Goods And Services Bid Specifications:

A Guide For New Jersey Local Public Agencies
(Second Edition)

State of New Jersey
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## GOODS AND SERVICES BID SPECIFICATIONS:
A GUIDE FOR NEW JERSEY LOCAL PUBLIC AGENCIES
(Yellow Book -- MSWord format)

**IMPORTANT - Read First:** Introduction and Preface

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**SECTION B — SUPPLEMENTAL INFORMATION**

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Introduction to the Second Edition

This Guide, "Goods and Services Bid Specifications" (also known as the "Procurement Yellow Book") is a comprehensive update to the original 1995 edition that includes the impact of new and amended laws and reported court cases that affect local unit contracting.

The Guide provides the "boilerplate" language that meets statutory requirements and sound procurement practices for procuring goods and services. It directly meets the needs of contracting units that fall under the Local Public Contracts Law. (N.J.S.A. 40A:11-1 et seq.)

While a boilerplate document, users are cautioned not to use it without due consideration. The standard forms include many blanks that must be completed and options that are only used if a box is checked to apply to a given bid. Check box use is required – without checking them, its provision is not applicable, so the document must be customized for each use.

The Guide is in three sections. Section A is the "Instructions to Bidders" section. Each section is numbered in outline form and is correlated to Section B, the "Supplement" and Section C the "Standard Bid Document Reference." The Supplement provides details explaining various sections of the specification and reviewing options available to users. It includes considerations of when to exercise options and their impact. The Reference includes explanatory and statutory information about the various forms as well as sample language and forms. Where appropriate, the forms should be adapted to local needs.

The entire Guide is available on the Division’s Local Procurement Web Site at www.nj.gov/dca/lgis/lpcl. The text and individual forms can be downloaded in Microsoft Word format for local editing and revisions.

The Guide is a product of the Division’s responsibility to provide technical advice. Thus, as technical guidance, contracting unit procurement and legal professionals should review it to ensure it meets agency needs and any local and statutory requirements.

The Division extends its grateful appreciation to the Governmental Purchasing Association of New Jersey and its Yellow Book Committee for its assistance in preparing and reviewing development drafts of the Guide. Comments and suggestions for improvements can be directed to the Division at lpcl@dca.state.nj.us.

http://www.state.nj.us/dca/lgis/lpcl/yellowbook/yelbook_1_intro.htm

1/24/2012
GOODS AND SERVICES BID SPECIFICATIONS:
A GUIDE FOR NEW JERSEY LOCAL PUBLIC AGENCIES
(Yellow Book)


PREFACE

Although all bid documents are a matter of law and policy determined by local officials of the contracting unit, there has long been a call to standardize "Instructions to Bidders and Statutory Requirements" or what is generally known as "boilerplate" language. General instructions and required language are the precursors to the essential part of all bid documents, the "Technical Specifications." The basic elements of all journalism — who, what, where, when and how — are translated into the business language of public procurement and published as a document commonly referred to as SPECIFICATIONS, BID PACKAGE, REQUEST FOR PROPOSALS or BID PROPOSAL.

The difficulty of developing ideal or standard language is compounded by the nature and variety of bids, i.e., construction, service or materials, as well as the many different types of contracting units, i.e., counties, municipalities, local commissions, and local authorities. When adapting these guidelines for your agency's use, you must consider these differences. Be sure to review the Supplemental Information, (previously known as the Notes on the Instructions to Bidders) and the Standard Bid Document Reference sections for detailed information and sample documents. Please remember that the statutory references used in this Guide are those of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.). If the law governing your contracting unit differs, you may need to add, modify, or delete statutory provisions.

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

The eleven sections of Instructions to Bidders are considered the basic elements of general bid instructions and incorporate generally accepted public procurement practice. It is not suggested that these are the only sections needed by a contracting unit. However, they are the foundation on which specifications can be built.
GOODS AND SERVICES BID SPECIFICATIONS: A GUIDE FOR NEW JERSEY LOCAL PUBLIC AGENCIES

SECTION A

Instructions to Bidders and Statutory Requirements
Instructions To Bidders And Statutory Requirements

I. SUBMISSION OF BIDS

A. Sealed bids shall be received by the contracting unit, hereinafter referred to as “owner,” in accordance with public advertisement as required by law, with a copy of said notice being attached hereto and made a part of these specifications.

B. Sealed bids will be received by the designated representative at the time _________ (am/pm) and ________ (location of b'd opening) as stated in the Notice to Bidders, and at such time and place will be publicly opened and read aloud.

C. The bid shall be submitted in a sealed envelope: (1) addressed to the owner, (2) bearing the name and address of the bidder written on the face of the envelope, and (3) clearly marked “BID” with the contract title and/or bid # of the contract being bid.

D. It is the bidder’s responsibility that bids are presented to the owner at the time and at the place designated. Bids may be hand delivered or mailed; however, the owner disclaims any responsibility for bids forwarded by regular or overnight mail. If the bid is sent by express mail service, the designation in sub-section C, above, must also appear on the outside of the express mail envelope. Bids received after the designated time and date will be returned unopened.

E. Sealed bids forwarded to the owner before the time of opening of bids may be withdrawn upon written application of the bidder who shall be required to produce evidence showing that the individual is or represents the principal or principals involved in the bid. Once bids have been opened, they shall remain firm for a period of sixty (60) calendar days.

F. All prices and amounts must be written in ink or preferably machine-printed. Bids containing any conditions, omissions, unexplained erasures or alterations, items not called for in the bid proposal form, attachment of additive information not required by the specifications, or irregularities of any kind, may be rejected by the owner. Any changes, whiteouts, strikeouts, etc. in the bid must be initialed in ink by the person signing the bid.

G. Each bid proposal form must give the full business address, business phone, fax, e-mail if available, the contact person of the bidder, and be signed by an authorized representative as follows:

- Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing.
- Bids by corporations must be signed in the legal name of the corporation, followed by the name of the State in which incorporated and must contain the signature and designation of the president, secretary or other person authorized to bind the corporation in the matter.
- Bids by sole-proprietorship shall be signed by the proprietor.
- When requested, satisfactory evidence of the authority of the officer signing shall be furnished.

H. Bidder should be aware of the following statutes that represent “Truth in Contracting” laws:

- N.J.S.A. 2C:21-34, et seq. governs false claims and representations by bidders. It is a serious crime for the bidder to knowingly submit a false claim and/or knowingly make material misrepresentation.
- N.J.S.A. 2C:27-10 provides that a person commits a crime if said person offers a benefit to a public servant for an official act performed or to be performed by a public servant, which is a violation of official duty.
- N.J.S.A. 2C:27-11 provides that a bidder commits a crime if said person, directly or indirectly, confers or agrees to confer any benefit not allowed by law to a public servant.
- Bidder should consult the statutes or legal counsel for further information.
II. BID SECURITY AND BONDING REQUIREMENTS

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

☐ A. BID GUARANTEE

Bidder shall submit with the bid a certified check, cashier's check or bid bond in the amount of ten percent (10%) of the total price bid, but not in excess of $20,000, payable unconditionally to the owner. When submitting a Bid Bond, it shall contain Power of Attorney for full amount of Bid Bond from a surety company authorized to do business in the State of New Jersey and acceptable to the owner. The check or bond of the unsuccessful bidder(s) shall be returned pursuant to N.J.S.A. 40A:11-24a. The check or bond of the bidder to whom the contract is awarded shall be retained until a contract is executed and the required performance bond or other security is submitted. The check or bond of the successful bidder shall be forfeited if the bidder fails to enter into a contract pursuant to N.J.S.A. 40A:11-21.

Failure to submit a bid guarantee shall result in rejection of the bid.

☐ B. CONSENT OF SURETY

Bidder shall submit with the bid a Certificate (Consent of Surety) with Power of Attorney for full amount of bid price from a Surety Company authorized to do business in the State of New Jersey and acceptable to the owner stating that it will provide said bidder with a Performance Bond in the full amount of the bid. This certificate shall be obtained in order to confirm that the bidder to whom the contract is awarded will furnish Performance and Payment Bonds from an acceptable surety company on behalf of said bidder, any or all subcontractors or by each respective subcontractor or by any combination thereof which results in performance security equal to the total amount of the contract, pursuant to N.J.S.A. 40A:11-22.

Failure to submit a consent of surety form shall result in rejection of the bid.

☐ C. 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 performance bond provided shall not be released until final acceptance of the whole work and then only if any liens or claims have been satisfied. The surety on such bond or bonds shall be a duly authorized surety company authorized to do business in the State of New Jersey pursuant to N.J.S.A. 17:31-5.

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.

