

# NEW JERSEY COUNTY COLLEGE

## Goods and Services Bid Specifications

### A Guide for New Jersey County Colleges

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**for the**

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## ***COUNTY COLLEGE EDITION***

### **GOODS AND SERVICES BID SPECIFICATIONS: A GUIDE FOR NEW JERSEY COUNTY COLLEGES County College Procurement “Yellow Book”**

#### **Introduction**

This Guide for county colleges, “Goods and Services Bid Specifications” (also known as the “Procurement Yellow Book”) is patterned after the Yellow Book that was developed for Local Public Contracts Law (LPCL) and Public School Contracts Law (PSCL) agencies, but specifically targeted to county colleges.

New Jersey county college procurement law is driven by state laws that affect all government agencies and a specific law, the County College Contracts Law, N.J.S.A. 18A:64A-25 et seq. (CCCL). When enacted in 1982, the CCCL was a county college focused version of the Public School Contracts Law, which itself was derived from the Local Public Contracts Law, which is the progenitor of our non-state government procurement laws was enacted in 1971 and along with the PSCL, substantially amended in 1999. They have been subject to incremental amendments over the years as circumstances driven by legislative priorities warranted.

While the LPCL and PSCL have been the focus of state policy, oversight and guidance since their enactment, the CCCL has only seen occasional amendments, driven by specific interests at various times. Further, the LPCL and PSCL have benefited by ongoing guidance and interpretative support from the N.J. Division of Local Government Services (DLGS). County colleges have never been included or received specific benefit from that oversight and support model.

The Guide provides county college procurement officials a framework for statutory and regulatory compliance with New Jersey procurement law that is buttressed by accepted practices. It is important to note that while there are sections that might incidentally address public works/construction activities, its primary focus is on goods and service contracting.

The Guide provides the basic “boilerplate” language that meets statutory requirements and sound goods and services procurement practices. It meets the needs of county colleges, but where appropriate, incorporates practices and guidance learned from the LPCL and PSCL that are integral to sound public procurement practices and are replicable by county colleges.

As a boilerplate document, users are cautioned not to use it without due consideration to individual college needs and advice of legal counsel. The standard text includes many blanks that must be completed by the college and options that are only used if a box is checked to apply to a given bid. Check box use is required – without checking them, its provision is not applicable, so the bid documents must be customized for each use.

Because county colleges have a statutory process for dealing with appeals (N.J.S.A. 18A:64A-25, aka, P.L. 1994 Ch. 48, Sec. 6f) this version has language that establishes an appeal process for bidders to follow that starts with the purchasing agent and then moves to the college’s board of trustees. Users should review that language (Section A-IX) and modify as necessary to meet their college’s procedures.

In addition, Parts A and B include italicized text that requires the attention of users. In some obvious cases it represents text that must be replaced with information specific to the college. In other cases, it reflects provisions that are found in the LPCL/PSCL and not represented in the CCCL. The authors find these provisions relevant and procedurally sound public procurement practices and recommend them for use by colleges. Given

their nature, it is recommended that college purchasing agents review them with legal counsel before including them in their specifications.

The Guide is in three parts. Part A is the general bid specification, the “Instructions to Bidders” section. Each section is numbered in outline form and is correlated to Part B, the “Supplement.” The Supplement provides details explaining various sections of the Instructions to Bidders and reviews options available to users. It includes considerations of when to exercise options and their impact.

Part C is the “Standard Bid Document Reference.” The Reference includes explanatory and statutory information about the various forms as well as sample language and forms. Where appropriate, the forms should be adapted to individual college needs.

*This edition of the Guide is currently available on the **NJ Council of County Colleges** website at [www.njccc.org/jpc](http://www.njccc.org/jpc). The text and individual forms can be downloaded in Microsoft Word format for local editing and revisions.*

This edition was developed and edited by Marc H. Pfeiffer, former Deputy Director of the Division of Local Government Services and Joseph A. Valenti, retired Chief of the Division’s Bureau of Local Management Services. It was derived from the LPCL/PSCL 2018 edition, prepared for the Rutgers Center for Government Services. Pfeiffer and Valenti developed the original (1995) and subsequent editions of the LPCL/PSCL Yellow Books while working for the Division. For the 2018 edition, they were assisted by a team of procurement professionals who are instructors in the Rutgers Center for Government Services, Principles of Public Purchasing courses.

## PREFACE

Although all bid documents are a matter of law and policy implemented by agency contracting officials, there has long been a call to standardize "Instructions to Bidders and Statutory Requirements" or what is generally known as "boilerplate" language. General instructions and required language are the precursors to the essential part of all bid documents, the “Technical Specifications.” The basic elements of all journalism — who, what, where, when and how — are translated into the business language of public procurement and published as a document commonly referred to as Specifications, Bid Package, Request for Proposals or Request for Sealed Bids.

The difficulty of developing ideal or standard language is compounded by the nature and variety of bids, i.e., construction, service or materials. When *adapting* these guidelines for an individual county college’s use, purchasing agents and their legal advisors should consider these differences. Be sure to review the Supplemental Information and the Standard Bid Document Reference sections for detailed information and sample documents. Please remember that the statutory references used in this Guide are those of the County College Contracts Law (N.J.S.A. 18A:64A-25 et seq.), along with general state laws affecting New Jersey government agency provisions.

The recommended language and statutory requirements are current as of this printing. Users are urged to periodically review literature and DLGS guidance for updates and amendments. We recommend that all bid documents and revisions be reviewed by the college attorney for legal compliance.

The Instructions to Bidders are considered the basic elements of general bid instructions and incorporate generally accepted public procurement practices. It is not suggested that these are the only sections needed by a college. However, they are the foundation on which specifications can be built.

**2020**

**GOODS AND SERVICES BID SPECIFICATIONS:**  
*A GUIDE FOR NEW JERSEY  
COUNTY COLLEGES*

**Part A**

**Instructions to Bidders and  
Statutory Requirements**

# Instructions to Bidders and Statutory Requirements

## I. SUBMISSION OF BIDS

- A. Sealed bids shall be received by the <name of county college>, hereinafter referred to as “owner,” in accordance with public advertisement as required by law, with a copy of said notice being attached hereto and made a part of these specifications.
- B. Sealed bids shall be received by the designated representative at the time \_\_\_\_\_ (am/pm) and \_\_\_\_\_ (location of bid opening) as stated in the Notice to Bidders, and at such time and place will be publicly opened and read aloud.
- C. The bid shall be submitted in a sealed envelope: (1) addressed to the owner, (2) bearing the name and address of the bidder written on the face of the envelope, and (3) clearly marked "BID" with the contract title and/or bid # of the contract being bid. The bidder shall include one original and one copy of its proposal in its bid submission.
- D. It is the bidder's responsibility to present bids to the owner prior to or at the time and at the place designated. Bids may be hand delivered or mailed; however, the owner disclaims any responsibility for bids forwarded by regular or overnight mail. Bids sent by express mail or delivery service must either 1) include the designation in sub-section C, above on the outside of the express mail or service envelope; or 2) must be in a separate envelope inside the delivery envelope and the envelope marked as required above. Bids received after the designated time and date will be returned unopened.
- E. Sealed bids forwarded to the owner before the time of opening of bids may be withdrawn upon written application of the bidder who shall be required to produce evidence showing that the individual is or represents the principal or principals involved in the bid. Once bids have been opened, they shall remain firm for a period of sixty (60) calendar days.
- F. More than one bid from an individual, any business entity, regardless of structure, or association under the same names shall not be considered.
- G. All prices and amounts must be written in ink or preferably machine-printed. Bids containing any conditions, omissions, unexplained erasures or alterations, items not called for in the bid proposal form, attachment of additive information not required by the specifications, or irregularities of any kind, may be cause for rejection by the owner in accordance with applicable law. Any changes, whiteouts, strikeouts, etc. in the bid must be initialed in ink by the person signing the bid.
- H. Each bid proposal form must give the full business name and address, business phone, fax, e-mail, the contact person of the bidder, and be signed by an authorized representative as follows:
- Bids by partnerships must be signed in the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing.
  - Bids by corporations must be signed in the legal name of the corporation, followed by the name of the State in which incorporated and must contain the signature and designation of the president, secretary or other person authorized to bind the corporation in the matter.
  - Bids by sole-proprietorship shall be signed by the proprietor.
  - When requested, satisfactory evidence of the authority of the officer signing shall be furnished.
- I. Bidder should be aware of the following statutes that represent “Truth in Contracting” laws:
- N.J.S.A. 2C:21-34, et seq. governs false claims and representations by bidders. It is a serious crime for the bidder to knowingly submit a false claim and/or knowingly make material misrepresentation.
  - N.J.S.A. 2C:27-10 provides that a public servant commits a crime if said public servant solicits or receives a benefit directly or indirectly, for an official act performed or to be performed by a public servant, which is a violation of official duty.
  - N.J.S.A. 2C:27-11 provides that a bidder commits a crime if said person, directly or indirectly, confers or agrees to confer any benefit not allowed by law to a public servant.
  - Bidder should consult the statutes or legal counsel for further information.
- J. Pay-to-Play Disclosure - Business entities are advised of their responsibility to file an annual disclosure statement of political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.27 if they receive contracts in excess of \$50,000 from public entities in a calendar year. Business entities are responsible for determining if filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or at [www.elec.state.nj.us](http://www.elec.state.nj.us).

- K. Official Request for Bid packages are available from the owner's website at \_\_\_\_\_ at no cost to prospective respondents. All addenda are posted on this site. Potential respondents are cautioned that they are responding at their own risk if a third party supplied the specifications that may or may not be complete. The owner is not responsible for third party supplied documents. Respondents are urged to register their contact information on the owner's website so any addenda to these specifications can be sent to them.

## II. BID SECURITY AND BONDING REQUIREMENTS

**The following provisions if indicated by an (X), shall be applicable to this bid and be made a part of the bid documents:**

☐ A. BID GUARANTEE

Bidder shall submit with the bid a certified check, cashier's check or bid bond in the amount of ten percent (10%) of the total price bid, but not in excess of \$20,000, payable unconditionally to the owner. When submitting a Bid Bond, it shall contain Power of Attorney for full amount of Bid Bond from a surety company authorized to do business in the State of New Jersey and acceptable to the owner. *The check or bond of the bidder to whom the contract is awarded shall be retained until a contract is executed and the required performance bond or other security is submitted.* The check or bond of the successful bidder shall be forfeited if the bidder fails to enter into a contract pursuant to N.J.S.A. 18A:64A-25.16.

The Bid Bond shall include a valid Power of Attorney authorizing the Attorney-in-Fact to execute the documents. Failure to submit a bid guarantee shall result in rejection of the bid.

☐ B. CONSENT OF SURETY

Bidder shall submit with the bid a Certificate (Consent) of Surety with Power of Attorney for full amount of bid price from a Surety Company authorized to do business in the State of New Jersey, and acceptable to the owner stating that it will provide said bidder with a Performance Bond in the full amount of the bid. This certificate shall be obtained in order to confirm that the bidder to whom the contract is awarded will furnish Performance and Payment Bonds from an acceptable surety company on behalf of said bidder, any or all subcontractors or by each respective subcontractor or by any combination thereof which results in performance security equal to the total amount of the contract, pursuant to N.J.S.A. 18A:64A-25.17.

*The Consent of Surety shall include a valid Power of Attorney authorizing the Attorney-in-Fact to execute the documents. Failure to submit a Consent of Surety form shall result in rejection of the bid.*

☐ C. PERFORMANCE BOND

The successful bidder shall simultaneously with the delivery of the executed contract, submit an executed bond in the amount of one hundred percent (100%) of the acceptable bid as security for the faithful performance of this contract.

The performance bond provided shall not be released until final acceptance of the whole work and then only if any liens or claims have been satisfied. The surety on such bond or bonds shall be a duly authorized surety company authorized to do business in the State of New Jersey pursuant to N.J.S.A. 17:31-5. For multi-year contracts, the Performance Bond may be resubmitted each year on the Contract Anniversary Date for the amount remaining on the contract.

Failure to submit this with the executed contract shall be cause for declaring the contract null and void pursuant to N.J.S.A. 18A:64A-25.17.

☐ D. LABOR AND MATERIAL (PAYMENT) BOND

The successful bidder shall with the delivery of the performance bond submit an executed payment bond to guarantee payment to laborers and suppliers for the labor and material used in the work performed under the contract.

Failure to submit a labor and material bond with the performance bond shall be cause for declaring the contract null and void.

☐ E. MAINTENANCE BOND

Upon acceptance of the work by the owner, the contractor shall submit a maintenance bond (N.J.S.A. 18A:64A-25.17) in an amount not to exceed \_\_\_\_\_% of the project costs guaranteeing against defective quality of work or materials for the period of: ☐ 1 year ☐ 2 years

### III. REVISIONS AND ADDENDA

- A. The bidder understands and agrees that its bid is submitted on the basis of the specifications prepared by the owner. The bidder accepts the obligation to become familiar with these specifications.
- B. Bidders are expected to examine the specifications and related bid documents with care and observe all their requirements. Ambiguities, errors or omissions noted by bidders should be promptly reported in writing to the contracting agent. Any prospective bidder who wishes to challenge a bid specification shall file such challenges in writing with the contracting agent no less than three business days prior to the opening of the bids. *Challenges filed after that time shall be considered void and have no impact on the county college or the award of a contract. In the event the bidder fails to notify the owner of such ambiguities, errors or omissions, the bidder shall be bound by the requirements of the specifications and the bidder's submitted bid.*
- C. No oral interpretation and or clarification of the meaning of the specifications for any goods and services will be made to any bidder. Such request shall be in writing, addressed to the owner's representative stipulated in the specification. In order to be given consideration, *a written request must be received at least three (3) business days prior to the date fixed for the opening of the bid for goods and services.*
- D. *All revisions and addenda to the specifications and notice will in writing and will be provided through an advertisement in <name of official newspaper>, sent to potential bidders who provided a physical or email address when obtaining a copy of the bid package, or had submitted a bid submission. All addenda so issued shall become part of the specification and bid documents and shall be acknowledged by the bidder in the bid by completing the Acknowledgement of Receipt of Addenda form. The owner's interpretations or corrections thereof shall be final.*

*When issuing addenda, the owner shall provide required notice prior to the official receipt of bids to any person who has submitted a bid or who has received a bid package. They will be sent from <name of sender>@<web address>.<domain>. It is recommended that bidders include this address in the recipient email's contact list to ensure it is not routed to a junk email folder.*

#### E. Discrepancies in Bids

1. If the amount shown in words and its equivalent in figures do not agree, the written words shall be binding. Ditto marks are not considered writing or printing and shall not be used.
2. In the event that there is a discrepancy between the unit prices and the extended totals, the unit prices shall prevail. In the event there is an error of the summation of the extended totals, the computation by the owner of the extended totals shall govern.

