

**COUNTY OF ATLANTIC, NEW JERSEY  
INVITATION TO BID, INSTRUCTIONS TO BIDDERS,  
AND GENERAL CONDITIONS**

**I. INVITATION TO BID**

Bid proposals will be received from Bidders via the Internet until the time and date specified in the legal notice, at which time the bid proposals submitted will be downloaded, and publicly opened and read, in the 1st Floor COB Building, 1333 Atlantic Avenue; Atlantic City, NJ for the advertised project

Including all labor, materials, equipment, resources and services to be provided by, or that are required of the Contractor to fulfill the Contractor's obligations in accordance with all of the terms, conditions, specifications and requirements set forth herein.. (referred to collectively as the "Work").

**II. INSTRUCTIONS TO BIDDERS**

**INSTRUCTIONS TO BIDDERS**

**1. Delivery of BIDS; Deadline for Submission of BIDS**

**The Bidder must upload their bid prior to the date and hour named so that it is included in the letting download**

**This is the only vehicle to bid this project; paper bids will not be accepted.**

**2. Late or Erroneous Bid Delivery**

Late bids (i.e., any Bid not delivered at the time, date and location specified above) shall be rejected. The County shall not be responsible for late courier delivery or late postal delivery, nor shall postmark dates or overnight dates be considered in honoring bids. The County shall not be responsible for Bidders hand-delivering bids which arrive late or to the wrong location.

**3. Use of County Forms**

**Bids shall be received online only. No paper submission will be accepted**

**4. Required Bid Documents; Signatures**

Bidders shall submit required documents to the County as specified by these Instructions and as required by law.

**A. DOCUMENTS REQUIRED AT THE TIME OF SUBMISSION OF THE BID. FAILURE TO SUBMIT SHALL BE AUTOMATIC BID REJECTION.**

1. Proposal Form
2. Ownership Disclosure Statement
3. Acknowledgement of Receipt of Addenda

**PROJECT SPECIFIC FORMS**

4. Bid Security (Check or Bid Bond with Agent and Bidder Signatures)
5. Consent of Surety (Agent and Bidder Signatures)

6. Federal Debarment List Certification (P.L. 2019, c. 406, N.J.S.A. 52:32-44.1)

**B. DOCUMENTS REQUIRED PRIOR TO AWARD**

1. Non-Collusion Affidavit;
2. Affirmative Action Information
3. Investment Activities in Iran Certification
4. Copy of NJ Business Registration Certificate

**C. Additional Information Regarding Certain Mandatory Bid Documents**

Without limiting the Bidder's responsibility to complete and submit any other form, certification or other document with its bid, take note of the following required forms:

- i. Investment Activities in Iran. The attached Investment Activities in Iran affidavit must be completed and submitted, pursuant to P.L. 2021, c. 4, prior to awarding any contract or renewal of contract. Each bidder must provide this written certification to the contracting agency that neither the person or entity, nor any of its parents, subsidiaries, or affiliates, is identified on the Department of Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. The Chapter 25 list is found on the Division of Purchase and Property's website at [www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf](http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf)
- ii. Federal Debarment Certification. The Federal Debarment Certification must be executed and submitted, pursuant to P.L. 2019, c. 406, N.J.S.A. 52:32-44.1, prior to awarding any contract for public work. Each bidder must provide this written certification to the contracting agency that neither the bidder nor bidder's affiliates are debarred at the Federal level from contracting with a Federal governmental agency. See Section 4.A above.

**D. BIDS WHICH FAIL TO INCLUDE ALL MANDATORY DOCUMENTS, COMPLETED IN ACCORDANCE WITH THESE INSTRUCTIONS AS REQUIRED BY LAW, SHALL BE REJECTED.**

**5. Incomplete Submissions**

It shall be the responsibility of the Bidder to submit bids that are responsive to all bid specifications and forms, including any updates, clarifications or addenda thereto that may be issued by the County prior to the bid submission due date either directly from the Division of Budget and Purchasing or the Atlantic County Bid Portal.

The County shall not be responsible for any erroneous pages or pages missing from the bid documents, if the Bidder has obtained the documents from a source other than directly from the County Division of Budget and Purchasing or the Atlantic County Bid Portal, or if such forms are missing or altered due to Bidder error, neglect or any other cause.

The County shall not be held responsible if a Bidder fails to receive any updates or addenda to this Bid, due to the failure of the Bidder to secure its bid documents directly from the County Division of Budget and Purchasing or the Atlantic County Bid Portal, or due to Bidder error or neglect.

**6. Addendums and Modifications of the Bid**

The County reserves the right to issue Addendums, Modifications, Clarifications and Updates to this Bid, and to add or remove materials, quantities, equipment, goods, services and divisions of Work, or parts thereof, or other components of the Work from the bid specifications or Contract Documents, as the County deems necessary to serve the County's needs and interests.

Bidders shall acknowledge receipt of any notice, modifications, revisions or addenda to the advertisement or to these bid documents that may be issued by the County in accordance with an acknowledgement form provided by the County.

#### **7. Electronic Bid Submissions - No Phone, Fax or Unauthorized Submissions**

As this is a Electronic Bid Submission pursuant to N.J.S.A. 52:34-12, only electronic bid submission via authorized medium will be accepted for publicly advertised bid requirements.

#### **8. Pre-Bid Meeting**

The County reserves the right to schedule an optional pre-bid conference, and/or site visitation. It is recommended to attend, and the scheduled date, time, and location would be indicated in the Advertisement for Bid. Additional site visits, depending on time available, may be scheduled by contacting the Division of Budget & Purchasing with contact information noted in "Pre-Bid Inquires".

#### **9. Pre-Bid Inquiries**

In the event that a Bidder may have any questions regarding this Bid or the Work, all such questions should be submitted in writing via the bid portal.

Responses will be forwarded to all bidders who have obtained a bid package from the Atlantic County Bid Portal.

#### **10. No Oral Instructions**

Neither the County of Atlantic nor their authorized representatives will be responsible in any way for oral answers unconfirmed in writing to any inquiries regarding the intent or meaning of these specifications. All inquiries shall be submitted and addressed by the County Purchasing Agent, as specified above.

#### **11. Communications with County Staff**

No Bidder intending to submit a Bid, nor any employee of any firm intending to submit a Bid, shall contact any County employee for any reason either directly or indirectly related to this Bid except as specified above.

#### **12. Purchasing Agent's Interpretations Are Binding**

Should any difference arise between the Bidders and the County as to the meaning or intent of these instructions or specifications, the County Purchasing Agent's decision shall be final and conclusive to the fullest extent permitted by law.

### **13. Bid Security**

Each Bidder shall submit with the Bid a certified check, cashier's check or bid bond in the amount of ten (10%) percent of the total price bid, but not in excess of \$20,000.00, payable unconditionally to the County of Atlantic. See sample Bid Bond. If a Bid Bond is submitted, it shall include a completed and current Power of Attorney, a current Certificate of Authority and a current Surety Financial Disclosure that comply with the laws and rules of New Jersey, issued by a firm authorized to transact such business in New Jersey.

All Bid Security, except the Bid Security of the three (3) apparent lowest responsible Bidders, shall be returned within ten (10) days after the opening of the bids, Sundays and holidays excepted, and the bids of such Bidders shall be considered withdrawn. After the awarding and signing of the Contract and the approval of the Contractor's Performance Bond, the Bid Security of the remaining unsuccessful Bidders shall be returned within three days, Sundays and holidays excepted.

If the successful Bidder fails to execute and deliver the Agreement and furnish the required Performance Bond within ten (10) days of the Notice of Award, the check or bond of the successful Bidder shall be forfeited and the County may annul the Notice of Award.

AIA Bid Bond forms are not acceptable. Failure to submit a bid guarantee as specified herein shall result in rejection of the Bid.

### **14. Consent of Surety**

In addition to the Bid Security, each Bid must be accompanied by one (1) or more consent of surety statements, in a form similar to the Certificate attached as Sample Consent of Surety, of one (1) or more surety companies authorized by the State of New Jersey to issue Bonds in the State of New Jersey and acceptable to the County, unconditionally agreeing, in the event the Bidder is awarded the Contract, to furnish a performance bond(s) with material and payment guarantees pursuant to N.J.S.A. 2A:44-143 (Performance Bond). In the event the surety company or companies choose(s) to furnish its (their) own form of Certificate, the substituted form must be substantially in compliance with the form provided herein. The Consent of Surety shall include a completed and current Power of Attorney and a current Surety Financial Disclosure that comply with the laws and rules of New Jersey. A current Certificate of Authority shall also be provided.

AIA forms are not acceptable. Failure to provide these documents as specified herein with the bid proposal shall result in a rejection of the Bid

### **15. Performance Bond**

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 surety on such bond or bonds shall be a duly authorized surety company authorized to issue performance bonds in the State of New Jersey

If the Contractor is a partnership, the bond is to be signed by each of the individual partners; if a corporation, the bond is to be signed in the correct corporate name by a duly authorized officer, agent or attorney in fact. The executed bond shall be accompanied by:

1. An appropriate acknowledgment of the respective parties.
2. An appropriate certified copy of a power of attorney when the bond(s) is/are executed by the surety's agent, officer or other representative.
3. A certified extract from the by-laws or resolution of the surety under which power of attorney or other certificate of the agent, officer or representative was issued.
4. A Surety Disclosure Statement and Certification.

A Performance Security set forth on AIA forms is not acceptable. Failure to submit this with the executed Contract shall be cause for declaring the Contract null and void pursuant to N.J.S.A. 40A:11-22.

## **16. Bid Prices**

Prices must be stated for all bid items, in numeric form, in accordance with the forms provided by the County. Bidders shall not alter the Bid format provided by the County.

Blank values, or responses which indicate that an item is not included, or subject to conditions or modifications not otherwise stated or permitted by this Bid shall be deemed non-conforming and shall be rejected.

Bid prices shall include all of the materials, goods, work and services to be delivered or performed by the Contractor to perform the Work and shall not be subject to additional charges or expenses unless such additional charges or expenses are explicitly authorized and approved in advance by the County, as set forth herein.

Each component of the Bid, whether stated as a lump sum, a unit price, allowance or "as and where directed" quantity, shall include all related costs, including but not limited to profit and overhead associated with each such component of the Bid.

All components of the Work assigned to the Bidder under the Contract Documents shall be performed at no additional costs to the County and the Bidder shall not seek or impose additional costs or charges for any such component of the Work, unless such charges or costs are explicitly authorized by the Contract Documents.

## **17. Add and/or Deduct Alternates**

In the event that this Bid includes or is amended by the County to include Add and/or Deduct Alternates, all Bidders shall be required to respond to such Add and/or Deduct Alternates in their bid proposals, in accordance with the Proposal forms supplied by the County. Failure to do so shall result in rejection of your Bid. Bidders shall not alter the Add and/or Deduct Alternate form provided by the County. Bidders shall fully complete and execute the form provided by the County in accordance with all instructions

applicable to bid submissions as stated herein. The County reserves the right, in its sole judgment and discretion, to award or reject all Add and/or Deduct Alternates, or any combination thereof in accordance with NJSA 40A:11-23.1 (d)

#### **18. Multiple Bids Not Allowed**

Each Bidder shall submit no more than one Bid. Submission of multiple Bids by or on behalf of any individual, firm, partnership, corporation or association shall be cause for rejection of all of such multiple Bids. Nothing herein shall preclude separate and distinct corporate entities from submitting Bids when such entities are partially or wholly owned by a parent entity.

#### **19. Alternative Bids Not Allowed**

No Bidder shall be allowed to offer more than one price on each item, even though he/she may believe that he/she has two or more types or styles of goods, materials, services or combinations thereof that will meet the requirements of these specifications. Bidders must determine for themselves which to offer. If a Bidder submits more than one price on any item, the Bidder's Bid for such alternatively priced items shall be rejected.

#### **20. Fixed Pricing**

Bid prices are to remain firm for a period of not less than sixty (60) days to allow the County to determine the lowest Bid that shall most economically serve the intentions of this Bid.

#### **21. Bids Based Upon Specifications; Bid Deviations**

It shall be presumed that all Bids are based upon these specifications, unless the Bidder explicitly states to the contrary in a letter format that shall be attached to the Bidder's bid submission.