☐ D. LABOR AND MATERIAL (PAYMENT) BOND

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

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

Upon acceptance of the work by the owner, the contractor shall submit a maintenance bond (N.J.S.A. 40A:11-16.3) in an amount not to exceed ___% of the project costs guaranteeing against defective quality of work or materials for the period of:

___ 1 year
___ 2 years

III. INTERPRETATION AND ADDENDA

A. The bidder understands and agrees that its bid is submitted on the basis of the specifications prepared by the owner. The bidder accepts the obligation to become familiar with these specifications.

B. Bidders are expected to examine the specifications and related bid documents with care and observe all their requirements. Ambiguities, errors or omissions noted by bidders should be promptly reported in writing to the appropriate official. Any prospective bidder who wishes to challenge a bid specification shall file such challenges in writing with the contracting agent no less than three business days prior to the opening of the bids. Challenges filed after that time shall be considered void and having no impact on the contracting unit or the award of a contract pursuant to N.J.S.A. 40A:11-13. In the event the bidder fails to notify the owner of such ambiguities, errors or omissions, the bidder shall be bound by the requirements of the specifications and the bidder's submitted bid.

C. No oral interpretation and or clarification of the meaning of the specifications for any goods and services will be made to any bidder. Such request shall be in writing, addressed to the owner's representative stipulated in the specification. In order to be given consideration, a written request must be received at least seven (7) business days prior to the date fixed for the opening of the bid for goods and services.

All interpretations, clarifications and any supplemental instructions will be in the form of written addenda to the specifications, and will be distributed to all prospective bidders. All addenda so issued shall become part of the specification and bid documents, and shall be acknowledged by the bidder in the bid. The owner's interpretations or corrections thereof shall be final.

When issuing addenda, the owner shall provide required notice prior to the official receipt of bids to any person who has submitted a bid or who has received a bid package pursuant to N.J.S.A. 40A:11-23c.1.

D. Discrepancies in Bids

1. If the amount shown in words and its equivalent in figures do not agree, the written words shall be binding. Ditto marks are not considered writing or printing and shall not be used.

2. In the event that there is a discrepancy between the unit prices and the extended totals, the unit prices shall prevail. In the event there is an error of the summation of the extended totals, the computation by the owner of the extended totals shall govern.

E. Pre-Bid Conference

If stated in the Notice to Bidders:

☐ A Pre-Bid Conference is not required for this bid.

☐ A pre-bid conference for this proposal will be held on ____________________.

Attendance is not mandatory, but is strongly recommended. Failure to attend does not relieve the bidder of any obligations or requirements.
IV. BRAND NAMES, STANDARDS OF QUALITY AND PERFORMANCE

A. Brand names and/or descriptions used in these specifications are to acquaint bidders with the types of goods and services desired and will be used as a standard by which goods and services offered as equivalent will be evaluated.

B. Variations between the goods and services described and the goods and services offered are to be fully identified and described by the bidder on a separate sheet and submitted with the bid proposal form. Vendor literature WILL NOT suffice in explaining exceptions to these specifications. In the absence of any exceptions by the bidder, it will be presumed and required that the goods and services as described in the bid specification be provided or performed.

C. It is the responsibility of the bidder to document and/or demonstrate the equivalency of the goods and services offered. The owner reserves the right to evaluate the equivalency of the goods and services.

D. In submitting its bid, the bidder certifies that the goods and services to be furnished will not infringe upon any valid patent or trademark and that the successful bidder shall, at its own expense, defend any and all actions or suits charging such infringement, and will save the owner harmless from any damages resulting from such infringement.

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

F. The contractor shall guarantee any or all goods and services supplied under these specifications. Defective or inferior goods shall be replaced at the expense of the contractor. The contractor will be responsible for return freight or restocking charges.

V. INSURANCE AND INDEMNIFICATION

The insurance documents indicated by an (X) shall include but are not limited to the following coverage's.

A. INSURANCE REQUIREMENTS

☐ 1. Worker’s Compensation Insurance

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

☐ 2. General Liability Insurance

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

☐ 3. Automotive Liability Insurance

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

☐ 4. Other Forms Of Insurance Required
B. CERTIFICATES OF THE REQUIRED INSURANCE

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

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

□ C. INDEMNIFICATION

Bidder shall indemnify and hold harmless the owner from all claims, suits or actions, and damages or costs of every name and description to which the owner may be subjected or put by reason of injury to the person or property of another, or the property of the owner, resulting from negligent acts or omissions on the part of the contractor, the contractor’s agents, servants or subcontractors in the delivery of goods and services, or in the performance of the work under the contract.

VI. PRICING INFORMATION FOR PREPARATION OF BIDS

A. The owner is exempt from any local, state or federal sales, use or excise tax.

B. Estimated Quantities (Open-End Contracts): The owner has attempted to identify the item(s) and the estimated amounts of each item bid to cover its requirements; however, past experience shows that the amount ordered may be different than that submitted for bidding. The right is reserved to decrease or increase the quantities specified in the specifications pursuant to N.J.A.C. 5:30-11.2 and 11.10. NO MINIMUM PURCHASE IS IMPLIED OR GUARANTEED.

C. Contractor shall be responsible for obtaining any applicable permits or licenses from any government entity that has jurisdiction to require the same. All bids submitted shall have included this cost.

D. Bidders shall insert prices for furnishing goods and services required by these specifications. Prices shall be net, including any charges for packing, crating, containers, etc. All transportation charges shall be fully prepaid by the contractor, F.O.B. destination and placement at locations specified by the owner. As specified, placement may require inside deliveries. No additional charges will be allowed for any transportation costs resulting from partial shipments made for the contractor's convenience.

VII. STATUTORY AND OTHER REQUIREMENTS

The following are mandatory requirements of this bid and contract.

A. MANDATORY AFFIRMATIVE ACTION CERTIFICATION

No firm may be issued a contract unless it complies with the affirmative action provisions of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27-1 et seq. The following information summarizes the full, required regulatory text, which is included as Exhibit A of this bid specification.

1. Goods and Services (including professional services) Contracts

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

   i. A photocopy of a valid letter that the contractor is operating under an existing Federally approved or sanctioned affirmative action program (good for one year from the date of the letter); or

   ii. A photocopy of a Certificate of Employee Information Report approval, issued in accordance with N.J.A.C. 17:27-4; or
iii. A photocopy of an Employee Information Report (Form AA 302) provided by the Division and distributed to the public agency to be completed by the contractor in accordance with N.J.A.C. 17:27-4.

2. Maintenance/Construction Contracts

After notification of award but prior to signing the contract, the contractor shall submit to the public agency compliance officer and the Division of Contract Compliance and Equal Employment Opportunity in Public Contracts (Division) an initial project workforce report (Form AA201) provided to the public agency by the Division for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7.

The contractor shall also submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of the contract to the Division and to the public agency compliance officer. The contractor shall also cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women.

B. AMERICANS WITH DISABILITIES ACT OF 1990

Discrimination on the basis of disability in contracting for the purchase of goods and services is prohibited. Bidders are required to read Americans With Disabilities language that is included as Appendix A of this specification and agree that the provisions of Title II of the Act are made a part of the contract. The contractor is obligated to comply with the Act and to hold the owner harmless.

C. STOCKHOLDER DISCLOSURE

N.J.S.A. 52:25-24.2 provides that no corporation or partnership shall be awarded any contract for the performance of any work or the furnishing of any goods and services, unless, prior to the receipt of the bid or accompanying the bid of said corporation or partnership, bidders shall submit a statement setting forth the names and addresses of all stockholders in the corporation or partnership who own ten percent or more of its stock of any class, or of all individual partners in the partnership who own a ten percent or greater interest therein. The included Statement of Ownership shall be completed and attached to the bid proposal. This requirement applies to all forms of corporations and partnerships, including, but not limited to, limited partnerships, limited liability corporations, limited liability partnerships and Subchapter S corporations. Failure to submit a stockholder disclosure document shall result in rejection of the bid.

D. PROOF OF BUSINESS REGISTRATION

N.J.S.A. 52:32-44 requires that each bidder (contractor) submit proof of business registration with the bid proposal. Proof of registration shall be a copy of the bidder’s Business Registration Certificate (BRC). A BRC is obtained from the New Jersey Division of Revenue. Information on obtaining a BRC is available on the internet at www.nj.gov/njbs or by phone at (609) 292-1730. N.J.S.A. 52:32-44 imposes the following requirements on contractors and all subcontractors that knowingly provide goods or perform services for a contractor fulfilling this contract:

1) The contractor shall provide written notice to its subcontractors and suppliers to submit proof of business registration to the contractor;
2) Prior to receipt of final payment from a contracting agency, a contractor must submit to the contracting agency an accurate list of all subcontractors or attest that none was used;
3) During the term of this contract, the contractor and its affiliates shall collect and remit, and shall notify all subcontractors and their affiliates that they must collect and remit to the Director, New Jersey Division of Taxation, 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 this State.