#### F. Optional Pre-Bid Conference

If stated in the Notice to Bidders and checked below:

- ☐ A Pre-Bid Conference will not be held.
- ☐ A pre-bid conference for this proposal will be held on \_\_\_\_\_.

Attendance is not mandatory but is strongly recommended. Failure to attend does not relieve the bidder of any obligations or requirements.

### IV. BRAND NAMES, STANDARDS OF QUALITY AND PERFORMANCE

- A. Brand names and/or descriptions used in these specifications are to acquaint bidders with the types of goods and services desired and will be used as a standard by which goods and services offered as equivalent will be evaluated.
- B. When a specification uses "brand name or equivalent," the listed brand name shall serve as a reference or point of comparison for the functional or operational characteristic desired for the good or service being requested. Where a bidder submits an equivalent, it shall be the responsibility of the bidder to document the equivalence claim. Failure to submit such documentation shall be grounds for rejection of the claim of equivalence.
- C. In submitting its bid, the bidder certifies that the goods and services to be furnished will not infringe upon any valid patent or trademark and that the successful bidder shall, at its own expense, defend any and all actions or suits charging such infringement, and will save the owner harmless from any damages resulting from such infringement.
- D. The contractor shall guarantee any or all goods and services supplied under these specifications. Defective or inferior goods shall be replaced at the expense of the contractor. The contractor will be responsible for return freight or restocking charges.

## V. INSURANCE AND INDEMNIFICATION

The insurance documents indicated by an (X) shall include but are not limited to the following coverages. The successful bidder shall provide coverage so that all insurance coverage must be in effect no later than 12:01 A.M. EST at the start of the day of the contract and remain in effect for the duration of the contract, including any extensions.

### A. INSURANCE REQUIREMENTS

☐ 1. Worker's Compensation Insurance

Worker's Compensation insurance shall be maintained in full force during the life of the contract, covering all employees engaged in performance of the contract pursuant to N.J.S.A. 34:15-12(a) and N.J.A.C. 12:235-1.6.

☐ 2. General Liability Insurance

General Liability insurance shall be provided with limits of not less than \$\_\_\_\_\_ any one person and \$\_\_\_\_\_ any one accident for bodily injury and \$\_\_\_\_\_ aggregate for property damage, and shall be maintained in full force during the life of the contract.

☐ 3. Automotive Liability Insurance

Automotive Liability insurance covering contractor for claims arising from owned, hired and non-owned vehicles with limits of not less than \$\_\_\_\_\_ any one person and \$\_\_\_\_\_ any one accident for bodily injury and \$\_\_\_\_\_ each accident for property damage, shall be maintained in full force during the life of the contract.

☐ 4. Other Forms of Insurance Required

### B. CERTIFICATES OF THE REQUIRED INSURANCE

Certificates of Insurance for those policies required above shall be submitted with the contract. Such coverage shall be with an insurance company authorized to do business in the State of New Jersey and shall name the owner as an additional insured.

Self-insured contractors shall submit an affidavit attesting to their self-insured coverage and shall name the owner as an additional insured.

☐ C. INDEMNIFICATION

The contractor shall indemnify and hold harmless the owner, its officers, agents, servants, and employees from all claims, suits or actions, and damages or costs of every name and description to which the owner may be subjected or put by reason of injury to the person or property of another, or the property of the owner, resulting from:

- a) negligent acts or omissions on the part of the contractor, the contractor's agents, servants or subcontractors in the delivery of goods and services, or in the performance of the work under the contract; and,
- b) the use of any copyrighted or copyrighted composition, valid trademark, secret process, patented or unpatented invention or article furnished or used in the performance of this contract.

## VI. PRICING INFORMATION FOR PREPARATION OF BIDS

- A. The owner is exempt from any local, state or federal sales, use or excise tax. The owner will not pay for N.J. State Sales and Use Tax that are included in any invoices.
- B. Estimated Quantities: The owner has attempted to identify the item(s) and the estimated amounts of each item bid to cover its requirements; however, past experience shows that the amount ordered may be different than that submitted for bidding. The right is reserved to decrease or increase the quantities specified in the specifications. NO MINIMUM PURCHASE IS IMPLIED OR GUARANTEED.
- C. Contractor shall be responsible for obtaining any applicable permits or licenses from any government entity that has jurisdiction to require the same. All bids submitted shall have included this cost.

- D. Bidders shall insert prices for furnishing goods and services required by these specifications. Prices shall be net, including any charges for packing, crating, containers, etc. All transportation charges shall be fully prepaid by the contractor, F.O.B. destination and placement at locations specified by the owner. As specified, placement may require inside deliveries. No additional charges will be allowed for any transportation costs resulting from partial shipments made for the contractor's convenience.
- E. In the event of a public emergency declared at the local, state or federal level prior to the expiration of the contract, if the owner opts to extend terms and conditions of the contract, the contractor agrees to extend the terms and conditions of this specification, whether existing or expiring for no longer than six months, for goods and/or services for the duration of the emergency.

## VII. STATUTORY AND OTHER REQUIREMENTS

The following are mandatory requirements of this bid and contract.

### A. MANDATORY AFFIRMATIVE ACTION CERTIFICATION

No firm may be issued a contract unless it complies with the affirmative action provisions of N.J.S.A. 10:5-31 and N.J.A.C. 17:27 as administered by the Division of Purchase & Property Contract Compliance and Audit Unit (Division) and provided below. The contract will include the language included as Attachment A in this specification.

#### 1. Goods, General Services and Professional Service Contracts

Each 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:

- i. A Letter of Federal Approval indicating that the vendor is under an existing federally approved or sanctioned affirmative action program. A copy of the approval letter must be provided by the vendor to the Public Agency and the Division. This approval letter is valid for one year from the date of issuance.
- ii. A Certificate of Employee Information Report (hereafter "Certificate"), issued in accordance with N.J.A.C. 17:27. The vendor must provide a copy of the Certificate to the Public Agency as evidence of its compliance with the regulations. The Certificate represents the review and approval of the vendor's Employee Information Report, Form AA-302 by the Division.
- iii. The successful bidder shall complete an Initial Employee Report, Form AA-302 and submit it to the Division with a check or money order for \$150.00 made payable to "Treasurer, State of NJ" and forward a copy of the Form to the Public Agency. Upon submission and review by the Division, the Report shall constitute evidence of compliance with the regulations

### B. NEW JERSEY ANTI-DISCRIMINATION

The contract for this bid shall require that the contractor agrees not to discriminate in employment and agrees to abide by all anti-discrimination laws including but not limited to N.J.S.A. 10:2 as included in Attachment B of this document.

### C. AMERICANS WITH DISABILITIES ACT OF 1990

Discrimination on the basis of disability in contracting for the purchase of goods and services is prohibited. If awarded the contract, the contractor is required to comply with requirements related to the Americans with Disabilities Act as provided in this specification as Attachment C. The contractor is obligated to comply with the Act and to hold the owner harmless for any violations committed under the contract.

### D. STATEMENT OF OWNERSHIP

N.J.S.A. 52:25-24.2 provides that no business organization, regardless of form of ownership shall be awarded any contract for the performance of any work or the furnishing of any goods and services, unless, **prior to the receipt of the bid or accompanying the bid** of said business organization, bidders shall submit a statement setting forth the names and addresses of all persons and entities that own ten percent or more of its stock or interest of any type at all levels of ownership. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member exceeding the ten percent ownership, has been listed.

The included Statement of Ownership shall be completed and attached to the bid proposal. This requirement applies to all forms of business organizations, including, but not limited to, corporations and partnerships, publicly-owned corporations, limited partnerships, limited liability corporations, limited liability partnerships, sole proprietorship, and Subchapter S corporations. Failure to submit a disclosure document shall result in rejection of the bid as it cannot be remedied after bids have been opened.

Not-for-profit entities should fill in their name, check the not-for-profit box, and certify the form. No other information is necessary.

#### E. PROOF OF BUSINESS REGISTRATION

Pursuant to N.J.S.A. 52:32-44, \_\_\_\_\_ (“Contracting Agency”) is prohibited from entering into a contract with an entity unless the bidder/proposer/contractor, and each subcontractor that is required by law to be named in a bid/proposal/contract has a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services within the Department of the Treasury.

Prior to contract award or authorization, the contractor shall provide the Contracting Agency with its proof of business registration and that of any named subcontractor(s). Subcontractors named in a bid or other proposal shall provide proof of business registration to the bidder, who in turn, shall provide it to the Contracting Agency prior to the time a contract, purchase order, or other contracting document is awarded or authorized.

During the course of contract performance:

- (1) the contractor shall not enter into a contract with a subcontractor unless the subcontractor first provides the contractor with a valid proof of business registration.
- (2) the contractor shall maintain and submit to the Contracting Agency a list of subcontractors and their addresses that may be updated from time to time.
- (3) the contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall 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, (N.J.S.A. 54:32B-1) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Taxation at (609) 292-6400. Form NJ-REG can be filed online at [www.state.nj.us/treasury/revenue/busregcert.shtml](http://www.state.nj.us/treasury/revenue/busregcert.shtml).

Before final payment is made under the contract, the contractor shall submit to the Contracting Agency a complete and accurate list of all subcontractors used and their addresses.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration as required, 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 proof of business registration not properly provided under a contract with a contracting agency.

#### **Emergency Purchases or Contracts**

For purchases of an emergent nature, the contractor shall provide its Business Registration Certificate within two weeks from the date of purchase or execution of the contract or prior to payment for goods or services, whichever is earlier.

#### F. DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

N.J.S.A. 52:32-55 prohibits State and local public contracts with persons or entities engaging in certain investment activities in energy or finance sectors of Iran. Bidders must indicate if they comply with the law by certifying the form. Pursuant to N.J.S.A. 18A:64A-25.43 the owner is required to notify the New Jersey Attorney General if it determines a false certification has been submitted.

**If boxes of the following items are checked, they are mandatory requirements of the bid proposal and contract.**

☐ **G. DOCUMENT CHECKLIST**

Bidder shall complete and sign the Bid Submission Document Checklist and include it in the bid submission. For construction bids, failure to submit the checklist is a fatal defect and the bid will be rejected. This document serves as a guide to bidders of the documents that are required to be submitted with the bid.

☐ **H. NON-COLLUSION AFFIDAVIT**

The Affidavit shall be properly executed and submitted with the bid proposal.

☐ **I. NEW JERSEY WORKER AND COMMUNITY RIGHT TO KNOW ACT**

The manufacturer or supplier of chemical substances or mixtures shall label them in accordance with the N.J. Worker and Community Right to Know Law (N.J.S.A. 34:5A, and N.J.A.C 8:59). All direct use containers shall bear a label indicating the chemical name(s) and Chemical Abstracts Service number(s) of all hazardous substances in the container, and all other substances which are among the five most predominant substances in the container, or their trade secret registry

number(s) pursuant to N.J.A.C. 8:59-5. "Container" means a receptacle used to hold a liquid, solid or gaseous substance such as bottles, bags, barrels, cans, cylinders, drums and cartons. (N.J.A.C. 8:59-1.3). Further, all applicable Material Safety Data Sheets (MSDS) - hazardous substance fact sheet - must be furnished. All containers which are stored at an owner's facilities by the contractor or subcontractors shall display RTK labeling. Vendors with questions concerning labeling should contact the New Jersey Department of Health and Senior Services Right to Know Program for assistance in developing proper labels. [www.nj.gov/health/workplacehealthandsafety/right-to-know/](http://www.nj.gov/health/workplacehealthandsafety/right-to-know/).

☐ J. PREVAILING WAGE ACT

Pursuant to N.J.S.A. 34:11-56.25 et seq., contractors on projects for public work shall adhere to all requirements of the New Jersey Prevailing Wage Act. The contractor shall be required to submit a certified payroll record to the owner within ten (10) days of the payment of the wages. In the event it is found that any worker, employed by the contractor or any subcontractor has been paid a rate of wages less than the prevailing wage required to be paid, the owner may terminate the contractor's or subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages and prosecute the work to completion.

The contractor is also responsible for obtaining and submitting all subcontractors' certified payroll records within the aforementioned time period. The contractor shall submit said certified payrolls in the form set forth in N.J.A.C. 12:60-6.1(c). It is the contractor's responsibility to obtain any additional copies of the certified payroll form to be submitted by contacting the New Jersey Department of Labor and Workforce Development, Division of Workplace Standards. Additional information is available at [http://lwd.dol.state.nj.us/labor/wagehour/wagerate/pwr\\_construction.html](http://lwd.dol.state.nj.us/labor/wagehour/wagerate/pwr_construction.html).

