



## **REQUEST FOR INFORMATION # 8157**

### **ENTERPRISE RESOURCE PLANNING (ERP) SOFTWARE, IMPLEMENTATION, AND INTEGRATION SUPPORT SERVICES**

**BUYER:** Denise Williams, MBA, MS, QPA, RPPO, CPSM, CPSD  
**ADVERTISED DATE:** October 31, 2022  
**LAST DAY FOR QUESTIONS:** November 18, 2022 at 12:00 PM EST  
**BID DUE DATE AND TIME:** December 8, 2022 at 10:00 AM EST

Issued by: Essex County College  
Purchasing Department  
303 University Ave.  
6<sup>th</sup> Floor  
Newark, NJ 07102  
[Purchasing@essex.edu](mailto:Purchasing@essex.edu)  
[www.essex.edu](http://www.essex.edu)

# **INTRODUCTION**

## **DESCRIPTION OF ESSEX COUNTY COLLEGE**

Essex County College is accredited by the Middle States Commission on Higher Education and is licensed by the State of New Jersey through the Office of the Secretary of Higher Education to operate and award Associate Degrees and Certificates.

## **MISSION**

Essex County College is an open-access community college that serves the diverse needs of students through comprehensive educational programs, training, and continuing education. Essex County College is dedicated to academic excellence and the success of its students.

## **VISION**

A Beacon for Education and Knowledge, Essex County College attracts people who seek a better life through education. We transform lives, broaden learning and empower students to achieve their full potential. Our College community and graduates are change agents and leaders who contribute to the health, vitality, and advancement of society.

Essex County College Students First Strategic Plan 2019-2024 is available via <https://www.essex.edu/wp-content/uploads/2021/12/STUDENTS-FIRST-Ver.-2.0.pdf>

## **OVERVIEW**

Essex County College reserves the right to reject any and all proposals and the right at its option to waive or refuse to waive any defect or informality in any proposals. All responsive proposals received will be subjected to an evaluation by qualified personnel. Respondents should submit sufficient information to enable the evaluation committee to fully ascertain each respondent's capability to perform the requirements contemplated by this solicitation. All commitments made in the proposals shall become a part of any resultant contract. Proposals will not be received after such date and time indicated in the solicitation. The College reserves the right to cancel this bid at any time without cost or obligation.

Only a purchase order authorizes the performance of services. Essex County College is not responsible for services performed without an authorized Purchase Order. This is being solicited through a Fair and Open process by N.J.S.A.19:44A-20 et seq. The College is exempt from any local, state, or federal sales, use, or excise taxes.

## **DESCRIPTION OF THE PROJECT**

Banner is Essex County College Enterprise Resource Planning system for over 20 years. The College is interested in obtaining efficiencies that may be provided by a centralized system approach to budgeting and financial controls, accounting controls, professional development management, procurement and purchase order/pcard management, Payroll, Contract and human resources management, recruitment and applicant tracking, and procurement processing and tracking.

Essex County College is seeking information from qualified vendors in regards to a potential College administration system to provide a state-of-the-art single vendor replacement of Banner.

The purpose of issuing this Request for Information (“RFI”) is to:

- a. Determine the level of market interest.
- b. Obtain information on potential new systems, processes, or approaches.
- c. Obtain recommendations that would enhance the success of a future procurement opportunity for this project.
- d. Obtain high-level cost estimates for planning and budget purposes.
- e. Provide the industry with an opportunity to comment on the potential procurement opportunity.
- f. Minimize our maintenance burden through good design, use of best practices, reliance on industry standard platforms and technologies.
- g. Determine which software can be adopted by the College with minimal or no customization of the underlying software.

Any qualified vendor interested in providing services, should prepare information in compliance with the specifications described in this RFI.