#### **22. Bidders shall not type changes upon, or make any other alterations to bid specifications and forms.**

All proposed deviations, alterations or other changes from the specifications proposed by the Bidder shall be explained in detail in the Bidder's submission. At a minimum, the Bidder shall describe the alternative(s) in a letter that shall be submitted with the Bid, which shall be signed by the Bidder and which shall explain the proposed deviations, alterations or other changes in detail and provide such additional data as necessary to verify that the proposed deviations, alterations or other changes will meet or exceed the requirements of this Bid. If the County determines, in its sole judgment, that the proposed deviation, change or alteration materially alters the requirements of this Bid to the disadvantage of the County, or is otherwise deemed by the County to be inconsistent with the County's requirements, including but not limited to requirements imposed by law, the County reserves the right to reject the Bid.

#### **23. Brand Names or Equivalents**

If and whenever in the bid specification a brand name, make, name of any manufacturer, or trade name is mentioned, it is for the purpose of establishing a grade or quality of materials, goods, processes or other

components of goods and services that the County requires. The County of Atlantic does not wish to rule out other competition and equal brands or makes, and therefore, the phrase “**or equivalent**” is added wherever any specific brand name, make, name of any manufacturer, or trade name is stated hereinafter.

If a Bidder intends to use any material, equipment, process or other component of goods and services that is other than or a proposed alternative to that which is specified hereinafter, it is the Bidder's responsibility to name such alternative within the Bid and to provide information to the County that shall demonstrate that the proposed alternative is equivalent to that which has been specified, which shall include a certification that the proposed substitute performs the functions and achieves the results called for by the design, is similar and of equal substance to that specified, and is suited to the same use as that specified.

In addition, the County may require:

- a. Details or catalogue cut sheets on the material properties of the substitute.
- b. A statement that the evaluation and approval of the proposed substitute will not hinder the Contractor's ability to complete the Contract as specified.
- c. A statement that the proposed substitute shall not change or modify the Contract's requirements and intent.
- d. A statement explaining the difference between the proposed substitute from that which has been specified along with advantages and disadvantages of the proposed alternative.
- e. The manufacturer's recommendations, maintenance requirements, and repair or replacement requirements for the substitute.

For any item approved as “or equal”, the Contractor shall be responsible for any and all costs associated with re-design, re-drawing, re-engineering and/or revisions to this Contract or other Contracts resulting from the use of the approved substitute.

When the use of more than one type of material or product is permitted, only one type shall be used throughout the Project.

The County shall be the sole judge concerning the merits of the Bidder's proposed alternative, and reserves the right to reject such Bids if, in the County's sole judgment, the proposed alternative materially alters the requirements of this Bid to the disadvantage of the County, or is otherwise deemed by the County to be inconsistent with the County's requirements, including but not limited to requirements imposed by law, the County reserves the right to reject the Bid.

## **24. Objections to Bid Specifications and Contract Documents**

Any prospective Bidder who wishes to challenge a bid specification or other component of the contract documents shall file such written challenge, objection, or alternative in writing with the County Purchase Agent, no less than three (3) business days prior to the opening of Bids. Any such challenge, objection or alternative filed after that time shall be considered void and shall have no impact on the contracting unit or the award of a Contract, in accordance with the provisions of N.J.S.A. 40A:11-13. It shall be presumed that the contract documents will consist exclusively of these Bid Documents, including plans, conditions, specifications and forms attached herewith. The County reserves the right to reject any and all proposed modifications, alterations or alternative Contract Documents which, in the County's sole judgment, fail to conform with or is otherwise inconsistent with the terms conditions, and requirements set forth herein, to the fullest extent permitted by law.

## **25. Non-proprietary Equipment**

All equipment purchased by the County of Atlantic shall be non-proprietary, unless specified otherwise or unless non-proprietary equipment is not available.

## **26. FOB Prices**

Prices quoted in all Bids shall be delivered prices, F.O.B. destination, freight prepaid.

## **27. Price Adjustments**

Bid prices shall not be subject to any increase during the life of the Contract, unless an increase is specifically authorized by the Contract Documents. Should there be any reduction in the Bidder's costs to procure goods, supplies, materials, labor or any other component of the Work as submitted in the Bid, the unit prices charged to the County will be reduced to reflect any such reduction in actual costs incurred by the Contractor for all such goods, supplies, materials, labor or any other component of the Work, to the extent that such reductions are specified or required by the Contract Documents.

## **28. Discounts**

All price discounts (if any), shall be calculated as of the date of acceptance by the County of any such discounted goods, supplies, materials, labor or any other component of the Work, regardless of the date of delivery or invoice.

## **29. Irrevocable Bids**

All Bids are irrevocable by the subscriber, or his, their or its personal or legal representatives. Said Bid and award thereunder is made to the subscriber by the County of Atlantic and shall bind the subscriber, his, their or its heirs, executors, administrators, successors or assigns.

## **30. Withdrawal of Bids Prior to Bid Opening**

A written request for the withdrawal of a Bid, or any party thereof, will be granted if the request is received by the County Purchasing Agent prior to the specified time of the bid opening.

## **31. Taxes**

The County is exempt from all taxes including Federal Excise Tax, Transportation Taxes, State Excise and Sales Tax, and local taxes. Contractor shall pay all sales, income, consumer, use and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the State of New Jersey and United States which are applicable to the Contractor during the performance of the Work. Contractor shall not pass through to County any taxes for which the County is exempted by the laws of the State of New Jersey. County shall cooperate with Contractor in providing evidence of its tax-exempt status.

## **32. Bid Preparation Costs**

The County shall not be liable for any costs incurred by any Bidders in the preparation or submission of its Bid.



### **33. Ownership of Bids**

All Bids shall become the property of the County upon receipt and will not be returned.

### **34. Dissemination of Bids Plans and Bid Information**

Information included in this document or in any way associated with this Bid, including but not limited to any plans for the Work that may be supplied or obtained by the Bidder pursuant to this Bid, are intended for use only by the Bidders to submit Bids and complete the Work, and shall remain the property of the County. Under no circumstances shall any of said information be published, disseminated to persons not employed by the Bidder copied or used, except as necessary to reply to this Bid and perform the Work.

### **35. Bid Award**

The County of Atlantic shall award all Contracts on a **lump sum Basis** to the lowest responsible and responsive Bidder.

### **36. Bid Ties**

Where two or more bidders are tied in any bid submission or component thereof, the County reserves the right to make the award to the vendor whose response, in the discretion of the contracting unit, is the most advantageous, price and other factors considered..

### **37. Delivery Dates**

All Bidders, where required, shall clearly stipulate the guaranteed delivery date of all items. Successful Bidder(s) failing to meet the delivery date specified by the Contract Documents shall be subject to the imposition of all sanctions and penalties provided for in the Contract Documents, or more generally at law or in equity.

### **38. Time for Award**

The award of the Contract or the rejection of the Bids shall be made within sixty (60) days of the date of receiving Bids; unless written extensions are requested by the Purchasing Agent and accepted by the Bidder(s). All bid securities shall be returned immediately if all Bids are rejected. The successful Bidder(s) to whom the award is to be made shall be notified by receipt of the Contract or a written "Notice to Proceed" from the County department for whom the work is being provided.

### **39. Funding Contingency**

When award of Contract is made in one fiscal year with an effective date in the next fiscal year, the award shall be contingent upon the availability of appropriation of sufficient funds for that purpose for the year in which said Contract takes effect. When a Contract shall be awarded for a period in excess of one year, said Contract shall be contingent upon the annual availability and appropriation of sufficient funds for that purpose for each year of the Contract, as required by law.

### **40. Modification of the Work**

Prior to commencement of any specific component of the Work, the County reserves the right to remove such component from the Work, for the convenience of the County, by providing written notice to the Bidder. The Bidder shall not be entitled to compensation for removal of any such component of the Work as of the Notice date, provided, however, that the Bidder shall be entitled to payment for any materials purchased and delivered to the County for any such component of the Work prior to date of the County's notice.

#### **41. Bid Rejection**

The County reserves the right to reject all Bids, when the County determines that rejection of all Bids is advisable to the extent that rejection of all Bids is permitted under the provisions of the New Jersey Local Public Contracts Law. In addition, the County reserves the right to waive minor informalities or non-material exceptions in accordance with law .

#### **42. Withdrawal of Certain Bids on Public Works Projects, Pursuant to N.J.S.A. 40A:11-2 (42).**

N.J.S.A. 40A:11-23.3 authorizes a Bidder to request withdrawal of a Bid on a public works project, due to a mistake on the part of the Bidder. A mistake is defined by N.J.S.A. 40A:11-2(42) as a clerical error that is an unintentional and substantial quantity of labor, material, or both, from the final bid computation.

A Bidder claiming a mistake under N.J.S.A. 40A:11-23.3 must submit a request for withdrawal, in writing, by **US POSTAL SERVICE CERTIFIED OR REGISTERED MAIL** to Palma Conover, Division Director of Budget & Purchasing, 1333 Atlantic Ave., 6th Floor , Atlantic City, NJ 08401. The Bidder request for withdrawal of a Bid due to a mistake, as defined by the law, must be postmarked within five (5) business days after the receipt and opening of the Bids or the request will not be considered by the Purchasing Agent.

A Bidder's request to withdraw the Bid shall contain evidence, including any pertinent documents, demonstrating that a mistake was made. Such documents and relevant written information shall be reviewed and evaluated by the County Purchasing Agent pursuant to the Statutory criteria of N.J.S.A. 40A:11-23.3.

All of the following criteria provided must be met by the Bidder in order for a Bid to be withdrawn.

- A. Enforcement of the Contract, if actually made, would be unconscionable;
- B. The mistake relates to a material feature of the Bid;
- C. The mistake occurred notwithstanding the fact that the Bidder exercised reasonable care in preparation of the Bid; and
- D. The Bidder making the mistake is able to get relief by way of withdrawing the Bid without serious prejudice to the contracting unit, except for the loss of the bargain to the contracting unit.

#### **43. Execution of Contract**

The Contractor shall be required to sign the standard County Contract, a copy of which is attached, within ten (10) days after the County's issuance of a contract document to the successful Bidder. Failure to execute the Contract as required herein shall be subject to sanctions and remedies specified hereinafter.

Work shall not commence until the Contract has been fully executed, excepted for any project administrative items the Contractor may begin upon receipt of a Notice to Proceed, i.e. submittals, developing draft schedule of values, further inspection of project site, developing staging areas, etc.

#### **44. Modifications or Additions to the Contract Documents**

Bidders shall not make modifications or alterations to the contract documents and shall not replace or include Contracts or forms other than those that have been provided by the County with the bid documents.

#### **45. LAWS AND REGULATIONS**

Any Contract awarded by the County under this Invitation to Submit Bids shall require the Contractor to comply with the various Laws and regulations pertaining to construction projects, including, but not limited to, the following:

- Equal Employment Opportunity (Law Against Discrimination) (N.J.S.A. 10:5-31 et seq., and N.J.A.C. 17:27)
- General Requirements of the New Jersey Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.)
- New Jersey Prevailing Wage Act (N.J.S.A. 34:11-56.25 et seq.)
- Municipal Mechanics Lien Law (N.J.S.A. 2A:44-125 et seq.)
- New Jersey Worker and Community Right to Know Act (N.J.S.A. 34:5A-1 et. seq.)
- Standard for Sureties (N.J.S.A. 2A:44-143a and 143b)
- Surety Companies Authorization to do Business in New Jersey (N.J.S.A. 17:31-5)
- N.J.S.A. 52:25-24.2 "An Act Requiring the Reporting of the Names and Addresses of Shareholders or Partners owning over Ten Percent (10%) of an Enterprise
- Use of American goods and products wherever available (N.J.S.A. 40A:11-18)
- Americans with Disabilities Act of 1990 (Title II, 42 U.S.C. 12101)
- Public Works Contractor Registration Act (PWCRA), N.J.S.A. 34:11-56.48 et. seq.
- Business Registration of Public Contractor, N.J.S.A. 52:32-44
- New Jersey Local Unit "Pay to Play" Law (N.J.S.A. 19:44A-20.4 et. seq.).
- New Jersey Construction Safety Act (N.J.S.A. 34:5-166 et seq.).
- New Jersey Prompt Payment Act (N.J.S.A. 52:32-32 et. seq.)
- Copeland Anti-Kickback Act. (18 USC 874)

#### **46. Public Works Contractor Registration Act**

The Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., specifies that no Contractor or subcontractor shall bid on or engage in any Contract (or part thereof) for public work which is subject to the provisions of the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., and includes any subcontractor or lower tier subcontractor, unless they are registered with the Department of Labor and Workforce Development. Bidders submitting a Bid for a Public Works Contract or performing public work **MUST** submit a **certificate of registration prior to award of the Contract. Copies of the Bidder's subcontractor's certificate of registration will be required after submission of the Bid but prior to the award of the Contract.**

**Note: A copy of an application for registration is not acceptable as a substitute for the required certificate of registration.**

#### **47. Prevailing Wage Requirements**

A. The successful Bidder and any of its subcontractors shall be obligated to pay the prevailing wage, to submit certified payrolls and documentation of compliance, and to permit on-site monitoring, including interviews with employees and review of subcontracts, by County representatives. Wage rates to be paid on this Project shall be New Jersey Prevailing Wage determinations per trade.