☐ K. PUBLIC WORKS CONTRACTOR REGISTRATION ACT

N.J.S.A. 34:11-56.48 et seq. requires that a general or prime contractor and any listed subcontractors named in the contractor's bid proposal shall possess a certificate *at the time the bid proposal is submitted*. After bid proposals are received and prior to award of contract, the successful contractor shall submit a copy of the contractor's certification along with those of all listed subcontractors. All non-listed subcontractors and lower tier sub-subcontractors shall be registered prior to starting work on the project. It is the general contractor's responsibility that all non-listed subcontractors at any tier have their certificate prior to starting work on the job.

Under the law a "contractor" is "a person, partnership, association, joint stock company, trust, corporation or other legal business entity or successor thereof who enters into a contract" which is subject to the provisions of the New Jersey Prevailing Wage Act [N.J.S.A. 34:11-56.25, et seq.] It applies to contractors based in New Jersey or in another state.

To register, a contractor must provide the State Department of Labor and Workforce Development with a full and accurately completed application form. The form is available online at [www.state.nj.us/labor/lssc/lspubcon.html](http://www.state.nj.us/labor/lssc/lspubcon.html). N.J.S.A. 34:11-56.55 specifically prohibits accepting applications for registration as a substitute for a certificate of registration.

☐ L. EQUIPMENT CERTIFICATION

*Bidder shall certify on the Equipment Certification form that they control or have access to equipment necessary to do the required work if awarded the contract. If the bidder does not own or lease the equipment, a certification from the owner of the equipment that the bidder will have access to the equipment is required with the bid.*

## VIII. METHOD OF CONTRACT AWARD

- A. The length of the contract shall be stated in the technical specifications. Please see Section X, Termination of Contract, Sub-section E, for additional information.
- B. Depending on the nature of the bid and as the college determines in its best interest, the college may choose to award the contract to:
  - a) the lowest responsible bidders on the basis of individual lowest unit prices; or,
  - b) lowest price of volume extended aggregate price of defined categories of the entire bid; or,
  - c) a market-basket of items chosen by the college and applied to all bids; or
  - d) lowest total price of the bid.
- C. The form of contract shall be submitted by the owner to the successful bidder. Terms of the specifications/bid package prevail. Bidder exceptions must be formally accepted by the owner; material exceptions shall not be approved.

- D. Successful bidder/respondent shall complete W-9 Form and submit to the owner prior to contract award. The form is available at the following link: [www.irs.gov/pub/irs-pdf/fw9.pdf](http://www.irs.gov/pub/irs-pdf/fw9.pdf).

## **IX. CAUSES FOR REJECTING BIDS AND APPEAL OF DECISIONS**

- A. No bid shall be accepted which does not conform to the specifications. Nothing contained in this specification shall be construed as depriving any county college of the right to reject all bids.
- B. Bidder acknowledges that this bid and the award of a contract are governed by the County College Contracts Law, N.J.S.A. 18A:64A-25, and that any legal challenges to the bidding process, the award, or the rejection of any bids, must be submitted in writing to the Contracting Agent as follows; for bid specification challenges or any matter prior to receipt of bids, not later than three business days prior to the bid opening; for matters related to the award of a bid, within three business days of notification of an award.
- C. Any appeal of the decision of the contracting agent shall be to the Board of Trustees of the *<name of county college>* pursuant to the provisions of N.J.S.A. 18A:3B-6(f) and policies adopted by the Board. The matter must be presented by filing an appeal with the secretary of the Board of Trustees within ten (10) calendar days of the decision to award a contract or reject bids. Proceedings of the appeal shall be governed by the *<title of document/form for making appeals>* which may be obtained *<insert how rules/instructions can be obtained>*.

## **X. TERMINATION OF CONTRACT**

- A. If, through any cause, the contractor shall fail to fulfill in a timely and proper manner obligations under the contract or if the contractor shall violate any of the requirements of the contract, the owner shall there upon have the right to terminate the contract by giving written notice to the contractor of such termination and specifying the effective date of termination. Such termination shall relieve the owner of any obligation for balances to the contractor of any sum or sums set forth in the contract. Owner will pay only for goods and services accepted prior to termination.
- B. Notwithstanding the above, the contractor shall not be relieved of liability to the owner for damages sustained by the owner by virtue of any breach of the contract by the contractor and the owner may withhold any payments to the contractor for the purpose of compensation until such time as the exact amount of the damage due the owner from the contractor is determined.
- C. The contractor agrees to indemnify and hold the owner harmless from any liability to subcontractors/suppliers concerning payment for work performed or goods supplied arising out of the lawful termination of the contract by the owner under this provision.
- D. In case of default by the contractor, the owner may procure the goods or services from other sources and hold the contractor responsible for any excess cost.
- E. *Continuation of the terms of the contract beyond the fiscal year is contingent on availability of funds in the following year's budget. In the event of unavailability of such funds, the owner reserves the right to cancel the contract.*
- F. It is understood by all parties that if, during the life of the contract, the contractor disposes of his/her business concern by acquisition, novation, merger, sale and or/transfer or by any means convey his/her interest(s) to another party, all obligations are transferred to that new party. In this event, the new owner(s) will be required to submit all documentation/legal instruments that were required in the original bid/contract. Any change shall be approved by the Owner.
- G. The contractor will not assign any interest in the contract and shall not transfer any interest in the same without the prior written consent of the owner.
- H. The owner may terminate the contract for convenience by providing 60 calendar days advanced notice to the contractor.
- I. The contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.
- J. Neither party shall be responsible for any resulting loss or obligation to fulfill duties as specified in any of the terms or provisions of a contract if the fulfillment of any term or provision of the contract is delayed or prevented by any revolutions, insurrections, riots, wars, acts of enemies, national emergencies, strikes, floods, fires, acts of God, or by any cause not within the control of the party whose performance is interfered with which by the exercise of reasonable diligence such party is unable to prevent. Additionally, if the fulfillment of any of the terms and provisions of the contract is delayed or prevented by any court order, or action or injunction or other such agreement, the contract shall become voidable by the owner by notice to the parties.

## **XI. PAYMENT**

- A. No payment will be made unless duly authorized by the owner's authorized representative and accompanied by proper documentation.
- B. Payment will be made in accordance with the owner's policy and procedures. Invoices shall specify, in detail, the period for which payment is claimed, the services performed during the prescribed period, the amount claimed and correlation between the services claimed and this proposal.
- C. The owner may withhold all or partial payments on account of subsequently discovered evidence including but not limited to the following:
  - 1. Deliverables not complying with the project specification;
  - 2. Claims filed or responsible evidence indicating probability of filing claims;
  - 3. A reasonable doubt that the contract can be completed for the balance then unpaid.

When the above grounds are removed, payment shall be made for amounts withheld because of them.

- D. Public funds may be used to pay only for goods delivered or services rendered. The owner shall not pay penalties and/or interest on overdue bills unless otherwise required by law. No employee is authorized to sign a letter of credit or any other document that represents a legal commitment on the part of the owner to pay additional fees.

## **XII. OTHER PROVISIONS**

- A. Both parties agree to comply with all requirements of the Federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as maybe amended from time to time, and the corresponding HIPAA regulations for the confidentiality and security of medical information. If awarded the bid, the contractor shall:
  - 1. Not use or disclose protected health information other than as permitted or required by law
  - 2. Use appropriate safeguards to protect the confidentiality of the information
  - 3. Report any use or disclosure not permitted

The contractor, by execution of the contract, shall thereby indemnify and hold the owner harmless from any and all liabilities, claims, actions, costs and penalties which may be incurred as the result of the failure of the contractor to comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) or any other statute or case law protecting the privacy of persons using its services.

- B. The owner shall retain all of its rights and interest in any and all documents and property both hard copy and digital furnished by the owner to the successful bidder (contractor) for the purpose of assisting the contractor in the performance of this contract. None of the documents and/or property shall, without the written consent of the owner, be disclosed to others or used by the contractor or permitted by the contractor to be used by their parties at any time except in the performance of the resulting contract.

The contractor shall not have the right to use, sell, or disclose the total of the interim or final work products, or make available to third parties, without the prior written consent of the owner. Any information supplied to the owner may be required to be supplied on CD/DVD or USB flash drive media compatible with Microsoft Windows, and Microsoft Office Suite 2010 or greater.

- C. Under state and federal statutes, certain government records are protected from public disclosure (e.g., HIPPA, FERPA and others). The owner, the contractor and any subcontractors have a responsibility and an obligation to safeguard from public access student and employee personal information with which it has been entrusted when disclosure thereof would violate a student's right under the federal Family Educational Rights and Privacy Act (FERPA) and the employee's reasonable expectation of privacy. All payroll, personnel and health insurance related files are confidential. Pursuant to the New Jersey Open Public Records Act (OPRA), the owner retains the right to make any public disclosure under the law unless a claim of confidentiality under OPRA is made and sustained by the college. Also, among government records deemed confidential are administrative or technical information regarding computer hardware, software and networks that, if disclosed, would jeopardize computer security. The contractor and any subcontractor(s) are prohibited from the sale or distribution of all supplied information to any third party.
- D. Proof of licensure for any activity regulated by the State of New Jersey and required to do the work required under this specification, for either the firm or the person responsible for the work, shall be provided as required by the owner.

**ATTACHMENT A – EXHIBIT A**  
**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**  
N.J.S.A. 10:5-31 et seq. (P.L.1975, c.127) and N.J.A.C. 17:27 et seq.

**GOODS, GENERAL SERVICES, 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 AA-302 (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 & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

## **ATTACHMENT B – NEW JERSEY ANTI-DISCRIMINATION PROVISIONS**

### **N.J.S.A. 10:2-1 ET SEQ.**

Pursuant to N.J.S.A. 10:2-1, if awarded a contract, the contractor agrees that:

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

b. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;

c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

d. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

**ATTACHMENT C**  
**AMERICANS WITH DISABILITIES ACT OF 1990**  
Equal Opportunity for Individuals with Disability

The contractor and the owner do hereby agree that the provisions of Title 11 of the Americans with Disabilities Act of 1990 (the "Act") (*42 U.S.C. §12101 et seq.*), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant there unto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the owner pursuant to this contract, the contractor agrees that the performance shall be in strict compliance with the Act. In the event that the contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the contractor shall defend the owner in any action or administrative proceeding commenced pursuant to this Act. The contractor shall indemnify, protect, and save harmless the owner, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages, of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the owner's grievance procedure, the contractor agrees to abide by any decision of the owner which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the owner, or if the owner incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the contractor shall satisfy and discharge the same at its own expense.

The owner shall, as soon as practicable after a claim has been made against it, give written notice thereof to the contractor along with full and complete particulars of the claim, if any action or administrative proceeding is brought against the owner or any of its agents, servants, and employees, the owner shall expeditiously forward or have forwarded to the contractor every demand, complaint, notice, summons, pleading, or other process received by the owner or its representatives.

It is expressly agreed and understood that any approval by the owner of the services provided by the contractor pursuant to this contract will not relieve the contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the owner pursuant to this paragraph.

It is further agreed and understood that the owner assumes no obligation to indemnify or save harmless the contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the contractor's obligations assumed in this Agreement, nor shall they be construed to relieve the contractor from any liability, nor preclude the owner from taking any other actions available to it under any other provisions of the Agreement or otherwise at law.

**2020**

**GOODS AND SERVICES BID SPECIFICATIONS:**  
*A GUIDE FOR NEW JERSEY  
COUNTY COLLEGES*

**PART B**

**Supplemental Information to  
“Instructions to Bidders and Statutory  
Requirements”**

# **Supplemental Information to Instructions to Bidders and Statutory Requirements**

## **Goods and Services Specifications**

### **USE OF THIS MATERIAL**

This section follows the order in Part A – “Instructions to Bidders and Statutory Requirements,” often referred to in a bid specification as “terms and conditions,” or T&C. This text also refers to Part C, “Document Reference.” Section numbers used below relate to the numbering in Part A.

This material should be considered as minimum standards. No single version of terms and conditions can serve all county colleges for all goods and services, not to mention public works construction. Given a specific procurement, the purchasing agent may find it valuable to modify or adapt language to meet that need. T&C’s may also warrant modification to reflect a college’s policies such as internal bid award appeal procedures.

In addition, since the T&Cs become the core of a contract with a successful bidder, a college’s legal counsel may want to add or modify individual terms to meet what is felt to be in the best interest of the client in total, or for a particular procurement. Legal counsel can also keep the document up-to-date given changes in state law. The purchasing agent and legal counsel should consult as needed to ensure that the T&C’s meet the college’s needs.

### **I. SUBMISSION OF BIDS**

#### Copies of Bids

The owner should decide how many copies of the bid proposal it wants, and if it wants an electronic copy (i.e., on a CD/DVD). Multiple copies may be useful if there are more than one agency reviewer. At least one copy, in addition to the original, should always be available for Open Public Records Act (OPRA) purposes.

Due to potential information security problems, the use of USB/memory sticks as a submission medium is NOT recommended.

#### Bid Specifications

New Jersey public procurement practice has long provided that bid specifications are provided to potential bidders for no cost, unless the contracting unit incurs fees for reproducing copies. If charged, fees are subject to OPRA provisions regarding charges for copies of public records. Fees are most often used to offset the costs of reproduction of plans and specifications requiring special printing (i.e., construction plans or engineering drawings) and cannot be used as a barrier or a way to limit the number of bidders. The T&C (Section 1-K) notes that fees are not charged, and this should be changed if fees are being charged.

Section 1-K also refers to the practice of providing access to bid specifications and addenda through the owner’s website. This practice is expected to expand over time. However, if the owner does not use this approach for vendors to access documents, the section should be revised accordingly.

A sample bid proposal form is in *Part C, Section 3 “Bid Proposal Form.”*

If the college requires the use of pre-printed envelopes or labels, Section I, “Submission of Bids” would be the appropriate location to add the additional requirement.