A contractor, subcontractor or supplier who fails to provide proof of business registration or provides false business registration information shall be liable to a penalty of $25 for each day of violation, not to exceed $50,000 for each business registration not properly provided or maintained under a contract with a contracting agency. Information on the law and its requirements is available by calling (609) 292-1730.
If boxes of the following items are checked, they are mandatory requirements of the bid proposal and contract.

☐ E. NEW JERSEY WORKER AND COMMUNITY RIGHT TO KNOW ACT

The manufacturer or supplier of chemical substances or mixtures shall label them in accordance with the N.J. Worker and Community Right to Know Law (N.J.S.A. 34:5A-1 et seq., and N.J.A.C. 8:59-2 et seq.). Containers that the law and rules require to be labeled shall show the Chemical Abstracts Service number of all the components and the chemical name. Further, all applicable Material Safety Data Sheets (MSDS) - hazardous substance fact sheet - must be furnished.

☐ F. PREVAILING WAGE ACT

Pursuant to N.J.S.A. 34:11-56.25 et seq., contractors on projects for public work shall adhere to all requirements of the New Jersey Prevailing Wage Act. The contractor shall be required to submit a certified payroll record to the owner within ten (10) days of the payment of the wages. The contractor is also responsible for obtaining and submitting all subcontractors' certified payroll records within the aforementioned time period. The contractor shall submit said certified payrolls in the form set forth in N.J.A.C. 12:60-6.1(c). It is the contractor's responsibility to obtain any additional copies of the certified payroll form to be submitted by contacting the New Jersey Department of Labor and Workforce Development, Division of Workplace Standards. Additional information is available at www.state.nj.us/labor/Isse/Spubcon.html.

☐ G. THE PUBLIC WORKS CONTRACTOR REGISTRATION ACT

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

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

The law defines "public works projects" as contracts for "public work" as defined in the Prevailing Wage statute [N.J.S.A. 34:11-56.26(5)]. The term means:

- Construction, reconstruction, demolition, alteration, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program.
- "Public work" shall also mean construction, reconstruction, demolition, alteration, or repair work, done on any property or premises, whether or not the work is paid for from public funds..."
- "Maintenance work" means the repair of existing facilities when the size, type of extent of such facilities is not thereby changed or increased. While "maintenance" includes painting and decorating and is covered under the law, it does not include work such as routine landscape maintenance or janitorial services.

To register, a contractor must provide the State Department of Labor with a full and accurately completed application form. The form is available online at www.state.nj.us/labor/Isse/Spubcon.html.

N.J.S.A. 34:11-56.55 specifically prohibits accepting applications for registration as a substitute for a certificate of registration.
H. NON-COLLUSION AFFIDAVIT

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

I. PAY TO PLAY

Starting in January, 2007, business entities are advised of their responsibility to file an annual disclosure statement of political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.27 if they receive contracts in excess of $50,000 from public entities in a calendar year.

Business entities are responsible for determining if filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

VIII. METHOD OF CONTRACT AWARD

A. The length of the contract shall be stated in the technical specifications. Pursuant to requirements of N.J.A.C. 5:30-5.1 et seq., any contract resulting from this bid shall be subject to the availability and appropriation of sufficient funds annually. Please see Section X, Termination of Contract, Sub-section E, for additional information.

B. If the award is to be made or the basis of a base bid only, it shall be made to that responsible bidder submitting the lowest base bid.

C. If the award is to be made or the basis of a combination of a base bid with selected options, it shall be made to that responsible bidder submitting the lowest net bid.

D. The owner may also elect to award the contract on the basis of unit prices.

E. The form of contract shall be submitted by the owner to the successful bidder. Terms of the specifications/bid package prevail. Bidder exceptions must be formally accepted by the owner.

IX. CAUSES FOR REJECTING BIDS

Bids may be rejected for any of the following reasons:

A. All bids pursuant to N.J.S.A. 40A:11-13.2;

B. If more than one bid is received from an individual, firm or partnership, corporation or association under the same name;

C. Multiple bids from an agent representing competing bidders;

D. The bid is inappropriately unbalanced;

E. The bidder is determined to possess, pursuant to N.J.S.A. 40A:11-4b, Prior Negative Experience; or.

F. If the successful bidder fails to enter into a contract within 21 days, Sundays and holidays excepted, or as otherwise agreed upon by the parties to the contract. In this case at its option, the owner may accept the bid of the next lowest responsible bidder. (N.J.S.A. 40A:11-24b)

X. TERMINATION OF CONTRACT

A. If, through any cause, the contractor shall fail to fulfill in a timely and proper manner obligations under the contract or if the contractor shall violate any of the requirements of the contract, the owner shall thereupon have the right to terminate the contract by giving written notice to the contractor of such termination and specifying the effective date of termination. Such termination shall relieve the owner of any obligation for balances to the contractor of any sum or sums set forth in the contract. Owner will pay only for goods and services accepted prior to termination.
B. Notwithstanding the above, the contractor shall not be relieved of liability to the owner for damages sustained by the owner by virtue of any breach of the contract by the contractor and the owner may withhold any payments to the contractor for the purpose of compensation until such time as the exact amount of the damage due the owner from the contractor is determined.

C. The contractor agrees to indemnify and hold the owner harmless from any liability to subcontractors/suppliers concerning payment for work performed or goods supplied arising out of the lawful termination of the contract by the owner under this provision.

D. In case of default by the contractor, the owner may procure the goods or services from other sources and hold the contractor responsible for any excess cost.

E. Continuation of the terms of the contract beyond the fiscal year is contingent on availability of funds in the following year's budget. In the event of unavailability of such funds, the owner reserves the right to cancel the contract.

F. ACQUISITION, MERGER, SALE AND/OR TRANSFER OF BUSINESS, ETC.

   It is understood by all parties that if, during the life of the contract, the contractor disposes of his/her business concern by acquisition, merger, sale and/or transfer or by any means conveys his/her interest(s) to another party, all obligations are transferred to that new party. In this event, the new owner(s) will be required to submit all documentation/legal instruments that were required in the original bid/contract. Any change shall be approved by the Owner.

G. The contractor will not assign any interest in the contract and shall not transfer any interest in the same without the prior written consent of the owner.

H. The owner may terminate the contract for convenience by providing 60 calendar days advanced notice to the contractor.

XI. PAYMENT

A. No payment will be made unless duly authorized by the Owner's authorized representative and accompanied by proper documentation.

B. Payment will be made in accordance with the Owner's policy and procedures.
During the performance of this contract, the contractor agrees as follows:

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

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

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

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

The contractor or subcontractor agrees to make good faith efforts to employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2, or a binding determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

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

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
In conforming with the applicable employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affecational or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

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

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302

The contractor and its subcontractors shall furnish such reports or other documents to the Div. of Contract Compliance & EEO as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Div. of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.
APPENDIX A
AMERICANS WITH DISABILITIES ACT OF 1990
Equal Opportunity for Individuals with Disability

The contractor and the ___________ of ___________, (hereafter “owner”) do hereby agree that the provisions of Title 11 of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. §121 01 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant there unto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the owner pursuant to this contract, the contractor agrees that the performance shall be in strict compliance with the Act. In the event that the contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the contractor shall defend the owner in any action or administrative proceeding commenced pursuant to this Act. The contractor shall indemnify, protect, and save harmless the owner, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages, of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the owner’s grievance procedure, the contractor agrees to abide by any decision of the owner which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the owner, or if the owner incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the contractor shall satisfy and discharge the same at its own expense.

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

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

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

SECTION B

SUPPLEMENTAL INFORMATION TO INSTRUCTIONS TO BIDDERS
SECTION B - SUPPLEMENT
SUPPLEMENTAL INFORMATION TO INSTRUCTIONS TO BIDDERS

I. SUBMISSION OF BIDS

The public advertisement shall include specific information, which can subsequently be expanded in general instructions. The specific information includes: who is requesting bids; what is being bid; how are bids to be submitted; where and when will bids be opened; is there a cost for specifications; where bids will be submitted; and will there be a pre-bid conference? (See Instructions, Section I-A “Notice to Bidders”)

Fees for specifications are at the owner’s option. It is recommended that any reference be deleted if fees are not being charged. Fees are most often used to offset the costs of reproduction of plans and specifications (i.e., construction plans or engineering drawings) and cannot be used as a barrier or a way to limit the number of bidders.

