



PASSAIC COUNTY COMMUNITY COLLEGE
PURCHASE ORDER TERMS AND CONDITIONS

DEFINITIONS:

“College” shall mean Passaic County Community College.

“Supplier” or “Contractor” shall mean a seller from which the College orders supplies, services or other work via a written purchase order.

“Supplies” shall mean supplies, products, materials or other goods detailed in a purchase order.

“Services” shall mean design, engineering, installation, testing, evaluation, training, maintenance, repair, management, consulting and any other work necessary to fulfill a Supplier’s obligations under a purchase order.

“Purchase Order” shall mean a written order for Supplies or Services issued to a Supplier by the College.

“Subcontractor” shall mean Supplier’s suppliers or subcontractors of any tier contracting directly or indirectly with Supplier for the provision of any Supplies or Services under a purchase order.

1. Supplier Responsibilities

Supplier shall (a) provide to College the Supplies and/or Services ordered in accordance with the terms stipulated in a Purchase Order (“PO”); (b) keep College advised of the status of any Supplies and/or Services ordered with a PO; (c) permit duly authorized representatives of College to review and observe, from time to time upon reasonable notice, the manufacture, fabrication, assembly or delivery of the Supplies and Services ordered; (d) provide College with such reports as are appropriate to the nature of the Supplies and Services ordered and as may be reasonably requested by College from time to time; (e) keep, for orders requiring payment based on materials used and/or hours worked, the cost of materials used and/or expenses incurred, records of hours worked, and any other reasonable billable expenses incurred in filling the PO, which records College’s duly authorized representatives may examine from time to time upon reasonable notice; and (f) if requested by College, Supplier shall provide on-site training concerning any Supplies or Services ordered hereunder for College’s personnel at College’s facility at no additional cost.

2. Acknowledgment

The shipment of any Supplies or the furnishing of any Services (or delivery of any deliverable arising therefrom), shall constitute acceptance by Supplier of the PO and each and all of the terms and conditions stated herein. If Supplier objects to any of the terms and conditions hereof, it shall notify College in writing within ten days after issuance of the PO and may withhold acceptance of the PO until such objection is settled by written agreement.

3. Changes

College shall have the right to make changes in materials, packaging, time and place of delivery, method of transportation and any other specifications at any time and Supplier agrees to accept such changes. In the event such changes result in additional costs, College shall make an equitable adjustment in the purchase price provided such additional costs are itemized for College by Supplier within 30 days of the change.

College shall not make changes that would increase the cost above bid thresholds contained in any applicable law without first satisfying the conditions contained therein. Additionally, should any changes in cost raise the overall cost above the thresholds contained in any applicable law that would require additional documentation, registration or certifications from the Supplier, College shall so notify Supplier at the time the change is issued. Supplier agrees to comply with any such requirements within 10 days from the issuance of the change or, if they cannot comply, so notify the College in said time frame, in which case the change shall be cancelled.

4. Inspection and Acceptance

All Supplies and deliverables are subject to final review, inspection and acceptance by the College, notwithstanding any payment or initial inspection. Final inspection will be made by College within a reasonable time after receipt of Supplies or deliverables.

5. Rejections/Returns

College reserves the right to refuse any Supplies or Services (or associated deliverables), and to cancel all or any part of an applicable PO, if, in the College's sole opinion, the Supplies or Services (or associated deliverables) do not conform to applicable specifications, drawings, samples or descriptions. Acceptance of any part of a PO shall not bind the College to accept future shipments of non-conforming Supplies or Services, nor deprive it of the right to return non-conforming Supplies or Service deliverables already accepted. Supplies and Service deliverables, if rejected, may be returned to Supplier at Supplier's expense for transportation both ways, and no replacement or substitution shall be made unless so authorized by the College in writing.

6. Cancellation

The delivery of Supplies, Services and deliverables shall strictly comply with the delivery date or schedule, if any, specified by the College. If at any time it appears Supplier will not meet such delivery date or schedule, Supplier shall promptly notify College in writing of the reasons for, and the estimated duration of, the delay. The College may, in addition to its other rights and remedies, direct Supplier to ship delayed Supplies by expedited means so as to avoid or minimize delay to the maximum extent possible, the added cost to be borne by Supplier.