Contemporary procurement practices sometimes involve third parties providing bid specifications to potential bidders. The Model T&C has provisions (I-K) that note the college's official website as the source for obtaining bid specifications. County colleges not using a website should remove this provision.

#### Change in Submission Date

The bid specification should address circumstances that require a postponement of receipt of bids (i.e. weather related) or cancellation due to a change in specifications that cannot be addressed by a timely addendum (see below).

The County College Contracts Law requires (at N.J.S.A. 18A:64A-24.14a) that bids shall be received at a specified time, date and place, unsealed and announced. Deviations to this standard are rare, fact sensitive, and narrow in the application of the statutory provisions of the law. It is strongly recommended that the owner consult with legal counsel on the application of the statutory provisions of law and reported court cases impacting N.J.S.A. 18A:64A-14.4a. Given that this language is consistent with the Local Public Contracts Law at N.J.S.A. 40A:11-23b, cases concerning that law would also be instructive.

#### Timing of Bid Submissions

Honoring requests for bid withdrawal **prior** to bid opening should be dictated by college policy. It is generally acceptable policy that there be no determination of an award or rejection of bids after the bids are opened. Any information divulged at the bid opening is not a final determination and is subject to the final action of the contracting agent. If the bids are opened with the intent to award a contract at that time, the bids should be carefully reviewed by the appropriate officials to ensure compliance with all statutory, regulatory, and specification requirements.

#### Dealing with Bidder Deviations and Failure to Submit Documents

Bids must be properly submitted and executed in accordance with the owner's instructions. *Material deviations or alterations shall* be grounds for rejection. Bid defects are subject to case law *criteria of materiality*. This case law developed from a Local Public Contracts Law case, Township of River Vale v. R.J. Longo Construction Co., 127 N.J. Super.207, 216 (Law Div. 1974). In this definitive case, which affects government contracting units generally, the court articulated two criteria for determining whether a bid defect constitutes a material and hence non-waivable irregularity:

1. Whether the effect of a waiver would be to deprive the municipality of its assurance that the contract will be executed, performed and guaranteed according to its specified requirements.
2. Whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

In these cases, attorney advice and careful review of case law is usually warranted.

#### Political Contribution Disclosure Compliance (Pay to Play)

Vendors doing business with county colleges are subject to limitations on campaign contributions. This is because a college is a subsidiary of county government and thus covered under N.J.S.A. 19:44A-20.4. This requires that counties and their agencies use a fair and open process to award contracts valued over \$17,500, or otherwise use a non-competitive process that involves contribution certification by vendors. This website, [www.nj.gov/dca/divisions/dlgs/resources/poli\\_contri\\_discl.html](http://www.nj.gov/dca/divisions/dlgs/resources/poli_contri_discl.html) has detailed information on Pay-to-Play laws. If the county college has adopted its own pay-to-play regulations, this section should be revised to reflect that.

N.J.S.A. 19:44A-20.27 establishes a disclosure requirement for business entities. It requires that, when a business entity has received in any calendar year \$50,000 or more in public contracts with public entities, it must file an annual report with the Election Law Enforcement Commission (ELEC).

While the college has no role in this process, bid or proposal specifications and contracts should include language notifying business entities of their potential obligation under the law.

## **II. BID SECURITY AND BONDING REQUIREMENTS**

### **A. Bid Guarantees**

County colleges may require a bid guarantee for goods, services, and construction contracts (N.J.S.A. 18A:64A-25.16). A bid guarantee may be submitted as a certified check, cashier's check, or a bid bond. If used, a guarantee is limited to 10% of the amount bid or \$20,000, whichever is lower. Bid guarantees are a way to ensure bidders have the business experience and financial capacity to enter into a contract at the price they bid and are willing to forfeit the guarantee if they are the low bidder and fail to enter into a contract.

If a bid guarantee is required on an open-end unit priced contract, the owner should specify in the instructions to bidders the amount or formula to be used as an estimate for determining the ten (10%) percent. Care should be used in deciding which non-construction contracts warrant a bid guarantee. Bid bonds or checks add costs to a bidder and may deter some bidders from participating.

Bid bonds that provide only for an amount that would be between the amount bid and the next lowest bidder is not accepted and should be carefully reviewed by the college's legal counsel. If a bid bond is submitted, it must include a Power of Attorney affidavit from the insurance company that issued the bond authorizing the individual signing the bond (usually an Attorney-in-Fact) to execute the bid bond on behalf of the company.

The CCCL requires the guarantee for a construction contract shall be in the amount of 10% of the bid (no upper limit), and for non-construction contracts, 10% of the amount bid, not in excess of \$20,000. On contracts of \$200,000 and up the latter equates to a \$20,000 bid bond. The only exception to the amount is in the event a funding agency, i.e., a federal agency requires a different amount. In that case the amount required by the funding agency is used.

The check or bond of the unsuccessful bidder(s) shall be returned pursuant to N.J.S.A. 18A:64A-25.18 (i.e., all except the apparent three lowest bidders). The check or bond of the bidder to whom the contract is awarded shall be retained until a contract is executed and the required performance bond or other security is submitted.

### **B. Performance Bonding**

Performance bonds (N.J.S.A. 18A:64A-25.16 and 17) have been traditionally used to protect a college against risks presented by a contractor. County colleges have the option of requiring performance bonding for contracts of any size. Their use depends on how much risk and exposure the owner is willing to assume for a specific contract.

A performance (aka, "contract") bond is represented by a surety guaranteeing to the owner the cost of completing the project in the event the contractor fails to do so. In an ideal situation, the owner is assured that it will obtain a completed project for the amount it agreed to pay. The amount of a performance bond on many projects equals the full contract amount, but it can be adjusted for less than the full amount for projects that take many years. The CCCL includes detailed language about the structure and wording of these bonds.

As with bid guarantees, care should be used in deciding which non-construction contracts warrant a performance bond. A Consent of Surety for a performance bond adds cost to a bid and may deter some bidders from participating.

There are three important points to remember when considering bonding requirements:

- The surety company can be a great help in resolving difficulties that may arise between the contractor and the owner.
- Be sure that bonding is required in a sufficient amount.
- Be sure specifications are written in sufficient detail so they can be relied upon in case of default.

Bond requirements depend on the nature and complexity of the work to be performed, and the laws affecting county colleges specifically, and as government contracting units generally. Remember that all bond documents must be evaluated for their completeness and compliance. It is also important to note the primary purpose for each type of bond document required.

For the bid, the performance bond requirement is fulfilled by the submission of a “Consent of Surety” document. A Consent of Surety is a written legal relationship between a surety and a contractor. If the contractor is awarded the contract, the surety will provide to the contractor a bond, payable to the county college for the faithful performance of all provisions of the specifications and/or all matters relating to the performance of the contract.

A Consent of Surety must include a Power of Attorney affidavit from the insurance company that issued the bond authorizing the individual signing the bond (usually an Attorney-in-Fact) to execute the surety bond on behalf of the company.

A labor and material bond (N.J.S.A. 2A:44-143) is given by a contractor to guarantee payment to certain laborers and suppliers for the labor and materials used in the work performed under a contract. This liability is usually part of the performance bond.

A maintenance bond guarantees against defective work or materials and are generally permitted under the law at N.J.S.A. 18A:64A-25.17(1).

It should be noted that statutes require all surety companies to be licensed by the state in order to transact business as a surety. Standards for surety companies are at N.J.S.A. 2A:44-143. A current listing of licensed companies can be found at [www.state.nj.us/dobi/division\\_insurance/surety.htm](http://www.state.nj.us/dobi/division_insurance/surety.htm). Any bond submitted as part of a bid or contract should be checked against the listing of licensed companies to make sure it complies with the law.

### **III. INTERPRETATIONS AND ADDENDA**

The CCCL does not provide a specific process for dealing with interpretations of specification issues, nor does it include a provision that is in the LPCL and PSCL covering addenda to bid specifications. *The following replicates the procedures in the other laws and are recommended for county colleges.*

Any bidder requesting interpretation of the specifications should do so in writing. (See Part A, Section III “Interpretation and Addenda.”).

Any vendor challenge to the specifications must be submitted in writing not less than three business days prior to the scheduled bid opening.

In addition, as part of a bid submission a bidder must submit an Acknowledgement of Receipt of Addenda form. This ensures that the bidder is aware of any addenda issued by the owner.

No oral interpretation should be given to any potential bidder. A college can consider posting questions and answers on their website and provide a link to the page in their specifications, so all potential bidders are made aware of interpretations and clarifications. Online bid specification distribution services may provide question and answer service along with automatic emails of such postings to all who obtained a specification. When using these systems, care should be taken to ensure answers to questions do not become an addendum that requires a separate form of notice and receipt.

Colleges that choose to use email to distribute addenda should be sure to substitute the appropriate email address in Part A, III-D. Those not choosing to use email should eliminate the last two sentences.

Optional Pre-Bid Conferences. It has been long held under the LPCL and PSCL that absent statutory language for a specific procurement, *mandatory* pre-bid conferences are not an authorized practice. Logically, this would also extend to the CCCL. Nothing, however, prohibits holding an *optional* pre-bid conference, and this is reflected in Subsection F. Purchasing agents should take in consideration the use of pre-bid conference calls or live webinars. Depending on the organization's technological capacity, either of those options (which could also involve live video of a site) would work well to educate potential bidders on any aspects of a procurement. Webinars and meetings can also be recorded and made available on a website for those unable to attend a live event.

#### **IV. BRAND NAMES, STANDARDS OF QUALITY AND PERFORMANCE**

The use of "brand name or equivalent" in a bid specification allows a vendor to submit the brand-named item or one that is equivalent to that item. The LPCL and PSCL provide a codified process that guides contracting units in this area. Its use by county colleges is recommended as it is a legally supportable approach and is consistent with the provisions of the CCCL at N.J.S.A. 18A:64A-25.13. Use of these procedures at N.J.A.C. 5:34-9.2 by county colleges encourages free, open, and competitive bidding.

The following is adapted from the rule:

Before using "brand name or equivalent" in bid specifications, the following procedures shall be considered initially:

- The contracting agent should consider the use of a specification based on a standard issued by a national or international testing or standards setting organization.
- The contracting agent should consider using generic specifications available through commercial or non-commercial services.
- The contracting agent should consider using a specification based on specialized programs.

If the above procedures are not used, a contracting unit can decide to use "brand name or equivalent" if the contracting agent knows that at least one equivalent exists. If the contracting agent does not know if at least one equivalent exists, the item would be considered "proprietary" and the rules for use of proprietary items should be used. "Proprietary" is a term defined in the LPCL/PSCL and referred to at N.J.A.C. 5:34-9.1 and 9.2.

The CCCL has a specific provision regarding patented and copyrighted material. In this case, such goods may be specifically named in a specification. However, an action awarding the contract shall include a description of why such goods are a special need and is "directly related to the performance or purpose for which the purchase, contract, or agreement is made" [N.J.S.A. 18A:64A-25.13(d)]. If the "brand name or equivalent" is used and a bidder proposes an equivalent, the burden rests with the bidder to demonstrate equivalency through the submission of documentation. Mere submission of

company or product literature is unacceptable and can be used as a basis for rejection of the claim of equivalence and the bid.

Pre-approval or pre-qualification of equivalent products by a government contracting unit before submission of bids is an anti-competitive practice and not allowed under the LPCL/PSCL [N.J.A.C. 5:34-9.2(d)] and following this policy but not engaging in pre-qualification is seen as a best practice by colleges. This does not absolve the owner of the need to determine compatibility and suitability. Where there are questions concerning the potential for varying products, it is recommended that purchasing agents review N.J.A.C. 5:34-9.2 regarding the use of “brand names or equals” as a guide to minimizing these issues.

It is recommended that inspection be made upon delivery, installation or performance of service. Owner should serve written notice to the vendor/contractor upon discovery of defect or non-performance, a copy of which should be forwarded to the surety if a performance bond has been required. Request for payment should not be processed until the matter is satisfactorily resolved.

## **V. INSURANCE & INDEMNIFICATION**

Insurance requirements and dollar limitations are determined by individual specialized needs of the owner and may vary by type of project or service. Consult your risk manager or insurance consultant for current or required limits. Such requirements must be reasonable and related to the estimate of exposure. The owner should also consider what “other” insurance may be required for a specific circumstance; for example, Professional Liability insurance might be warranted when a contract calls for professional advice or is part of the required services.

Indemnification and insurance should not be confused with bonding coverage.

## **VI. PRICING INFORMATION FOR PREPARATION OF BIDS**

**If fixed quantities are used in a bid specification, open-ended language must be omitted from the boilerplate.**

If the owner waives the cost of permits or other fees, it should be noted in this section of Instructions to Bidders.

“FOB destination” should be the preferred method for county colleges. When “F.O.B. destination” is specified, title or ownership of the goods passes to the buyer (owner) upon delivery to the owner's designated point. The seller must pay all freight and incidental charges required to effect delivery and is responsible for any loss or damage up to time of delivery.

When “free on board (F.O.B.) shipping point” is used, the title or ownership of the goods passes from the seller to the buyer (owner) at the moment of delivery to the carrier. Goods are put into the hands of the carrier or loaded in the carrier's vehicle free of expense to the buyer, with delivery to the carrier constituting delivery to the buyer. The buyer must pay all freight and incidental charges required to effect delivery and bears the burden of recovering the value for loss or damage incurred after delivery to the carrier.

When dealing with materials or equipment that requires the contractor to unpack or install what is delivered, the owner should consider including language in the technical specification requiring the contractor to remove and dispose of any debris, shipping and packing material related to the delivery or installation. If appropriate the technical specification can also call for existing equipment or material to be removed and disposed of by the contractor, in accordance with law (i.e., if related to environmental disposal considerations).