Affirmative Action language shall be included in the advertisement. There is no exception to this requirement. "Bidders are required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27.

A sample bid proposal form is in Instructions, Section I-G “Bid Proposal Form.”

If your contracting unit requires the use of pre-printed envelopes or labels, Section I, “Submission of Bids” would be the appropriate location for the additional requirement.

Honoring requests for bid withdrawal prior to bid opening should be dictated by local policy.

State law requires (N.J.S.A. 40A:11-23b) that bids shall be received at a specified time, date and place, unsealed and announced. Deviations to this standard are rare, fact sensitive, and narrow in the application of the statutory provisions of the law. It is strongly recommended that the owner consult with legal counsel on the application of the statutory provisions of law and reported court cases impacting N.J.S.A. 40A:11-23b.

It is generally acceptable policy that there be no determination of an award or rejection of bids after the bids are opened. Any information divulged at the bid opening is not a final determination and is subject to the final action of the governing body. If the bids are open at a governing body’s meeting with the intent to award a contract, the bids should be carefully reviewed by the appropriate local officials to ensure compliance with all statutory, regulatory, and specification requirements.

Bids must be properly submitted and executed in accordance with the owner’s instructions. Material deviations or alterations may be grounds for rejection. In P&A Construction, Inc. v. Township of Woodbridge, 365 N.J. Super. 164 (App. Div. 2004), it was concluded that N.J.S.A. 40A:11-23.2 should be construed as a legislative directive that a bidder’s failure to submit any of the six mandatory items set forth in the statute shall automatically be considered a non-waivable defect. Any other bid defect is subject to case law criteria of materiality. See Township of River Vale v. R.J. Longo Construction Co., 127 N.J. Super. 207, 216 (Law Div. 1974). In this definitive case, the court
articulated two criteria for determining whether a bid defect constitutes a material and hence non-waivable irregularity:

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

II  BID SECURITY AND BONDING REQUIREMENTS

Bonding (N.J.S.A. 40A:11-21) traditionally has been used to protect a contracting unit dealing with a contractor. Contracting units have the option of requiring bonding for contracts with a value of less than $100,000; they are required over that amount. However, building and construction contracts for all contracting units require sufficient surety as well as labor and material bonds (N.J.S.A. 2A:44-143). Bonding for non-construction projects will depend on how much risk and exposure the owner is willing to assume.

There is no standard for setting a performance bond as a percentage of total non-construction contract prices. N.J.S.A. 40A:11-22a mandates the percentage for construction and building contracts.

When a statute or rule mandates a specific form, that form shall be used.

There are three important points to remember when considering bonding requirements: The surety company can be a great help in resolving difficulties that may arise between the contractor and the owner. Be sure that bonding is required in a sufficient amount. Be sure your specifications are written in sufficient detail so you can rely upon them in case of default.

Bond requirements depend on the nature and complexity of the work to be performed. Owners should review the appropriate statutes for their particular contracting units. Remember that all bond documents must be evaluated for their completeness and compliance. It is also important to note the primary purpose for each type of bond document required.

A bid guarantee is used to ensure that a bidder, if awarded a contract within the time stipulated, will enter into a contract and furnish the performance bond and, if required for a construction contract, the labor, material, and maintenance bond.

Owner should not accept a bid bond, which is for less than statutory 10%, not to exceed $20,000.00. A non-conforming bid bond is a material defect and grounds for rejection of the bid.

An owner may accept the submission of a bid guarantee in the form of a certified check, cashier's check or a bid bond. If a bid guarantee will be required on an open-end unit priced contract, the owner should specify in the instructions to bidders the amount to be used as an estimate for determining the ten (10%) percent.

A consent of surety is an agreed upon written legal relationship between a surety and a contractor. If the contractor is awarded the contract, the surety will provide to the contractor a bond for the faithful performance of all provisions of the specifications and/or all matters relating to the performance of the
contract. If the bidder submits a certified check or a cashier's check, a consent of surety for a performance bond can still be required. (See Instructions, Section II-B "Consent of Surety")

A performance (contract) bond is the surety guaranteeing to the owner the cost of completing the project in the event the contractor fails to do so. In an ideal situation, the owner is assured that it will obtain a completed project for the amount it agreed to pay. The amount of a performance bond on many projects equals the full contract amount, but it can be for less than the full amount. Frequently two bonds are required. One is to cover performance and the other is to cover payment of labor and material bills.

An Attorney-In-Fact is the holder of Power of Attorney granted by a surety company empowering the execution of a surety bond on behalf of the company.

N.J.S.A. 40A:11-22 allows a bidder to offer a personal (individual) surety instead of a surety (corporate) company. The owner may reject any bid if it is not satisfied with the sufficiency of the personal (individual) surety offered. It is important for owner to establish standards and procedures for the receipt of such personal sureties.

A labor and material bond is given by a contractor to guarantee payment to certain laborers and suppliers for the labor and materials used in the work performed under a contract. This liability may be contained in the performance bond.

A maintenance bond guarantees against defective work or materials. The bond cannot be longer than two years and can be less than, but not more than 100% of the project cost.

It should be noted that statutes require all surety companies to be licensed by the state in order to transact business as a surety. Current listing of licensed companies can be found at www.state.nj.us/dobi/.

III. INTERPRETATION AND ADDENDA

Any bidder requesting interpretation of the specifications should do so in writing. The owner may issue an addendum to the specifications. (See Instructions, Section III "Interpretation and Addenda").

Any vendor challenge to the specifications must be submitted in writing not less than three (3) business days prior to the scheduled bid opening.

No oral interpretation should be given to any potential bidder.
IV. BRAND NAMES, STANDARDS OF QUALITY AND PERFORMANCE

The use of “brand name or equivalent” in a bid specification allows a vendor to submit the brand named item or one that is equivalent to that item. The public contracts laws and regulations provide a procedure to follow when deciding to use “brand name or equivalent.” Use of these procedures encourages free, open, and competitive bidding as intended under the public contracts laws.

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

The contracting agent should consider the use of a specification based on a standard issued by a national or international testing or standards setting organization.

The contracting agent should consider using generic specifications available through commercial or non-commercial services.

The contracting agent should consider using a specification based on specialized programs.

If the above procedures are not used, a contracting unit can decide to use “brand name or equivalent” if the contracting agent knows that at least one equivalent exists. If the contracting agent does not know if at least one equivalent exists, the item is proprietary and the rules for use of proprietary items must be used. [N.J.S.A. 40A:11-13(d) and N.J.A.C. 5:34-9.1 and 9.2]

Prior to advertising for receipt of bids that includes proprietary goods or services, the contracting agent or purchasing agent shall certify in writing to the CEO an explanation of why goods or services are of a specialized nature and necessary for the conduct of the affairs of the local contracting unit. The resolution shall include a description of why goods or services are of a specialized nature and necessary for the conduct of the affairs of the local contracting unit. In both these cases, when making the explanation, do not paraphrase the statute or regulations, be precise as to the situation being addressed [N.J.A.C. 5:34-9.1(b) and (c)]

If the “brand name or equivalent” is used and a bidder proposes an equivalent, the burden rests with the bidder to demonstrate equivalency through the submission of documentation. Mere submission of company or product literature is unacceptable and can be used as a basis for rejection of the claim of equivalence and the bid.

Pre-approval or pre-qualification of equivalent products by the contracting unit before submission of bids is an anti-competitive practice and not allowed.

This does not absolve the owner of the need to determine compatibility and suitability.

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

Insurance requirements and dollar limitations are determined by individual specialized needs of the owner and may vary by type of project or service. Consult your local risk manager or insurance consultant for current or required limits. Such requirements must be reasonable and related to the estimate of exposure.

Indemnification and insurance should not be confused with bonding coverage.

VI. PRICING INFORMATION FOR PREPARATION OF BIDS

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

The owner can authorize the successful contractor to use the contracting unit’s tax identification number to eliminate sales tax liability to the contractor if the contractor is purchasing items to be used for the contracting unit’s project that is otherwise exempt from sales taxes.

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

“FOB destination” should be the preferred method for local contracting units.

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

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

VII. STATUTORY AND OTHER REQUIREMENTS

Statutory requirements may differ according to the type of contracting unit. While certain statutory requirements are not found specifically in purchasing laws, they are requirements, which must be addressed in your specifications.

The Affirmative Action rules require a careful reading and any questions concerning compliance should be directed to New Jersey Department of the Treasury, Division of Contract Compliance & Equal Employment Opportunity in Public Contracting. (See Instructions, Section VII-A “Mandatory Affirmative Action Certification” and Section VII-A-1 “Goods and Services (including Professional Services) Contracts.”)