B. The New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. (P.L. 1963, Chapter 150) along with the Prevailing Wage Rate Determination or other documents specifying the New Jersey prevailing rates are hereby made a part of every Contract entered into by the County of Atlantic, except those Contracts which are not within the scope of the Act. The successful Contractor and any of its subcontractors shall be obligated to pay the prevailing wage, to submit certified payrolls and documentation of compliance, and to permit on-site monitoring, including interviews with employees and review of subcontracts, by County representatives.

C. The Contractor's signature on the Contract is the Contractor's guarantee that neither he nor any subcontractors he might employ to perform the work covered by this Bid are listed or are on record in the office of the Commissioner of the New Jersey State Department of Labor as one who has failed to pay prevailing wages in accordance with the provisions of this act.

D. Every Contractor and subcontractor shall keep an accurate payroll record, showing the name, craft or trade, job title or classification, actual hourly rate of wages paid, hours worked, and total wages paid to each worker employed by him in connection with a public work. The prevailing wage as published by the Department of Labor shall be noted on the payroll journal next to the actual wage rate paid. Payroll records shall be presented for a period of two (2) years from the date of payment. The Contractor shall be responsible for ensuring that its subcontractors comply with the Act and shall cooperate with County or State requests for information to verify compliance. Payroll records shall be preserved and made available for inspection in accordance with the General Conditions concerning record keeping and audits

F. In the event of the Contractor or any of its subcontractors engaged in Work on the Project has or is paying workmen in their employ wages less than the required prevailing wage rates, then the County shall have the right to terminate the Contractor's right to proceed with the Work, or such part of the Work as to which there has been a failure to pay the required wages. In such event, the County may proceed with all other available rights and remedies as set forth herein and the full extent permitted by Law, including but

not limited to completion of the Work by other means, The Contractor and its Surety shall be responsible for payment of any wages that are due and owing by law, along with any other costs and damages to the full extent permitted by law.

G. Although the wage rates are the minimum hourly rates required by the specifications to be paid during the life of the Contract, it is the responsibility of the Bidders to inform themselves as to the local labor conditions such as the length of work day and work week, overtime compensation, health and welfare contributions, labor supply and prospective changes or adjustments of wage rates.

H. No increase in Contract Price shall be allowed or authorized on account of payment of wage rates in excess of those stated in the New Jersey Prevailing Wage Act.

#### **48. New Jersey Business Registration Certificate**

Pursuant to N.J.S.A. 52:32-44, Atlantic County (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 <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.

#### **49. Affirmative Action**

The Bidder 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. Upon notification of award the Contractor shall complete an Initial Project Workforce Report Form AA-201 and submit a copy to the County and the NJ Division of Purchase and Property. Thereafter, the Contractor shall submit a copy of the Monthly Project Workforce Report Form AA-202 to the County and the NJ Division of Purchase and Property once per month for the duration of the Contract. Forms, instructions and more information can be found at [http://www.state.nj.us/treasury/contract\\_compliance](http://www.state.nj.us/treasury/contract_compliance).

#### **50. Non-Discrimination**

The provisions of N.J.S.A. 10:2-1 through 10:2-4, dealing with discrimination in employment on public Contracts, and the Rules and Regulations promulgated pursuant thereto, are hereby made a part hereof and shall be binding upon the successful Bidder in the performance of the Project for the County.

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

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

No provision in this section shall be construed to prevent a board of education from designating that a Contract, subcontract or other means of procurement of goods, services, equipment or construction shall be awarded to a small business enterprise, minority business enterprise or a women's business enterprise pursuant to P.L. 1985, c. 490

## **51. NJ PEOSHA & OSHA**

The successful Bidder will be required to comply with all applicable provisions of the N.J. Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq., when providing any materials, supplies or services as part of the Work. In addition, the successful Bidder shall comply with all provisions and requirements of the Occupational Safety and Health Act and the Occupational Safety and Health Administration (OSHA) which may apply to the Work,

## **52. Worker and Community Right to Know Act**

The manufacturer or supplier of a substance or mixture shall supply the Chemicals Abstracts Service number of all the components of the mixture or substance and the chemical name to the County to ensure that every container bears a proper label at a County facility, in accordance with the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq. Further, all applicable Material Safety Data Sheets (MSDS), a/k/a Hazardous Substance Facts Sheets, must be furnished to the County.

## **53. Buy American**

Only manufactured and farm products of the United States, wherever available, shall be used in connection with this undertaking, pursuant to N.J.S.A. 40A:11-18.

## **54. One Call System—Call Before You Dig**

Prior to performing any work that requires excavation; the Contractor shall be responsible for ascertaining underground utility locations and shall comply with the requirements of the New Jersey “One Call” system (Dial 8-1-1 or 1 (800) 272-1000).

## **55. The Atlantic County Recycling Program and Solid Waste Management Plan.**

Bidders are advised that the Contractor shall to comply with the requirements of the Atlantic County Solid Waste Management Plan and Recycling Plan, adopted in accordance with N.J.S.A. 13:1E- 1, et seq., and Atlantic County Ordinances #10 of 2009 and #9 of 2014. The said plans and ordinances specify requirements concerning disposal of solid wastes, along with materials that are identified as either mandatory recyclables or recommended to be recycled. Solid waste materials generated during performance of the Work shall be disposed of in accordance with the County Plan and Atlantic County Utilities Authority procedures.

Note: The Atlantic County Recycling Plan designates the following commercial and institutional materials as recyclable and mandates the recycling thereof.

- Glass Food & Beverage containers: Clear, Amber, Green
- Newspapers
- Aluminum Beverage Cans
- Office Paper (White, Non-Colored)
- Computer Paper
- Cardboard

Additional information regarding compliance with Atlantic County's Solid Waste and Recycling Plan requirements is available by contacting the Atlantic County Utilities Authority, Attn: Sr. Vice President, Solid Waste Division, P.O. Box 996, Pleasantville, NJ 08232-0996 (609) 272-6913 (phone) (609) 272-6941 (fax) and on the web at ACUA.com

#### **56. Americans with Disabilities Act**

To request a reasonable accommodation of a disability, contact the ADA Coordinator at Telephone: (609) 645-7700 ext. 4519 (TTY uses NJ Relay 1-800-852-7899) at least five (5) business days prior to any meeting, inspection or other event.

#### **57. Compliance with All Law**

The Bidder's preparation and submission of its Bid, together with the Bidder's provision of all materials and goods, and the performance of all work and services as required to accomplish the Work as set forth herein, shall be subject to all applicable Federal, State and County ordinances, regulations and statutes. All statutes, rules and regulations that are applicable to the Work shall apply as if set forth in full herein. By submission of a Bid, the Bidder warrants and represents to the County that it is familiar with, and shall comply with all of the statutes, ordinances, rules and regulations that are applicable to the materials, goods, work and services required to accomplish the Work as set forth herein.

#### **58. NJ DOT Requirements**

Be Advised that submission of Bids and performance of the work is subject to the New Jersey Department of Transportation's Standard Specifications for Road and Bridge Construction, 2019 Edition ("NJDOT Specifications") in effect as of the Bid due date, subject to the amendments and modifications of the NJDOT Specifications set forth in the Technical Specifications below and in the other Contract Documents. The NJDOT Specifications shall be deemed incorporated herein by reference, as modified by the County herein. Unless specifically stated otherwise, the NJDOT Specifications shall be deemed to be in addition to any similar provision set forth in the Instruction to Bidders or other sections of the Contract Documents. Additional specific requirements are set forth hereinafter in the Technical Specifications.

#### **59. Reference to Standards, Specifications and Regulations**

Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or laws or regulations in effect at the time of opening of the Bids, except as may be otherwise specifically stated in the Contract Documents. Contractor, all subcontractors and all of their suppliers acknowledge their familiarity and experience with generally accepted published standards of quality and workmanship applicable to the portions of the Work performed and services provided by them. The requirements of any indicated reference standard are hereby incorporated into the Contract Documents and made a part thereof, to the extent indicated by the applicable reference thereto, provided that the same are not contrary to or otherwise in conflict with any other specification or requirement set forth in the Contract Documents. All work performed under this Contract shall meet or exceed all applicable local, state and federal codes and regulations.



**60. Bidder Understanding of the Contract Documents; Examination of and Familiarity with Work**

A. At the time of the opening of Bids, each Bidder will be conclusively presumed to have read and to be thoroughly familiar with the Contract Documents, including all addenda and interpretations issued. The failure or omission of any Bidder to receive or examine the Contract Documents and any addenda thereto or interpretations thereof shall in no way relieve the Bidder from any obligation in respect of his Bid.

B. By submitting a Bid, the Bidder warrants and represents that it has a thorough understanding of this Bid and of all goods, materials and operations necessary to provide the County with all materials, goods and services necessary to accomplish the Work as specified herein.

C. Each Bidder must inform himself fully of the conditions under which the work will be performed. It is the responsibility of the bidder, by personal examination of the work site, the documents and such other records and resources as may be reasonably prudent for a duly qualified and experienced general contractor to develop its own knowledge and understanding of the materials, equipment and tasks necessary to accomplish the Work. Bidders shall make their own estimates of the plant, labor, material, equipment, facilities and services needed to perform the work; with the prior consent of the County, to make any required tests and inspections and to evaluate the difficulties attending the execution of the proposed Contract, including local conditions, site conditions, location and availability of utilities, labor, transportation facilities, uncertainties of weather, subsurface conditions and other contingencies, to the degree that such examinations should be reasonably undertaken by a prudent, experienced general contractor.

D. Bidders are expected to read and become familiar with the Contract Documents, including all addenda. Failure of the Bidder to do so will not relieve a Bidder of the obligation to furnish all plant, labor, material, equipment, facilities and services necessary to carry out the provisions of the Contract Documents and to complete the required work for the consideration set forth in the Bid.

E. The County does not assume any responsibility for any interpretation, determination or conclusion made or assumed by a Bidder, arising from the Bidder's examination of the Contract Documents or other matters relevant to the Work, or arising from a Bidder's failure to make such examinations, to the degree that such examinations should have been reasonably undertaken by a prudent, experienced general contractor.

F. After the submission of its Bid, no Bidder shall be permitted to make any claims alleging insufficient data or incorrectly assumed conditions, nor shall any Bidder be permitted to claim any misunderstanding with regard to the nature, conditions or character of the Work or any elements thereof to be provided or performed hereunder, to the fullest extent that such conditions, character or nature of the work or elements thereof were known or should have been reasonably foreseen or anticipated by a prudent and experienced general contractor.

## **61. No Express or Implied Representations**

The County does not make any express or implied representations or warranties as to the accuracy of the information shown on drawings of previous construction or any interpretation of same. Prior to submission of Bids, Bidders shall ascertain by their own field inspections the accuracy of the information shown on any existing drawings or reports. It shall be the responsibility of each Bidder to verify all distances, measurements, quantities and locations in the field prior to submission of Bids and as work proceeds after a Contract has been awarded.

Atlantic County will not be held responsible for a Bidder's failure to receive ~~ing general~~ information due to the Bidder's failure to schedule Pre-Bid viewing of the project area.

## **62. Ethical Standards; Truth In Contracting Laws:**

A Bidders should be aware of the following statutes that represent "Truth in Contracting" laws:

1. 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.
2. 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.
3. 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.
4. Bidder should consult the statutes or legal counsel for further information.