## VII. STATUTORY AND OTHER REQUIREMENTS

While certain statutory requirements are not found specifically in the CCCL, they are requirements that must be addressed in bid specifications. The Instructions to Bidders contains several of them and others are self-explanatory. The Document Reference (Part C) includes elaboration on those that require forms; the following description goes into additional detail for one of them.

A. State Equal Employment Opportunity/Affirmative Action rules require a careful reading and any questions concerning compliance should be directed to New Jersey Department of the Treasury, Division of Purchase and Property Contract Compliance and Audit Unit. See Part A, Section VII-A “Mandatory Affirmative Action Certification” for “mandatory language” that must appear in bid specification.

The mandatory language for the specification is the same language that must be part of the contract. This language is found in the Part C, Section 7 for Goods and Services contracts (including professional services), and Section 17 for Construction. The Instructions to Bidders document (VII-A) references and includes the language for goods and services as Attachment A. Users can modify this structure as long as the specification includes the appropriate mandatory language. **If these T&C are used for public construction, the text in VII-A and Attachment A must be amended to reflect the public construction language found in Part C-17.**

In addition, all colleges must retain the affirmative action evidence in their files for review by the state’s EEO Monitoring Program. The program also has rules concerning emergency contracts which essentially require that there be documentation of the emergency, that the vendor be required to comply with document filing prior to payment, and that the vendor be provided the appropriate Exhibits.

All state contracting units are required to appoint a “Public Agency Compliance Officer” (PACO) to administer the provisions of the law as it applies to the agency. Full details about the program are online at [www.state.nj.us/treasury/contract\\_compliance/](http://www.state.nj.us/treasury/contract_compliance/).

## VIII. METHOD OF CONTRACT AWARD

The provisions in Section VIII describes how contracts are awarded. The owner must carefully determine in advance the method and process that will be used and clearly state it in the technical specifications.

## IX. CAUSES FOR REJECTING BIDS AND APPEAL OF DECISIONS

A. The provision in Section IX describe cause for rejection. See also “Dealing with Bidder Deviation...” in Section I above. In addition, Section III addresses appeals to bid specifications.

B. County College Boards of Trustees have the statutory authority to act as a hearing body for appeals of purchasing agent actions (e.g., process, award, rejection of bids). Often referenced as P.L.1994, c.48, Section 6(f), that law is codified as N.J.S.A. 18A:3B-6(f). Each county college should have its own process for hearing and adjudicating appeals to the board. Those procedures should be documented, and the bid specification should contain instructions on how that information can be obtained by bidders (i.e., website, email, contact phone number).

County colleges often require that protests be filed within 10 days of the action to award or reject bids. Those actions should be publicly memorialized in some way so bidders can become aware of when the 10-days begins. That can be by a board action or posting of the action on a website. This is not a statutory deadline and the college legal counsel should be consulted on the amount of time allowed for a filing.

Regardless, Purchasing Agents should coordinate their bid language in Section IX-B with their legal counsel to ensure the specification text and documentation of the appeal process is consistent with their Board's practice and legal guidance.

## **X. TERMINATION OF CONTRACT**

Owner should carefully develop and review appropriate language with its attorney. Language provided in this document is only for guidance.

## **XI. PAYMENT**

Payment will be made in accordance with the owner's policy and procedures. It is in the owner's interest to include voucher submission and payment schedules.

## **XII. OTHER PROVISIONS**

B. Ownership of material. Given the nature of an individual procurement, the purchasing agent and legal advisors should carefully consider the need to provide for appropriate control of intellectual property created or used under a contract for the goods or services. The T&C provides general information, but it might be appropriate to modify it for certain types of contracts.

## **Related Bid Specification Provisions of the County College Contracts Law**

### A. Number of Working Days (N.J.S.A. 18A:64A-25.26):

This provision requires all bid specifications for “public work” (generally construed as construction projects) to set a date or number of days for completion of work. It also requires that all such contracts contain provisions for deductions from the price for work that exceeds that limit.

In practice, this section has often been ignored or rendered moot by use of extensions as in the current environment (it dates back to the late 1960’s) makes such practices impractical given the myriad of circumstances that can delay a project. Where appropriate, bid specifications can provide for incentives if it is completed earlier than a date set in the contract.

### B. Liquidated Damages (N.J.S.A. 18A:64A-25.22)

This provision which occasionally is found in specifications, but more often found in contracts, allows the county college to collect monetary damages related to the costs of a contractor failing to fulfill contract requirements.

Individuals drafting bid specifications should consult with legal advisors to determine how this provision is treated in the Instructions to Bidders and/or contracts.

**2020**

**GOODS AND SERVICES BID SPECIFICATIONS:**  
*A GUIDE FOR NEW JERSEY  
COUNTY COLLEGES*

**PART C**

**STANDARD BID  
DOCUMENT REFERENCE**

# 2020 COUNTY COLLEGES GOODS AND SERVICES SPECIFICATIONS PART C DOCUMENT REFERENCE CONTENTS\*

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## Notes on this Document

While the term “county colleges” is used throughout, for the purposes of consistency with other contracting laws, “contracting unit” is also used to reflect that the provisions affect NJ government agencies.

LPCL refers to the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.); PSCL refers to the Public School Contracts Law (N.J.S.A. 18A:18A-1 et seq.).

STANDARD BID DOCUMENT REFERENCE				Section 1
Name of Form:	NOTICE OF ADVERTISEMENT FOR BIDS	Instruction References:		I-A
Applicability		Mandatory	Optional	N/A
	Goods and Services	X		
	Construction	X		
Source References:	Generally - N.J.S.A. 18A:64A-25.14			
Supplement Reference:	Section 1			
Description:	Prior to receipt, legal advertisement shall appear in the owner's official newspaper(s) no less than 10 days.			

Owners should provide the following information in the text for each bid:

- Who is requesting bids?
- When will bids be opened?
- Where will bids be opened?
- Where will bids be submitted?
- What is being bid?
- Will there be a pre-bid conference? Where? When? (State law does not permit mandatory attendance at a pre-bid conference. The term "strongly encouraged" is advised.)
- Where can specifications be obtained (include a website address if available)
- How are bids to be submitted?
- Is there a cost for specifications?

Bid ads may include other related information at the contracting unit's option.

The mandatory Equal Employment Opportunity in Public Contracts Statement must appear in all legal advertisements.

The Notice to Bidders on the next page is a sample.

## NOTICE TO BIDDERS

NOTICE IS HEREBY GIVEN that sealed bids will be received by the *(title of individual)*, for the *(proper name of agency)*, County of *(county name)*, State of New Jersey on *(Date)* at *(am/pm)* prevailing time at *(full description of the location for the receipt of bids)* at which time and place bids will be opened and read in public for:

*(description of goods or services/project that serves as the title and contract # if any)*

Specifications and other bid information may be obtained at the *(name of the location where information is available and website address if used)* during regular business hours *(hours of operation)* or online at \_\_\_\_\_. Bids must be made on the proposal forms included with the bid specification, be enclosed in a sealed package bearing the name and address of the bidder and "BID TITLE, NAME & CONTRACT #" on the outside, addressed to *(name of official)*, at the address above.

*(OPTIONAL: A NON-REFUNDABLE fee of [insert specification cost if applicable] in the form of a check payable to the [name of agency] will be required for each set of specifications.)*

*(OPTIONAL: If an optional pre-bid conference will be held, date, time and location.)*

Bidders are required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 et seq.

---

Name & Title (of appropriate official)

Publication date:

STANDARD BID DOCUMENT REFERENCE				Section 2
Name of Form:	<b>BID SUBMISSION DOCUMENT CHECKLIST</b>	Instruction References:		<b>VII-H</b>
Applicability		<b>Mandatory</b>	<b>Optional</b>	<b>N/A</b>
	Goods and Services		<b>X</b>	
	Construction		<b>X</b>	
Source References:	Advisory practice			
Supplemental Reference:	1, regarding failure to submit documents.			
Description:	Summarizes all required documentation to be provided by prospective bidders.			

This form provides bidders a checklist to assure submission of all required documents or information. While not required for county colleges, its optional use is encouraged as a way of ensuring bids are complete. It may be expanded or customized depending upon owner's requirements and the specific bid.

Contracting units should expand upon the form to reflect requirements of individual bid specifications, such as adding lines for submission of manufacturer specifications, copies of warranties, product samples, etc.

Colleges should be aware that the Local Public Contracts Law includes provisions for construction projects (N.J.S.A. 40A:11-23.2). It is a list of those items that the LPCL statutorily deems "fatal" to a bid. This means the bid is summarily rejected if the documents are not included and cannot be cured by the bidder or the owner. The provision prevents the governing body to allow the bidder to "cure" the failure to submit. Failure to submit other forms may also be fatal. See Section 1 of the Supplemental Reference.

While the law is not binding on county colleges, it may come into play in the event of litigation about the ability of a bidder or owner to "cure" a document that is not submitted.

**(Name of County College)**  
**BID DOCUMENT CHECKLIST**

Checked if Required	Submission Requirement	Initial each required entry and if required, submit the item
<input type="checkbox"/>	Ownership Disclosure Certification	
<input type="checkbox"/>	Non-Collusion Affidavit	
<input type="checkbox"/>	Bid Proposal Form	
<input type="checkbox"/>	Bid Guarantee (with Power of Attorney for <b>full amount</b> of <i>Bid Bond</i> )	
<input type="checkbox"/>	Consent of Surety for Performance Bond (with Power of Attorney for <b>full amount</b> of <i>Bid Price</i> )	
<input type="checkbox"/>	<i>Evidence of Affirmative Action Compliance*</i>	
<input type="checkbox"/>	<i>Proof of Business Registration (BRC)*</i>	
<input type="checkbox"/>	Acknowledgement of Receipt of Revisions or Addenda	
<input type="checkbox"/>	Disclosure of Investment Activities in Iran	
<input type="checkbox"/>	References	
<input type="checkbox"/>	Status of Present Contracts	
<input type="checkbox"/>	Equipment Certification	
<input type="checkbox"/>	Public Works Contractor Registration Certificate	
<input type="checkbox"/>	Subcontractor Listing	

***\*Statutorily allowed to be provided with bid OR prior to execution of contract.***

Full Name (Print):		Title:	
Signature:		Date:	

STANDARD BID DOCUMENT REFERENCE				Section 3
Name of Form:	BID PROPOSAL FORM	Instruction Reference:		I-G
Applicability		Mandatory	Optional	N/A
	Goods and Services	X		
	Construction	X		
Source References:				
Supplemental Reference:				
Description:	Bid specifications should use a clearly designed form for submittal of prices by bidders. Depending on the bid, a narrative document that shows a single total, form with tables showing line item pricing, or more detailed documents may be appropriate.			

The form must be completed and signed by the bidder or its authorized agent.

While the LPCL (40A:11-23.1) goes into detail about the requirement for what seems to be an obvious form, there is no parallel language in the CCCL. However, the form is still by nature necessary for any CCCL bid.

A sample single price type form is shown.

## BID PROPOSAL FORM

\_\_\_\_\_  
(Contract Title and Bid Number, if applicable)

\_\_\_\_\_  
(Description of goods/services being bid)

The undersigned, being authorized, proposes to furnish and deliver the above goods/services pursuant to the bid specification and made part hereof:

\_\_\_\_\_  
Amount in words

\$ \_\_\_\_\_  
Amount in numbers

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature of Authorized Agent

\_\_\_\_\_  
Type or Print Name

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

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Email address

STANDARD BID DOCUMENT REFERENCE				Section 4
Name of Form:	ACKNOWLEDGEMENT OF RECEIPT OF REVISIONS OR ADDENDA	Instruction Reference:		III-D
Applicability		Mandatory	Optional	N/A
	Goods and Services		X	
	Construction		X	
Source References:	Notice of revisions or addenda at N.J.S.A. 18A:64A-25.14b. Form acknowledging bidder receipt of notices <b>is not</b> required under the CCCL. Form is sourced from N.J.S.A. 40A:11-23.1a			
Supplemental Reference:	III			
Description:	Recommended administrative method for securing Acknowledgment of Receipt of Addenda by bidders.			

This form is required for **LPCL** public works/construction bids (N.J.S.A. 40A:11-23.1a) and is **highly recommended for any CCCL bid** that might be subject to specification changes. Because of the requirement to provide notice to bidders in some cases, it is highly recommended that contracting units keep lists of individuals who obtain copies of bid specifications and their contact information for updates. The included form is an example, subject to local modification.

While email was not an option at the time the law was passed, it is arguable today that the use of an email address obtained from the requester could be used in lieu of a fax notice, as long as an email delivery receipt is required (as it would be with a fax).

Publishing & Notice Requirements for Bid Addenda N.J.S.A. 18A:64A-25.14b	
Action	Requirement
Publish in an official newspaper of the contracting unit	Yes
Publication date and time for addenda	No later than 7 days, Saturdays, Sundays and holidays excepted prior to the bid due date
In writing by certified mail, facsimile or delivery service	Yes

(Name of County College)

### ACKNOWLEDGMENT OF RECEIPT OF ADDENDA

This form must be submitted whether or not addenda were issued. If no addenda were issued, check the "No Addenda were received box" and complete the signature section.

The undersigned Bidder hereby acknowledges receipt of the following Addenda:

Addendum Number/Description	Dated	Acknowledge Receipt (initial)

☐ No addenda were received

Name of Bidder:	
By:	
(Signature of Authorized Representative)	
Name:	
Title:	
Date:	

STANDARD BID DOCUMENT REFERENCE				Section 5
Name of Form:	BID GUARANTEE	Instruction References:		II-A
Applicability:		Mandatory	Optional	N/A
	Goods and Services		X	
	Construction		X	
Source References:	N.J.S.A. 18A:64A-25.16			
Supplemental Reference:	Bid Guarantee II-A			
Description:	<p>A 10% deposit (guarantee) of the amount bid (but not to exceed \$20,000) for goods and services contracts may be required to ensure that the bidder enters into a contract if the bidder receives the award and will provide a performance bond (if one is required).</p> <p>If required for a construction contract, the amount shall be 10% of the amount bid, with no cap.</p> <p>Failure to enter into an awarded contract results in forfeiture of the deposit. Failure to provide a required bid guarantee is a fatal defect that cannot be cured and must result in rejection of the bid.</p>			

A bid guarantee (N.J.S.A. 18A:64A-25.16) is used to ensure that a bidder, if awarded a contract within the time stipulated, will enter into a contract. The guarantee can be provided in any one of three forms (a contracting unit cannot choose between them), all payable unconditionally to the owner.