### **PREFERRED RESPONDANT CHARACTERISTICS**

It is desired that the Respondents meet the following criteria:

#### **ERP Software Respondents**

- While the components may or may not be provided by the same ERP software provider, the College acknowledges that certain specialized functions may require third-party software solutions.
- The College prefers that a core component of the Respondents’ proposed ERP software has been implemented and in production for a U.S. local government (college, university, city, town, or county) and/or a conversion from Banner.

## **IMPLEMENTATION SERVICES SCOPE**

The College seeks information about a comprehensive set of services that ensure ERP project success. These services would likely include:

- Project Management;
- Business Process Redesign;
- Software Configuration;
- Keeping existing systems running until migration is complete;
- Development:
  - Enhancements and Modifications (if applicable),
  - Integration, Automated Interfaces, or Scripts,
  - Custom Reports, Queries, and Forms
  - Custom Workflows,
  - Data Conversion; and
  - Workaround Development
- Security Configuration;
- Testing;
- Organizational Change Management and Communications;
- System Administrator Training;
- End-User Training;
- Documentation;
- Knowledge Transfer;
- Deployment (Roll-Out) Support; and
- Post-Implementation Support.

## **RESPONSES**

Interested parties are invited to respond to this RFI by submitting a response to Essex County College. Responses should include ideas, information and recommendations that could result in a clarification of the requirements, cost-saving opportunities, and the identification of potential problem areas with this initiative.

Respondents to include the following sections in their response, referencing the same numbering system as used in this section. The information provided should address the specific response item and be informative and concise. For Respondents replying as both providers of ERP software and implementation services, all Sections must be completed.

Respondents are requested to provide a concise and focused response to this RFI. Responses are requested in the following format:

- A. For each RFI question, please restate the question before your response. If printed matter is supplied as supplemental information, please make sure that the supplemental information is appropriately marked with the corresponding section number to which it applies.
- B. Questions Regarding Software Solution, implementation services may choose to refer to one or more software solutions with which they have experience and which are suitable to the needs presented in the RFI.
- C. All questions and statements must be answered in the order asked.

## **INTRODUCTORY MATERIALS**

- 1) Title Page or Cover. The title page or cover must include the RFI number and title, the RFI due date and time, and the Respondent name and address.
- 2) Table of Contents. Each response shall be submitted with a table of contents that clearly identifies and denotes the location of each section and sub-section of the response. Additionally, the table of contents should clearly identify and denote the location of all attachments to the response.

## **EXECUTIVE SUMMARY**

In the Executive Summary, the Respondent should condense and highlight the contents of the response in such a way as to provide the College with a broad understanding of the information provided. The maximum length of the Executive Summary should be five pages. This section of the response is intended to provide a clear and concise understanding of key aspects of the response as follows:

- Statement as to whether the Respondent is providing information about ERP software, ERP implementation services, or both;
- Summary of best practices, recommended strategies and lessons learned that provide “best value” solutions for the College; and
- Discussion of the Respondent’s prior experience with ERP solutions and/or services relevant to Essex County College.

## **QUESTIONS REGARDING STRATEGIC PLANNING**

- Given the size and resources of the College, is the acquisition, implementation, and management of a comprehensive single-vendor ERP solution a realistic objective?
- Are there other solutions involving either a single-vendor core ERP system supplemented by best-of-breed solutions, or a broad set of best-of-breed solutions that will better serve the College's needs and capabilities?
- What are typical and effective solutions used by other College's size?
- What College staffing needs will the proposed solutions require for implementation and long-term management?

## **QUESTIONS REGARDING SOFTWARE SOLUTION**

**3.0: Solution Overview:** Provide an overview of the Respondent's recommended options for software components or modules to meet the College's requirements, with emphasis on choices among single vendor ERP, best-of-breed, or a hybrid of both, where integration between vendor solutions will be an expectation. Highlight any third-party products included in the solution, with an explanation of why these products are the recommended option. This section is intended to be a high-level overview of the solution offered.

