Public Works and Construction Bids
Front End Basic Review

Golden Nugget Hotel
Atlantic City, New Jersey

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Public Works/Construction Bids

Today’s presentation will provide guidance on Public Works and Construction Bids. It is a basic review of the front end language and supporting documents that are needed for a sound set of bid specifications.

Architect/Engineer Front End Bid Specifications
Last year, I reviewed over thirty (30) different front end bid specifications as prepared by thirty (30) architects/engineers in the State of New Jersey. Frankly, I was able to learn some valuable information from many of the bids as prepared by them.

My Findings!
In my upcoming “Notes” on Public Works and Construction Bids, I will share with you my findings. As you can see I have not named any school district or architectural/engineering firm in my presentation.

Going Forward—Work to Do! The School Business Administrator
Going forward, there is work to be done! Work to be done by the School Business Administrator to ensure all bids advertised by their school districts are in compliance with all law and code. The architect/engineer is the partner of the SBA in preparing specifications in compliance with law and code, however, the ultimate responsibility of the outcome of the final product lies with the School Business Administrator.

It is the School Business Administrator, who pursuant to N.J.S.A. 18A:18A-2 (b)

“...has the authority, responsibility and the accountability for the purchasing activity of the board of education...”

So let us begin our presentation and have some fun!

James Shoop
SHOOP SBA, LLC
Fairfield, NJ 07004
Public Works and Construction Bids—Notes

Many Definitions of Public Works; Construction and Improvements

**NJ Public School Contracts Law**
“Public works" means building, altering, repairing, improving or demolishing any public structure or facility constructed or acquired by a board of education to house school district functions or provide water, waste disposal, power, transportation and other public infrastructures. N.J.S.A. 18A:18A-2 (z)—Public School Contracts Law

**NJ Division of Property Management and Construction-Classification**
"Public work" means any public building or other public betterment or improvement constructed, repaired or improved wholly or in part at the expense of any agency of government required or permitted to use the DPMC's classification of contractors and/or prequalification of design consultants—N.J.A.C. 17:19-2.1 et seq. NJDPMC

**NJ Department of Labor and Workforce Development—Prevailing Wages**
"Public work" means construction, reconstruction, demolition, alteration, custom fabrication, 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, custom fabrication, 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 into of the contract the property or premises is owned by the public body—N.J.S.A 34:11-56.25 Prevailing Wages

**NJ Division of Purchase and Property—Contract Compliance—EEO—Affirmative Action**
"Construction contract" means any contract entered into by a public agency for the construction, alteration, repair or demolition of any building or other public work. Excluded from this definition are contractual agreements between public agencies.—N.J.A.C. 17:27-2.1 EEO—Affirmative Action
Public Works and Construction Bids—Notes

Many Definitions of Public Works; Construction and Improvements

NJ Division of Purchase and Property—Contract Compliance—EEO—Affirmative Action
“Public works contract" means any contract to be performed for or on behalf of the State or any county or municipality or other political subdivision of the State, or any agency or authority created by any of the foregoing, for the construction, alteration, repair or demolition of any building or public work or for the acquisition of materials, equipment, supplies or goods and services, including professional services, with respect to which discrimination in the hiring of persons for the performance of work thereunder or under any subcontract thereunder by reason of race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex is prohibited under N.J.S.A. 10:2-1.—N.J.A.C. 17:27-2.1—EEO—Affirmative Action

New Jersey Prompt Payment Law
“Improve" means: to build, alter, repair or demolish any structure upon, connected with, on or beneath the surface of any real property; to excavate, clear, grade, fill or landscape any real property; to construct driveways and private roadways on real property; to furnish construction related materials, including trees and shrubbery, for any of the above purposes; or to perform any labor upon a structure, including any design, professional or skilled services furnished by an architect, engineer, land surveyor or landscape architect licensed or registered pursuant to the laws of this State.—N.J.S.A. 2A:30-1 et seq.
Every set of bid specifications that I reviewed, provided a number of legal citations. One has to remember that bid specifications for school districts should include legal citations from the New Jersey Public School Contracts Law. The PSCL is N.J.S.A. 18A:18A-1 et seq.

I have noted that four (4) bid specifications provided as the base for their bids, citations for N.J.S.A. 40A:11-1 et seq., which is the Local Public Contracts Law, the basis for municipal purchasing.
Public Works and Construction Bids—Notes

Addenda Procedures--N.J.S.A. 18A:18A-21 (c) (d)

Every bid specification package reviewed had a section for issuance of addenda with similar language as noted below:

No interpretation of the meaning of the specifications will be made to any bidder orally. Every request for such interpretations should be made in writing to the School Business Administrator/Board Secretary or the Architect/Engineer of Record and must be received by same at least ten (10) business days, not including Saturdays, Sundays and holidays, prior to the date fixed for the opening of bids to be given consideration.

Any and all interpretations and any supplemental instructions will be distributed in the form of written addenda to the specifications. The addenda will be provided by the board of education* in accordance with N.J.S.A. 18A:18A-21(c) (2) to the bidder by certified mail, certified fax or delivery service, no later than seven (7) days, Saturdays, Sundays, or holidays prior to the date for acceptance of the bids. All addenda so issued shall become part of the contract document.

Failure of the board of education to provide proper notification of revisions or addenda to advertisements or bid documents... shall prevent the board from accepting the bids and require the re-advertisement of bids.

• In five (5) bid specifications it was noted that Addenda will be issued by the architect. All addenda shall be issued by the SBA.

• One bid specification stated that Addenda will be issued by first class mail.

• Two (2) bid specifications noted that Addenda will be issued by e-mail.

It is recommended that bidders complete, sign and submit an Acknowledgment of Addendum form, which should be included in the bid specification package.
Public Works and Construction Bids—Notes

Affirmative Action
Equal Employment Opportunity Public Contracts

Affirmative Action EEO Language
It is recommended that language be put in the bid specifications about the successful bidder submitting the AA201 Initial Project Workforce* Report prior to the execution of the contract with the school district and then submitting Form AA202 on a monthly basis.

- There was no mention of Forms AA201 or AA202 in thirteen (13) bid specifications.
- Three (3) specifications had the old name of form AA201—Initial Project Manning Report. The word Manning has been changed to Workforce.

Mandatory EEO Language Exhibit B—Required Document
A copy of MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE—EXHIBIT B, is required to be included in the bid specification package and also in the contract document with the successful company.

- Exhibit B Language Document was missing from five (5) bid specifications.
- Thirteen (13) bid specifications had outdated Exhibit B Mandatory Language. The Exhibit B language was changed in January 2016.

Affirmative Action—Training Fund Requirements
Three (3) bid specifications included an Affirmative Action Training Fund requirement for contracts over $2,500,000. The specifications called for setting aside $\frac{1}{2}$ of one percent of the contract cost for affirmative action training.

Please delete this training fund requirement as it does not pertain to public school district construction contracts.

Reference—Public Agency Guidelines Page 8 Section 2.8 Training Fund Requirements.
Suggested Language for Public Works/Construction Bid Specifications

Affirmative Action—Equal Employment Opportunity in Public Contracts Requirements
The construction contractor shall complete and submit an Initial Project Workforce Report, **Form AA-201** upon notification of award by the board of education. Proper completion and submission of this Report shall constitute evidence of the contractor’s compliance with the regulations. Failure to submit this form may result in the contract being terminated. The contractor also agrees to submit a copy of the Monthly Project Workforce Report, **Form AA-202** once a month thereafter for the duration of the contract to the Department of Labor Workforce and Development and to the board of education Public Agency Compliance Officer.