College reserves the right to terminate this contract in whole or part for its convenience. In such event, Supplier shall immediately stop, and instruct its Subcontractors to stop, all work and observe any instructions from College as to work in process. Supplier shall be paid an equitable adjustment for work already performed equal to the amount of Supplier's actual cost incurred in contemplation of the performance of the portion of the contract terminated plus 5% of such costs, provided that such adjustment shall in no case exceed the total amount of the contract.

College may also terminate this contract for cause in the event of a default by Supplier. In such event, College shall not be liable to Supplier for any amounts, and Supplier shall be liable for, and shall hold College harmless from, any damages occasioned by the Supplier's breach or default. If it should be determined that College has improperly terminated this contract for default, such termination shall be deemed to be for College's convenience.

Time is of the essence for this order. If delivery of the Supplies or the rendering of Services is not completed by the time promised, College may, without liability and in addition to its other rights and remedies, terminate this order as to Supplies not yet shipped or Services not yet rendered.

7. Invoices and Payment Terms

Unless otherwise specified by the College, a detailed invoice shall be issued for each PO after the Supplies are shipped or Services are provided. Applicable taxes and other charges, such as shipping costs, shall be stated separately on seller's invoice. No payment will be made prior to receipt of Supplies, Services (or associated deliverables) and a valid invoice.

Unless otherwise agreed to by the College, payment terms shall be Net 30 days from the receipt of a valid invoice. Payment due dates, including discount periods, will be computed from date of invoice receipt to the date College's check is mailed (or payment is otherwise transmitted by College). Any discount taken by College will be taken on full amount of invoice. Title shall pass to the College at the time of payment.

College may withhold payment of any amounts to be paid to Supplier if such payments are disputed in good faith by College. If College is owed any money from Supplier, College at any time may set-off such amount owed against any amount due Supplier under this order.

8. Representations and Warranties

In accepting this PO, Supplier unconditionally represents and warrants, any other representation or agreement to the contrary notwithstanding, that the Supplies and Services supplied pursuant to this PO are of merchantable quality, conform to the specifications as stated on the PO and as otherwise provided by College, shall be free from material defect for a minimum of one year from the date of acceptance by the College, and are suitable for College's intended uses and purposes in the ordinary course of its business.

If this PO is for Services then by accepting this PO, Supplier also unconditionally represents and warrants, any other representation or agreement to the contrary notwithstanding that: (a) its performance of the Services and the deliverables arising therefrom, or any portion or function thereof, or the use of the deliverables or any portion thereof, will not violate or infringe any third-party patent, trademark, copyright, trade secret or similar rights; (b) the Services will be provided by qualified personnel reasonably skilled and trained in the performance of the Services and in a workmanlike and professional manner in accordance with general industry standards; (c) it is currently under no obligation to any third party, nor will it enter into any obligation to a third party, that could interfere with its rendering to the College the Services or deliverables; (d) any documentation provided to College shall meet reasonable standards of clarity and detail; and (e) all deliverables will be warranted to perform according to their specifications.

All warranties herein stated shall run to College, its employees or students, or any other user of the Supplies, Service deliverables, or products into which such Supplies or deliverables may be incorporated.

9. Indemnification

Supplier agrees to indemnify and hold harmless College, its affiliates (and its and their respective directors, employees, students and agents) from any losses, liabilities, damages and/or expenses (including without limitation reasonable counsel fees) arising, directly or indirectly, from: (a) Supplier's breach of any provision hereof, including without limitation the confidentiality obligations and the representations and warranties made herein; (b) any negligent or wrongful act or omission of Supplier, its employees, consultants or subcontractors; (c) Supplier's failure to comply with applicable laws and regulations in filling the PO; (d) any claim charging that College's purchase of Supplies, Services or deliverables under the PO constitutes misappropriation of trade secrets, breach of a confidential relationship, or trademark, trade secret or copyright infringement; and/or (e) any claim charging that any Supplies or deliverables acquired under the PO, or the use of such Supplies or deliverables, infringe a third-party's patent anywhere in the world. If the Supplies or deliverables, or the use of such Supplies or deliverables, are held to constitute an infringement and their sale or use is enjoined, Supplier shall, at its expense and option, either procure for College and its affiliates the right to continue to use such Supplies or deliverables, or replace same with an equivalent non-infringing product, or modify same so it becomes an equivalent non-infringing product. This Section will not be construed to limit or exclude any other claims or remedies that College or its affiliates (and its and their respective directors, employees, students and agents) may assert.