The provisions of Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) prohibits discrimination on the basis of disability by public entities in all services, programs, and
activities provided or made available by public entities, and the rules and regulations promulgated by the law are made part of the contract. Bidders, by reading the form, are indemnifying, protecting and saving harmless the owner and its employees from and against any and all suits, claims, losses or damages. (See Instructions, Section VII-B “Mandatory Language – Americans with Disabilities Act of 1990.”)

The Prevailing Wage Act and Regulations should be reviewed for current requirements. A local unit may obtain an electronic application for official Prevailing Wage Rate Determinations by contacting the New Jersey Department of Labor at the website in Instructions, Section VII-F “Request for Prevailing Wage Determination.”

The certified payroll records shall be submitted to the owner not later than 10 days after each payroll period.

The Stockholder Disclosure Certification does not require that an individual submit proof of ownership. However, it is recommended that your form contain a signature block to avoid the appearance of noncompliance by the bidder. (See Instructions, Section VII-C “Stockholder Disclosure Certification.”)

Right to Know (RTK) Chemical Labeling: New Jersey manufacturers are required to include material safety labeling on all chemical containers. To obtain containers with New Jersey RTK labeling for products manufactured outside of New Jersey, a bid specification can include a clause requiring New Jersey RTK labeling as a term or condition of your contract. Owners must also ensure that all containers, which are stored at their facilities by contractors, display RTK labeling. The options and exclusions from labeling are found in New Jersey Right to Know Act regulations at (N.J.A.C. 8:59-5.5 and 5.6). General information and labeling assistance for bidders is found on the New Jersey Department of Health and Senior Services Right to Know Program website at: www.nj.gov/health/eoh/rtkweb/

A Non-Collusion Affidavit is not statutorily required. If required by the owner, bidder non-compliance may be cause for rejection. (See Instructions, Section VII-F “Non-Collusion Affidavit.”)

Pay to Play: N.J.S.A. 19:44A-20.27 establishes a disclosure requirement for business entities. It requires that, when a business entity has received in any calendar year $50,000 or more in public contracts with public entities, it must file an annual report with the Election Law Enforcement Commission (ELEC). The report shall disclose any contribution of money or any other thing of value, including an in-kind contribution, or pledge to make a contribution of any kind:

- To a candidate for or the holder of any public office having ultimate responsibility for the awarding of public contracts, or;
- To a political party committee, legislative leadership committee, political committee or continuing political committee.

The report, starting in January 2007, will include all reportable contributions made by the business entity during the 12 months prior to the reporting deadline. ELEC will be promulgating a form and procedures for filing. ELEC can also impose fines for failure to comply with this requirement.
While the local unit has no role in this process, it is recommended that all bid or proposal specifications and contracts should include language notifying business entities of their potential obligation under the law.

VIII. METHODS OF AWARD

The provisions in Section VIII describe methods of award. The owner must carefully determine in advance which method will be used and clearly state it in the specifications.

IX. CAUSES FOR REJECTING BIDS

The provisions in Section IX describe causes for rejection. Any statement reserving the right to reject all bids for reasons other than those statutorily stated is prohibited.

X. TERMINATION OF CONTRACT

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

XI. PAYMENT

Payment will be made in accordance with the owner's policy and procedures.
GOODS AND SERVICES BID SPECIFICATIONS:
A GUIDE FOR NEW JERSEY
LOCAL PUBLIC AGENCIES

SECTION C

STANDARD BID
DOCUMENT REFERENCE

References Section A –
Instructions to Bidders and Statutory
Requirements
<table>
<thead>
<tr>
<th>Name of Form:</th>
<th>NOTICE TO BIDDERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Competitive Contracting Solid Waste</td>
<td>40A:11-4.5a 40A:11-23a</td>
</tr>
<tr>
<td>Instructions Reference:</td>
<td>Submission of Bids (I-A)</td>
</tr>
<tr>
<td>Description:</td>
<td>Prior to receipt, legal advertisement shall appear in the owner’s official newspaper(s) no less than the number of days indicated and may be made part of specifications.</td>
</tr>
<tr>
<td></td>
<td>- Goods &amp; Services – 10 days</td>
</tr>
<tr>
<td></td>
<td>- Solid Waste – 60 days</td>
</tr>
<tr>
<td></td>
<td>- Competitive Contracting – 20 days</td>
</tr>
</tbody>
</table>

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

- Who is requesting bids?
- When will bids be opened?
- Where will bids be opened?
- Where will bids be submitted?
- What is being bid?
- Will there be a pre-bid conference? Where? When? (State law does not permit mandatory attendance at a pre-bid conference. The term “strongly encouraged” is advised.
- Where may specifications be obtained?
- How are bids to be submitted?
- Is there a cost for specifications?

The mandatory Affirmative Action Statement must appear in all legal advertisements.

The Notice to Bidders on Page C-2 is a sample.
NOTICE IS HEREBY GIVEN that sealed bids will be received by the (title of individual), for the (proper name of agency), County of (county name), State of New Jersey on (Date) at (am / pm) prevailing time at (full description of the location for the receipt of bids) at which time and place bids will be opened and read in public for:

(description of goods or services)

Specifications and other bid information may be obtained at the (name of the location where information is available) during regular business hours (hours of operation).

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

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

Bidders are required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27-1 et seq.

________________________________________
Name & Title (of appropriate official)

Publication date:
<table>
<thead>
<tr>
<th>Name of Form:</th>
<th>BID PROPOSAL FORM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory Reference:</td>
<td>NONE</td>
</tr>
<tr>
<td>Instructions Reference:</td>
<td>Submission of Bids I-G</td>
</tr>
<tr>
<td>Description:</td>
<td>This is a concise format for submittal of prices offered by bidder. Other formats that include detailed price breakdowns, unit prices and extensions may be suitable if the basic information is included.</td>
</tr>
</tbody>
</table>

The form must be completed fully and contain an original signature of the bidder or its authorized agent.

The Bid Proposal Form on page C-4 is a sample.
BID PROPOSAL FORM

________________________________________
(Contract Title and Bid Number, if applicable)

________________________________________
(Description of goods/services being bid)

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

________________________________________
Amount in words

$ __________________________________
Amount in numbers

________________________________________
Company Name

________________________________________
Federal I.D. # or Social Security #

________________________________________
Address

________________________________________
Signature of Authorized Agent

________________________________________
Type or Print Name

________________________________________
Title:

________________________________________
Telephone Number

________________________________________
Date

________________________________________
Fax Number

________________________________________
E-mail address
<table>
<thead>
<tr>
<th>Name of Form:</th>
<th>CONSENT OF SURETY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instructions Reference:</td>
<td>Bid Security II-B</td>
</tr>
<tr>
<td>Description:</td>
<td>The sample provides very basic language. If Owner requires a Consent of Surety certificate, it is important that the certificate supplied by surety be carefully reviewed.</td>
</tr>
</tbody>
</table>

When the Owner requires a performance bond, all bidders are required to submit a Consent of Surety certificate from a surety company stating that said company will provide the bidder with a performance bond. Contracting units have the option of requiring bonding for contracts with a value of less than $100,000.

A Consent of Surety for construction contracts is required for those contracts over $100,000.

The Consent of Surety on Page C-6 is a sample.
CONSENT OF SURETY

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

To: ______________________________________________________________________
   (Owner)

Re: ______________________________________________________________________
   (Contractor)

________________________________________________________________________
(Project Description)

This is to certify that the ______________________________________________________________________
(Surety Company)

will provide to ______________________________________________________________________
(Owner)
the full amount of awarded contract in the event that said contractor is awarded a contract for
the above project.

________________________________________________________________________
(CONTRACTOR)

________________________________________________________________________
(Authorized Agent of Surety Company)

Date: ____________________________

CONSENT OF SURETY MUST BE SIGNED BY AN AUTHORIZED AGENT
OR REPRESENTATIVE OF A SURETY COMPANY AND NOT BY THE
INDIVIDUAL OR COMPANY REPRESENTATIVE SUBMITTING THE BID.
This form could be used for complex purchases.

Should it be necessary to issue addenda, it is recommended that an acknowledgement form for receipt of addenda accompany same.

