanket P.O. This assessment is authorized by [N.J.S.A. 52:27B-56](#) and [N.J.A.C. 17:12-1.5](#), to maintain the State’s procurement system at a level to meet industry standards of efficiency.

For purposes of this section, “transaction” is defined as the payment or remuneration to the Vendor {Contractor} for services rendered or products provided to the State pursuant to the terms of this Blanket P.O., including but not limited to the following: purchase orders, invoices, hourly rates, firm fixed price, commission payments, progress payments and contingency payments.

## **6.0 QUOTE EVALUATION**

### **6.1 RIGHT TO WAIVE**

Pursuant to N.J.A.C. 17:12-2.7(d) the Director may waive minor irregularities or omissions in a Quote. The Director also reserves the right to waive a requirement provided that the requirement does not materially affect the procurement or the State's interests associated with the procurement.

### **6.2 DIRECTOR'S RIGHT OF FINAL QUOTE ACCEPTANCE**

The Director reserves the right to reject any or all Quotes, or to award in whole or in part if deemed to be in the best interest of the State to do so. The Director shall have authority to award orders or Blanket P.O.s in accordance with N.J.S.A. 52:34-12.

### **6.3 STATE'S RIGHT TO INSPECT VENDOR (BIDDER) FACILITIES**

The State reserves the right to inspect the Vendor's {Bidder's} establishment before making an award, for the purposes of ascertaining whether the Vendor {Bidder} has the necessary facilities for performing the Blanket P.O.

The State may also consult with clients of the Vendor {Bidder} during the evaluation of Quotes. Such consultation is intended to assist the State in making a Blanket P.O. award that is most advantageous to the State.

### **6.4 CLARIFICATION OF QUOTE / STATE'S RIGHT TO REQUEST FURTHER INFORMATION**

After the submission of Quotes, unless requested by the State as noted below, Vendor {Bidder} contact with the State is not permitted.

After the Quotes are reviewed, one (1), some or all of the Vendors {Bidders} may be asked to clarify certain aspects of its Quote. A request for clarification may be made in order to resolve minor ambiguities, irregularities, informalities or clerical errors. Clarifications cannot correct any deficiencies or material omissions, or revise or modify a Quote.

Further, the Director reserves the right to request a Vendor {Bidder} to explain, in detail, how the Quote price was determined.

### **6.5 QUOTE EVALUATION COMMITTEE**

Quotes may be evaluated by an Evaluation Committee composed of members of affected departments and agencies together with representative(s) from the Division. Representatives from other governmental agencies may also serve on the Evaluation Committee. On occasion, the Evaluation Committee may choose to make use of the expertise of outside consultant(s) in an advisory role.

### **6.6 ORAL PRESENTATION**

After the Quotes are reviewed, one (1), some or all of the Vendors {Bidders} may be required to give an oral presentation to the State concerning its Quote.

A Vendor {Bidder} may not attend the oral presentations of its competitors.

It is within the State's discretion whether to require the Vendor {Bidder} to give an oral presentation or require the Vendor {Bidder} to submit written responses to questions regarding its Quote. Action by the State in this regard should not be construed to imply acceptance or rejection of a Quote.

The Division will be the sole point of contact regarding any request for an oral presentation or clarification.

## **6.7 EVALUATION CRITERIA**

The following evaluation criteria categories, not necessarily listed in order of significance, will be used to evaluate Quotes received in response to this Bid Solicitation.

- A. Experience of Vendor {Bidder} (Attachment #1): The Vendor {Bidder} must have at least two (2) years of experience performing towing services on public roadways in order to be considered for award of that service; and
- B. Price: The Vendor's {Bidder's} pricing provided on the State-Supplied Price Sheet for each price line. See Section 6.7.1, subsections included, for information regarding the pricing evaluation methodology.

### **6.7.1 VENDOR'S {BIDDER'S} STATE-SUPPLIED PRICE SHEET**

The Division intends to award to one (1) responsive Vendor {Bidder} per price line for towing services. The Division will evaluate and rank based upon pricing, from lowest to highest.

If two (2) or more Vendors {Bidders} are tied on pricing based upon the above pricing evaluation methodology, then the Division will rank based upon the years of experience recorded on Attachment #1, for the respective price line in question. Should two (2) or more Vendors {Bidders} submit the same price and have the same number of years experience, then section 6.7.3 below will apply.