All bidders should familiarize themselves with N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27-1.1 et seq. MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE—EXHIBIT B. If awarded a contract, your company/firm will be required to comply with the above requirements.

All relevant questions should be related to:  
Department of Treasury  
Division of Purchase and Property  
Contract Compliance and Audit Unit  
EEO Monitoring Program—PO Box 206  
Trenton, New Jersey 08625-0206  
(609) 292-5473

It is required, pursuant to N.J.S.A. 18A:18A-20, to include the American Goods language in all specifications for work.

Some specifications called it “domestic goods.”

- Eight (8) bid specifications failed to include American Goods language.
Public Works and Construction Bids—Notes

Americans with Disabilities Act

It is recommended that language pertaining to the Americans with Disabilities Act, a federal law, be included in the bid specifications. This will also complement the New Jersey Educational Law-Facilities for Handicapped Persons Law—N.J.S.A. 18A:18A-17.

It is further recommended that bidders are required to read Americans with Disabilities language form that is included in the specification. The form should be signed by the bidder to show agreement that the provision of the Act and the form shall be submitted with the bid response. The contractor is obligated to comply with the Act and to hold the owner harmless.

Architects and engineers are quite familiar with the ADA law, and appropriate regulations including the 2010 Revised Regulations for Title II and Title III and the program access clause.

- Thirteen (13) bid specifications failed to include ADA language in bid specifications.

Suggested Language for Americans with Disabilities Act

Americans with Disabilities Act; Facilities for Handicapped Persons

The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L 101-336, in accordance with 42 U.S.C. S121.01 et seq. The Board of Education further recognizes that all specifications for the construction, remodeling or renovation of any public building shall provide facilities for the physically handicapped. Reference—N.J.S.A. 18A:18A-17.

It is further recommended that bidders are required to read the Americans with Disabilities language form that is included in these specifications. The form shall be signed to show agreement with the provisions of Title II of the Act and the provisions are to be made a part of the contract. The signed form shall be submitted with the bid proposal. The contractor is obligated to comply with the Act and to hold the owner harmless.

The author notes that the architect/engineer may fully explain all ADA requirements in the technical set of specifications.
Public Works and Construction Bids—Notes

Anti-Discrimination Language--N.J.S.A. 10:2-1

Some school districts confuse the Anti-Discrimination Language with the Affirmative Action language requirements. While similar, they are different in scope and should be kept separately in the bid specifications.

$50.00 Penalty Clause
The anti-discrimination language is distinguished by assessing a **$50.00 penalty** for each person, while Affirmative Action, Equal Employment Opportunities in Public Contracts penalties are $250.00 per day.

- Failure to include Anti-Discrimination Law Language pursuant to N.J.S.A. 10:2-1; Eleven (11) bid specifications.
Public Works and Construction Bids—Notes

Bid Guarantee

The bid guarantee is a financial document made payable to the board of education for which amount (10% not to exceed $20,000) shall be forfeited by the successful bidder if that bidder fails to execute the contract. It is recommended that the following advisory language be put in the bid guarantee section:

Advisory Language:

Failure to sign the bid bond by either the Surety or Principal, and failure to submit the properly executed bid bond with the bid package, shall be deemed cause for disqualification and rejection of the bid.

- One bid specification failed to include language about submitting a bid guarantee.
Public Works and Construction Bids—Notes

Business Registration Certificate

Most specifications had the basic language about the New Jersey Business Registration requirements. I would suggest language be inserted in specifications that alert potential bidders about the failure to submit the BRC prior to the contract award.

Suggested Language:
All respondents are requested to submit with their response, a copy of their company’s New Jersey Business Registration Certificate. Failure to submit the Business Registration Certificate prior to the award of contract will result in the rejection of the bid/proposal.

- Three (3) bid specifications failed to include any BRC language.
Certificate (Consent) of Surety

In all of the bid specifications I reviewed, the districts asked for a performance bond to be submitted by the successful bidder. If the district requires a performance bond then it shall include in the bid specifications a requirement for a Certificate (Consent) of Surety to be submitted by the bidders. Ref. N.J.S.A. 18A:18A-25.

It is recommended that the following advisory language be inserted in the Surety section:

Advisory Language

Failure to sign the Certificate (Consent) of Surety by either the Surety or Principal, and failure to submit the properly executed Certificate (Consent) of Surety with the bid package, shall be deemed cause for disqualification and rejection of the bid.

- Four (4) bid specifications failed to include any Certificate (Consent) of Surety Language.
Public Works and Construction Bids—Notes

Contractor Requirement State Comptroller—Access to Records

For any contract that exceeds $2 million, the school district has to notify the NJ State Comptroller’s office on the appropriate form. For $10 million or more there is another form for the district to submit. The Comptroller’s Office will be asking for bid documents and I can guarantee you they will be looking for the Access and Maintenance of Contract Records language in the bid specifications. N.J.S.A. 52:15C-14 (d) and N.J.A.C. 17:44-2.2.

- Access and Maintenance of Contract Records--State Comptroller were missing from twenty (20) bid specifications.

Suggested Language for Access and Maintenance of Records

Contractors/vendors doing business with the board of education are reminded of the following legal requirements pertaining to the Office of the New Jersey State Comptroller:

Access to Relevant Documents and Information—N.J.S.A. 52:15C-14 (d)
Private vendors or other persons contracting with or receiving funds from a unit in the Executive branch of State government, including an entity exercising executive branch authority, independent State authority, public institution of higher education, or unit of local government or board of education shall upon request by the State Comptroller provide the State Comptroller with prompt access to all relevant documents and information as a condition of the contract and receipt of public monies. The State Comptroller shall not disclose any document or information to which access is provided that is confidential or proprietary. If the State Comptroller finds that any person receiving funds from a unit in the Executive branch of State government, including an entity exercising executive branch authority, independent State authority, public institution of higher education, or unit of local government or board of education refuses to provide information upon the request of the State Comptroller, or otherwise impedes or fails to cooperate with any audit or performance review, the State Comptroller may recommend to the contracting unit that the person be subject to termination of their contract, or temporarily or permanently debarred from contracting with the contracting unit.
Contractor Requirement State Comptroller—Maintenance of Records

Suggested Language for Access and Maintenance of Records

Contractors/vendors doing business with the board of education are reminded of the following legal requirements pertaining to the Office of the New Jersey State Comptroller:

**Maintenance of Contract Records—N.J.A.C. 17:44-2.2**
Relevant records of private vendors or other persons entering into contracts with covered entities are subject to audit or review by OSC pursuant to N.J.S.A. 52:15C-14(d).

The contractor/vendor to whom a contract has been awarded, shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.
Public Works and Construction Bids—Notes

Contractor’s Registration Evidence

Pursuant to the Public Works Contractor Registration Act—N.J.S.A. 34:11-56.48 et seq., no contractor shall bid on any contract for public work, unless the contractor is registered pursuant to the act. The contractor and all subcontractors shall possess a valid certificate at the time the proposal is received by the school district.