**Publishing & Notice Requirements for Bid Addenda**

* N.J.S.A. 40A:11-23c, 1), 2), & 3)

**TYPE OF BID SOLICITATION**

<table>
<thead>
<tr>
<th>Action</th>
<th>Goods &amp; Services</th>
<th>Construction Work</th>
<th>Municipal Solid Waste Collection &amp; Disposal Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Publish in official newspaper of the contracting unit</td>
<td>Yes</td>
<td>Not required</td>
<td>Published in an official newspaper, and in at least one newspaper of general circulation published in the State.</td>
</tr>
<tr>
<td>Publication Time</td>
<td>No later than 7 days, Saturdays, Sundays, holidays excepted, prior to the date for acceptance of bids.</td>
<td>A notice shall be provided no later than 7 days, Saturdays, Sundays, or holidays excepted, prior to the date for acceptance of bids, to any person who has submitted a bid or who has received a bid package.*</td>
<td>No later than 7 days, Saturdays, Sundays, holidays excepted, prior to the date for acceptance of bids.</td>
</tr>
<tr>
<td>In writing by certified mail or by:</td>
<td>Yes</td>
<td>Yes</td>
<td>While the Local Public Contracts Law does not specifically provide for these three methods, it may be a best practice to use any one of the three.</td>
</tr>
<tr>
<td>...Certified facsimile transmission**or by:</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>...A delivery service***</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>

* For all construction work contracts a notice must be provided, but the placement of an official newspaper notice is not statutorily required.

** Sender's facsimile machine produces a receipt showing date and time of transmission and that the transmission was successful.

*** Delivery service provides certification of delivery to the sender.

The Acknowledgement of Receipt of Addenda on Page C-8 is a sample.
(Name of Local Public Agency)

ACKNOWLEDGMENT OF RECEIPT OF ADDENDA

The undersigned Bidder hereby acknowledges receipt of the following Addenda:

<table>
<thead>
<tr>
<th>Addendum Number</th>
<th>Dated</th>
<th>Acknowledge Receipt</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<tr>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

☐ No addenda were received:

Acknowledged for: ______________________________________
                              (Name of Bidder)

By: __________________________
    (Signature of Authorized Representative)

Name: __________________________
      (Print or Type)

Title: __________________________

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

1. A photocopy of a valid letter that the contractor is operating under an existing Federally approved or sanctioned affirmative action program (good for one year from the date of the letter); or

2. A photocopy of a Certificate of Employee Information Report approval, issued in accordance with N.J.A.C. 17:27-4; or

3. A photocopy of an Employee Information Report (Form AA302) provided by the Division and distributed to the public agency to be completed by the contractor in accordance with N.J.A.C. 17:27-4.

This form provides the bidder guidance on the requirements. It is advisory in nature only and is a non-mandatory, waiveable form.

For information on the requirements of the Affirmative Action Law, contact:

Division of Contract Compliance & Equal Employment Opportunity in Public Contracting
Department of the Treasury
State of New Jersey
P.O. Box 209
Trenton, NJ 08625-0209
609-292-5473
E-mail: www.state.nj.us/treasury/contract_compliance/ccmail.html

The Affirmative Action Compliance Notice on Page C-10 is a sample.
AFFIRMATIVE ACTION COMPLIANCE NOTICE
N.J.S.A. 10:5-31 and N.J.A.C. 17:27

GOODS AND SERVICES CONTRACTS
(INCLUDING PROFESSIONAL SERVICES)

This form is a summary of the successful bidder's requirement to comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27-1 et seq.

The successful bidder shall submit to the public agency, after notification of award but prior to execution of this contract, one of the following three documents as forms of evidence:

(a) A photocopy of a valid letter that the contractor is operating under an existing Federally approved or sanctioned affirmative action program (good for one year from the date of the letter);

OR

(b) A photocopy of a Certificate of Employee Information Report approval, issued in accordance with N.J.A.C. 17:27-4;

OR

(c) A photocopy of an Employee Information Report (Form AA302) provided by the Division and distributed to the public agency to be completed by the contractor in accordance with N.J.A.C. 17:27-4.

The successful vendor may obtain the Affirmative Action Employee Information Report (AA302) from the contracting unit during normal business hours.

The successful vendor(s) must submit the copies of the AA302 Report to the Division of Contract Compliance and Equal Employment Opportunity in Public Contracts (Division). The Public Agency copy is submitted to the public agency, and the vendor copy is retained by the vendor.

The undersigned vendor certifies that he/she is aware of the commitment to comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27-1 et seq. and agrees to furnish the required forms of evidence.

The undersigned vendor further understands that his/her bid shall be rejected as non-responsive if said contractor fails to comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27-1 et seq.

COMPANY: ____________________________  SIGNATURE: ____________________________

PRINT NAME: ____________________________  TITLE: ____________________________

DATE: ____________________________
<table>
<thead>
<tr>
<th>Name of Form:</th>
<th>MANDATORY AFFIRMATIVE ACTION LANGUAGE FOR GOODS AND SERVICES (INCLUDING PROFESSIONAL SERVICES) CONTRACTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instructions Reference:</td>
<td>Statutory and Other Requirements VII-A-1</td>
</tr>
<tr>
<td>Description:</td>
<td>Exhibit A of Bid Specification</td>
</tr>
</tbody>
</table>

Exhibit A of the model Instructions to Bidders and Statutory Requirements is the current and complete mandatory language for goods and services (including professional services) bid specifications and contracts. Section VII-A-1 of the Instructions summarizes the requirements and refers bidders to the full text.

The document is the mandatory language for goods and services bid specifications and contracts pursuant to N.J.A.C. 17:27-3.4, and the mandatory bid specification and contract language for employment goal compliance for goods and services at N.J.A.C. 17:27-3.6. A complete review of both rule provisions is recommended.

Please note that Exhibit A does not apply to construction contracts. There is a different document, Exhibit B, for such contracts. Exhibit B can be found on pages C-27 through C-30.

Exhibit A can be found on Page C-12 & 13.
EXHIBIT A

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.A.C. 17:27

GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

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

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

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

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

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

The contractor or subcontractor agrees to make good faith efforts to employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2, or a binding determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

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

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

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

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

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302

The contractor and its subcontractors shall furnish such reports or other documents to the Div. of Contract Compliance & EEO as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Div. of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.
<table>
<thead>
<tr>
<th>Name of Form:</th>
<th>MANDATORY LANGUAGE – AMERICANS WITH DISABILITIES ACT OF 1990</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instructions Reference:</td>
<td>Statutory and Other Requirements VII-B</td>
</tr>
<tr>
<td>Description:</td>
<td>The Act prohibits discrimination on the basis of disability by public entities in all services, programs and activities provided or made available by public entities.</td>
</tr>
</tbody>
</table>

The federal Americans with Disabilities Act of 1990 requires bid specifications and contracts to contain language that prohibits discrimination on the basis of disability by public entities in all services, programs and activities provided or made available by public entities.

Appendix A can be found on Page C-15.
APPENDIX A  
AMERICANS WITH DISABILITIES ACT OF 1990  
Equal Opportunity for Individuals with Disability

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

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

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

It is further agreed and understood that the owner assumes no obligation to indemnify or save harmless the contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the contractor's obligations assumed in this Agreement, nor shall they be construed to relieve the contractor from any liability, nor preclude the owner from taking any other actions available to it under any other provisions of the Agreement or otherwise at law.
No corporation or partnership shall be awarded any contract for the performance of any work or the furnishing of any materials or supplies, unless, prior to the receipt of the bid or accompanying the bid of said corporation or partnership, there is submitted a statement setting forth the names and addresses of all stockholders in the corporation or partnership who own ten (10) percent or more of its stock of any class, or of all individual partners in the partnership who own a ten (10) percent or greater interest therein. Form of Statement shall be completed and attached to the bid proposal.

The Attorney General has concluded that the provisions of N.J.S.A. 52:25-24.2, in referring to corporations and partnerships, are intended to apply to all forms of corporations and partnerships, including, but not limited to, limited partnerships, limited liability corporations, limited liability partnerships, and Subchapter S corporations.

Bidders are required to disclose whether they are a partnership, corporation or sole proprietorship. The Stockholder Disclosure Certification form shall be completed, signed and notarized. Failure of the bidder to submit the required information is cause for automatic rejection of the bid.

The Stockholder Disclosure Certification on Page C-17 is a sample.
STOCKHOLDER DISCLOSURE CERTIFICATION
This Statement Shall Be Included with Bid Submission

Name of Business

☐ I certify that the list below contains the names and home addresses of all stockholders holding 10% or more of the issued and outstanding stock of the undersigned.

OR

☐ I certify that no one stockholder owns 10% or more of the issued and outstanding stock of the undersigned.

Check the box that represents the type of business organization:

☐ Partnership

☐ Corporation

☐ Limited Partnership

☐ Sole Proprietorship

☐ Limited Liability Corporation

☐ Limited Liability Partnership

☐ Subchapter S Corporation

Sign and notarize the form below, and, if necessary, complete the stockholder list below.