### **6.7.2 QUOTE DISCREPANCIES**

In evaluating Quotes, discrepancies between words and figures will be resolved in favor of words. Discrepancies between Unit Prices and totals of Unit Prices will be resolved in favor of Unit Prices. Discrepancies in the multiplication of units of work and Unit Prices will be resolved in favor of the Unit Prices. Discrepancies between the indicated total of multiplied Unit Prices and units of work and the actual total will be resolved in favor of the actual total. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum of the column of figures.

In the event that a Vendor {Bidder} using **NJSTART** to submit a Quote uploads a State-Supplied Price Sheet and completes the "Items" Tab in **NJSTART** (instead of entering a Unit Cost of \$1.00 as instructed), the State-Supplied Price Sheet will govern.

### **6.7.3 TIE-BREAKING CRITERIA**

Tie Quotes will be awarded by the Director in accordance with N.J.A.C. 17:12-2.10.

## **6.8 NEGOTIATION AND BEST AND FINAL OFFER (BAFO)**

In accordance with N.J.S.A. 52:34-12(f) and N.J.A.C. 17:12-2-7, after evaluating Quotes, the Bureau may establish a competitive range and enter into negotiations with one (1) Vendor {Bidder} or multiple Vendors {Bidders} within this competitive range. The primary purpose of negotiations is to maximize the State's ability to obtain the best value based on the mandatory requirements, evaluation criteria, and cost. Multiple rounds of negotiations may be conducted with one (1) Vendor {Bidder} or multiple Vendors {Bidders}. Negotiations will be structured by the Bureau to safeguard information and ensure that all Vendors {Bidders} are treated fairly.

Similarly, the Bureau may invite one (1) Vendor {Bidder} or multiple Vendors {Bidders} to submit a Best and Final Offer (BAFO). Said invitation will establish the time and place for submission of the BAFO. Any BAFO that does not result in more advantageous pricing to the State will not be considered, and the State will evaluate the Vendor's {Bidder's} most advantageous previously submitted pricing.

If required, after review of the BAFO(s), clarification may be sought from the Vendor(s) {Bidder(s)}. The Division may conduct more than one (1) round of negotiation and/or BAFO in order to attain the best value for the State.

After evaluation of Quotes and as applicable, negotiation(s), and/or BAFO(s), the Bureau will recommend, to the Director, the responsible Vendor(s) {Bidder(s)} whose Quote(s), conforming to the Bid Solicitation, is/are most advantageous to the State, price, and other factors considered. The Director may accept, reject or modify the recommendation of the Bureau. The Director may initiate additional negotiation or BAFO procedures with the selected Vendor(s) {Bidder(s)}.

**Negotiations will be conducted only in those circumstances where it is deemed by the Bureau or Director to be in the State's best interests and to maximize the State's ability to get the best value. Therefore, the Vendor {Bidder} is advised to submit its best technical and price Quote in response to this Bid Solicitation since the State may, after evaluation, make a Blanket P.O. award based on the content of the initial submission, without further negotiation and/or BAFO with any Vendor {Bidder}.**

All contacts, records of initial evaluations, any correspondence with a Vendor {Bidder} related to any request for clarification, negotiation or BAFO, any revised technical and/or price Quotes, and related documents will remain confidential until a Notice of Intent to Award a Blanket P.O. is issued.

If the Bureau contemplates negotiation, Quote prices will not be publicly read at the Quote opening. Only the name and address of each Vendor {Bidder} will be publicly announced at the Quote opening.

#### **6.9 "REQUEST FOR REVISION" WITHIN [NJSTART](#)**

The State may request a revision of the Vendor's {Bidder's} Quote within [NJSTART](#). The Vendor {Bidder} shall respond to the "Request for Revision" (e.g., to reduce pricing if a BAFO is requested) only for the reason(s) identified by the State. Any changes made by a Vendor {Bidder} to the Quote other than as requested by the State shall be considered null and void.

#### **6.10 POOR PERFORMANCE**

A Vendor {Bidder} with a history of performance problems may be bypassed for consideration of an award issued as a result of this Bid Solicitation. The following materials may be reviewed to determine Vendor {Bidder} performance: Blanket P.O. cancellations for cause pursuant to Section 5.7(B) of the SSTC; information contained in Vendor performance records; information obtained from audits or investigations conducted by a local, state or federal agency of the Vendor's {Bidder's} work experience; current licensure, registration, and/or certification status and relevant history thereof; or its status or rating with established business/financial reporting services, as applicable. Vendors {Bidders} should note that this list is not exhaustive.