**3.1: Technical Platform:** Describe the recommended technical delivery platform for the proposed solution. As appropriate, describe the architecture that supports the solution, and critical technical components that are required. If the proposed solution can be offered on multiple platforms (e.g., on-premise or hosted), provide a brief description of other platforms available. Discuss advantages or disadvantages that the College should consider when selecting the technical platform.

**3.2: SaaS Functionality.** Some governments may be hesitant to adopt SaaS functionality due to concerns that, in general, current public sector functionality and security of SaaS products is not as mature as traditional on-premise licensed software and may not meet the breadth of functional needs across an organization. What approach would you suggest to leverage the best products available at the implementation start date with a roadmap to take advantage of cloud/SaaS solutions as they become more robust in the future?

**3.3: Product Summary.** Respondents should provide software solution options which support the requirements as detailed previously in this document. For those elements of functional scope that are not supported by a particular vendor's offerings, third-party products, or suggestions of alternative approaches to meet the functional scope are encouraged.

**3.4: Unique Requirements.** The College desires to avoid customization of baseline software and adopt the business practices inherent in the software. However, the College may have business

requirements that are unique. With this understanding, describe your approach to addressing client-specific needs within your solution with regard to creating, configuring, and modifying business process models and workflows for business transactions based on business rules.

**3.5: Test Environment.** The College would like to know if it is generally possible to operate a test environment separate from the production environment for the purpose of testing and training and, if so, if this would generally require additional cost.

**3.6: Software Maintenance.** Referring to any proposed software solutions, please describe how the software is to be maintained with respect to routine updates (e.g., patches and fixes) to more significant upgrades (e.g., new functionality and/or technical capabilities) and whether the customer or the vendor will control these changes.

**3.7: Source Code.** Is it a reasonable request to ask for source code should the software vendor cease operations?

#### **4.0      QUESTIONS REGARDING IMPLEMENTATION SERVICES**

**4.1: Project Management Methodology.** Describe effective implementation and project management methodology.

**4.2: Project Staffing.** Describe approaches to staffing ERP implementation projects that support success (e.g., use of on-site vs. off-site and full-time vs. part-time resources and how those resources are coordinated to work effectively with the College project team).

**4.3: Project Roles.** Based upon the planned scope and timeline of the project defined by the College, describe the roles and positions that would typically be expected of the customer organization

**4.4: Installation.** Describe the typical installation process.

**4.5: Interface Development and System Integration.** Describe how interfaces between new and existing system are developed, tested, and documented toward achieving optimum practical system integration. Please also provide feedback on the effort and practicality of establishing interfaces between new/replacement systems and existing systems scheduled for replacement at a later date.

**4.6: Data Conversion and Migration.** Describe the process for successful conversion of historical data from existing systems and migration to new systems.

**4.7: Reporting.** Describe the approach for the creation of custom reports and the configuration of standard reports during the implementation process.

**4.8: Business Process Workflows.** Describe what business process workflow documentation is required for implementation in new systems. Further, describe any assistance which is available to document or assess existing business process workflows and to migrate them to new systems with improvements as necessary **or** appropriate.

**4.9: Testing Tools.** Describe any tools and enablers included in your implementation approach that facilitate thorough and efficient functional testing of the ERP system.

**4.10: Organizational Change Management.** Describe your approach to organizational change management and communications for a College ERP project to prepare users for new system adoption. Include in the description any deployments of social media or marketing approaches to reach a broader audience of stakeholders.

**4.11: Training.** Describe your approach to training the College project team and system end users. Include perspectives on train-the-trainer versus consultant led training delivery, and any successes or lessons learned from computer-based training approaches to effectively train remote or large numbers of end users.

**4.12: Timeline Recommendations.** Describe any recommended changes to the College's deployment strategy and timeline based on your experience with similar projects in the public sector. The College would like to consider alternatives that may result in cost savings, risk reduction, or other strategic benefits.