10. Limitation of Liability

UNDER NO CIRCUMSTANCES WILL COLLEGE OR ITS AFFILIATES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS OF SUPPLIER OR ANY OTHER PARTY ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, FAILURE OF ANY REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, OR OTHERWISE. NOTWITHSTANDING THE FORM (e.g., CONTRACT, TORT OR OTHERWISE) IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT. IN NO EVENT WILL COLLEGE OR ITS AFFILIATES BE LIABLE FOR DAMAGES OR LOSSES THAT EXCEED, IN THE AGGREGATE, THE GREATER OF (i) THE AMOUNT OF FEES PAID BY COLLEGE FOR THE SUPPLIES OR SERVICES THAT GAVE RISE TO SUCH DAMAGES OR LOSSES FOR EACH RESPECTIVE BREACH OR SERIES OF RELATED BREACHES OR (ii) \$1000. THIS SECTION WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY DESPITE THE FOREGOING DISCLAIMER, EXCLUSION AND LIMITATION.

11. Insurance

Supplier shall, at its own expense, maintain with a reputable insurer (and provide written certificate(s) of insurance to College if and when requested) for a period of at least two years after the fulfillment of the PO, reasonable and customary insurance coverage, including, but not limited to, (a) worker's compensation statutory coverage as required by the laws of the applicable jurisdiction; (b) automobile insurance in the minimum amount of \$1 million; and (c) commercial general liability insurance, including coverage for product liability, in the minimum amount of \$1 million/\$2 million aggregate in respect of claims for any losses, costs and expenses arising out of or relating to Supplier furnishing the Supplies, deliverables and/or Services under the PO.

The certificate(s) of insurance will, if requested by College, designate College as an "additional insured" under the commercial general liability policy and will include the agreement for the insurer to give College written notice at least 30 days prior to the effective date of any cancellation, lapse or material change in the policy, and will contain a waiver of subrogation in favor of College.

12. Copyrights; Rights to Inventions.

College will be the exclusive owner of all work product and deliverables created by Supplier in connection with or during the performance of Services provided pursuant to a PO, any works based on or derived from such deliverables ("Derivatives"), and any ideas, concepts, inventions or techniques that Supplier may conceive or first reduce to practice in connection with developing the deliverables ("Deliverable Concepts", the deliverables, Derivatives, and Deliverable Concepts are collectively referred to as "College

Materials"), as well as all intellectual property rights therein, including patents, copyrights, trade secrets, trademarks, moral rights, and similar rights of any type under the laws of any governmental authority (collectively, "Intellectual Property Rights"). All copyrightable College Materials shall be prepared by Supplier as a "work made for hire" for College, and College shall be considered the author of the College Materials for purposes of copyright.

To the extent that the College does not acquire ownership of such copyrights as a work made for hire, and with respect to all other rights, Supplier hereby assigns, or agrees to assign upon creation, to College all right, title and interest in and to the College Materials and all Intellectual Property Rights therein. To the extent such assignment of rights and ownership is held to be invalid or any of the foregoing rights, including "moral rights" or rights of "*droit moral*" are held to be inalienable, Supplier agrees to waive and agrees not to exercise such rights, and if such waiver and agreement are deemed invalid, to grant to College and its designees the exclusive, transferable, perpetual, irrevocable, worldwide and royalty free right to make, use, market, modify, distribute, transmit, copy, sell, practice, and offer for sale and import the College Materials and any process, technology, software, article, equipment, system, unit, product or component part covered by the Deliverable Concepts or a claim of any patent in any part of the Deliverable Concepts.

At College's request, Supplier will obtain the execution of any instrument, including from any employee or Subcontractor, as may be appropriate to assign these rights under this paragraph to College or perfect these rights in College's name. Supplier agrees that any copyrightable material prepared for College shall carry on the face thereof in legible form a copyright notice identifying College and the year of publication.

13. Force Majeure and Disaster Recovery

Supplier and College, as the case may be, shall be excused for delays in performance or failure of performance to the extent arising from causes beyond such party's reasonable control, including without limitation strikes, wars, fires, floods, earthquakes, acts of terror, or other acts of God. In the event of any such event or condition, the party whose performance is excused hereunder shall notify the other promptly thereof and shall make diligent efforts to perform at its earliest opportunity. If Supplier's performance is excused hereunder, College shall have the right to make, have made, or otherwise procure replacement Supplies and Services.