## **7.0 BLANKET P.O. AWARD**

### **7.1 DOCUMENTS REQUIRED BEFORE BLANKET P.O. AWARD**

#### **7.1.1 REQUIREMENTS OF PUBLIC LAW 2005, CHAPTER 51, N.J.S.A. 19:44A-20.13 - N.J.S.A. 19:44A-20.25 (FORMERLY EXECUTIVE ORDER NO. 134), EXECUTIVE ORDER NO. 117 (2008) AND N.J.A.C. 17:12-5 ET SEQ.**

- A. The State shall not enter into a Blanket P.O. to procure services or any material, supplies or equipment, or to acquire, sell, or lease any land or building from any Business Entity, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions, to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor, to any State, county, municipal political party committee, or to any legislative leadership committee during certain specified time periods;
- B. Prior to awarding any Blanket P.O. or agreement to any Business Entity, the Business Entity proposed as the intended Vendor {Contractor} of the Blanket P.O. shall submit the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form, certifying that no contributions prohibited by either Chapter 51 or Executive Order No. 117 have been made by the Business Entity and reporting all qualifying contributions made by the Business Entity or any person or entity whose contributions are attributable to the Business Entity. The required form and instructions, available for review on the Division's website at <http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf>, shall be provided to the intended Vendor {Contractor} for completion and submission to the Division with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Blanket P.O., the intended Vendor {Contractor} shall submit to the Division, in care of the Division Procurement Specialist, the Certification and Disclosure(s) within five (5) business days of the State's request. The Certification and Disclosure(s) may be executed electronically by typing the name of the authorized signatory in the "Signature" block as an alternative to downloading, physically signing the form, scanning the form, and uploading the form. Failure to submit the required forms will preclude award of a Blanket P.O. under this Bid Solicitation, as well as future Blanket P.O. opportunities; and
- C. Further, the Vendor {Contractor} is required, on a continuing basis, to report any contributions it makes during the term of the Blanket P.O., and any extension(s) thereof, at the time any such contribution is made. The required form and instructions, available for review on the Division's website at <http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf>, shall be provided to the intended Vendor {Contractor} with the Notice of Intent to Award.

The Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form is located on the [Division's website](#).

Vendors {Bidders} may refer to the QRGs "Vendor Forms" and "Attaching Files" for instructions on submitting the forms required by this section of the Bid Solicitation through **NJSTART**. QRGs are located on the [NJSTART Vendor Support Page](#).

Vendors {Bidders} should verify its Chapter 51 Compliance status on the "Maintain Terms and Categories" Tab within its profile in **NJSTART**. In the event of an issue with a Vendor's {Bidder's} Chapter 51 Compliance status, **NJSTART** provides a link to take corrective action.

### **7.1.2 SOURCE DISCLOSURE REQUIREMENTS**

Pursuant to N.J.S.A. 52:34-13.2, all Blanket P.O.s primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a Vendor {Contractor} or Subcontractor within the United States and the certification is approved by the State Treasurer. Also refer to Section 3.6 Service Performance within U.S. of the SSTC.

Pursuant to the statutory requirements, the intended Vendor {Contractor} of a Blanket P.O. primarily for services with the State of New Jersey must disclose the location by country where services under the Blanket P.O., including subcontracted services, will be performed. The Source Disclosure Form accompanies the subject Bid Solicitation. FAILURE TO SUBMIT SOURCING INFORMATION WHEN REQUESTED BY THE STATE SHALL PRECLUDE AWARD OF A BLANKET P.O. TO THE INTENDED VENDOR {BIDDER}.

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

The Source Disclosure Form is located on the [Division's website](#). Vendors {Bidders} may refer to the QRGs "Vendor Forms" and "Attaching Files" for instructions on submitting the forms required by this section of the Bid Solicitation through [NJSTART](#). QRGs are located on the [NJSTART Vendor Support Page](#).

#### **7.1.2.1 BREACH OF BLANKET P.O.**

A SHIFT TO PROVISION OF SERVICES OUTSIDE THE UNITED STATES DURING THE TERM OF THE BLANKET P.O. SHALL BE DEEMED A BREACH OF BLANKET P.O. If, during the term of the Blanket P.O., or any extension thereof, the Vendor {Contractor} or Subcontractor, who had upon Blanket P.O. award declared that services would be performed in the United States, proceeds to shift the performance of any of the services outside the United States, the Vendor {Contractor} shall be deemed to be in breach of its Blanket P.O. Such Blanket P.O. shall be subject to termination for cause pursuant to Section 5.7b.1 of the SSTC, unless such shift in performance was previously approved by the Director and the Treasurer.