The bid specifications should be written to request from all bidders, a copy of the Public Works Contractor Registration Certificate and any certificates from subcontractors. Again, it is a request.

Failure to submit certificate prior to award of contract
If the apparent low bidder fails to provide a copy of the certificate prior to the award of contract, the bid may be rejected as being non-responsive.

- Language concerning the Contractor Registration requirements was missing from six (6) bid specifications.
Public Works and Construction Bids—Notes

Contractor’s Registration Evidence

State of New Jersey

Department of Labor and Workforce Development
Division of Wage and Hour Compliance

Public Works Contractor Registration Act

Pursuant to N.J.S.A. 34:11-66-48, et seq., of the Public Works Contractor Registration Act, this certificate of registration is issued for purposes of bidding on any contract for public work or for engaging in the performance of any public work to:

Energy Mechanical Inc.

2016

Responsible Representative(s):
Henry S. Stomski Jr., CEO

Harold J. Witte, Commissioner
Department of Labor and Workforce Development

This certificate may not be transferred or assigned and may be revoked for cause by the Commissioner of Labor and Workforce Development.

NON TRANSFERABLE
Public Works and Construction Bids—Notes

Debarment Language

**Debarment** means an exclusion from public work contracting for a definite period of time.

**Disqualification** means exclusion from public work contracting until specific conditions or requirements are satisfied or denial or revocation of the opportunity to bid on or engage in a particular public work contract.

**Suspension** means an exclusion from public work contracting for a period of time, pending the completion of an investigation, legal proceedings or administrative proceedings. N.J.A.C. 17:19-1.1

Suggested Language

The Board of Education will not enter into a contract for work with any person, company or firm that is on the State Department of Labor and Workforce Development; Prevailing Wage Debarment List, or the State of New Jersey Consolidated Debarment Report (www.state.nj.us/treasury/debarred) or the Federal System for Award—SAM.gov.

School districts are not to enter into any contract with any vendor that is named on the

**NJ Department of Treasury Consolidated Debarment Report**

0018=Schools Development Authority
0997=Schools Development Authority
1000=Criminal Justice
1050=Consumer Affairs Board of Medical Examiners
1321=Consumer Affairs Board of Architects
2050=Treasury Purchase Bureau
2065=Treasury Property Management and Construction
2800=School Construction Corporation
4210=Health & Senior Services
4550=Workplace Standards
6000=NJ Turnpike Authority
6120=Contract Administration
7540=Medical Assistance (Medicaid)
8020=Housing and Mortgage Finance Agency
Public Works and Construction Bids—Notes

Debarment Language

Reasons for being on the Debarment Report List
A=Criminal Offense
B=Organized Crime Contract
C=Antitrust / Anti-Kickback
D=Election Law Offense,
E=Discrimination Law
F=Wage & Hour Violation
G=Industry Law Violation
H=Failure To Perform
I=Poor Performance
J=Contingent Fees

Citations
It appears that the legal citations on debarment appear in N.J.A.C. 17:19-1.1 et seq. Please check your citations as they may be outdated. Many districts provide the citation of N.J.A.C. 6:20-7 which no longer exists.

• There were five (5) bid specifications that failed to mention any debarment language or consequences.
Public Works and Construction Bids—Notes

Equipment Certification

Pursuant to N.J.S.A. 18A:18A-23, school districts may request from all bidders, a certificate that they either own, lease or controls equipment to do the work. It is recommended that all bid specifications include the Equipment Certification language and document requirement.

Some bid specifications call this a “Certificate of Ability to Perform.” May I suggest renaming it to Equipment Certification?

- Sixteen (16) bid specifications did not include either the Equipment Certification language or a certification form.
Public Works and Construction Bids—Notes

Iran; Disclosure of Investment Activities

Pursuant to N.J.S.A. 18A:18A-49.4, school districts shall comply with N.J.S.A. 52:32-55 as it pertains to Disclosure of Investment Activities in Iran. That law requires all bidders to complete a certification about investments in Iran. It is noted in the law that if the bidder fails to submit a certification, their bid will be deemed non-responsive. It appears that the Iran Certification is a mandatory document.

Recommendations

1. **Provide the Public School Contracts Law Citation**

   Twelve (12) bid specification failed to include the Public School Contracts Law legal citation pertaining to the Iran Disclosure Law.

2. **Emphasize the Penalty for Failure to Certify**
   It is recommended that the following advisory language such as the following be included in the bid specifications: "**Failure to complete, sign, certify and submit the Disclosure of Investment Activities in Iran form with the bid/proposal shall be cause for rejection of the proposal.**"

   Vanas Construction Co. v Franklin Township Public Schools—2016
   "**Court finds that the failure to comply with the statutory mandate (failure to submit the Iran certification) is a material defect, is not waivable and cannot be cured post-bid.**"

3. **Provide a Certification Form for Bidders to Complete**
   The Iran Certification Form was missing from seven (7) bid specifications.

   Boxes on Form—the directions on the form state to check one of the two boxes. On three (3) Iran forms there were no boxes to check.
Public Works and Construction Bids—Notes

Liquidated Damages

To better understand the liquidated damages clause one should look at N.J.S.A. 18A:18A-19—Number of Working Days Law. That law requires all specifications for work to have a fixed date which the work shall be completed or the number of working days to be allowed for its completion. That law permits a deduction from the contract price

- Any wages paid by the board of education to any inspector necessarily employed by the board, for any number of days in excess of the number of days allowed in the specifications.

As to the liquidated damages, the board may include damages if there are any violations of any of the terms and conditions or the failure to perform said contract in accordance with the terms and conditions of the contract. It has been a common practice therefore for school districts to set a fixed per day cost for liquidated damages.

- Seven (7) bid packages failed to include any liquidated amounts.

Most of the other bid packages had a fixed rate from $500.00 to $2,000 per day.

I recommend a schedule of liquidated damages based upon the contract amount.

For example

<table>
<thead>
<tr>
<th>Amount of Contract</th>
<th>Range of Amount</th>
<th>Liquidated Damages</th>
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<tbody>
<tr>
<td>$ 20,000 and less</td>
<td>$ 50,000</td>
<td>$ 200.00 per calendar</td>
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<td>$ 50,001 and less</td>
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</tr>
<tr>
<td>1,000,000 and over</td>
<td></td>
<td>$ 2,500.00 per calendar</td>
</tr>
</tbody>
</table>
Public Works and Construction Bids—Notes

Non-Collusion Affidavit

A straightforward standard document that appears in many bid packages. The contractor is just verifying that he prepared this bid independently and did not discuss, participate or make any agreement with another bidder as it pertains to the bid.

All bidders are asked to complete and submit a Non-Collusion Affidavit.

- Only one (1) bid package failed to include any Non-Collusion Affidavit
Public Works and Construction Bids—Notes

Pre-qualification and Classification of Bidders

Any contractor who submits a bid for a public works contract the amount which exceeds $20,000, pursuant to N.J.S.A. 18A:18A-26, 27 et seq., shall be classified by the Department of Treasury, Division of Property Management (DPMC) as to the type of work and trades (character) and the aggregate rating (amount) of public work they are qualified to submit bids.

The board of education may only accept bids from contractors that are qualified.

There are three (3) documents that have to be submitted with the bid in order for a contractor to meet this qualification requirement.