1. A certified check in the full amount of 10% of the amount bid
2. A cashier's check in the full amount of 10% of the amount bid
3. A bid bond for the full amount of 10% of the amount bid from a surety company authorized to do business in the State of New Jersey. A bid bond without this Consent of Surety should be carefully reviewed as to its legality by a contracting unit's legal counsel.

The following is an example of a bid bond. A bid bond should be carefully examined by legal counsel to ensure it is issued consistent with state law. This includes checking with the Department of Banking and Insurance's listing of approved sureties at [www.state.nj.us/dobi/division\\_insurance/surety.htm](http://www.state.nj.us/dobi/division_insurance/surety.htm).

If a bid bond is submitted, the Consent of Surety must be accompanied by a Power of Attorney affidavit from the insurance company that issued the bond authorizing the individual signing the bond (usually an Attorney-in-Fact) to execute the bid bond on behalf of the company. A Power of Attorney is *not shown* on the attached sample.

# BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, \_\_\_\_\_ as  
Principal, and \_\_\_\_\_ as Surety, is

hereby held and firmly bound unto \_\_\_\_\_ as Owner, in the Penal Sum of  
\_\_\_\_\_ (\$ \_\_\_\_\_ ) for the payment of which, well and  
truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

The condition of the above obligation is such that whereas the Principal has submitted to

a certain bid, attached hereto and hereby made a part of hereof, to enter into a contract in writing for the

NOW THEREFORE,

- A) If said bid shall be rejected or in the alternative,
- B) If said bid shall be accepted and the Principal shall execute and deliver a contract properly completed in accordance with said bid and shall furnish a bond for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in the connection therewith, and shall in all other respects perform the agreement created by the acceptance of said bid,

Then this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such bid; and Surety does hereby waive notice of any such extension. '

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

\_\_\_\_\_  
Principal

BY: \_\_\_\_\_  
Witness

\_\_\_\_\_  
Surety

BY: \_\_\_\_\_  
Witness

\_\_\_\_\_  
Attorney-in-Fact

STANDARD BID DOCUMENT REFERENCE				Section 6	
Name of Form:	PERFORMANCE BOND/CONSENT OF SURETY		Instruction Reference:		II-B
Applicability			Mandatory	Optional	N/A
	Goods and Services			X	
	Construction			X	
Source References:	Consent of Surety		Performance Bonds		
	N.J.S.A. 18A:64A-25.17		N.J.S.A. 2A:44-143 through 147		
Supplemental Reference:		II-B			
Description:		A Consent of Surety is a financial obligation provided by a 3 <sup>rd</sup> party insurance company (a “surety”) that is licensed to do business in New Jersey. It guarantees the company will provide a bidder a performance bond in the full amount (100%) of the amount bid that guarantees completion of the contract as specified.			

When required, a Consent of Surety is a non-curable defect (case law) if not included with the bid and cannot be waived by the governing body. Such bids must be rejected.

Once the bid is awarded, the bidder must provide the required bonds prior to execution of the contract. The issuer of the bond should be checked with the Department of Banking and Insurance listing of approved sureties at [www.state.nj.us/dobi/division\\_insurance/surety.htm](http://www.state.nj.us/dobi/division_insurance/surety.htm) to ensure compliance with state law.

The Consent of Surety that follows is a sample; any such consent should be similar in nature and not include exceptions. After award and the surety certificate is issued, it should be carefully reviewed by legal counsel for substantial compliance with the form set forth at N.J.S.A. 18A:64A-25.17.

Legal and industry practice requires that a Consent of Surety must be accompanied by a Power of Attorney affidavit from the insurance company that issued the bond authorizing the individual signing the bond (usually an Attorney-in-Fact) to execute the surety bond on behalf of the company. A Power of Attorney is *not shown* on the attached sample.

## CONSENT OF SURETY

A performance bond will be required from the successful contractor on this project, and consequently, all bidders shall submit, with their bid, a consent of surety in substantially the following form:

To: \_\_\_\_\_  
(Owner)

Re: \_\_\_\_\_  
(Contractor)

\_\_\_\_\_  
(Project Description)

This is to certify that the \_\_\_\_\_  
(Surety Company)

will provide to \_\_\_\_\_ a performance bond in  
(Owner)

the full amount of awarded contract in the event that said contractor is awarded a contract for the above project.

\_\_\_\_\_  
(CONTRACTOR)

\_\_\_\_\_  
(Authorized Agent of Surety Company)

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

**CONSENT OF SURETY MUST BE SIGNED BY AN AUTHORIZED AGENT  
OR REPRESENTATIVE OF A SURETY COMPANY AUTHORIZED TO DO BUSINESS  
IN NEW JERSEY AND NOT BY THE  
INDIVIDUAL OR COMPANY REPRESENTATIVE SUBMITTING THE BID.**

STANDARD BID DOCUMENT REFERENCE				Section 7
Name of Form:	<b>EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE: GOODS, GENERAL SERVICES AND PROFESSIONAL SERVICES</b>	Instruction Reference:		<b>VII-A</b>
Applicability:		<b>Mandatory</b>	<b>Optional</b>	<b>N/A</b>
	Goods and Services	<b>X</b>		
	Construction	<b>X</b>		
Source References:	N.J.S.A. 10:5-31 (P.L 1975, c.127) and N.J.A.C 17:27-1 et seq. See also NJ Public Contracting Equal Employment Opportunity website: <a href="http://www.state.nj.us/treasury/contract_compliance/">www.state.nj.us/treasury/contract_compliance/</a> Included			
Supplemental Reference:	VII-A			
Description:	Requires that all bid specifications include mandatory language requiring contractors to report on efforts to meet equal opportunity/affirmative action in employment goals. Successful bidders must be registered with, and report to the state agency on employment related data.			

*This section reflects information regarding goods and services contracts. Section 17 covers this requirement for public works/construction contracts.*

*Details on the following items are online in a handbook titled “Public Agency Guidelines for Administering EEO in Public Contracts” on the EEO Monitoring Program website at [www.state.nj.us/treasury/contract\\_compliance/](http://www.state.nj.us/treasury/contract_compliance/)*

- 1) All advertisements for bids or RFPs must include the following sentence:

“Bidders are required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 et seq.”

- 2) For contracts in excess of bid threshold but not publicly advertised, any solicitation must include the following sentence:

“If awarded a contract, your company/firm shall be required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 et. seq.”

- 3) All contracts in excess of a contracting unit’s bid threshold must include mandatory language in their specifications and/or contract documents (“Exhibits”). There are different language requirements for goods/general services/professional services contracts (Exhibit A) and construction contracts (Exhibit B). The most recent Exhibit (2016) for Goods, General Services and Professional Services is reprinted on the following page. The Guidelines also require that bid specifications provide direction on what documents must be filed with the contracting agency prior to execution of a contract.

## EXHIBIT A

### MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L.1975, c.127) and N.J.A.C. 17:27 et seq.

### GOODS, GENERAL SERVICES, 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 AA-302 (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 & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

STANDARD BID DOCUMENT REFERENCE				Section 8
Name of Form:	AMERICANS WITH DISABILITIES ACT OF 1990	Instruction Reference:		VII-C
Applicability:		Mandatory	Optional	N/A
	Goods and Services	X		
	Construction	X		
Source References:	Title II of the Americans with Disabilities Act of 1990 (42 <u>U.S.C.</u> §12101 et seq.)			
Supplemental Reference:	VII-C			
Description:	<p>The Act prohibits discrimination on the basis of disability by public entities in all services, programs and activities provided or made available by public entities. "In providing any aid, benefit, or service on behalf of the Owner pursuant to this contract, the contractor agrees that the performance shall be in strict compliance with the Act."</p> <p>No action is required by the bidder. The law requires the language to be part of any publicly bid contract. Language in Part A references this requirement and reprints it as Attachment C.</p>			

By inclusion in the contract, the successful bidder will be indemnifying, protecting and saving harmless the owner and its employees from and against any and all suits, claims, losses or damages. (See Instructions, Section VII-C, "Mandatory Language – Americans with Disabilities Act of 1990").

## **AMERICANS WITH DISABILITIES ACT OF 1990**

### **Equal Opportunity for Individuals with Disability**

The contractor and the owner do hereby agree that the provisions of Title 11 of the Americans with Disabilities Act of 1990 (the "Act") (42 U.S.C. 5121 01 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant there unto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the owner pursuant to this contract, the contractor agrees that the performance shall be in strict compliance with the Act. In the event that the contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the contractor shall defend the owner in any action or administrative proceeding commenced pursuant to this Act. The contractor shall indemnify, protect, and save harmless the owner, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages, of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the owner's grievance procedure, the contractor agrees to abide by any decision of the owner which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the owner, or if the owner incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the contractor shall satisfy and discharge the same at its own expense.

The owner shall, as soon as practicable after a claim has been made against it, give written notice thereof to the contractor along with full and complete particulars of the claim, if any action or administrative proceeding is brought against the owner or any of its agents, servants, and employees, the owner shall expeditiously forward or have forwarded to the contractor every demand, complaint, notice, summons, pleading, or other process received by the owner or its representatives.

It is expressly agreed and understood that any approval by the owner of the services provided by the contractor pursuant to this contract will not relieve the contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the owner pursuant to this paragraph.

It is further agreed and understood that the owner assumes no obligation to indemnify or save harmless the contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the contractor's obligations assumed in this Agreement, nor shall they be construed to relieve the contractor from any liability, nor preclude the owner from taking any other actions available to it under any other provisions of the Agreement or otherwise at law.

STANDARD BID DOCUMENT REFERENCE				Section 9
Name of Form:	STATEMENT OF OWNERSHIP	Instruction Reference:		VII-D
Applicability:		Mandatory	Optional	N/A
	Goods and Services	X		
	Construction	X		
Source References:	N.J.S.A. 52:25-24.2 (also known as "Chapter33" from the laws of 1977) Guidance for non-state contracting units is available in AU-2002-03 and 2016-19			
Supplemental Reference:				
Description:	Fulfills statutory criteria for disclosure of bidder's ownership that exceeds 10%. Failure to supply with the bid should be considered as cause for automatic rejection for a construction contract (case law and N.J.S.A. 40:11-23.2).			

N.J.S.A. 52:25-24.2 provides that no business organization, regardless of form of ownership shall be awarded any contract for the performance of any work or the furnishing of any goods and services, including construction bids, unless, **prior to the receipt of the bid or accompanying the bid** of said business organization, bidders shall submit a statement setting forth the names and addresses of all persons and entities that own ten percent or more of its stock or interest of any type at all levels of ownership. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member, exceeding the ten percent ownership, has been listed. Disclosure must also be provided for individual stockholders who own more than 10 percent, if the business is owned by a publicly owned corporation. In this case, disclosure is met by providing a web link or reference to a US Security Exchange Commission (or similar foreign regulator for a non-US corporation) ownership filing statement.

State law does not mandate the form of the Statement, as a result, contracting units have used a variety of forms: one issued by the DLGS and other locally developed ones. Included here are two samples, one released by the Division (page 18) and one based on the State Division of Purchase and Property (page 20). Both comply with the law.

Users should be sure to review the form they use and edit them accordingly to fill in the name of their contracting unit (shown as **<name/type of contracting unit>**).