#### **7.1.3 AFFIRMATIVE ACTION**

The intended Vendor {Contractor} must submit a copy of a New Jersey Certificate of Employee Information Report, or a copy of Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program. Intended Vendors {Contractors} not in possession of either a New Jersey Certificate of Employee Information Report or a Federal Letter of Approval must complete the Affirmative Action Employee Information Report (AA-302) located on the web at [http://www.nj.gov/treasury/purchase/forms/AA\\_%20Supplement.pdf](http://www.nj.gov/treasury/purchase/forms/AA_%20Supplement.pdf).

Vendors {Bidders} should verify its Affirmative Action Compliance status on the "Maintain Terms and Categories" Tab within its profile in [NJSTART](#). In the event of an issue with a Vendor's {Bidder's} Affirmative Action Compliance status, [NJSTART](#) provides a link to take corrective action.

#### **7.1.4 BUSINESS REGISTRATION**

In accordance with N.J.S.A. 52:32-44(b), a Vendor {Bidder} and its named Subcontractors must have a valid Business Registration Certificate ("BRC") issued by the Department of the Treasury,

Division of Revenue and Enterprise Services prior to the award of a Blanket P.O. See Section 4.4.2.1 of this Bid Solicitation for further information.

Vendors {Bidders} should verify its Business Registration Certification Active status on the “Maintain Terms and Categories” Tab within its profile in [NJSTART](#). In the event of an issue with a Vendor’s {Bidder’s} Business Registration Certification Active status, [NJSTART](#) provides a link to take corrective action. Vendors {Bidders} may refer to the QRG “Vendor Categories and Certifications” for instructions on completing certifications on the “Maintain Terms and Categories” Tab within its profile in [NJSTART](#). QRGs are located on the [NJSTART Vendor Support Page](#).

## **7.2 FINAL BLANKET P.O. AWARD**

Blanket P.O. awards will be made with reasonable promptness by written notice to those responsible Vendors {Bidders}, whose Quotes, conforming to this Bid Solicitation, are most advantageous to the State, price, and other factors considered. Any or all Quotes may be rejected when the State Treasurer or the Director determines that it is in the public interest to do so.

## **7.3 INSURANCE CERTIFICATES**

The Vendor {Contractor} shall provide the State with current certificates of insurance for all coverages required by the terms of this Blanket P.O., naming the State as an Additional Insured. See Section 4.2 of the SSTC accompanying this Bid Solicitation.

Vendors {Bidders} should verify its Insurance Certification Compliance status on the “Maintain Terms and Categories” Tab within its profile in [NJSTART](#). In the event of an issue with a Vendor’s {Bidder’s} Insurance Certification Compliance status, contact the Division Procurement Specialist.

## **7.4 PERFORMANCE SECURITY**

Not applicable to this procurement.

## **8.0 BLANKET P.O. ADMINISTRATION**

### **8.1 STATE CONTRACT MANAGER**

The State Contract Manager (SCM) is the State employee responsible for the overall management and administration of the Blanket P.O.

The SCM for this project will be identified at the time of execution of Blanket P.O. At that time, the Vendor {Contractor} will be provided with the State Contract Manager's name, department, division, agency, address, telephone number, fax phone number, and email address.

#### **8.1.1 STATE CONTRACT MANAGER RESPONSIBILITIES**

For an agency Blanket P.O. where only one (1) State office uses the Blanket P.O., the SCM will be responsible for engaging the Vendor {Contractor}, assuring that Purchase Orders are issued to the Vendor {Contractor}, directing the Vendor {Contractor} to perform the work of the Blanket P.O., approving the deliverables and approving payment vouchers. The SCM is the person who the Vendor {Contractor} will contact **after the Blanket P.O. is executed** for answers to any questions and concerns about any aspect of the Blanket P.O. The SCM is responsible for coordinating the use of the Blanket P.O. and resolving minor disputes between the Vendor {Contractor} and any component part of the SCM's Department. The SCM is also responsible for notifying Office of Information Technology (OIT) and other appropriate parties of security and privacy violations or incidents. The SCM cannot modify the Blanket P.O., direct or approve a Change Order.

If the Blanket P.O. has multiple users, the SCM shall be the central coordinator of the use of the Blanket P.O. for all Using Agencies, while other State employees engage and pay the Vendor {Contractor}. All persons and agencies using the Blanket P.O. must notify and coordinate the use of the Blanket P.O. with the SCM.

#### **8.1.2 COORDINATION WITH THE STATE CONTRACT MANAGER**

Any Blanket P.O. user that is unable to resolve disputes with a Vendor {Contractor} shall refer those disputes to the SCM for resolution. Any questions related to performance of the work of the Blanket P.O. by Blanket P.O. users shall be directed to the SCM. The Vendor {Contractor} may contact the SCM if the Vendor {Contractor} cannot resolve a dispute with Blanket P.O. users.