B. In addition to and without limitation upon any other law, rule or standards related to ethics in public bidding and contracting, take note that County employees are prohibited by policy from accepting gifts from vendors. Consequently, all Bidders should be aware and should make all employees and representatives aware that they may not offer any item or material, irrespective of the perceived value of the item or material, to any County employee. Items and materials that have been or are intended to be discarded by the Bidder shall not be offered or given to a County employee. Bidders must immediately report to the County Purchasing Agent any County employee who approaches the Bidder, the Bidder's employees or representatives and solicits, requests or suggests in any way that the Bidder provide something as a gift to a County employee.

## **63. Debarred Bidders**

No work may be awarded to a Contractor or subcontractor who is included on the State Treasurer's List of Debarred, Suspended and Disqualified Bidders, or who has been debarred, suspended or disqualified by the State of New Jersey or by the United States government. By submitting a Bid, the Bidder warrants to the County that neither the Bidder nor any of its subcontractors is Debarred, Suspended or Disqualified by the State of New Jersey or by the government of the United States from an award of any public contract. This warranty to the County is in addition to any warranty or representation made by the Bidder in its Federal Debarment Certification.

## **64. Captions and Headings**

Captions and headings used throughout this document are for convenience only and shall not be used or interpreted as having any particular meaning or limitation upon the terms and conditions stated herein. Similarly, organization and division of various sections is only intended for organizational convenience and shall not be construed to affect or limit the specific terms and conditions of the various provisions herein.

# **III. GENERAL CONDITIONS**

## **1. DEFINITIONS**

**1.1 The Contract Documents** The Contract Documents consist of the Agreement between County and Contractor, the Conditions of the Contract (Bid Instructions, General, Supplemental Technical and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment of the Contract signed by both parties, (2) a Change Order, (3) a Construction Change or “if and where directed” Directive, or (4) a written order for a minor change in the Work issued by the County Project Manager.

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification that has been duly executed by the parties, as set forth hereinafter.

**1.2 WORK** The term “Work” includes all labor, materials, equipment, resources and services to be provided by, or required of the Contractor to fulfill the Contractor’s obligations in accordance with all of the terms, conditions, specifications and requirements arising from the Contract Documents.

**1.3 PROJECT** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the County or by separate Contractors.

**1.4 DRAWINGS** The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

**1.5 SPECIFICATIONS** The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

**1.6 DAY, CALENDAR DAY AND WORKING DAY** These terms as applied throughout the Contract Documents shall be defined as detailed below in the Technical Specifications.

**1.7 Contractor** - the entity awarded a Contract to perform the Work described herein.

**1.8 Other Defined Terms** - refer to the definition of specific terms as provided hereinafter, including specific definitions of terms in the Technical Specifications.

**1.9 Construction Industry Terms** Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

## **2. CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

2.1 The intent of the Contract Documents is to include all work, materials, services and any other items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in staging, organizing or dividing the Work for its own forces, or among Subcontractors, or in establishing the extent of Work to be performed.

2.3 Left blank.

2.4 The following General Conditions along with the Bid Instructions provide the basic terms, conditions and requirements that apply to the Work. These requirements are in addition to and shall be read together with the terms, conditions and requirements of the Technical and any Special Provisions and other Contract Documents. Questions requiring interpretation of requirements shall be referred in writing to the Resident Engineer for interpretation and resolution.

2.5 In the event of any inconsistency, conflict or question regarding priority, application or interpretation of provisions in these general conditions, the technical specifications, plans or any other Contract Documents, the provision or interpretation thereof which affords the greatest protection of County interests and which, in the opinion of the County Engineer, best assures Contractor performance in accordance with the overall intent and purpose of the Contract Documents, shall be deemed controlling to the fullest extent permitted by law.

## **3. Contractor's Performance of the Work; Contractor's Workforce**

3.1 Provision of Necessary Workforce - The Contractor shall provide the necessary workforce to accomplish the Work as set forth in the Contract Documents, and if necessary, to increase said workforce to complete the Work within the time schedule and performance requirements set forth in the Contract Documents. The Contractor shall furnish all materials, tools, equipment, transportation, supervision, and perform all labor and services necessary and incidental to the satisfactory completion of the Work in a proper workmanlike manner within the time stipulated as set forth in the specifications.

3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and its subcontractors carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Contractor shall be responsible for its own labor relations with any trade or union represented among its employees, and shall resolve any disputes between

Contractor and his employees or anyone representing such employees, promptly and at no expense to the County.

3.3 Removal of Workforce Members for Cause - The Contractor shall remove any of its employees or subcontractors from County property who are deemed by the County to be unable to meet the requirements and conditions set forth herein, including but not limited to unexcused violations of any laws, rules, or ordinances that are applicable to the Work, refusal to comply with terms and conditions of the Contract Documents, unexcused interference with inspections, disruptive behavior or other good causes.

3.4 Use of Specified Materials and Processes - The Contractor shall procure and utilize materials, equipment and process as specified by the Contract Documents. The Contractor shall make no substitutions of any specified material, equipment, process or other component of the Work, without good cause and without first securing the written consent of the County, after evaluation by the County's Resident Engineer / Resident Engineer and in accordance with a Change Order.

#### **4. Contractor's Superintendent**

The Contractor shall provide and designate a Superintendent who shall be assigned to oversee and manage performance of the Work on a day to day basis. The Contractor shall ensure that its Superintendent has sufficient credentials and experience in provision, administration and supervision of the Work required hereunder. The Contractor's Superintendent shall monitor all installations, all contract administration duties and shall oversee performance of the Work by the Contractor's workforce and any subcontractor or other third party performing any part of the Work by or on behalf of the Contractor. The Contractor's Superintendent shall serve as the designated contact person at the Work site who shall be available during all working hours to review and respond to any instructions, directives, concerns or other matters raised by or on behalf of the County.

In the event that the designated Project Superintendent shall be unable to perform these responsibilities, due to injury, illness, severance of employment or any other reason, the Contractor shall promptly notify the County and shall designate another duly qualified employee to serve as a substitute Project Superintendent, within 48 hours.

#### **5. County not Responsible for control of Contractors, for Construction Means and Methods**

The County shall not be responsible for and shall not have control or charge of construction means, methods, techniques, sequences or procedures, or the safety precautions and programs in connection with the Work, and the County shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Further, the County shall not be responsible in any way for the acts or omissions of the Contractor, and any subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

#### **6. Independent Contractor**

The Contractor shall be deemed and considered an Independent Contractor in respect to the Work covered by this Contract, and shall not be deemed to be an agent, partner or joint venture of the County. The Contractor shall assume all responsibility and expense for the Contractor's Work, and for all risks and casualties of every description arising out of the Contractor's performance of the Work. Nothing arising from the Contract Documents or performance of the Project shall be construed to create a contractual

relationship of any kind (1) between the County and Contractor, (2) between the County and any Subcontractor or Sub-subcontractor, (3) between the County and any other party. The County's Resident Engineer / Project Resident Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract Documents intended to facilitate performance of the Work.

## **7. Subcontractors and Assignments**

7.1 Assignment to any third party of any monies due or to grow due the Bidder or any sub contract based upon this Bid is prohibited and will not be recognized by the County. Any such assignment shall be considered a default by the County

7.2 The Contractor shall not subcontract any portion of the work covered by these specifications without the prior written and explicit consent of the County of Atlantic. No subcontract will be effective or deemed permitted without the prior written consent of the County, and any authorized subcontract shall be considered a default by the County.

7.3 The successful Bidder must maintain and submit to Atlantic County a list of subcontractors and their addresses 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 is made for goods provided or services rendered or for construction of a construction project under this Contract.

7.4 All subcontractors shall provide a copy of their business registration to any Contractor who shall forward it to the County. No Contract with a subcontractor shall be entered into by any Contractor under any Contract with Atlantic County unless the subcontractor first provides proof of valid business registration. The successful Bidder as well as their subcontractors 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," P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq., on all their sales of tangible personal property delivered into the state of New Jersey.

7.5 The Contractor shall be the party solely and fully responsible to the County for the performance of all requirements of the Contract Documents, at all times and in all respects, without regard to any subcontract or assignment agreement. If a subcontract or other assignment is authorized by the County, the assignee or subcontractor shall enter into an agreement affirming that it shall be bound by all of the terms, conditions and requirements set forth in the Contract Documents. The Contractor shall provide the County with copies of all subcontractor agreements upon the County's request.

7.6 The Contractor shall be responsible for payment of all of its subcontractors for all materials, goods, services and labor provided by such subcontractors in connection with the Work, to the extent that such amounts are justly due and owing, subject only to such offsets, retainage and other adjustments that may be permitted by law.

## **8. Contractor's Duty to Perform**

The Contractor's obligation to perform and complete the Work and provide all Services in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work or Services that are not in accordance with the Contract Documents, or as a waiver or release of Contractor's obligation to perform the Work and provide Services in accordance with the Contract Documents: observations made by the County, recommendation of any progress or final payment by the

County, any determination that work is substantially completed or any payment by County to Contractor under the Contract Documents, any use of or reliance upon the Work or Services any part thereof by the County, any acceptance by the County, any failure to do so, any review and approval of a Shop Drawing, sample, submittal, substitution, or the issuance of a notice of acceptability, any inspection, test or approval by others, or any correction of defective Work by the County, any limitations of any Subcontractor's or Supplier's warranty, or similar actions or omissions by the County.

## **9. Reliance upon Drawings, Plans and Other Information Provided by the County**

All information provided by the County to the Contractor is only offered to show conditions that are believed to exist, but it is not intended to be inferred that the conditions as shown thereon constitute a true and accurate representation by or on behalf of the County that such conditions actually exist. The Contractor shall be solely responsible to inspect the job site prior to commencement of the Work and to field verify conditions and measurements that actually exist. If any discrepancy exists, the Contractor shall promptly notify the County and await clarification regarding resolution of any such discrepancy by the County.

To the fullest extent permitted by law, the Contractor shall accept full responsibility for any loss sustained by it as a result of any variances between the conditions as shown in drawings and plans, if any, and any other information provided by the County to the Contractor and the actual conditions revealed during the progress of the Work, to the extent that such conditions should have been reasonably observed or discovered by the Contractor prior to commencement of work affected by such variations.

Nothing in this Section shall be deemed to waive or limit the rights and duties of the County and the Contractor arising under the Changed Conditions Clauses, as set forth hereinafter in Paragraph 49.

## **10. Review Of Contract Documents And Field Conditions By Contractor**

10.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work and shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Resident Engineer as a request for information in such form as the Resident Engineer may require.

10.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Resident Engineer, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported in writing promptly to the Resident Engineer.

10.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Resident Engineer in response to the Contractor's notices or requests for information, the Contractor shall make Claims for Changes to the Work. Refer to General Condition No. 36 below.

If the Contractor fails to perform the obligations of this section and as required by Section 36 below, Contractor shall pay such costs and damages to the County as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the County or Resident Engineer for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Document unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission or difference and failed to report it to the Resident Engineer.

## **11. Patent Fees, Licensee Fees and Royalties**

Contractor shall pay all patent and license fees and royalties (if any) and assume all costs incident to the Contractor's use of all materials and equipment necessary for the Contractor's performance of the Work. If a particular software, material, procedure, invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work, review and or approval thereof by the County shall be for the sole purpose and benefit of the County to assess apparent adequacy for the Work, and shall not be an approval of the use thereof by Contractor, in violation of any patent or other rights of any third person. To the fullest extent permitted by laws and regulations, Contractor shall indemnify and hold harmless the County and its officers, directors, employees, agents, and other Bidders of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, County Project Managers, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights, or license fees or similar assessments incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents.

## **12. Permits And Agreements**

12.1 Permits Obtained by The County: REFER TO Technical Specifications

12.2 Contractor Permits: The Contractor shall be responsible for identifying, applying for and obtaining any other governmental agency permits and consents, along with any utility company permits, authorizations, relocations or consents, that may be necessary to proceed with the work, including (but not necessarily limited to) permits under the Uniform Construction Code, the Uniform Fire Safety Code, the Department of Environmental Protection, and Soil Conservation District. Costs of application and compliance with such permits shall be the Contractor's responsibility.