Document #1—Notice of Classification—DPMC-27
The Notice of Classification is a document issued by the DPMC that provides the following information about the qualified contractor:

- Trade(s) classification held by the contractor

The contractor is classified by the trade and trade number as found in Form DPMC-27. For example

<table>
<thead>
<tr>
<th>Trade Number</th>
<th>Trade</th>
</tr>
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<tbody>
<tr>
<td>C030</td>
<td>Plumbing</td>
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<tr>
<td>C032</td>
<td>HVACR</td>
</tr>
</tbody>
</table>

The contractor is therefore qualified to submit bids (exceeding $20,000) to the board of education that pertain to plumbing and heating, ventilation, air conditioning and refrigeration.
Public Works and Construction Bids—Notes

Pre-qualification and Classification of Bidders

Document #1—Notice of Classification—DPMC-27—continued!
The Notice of Classification also provides information of the contractor’s Aggregate Amount Rating. Based upon the application process and the information the contractor provides to the DPMC, the contractor is given an Aggregate Amount Rating. An example would be as follows:

- $10,000,000 Aggregate Amount

Basically this means the contractor may not exceed the amount of $10,000,000 in public works contracts both uncompleted and projected.
Public Works and Construction Bids—Notes

Document #1—Notice of Classification—DPMC-27

EAGLE MECHANICAL INC
664 HIGHLAND AVENUE
CHERRY HILL, NJ 08002

State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PROPERTY
MANAGEMENT AND CONSTRUCTION
33 WEST STATE STREET - P.O. BOX 034
TRENTON, NEW JERSEY 08625-0034

NOTICE OF CLASSIFICATION

In accordance with N.J.S.A. 18A:18A-27 et seq (Department of Education) and N.J.S.A. 52:35-1 (Department of the Treasury) and any rules and regulations issued pursuant hereto, you are hereby notified of your classification to do State work for the Department(s) as previously noted.

<table>
<thead>
<tr>
<th>Aggregate Amount</th>
<th>Trade(s) &amp; License(s)</th>
<th>Effective Date</th>
<th>Expiration Date</th>
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</table>

- Licenses associated with certain trades are on file with the Division of Property Management & Construction (DPMC).
- Current license information must be verified prior to bid award.
- A copy of the DPMC 701 Form (Total Amount of Uncompleted Projects) may be accessed from the DPMC website at http://www.state.nj.us/treasury/dpmc/Assets/Files/dpmc-27_03_07.pdf.

ANY ATTEMPT BY A CONTRACTOR TO ALTER OR MISREPRESENT ANY INFORMATION CONTAINED IN THIS FORM MAY RESULT IN PROSECUTION AND/OR DEBARMENT, SUSPENSION OR DISQUALIFICATION. INFORMATION ON AGGREGATE AMOUNTS CAN BE VERIFIED ON THE DPMC WEB SITE.
<table>
<thead>
<tr>
<th>Firm Name</th>
<th>Form 3—TRADES REQUESTED</th>
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<tbody>
<tr>
<td>Public Works and Construction Bids — Notes</td>
<td>STATE OF NEW JERSEY—DIVISION OF PROPERTY MANAGEMENT AND CONSTRUCTION</td>
</tr>
</tbody>
</table>

### INSTRUCTIONS:
Place a check( ) next to each trade classification that your company intends to submit a bid. Refer to N.J.A.C. 17:19-2.7 for further details.

<table>
<thead>
<tr>
<th>Trade Classification</th>
<th>Notes</th>
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<td><em>C006 Construction Manager as Contractor</em></td>
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<tr>
<td><em>C007 Design Build</em></td>
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<tr>
<td><em>C008 General Construction</em></td>
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<tr>
<td><em>C009 General Construction/Alterations &amp; Additions</em></td>
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<tr>
<td><em>C010 Pavers, Retaining Wall, Sidewalks</em></td>
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<tr>
<td><em>C011 Doors and Hardware</em></td>
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<tr>
<td><em>C012 Windows</em></td>
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<tr>
<td><em>C013 Siding and Gutters</em></td>
<td></td>
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<tr>
<td><em>C014 Carpentry</em></td>
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<tr>
<td><em>C015 Lighting/Tile</em></td>
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<tr>
<td><em>C016 Millwork</em></td>
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<tr>
<td><em>C017 Insulation</em></td>
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<tr>
<td><em>C018 Acoustical</em></td>
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<tr>
<td><em>C019 Concrete/Foundation Footings/Masonry Work</em></td>
<td></td>
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<tr>
<td><em>C020 Gutter</em></td>
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<tr>
<td><em>C021 Demolition</em></td>
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<tr>
<td><em>C022 Fencing</em></td>
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<tr>
<td><em>C023 Historical Light Fixture Restoration</em></td>
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<tr>
<td><em>C024 Roof Restoration</em></td>
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<tr>
<td><em>C025 Pre-cast Concrete</em></td>
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<tr>
<td><em>C026 Curtain Walls</em></td>
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<tr>
<td><em>C027 Architectural Cast Iron</em></td>
<td></td>
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<tr>
<td><em>C028 Welding</em></td>
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<tr>
<td><em>C029 Structural Steel and Ornamental Iron</em></td>
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<tr>
<td><em>C030 Plumbing</em></td>
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<tr>
<td><em>C031 Oil and Gas Burners</em></td>
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<tr>
<td><em>C032 HVAC®</em></td>
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<tr>
<td><em>C033 Boilers (New Repair)</em></td>
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<tr>
<td><em>C034 Service Station</em></td>
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<tr>
<td><em>C035 Solar energy systems</em></td>
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<tr>
<td><em>C036 Energy Services (ESCO)</em></td>
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<tr>
<td><em>C038 Geothermal Loop Systems</em></td>
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<tr>
<td><em>C040 Fireproof Applications</em></td>
<td></td>
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<tr>
<td><em>C041 Insulation/Mechanical</em></td>
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<tr>
<td><em>C042 Inuminators</em></td>
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<tr>
<td><em>C043 Control Systems</em></td>
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<tr>
<td><em>C044 Parking and Control Systems</em></td>
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<tr>
<td><em>C045 Sprinkler Systems</em></td>
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<tr>
<td><em>C046 Sheet Metal (Mechanical)</em></td>
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<tr>
<td><em>C047 Electrical</em></td>
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<tr>
<td><em>C048 Communications Systems</em></td>
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<td><em>C049 Fire Alarm/Signal Systems</em></td>
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<tr>
<td><em>C050 Security/Alarm Systems</em></td>
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<td><em>C052 Audio Visual Systems</em></td>
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<td><em>C054 Site Work</em></td>
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<td><em>C055 Sewage and Water Treatment Plants</em></td>
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<tr>
<td><em>C056 Sewer Piping and Storm Drains</em></td>
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<tr>
<td><em>C057 Landscape Construction</em></td>
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<tr>
<td><em>C058 Underground Water and Utilities</em></td>
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<tr>
<td><em>C059 Road Construction and Paving</em></td>
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<tr>
<td><em>C060 Athletic Fields/Tennis Courts</em></td>
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<tr>
<td><em>C061 Athletic Fields/Synthetic Turf</em></td>
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<tr>
<td><em>C062 Pumping Stations</em></td>
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<tr>
<td><em>C065 Landscape Irrigation®</em></td>
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</tr>
<tr>
<td><em>C066 Roofing-Membrane EPDM</em></td>
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<tr>
<td><em>C070 Roofing-Membrane PVC/CF/ESPEC®</em></td>
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<td><em>C071 Roofing-Membrane Modified Bitumen</em></td>
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<td><em>C079 Roofing-Urethane</em></td>
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<tr>
<td><em>C080 Roofing-Built-Up</em></td>
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<td><em>C081 Roofing-Metal</em></td>
<td></td>
</tr>
<tr>
<td><em>C082 Roofing-Plate/Slates/Shingles</em></td>
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<tr>
<td><em>C083 Caulking and Waterproofing</em></td>
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<tr>
<td><em>C084 Scaffolding</em></td>
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<tr>
<td><em>C085 Roofing-Historical Sites</em></td>
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<td><em>C086 Roofing-Top</em></td>
<td></td>
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<tr>
<td><em>C087 Painting-Structure/Exposed Structures</em></td>
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<tr>
<td><em>C088 Sandblasting</em></td>
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<tr>
<td><em>C089 Divers</em></td>
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<tr>
<td><em>C090 Barges</em></td>
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<tr>
<td><em>C091 Bulkhead and Docks</em></td>
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<tr>
<td><em>C092 Jetty and Breakwater</em></td>
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<tr>
<td><em>C093 Dredging</em></td>
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<tr>
<td><em>C096 Pile Driving</em></td>
<td></td>
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<tr>
<td><em>C098 Prefabrication Buildings</em></td>
<td></td>
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<tr>
<td><em>C099 Prefabrication/Music/Sound</em></td>
<td></td>
</tr>
<tr>
<td><em>C100 HVAC®</em></td>
<td></td>
</tr>
<tr>
<td><em>C101 Abatement</em></td>
<td></td>
</tr>
<tr>
<td><em>C102 Asbestos Removal/Installation</em></td>
<td></td>
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<tr>
<td><em>C103 Waste Removal Toxic</em></td>
<td></td>
</tr>
<tr>
<td><em>C104 Radon Mitigation</em></td>
<td></td>
</tr>
<tr>
<td><em>C105 Lead Paint Abatement</em></td>
<td></td>
</tr>
</tbody>
</table>