## **9.0 STATE OF NEW JERSEY STANDARD TERMS AND CONDITIONS**

(Rev: 11/12/2020)

### **1. STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT**

Unless the bidder/offeror is specifically instructed otherwise in the Bid Solicitation/Request for Proposals (RFP), the following terms and conditions shall apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in the RFP and should be read in conjunction with same unless the RFP specifically indicates otherwise. In the event that the bidder/offeror would like to present terms and conditions that are in conflict with either these terms and conditions or those set forth in the RFP, the bidder/offeror must present those conflicts during the Question and Answer period for the State to consider. Any conflicting terms and conditions that the State is willing to accept will be reflected in an addendum to the RFP. The State's terms and conditions shall prevail over any conflicts set forth in a bidder/offeror's Proposal that were not submitted through the question and answer process and approved by the State. Nothing in these terms and conditions shall prohibit the Director of the Division of Purchase and Property (Director) from amending a contract when the Director determines it is in the best interests of the State.

#### **1.1 CONTRACT TERMS CROSSWALK**

<b>NJSTART Term</b>	<b>Equivalent Statutory, Regulatory and/or Legacy Term</b>
Bid/Bid Solicitation	Request For Proposal (RFP)/Solicitation
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order (Blanket P.O.)	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor	Bidder/Contractor

### **2. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS**

The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

#### **2.1 BUSINESS REGISTRATION**

Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the bidder who shall provide it to the State.

The contractor shall maintain and submit to the State a list of subcontractors and their addresses that may be updated from time to time with the prior written consent of the Director during the course of contract performance. The contractor shall submit to the State a complete and accurate list of all subcontractors used and their addresses before final payment is made under the contract.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the Use Tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal

property delivered into the State. 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 <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

## **2.2 ANTI-DISCRIMINATION**

All parties to any contract with the State agree not to discriminate in employment and agree 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 agreement to abide by the provisions of N.J.S.A. 10:5-31 through 10:5-38 include those provisions indicated for Goods, Professional Service and General Service Contracts (Exhibit A, attached) and Constructions Contracts (Exhibit B and Executive Order 151, August 28, 2009, attached) as appropriate.

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

## **2.3 PREVAILING WAGE ACT**

The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25 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/her guarantee that neither he/she nor any subcontractors he/she might employ to perform the work covered by [this proposal] has been suspended or debarred by the Commissioner, Department of Labor and Workforce Development 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/her guarantee that he/she and any subcontractors he/she might employ to perform the work covered by [this proposal] shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

## **2.4 AMERICANS WITH DISABILITIES ACT**

The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101, et seq.

## **2.5 MACBRIDE PRINCIPLES**

The bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

## **2.6 PAY TO PLAY PROHIBITIONS**

Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L. 2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for the business entity to:

- A. Make or solicit a contribution in violation of the statute;
- B. Knowingly conceal or misrepresent a contribution given or received;
- C. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- D. Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor or Lieutenant Governor, or to any State or county party committee;

- E. Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
- F. Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- G. Engage in any exchange of contributions to circumvent the intent of the Legislation; or
- H. Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

## **2.7 POLITICAL CONTRIBUTION DISCLOSURE**

The 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 N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, §3 as amended) if in a calendar year the contractor receives one (1) or more contracts valued at \$50,000.00 or more. It is the contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888)313-3532 or on the internet at <http://www.elec.state.nj.us/>.

## **2.8 STANDARDS PROHIBITING CONFLICTS OF INTEREST**

The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or 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;

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 New Jersey Office of the Attorney General and the Executive Commission on Ethical Standards, now known as the State Ethics Commission;

No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he/she is employed or associated or in which he/she 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, now known as the State Ethics Commission, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest;

No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his/her official position to secure unwarranted privileges or advantages for the vendor or any other person; and

The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards, now known as the State Ethics Commission may promulgate under paragraph 3c of Executive Order No. 189.

### **2.9 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE**

Pursuant to N.J.S.A. 54:49-19, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, 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 that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act. The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests 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.

### **2.10 COMPLIANCE - LAWS**

The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.

### **2.11 COMPLIANCE - STATE LAWS**

It is agreed and understood that any contracts and/or orders placed as a result of [this proposal] shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of New Jersey.

### **2.12 WARRANTY OF NO SOLICITATION ON COMMISSION OR CONTINGENT FEE BASIS**

The contractor warrants 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. If a breach or violation of this section occurs, the State shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

## **3. STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT**

### **3.1 COMPLIANCE - CODES**

The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.