12.3 . Construction Easements: REFER TO Technical Specifications

## **13. Performance Bond And Payment Bond**

Within TEN (10) days after issuance of the County's Notice of Award of the Contract, the Contractor shall furnish, and shall maintain in full force and effect until released by the County, bonds covering



faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding instructions above and as required by law.

Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

The bond shall be made out to the Atlantic County, as obligee and contain the full title of the project.

The bond shall ensure the Contractor's payment of all lawful claims of subcontractors, materialmen, laborers, persons, firms or corporations for labor performed, of material, provisions, vendors or other supplies or teams, fuels, oil implements, or machinery furnished, used or consumed in the carrying forward performing or completing of said work or services for the County. The Contractor agrees that this undertaking shall be for the benefit of any subcontractor, materialmen, laborer, person, firm or corporation having a just claim.

The Contractor agrees that the substance of Performance Bond shall be that required by N.J.S.A. 2A:44-147 notwithstanding the form of the Bond.

In the event that the Surety shall become insolvent or otherwise fail to maintain its authority to issue performance bonds in the State of New Jersey prior to completion and final acceptance of the Work, the Contractor shall provide a substitute performance bond to the County which conforms with the requirements of this section.

## **14 Provisions Concerning Unit Prices**

### **14.1 Unit Prices**

A. A unit price is an amount stated on the Contractor's Bid Form/ Unit Price Schedule as a price per unit of measurement for materials and services. Unit Prices will be used to evaluate Contractor Payment Applications, work progress and entitlement to payments.

Unit prices will also be used as the basis to determine the value of amounts to be added to or deducted from the Contract Sum by Change Order, work performed on an "if and where directed" basis and claims in the event the estimated quantities of Work required by the Contract Documents are increased or decreased.

B. Each Unit price shall include all necessary material, overhead, profit, all costs and applicable taxes, fees, licenses and royalties of any kind attributable to the performance or provision thereof.

C. The Contractor shall refer to individual specification sections for activities requiring the establishment of unit prices. Additional provisions regarding methods of measurement and payment for unit prices are specified in those sections.

D. Payment for unit price work and materials shall be based upon actual quantities delivered, installed and accepted by the County.

E. This section shall be in addition to, and shall not limit any more specific provisions concerning Unit Prices in the Technical Specifications and other provisions of the Contract Documents.

## **15. Submission of Preferred Truck Routes**

A. The County of Atlantic requires that Contractor(s) and all subcontractors shall use major highways and County roads for trucking purposes in connection with this project. Therefore, Contractor shall anticipate this requirement while formulating his/her Bid proposal.

B. Prior to commencement of Work, the Contract will be required to submit preferred truck routes using major highways and County roads for deliveries and other transportation of materials and equipment associated with the Work. The County will review the routes and reserves the right to either approve or mandate changes for the purpose of directing supply and delivery trucks to major highway routes. The Contractor shall follow these routes thereafter.

## **16. Submittals**

Without limitation on any other submittal requirements required by the Technical Specifications, Special Provisions or which may be generally required by prudent trade practices and industry standards, the Contractor understands and agrees to provide the following submittals:

16.1. General: Upon request show: elevations and cross sections, measurements, locations, material thicknesses, connections, anchors and other details of the Work;

16.2. Product Data: Submit product data as requested;

16.3. Shop Drawings: Submit shop drawings showing layout, profiles, calculations, design parameters, and product components, including but not limited to anchorage, accessories, and finishes;

16.4. Samples;

16.5 Quality Assurance / Control Submittals:

1) Test Reports: Submit certified test reports showing compliance with specified performance characteristics and physical properties.

2) Installer Qualification Data: Submit installer qualification data; and

16.6. Other Submittals – as directed by the County’s Resident Engineer, and as required by NJDOT Specifications or other Contract Documents;

16.7. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

16.8. Submittals which are not required by the Contract Documents may be returned by the County Resident Engineer / Resident Engineer without action.

16.9 The Contractor shall review for compliance with the Contract Documents, approve and submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the progress of the Project.

16.10 By approving and submitting Shop Drawings, Product Data, Sample and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

## **17. Construction Layout**

The Contractor shall, prior to commencement of work, review all design plans, investigate field conditions and perform all layout and mark-outs necessary to accomplish the Work in accordance with the Contract Documents, at no additional costs to the County. Refer to the Technical Specifications for additional provisions applicable to Construction Layout. All layouts will be performed by qualified personal appropriate for the specific layout and measurement tasks, which may include a licensed land surveyor, civil engineer, County Project Manager or qualified supervisor.

## **18. Progress Schedule**

Subject to and without limitation upon any more specific requirements of any Technical Specifications and County Special Conditions below, the Contractor shall develop and observe a task-oriented progress schedule that shall include a proposed start and completion date for the Work, with proposed progress milestones. The Contractor shall develop and maintain the schedule as necessary to complete the Work within any time limits set forth in these Specifications.

Upon execution of the Contract, the Contractor shall submit its schedule to the County, which shall be subject to review and approval by the County. The Contractor shall be responsible for preparing updates and corrections to the progress schedule, to reflect the actual contract start and such other adjustments as may be necessary and appropriate to complete the Work in an orderly manner within the specified project time limits. Submission of the progress schedule and approval thereof by the County, including modifications and corrections thereto, shall not act as waiver of the contract time, the completion date or any other requirement of the Contract Documents, and shall not constitute a substitute for or evidence approval of any change order or contract modification.

At the County's request, the Contractor shall update the schedule when the County determines that an updated schedule is required.

## **19. Prompt Performance**

The Contractor's performance of the Work in a timely manner, without undue disruption of normal County operations and services is an essential component of the Work. The Contractor shall begin the Work promptly on the date of commencement as directed by the County and shall provide a level of effort

necessary to carry the Work forward expeditiously, with adequate forces to achieve completion at the earliest possible date within the Contract Documents

## **20. SEQUENCE OF WORK**

20.1 The Contractor shall carefully coordinate, plan and install the Work of this Contract in the necessary sequence and in such manner as not to delay other Contractors or Subcontractors. Nothing is to be construed in the Contract Documents that the Contractor or Subcontractor(s) shall be allowed to perform all of their work at one time or at one visit to the site.

20.2 The County wishes to emphasize that the Contractor should familiarize himself with the requirements of all parts of the Contract Documents, and not to restrict himself to the category that encompasses his own trade or Contract.

## **21. Pre-Construction Meeting and Progress Meetings**

Subject to and in accordance with the more specific requirements of the Technical Specifications and prior to commencing the Work, at a specific time and place as directed by the County, the Contractor shall meet with the County Engineer or his designee at a pre-construction meeting. In addition, Progress Meetings shall be held as Work proceeds on an as needed basis as directed by the County.

Pre-Construction and Progress Meetings shall be held to review and address issues related to the Work and may include: schedule compliance, critical sequencing, equipment or material deliveries, use of County property, contract compliance, quality control issues, avoidance of interference with County operations, requesting and processing contract modifications, and such other matters which are relevant to the orderly and expeditious performance of the Work.

All meetings will be attended by the Contractor's Project Manager and by a duly authorized representative of the County. Failure to attend scheduled meetings without cause or approval by the County shall subject the Contractor to a Liquidated Damage Payment of \$200.00 for each missed and unexcused meeting, in accordance with provisions concerning liquidated damages set forth in the Contract Documents.

The Contractor shall be responsible for preparation and distribution of meeting minutes which shall include issues and actions to be taken.

In addition, the Contractor's Project Superintendent shall maintain a daily job log, which shall record daily work progress, job conditions, weather conditions, subcontractors on site and any testing operations or inspections of the Work.

## **22. RESERVED**

## **23. Modifications of the Schedule**

23.1. Subject to and in accordance with the more specific requirements of the Technical Specifications, there shall be no modification of the Work schedule without the prior written approval of the County. All requests for modifications shall be made by the Contractor in writing, subject to prior approval of the

County, in its sole judgment as to whether good cause exists and whether such time extensions shall interfere with safe and orderly operation of the County's highway system.

23.2. Failure to comply with the schedule and complete the Work within the time specified for performance, due to fault or neglect attributable to the Contractor, as specified or required by the Contract Documents, including General Conditions 18, 19 and 23, and as specified in County Special Provision 108.10, shall constitute a default that shall be subject to remedies including but not limited to assessment of liquidated damages for each day of delay, in accordance with the more specific requirements of County Special Provision 108.20..

23.3. Where Contractor is prevented from completing any part of the installation work within the specified installation times due to delay beyond the control of Contractor, the Contract time may be extended in an amount equal to the time lost due to such delay, provided that the Contractor shall have first secured County consent based upon notice to the County which shall include verification of the reasons asserted that delays are beyond the control of Contractor, due to acts or neglect of others, County directives that require modification of the schedule, fires, epidemics, abnormal weather conditions or acts of God that prevent schedule adherence (referred to below as "excusable cause"). Any such extension shall additionally be subject to and in accordance with the more specific requirements of the Technical Specifications.

23.4. If in the opinion of the County, the Contractor is falling behind in the performance of Work without excusable cause as set forth above, the County shall notify the Contractor, and the Contractor shall take such steps as may be necessary to improve his progress, which may include but not be limited to dedication of additional staff, additional hours, or other means, without additional cost to the County. Failure to comply shall constitute grounds for declaring the Contractor in default.

23.5. Nothing in this Section shall be deemed to waive or limit the rights and duties of the County and the Contractor arising under the Changed Conditions Law Clauses, as set forth hereinafter.

#### **24. Work During Regular Business Hours**

All work shall be performed during regular daylight business hours (typically 8 a.m. to 5 p.m., Monday through Friday), **except for any Limitations of Operations listed in the County's Special Provisions.** However, the Contractor may make application to the County to work on evening or weekend hours, subject to and in accordance with any more specific requirements of the Technical Specifications.

#### **25. Clean Up and Removal of Debris As Work Proceeds**

25.1. Without limitation on any clean up or debris removal duties set forth in the Technical Specifications, the Contractor shall remove all loose and loose rubbish from the work daily. Debris and rubbish shall be deposited in appropriate receptacles and disposed of or recycled, in accordance with applicable codes and ordinances. Dumpsters, recycling containers and other costs related to debris and recycling clean up shall be provided at the expense of the Contractor, as necessary to keep the work site and surrounding properties clean and orderly. Debris and rubbish shall not be allowed to accumulate or spill onto surrounding properties.

25.2. All products of removal not scheduled to be reused, or turned over to the County, shall become the property of the Contractor and shall be removed from the site.

25.3. Refer to Bid Instruction for additional details regarding the Atlantic County Solid Waste Management Plan and Recycling Plan.

25.4. In the event that the Contractor employs one or more subcontractors at the work site, the Contractor shall take adequate measures to ensure that its subcontractors comply with clean up, debris removal and regulatory requirements.

25.5 The Contractor will remove and properly dispose of all bracing, forms, silt fencing, temporary lighting, security fencing and locks when they are no longer necessary or otherwise require replacement.

25.6 Perform thorough final cleaning upon close out. Employ experienced workers or professional cleaners for final cleaning. Clean the Work area to the condition that is in good order and appropriate for a public highway as recommended by the County.

25.7 Comply with regulations of authorities having jurisdiction and safety standards for cleaning and handling debris and waste materials. Do not burn waste materials. Do not bury or dump debris, fluids or other excess materials. Do not discharge volatile, harmful, or dangerous materials into drainage systems. Remove waste materials from the site and dispose of in a lawful manner.

25.8 . Where extra materials of value remaining after completion of associated work, have become the Owner's property, arrange for disposition of these materials as directed.

## **26. RESERVED**

## **27. Site Storage and Protection of Materials**

Without limitation on any other submittal requirements required by the Technical Specifications, Special Provisions or which may be generally required by prudent trade practices and industry standards:

1. The Contractor shall be responsible for safe and appropriate storage of all materials and equipment necessary to perform the Work.
2. The Contractor shall cause any material wraps or covers to be properly removed and disposed of. The Contractor shall ensure that any damage, defacement, scratches or disfigurement caused in shipping or handling are promptly repaired or that damaged materials are replaced, as may be directed by the County's Resident Engineer.
3. The Contractor is responsible for securing all equipment and materials stored in connection with the Work.