Stockholders:

Name: ___________________________  Name: ___________________________

Home Address: ___________________________

____________________________

Name: ___________________________  Name: ___________________________

Home Address: ___________________________

____________________________

Name: ___________________________  Name: ___________________________

Home Address: ___________________________

____________________________

Name: ___________________________

Home Address: ___________________________

____________________________

Subscribed and sworn before me this ___ day of __________________, 2 ___.

(Notary Public)

My Commission expires:

____________________________

(Affiant)

____________________________

(Print name & title of affiant)

(Corporate Seal)
<table>
<thead>
<tr>
<th>Name of Form:</th>
<th>BUSINESS REGISTRATION CERTIFICATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instructions Reference</td>
<td>Statutory and Other Requirements VII-D</td>
</tr>
<tr>
<td>Description:</td>
<td>Contractor must provide State Division of Revenue issued Business Registration Certificate with the bid submission.</td>
</tr>
</tbody>
</table>

Detailed information on this requirement is found in Division of Local Government Services Local Finance Notices 2004-17 (8/6/04), 2004-24 (11/1/04), 2005-12 (4/27/05) and on the Division web site at www.nj.gov/dca/lgs/lpc. These resources and a Frequently Asked Questions resource should be consulted when questions arise.
<table>
<thead>
<tr>
<th>Name of Form:</th>
<th>REQUEST FOR PREVAILING WAGE DETERMINATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instructions Reference:</td>
<td>Statutory and Other Requirements VII-F, but not applicable for material and service contracts.</td>
</tr>
<tr>
<td>Description:</td>
<td>To be used by the public body in requesting wage determination prior to commencing bid process. Used for public work contracts where the threshold requiring the use of prevailing wages has been exceeded. This form is completed by the public agency to request the minimum wage rates to be paid by a contractor(s).</td>
</tr>
</tbody>
</table>

If the contract is one for public work pursuant to N.J.S.A. 34:11-56.25 et seq., be sure the current prevailing wage threshold for municipal and non-municipal entities is checked.

The term “public work” means construction, reconstruction, demolition, alteration, or repair work, or maintenance work, including painting and decorating, done under a contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. This also includes off-site workers who custom fabricate plumbing, heating, cooling, ventilation, or exxhaust duct systems and mechanical insulation as part of a public works project. [N.J.S.A. 34:11-56.26(5)]

"Public work" shall also mean construction, reconstruction, demolition, alteration, or repair work, done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering of the contract:

- Not less than 55% of the property or premises is leased by a public body or is subject to an agreement to be subsequently leased by the public body; and
- The portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet. [N.J.S.A. 34:11-56.26(5)(a)(b)]

Public Law 2004, Chapter 101 took affect on July 14, 2004. This law, N.J.S.A. 34:11-56.26(5), adds to existing prevailing wage requirements off-site workers who custom fabricate plumbing, heating, cooling, ventilation, or exhaust duct systems and mechanical insulation as part of a public works project.

The New Jersey Department of Labor’s Division of Wage and Hour Compliance’s electronic application for official Prevailing Wage Rate Determinations can be obtained at: https://wnjipin.state.nj.us/pw/prevwage.html.

This page provides public body officials or their representatives an opportunity to apply for and download an official New Jersey Prevailing Wage Rate Determination. Official Prevailing Wage Rate Determinations are required for public work contracts and certain Economic Development Authority assisted projects.
<table>
<thead>
<tr>
<th>Name of Form:</th>
<th>PUBLIC WORKS CONTRACTOR REGISTRATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory Reference:</td>
<td>N.J.S.A.34:11-56.48</td>
</tr>
<tr>
<td>Instructions Reference:</td>
<td>Statutory and Other Requirements VII-G</td>
</tr>
<tr>
<td>Description:</td>
<td>Used for public works contract when prevailing wage threshold will be exceeded.</td>
</tr>
</tbody>
</table>

The Public Works Contractor Registration Act (PWCRRA) requires that all contractors, including named subcontractors, to register with the Department of Labor prior to submitting price proposals or engaging on certain public works contracts that exceed the prevailing wage threshold. The prevailing wage threshold is $11,892 for municipalities and $2,000 for all non-municipal entities, such as boards of education, authorities, fre districts, counties, etc.

Because the PWCRRA uses the definition of public works contracts under the prevailing wage law, where the law uses the term “bidding”, contracting units are advised to read that as meaning to “submit” a price proposal.” Thus, the law applies to the formal bidding process where the contract is awarded to the lowest responsible bidder, and the receipt of informal quotations awarded to the vendor whose proposal is the “most advantageous, price and other factors considered.”

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

The PWCRRA defines “public works projects” as contracts for “public work” as defined in the Prevailing Wage Act [N.J.S.A. 34:11-56.26(5)]. The term means:

- “Construction, reconstruction, demolition, alteration, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program.
- "Public work" shall also mean construction, reconstruction, demolition, alteration, or repair work, done on any property or premises, whether or not the work is paid for from public funds,...
- “Maintenance work” means the repair of existing facilities when the size, type or extent o’ such facilities is not thereby changed or increased. While “maintenance” includes painting and decorating and is covered under the law, it does not include work such as routine landscape maintenance or janitorial services.

In order to provide guidance to contracting officials on implementing the law, nine key principles have been identified in the law. The nine items follow:

1. The law applies to all “public works contracts” that exceed the contracting unit’s prevailing wage threshold, as set by N.J.S.A. 34:11-56.26 (a) and (b).
2. The law applies to contracts for which public bidding is required, as well as those for which quotations are received.
3. All named contractors in a bid proposal (including out-of-state contractors) must be registered with the Department of Labor’s Division of Wage and Hour Compliance at the time proposals are received by the public entity.
For clarity, Local Finance Notice 2004-9 dated 4/28/04 uses the following term: “Received,” in context of when “proposals are received,” means the deadline or moment in time when proposals are formally opened and no other proposals are accepted.

4. The law requires contractors to submit certificates after a bid proposal is received and prior to awarding the contract. (N.J.S.A. 34:11-56.55)

5. After bid proposals are received, and prior to contract award, the contractor most likely to receive the contract award must submit to the public entity copies of certifications of all listed sub-contractors.

6. The contracting agent must review the certificates to be sure they were in effect at the time the bid proposals were received.

7. Non-listed subcontractors do not have to be registered until they physically start the public work assigned to them.

8. Bid proposal documents need to inform those submitting proposals of these requirements.

9. Emergency work is covered under the provisions of the Prevailing Wage Act and the PWCRA.

It is specifically recommended that language be included in specifications especially those sections regarding “Instructions to Bidders” advising potential bidders that:

1. All named sub-contractors must be registered with the Department of Labor pursuant to the PWCRA at the time the proposal is received, or the proposal will be determined to be non-responsive.

2. Any non-listed sub-contractor must be registered with the Department of Labor prior to physically starting work.

A contractor’s certification can be confirmed by contacting the Department of Labor’s Division of Wage and Hour Compliance website (www.nj.gov/labor/Isse/Ispubcon.html). This site only shows approved contractors; there is no “pending” approval or a “grace” period. If a contracting unit encounters a problem in its review of certifications, or difficulty in making an award because of a non-registered contractor, they should contact the Contractor Registration Unit as soon as possible.

N.J.S.A. 34:11-56.56 provides several methods for the Department of Labor to enforce the law. The Department can deny renewal, revoke or suspend the registration of a contractor for a period of not more than five years, or, as a condition of initial or continued registration, require a surety bond payable to the State of New Jersey.

Additional information on the PWCRA can be obtained from the:

Contractor Registration Unit Telephone: 609-292-9464
Division of Wage and Hour Compliance Fax: 609-633-8591
New Jersey Department of Labor E-mail: contreq@dcf.state.nj.us
PO Box 389 Web site: www.nj.gov/labor/Isse/Ispubcon.html
Trenton, New Jersey 08625-0389

The web site has links to the PWCRA Registration Form, Listing of Contractors, Prevailing Wages and other useful information.