### **3.2 PUBLIC WORKS CONTRACTOR REGISTRATION ACT**

The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who 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 pursuant to N.J.S.A. 34:11-56.51. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.

### **3.3 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS**

N.J.S.A. 10:2-1 requires that during the performance of this contract, the contractor must agree as follows:

- A. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- B. No contractor, subcontractor, nor any person on his/her behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
- C. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and
- D. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:

- A. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will 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, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- B. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry,

marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;

- C. The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment, N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows:
1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2;
  2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;
  3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions; and
  4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

### **3.4 BUILDING SERVICE**

Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.

### **3.5 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT**

The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the statute.

### **3.6 SERVICE PERFORMANCE WITHIN U.S.**

Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b) (1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

### **3.7 BUY AMERICAN**

Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the contractor shall be required to so certify.

### **3.8 DOMESTIC MATERIALS**

Pursuant to N.J.S.A. 52:33-2 et seq., if the contract is for the construction, alteration or repair of any public work, the contractor and all subcontractors shall use only domestic materials in the performance of the work unless otherwise noted in the specifications.

### **3.9 DIANE B. ALLEN EQUAL PAY ACT**

Pursuant to N.J.S.A. 34:11-56.14 and N.J.A.C. 12:10-1.1 et seq., a contractor performing “qualifying services” or “public work” to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. For more information and report templates see <https://nj.gov/labor/equalpay/equalpay.html>.

## **4. INDEMNIFICATION AND INSURANCE**

### **4.1 INDEMNIFICATION**

The contractor’s liability to the State and its employees in third party suits shall be as follows:

- A. Indemnification for Third Party Claims - 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 which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract, including 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;
- B. The contractor’s indemnification and liability under subsection (a) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions; and
- C. In the event of a patent and copyright claim or suit, the contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

### **4.2 INSURANCE**

The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A-VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days’ written notice of cancellation or material change to the State of New Jersey at the address shown below. If the contractor’s insurer cannot provide 30 days written notice, then it will become the obligation of the contractor to provide the same. The contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of

Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancelation shall be emailed to the State at:

[ccau.certificate@treas.nj.gov](mailto:ccau.certificate@treas.nj.gov)

The insurance to be provided by the contractor shall be as follows:

- A. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage;
- 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 \$1,000,000 per occurrence as a combined single limit. The State must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property;
- 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. \$1,000,000 BODILY INJURY, EACH OCCURRENCE;
  2. \$1,000,000 DISEASE EACH EMPLOYEE; and
  3. \$1,000,000 DISEASE AGGREGATE LIMIT.
    - a. This \$1,000,000 amount may have been raised by the RFP when deemed necessary by the Director; and
    - b. In the case of a contract entered into pursuant to N.J.S.A. 52:32-17 et seq., (small business set asides) the minimum amount of insurance coverage in subsections a., b., and c. above may have been lowered in the RFP for certain commodities when deemed in the best interests of the State by the Director.

## **5. TERMS GOVERNING ALL CONTRACTS**

### **5.1 CONTRACTOR IS INDEPENDENT CONTRACTOR**

The contractor's status shall be that of any independent contractor and not as an employee of the State.

### **5.2 CONTRACT AMOUNT**

The estimated amount of the contract(s), when stated on the RFP form, shall not be construed as either the maximum or minimum amount which the State shall be obliged to order as the result of the RFP or any contract entered into as a result of the RFP.

### **5.3 CONTRACT TERM AND EXTENSION OPTION**

If, in the opinion of the Director, it is in the best interest of the State to extend a contract, the contractor shall be so notified of the Director's Intent at least 30 days prior to the expiration date of the existing contract. The contractor shall have 15 calendar days to respond to the Director's request to extend the term and period of performance of the contract. If the contractor agrees to the



extension, all terms and conditions of the original contract shall apply unless more favorable terms for the State have been negotiated.

#### **5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK**

The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, the Director shall provide to the contractor advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- A. If the contractor does not agree with the Director's proposed adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price; and
- B. If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

#### **5.5 CHANGE IN LAW**

If, after award, a change in applicable law or regulation occurs which affects the Contract, the parties may amend the Contract, including pricing, in order to provide equitable relief for the party disadvantaged by the change in law. The parties shall negotiate in good faith, however if agreement is not possible after reasonable efforts, the Director shall make a prompt decision as to an equitable adjustment, taking all relevant information into account, and shall notify the Vendor {Contractor} of the final adjusted contract price.