*Copies of License must be attached.

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(DPNC-27) - 01/15

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Initials of Preparer ———

28
Public Works and Construction Bids—Notes

Pre-qualification and Classification of Bidders

**Document #2—Uncompleted Contracts Document—DPMC 701**
This document officially called the Total Amount of Uncompleted Contracts is completed by the contractor submitting a bid, on the form provided by the DPMC. The document lists the amount of uncompleted contracts held by the contractor and a certification that the amount of uncompleted contracts, added to the bid amount for the board project, does not exceed the Aggregate Amount rating as assigned by the DPMC.

Simple Math
In determining if the apparent low bidder of a construction project was eligible for the award of contract, the school business administrator has to do a simple math computation.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bid Price Submitted by Low Bidder</td>
<td>$8,900,000</td>
</tr>
<tr>
<td>Uncompleted Contracts</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>Aggregate Amount Rating</td>
<td>$10,000,000</td>
</tr>
</tbody>
</table>

Is the low bidder contractor eligible for the award of contract?

**Just a reminder!** “A firm shall not be awarded a contract which, when added to the backlog of uncompleted construction work...exceed the firm’s aggregate rating”, also applies to subcontractors aggregate rating.
Pre-qualification and Classification of Bidders

Document #2—Uncompleted Contracts Document—DPMC 701

This form is to be used with the NOTICE OF CLASSIFICATION when submitting bids to the Department of Education.

I certify that the amount of uncompleted work on contracts is $__________________________.

The amount claimed includes uncompleted portions of all currently held contracts from all sources (public and private) in accordance with N.J.A.C. 17:13-2.13.

I further certify that the amount of this bid proposal, including all outstanding incomplete contracts does not exceed my prequalification dollar limit.

Respectfully submitted,

By ____________________________
Name of Firm

______________________________
Signature

______________________________
Title

______________________________
Business Address

______________________________
Phone

Affix corporate seal here.

Sworn to and subscribed before me
This ___________________ day of
20_______

Notary Public

DPMC 701 (3/15)
Pre-qualification and Classification of Bidders

Document #3—Pre-qualification Affidavit/No Material Adverse Change
Pursuant to N.J.S.A. 18A:18A-32, no bidder is qualified to bid on any public work contract unless they provide an affidavit that there has been no material adverse change in his qualification information pursuant to N.J.S.A. 18A:18A-28.

The document has come in a few similar type of forms as designed by various contracting agencies. The most common affidavit form is the

Affidavit of No Material Adverse Change in Status (Circumstances)

Other districts have included this requirement in an overall Pre-qualification Affidavit/No Material Adverse Change that certifies current classifications and uncompleted contracts.
Public Works and Construction Bids—Notes

Partial Payments; Withholding of Funds; Retainage

Architects and SBA’s are reminded of the following language as it pertains to partial payments and withholding of funds.

Contracts – Less than $100,000 – Lump Sum Payment
Public works contracts less than $100,000 shall be paid in one lump total sum, upon completion of the project and to the satisfaction of the Board of Education. (Ref. N.J.S.A. 18A:18A-40.1)

Contracts – Exceeding $100,000 – Monthly Payments
Public works contracts that exceed $100,000 shall be paid with partial payments on a monthly basis for work that was completed to the satisfaction of the Board of Education. (Ref. N.J.S.A. 18A:18A-40.1)

Withholding of Monies – Percentage to be Withheld
The Board of Education shall withhold the following percentages of outstanding balances of monies owed to contractors:

<table>
<thead>
<tr>
<th>Balances Exceeding $500,000</th>
<th>Two (2%) Per Cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balances Less than $500,000</td>
<td>Five (5%) Per Cent</td>
</tr>
</tbody>
</table>


- Language explaining partial payments and withholding of fund were not found in eleven (11) bid specifications.
Public Works and Construction Bids—Notes

Performance Bond

Pursuant to N.J.S.A. 2A:44-143, a board of education shall require a performance bond from the successful bidder for the construction, alteration, erection or repair of any public buildings or other public works. The bond shall be in accordance with the provisions of N.J.S.A. 2A:44-147.

Note the following:

Amount of the bond shall be 100% of the amount of the contract and may not exceed the 100%.

The performance bond shall be issued by licensed bonding companies with the New Jersey Department of Banking and Insurance.

The performance bond shall substantially follow the form of bond as outlined in N.J.S.A. 2A:44-147.

The performance bond, properly executed, shall be submitted by the successful bidder at the time of execution of contract with the board of education.

- All bid specifications included language on the issuance of a performance bond.
Public Works and Construction Bids—Notes

Pay to Play—Chapter 271 Political Contribution Form

I looked for the following four (4) items as it pertained to Pay to Play requirements:

1. **Language about the submission of a Chapter 271 Political Contribution Disclosure Form.**
   - Eight (8) bid specifications failed to include any language. They just had the Chapter 271 PCD form in the package.

2. **Language about the Board of Education code and Pay to Play**
   N.A.J.C. 6A:23A-6.3 (a) (1) reminds all concerned that a board of education cannot vote upon any contract exceeding $17,500 or greater to any company that has made a reportable contribution to a board member during the past 12 months.
   - Twelve (12) bid specifications failed to include this Pay to Play language about boards of education.