Contact the Division of Local Government Services at (609) 292-7842, by fax at (609) 633-6243 or by e-mail at lpc@doc.state.nj.us for assistance in the application of the Local Public Contracts Law or related PWCRA issues. As specific situations are presented to the contracting unit, local legal advisors should review this guidance as to its applicability.
<table>
<thead>
<tr>
<th>Name of Form:</th>
<th>NON-COLLUSION AFFIDAVIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory Reference:</td>
<td>No specific statutory reference</td>
</tr>
<tr>
<td></td>
<td>State Statutory Reference N.J.S.A. 52:34-15</td>
</tr>
<tr>
<td>Instructions Reference:</td>
<td>Statutory and Other Requirements VII-H</td>
</tr>
<tr>
<td>Description:</td>
<td>The Owner's use of this form is optional. It is used to ensure that the bidder has not participated in any collusion with any other bidder or Owner representative or otherwise taken any action in restraint of free and competitive bidding.</td>
</tr>
</tbody>
</table>

The Non-Collusion Affidavit on Page C-23 is a sample.
NON-COLLUSION AFFIDAVIT

State of New Jersey
County of ____________________ ss:

I, ________________________________ residing in ________________________________
(name of affiant) (name of municipality)
in the County of ____________________ and State of ____________________ of
full age, being duly sworn according to law on my oath depose and say that:

I am _______________________________ of the firm of ________________________________
(title or position) (name of firm)

________________________________________ the bidder making this Proposal for the bid
entitled __________________________________, and that I executed the said proposal with
full authority to do so that said bidder has not, directly or indirectly entered into any agreement,
participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding
in connection with the above named project; and that all statements contained in said proposal
and in this affidavit are true and correct, and made with full knowledge that the ____________________
(name of contracting unit) relies upon the truth of the statements contained in said Proposal
and in the statements contained in this affidavit in awarding the contract for the said project.

I further warrant that no person or selling agency has been employed or retained to solicit or
secure such contract upon any agreement or understanding for a commission, percentage,
brokerage, or contingent fee, except bona fide employees or bona fide established commercial or
selling agencies maintained by ________________________________.

Subscribed and sworn to

before me this day

__________________________________
Signature

__________________________ , 20__
(Type or print name of affiant under signature)

Notary public of

My Commission expires ______________

(Seal)
<table>
<thead>
<tr>
<th>Name of Form:</th>
<th>BID DOCUMENT CHECKLIST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory Reference:</td>
<td>NONE for goods and services. (Construction projects only - N.J.S.A. 40A:11-23.1 &amp; 23.2)</td>
</tr>
<tr>
<td>Instructions Reference:</td>
<td>None - for reference purposes only</td>
</tr>
<tr>
<td>Description.</td>
<td>Summarizes all required documentation to be provided by prospective bidders.</td>
</tr>
</tbody>
</table>

This form can be used for the benefit of the bidder to assure submission of all required documents or information.

For goods and services, a checklist is optional, and may be expanded or customized depending upon owner's requirements.

For construction projects, refer to the statutes noted above for mandatory checklist items.

The Bid Document Checklist on Page C-25 is a sample.
(Name of Public Agency)

BID DOCUMENT CHECKLIST*

<table>
<thead>
<tr>
<th>Required by owner</th>
<th>Submission Requirement</th>
<th>Initial each required entry and if required submit the item</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐</td>
<td>Stockholder Disclosure Certification</td>
<td></td>
</tr>
<tr>
<td>☐</td>
<td>Non-Collusion Affidavit</td>
<td></td>
</tr>
<tr>
<td>☐</td>
<td>Bid Proposal Form</td>
<td></td>
</tr>
<tr>
<td>☐</td>
<td>References</td>
<td></td>
</tr>
<tr>
<td>☐</td>
<td>Status of Present Contracts</td>
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<tr>
<td>☐</td>
<td>Equipment Certification</td>
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<tr>
<td>☐</td>
<td>Bid Guarantee (with Power of Attorney for full amount of Bid Bond)</td>
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<tr>
<td>☐</td>
<td>Public Works Contractor Certificate</td>
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<tr>
<td>☐</td>
<td>Consent of Surety (with Power of Attorney for full amount of Bid Price)</td>
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<td>☐</td>
<td>Mandatory Affirmative Action Language</td>
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<td>Prevailing Wage</td>
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<td>☐</td>
<td>Americans with Disabilities Act of 1990 Language</td>
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<td>☐</td>
<td>Proof of Business Registration</td>
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</tr>
</tbody>
</table>

*This form need not be submitted. It is provided for bidder's use in assuring compliance with all required documentation.
<table>
<thead>
<tr>
<th>Name of Form:</th>
<th>EQUIPMENT CERTIFICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instructions Reference</td>
<td>None - for reference purposes only</td>
</tr>
<tr>
<td>Description:</td>
<td>Contractor is certifying the availability of the appropriate equipment to provide the specified services.</td>
</tr>
</tbody>
</table>

The Equipment Certification on Page C-27 is a sample.
EQUIPMENT CERTIFICATION

The undersigned Bidder hereby certifies as follows:

The bidder owns or controls all the necessary equipment required to accomplish the work described in the specifications.

Name of Bidder: _____________________________

By: _____________________________
   (Signature)

Name of above: _____________________________
   (Print)

Title: _____________________________

Date: _____________________________
<table>
<thead>
<tr>
<th>Name of Form:</th>
<th>MANDATORY AFFIRMATIVE ACTION LANGUAGE FOR CONSTRUCTION CONTRACTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instructions Reference:</td>
<td>Statutory and Other Requirements</td>
</tr>
<tr>
<td>Description:</td>
<td>Exhibit B of Bid Specification</td>
</tr>
</tbody>
</table>

Exhibit B of the model Instructions to Bidders and Statutory Requirements is the current and complete mandatory language for construction bid specifications and contracts.

The document is the mandatory language for construction bid specifications and contracts pursuant to N.J.A.C. 17:27-3.5, and the mandatory bid specification and contract language for employment goal compliance for construction contracts at N.J.A.C. 17:27-3.7. A complete review of both rule provisions is recommended.

Exhibit B can be found on Pages C-29 through C-31.
EXHIBIT B

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.A.C. 17:27

CONSTRUCTION CONTRACTS

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

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

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

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

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

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the applicable employment goal prescribed by N.J.A.C. 17:27-7.3, provided, however, that the Division may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Division is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Division, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the applicable employment goal established in accordance with N.J.A.C. 17:27-7.3. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to attempt to hire or schedule minority and women workers directly, consistent with the applicable employment:
goal. If the contractor’s or subcontractor’s prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with the applicable employment goal, the contractor or subcontractor agrees to be prepared to hire or schedule minority and women workers directly, consistent with the applicable employment goal, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines or is so notified by the Division that the union is not referring minority and women workers consistent with the applicable employment goal.

(B) If the hiring or scheduling of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions consistent with the applicable county employment goals:

(1) To notify the public agency compliance officer, the Division, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

(2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;

(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area until such time as the workforce is consistent with the employment goal;

(5) If it is necessary to lay off some of the workers in a given trade on the construction site, to assure, consistent with the applicable State and Federal statutes and court decisions, that sufficient minority and women employees remain on the site consistent with the employment goal; and to employ any minority and women workers laid off by the contractor on any other construction site on which its workforce composition is not consistent with an employment goal established pursuant to rules implementing N.J.S.A. 10:5-31 et. seq.;

(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall determine the qualifications of such individuals and if the contractor’s or subcontractor’s workforce in each construction trade is not consistent with the applicable employment goal, it shall hire or schedule those individuals who satisfy appropriate qualification standards. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Division. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(ii) If the contractor’s or subcontractor’s workforce is consistent with the applicable employment goal, the name of any interested women or minority individual shall be maintained on a waiting list for the first consideration, in the event the contractor’s or subcontractor’s workforce is no longer consistent with the applicable employment goal.

(iii) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Division.
(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Division and submitted promptly to the Division upon request.

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

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Division an initial project workforce report (Form AA 201) provided to the public agency by the Division for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division and to the public agency compliance officer.

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

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Division of Contract Compliance & EEO as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (NJAC 17:27).
Disclosure of Contributions to New Jersey Election Law Enforcement Commission (ELEC)

N.J.S.A. 19:44A-20.27 establishes a new disclosure requirement for business entities. It requires that, when a business entity has received in any calendar year $50,000 or more in public contracts with public entities, it must file an annual report with the Election Law Enforcement Commission (ELEC). The report shall disclose any contribution of money or any other thing of value including an in-kind contribution, or pledge to make a contribution of any kind:

- To a candidate for or the holder of any public office having ultimate responsibility for the awarding of public contracts, or,
- To a political party committee, legislative leadership committee, political committee or continuing political committee.

The report will include all reportable contributions made by the business entity during the 12 months prior to the reporting deadline. ELEC will be promulgating a form and procedures for filing commencing in January 2007. ELEC can also impose fines for failure to comply with this requirement.

While the local unit has no role in this process, it is recommended that all bid or proposal specifications and contracts should include language notifying business entities of their potential obligation under the law. Such language could read as follows:

Starting in January 2007, all business entities are advised of their responsibility to file an annual disclosure statement of political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.27 if they receive contracts in excess of $50,000 from public entities in a calendar year. Business entities are responsible for determining if filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.