#### **5.6 SUSPENSION OF WORK**

The State may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the contract price. The contractor shall provide whatever information that Director may require related to the equitable adjustment.

#### **5.7 TERMINATION OF CONTRACT**

- A. For Convenience:  
Notwithstanding any provision or language in this contract to the contrary, the Director may terminate this contract at any time, in whole or in part, for the convenience of the State, upon no less than 30 days written notice to the contractor;
- B. For Cause:
  - 1. Where a contractor fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director

may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond; and

2. Where in the reasonable opinion of the Director, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond.
- C. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond; and
- D. In the event of termination under this section, the contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

### **5.8 SUBCONTRACTING OR ASSIGNMENT**

- A. Subcontracting: The contractor may not subcontract other than as identified in the contractor's proposal without the prior written consent of the Director. Such consent, if granted in part, shall not relieve the contractor of any of his/her responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws; and
- B. Assignment: The contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Director.

### **5.9 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND STATE**

Nothing contained in any of the contract documents, including the RFP and vendor's bid or proposal shall be construed as creating any contractual relationship between any subcontractor and the State.

### **5.10 MERGERS, ACQUISITIONS**

If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than 30 days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within 30 days of the request. Failure to do so may result in termination of the contract for cause.

If, at any time during the term of the contract, the contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity 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 shall be made until all parties to the dissolved business entity submit the required documents to the Director.

### **5.11 PERFORMANCE GUARANTEE OF CONTRACTOR**

The contractor hereby certifies that:

- a. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice;
- b. All equipment supplied to the State and operated by electrical current is UL listed where applicable;
- c. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the State. The contractor shall render prompt service without charge, regardless of geographic location;
- d. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters;
- e. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice;
- f. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract; and
- g. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

#### **5.12 DELIVERY REQUIREMENTS**

- A. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract;
- B. The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract and in accordance with good commercial practice;
- C. Items delivered must be strictly in accordance with the contract; and
- D. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

#### **5.13 APPLICABLE LAW AND JURISDICTION**

This contract 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 and shall be filed in the appropriate Division of the New Jersey Superior Court.

#### **5.14 CONTRACT AMENDMENT**

Except as provided herein, the contract may only be amended by written agreement of the State and the contractor.

#### **5.15 MAINTENANCE OF RECORDS**

The contractor shall maintain records for products and/or services delivered against the contract for a period of five (5) years from the date of final payment unless a longer period is required by law. Such records shall be made available to the State, including the Comptroller, for audit and review.

#### **5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)**

The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract.

In connection with this assignment, the following are the express obligations of the contractor:

- A. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder;
- B. It shall advise the Attorney General of New Jersey:
  - 1. In advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action; and
  - 2. Immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- C. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey; and
- D. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

#### **6. TERMS RELATING TO PRICE AND PAYMENT**

##### **6.1 PRICE FLUCTUATION DURING CONTRACT**

Unless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract. In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price 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 price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1.

In an exceptional situation the State may consider a price adjustment. Requests for price adjustments must include justification and documentation.

##### **6.2 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.

##### **6.3 PAYMENT TO VENDORS**

- a. The using agency(ies) is (are) authorized to order and the contractor is authorized to ship only those items covered by the contract resulting from the RFP. If a review of orders placed by the using agency(ies) reveals that goods and/or services other than that covered by the contract have been ordered and delivered, such delivery shall be a violation of the terms of the contract

and may be considered by the Director as a basis to terminate the contract and/or not award the contractor a subsequent contract. The Director may take such steps as are necessary to have the items returned by the agency, regardless of the time between the date of delivery and discovery of the violation. In such event, the contractor shall reimburse the State the full purchase price;

- b. The contractor must submit invoices to the using agency with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily completed or delivered. For commodity contracts, the invoice, together with the Bill of Lading, and/or other documentation to confirm shipment and receipt of contracted goods must be received by the using agency prior to payment. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work section of the RFP and must be in strict accordance with the firm, fixed prices submitted for each task or subtask on the RFP pricing sheets. When applicable, invoices should reference the appropriate RFP price sheet line number from the contractor's bid proposal. All invoices must be approved by the State Contract Manager or using agency before payment will be authorized;
- c. In all time and materials contracts, the State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at [www.nj.gov/treasury/purchase/forms/Vendor\\_Timesheet.xls](http://www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls); and
- d. The contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Chief of Operations, Division of Revenue, P.O. Box 628, Trenton, NJ 08646.