3. **Chapter 271 PCD Form**
   - Five (5) bid specification failed to include the form and supporting Pay to Play directions and contractor instructions.

4. **Affected Agencies List**
   The Chapter 271 Contractor Instructions mentions the following about public agencies affected by the Pay to Play law:

   “*The enclosed list of agencies is provided to assist the contractor in identifying those public agencies whose elected official and/or candidate campaign committees are affected by the disclosure requirement. It is the contractor’s responsibility to identify the specific committees to which contributions may have been made and need to be disclosed.*”
   - Twenty-six (26) bid specifications failed to include the list of public agencies affected by the Pay to Play law.
Pay to Play—Chapter 271 Political Contribution Form

Affected Agencies—Sample County

List of Agencies with Elected Officials Required for Political Contribution Disclosure
N.J.S.A. 19:44A-20.26

**County Name: Passaic**
State: Governor, and Legislative Leadership Committees
Legislative District #s: 26, 34, 35, 36, & 40
  State Senator and two members of the General Assembly per district.

<table>
<thead>
<tr>
<th>County:</th>
<th>Page:</th>
<th>Page:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Freeholders</td>
<td>County Clerk</td>
<td>Sheriff</td>
</tr>
<tr>
<td>Surrogate</td>
<td>Clerk</td>
<td>Registrar of Deeds</td>
</tr>
</tbody>
</table>

**Municipalities (Mayor and members of governing body, regardless of title):**

<table>
<thead>
<tr>
<th>Borough</th>
<th>Borough:</th>
<th>Borough:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bloomingdale Borough</td>
<td>Passaic City</td>
<td>Wanaque Borough</td>
</tr>
<tr>
<td>Clifton City</td>
<td>Paterson City</td>
<td>Wayne Township</td>
</tr>
<tr>
<td>Haledon Borough</td>
<td>Pompton Lakes Borough</td>
<td>West Milford Township</td>
</tr>
<tr>
<td>Hawthorne Borough</td>
<td>Prospect Park Borough</td>
<td>West Paterson Borough</td>
</tr>
<tr>
<td>Little Falls Township</td>
<td>Ringwood Borough</td>
<td></td>
</tr>
<tr>
<td>North Haledon Borough</td>
<td>Totowa Borough</td>
<td></td>
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</tbody>
</table>

**Boards of Education (Members of the Board):**

<table>
<thead>
<tr>
<th>Borough</th>
<th>Borough:</th>
<th>Borough:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bloomingdale Borough</td>
<td>Passaic City</td>
<td>Totowa Borough</td>
</tr>
<tr>
<td>Clifton City</td>
<td>Passaic County Manchester Regional</td>
<td>Wanaque Borough</td>
</tr>
<tr>
<td>Haledon Borough</td>
<td>Passaic Valley Regional</td>
<td>Wayne Township</td>
</tr>
<tr>
<td>Hawthorne Borough</td>
<td>Paterson City</td>
<td>West Milford Township</td>
</tr>
<tr>
<td>Lakeland Regional</td>
<td>Pompton Lakes Borough</td>
<td>West Paterson Borough</td>
</tr>
<tr>
<td>Little Falls Township</td>
<td>Prospect Park Borough</td>
<td></td>
</tr>
<tr>
<td>North Haledon Borough</td>
<td>Ringwood Borough</td>
<td></td>
</tr>
</tbody>
</table>

**Fire Districts (Board of Fire Commissioners):**

None
Public Works and Construction Bids—Notes

Prevailing Wages

Public works bid specifications shall require language about contractors’ and subcontractors’ responsibilities pursuant to the New Jersey Prevailing Wages Act, N.J.S.A. 34:11-56.25 et seq.

The bid specifications shall contain at a minimum, language concerning

- Paying Prevailing Wages to all Workers—Compliance with the Law
- Submission of Certified Payrolls—Contractor
- Submission of an Affidavit—Contractor at Final Payment
- Posting of Prevailing Wages—Contractor at Job Site
- Non-compliance Statement—Board of Education

It is recommended that all bid specifications have a Prevailing Wages Certification form to be signed and submitted by each bidder.

Prevailing wage rates are set by the New Jersey Department of Labor and Workforce Development. (Dept. of LWD)

- Two (2) bid documents failed to include any language about prevailing wages.
- Ten (10) bid documents failed to include part of the prevailing wage minimum language requirements.
- Twelve (12) bid documents stated that prevailing wages was determined by the New Jersey Department of Labor and Industry.

The name of the department has changed to the New Jersey Department of Labor and Workforce Development.
Public Works and Construction Bids—Notes

Prevailing Wages

Suggested Prevailing Wages Language

PREVAILING WAGES; CONSTRUCTION, ALTERATIONS, REPAIRS

The State of New Jersey Prevailing Wage Act, Chapter 150 Laws of 1963 with applicable statewide wage rates and for the wage rates for the county of the location of the school district, as published by the Department of Labor and Workforce Development in conformance with N.J.S.A. 34:11-56-25 et seq., may be included in these bid contract documents. Copies of these wage rates may be obtained from the State Department of Labor and Workforce Development, and/or viewed at http://lwd.dol.state.nj.us/ the Prevailing Wages Determination Section.

Compliance with New Jersey Prevailing Wage Act
Every contractor and subcontractor performing services in connection with this project, shall pay all workers a wage rate not less than the published prevailing wage rates, for the locality the work is being performed, as designated by the New Jersey Department of Labor and Workforce Development.

Certified Payrolls
Every contractor agrees to submit to the Board of Education a certified payroll for each payroll period within ten (10) days of the payment of wages. The contractor further agrees that no payments will be made to the Contractor by the Board of Education, if certified payrolls are not received by the board. It is the Contractor’s responsibility to insure timely receipt by the district of certified payrolls.

Submission of Affidavit
Before final payment, the contractor shall furnish the Board of Education with an affidavit stating that all workers have been paid the prevailing rate of wages in accordance with State of New Jersey requirements. The contractor shall keep an accurate record showing the name, craft, or trade and actual hourly rate of wages paid to each workman employed by him in connection with this work. Upon request, the Contractor(s) and each Subcontractor shall file written statements certifying to the amounts then due and owing to any and all workmen for wages due on account of the work. The statements shall be verified by the oaths of the Contractor or Subcontractor, as the case may be.
Public Works and Construction Bids—Notes

Prevailing Wages

Suggested Prevailing Wages Language

Posting of Prevailing Wages
The contractor and subcontractor shall post the prevailing wage rates for each craft and classification involved in the work, including the effective date of any changes thereof, in prominent and easily accessible places at the Site of the work and in such place or places as used to pay workmen their wages. (Ref. 18A:7G-23 and N.J.S.A. 34:11-56.32.)

Prevailing Wages Certification—Submission with Bid
The bidder shall submit a Prevailing Wages Certification with its bid package.