14. Shipping Terms; Transportation Liability

Unless otherwise specified by College, delivery of Supplies is to be FOB Destination, Freight Prepaid. If College has not designated routing, Supplier is required to ship via the most economical method that will meet the required delivery date. Supplier shall provide a packing list to College for all shipments referencing the appropriate order number. Bills of lading, if any, shall also reference the appropriate order number.

Supplier agrees that in any case where freight regulations covering Supplies transported by common carrier establish a maximum limit on the carrier's liability for loss or damage suffered in transit, Supplier will be liable to College for any loss or damage in excess of such maximum limit up to the full price of the Supplies.

15. Confidentiality; No Publicity.

Supplier shall keep in confidence and shall not, without securing the prior written consent of College, disclose to any third party information relating to: the existence of the relationship with College; College's purchasing systems or practices (including, without limitation, descriptions of purchased items, quantities purchased and prices paid); the nature of the Services performed and deliverables and Supplies delivered under the PO; and any proprietary or confidential data, designs, or other information supplied by, or on behalf of, College. Notwithstanding the foregoing, Supplier may disclose such confidential information to Supplier's Subcontractors having a need to know such information in order to provide the ordered Supplies or Services.

Supplier agrees that it will take appropriate action by instruction, agreement, or otherwise with its employees and Subcontractors who are permitted access to the aforementioned information to notify them of Supplier's obligations hereunder.

Upon College's request any data, designs, or other information furnished to Supplier (and copies thereof) shall be returned to College.

Any individually identifiable data regarding College's employees, students or any other individual associated with the College, to which Supplier has access in connection with performance of the Services ("Personal Data") is the exclusive property and Confidential Information of College. Supplier will not use or disclose any Personal Data except as specifically directed by College in writing. Supplier will implement reasonable security measures to protect the confidentiality of Personal Data and to prevent its unauthorized disclosure, including without limitation commercially reasonable security measures requested by College from time to time in writing.

Supplier shall have no right to use College's name or logo in any marketing materials, advertising, press releases, customer lists or other publicity without College's prior written consent.

16. College's Property

If the Services include any work on College's property, to include inside delivery and/or installation, Supplier shall take reasonable care to protect surfaces, walls, etc., and shall reimburse the College the reasonable cost of any damage caused to College's property by Supplier or Supplier's agents.

Any and all tools, equipment and materials of every description furnished to Supplier by, or specifically paid for by, College, and any replacement thereof, and any materials affixed or attached thereto, shall be and remain the property of the College, and shall be safely stored separate and apart from Supplier's property. Supplier shall not substitute any property for College's property and shall not use such property except in filling College's orders.

Such property while in Supplier's custody or control shall be held at Supplier's risk, shall be kept insured by Supplier at Supplier's expense in an amount equal to the replacement cost with loss payable to College, and shall be subject to removal at College's request, in which event Supplier shall prepare such property for shipment and shall redeliver to College in the same condition as originally received by Supplier, reasonable wear and tear excepted.

17. College's Rules and Regulations

If Supplier is performing services at any College facility, Supplier, including Suppliers agents, employees and Subcontractors, shall at all times observe the College's rules for technology use, computer system security, general conduct, security and public safety, and access at the facility (together the "Rules and Regulations"), as may be revised by College from time to time, and shall at all times follow the reasonable directions of College's facility management and public safety personnel.

18. Compliance with Laws

Supplier agrees to comply with the applicable provisions of any federal, national, state or local law, and all orders, rules and regulations issued thereunder, whether now or hereafter in force, specifically including, but not limited to, the requirements of the New Jersey Prevailing Wage Act N.J.S.A. 34:11-56.25 *et seq.* and 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a).

Any provisions, representations or agreements required thereby to be included in the contract resulting from acceptance of the PO are hereby incorporated by reference. Specifically, the parties to this contract agree to incorporate into this contract the mandatory language contained in the following, as amended and supplemented from time to time: 42 U.S.C. S121 01 *et seq.*; P.L. 1975, c. 127, subsection 3.4(a), 3.5 (d) and section 5.3; N.J.A.C. 17:44-1 *et seq.*; N.J.S.A. 10:5-31 *et seq.*, and N.J.A.C. 17:27, Exhibit A or Exhibit B, attached herein, as applicable.