#### **6.4 OPTIONAL PAYMENT METHOD: P-CARD**

The State offers contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State agency's use of the p-card are optional. P-card transactions do not require the submission of a contractor invoice; purchasing transactions using the p-card will usually result in payment to a contractor in three (3) days. A contractor should take note that there will be a transaction-processing fee for each p-card transaction. To participate, a contractor must be capable of accepting the MasterCard. Additional information can be obtained from banks or merchant service companies.

#### **6.5 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 60 days of the agency's receipt of a properly executed State Payment Voucher or within 60 days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds \$5.00 per properly executed invoice.

Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

#### **6.6 AVAILABILITY OF FUNDS**

The State's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues 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 appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenue.

## **7. TERMS RELATING TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS**

The provisions set forth in this Section of the Standard Terms and Conditions apply to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

### **7.1 CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS**

Pursuant to 2 CFR 200.321, the State must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Accordingly, if subawards are to be made the Contractor shall:

- (1) Include qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and,
- (5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

### **7.2 DOMESTIC PREFERENCE FOR PROCUREMENTS**

Pursuant to 2 CFR 200.322, where appropriate, the State has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). If subawards are to be made the Contractor shall include a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

### **7.3 PROCUREMENT OF RECOVERED MATERIALS**

Where applicable, in the performance of contract, pursuant to 2 CFR 200.323, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

To the extent that the scope of work or specifications in the contract requires the contractor to provide recovered materials the scope of work or specifications are modified to require that as follows.

- i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
  2. Meeting contract performance requirements; or
  3. At a reasonable price.
- ii. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
  - iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

#### **7.4 EQUAL EMPLOYMENT OPPORTUNITY**

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." See, 2 CFR Part 200, Appendix II, para. C.

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:  
Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the

administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### **7.5 DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED**

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40



U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week.

#### **7.6 COPELAND ANTI-KICKBACK ACT**

Where applicable, the Contractor must comply with Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

- a. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the OGS centralized contract.
- b. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the clauses above may be grounds for termination of the OGS centralized contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

#### **7.7 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, 40 U.S.C. 3701-3708**

Where applicable, all contracts awarded by the non-Federal entity in excess of \$ 100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The unauthorized user shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor

shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

#### **7.8 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

#### **7.9 CLEAN AIR ACT, 42 U.S.C. 7401-7671Q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED**

Where applicable, Contract and subgrants of amounts in excess of \$150,000, must comply with the following:

##### Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

##### Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### **7.10 DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)**

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the State or authorized user. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State or authorized user, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**7.11 BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. 1352**

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

## EXHIBIT A

### MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)

N.J.A.C. 17:27 et seq.

#### GOODS, GENERAL SERVICE AND PROFESSIONAL SERVICES CONTRACTS

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

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

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

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

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

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

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

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

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

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

Letter of Federal Affirmative Action Plan Approval;

Certificate of Employee Information Report; or

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at [http://www.state.nj.us/treasury/contract\\_compliance](http://www.state.nj.us/treasury/contract_compliance)).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase and Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase and Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1 et seq.

## EXHIBIT B

### MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)

N.J.S.A. 10:5-39 et. seq. (P.L. 1983, c. 197)

N.J.A.C. 17:27-1.1 et seq.

### CONSTRUCTION CONTRACTS

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

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

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

N.J.S.A. 10:5-39 et seq. requires contractors, subcontractors, and permitted assignees performing construction, alteration, or repair of any building or public work in excess of \$250,000 to guarantee equal employment opportunity to veterans.

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

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

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

- (A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.
- (B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:
- (1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;
  - (2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
  - (3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
  - (4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;
  - (5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;
  - (6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:
    - (i) The contractor or subcontractor shall interview the referred minority or women worker.
    - (ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith

determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

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

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

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

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

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



The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Dept. of LWD, Construction EEO Monitoring Program and to the public agency compliance officer.

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

- (D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

## EXECUTIVE ORDER NO. 151 REQUIREMENTS

It is the policy of the Division of Purchase and Property that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the Division of Purchase and Property to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

The contractor must demonstrate to the Division of Purchase and Property's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the Division of Purchase and Property's contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but is not limited to:

1. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at <https://newjersey.usnlx.com/>;
2. The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;
3. The Contractor shall actively solicit and shall provide the Division of Purchase and Property with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and
4. The Contractor shall provide evidence of efforts described at 2 above to the Division of Purchase and Property no less frequently than once every 12 months.
5. The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27.

This language is in addition to and does not replace good faith efforts requirements for construction contracts required by N.J.A.C. 17:27-3.6, 3.7 and 3.8, also known as Exhibit B.