Non-compliance Statement
If it is found that any worker, employed by the contractor or any subcontractor covered by said contract, has been paid a rate of wages less than the prevailing wage required to be paid by such contract, the Board of Education, may begin proceedings to terminate the contractor's or subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages and to prosecute the work to completion or otherwise. The contractor and his sureties shall be liable for any excess costs occasioned thereby to the public body.
Public Works and Construction Bids—Notes

Prevailing Wages

SAMPLE WAGE DETERMINATION—ELECTRICIAN—PASSAIC COUNTY

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

County - PASSAIC

Craft: Electrician

<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td></td>
<td>05/30/16</td>
</tr>
<tr>
<td>Cable Splicer</td>
<td>W68.71</td>
</tr>
<tr>
<td></td>
<td>B33.74</td>
</tr>
<tr>
<td></td>
<td>T92.45</td>
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<tr>
<td>Foreman</td>
<td>W59.77</td>
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<tr>
<td></td>
<td>B34.34</td>
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<tr>
<td></td>
<td>T94.11</td>
</tr>
<tr>
<td>Journeyman</td>
<td>W63.27</td>
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<tr>
<td></td>
<td>B30.67</td>
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<tr>
<td></td>
<td>T94.04</td>
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</table>

Craft: Electrician

<table>
<thead>
<tr>
<th>INTERVAL</th>
<th>PERIOD AND RATES</th>
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</thead>
<tbody>
<tr>
<td>Yearly</td>
<td>40% 49% 58% 68% 80%</td>
</tr>
<tr>
<td>Benefit</td>
<td>40% 49% 58% 68% 80%</td>
</tr>
</tbody>
</table>

Ratio of Apprentices to Journeymen - 2:3

Craft: Electrician

COMMENTS/NOTES

THESE RATES ALSO APPLY TO THE FOLLOWING:
- All burglar and fire alarm work.
- All fiber optic work.
- Teledata work in new construction.
- Teledata work involving 16 Voice/Data Lines or more.

The regular workday shall be 8 hours, between 8:00 AM and 4:30 PM.

FOREMAN REQUIREMENTS:
- On any job where there are 1 to 10 Journeymen electricians, 1 shall be designated a Foreman.

SHIFT DIFFERENTIALS:
- Shift work must run for a minimum of 5 consecutive workdays.
- 2nd Shift (4:30 PM to 12:30 AM) shall receive 8 hours pay for 7.5 hours work + an additional 10% of the regular rate, per hour, inclusive of benefits.
- 3rd Shift (12:30 AM to 8:00 AM) shall receive 8 hours pay for 7 hours work + an additional 15% of the regular rate, per hour, inclusive of benefits.

OVERTIME
- Hours in excess of 8 per day, or outside of the regular workday, Monday through Friday, and all hours on Saturdays, shall be paid at time and one-half the regular rate, inclusive of benefits. All hours on Sundays and holidays shall be paid at double the regular rate, inclusive of benefits.

2/15/2017
Public Works and Construction Bids—Notes

Statement of Ownership Disclosure
(Formally the Stockholders Disclosure Form)

N.J.S.A. 52:25-24.2 and related court cases provides that no business organization, regardless of form of ownership shall be awarded any contract for the performance of any work or the furnishing of any goods and services, unless, prior to the receipt of the bid or accompanying the bid of said business organization, bidders shall submit a statement setting forth the names and addresses of all persons and entities that own ten percent or more of its stock or interest of any type at all levels of ownership.

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

In the past we have called this form the Stockholders’ Disclosure Form. It is my recommendation to rename the form

Statement of Ownership Disclosure Form

Format of Statement of Ownership Disclosure Form
It is my recommendation to be in compliance with the amended law of August 31, 2016, that all school districts use the model Statement of Ownership Disclosure Form as provided by the New Jersey Division of Local Government Services as noted in Local Finance Notice LFN 2016-19 of December 1, 2016.

• Three (3) bid specifications did not included an Ownership Disclosure Form
Public Works and Construction Bids—Notes

Withdrawal of Bids I—60 days

Many of the bid specifications have the 60 day withdrawal of bid clause which states that the bidders cannot modify, withdraw or cancel during that sixty (60) day period. That is fine, however, a second look at the law* may be warranted.

N.J.S.A. 18:18A-36 (a)*
The board of education shall award the contract or reject all bids within such time as may be specified in the invitation to bid, but in no case more than 60 days, except that the bids of any bidders who consent thereto may, at the request of the board of education, be held for consideration for such longer period as may be agreed.

The onus appears to be on the board of education to take the required action within sixty days. It is suggested that wording from 18A:18A-36 (a) be inserted in the bid specifications.

Withdrawal of Bids II-Prior to a Bid Opening

The board of education, after consultation with the board attorney, may want to include the following language of withdrawal of bid, prior to a bid opening.

The School Business Administrator/Board Secretary may consider a written request from a bidder to withdraw a bid if the written request is received by the School Business Administrator/Board Secretary before the advertised time of the bid opening. Any bidder who has been granted permission by the School Business Administrator/Board Secretary to have his/her bid withdrawn cannot re-submit a bid for the same advertised bid project. That bidder shall also be disqualified from future bidding on the same project if the project is re-bid.

Again, confirm with the board attorney.
Withdrawal of Bid III—After the Bid Opening

(Error, Mistake or Omission)

The board of education, after consultation with the board attorney, may want to include the following language of a withdrawal of a bid, after the bid opening.

The Board of Education may consider a written request from a bidder to withdraw a bid, if the written request is received by the School Business Administrator/Board Secretary within five (5) business days after the bid opening. A request to withdraw a bid after the specified number of days will not be honored.

The contractor/vendor who wishes to withdraw a bid must provide a certification supported by written factual evidence that an error, mistake or omission was made by the contractor and that the error, mistake or omission was a substantial computational error, mistake or an unintentional omission or all three.

The request to withdraw a bid after the bid opening may be reviewed by the School Business Administrator/Board Secretary, the Director of Facilities, other interested administrators; and the Architect/Engineer of Record for the project (if necessary) and/or the Board Attorney and a recommendation will be made to the Board of Education. If the Board of Education grants permission to have the bid withdrawn the contractor/vendor shall be disqualified from bidding on the same project if the project is re-bid. If the contractor/vendor fails to meet the burden of proof to have the bid withdrawn the request to withdraw the bid will be denied and if the contractor/vendor fails to execute the contract the bid guarantee will be forfeited and become property of the Board of Education.

Again, please seek guidance from the board attorney.

N.J.S.A. 40A:11-23.3. Withdrawal of public works bid—the author is aware that this law does not pertain to school districts.
Public Works and Construction Bids—Notes

Contractor Performance Review

The specifications for every contract for public work, the entire cost whereof will exceed $20,000.00, shall provide that the board of education, through its authorized agent, shall upon completion of the contract report to the department as to the contractor's performance, and shall also furnish such report from time to time during performance if the contractor is then in default.

Mandatory Requirement Language
It is suggested that the bid specifications for Public Works, have as a minimum, the following language:

The School Business Administrator, upon completion of every contract for public work that exceeds $20,000, shall report to the department as to the contractor's performance, and shall also furnish such report from time to time during performance if the contractor is then in default.

Reporting to What “Department”

One could argue that the Department of Education should receive the report as the legal requirement is found in educational law.

Another could argue that the Department of Treasury should receive the report. This argument seems more plausible for the following reasons:

• Contractor Phase Performance Review—Non-DPMC Contracting Unit
The Division of Property Management and Construction of the Department of Treasury has provided a reporting tool (Form DPMC 43-A) for Contractor Performance for Non-DPMC Contracting Units.
Contractor Performance Review  

- Classification Procedures  
The DPMC of the Treasury Department, classifies all bidders as to the character (trade) and the amount (aggregate rating) for public work contracts. In accordance with N.J.S.A. 18A:18A-29:

  “The department shall consider reports filed by boards of education pursuant to 18A:18A-15 as a basis for denial of a favorable classification to all prospective bidders.”