## **28. Delivery & Inspection of Materials and Equipment**

1. Equipment and material shall be delivered F.O.B. destination, to the Work site outlined in this Bid.
- 2 Without limitation on any other submittal requirements required by the Technical Specifications, Special Provisions or which may be generally required by prudent trade practices and industry standards:

i. The material(s) and equipment(s) shall be subject to inspection and approval by the County's Resident Engineer; and

ii. The Contractor will notify the County not less than 48 hours in advance of delivery of materials and equipment by calling the appropriate contact, as directed by County.

C. The County will not make payment for materials or equipment purchased or delivered to the Work site until the same has been installed per the Contract Documents and accepted by the County, except in instances where the County has approved payment in advance, and has been adequately assured that such materials or equipment conforms to the Contract Documents. Contractor shall be responsible for storage, security and risk of loss of such materials and equipment.

## **29.0. Progress Payments; Payment Application Requirements**

29.1 The following provisions shall be in addition to any other more specific requirements set forth elsewhere in the Technical Specifications or other Contract Documents:

A. Progress payments shall be processed typically on a monthly basis for work completed, through the last day of the prior month, with a retainage of 2% of the work completed, provided that the Contractor has complied with the procedures set forth herein.

B. Estimates shall be prepared by the Contractor monthly, as of the 1st or 15th of each month, as may be specified by the County, and shall be submitted to the County for preliminary review (a "pencil copy"). If the County has retained an RE/Consultant Inspector for the Work, the Contractor shall first submit its pencil copy estimates to the RE/ Consultant Inspector. The Contractor's pencil copy estimate shall be subject to review and consent to proceed by the County Engineer, RE / County Inspector for compliance with contract requirements.

C. Upon completion of the entire Work covered by the specifications, and after final approval by the RE /consultant inspector and the County, the Contractor shall, in like manner, submit its final estimate for acceptance and payment.

D. With each acceptable estimate, the Contractor shall submit to the County an itemized payment application, supported by such data substantiating the contractor's right to payment as the County may require.

E. By submitting a payment application, the Contractor warrants that title to all material and equipment covered by the payment application will pass to the County no later than the time of payment, and to the best of the contractor's knowledge, information, and belief, will be free and clear of liens, claims, security interests or encumbrances.

F. Each Application for Payment shall be consistent with previous payment applications that have been accepted by the County.

G. Unless the County specifies otherwise, the Contractor shall use AIA Document G702 (Application for Payment) and Continuation Sheets G703 as the form for Applications for Payment, or similar forms provided by the County.

H. With each Application for Payment, the Contractor shall submit all AA-202 Monthly Project Workforce Reports, Certified Payroll documentation, Delivery Tickets, manning reports and Buy American Certificates that are related to the Work covered by the payment application.

I. With each Application for Payment, the Contractor shall provide waivers of mechanics liens from every entity who may lawfully be entitled to file a mechanics lien arising out of the Contract that is related to the Work covered by the payment application

J. The Contractor shall also submit a completed Atlantic County Standard Invoice with its Application for Payment.

K. Progress Payment applications shall not include requests for payment of amounts that the contractor does not intend to pay to a subcontractor or material supplier, due to a dispute or other reason.

L. If the payment application indicates that the Contractor has withheld or will withhold payment from a subcontractor or supplier, the Contractor shall provide written notice of such non-payment to the subcontractor or supplier, with a copy of the notice also supplied to the County and to the Surety that holds the performance bond for the Work. The Contractor's written notice shall include the reason for withholding payment and state the amount of payment withheld in the notice. The Contractor shall diligently seek to resolve any underlying dispute with such subcontractor or supplier, at no additional cost to the County.

M. An Application for Payment shall not be deemed complete if, at the time of submission, the Contractor has failed to provide the County with any documentation required for performance or acceptance of the work required elsewhere in the Contract Documents, including but not limited acceptable materials testing results, shop submittals, insurance, and compliance with all laws governing the Work that are applicable to the Contractor.

N. The Contractor shall not cause or permit interference with reasonable inspection of the Work by the County designated Inspector. Work which has not been reasonably inspected due to interference or avoidance caused or permitted by the Contractor may be deemed ineligible for payment by the County until the Contractor facilitates such inspections or testing, and may also be subject to a reduction in value of up to one half of the stipulated Liquidated Damages rate stipulated by County Special Provision Section 108.20 for each day that such interference has occurred.

O. When an Application for Payment which has been deemed acceptable for payment by the County's RE/ Consultant Inspector, the Contractor shall Submit three (3) signed and sealed, executed copies along with one completed Atlantic County Standard invoice to the County's Project Manager / Contract Administrator by means ensuring receipt within twenty-four (24) hours; one (1) copy shall be complete, including waivers of lien and similar attachments, when required.

P. It is the contractor's responsibility to submit payments applications that are accurate and complete. The Contractor shall complete every entry on the payment application form. The form shall be executed by a person authorized to sign legal documents on behalf of the Contractor and County. Entries shall match data on the Schedule of Values and the Contractor's Construction Work Schedule. The Contractor shall use updated schedules if revisions have been made, and shall include amounts of Change Orders and Requests Against Allowances (if any) issued prior to the last day of the construction period covered by the application.



Q. Payment applications that are incomplete or inaccurate shall not be eligible for payment and shall be returned to the contractor for correction. After a payment application has been submitted in a complete and acceptable manner, and after the County's project manager has issued a certificate for payment, the County shall make payment within thirty days thereafter, subject to a 2% retainage, in the manner and within the time provided in the contract documents and laws governing contract payments.

R. It is the Contractor's responsibility to promptly pay each of its suppliers and subcontractors, upon receipt of payment from the County, out of the amount paid to the Contractor on account of such supplier's or subcontractor's portion of the Work, to the extent that such payments are due and owing. The contractor shall similarly require, by appropriate agreement with each subcontractor, each subcontractor to make payments to sub-subcontractors in similar manner within ten calendar days.

S. The County, its employees and agents (including but not limited to any project manager, Resident Engineer, County Project Manager employed or retained by the County) shall not have an obligation to pay or to see to the payment of money to a Contractor's employee, subcontractor, sub-subcontractor, supplier or any other entity or third party, except as may be explicitly required by law. The Contractor's Application for Payment shall be its warranty to the County that all such payments that are due and owing shall be properly made and paid when due.

T. Issuance of any certificate of payment, or subsequent disbursement of funds by the County shall not constitute a waiver or release any claim which the County may have against any other party, or a waiver or release of any warranty or other responsibility of the contractor, nor shall payment by the County as a result of said certificate constitute acceptance of work not in accordance with the contract.

U. Unless specifically authorized hereinafter or specifically directed by the County, the Contractor shall not be entitled to payment for materials, equipment, fixtures, or other components of the work which have been purchased or delivered, but which have not been delivered and installed by the Contractor in accordance with the Contract Documents, and which have been deemed acceptable by the County as delivered and installed. Request for payment for materials to be delivered prior to installation shall be submitted by the Contractor to the County in writing, prior to delivery.

V. In addition to any other right or remedy set forth in the Contract Documents, the County reserves the right to reject the Contractor's measurement of work-in-place that involves use of established unit prices, and to have this Work measured or otherwise evaluated by an independent surveyor or Engineer (at the County's expense). Payment for unit price work shall be based upon actual quantities delivered, installed and accepted. The County additionally reserves the right to deduct from the contract price any wages paid by the County to any inspector(s) necessarily employed by it on the Work, for any number of days in excess of the number allowed for Work as set forth in County Special Provision 108.10.

29.2 No Waiver. The County's review, comment, acceptance or rejection of any AA202 Monthly Project Workforce Reports, Certified Payroll documentation, Delivery Tickets, manning reports, Buy American Certificates, material testing results and similar supporting documentation prepared and submitted by or on behalf of the Contractor shall be for the limited purpose assisting the County's evaluation that the associated Payment Application appears to be complete and in an acceptable form. No review, comment, acceptance, rejection such materials shall be deemed to waive, limit or release the Contractor from any of its duties to perform the Work strictly in accordance with the terms and conditions

of the Contract Documents. The County's processing or payment of a Payment Application shall not result in an approval of defective or improper Work. The County, upon determining that any payment under a previous Payment Application was improper or unwarranted for any reason, has the right to recover erroneous payment from the Contractor

29.3 Defective Work. The County has the right to reject any Payment Application, or any portion thereof to the extent that Work or materials included in any Payment Application, in the sole judgment of the County, is defective, or otherwise does not comply with Contract requirements, or is not proceeding as specified in the Contract, or at any point following the County giving the Contractor and Surety notice of default as specified for any of the reasons specified in the Contract Documents.

### **30. OSHA & PEOSHA Compliance**

The Contractor shall provide a workplace for its workers complies with all applicable Osafety and health standards as required by the Public Employees' Occupational Safety and Health Act (PEOSHA) and the Occupational Safety and Health Act of 1970 ("OSHA") Contractor shall seek to identify and eliminate or reduce work place hazards as defined by OSHA and PEOSHA, as may be applicable to the Work. Contractor shall be responsible for all required informational and safety training. Any notice of injury, along with any testing, sampling or protective gear required OSHA / PEOSHA, shall be provided by the Contractor. The Contractor shall not retaliate or discriminate against any of its workers for using their rights under the law, including their right to report a work-related injury or illness

### **31. Public Convenience and Safety; Avoidance of Damage to County Property and Property of Others**

The safety, protection and convenience of the public and adjacent residents are of primary importance and shall be provided for by the Contractor in an adequate and satisfactory manner.

- A. Precautions shall be exercised at all times for the protection of persons and property. The safety provisions of applicable laws, rules and regulations, building and construction codes, shall be observed. The work site and all machinery, equipment and other hazards of any character associated with the Contractor's work shall be safeguarded by the Contractor.
- B. If any operation, practice or condition during the course of the Work is unsafe or is deemed by the County to be unsafe, the Contractor shall immediately take corrective action. Where any operation, practice or condition endangers persons or property, it shall be immediately discontinued by the Contractor and adequate remedial action taken before the affected part of the Work is resumed.
- C. All work shall be performed in a professional and workmanlike manner, with due regard to avoiding damage to County property and to the property of others. Should the Contractor's work cause any damage to County property or property of others, the Contractor shall promptly repair, restore or replace such damaged property to the satisfaction of the County.

### **32. Accident Reports**

If death or injuries to workers or other persons, or damage to property is caused by or occurs in connection with the Contractor's Work, the accident shall be reported immediately by the Contractor to the County,

and to the Contractor's insurance carrier, with full details and statements of witnesses (if any). If a claim is made by anyone against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the County, giving full details of the claim and the Contractor's response thereto.

### **33. County not Responsible for control of Contractors, for Construction Means and Methods**

The County shall not be responsible for and shall not have control or charge of construction means, methods, techniques, sequences or procedures, or the safety precautions and programs in connection with the Work, and the County shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Further, the County shall not be responsible in any way for the acts or omissions of the Contractor, and any subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

### **34. Hot Work**

The term "hot work" means hot riveting, welding, burning, open flame use, or other mechanical spark-producing operations or those operations resulting in high temperature surfaces. It also includes opening electrical systems which have the potential of arcing or otherwise igniting a flammable material. Without limitation upon any other regulatory requirement or prudent practice applicable to the Contractor's Work, the Contractor shall perform all hot work in a fire-safe manner. The Contractor shall supply and maintain on the site adequate fire-fighting equipment capable of extinguishing incipient fires when "hot work" is required. The Contractor shall comply with applicable Federal, State, and local fire-prevention regulations.

### **35. Completion and Acceptance of Work**

Subject to and in accordance with any more specific requirements of the Technical Specifications, the Work to be performed by the Contractor shall be deemed complete when ALL of the following have been satisfied by the Contractor to the County:

- A. The Work has, in the judgment of the County Engineer, been completed satisfactorily, and all components that require testing have been successfully tested in all respects according to the Contract Documents;
- B. The Work is fully completed, operational and ready for use by the County in all respects in accordance with the Contract Documents, including correction of all punch list items and any other Defective or Unauthorized Work; and
- C. The Contractor has, to the County's satisfaction, executed and delivered to the County or its designated representative all documents, permits, certificates, proofs of compliance, release of claims, surety consents and any other documents the County deems mandatory to assure compliance with this Bid.
- D. Record Drawings: During the performance of the Work, the Contractor shall maintain a clean, undamaged set of blue or black line white-prints of Contract Drawings and Shop Drawings. This set shall be marked up to show actual installations, when installation varies

substantially from the Work as originally shown. Where Shop Drawings are used, record a cross-reference at the corresponding location on the Contract Drawings. Give particular attention to concealed elements that would be difficult to measure and record at a later date. The Contractor shall supply the Record Drawings to the County for review and acceptance as a precondition to acceptance of the Work.