19. Notices

Any notice or communication required or permitted under this PO shall be in writing and shall be deemed received either (a) on the date personally delivered, (b) the next day after transmission by fax, courier or next-day carrier, or (c) the third day after mailing via first-class mail, return receipt requested, to a party at the address specified on the signature page or such other address as designated from time to time

20. Governing Law and Forum

The laws of the State of New Jersey, without regard to principles of conflict of laws or place of residence, will govern these terms and conditions and the PO. Any legal suit, action, or proceeding arising out of or this Agreement or the transactions contemplated hereby or shall be instituted in the United States District Court for the District of New Jersey sitting in Newark or the Superior Court of New Jersey sitting in the County of Passaic and each party irrevocably submits to the exclusive jurisdiction of such court in any such suit, action, or proceeding. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

21. Dispute Resolution

Any dispute between the parties shall be first addressed in good-faith negotiations between the parties and/or, if mutually agreeable, through mediation. Any dispute that cannot be settled in such a manner within ninety (90) days of the original identification of the dispute, shall be settled by binding arbitration administered by the New Jersey Office of the American Arbitration Association,

Somerset New Jersey in accordance with its Commercial or Construction Industry Arbitration Rules, except where those rules conflict with this agreement, in which case this agreement shall control. Judgment on the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. Under no circumstances shall any arbitrator award damages in excess of or inconsistent with the limitations contained in the "Limitation of Liability" section of these terms and conditions.

22. Assignment

The PO and Supplier's rights and duties hereunder shall not be assignable by Supplier without the prior written consent of College, which consent may be withheld in College's sole discretion. College may assign its rights and obligations hereunder to any one or more of its affiliated organizations.

The PO and these terms and conditions shall inure to the benefit of and be binding upon College and Supplier and their respective successors and permitted assigns; nothing contained herein shall give to any other person any benefit or any legal or equitable right, remedy or claim.

23. General

The parties hereto shall not be deemed to have constituted either party as the representative, agent, partner or joint venture of the other.

Headings used herein are for convenience only and shall not be used for interpretive purpose.

Supplier and its subcontractors, at their own expense, shall obtain all necessary licenses and permits relating to performance of the work.

For any Services performed on site, to include inside delivery and/or installation, Supplier shall be completely responsible to remove all packing material, boxes and trash, and shall leave all College areas reasonable clean and free of debris.

A party's failure to act with respect to another party's breach of any provision contained herein shall not constitute a waiver.

If any provision herein is held to be invalid or unenforceable, such provision shall be narrowly construed, if possible, or otherwise deemed ineffective and the remaining provisions shall not be affected.

These terms and conditions contained herein will survive the fulfillment of the PO.

No modification, amendment or waiver of any term or condition hereof shall be effective unless set forth in writing and signed by College and Supplier.

Any action by Supplier against College arising under this order shall be commenced **within one year** after the cause of action has accrued.

Any additional terms in Supplier's forms, including but not limited to quotes, proposals and invoices, are objected to and rejected and shall be deemed a material alteration hereof.

24. Complete Agreement

These terms and conditions and any other terms agreed to by the parties in writing (e.g., supply agreements, service agreements, and statements of work) if any, pursuant to which this PO was issued, contain the entire understanding of the parties with respect to the subject matter of the PO. In the event of any conflict between the terms and conditions contained herein and those in any other applicable written agreement, the terms and conditions contained herein shall govern.

Unless agreed to by College in a writing, College will not be bound to any additional or different terms or conditions hereafter transmitted by Supplier and College will not be bound by its silence, course of dealing, usage of the trade or its acceptance of the Supplies or Services.

EXHIBIT A
MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)
N.J.A.C. 17:27
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 ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

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

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

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

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

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

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

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

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

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

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

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.**

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

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

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

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

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

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

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

- (A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.
- (B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions: (1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Dept. of LWD, Construction EEO Monitoring Program pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers; (2) To notify any minority and women workers who have been listed with it as awaiting available vacancies; (3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade; (4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area; (5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions; (6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor: (i) The contractor or subcontractor shall interview the referred minority or women

worker. (ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below. (iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies. (iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified r if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program. (7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.

- (C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union. After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA 201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Dept. of LWD, Construction EEO Monitoring Program and to the public agency compliance officer. The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women.
- (D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to **Subchapter I0 of the Administrative Code (NJAC 17:27)**.