It is therefore implied that the Department of Treasury needs the performance reports as the basis of approving or denying classification to all prospective bidders.

Reporting Tool—DPMC 43-A  
It is recommended that the School Business Administrator comply with the reporting requirements pursuant to N.J.S.A. 18A:18A-15, and report to the Department of the Treasury, Division of Property Management and Construction on the form provided by the Division, DPMC 43-A. The SBA may also send a copy of the report to the Department of Education.

## CONTRACTOR PHASE PERFORMANCE REVIEW – Non-DPMC Contracting Unit

**STATE OF NEW JERSEY – TREASURY DIVISION OF PROPERTY MANAGEMENT & CONSTRUCTION**

### CONTRACTOR: [Redacted]
### ADDRESS: [Redacted]
### VENDOR ID: [Redacted]

### PROJECT: [Redacted]
### LOCATION: [Redacted]
### CONTRACT UNIT: [Redacted]
### PROJECT MGR: [Redacted]
### ADDRESS: [Redacted]
### PHONE: [Redacted]

### EVALUATION PERIOD (CHECK ONE)
- 25% Completion
- 50% Completion
- 75%/Substantial Completion
- Close-Out

**INSTRUCTIONS:** Circle rating values for each item that the contractor performed during this rating period. In order for this evaluation to be included in consideration of the contractor’s classification it must be submitted in accordance with N.J.A.C. 17:15.

**NOTE:** Written comments with task specific explanations of how and when a contractor exceeded or failed to meet the rating criteria must be provided when any item is rated other than “S”. Attach comments on a separate sheet.

<table>
<thead>
<tr>
<th>ITEM</th>
<th>EVALUATOR #1 (REQUIRED)</th>
<th>EVALUATOR #2 (REQUIRED)</th>
<th>EVALUATOR #3 (REQUIRED)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>O</td>
<td>V</td>
<td>S</td>
</tr>
<tr>
<td>1. QUALITY OF WORK</td>
<td>100</td>
<td>90</td>
<td>80</td>
</tr>
<tr>
<td>2. SCHEDULING</td>
<td>100</td>
<td>90</td>
<td>80</td>
</tr>
<tr>
<td>3. MANAGEMENT</td>
<td>100</td>
<td>90</td>
<td>80</td>
</tr>
<tr>
<td>4. COST CONTROL/CHANGE ORDERS</td>
<td>100</td>
<td>90</td>
<td>80</td>
</tr>
<tr>
<td>5. SAFETY/INDUSTRIAL HYGIENE</td>
<td>100</td>
<td>90</td>
<td>80</td>
</tr>
<tr>
<td>6. SUBCONTRACTORS</td>
<td>100</td>
<td>90</td>
<td>80</td>
</tr>
<tr>
<td>7. CLOSEOUT</td>
<td>100</td>
<td>90</td>
<td>80</td>
</tr>
</tbody>
</table>

**AVERAGE**

**RATING VALUES**
- **O:** OUTSTANDING – For exceeds the contract requirements by considerably exhibiting superior performance. Always meets, and almost always exceeds the contract requirements. Justification required for this rating.
- **V:** VERY GOOD – Often exceeds the contract requirements and frequently provides a high level of performance. Always meets, and often exceeds the contract requirements. Justification required for this rating.
- **S:** SATISFACTORY – Provides an acceptable level of performance consistently meeting the contract requirements.
- **M:** MARGINAL – Performs slightly below the standards of the contract, missing the contract requirements on an infrequent basis. Justification required for this rating.
- **U:** UNSATISFACTORY – Failed to meet important contract requirements, resulting in a negative impact on the entire project. Justification required for this rating.

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**EVALUATOR #1 (REQUIRED)**
I certify that my evaluation of this contractor is based on direct observation and/or involvement with the contractor’s performance on this project.

**EVALUATOR #2 (REQUIRED)**
I certify that my evaluation of this contractor is based on direct observation and/or involvement with the contractor’s performance on this project.

**EVALUATOR #3 (REQUIRED)**
I certify that my evaluation of this contractor is based on direct observation and/or involvement with this contractor’s performance on this project.

**PRINT NAME & TITLE**

(RIGHT) **FOR CONTRACTING UNIT USE ONLY**

PHASE AVERAGE: [Redacted]

CLOSED: [Redacted]

RESET
CONTRACTOR RATING CRITERIA

1. Quality of Work:
   - Quality of construction and materials
   - Quality of supervision personnel
   - Quality control program
   - Compliance with required testing inspections
   - Compliance with plans and specifications
   - Quality of as-built drawings

2. Scheduling:
   - Timeliness of creation, submission and approval of project schedule
   - Quality of project schedule
   - Adequacy of staffing, materials and equipment to meet schedule
   - Timeliness of ordering materials to meet schedule
   - Timeliness of submittal of shop drawings and samples
   - Timeliness in obtaining permits
   - Adherence to schedule
   - Timeliness of notice of condition(s) impacting schedule
   - Timeliness of notice of scheduled stops, cutovers, shutdowns, and/or interruptions to operations of Client facilities and other contractors' work in progress
   - Accuracy and timeliness of notice that work in place is ready for inspection/tests

3. Management:
   - Coordination of work with Client operations
   - Management of subcontractors and suppliers
   - Responsiveness to contacting officer and contracting officer representative requests
   - Timeliness of payment to subcontractors and suppliers
   - Timeliness and accuracy of submission of project records and as-built documentation
   - Compliance with Prevailing Wage program
   - Adequacy of daily logs for all work activities

4. Cost Control and Change Orders:
   - Validity and appropriateness of supporting documentation for change orders
   - Timeliness of submission of change order proposals
   - Timeliness of performance of change order work
   - Avoidance and minimization of claims and change orders

5. Safety and Industrial Hygiene:
   - Adequacy of compliance with contract and OSHA safety guidelines, industry standards and requirements of applicable laws, rules and regulations
   - Timeliness and adequacy of corrections to safety deficiencies
   - Quality of site safety maintenance
   - Accuracy and timeliness of regulatory documentation (e.g., notifications, variance requests, etc.)
   - Compliance with regulatory requirements for worker exposure

6. Subcontractors:
   - Quality of subcontractor work
   - Subcontractor attendance at scheduled meetings and job site consultations
   - Subcontractor responsiveness and compliance with contacting officer requests
   - Subcontractor provision of appropriate manpower and material on schedule
   - Validity and appropriateness of supporting documentation for change orders

7. Close Out:
   - Timeliness of completion of punch list work
   - Clarity and completeness of operating/maintenance manuals and warranties and demonstrations of the operation of installed systems and/or equipment
   - Timeliness and completeness of demobilization from construction site, leaving contractor occupied areas in, or restored to good condition
   - Supports building commissioning and project delivery program
   - Compliance with all training requirements
   - Clarity and completeness of as-built drawings

DISTRIBUTION:

Submit completed form DPMC-43A to:
NJ Department of Treasury
DPMC Evaluations Coordinator
P O Box 235
Trenton NJ 08625-0235

Send a copy of this completed evaluation to the contractor and to each evaluator.