E. Maintenance and Operational Manuals and Warranties: As a precondition to acceptance of the Work, the Contractor shall supply all maintenance and operational manuals, instructions and all manufacturer warranties that are required for the various components of the Work.

### **36. Defective or Unauthorized Work**

Any portion of the Work, including any materials, goods, equipment, labor, services or combination thereof which in the judgment of the County Project Manager / County Engineer, fails to meet the requirements of the Contract Documents, whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause, shall be considered as Defective Work. Any Work including any materials, goods, equipment, labor, services or combination thereof which in the judgment of the County is not authorized or required by the Contract Documents shall be classified as Unauthorized Work.

Any Work, including materials, goods, equipment, labor, services or combination thereof which in the judgment of the County or in the judgment of any Manufacturer, supplier or other entity that is intended to provide a warranty pertaining to the Work or any component thereof, fails to meet the requirements of the Contract Documents, including but not limited to any requirement necessary for the issuance of a required warranty, whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause, shall be considered as Defective Work.

#### **Incomplete / Punchlist Work**

Any Work included on a Punchlist shall be treated as Defective Work and shall be corrected by the Contractor, within the time proscribed by the County for the completion of Punchlist work, and in no event more than 30 days after issuance of the Punchlist.

### **37. Removal and Correction of Defective or Unauthorized Work**

Any Defective or Unauthorized Work performed by the Contractor, regardless of whether observed before or after completion of the Work and whether or not fabricated, installed or completed, shall be removed immediately and replaced by the Contractor with Work and materials which shall conform to the specifications, or shall be otherwise corrected and remedied in an acceptable manner authorized by the County or its designee. The Contractor shall bear all costs of correcting, removing or replacing such rejected Work, including compensation to the County for the County's additional costs made necessary thereby.

This clause shall have full effect regardless of the fact that the Defective or Unauthorized Work may have been performed, or the defective materials used, with the actual or implied knowledge of the County. The fact that the County or its designee may have previously overlooked such defective work shall not constitute an acceptance of any part of it by the County.

If, within one (1) year after the date of completion of the Work or designated portion thereof, or within such longer period of time as may be prescribed by law or by the terms of any applicable warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the County to do so unless the County has previously given the Contractor a specific written acceptance of such condition. This obligation shall survive termination of the Contract. The County shall give such notice promptly after discovery of the condition.

Upon failure of the Contractor to immediately correct, remove or replace rejected or Unauthorized Work, or to immediately comply with any order of the County made under the provisions of this Section, the County shall have authority to cause such rejected or unauthorized Work to be corrected or removed and replaced, and the costs thereof, as well as those incurred in storing any rejected materials, shall be deducted from any monies due or to become due the Contractor. If the payments then or thereafter due the Contractor are not sufficient to cover such costs, the Contractor shall pay the difference to the County. The County reserves the right, should Defective or Unauthorized Work or materials used by or on the part of the Contractor be discovered, either before or after the Project has been accepted, or even after Final Payment has been made, to claim and recover by process of law such sums as may be sufficient to correct, remove or replace the Defective or Unauthorized Work or materials.

### **38. CHANGES IN THE WORK**

Any changes in the Work shall be subject to the provisions Section 104.03, NJ DOT Standard Specifications for Roads and Bridges, 2019 ed., together with all applicable provisions in these General Conditions, including but not limited to provisions concerning "Changed Conditions" set forth below in General Condition Section 49.

### **39. Warranties**

Without limitation upon any other warranty, representation warranty or duty imposed upon or made by the Contractor in the Contract Documents, the Contractor hereby warrants:

1. That this Contractor has not been solicited or secured, directly or indirectly, in a manner contrary to the laws of the State of New Jersey and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of this Contract by any conduct, including the paying or giving of any fee, commission, compensation, gift, gratuity or consideration of any kind, directly or indirectly, to any County, employee, officer or officials.
2. That the Contractor, for itself and its subcontractors, is qualified by training and experience to perform the services in accordance with all of the terms, conditions and requirements of the Contract Documents.
3. That the Contractor is ready, willing and able to perform all services in the timeframe and as required by this Contract, and that he and/or his subcontractors performing the work presently hold in good standing any and all necessary licenses for the lawful performance of the Project within the State of New Jersey.

4. That all materials and all Work completed pursuant to this Contract will comply with minimum quality, design and performance standards over time as stated or intended by the NJ DOT Standard Specifications, as adopted in the Technical Specifications set forth below.

Refer to the Technical Specifications for additional warranty provisions and requirements.

#### **40. RESERVED**

#### **41. Maintenance Bond**

In addition to any other warranty, expressly stated or implied herein or otherwise arising as matter of law, the Contractor shall provide to the County a two-year Maintenance Bond upon completion of the Work, in a form acceptable to County Counsel, in an amount equal to TEN PERCENT of the final Contract cost, as an added warranty against defects in material and workmanship provided to the County, which shall commence upon final Acceptance of the Work by the County.

#### **42. Indemnification**

A. Contractor agrees to protect, defend, indemnify and save harmless the County and its officers, directors, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses and damages, fines, penalties and assessments (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any and all losses, claims, actions, costs, expenses, judgment, subrogation or other expenses by reason of any real or alleged injury or damage to the person or property of others arising out of or incidental to the Contractor's performance of the Work as set forth in the Contract Documents.

B. If it becomes necessary for the Contractor, either as principal or by agent or employee, to enter upon the premises or property of the County, in order to construct, erect, inspect, make delivery or remove property hereunder, the Contractor hereby covenants and agrees to be responsible for, and to indemnify and save harmless the County from the payment of all sums of money by reason of any accidents, injuries damages or hurt that may happen or occur upon or about such work and all fines, penalties and loss incurred for or by reason of the violation of any municipal or County ordinance, regulations, or the laws of the State, or the United States, arising from or related to the Contractor's performance of its Work.

C. The Contractor shall indemnify and save harmless the County against any and all claims for royalty, patent infringements or suits for information thereon which may be involved in the manufacture or use of the item to be furnished herein.

D. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment.

E. If Contractor hires an "Licensed Abatement" subcontractor, said Contractor must provide County of Atlantic with Certificate of Insurance outlining ALL current coverages.

### **43. Default**

43.1 Events of Default. Without limitation upon any duty or obligation imposed upon the Contractor by the Contract Documents, Default by the Contractor shall include the following:

- A. Failure by the Contractor to begin work under the Contract within the time specified in the Notice to Proceed, or otherwise according to the Contract;
- B. Failure by the Contractor to perform the Work with sufficient workmen, equipment or materials to insure completion of the Work in accordance with the Contract;
- C. Violation by the Contractor of any of the conditions or covenants of the Contract, the Documents, or any order of the County authorized therein, and failure to execute the same in good faith or in accordance with the terms thereof;
- D. Unnecessary, unreasonable or negligent delay by the Contractor in performance of the Contract;
- E. Abandonment or discontinuation by the Contractor of performance of the Work without approval of the County, or failure to resume Work which has been discontinued within a reasonable time after notice to do so;
- F. Failure or refusal by the Contractor to remove materials or perform anew any Work rejected as defective or unsatisfactory;
- G. Failure by the Contractor to complete the Work within the time specified in the Contract, or within the extended time as otherwise provided according to the Contract;
- H. Insolvency or bankruptcy of the Contractor, or commission by him of any act of insolvency or bankruptcy;
- I. Failure by the Contractor to protect, repair or make good any damage or injury to property;
- J. Failure by the Contractor, for any cause whatsoever, to carry on the Work in an acceptable manner;
- K. Conviction of any principal of Contractor of any crime under the laws of the State of New Jersey which, if committed by a public official, would disqualify that person from public employment;
- L. Failure of Contractor to pay its subcontractors and/or suppliers, or any governmental authority any sums that are legally due and owing that are related to provision of goods or services related to this project.
- M. Assignment or subcontracting of the work or any part thereof or any monies due hereunder that is not authorized as set forth in this Contract.

43.2 Remedies: In the event of a default by the Contractor. The County shall be entitled to proceed with each and every remedy that may be available at law or in equity, including but not limited to: commencement of an action seeking specific performance, damages, and termination of this agreement as provided hereinafter.

Should the County fail to make any payment when such payment is due in accordance with the Contract Documents, or otherwise fail to perform any material duty or obligation imposed upon the County by the Contract Documents. the Contractor shall be permitted to proceed with all remedies that may be available at law or in equity, provided that Contractor shall first provide the County with written notice of the circumstances that are alleged to constitute a default and a 30 day opportunity to cure.

Prior to commencement of any right or remedy pursuant to this section, the party alleging a default shall provide the defaulting party with written notice of the facts and circumstances that are alleged to

constitute a default, together with an opportunity to cure, which shall in no event extend beyond 30 days from the date of the alleged default's occurrence.

Notwithstanding the foregoing, commencement of remedies for construction contracts subject to N.J.S.A. 40A:11-50 shall be subject to mediation of disputes, as provided hereinafter at General Condition Section 47. The County and Contractor shall seek to mediate claims and disputes, when resort to litigation is not authorized, as set forth in the Contract Documents.

The commencement of one or more remedy shall not preclude the County from pursuit of any other available remedy

#### **44. Continuation of the Work by the Contractor During A Dispute**

During the pendency of any dispute or disagreement, the Contractor shall carry on the Work in accordance with the Contract Document and adhere to the progress schedule, and shall not abandon, slow down or terminate the Work. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, unless this Contract is Terminated or such deviation from the Work or Work Schedule is directed by the County.

#### **45. County's Right To Carry Out The Work**

If the Contractor fails to correct defective work, or otherwise neglects to carry out the Work in accordance with the Contract Documents, the County may elect to issue a written demand for performance to the Contractor. If the Contractor continues to fail to perform the Work within a ten day period after issuance of the County's written demand for performance, the County may elect to make the required corrections or otherwise carry out the Work in accordance with the Contract Documents. The County's election to perform such work shall be without prejudice to other remedies, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including County's expenses and compensation for the County's Architect or Resident Engineer, for all additional services made necessary by such default, neglect or failure, to the fullest extent permitted by law.

#### **46. Liquidated Damages**

Without limitation upon any other provision regarding liquidated damages in the Contract Documents, all amounts set forth in the Contract Documents as liquidated damages shall be a per day charge for every calendar day that the Contractor is in default in completing the Work or any designated portion thereof in excess of the number of days prescribed. The daily sums herein contracted to be paid by the Contractor to the County for any default or delay in the completion of this Work or portions of Services are stipulated to be not a penalty, but rather, liquidated compensation for damages which the County will suffer by reason of such default, loss of use of property, interest on monies borrowed, increased administrative and engineering costs, and other tangible and intangible losses.

The County may deduct the sum of liquidated damages from any monies due or that become due the Contractor under the Contract. If such monies are insufficient, the Contractor or his surety or sureties shall pay to the County any deficiency in such monies within thirty (30) calendar days. Assessment of



Liquidated Damages are not intended and shall not be an exclusive, and are in addition to any other rights and remedies provided by law or under this Contract.

Refer to the Technical Specifications for additional provisions concerning liquidated damages.

#### **47. Mediation Provisions for Construction Contracts**

Either party to this contract may demand that a dispute concerning whether a party has failed to make payments pursuant to the provisions of N.J.S.A. 2A:30A-1 et seq., or perform Work required hereunder be submitted to non-binding mediation.

If mediation is demanded, it shall be demanded consistent with the county's provisions concerning Alternative Dispute Resolution for contracts to which N.J.S.A. 40A:11-50 is applicable. Those provisions are set forth below.

Alternative Dispute Resolution shall not be available with regard to disputes concerning the bid solicitation or award process or the formation of contracts or subcontracts entered into pursuant to the New Jersey Local Public Contracts Law. In addition, Alternative Dispute Resolution shall not prevent either party from pursuing any other remedy, including but not limited to injunctive relief or an action for specific performance, in the event that emergent circumstances exist or when necessary to protect the health, safety or welfare of the public.