## STATEMENT OF OWNERSHIP DISCLOSURE

N.J.S.A. 52:25-24.2 (P.L. 1977, c.33, as amended by P.L. 2016, c.43)

**This statement shall be completed, certified to, and included with all bid and proposal submissions. Failure to submit the required information is cause for automatic rejection of the bid or proposal.**

**Name of Organization:** \_\_\_\_\_

**Organization Address:** \_\_\_\_\_

**Part I Check the box that represents the type of business organization:**

- ☐ Sole Proprietorship (skip Parts II and III, execute certification in Part IV)
- ☐ Non-Profit Corporation (skip Parts II and III, execute certification in Part IV)
- ☐ For-Profit Corporation (any type)      ☐ Limited Liability Company (LLC)
- ☐ Partnership      ☐ Limited Partnership      ☐ Limited Liability Partnership (LLP)
- ☐ Other (be specific): \_\_\_\_\_

**Part II**

- ☐ The list below contains the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. **(COMPLETE THE LIST BELOW IN THIS SECTION)**

**OR**

- ☐ No one stockholder in the corporation owns 10 percent or more of its stock, of any class, or no individual partner in the partnership owns a 10 percent or greater interest therein, or no member in the limited liability company owns a 10 percent or greater interest therein, as the case may be. **(SKIP TO PART IV)**

(Please attach additional sheets if more space is needed):

Name of Individual or Business Entity	Home Address (for Individuals) or Business Address

**Part III DISCLOSURE OF 10% OR GREATER OWNERSHIP IN THE STOCKHOLDERS, PARTNERS OR LLC MEMBERS LISTED IN PART II**

If a bidder has a direct or indirect parent entity which is publicly traded, and any person holds a 10 percent or greater beneficial interest in the publicly traded parent entity as of the last annual federal Security and Exchange Commission (SEC) or foreign equivalent filing, ownership disclosure can be met by providing links to the website(s) containing the last annual filing(s) with the federal Securities and Exchange Commission (or foreign equivalent) that contain the name and address of each person holding a 10% or greater beneficial interest in the publicly traded parent entity, along with the relevant page numbers of the filing(s) that contain the information on each such person. **Attach additional sheets if more space is needed.**

Website (URL) containing the last annual SEC (or foreign equivalent) filing	Page #'s

**Please list** the names and addresses of each stockholder, partner or member owning a 10 percent or greater interest in any corresponding corporation, partnership and/or limited liability company (LLC) listed in Part II **other than for any publicly traded parent entities referenced above.** The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member exceeding the 10 percent ownership criteria established pursuant to N.J.S.A. 52:25-24.2 has been listed. **Attach additional sheets if more space is needed.**

Stockholder/Partner/Member and Corresponding Entity Listed in Part II	Home Address (for Individuals) or Business Address

**Part IV Certification**

I, being duly sworn upon my oath, hereby represent that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I acknowledge: that I am authorized to execute this certification on behalf of the bidder/proposer; that the **<name of contracting unit>** is relying on the information contained herein and that I am under a continuing obligation from the date of this certification through the completion of any contracts with **<type of contracting unit>** to notify the **<type of contracting unit>** in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I am subject to criminal prosecution under the law and that it will constitute a material breach of my agreement(s) with the, permitting the **<type of contracting unit>** to declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print):		Title:	
Signature:		Date:	

## STATEMENT OF OWNERSHIP

This statement is a mandatory requirement of bid submission pursuant to  
N.J.S.A. 52:25-24.2. **Failure to complete and submit will result in disqualification of the bid.**

Page 1 of 2

### Part A – Check the Yes or No boxes for questions #1 and #2 as appropriate

<b>Name of Bidder/Proposer Organization:</b>		<b>Yes</b>	<b>No</b>
1. Are there any individuals, corporations or partnerships, or other business entities that own a 10% or greater interest in the bidder/proposer?			
2. Is the bidder/proposer incorporated as a not-for-profit organization?			
<b>If the answer to question #1 is NO or the answer to question #2 is YES, execute the certification in Part D. No other information is required. All others continue with Part B.</b>			

**Part B:** Disclose the identifying information related to all individuals, partnerships and/or corporations owning a 10% or greater interest in the bidder/proposer. Use the reverse side if more space is needed. If the owner of 10% or more is:

- An individual, insert only the person's name under Name of Individual and their home address.
- Any other entity, insert the entity's name and business address. For any parent entity that is publicly traded, "interest" includes beneficial interest; see also Part C.

If any 10% or more owner, including if the bidder has a direct or indirect parent entity at any level of ownership who owns more than 10%, that owner must also be listed.

Questions concerning ownership disclosure should be considered by the bidder's legal advisors and review of the statute and its related case law. Use Page 2 if additional space is needed. When complete, execute the Certification in Part D.

Name of Individual or Business Entity	Home (for individuals) or Business Address

**Part C: Publicly Traded Parent Company Disclosure.** Ownership disclosure (name and address) can be met by submitting the last annual filing of an SEC or similar foreign regulator document or providing the website link to such documents, and include relevant page numbers. See N.J.S.A 52:25-24.2. Continue on Page 2 if more space is needed.

Title of Attached Document or Weblink	Page #

**Part D: Certification.** I, being duly sworn upon my oath, hereby represent that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I acknowledge: that I am authorized to execute this certification on behalf of the bidder/proposer; that the *<name of contracting unit>* is relying on the information contained herein and that I am under a continuing obligation from the date of this certification through the completion of any contracts with *<type of contracting unit>* to notify the *<type of contracting unit>* in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I am subject to criminal prosecution under the law and that it will constitute a material breach of my agreement(s) with, and permitting the *<type of contracting unit>* to declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print):		Title:	
Signature:		Date:	

## STATEMENT OF OWNERSHIP

Continuation from Page 1

Page 2 of 2

**Part B Continued** – If necessary, continue entering the identifying information related to the individuals, partnerships and/or any form of corporation owning a 10% or greater interest in the bidder/proposer. If the owner of 10% or more is:

- An individual, insert only the person's name under Name of Individual and their home address.
- Any other entity, insert the entity's name and business address. For any parent entity that is publicly traded, "interest" includes beneficial interest; see also Part C.

If any 10% or more owner, including if the bidder has a direct or indirect parent entity at any level of ownership who owns more than 10%, that owner must also be listed. When done, execute the Certification in Part D on Page 1.

Name of Individual	Home or Business Name	Address

**Part C Continued: Publicly Traded Parent Company Disclosure.** If necessary, continue entering here if compliance is being met by document submission or provide the website link to the documents, and including the relevant page numbers. When done, execute the Certification in Part D on Page 1.

Title of Attached Document or Weblink	Page #

STANDARD BID DOCUMENT REFERENCE				Section 10
Name of Form:	<b>BUSINESS REGISTRATION CERTIFICATE</b>	Instruction Reference:		<b>VII-E</b>
Applicability:		<b>Mandatory</b>	<b>Optional</b>	<b>N/A</b>
	Goods and Services	<b>X</b>		
	Construction	<b>X</b>		
Supplemental Reference:	N.J.S.A. 52:32-44 (as amended in 2009 by P.L. 2009, c.315). DLGS guidance affecting all contracting units can be found in Local Finance Notices 2004-24 and 2005-12, though they do not reflect the 2009 changes)			
Instructions Reference:	<a href="http://www.nj.gov/dca/divisions/dlgs/programs/lpcl.html#1">www.nj.gov/dca/divisions/dlgs/programs/lpcl.html#1</a>			
Description:	The state-issued certificate is mandatory but doesn't have to be submitted until prior to award of the contract. It does not need to be submitted with the bid and failure to submit with the bid is <b>not</b> fatal.			

This law requires all contractors and subcontractors to be registered with the state for payment of sales and use tax and provide the contracting unit proof of that registration. That proof is known as a "Business Registration Certificate" and is issued by the New Jersey Division of Taxation.

The Business Registration Certificate (BRC) is mandatory for Individual purchases, and aggregate purchases from the same contractor, exceeding 15% of the units bid threshold. Once on file, the BRC does not have to be resubmitted for subsequent purchases until the next procurement cycle.

Information on this requirement is found in Division of Local Government Services Local Finance Notices 2004-17 (8/6/04), 2004-24 (11/1/04), 2005-12 (4/27/05) and on the Division web site at [www.nj.gov/dca/divisions/dlgs/programs/lpcl.html#1](http://www.nj.gov/dca/divisions/dlgs/programs/lpcl.html#1).

**Not reflected** in the Local Finance Notices or on the DLGS website (as of 3/18) are the following 2009 statutory changes:

- 1) Instead of the submission being required at the time of the bid and being fatal to the bid if not submitted, it can now be submitted prior to award of the contract.
- 2) Alternatively, the contracting agency may permit the contractor to provide information that the contracting agency can use to obtain the information from the state's BRC database.
- 3) A BRC is only required when goods or services are provided within the geographic boundaries of New Jersey.
- 4) BRC's are required: 1) for a contract for goods or services, any subcontractor who is knowingly providing goods or services; or 2) for a construction contract, all subcontractors who are named in a bid or response to a request for proposals to the contracting agency.
- 5) The contractor shall maintain the names and addresses of subcontractors that may be updated from time to time during the course of contract performance. A complete and accurate list shall be submitted before final payment, and the contractor shall attest to same before final payment is made. If no subcontractors are used the contractor shall attest to that prior to final payment.

The law requires that all contracts include specific language approved by the Department of Treasury. The language describes the responsibilities of contractors and subcontractors to collect and pay all required taxes to the state. It also requires contractors to notify their subcontractors of their responsibilities and to notify the contracting unit of the names and provide BRC's of all subcontractors (as defined in #4 above). The required contract language follows on the next page.

## **New Jersey Business Registration Requirements**

Pursuant to N.J.S.A. 52:32-44, \_\_\_\_\_ (“Contracting Agency”) is prohibited from entering into a contract with an entity unless the bidder/proposer/contractor, and each subcontractor that is required by law to be named in a bid/proposal/contract has a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services within the Department of the Treasury.

Prior to contract award or authorization, the contractor shall provide the Contracting Agency with its proof of business registration and that of any named subcontractor(s).

Subcontractors named in a bid or other proposal shall provide proof of business registration to the bidder, who in turn, shall provide it to the Contracting Agency prior to the time a contract, purchase order, or other contracting document is awarded or authorized.

During the course of contract performance:

- (1) the contractor shall not enter into a contract with a subcontractor unless the subcontractor first provides the contractor with a valid proof of business registration.
- (2) the contractor shall maintain and submit to the Contracting Agency a list of subcontractors and their addresses that may be updated from time to time.
- (3) the contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall 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, (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 Taxation at (609)292-6400. Form NJ-REG can be filed online at [www.state.nj.us/treasury/revenue/busregcert.shtml](http://www.state.nj.us/treasury/revenue/busregcert.shtml).

Before final payment is made under the contract, the contractor shall submit to the Contracting Agency a complete and accurate list of all subcontractors used and their addresses.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration as required, 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 proof of business registration not properly provided under a contract with a contracting agency.

### **Emergency Purchases or Contracts**

For purchases of an emergent nature, the contractor shall provide its Business Registration Certificate within two weeks from the date of purchase or execution of the contract or prior to payment for goods or services, whichever is earlier.

STANDARD BID DOCUMENT REFERENCE				Section 11
Name of Form:	DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN	Instruction Reference:		VII-F
Applicability		Mandatory	Optional	N/A
	Goods and Services	X		
	Construction	X		
Source References:	N.J.S.A. 52:32-55 et seq. N.J.S.A. 18A:64A-25.43			
Supplemental Reference:				
Description:	P.L. 2012, c.25 prohibits State and local public contracts with persons or entities engaging in certain investment activities in energy or finance sectors of Iran. Bidders must indicate if they comply with the law by certifying the form.			

A 2016 Superior Court decision concluded that failure to submit the Iran Disclosure with a bid was a “material defect, is not waivable and cannot be cured post bid.” In the absence of review by a higher court, it is recommended that the disclosure be treated in that manner.

The Certification form requires the insertion of contracting unit identification information which should be filled in (in italics on the form) prior to its use.

# Disclosure of Investment Activities in Iran

<b>Bidder Name:</b>	
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## Part 1: Certification

BIDDERS ARE TO COMPLETE PART 1 BY CHECKING **EITHER BOX**.

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

### CHECK THE APPROPRIATE BOX:

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

**OR**

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

## Part 2 – Additional Information

PLEASE PROVIDE FURTHER INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN. You must provide a detailed, accurate and precise description of the activities of the bidding person/entity, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran on additional sheets provided by you.

## Part 3: Certification

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

Full Name (Print):		Title:	
Signature:		Date:	

STANDARD BID DOCUMENT REFERENCE				Section 12
Name of Form:	NON-COLLUSION AFFIDAVIT		Instruction Reference:	VII-I
Applicability		Mandatory	Optional	N/A
	Goods and Services		X	
	Construction		X	
Source References:	N.J.S.A. 52:34-15			
Supplemental Reference:				
Description:	The contracting unit's use of this form is optional. It is used to ensure that the bidder has not participated in any collusion with any other bidder or contracting unit representative or otherwise taken any action in restraint of free and competitive bidding.			

A Non-Collusion Affidavit is not statutorily required. If required by the owner, bidder non-compliance may be cause for rejection.

Previous versions of this form required a notary to certify the individual signing the form. Recent research into the underlying law determined that the action of a notary is unnecessary and has been eliminated from the sample form.

## NON-COLLUSION AFFIDAVIT

State of New Jersey

County of \_\_\_\_\_

I, \_\_\_\_\_ residing in \_\_\_\_\_  
(name of affiant) (name of municipality)

in the County of \_\_\_\_\_ and State of \_\_\_\_\_, of full age,  
being duly sworn according to law on my oath depose and say that:

I am \_\_\_\_\_ of the firm of \_\_\_\_\_  
(title or position) (name of firm)

\_\_\_\_\_ the bidder making this Proposal for the bid

entitled \_\_\_\_\_, and that I executed the said proposal with  
(title of bid proposal)

full authority to do so; that said bidder has not, directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with the above named project; and that all statements contained in said proposal and in this affidavit are true and correct, and made with full

knowledge that the \_\_\_\_\_ relies upon the truth of  
(name of contracting unit)

the statements contained in said Proposal and in the statements contained in this affidavit in awarding the contract for the said project.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such 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 \_\_\_\_\_.  
(name of firm)

\_\_\_\_\_  
Authorized Bidder's Representative

\_\_\_\_\_  
Type or print name of representative

STANDARD BID DOCUMENT REFERENCE				Section 13
Name of Form:	NEW JERSEY ANTI-DISCRIMINATION PROVISIONS	Instruction Reference:		VII-B
Applicability:		Mandatory	Optional	N/A
	Goods and Services	X		
	Construction	X		
Source References:	N.J.S.A. 10:2-1 et seq.			
Supplemental Reference:	VII-B			
Description:	<p>Obligates a contractor, their subcontractors or employees from engaging in discrimination of various types against any person qualified and available to work on the contract.</p> <p>No action is required by the bidder. The law requires the language to be part of any publicly bid contract. Language in Section A references this requirement and the full text is included as Attachment B.</p>			

By inclusion in the bid specification, if the bidder is awarded a contract or subcontract for the purposes of the contract, the bidder or anyone working for the bidder or contractor or subcontractor, agrees that they will not discriminate against any person who is qualified and ready to perform the work or, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex. The law provides for various penalties.