The County's Alternative Dispute Resolution procedure is as follows:

- A. Controversies and Claims Subject to Mediation. Except as specified above, if a dispute between County and Contractor arises during the course of the contract, the parties will make a good faith effort to resolve the dispute through non-binding mediation prior to resorting to litigation.
- B. Contract Performance Pending Mediation. During mediation proceedings, Contractor shall continue to perform, and County shall continue to make payments pursuant to the terms of the contract.
- C. When Mediation May be Demanded. Prior to either party demanding mediation, the aggrieved party shall attempt to resolve the problem directly with the other party.

In the event that the parties are unable to directly resolve a problem within 10 days of the first notice of the dispute, the aggrieved party shall promptly submit a written notice of dispute to the other party. The other party shall respond in writing.

Demand for mediation of any claim shall not be made until the earlier of the following:

- (i) Five (5) business days after the other party has provided its written response to the aggrieved party's notice of dispute; or
- (ii) Thirty (30) days have passed after submission of the original, written claim by the aggrieved party and the other party has not responded.

If the written response from the other party does not resolve the dispute, the aggrieved party shall have thirty (30) days from the delivery of the other party's response to file a demand for mediation. If the aggrieved party fails to do so, it shall be deemed to have waived its right pursuant to this contract to demand Alternative Dispute Resolution.

A party who files a "Notice of Demand for Mediation" must assert in the demand all claims then known to that party for which mediation may be demanded. If a party fails to include a claim because of excusable neglect, or when a claim has matured or been acquired subsequently, the mediator or mediators may permit amendments.

D. Procedure to Request Mediation. Either party may demand mediation by written notice to the other party. The written notice shall contain at minimum 1) a brief statement of the nature of the dispute, and 2) the name, address and the phone number of that party's designated representative for purposes of mediation. The other party shall designate its representative for mediation in writing no later than five (5) business days after receipt of the demand for mediation. The respective designees shall thereupon promptly, and with due regard for the need for timely action, choose a mediator. If the parties cannot agree on a mediator, they shall choose a reputable mediation firm.

Any mediation firm so chosen shall present a list of at least five (5) proposed mediators to the parties and shall provide the parties with a summary of each person's qualifications to serve as mediator. Each party shall rank the proposed mediators in order of preference.

The fifth and any lower ranked persons on each list will be excluded from further consideration.

The chosen mediator shall be the remaining person who is the combined highest ranking mediator on both preference lists, after deleting all excluded persons.

In the event of a tie, the mediator shall be chosen by lot.

E. Procedures at Mediation. The mediation shall be conducted in such reasonable and efficient manner as may be agreed between the parties and the mediator or, if the parties cannot agree, as may be determined by the mediator.

The parties will not be bound by the Rules of Evidence in presenting their positions before the mediator.

F. Cost of Mediation. Each party will bear its own cost of participation in the mediation. The mediator's fee will be divided equally between the parties.

G. Failure of Mediation. If a good faith effort to resolve the dispute through mediation is unsuccessful within 60 days after the initial request for mediation, then either party may terminate the mediation by written notice to the mediator and to the other party. Thereafter, either party may submit the dispute to the Superior court of New Jersey, Atlantic County, for adjudication, which court shall have exclusive original jurisdiction over the dispute.

In no event shall the Contractor be entitled to an extension of time or an increase in compensation due to change in the Work that exceeds the actual and reasonable costs directly resulting from such change. The total changes sought by the Contractor shall not exceed the amounts allowed by force accounts established hereunder.

The Contractor shall bear the duty and responsibility to prove that it has complied with the Contract, and that it is entitled as matter of law and or equity to any excess payments.

#### **48. Termination of Contract**

A. Termination for Convenience: The County may terminate a Contract, in whole or in part, without showing cause upon giving written notice to the Contractor, when the County determines that termination is in the best interest of the County. The County shall pay all costs incurred by the Contractor up to the date of termination, less any credits or setoffs that are due and owing to the County, as specified by the Contract Documents. The Contractor will not be reimbursed for any anticipatory profits, or for any costs or expenses which have not been incurred for materials delivered or work performed for the County, as of the date of termination.

B. Termination by the Owner for Cause: Without limitation upon any other right or remedy that may exist or be available to the County under the Contract Documents or generally as a matter of law or in equity, the County may terminate the Contract if the Contractor:

1. Persistently or repeatedly refused or fails to supply enough skilled workers or proper materials;
2. Fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the contractor and the subcontractor;
3. Persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
4. Otherwise is guilty of substantial breach of a provision of the contract documents.

The County shall pay all costs incurred by the Contractor up to the date of termination, less any credits or setoffs that are due and owing to the County, as specified by the Contract Documents. The Contractor will not be reimbursed for any anticipatory profits, or for any costs or expenses which have not been incurred for materials delivered or work performed for the County, as of the date of termination.

C. Notice of Termination. When any of the above reasons exists, the County may terminate the contract after giving the Contractor and the Contractor's surety, if any, seven (7) days' written notice of the Termination.

#### **49. Special Provisions Regarding "Differing Site Conditions"**

A. If the Contractor encounters differing site conditions during the progress of the Work, the Contractor shall promptly notify the County in writing of the specific differing site conditions encountered before the site is further disturbed and before any additional work is performed in the location that is impacted by the differing site conditions.

B. Upon receipt of a Differing Site Conditions Notice in accordance with paragraph A above, of this subsection, or upon the County otherwise learning of differing site conditions, the County shall promptly undertake an investigation to determine whether differing site conditions are present. If the County determines different site conditions exist and may result in additional costs or delays, the County shall provide prompt written notice to the Contractor containing directions on how to proceed.

C. The County shall make a fair and equitable adjustment to the contract price and contract completion date for increased costs and delays resulting from the agreed upon differing site conditions encountered by the contractor. If both parties agree that the contracting unit's investigation and directions decrease the contractor's costs or time of performance, the contracting unit shall be entitled to a fair and equitable downward adjustment of the contract price or time of performance.

D. If the County determines that there are no differing site conditions present that would result in additional costs or delays, the County shall notify the contractor, in writing, and the Contractor shall resume performance of the Work. In such event, the Contractor shall be entitled to pursue a Differing Site Conditions claim against the County for additional compensation or time attributable to the alleged differing site conditions.

E. Execution of the contract by the Contractor shall constitute a representation that the contractor has visited the site and has become generally familiar with the local conditions under which the work is to be performed.

F. As used in this subsection, "differing site conditions" mean physical conditions at the contract work site that are subsurface or otherwise concealed and which differ materially from those indicated in the Contract Documents or are of such an unusual nature that the conditions differ materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the contract.

## **50. Special Provisions Regarding Suspension of Work**

A. In the event that the County determines that it is necessary to suspended performance of all or any portion of the Work for a period of time lasting more than 10 calendar days, the County shall give prompt written notice of the suspension to the Contractor.

B. If the performance of all or any portion of the Work is suspended by the County for more than 10 calendar days due to no fault of the Contractor or as a consequence of an occurrence beyond the County's control, the Contractor shall be entitled to compensation for any resultant delay to the Work completion date or additional Contractor expenses, and to an extension of time, provided that, to the extent feasible, the Contractor, within 10 calendar days following the conclusion of the suspension, notifies the County, in writing, of the nature and extent of the suspension of work.

C. The notice of a Work Suspension Claim shall include available supporting information, which information may thereafter be supplemented by the Contractor as needed and as may be reasonably requested by the County.

- D. Whenever a work suspension exceeds 60 days, upon seven days' written notice, either party' shall have the option to terminate the contract for cause and to be fairly and equitably compensated therefor.
- E. Upon receipt of the Contractor's suspension of work notice in accordance with paragraph B of this subsection, the County shall promptly evaluate the Contractor's notice and promptly advise the Contractor of its determination on how to proceed in writing.
- F. If the County determines that the Contractor is entitled to additional compensation or time, the County shall make a fair and equitable upward adjustment to the contract price and contract completion date.
- G. If the County determines that the Contractor is not entitled to additional compensation or time, the contractor shall proceed with the performance of the contract work, and shall be entitled to pursue a suspension of work claim against the County for additional compensation or time attributable to the suspension.
- H. Failure of the Contractor to provide timely notice of a suspension of work shall result in a waiver of a claim if the contracting unit can prove by clear and convincing evidence that the lack of notice or delayed notice by the contractor actually prejudiced the contracting unit's ability to adequately investigate and defend against the claim.

**51. Special Provisions Regarding Changes in the Character of The Work**

- A. If the Contractor believes that the County has directed the Contractor to undertake a material change to the Work, the Contractor shall notify the County in writing of such Change of Character to the Work
- B. The Contractor shall continue to perform all Work on the project that is not the subject of the notice of a change of character to the Work.
- C. Upon receipt of the Contractor's Change in Character notice in accordance with paragraph (A) of this subsection, the County shall promptly evaluate the Contractor's notice and promptly advise the Contractor of its determination on how to proceed in writing.
- D. If the County determines that a change to the Contractor's Work caused or directed by the County materially changes the character of any aspect of the Work, the County shall make a fair and equitable upward adjustment to the contract price and contract completion date.
- E. The basis for any such price adjustment shall be the difference between the cost of performance of the work as planned at the time of contracting and the actual cost of such work as a result of its change in character, or as otherwise mutually agreed upon by the contractor and the County to the contractor performing the changed character work.
- F. If the County determines that the contractor is not entitled to additional compensation or time, the contractor shall continue the performance of all contract work, and shall be entitled to pursue a claim against the County for additional compensation or time attributable to the alleged material change.

- G As used in this subsection, "material change" means a character change which increases or decreases the contractor's cost of performing the work, increases or decreases the amount of time by which the Contractor completes the work in relation to the contractually required completion date, or both.

**52. Special Provisions Regarding Changes in Quantities:**

- A. The County may increase or decrease the quantity of Work to be performed by the Contractor.
- i. If the quantity of a pay item is cumulatively increased or decreased by 20 percent or less from the bid proposal quantity, the quantity change shall be considered a minor change in quantity.
- ii. If the quantity of a pay item is increased or decreased by more than 20 percent from the bid proposal quantity, the quantity change shall be considered a major change in quantity.
- B. For any minor change in quantity, the County shall make payment for the quantity of the pay item performed at the bid price for the pay item.
- C. For a major increase in quantity, the County or contractor may request to renegotiate the price for the quantity in excess of 120 percent of the bid proposal quantity. If a mutual agreement cannot be reached on a negotiated price for a major quantity increase, the County shall pay the actual costs plus an additional 5 percent for overhead and an additional 5 percent for profit.
- D. In the event of a major decrease in quantity, the County or contractor may request to renegotiate the price for the quantity of work performed. If a mutual agreement cannot be reached on a negotiated price for a major quantity decrease, the County shall pay the actual costs plus an additional 10 percent for overhead and an additional 10 percent for profit, unless otherwise specified in the original Bid; provided, however, that the contracting unit shall not make a payment in an amount that exceeds 80 percent of the value of the bid price multiplied by the bid proposal quantity.
- E. As used in this subsection, the term "bid proposal quantity" means the quantity indicated in the bid proposal less the quantities designated in the project plans as "if and where directed."

**53. Record Keeping And Right To Audit:**

N.J.A.C. 17:44-2.2 provides that:

"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."

The Contractor and all of its subcontractors agree that they shall keep and maintain complete and accurate records and all documents related to this contract, as required by law, including but not limited to proper and adequate books, records and accounts accurately reflecting all cost and amounts billed to County with regard to this Project.

Upon request all such records shall be made available to employees, representatives and agents of the New Jersey Office of the Comptroller for review, inspection and reproduction, as such employee, representative or agent shall require. Such records shall also be made available for review inspection and reproduction by the County's designated employees or representatives. Such records shall be retained by Contractor and all of its subcontractors for at least five (5) years after the date of final payment. In no event shall books and records be disposed of or destroyed prior to five (5) years, or during any dispute or claim between County and Contractor with regard to this agreement or during any review of such records conducted by the State of New Jersey,

The Contractor is hereby advised that maintenance of such records is required pursuant to N.J.A.C. 17:44-2.2, and that all such records shall be made available for inspection to the New Jersey Office of the Comptroller, upon request during the said five year period and that all such records shall be preserved during the pendency of any dispute or review.