**NEW JERSEY ANTI-DISCRIMINATION PROVISIONS**  
**N.J.S.A. 10:2-1 ET SEQ.**

Pursuant to N.J.S.A. 10:2-1, if awarded a contract, the contractor agrees that:

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

STANDARD BID DOCUMENT REFERENCE				Section 14
Name of Form:	PREVAILING WAGE DETERMINATION	Instruction Reference:		VII-K
Applicability		Mandatory	Optional	N/A
	Goods and Services			X
	Construction	X		
Source References:	N.J.S.A. 34:11-56.25 et seq. for the law generally N.J.S.A. 34:11-56.28 for improvements to leased property N.J.A.C. 12:60 and 12:60-2A.1			
Supplemental Reference:				
Description:	Used for public work/construction contracts on agency owned or leased property where the threshold requiring the use of prevailing wages has been exceeded, the county college must obtain trade employee wage determinations prior to commencing bid process. Certifications of the minimum wages paid by contractors are requested through the N.J. Department of Labor and Workforce Development website.			

The New Jersey State Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. requires contractors on public works/construction projects to follow laws related to the payment of minimum wages to employees and the reporting of those wages. Such bid specifications must expressly state that all workers employed in the performance of these projects shall be paid not less than the prevailing wage rate. Bid specifications are required to include other specific requirements that comply with the Act; this language is reflected in Part A, VII-K. The law is administered by the NJ Department of Labor and Workforce Development. The home page for information about the Act is found here: [http://lwd.dol.state.nj.us/labor/wagehour/wagerate/pwr\\_construction.html](http://lwd.dol.state.nj.us/labor/wagehour/wagerate/pwr_construction.html)

Contracts for “public work” defined by the law require contractors to pay the prevailing wage for each trade craft covered under the law. The term “public work” means construction, reconstruction, demolition, alteration, or repair work, or maintenance work, including painting and decorating, done under a contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. This also includes off-site workers who custom fabricate plumbing, heating, cooling, ventilation, or exhaust duct systems and mechanical insulation as part of a public works project.

Information on covered work and cost thresholds for different contracting units is found here: [http://lwd.dol.state.nj.us/labor/wagehour/regperm/public\\_contracts\\_general.html](http://lwd.dol.state.nj.us/labor/wagehour/regperm/public_contracts_general.html). Contracting units must apply to the Department’s Division of Wage and Hour Compliance to obtain an official wage rate determination. They must advise bidders of the prevailing wage requirement and to contact the Division of Wage and Hour Compliance for the wage rates that cover the contracting unit.

The covered wage rate determinations must be **included in the formal contract**. The contracting unit should be sure to include the correct wage rate determination for the trades related to the work to be performed under the contract in their geographic region. Nothing however, prohibits the owner from including the wage rate determination in the bid specification.

The online application for official New Jersey Prevailing Wage Rate Determinations can be obtained at: <https://lwd.state.nj.us/labor/wagehour/content/prevwageapplication.html>. This page allows contracting unit officials to apply for and download an official determination.

A sample trade craft wage rate determination is shown on the next page.

**NEW JERSEY DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
PREVAILING WAGE RATE DETERMINATION**

County - MIDDLESEX

**Craft: Carpenter**

**PREVAILING WAGE RATE**

	11/01/16	05/01/17	11/01/17	05/01/18	11/01/18
Foreman	W53.42 B30.44 T83.86	W0.00 B0.00 T85.04	W0.00 B0.00 T86.04	W0.00 B0.00 T87.29	W0.00 B0.00 T88.54
Journeyman	W46.45 B26.48 T72.93	W0.00 B0.00 T74.23	W0.00 B0.00 T75.23	W0.00 B0.00 T76.48	W0.00 B0.00 T77.73

**Craft: Carpenter**

**APPRENTICE RATE SCHEDULE**

<u>INTERVAL</u>	<u>PERIOD AND RATES</u>									
Yearly	40%	55%	65%	80%	90%					
Benefits	57% of	Appren	tice	Wage Rate	for all intervals					

**Ratio of Apprentices to Journeymen - 1:3**

**Craft: Carpenter**

**COMMENTS/NOTES**

**FOREMAN REQUIREMENTS:**

- When there are 2 or more Carpenters on a job, 1 shall be designated as a Foreman.
- When there are 21 or more Carpenters on a job, 2 shall be designated as Foremen.

The regular workday shall consist of 8 hours, starting between 7:00 AM and 9:00 AM.

**SHIFT DIFFERENTIALS:**

- When a 2 shift schedule (including a day shift) is established, the day shift shall be established on an 8 hour basis. The second shift shall be established on an 8 hour basis, and receive the regular rate plus 15%, inclusive of benefits.
- When a three shift schedule is established, the first shift shall be established on an 8 hour basis, the second shift on a 7.5 hour basis, and the third shift on a 7 hour basis. The first shift shall receive the regular hourly rate, the second shift shall receive the regular rate plus 15% and the third shift shall receive the regular rate plus 20%, inclusive of benefits.
- When there is no day shift, and a second or third shift is established, it shall be established on an 8 hour basis. The second shift shall receive the regular rate plus 15% and the third shift shall receive the regular rate plus 20%, inclusive of benefits.

**OVERTIME:**

- All hours in excess of 8 per day, or before or after an established shift that are not shift work, and all hours on Saturdays shall be paid at time and one-half the hourly rate, inclusive of benefits. All hours on Sundays and holidays shall be paid at double the hourly rate, inclusive of benefits.
- Four 10-hour days may be worked, Monday to Thursday, at straight time. Friday may be used as a make-up day for a day lost due to inclement weather. If Friday is not a make-up day, all hours on Friday shall be paid at time and one-half the hourly rate, inclusive of benefits.

**RECOGNIZED HOLIDAYS:** New Year's Day, Presidents' Day, Memorial Day, July 4th, Labor Day, Presidential Election Day, Veterans' Day, Thanksgiving Day, Christmas Day. Sunday holidays observed the following Monday.

STANDARD BID DOCUMENT REFERENCE				Section 15
Name of Form:	PUBLIC WORKS CONTRACTOR REGISTRATION		Instruction Reference:	VII-L
Applicability:		Mandatory	Optional	N/A
	Goods and Services			X
	Construction	X		
Source References:	N.J.S.A. 34:11-56.48 et seq., and N.J.A.C. 12:62 General guidance for all contracting units is in Local Finance Notice 2004-09			
Supplemental Reference:				
Description:	Contractors must be registered with the state to engage in public works contracting for contracts over a contracting unit's prevailing wage threshold.			

This law requires that all contractors, general, or prime (or named) subcontractors, working on public projects subject to prevailing wage laws to register as a Public Works Contractor (N.J.S.A. 34:11-56.51). The registration is known as a Public Works Contractor Registration (PWCR).

It prohibits contractors from bidding on any contract for public work unless the contractor is registered *at the time bids were received*. It also prohibits contractors from naming/listing a subcontractor in a bid or proposal for a contract unless that subcontractor is also registered *at the time bids are received*.

At or after a bid is opened, but prior to award, general and prime contractors must provide proof of PWCR showing that they were registered **prior** to date bids were opened for themselves and all named/listed subcontractors. Non-listed lower-tier subcontractors must also provide proof through the general or prime contractor that they were registered prior to the start of work on the contract.

STANDARD BID DOCUMENT REFERENCE				Section 16	
Name of Form:	EQUIPMENT CERTIFICATION		Instruction Reference:		VII-M
Applicability		Mandatory	Optional	N/A	
	Goods and Services		X		
	Construction		X		
Source References:	Not included in the CCCL. LPCL reference is at N.J.S.A.40A:11-20 and in the PSCL at N.J.S.A. 18A:18A-23.				
Supplemental Reference:					
Description:	As the form is not referenced in the CCCL, colleges should seek legal advice from counsel if they desire to use this form as an option for public works contracts. It may be useful when the college wants to ensure that the contractor has access to the equipment needed to perform the work.				

The LPCL and PSCL have identical statutory language. The full statute is instructive. It is reprinted verbatim below, but formatted to assist in understanding:

“There may be required from any bidder submitting a bid on public work to any contracting unit, duly advertised for in accordance with law, **a certificate showing that he owns, leases, or controls all the necessary equipment required by the plans,** specifications and advertisements under which bids are asked for;

and **if the bidder is not the actual owner or lessee** of any such equipment, his certificate shall **state the source from which the equipment** will be obtained, and shall be **accompanied by a certificate from the owner or person in control of the equipment definitely granting to the bidder the control of the equipment** required during such time as may be necessary for the completion of that portion of the contract for which it is necessary.”

It is important to understand that if the bidder does not control the equipment, the entity that does needs to document that it is available to the bidder.

The following form is consistent with the law and can serve the purpose. Colleges should seek legal advice as to its use in a given circumstance.

## EQUIPMENT CERTIFICATION

The undersigned Bidder hereby certifies as follows:

The bidder owns, controls, or has proof of lease of all the necessary equipment required to accomplish the work described in the specifications. To the extent that said equipment is not currently owned or under lease by the bidder, attached hereto is documentation from that owner or leasing organization that states the equipment will be available as required by the bidder upon award of a contract.

☐ **Check here if documentation is attached.**

Name of Bidder:	
By:	
(Signature of Authorized Representative)	
Name:	
Title:	
Date:	

STANDARD BID DOCUMENT REFERENCE				Section 17
Name of Form:	<b>EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE - CONSTRUCTION CONTRACTS</b>		Instruction Reference:	<b>VII-A</b>
Applicability:		<b>Mandatory</b>	<b>Optional</b>	<b>N/A</b>
	Goods and Services			<b>X</b>
	Construction	<b>X</b>		
Source References:	N.J.S.A. 10:5-31 (P.L 1975, c.127) and N.J.A.C 17:27-1 et seq. See also NJ Public Contracting Equal Employment Opportunity website: <a href="http://www.state.nj.us/treasury/contract_compliance/">www.state.nj.us/treasury/contract_compliance/</a>			
Supplemental Reference:	VII-A			
Description:	Requires that all bid specifications include mandatory language requiring contractors to report on efforts to meet equal opportunity/affirmative action in employment goals. Successful bidders must be registered with, and report to the state agency on employment related data.			

*This section reflects information regarding construction contracts. Section 7 covers this requirement for goods, general services and professional services.*

*Details on the following items are online in a handbook titled "Public Agency Guidelines for Administering EEO in Public Contracts" on the EEO Monitoring Program website at [www.state.nj.us/treasury/contract\\_compliance/](http://www.state.nj.us/treasury/contract_compliance/)*

- 1) All advertisements for bids or RFPs must include the following sentence:

"Bidders are required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 et seq."

- 2) For contracts in excess of bid threshold but not publicly advertised, any solicitation must include the following sentence:

"If awarded a contract, your company/firm shall be required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 et seq."

- 3) All contracts in excess of a contracting unit's bid threshold must include mandatory language in their specifications and/or contract documents ("Exhibits"). The most recent Exhibit (2016) for Construction Contracts is reprinted on the following page. The Guidelines also require that bid specifications provide direction on what documents must be filed with the contracting agency prior to execution of a contract. Sample language for this follows:

**Construction Contracts:**

The successful construction contractor(s) shall complete and submit an N.J. EEO Monitoring Program Initial Project Workforce Report (Form AA-201) upon notification of award. Proper completion and submission of this Report shall constitute evidence of the contractor's compliance with the regulations. Failure to submit this form may result in the contract being terminated. The contractor also agrees to submit a copy of the Monthly Project Workforce Report (Form AA-202) once a month thereafter for the duration of the contract to the Dept. of LWD and to the Public Agency Compliance Officer.

The EEO/AA evidence must be submitted after notification of award, but prior to signing a construction contract.

**EXHIBIT B**  
**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**  
**N.J.S.A. 10:5-31 et seq. (P.L.1975, c.127) and N.J.A.C. 17:27 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, 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 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 nondiscrimination 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.

STANDARD BID DOCUMENT REFERENCE				Section 18
Name of Form:	STATE COMPTROLLER REQUIREMENTS	Instruction Reference:		X-I
Applicability		Mandatory	Optional	N/A
	Goods and Services	X		
	Construction	X		
Source References:	N.J.S.A. 52:15C-10			
Instructions Reference:	X-I			
Description:	1) Required bid specification language 2) Contracting unit responsibilities to submit documents to the State Comptroller			

- 1) N.J.A.C. 17:44-2.2 requires that bid specifications shall include the following language that requires contractors to maintain all documents related to the contract for five years from date of final payment and to make them available to the Comptroller's office upon request.

**<Insert name of Contractor/Vendor>** shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

- 2) Contracting units have statutory responsibility to the State Comptroller's office as follows.

**Instructions and forms for compliance with the following responsibilities are found at**

[www.nj.gov/comptroller/divisions/procurement/forms/](http://www.nj.gov/comptroller/divisions/procurement/forms/)

**A. Notification for contracts valued at \$12.5M or more**

*Pre-Award Notification:* In accordance with N.J.S.A 52:15C-10, contracting units must notify OSC as early as practicable, but no later than 30 days before advertisement, of any negotiation or solicitation of a contract that may exceed \$12.5 million.

- [Pre-Advertisement Notice for Contracts \\$12.5 million or more](#)

*Post-Award Notification:* Within 20 days after the award of a contract of \$10 million or more, complete and email the required form and applicable documents.

- [Post-Award Notice for Contracts \\$12.5 million or more](#)

**B. Notification for contracts valued at \$2.5M or more**

*Post-Award Notification for Contracts valued at more than \$2.5 million but less than \$12.5 million:*

Contracting units must provide post-award notification for any contract for an amount exceeding \$2.5 million. Notification must be given within 20 days of the award.

- [Post-Award Notice for Contracts Valued at More Than \\$2.5 million but Less Than \\$12.5 million](#)

*Post-Award Notification for **Emergency** Contracts valued at more than \$2.5 million:* Contracting units must provide post-award notification for any contract issued pursuant to public exigency or emergency for an amount exceeding \$2.5 million. Notification must be given within 30 business days of the award.

- [Post-Award Notice for Emergency Contracts Valued at \\$2.5 million or More](#)

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