## **5.0 ADDITIONAL TOPICS FOR ALL RESPONDENTS**

**5.1: Pre-Implementation Activities.** Describe any suggested activities that the College could complete prior to the start of the implementation project that would accelerate or facilitate the implementation effort.

**5.2: RFP Contents.** To assist the College in composing an effective RFP, please provide feedback on the following.

- Guidance on the appropriate level of detail and extensiveness of business and technical requirements to be presented in an RFP.
- Describe what, if any, documentation of existing business process workflows is appropriate to include in an RFP.
- Guidance with regard to whether software products and implementation services should be in same or separate RFP documents.

## **6.0 RESPONSE TO COST SCHEDULES**

*Vendor can submit their own pricing sheet.*

The College is seeking the best estimates of ERP software and implementation costs that can be obtained based upon the information provided in this RFI. The College intends to view these responses as planning estimates to assist in validating or refining anticipated expenditures. This

is an important step in the College's plan to confirm funding for the project, and Respondents' diligence in providing your best estimates is appreciated.

**6.1: Software Costs.** In addition to the cost schedules, describe the pricing model used for the estimated cost provided in your response. Discuss the typical payment terms and the method of determining future cost adjustments on a year over year basis (e.g., general price increases, changes in user counts).

**6.2: Services Costs.** Due to the significant cost of ERP implementation services and the anticipated project timeline spanning multiple fiscal years, the College would like to understand not only the total approximate cost of implementation services but also the likely distribution of those costs.

In addition to the cost schedules, describe the Respondent's approach to establishing a payment schedule and typical payment terms applied during an implementation project.

**6.3: Cost Assumptions.** In addition to the organizational metrics provided in Section list any other key assumptions used in the Respondent's estimated cost response.

This RFI is not a competitive solicitation and no contract award shall result.

This RFI will not be used to evaluate, rank or select vendors, nor will it be used to pre-qualify or screen vendors for a subsequent competitive solicitation process, if any. If a subsequent competitive solicitation is issued, Essex County College is under no obligation to advise any firm responding to this RFI. Vendors are advised to monitor Essex County College ([www.essex.edu](http://www.essex.edu)) websites for any such opportunities, which will be open to all vendors regardless of whether or not a response to this RFI has been submitted.

The College will not pay for the preparation of any information submitted or for use of that information. The College reserves the right to utilize any information submitted in its best interest without any obligation, liability, or consideration on the part of the division.

Ownership of all data, materials and documentation originated and prepared for the College pursuant to this RFI shall belong exclusively to the College and be subject to public inspection in accordance with the Open Public Records Act. Trade secrets or proprietary information submitted by a firm shall not be publicly disclosed under the Freedom of Information Act; however, the firm shall invoke the protection of this section prior to or upon submission of the data or other materials and must identify the data or other materials to be protected and state the reasons why protection is necessary. Disposition of the proprietary materials after the RFIs are reviewed should be stated by the firm. Firms should indicate on the **Cover Sheet** the portions of their response that are proprietary and return the signed Cover Sheet with their submission. Please list the page number(s) and reason(s).

**KEY DATES**

ADVERTISED DATE: October 31, 2022  
LAST DAY FOR QUESTIONS: November 18, 2022 at 12:00 PM EST  
BID DUE DATE AND TIME: December 8, 2022 at 10:00 AM EST

**PROPOSAL SUBMITTAL**

**Submission by fax or e-mail is NOT PERMITTED.**

All responses shall be made in accordance with guidance received from the Purchasing Department and shall be returned to the address below in sealed envelopes bearing on the outside the name of the vendor:

For USPS/Hand delivery, the mailing address is:

Ms. Denise Williams, MBA, MS, QPA, RPPO, CPSM, CPSD  
Essex County College  
303 University Avenue,  
Purchasing Department  
6<sup>th</sup> Floor, Room #6108  
Newark, New Jersey, 07102

**RE: RFI # 8157 – ENTERPRISE RESOURCE PLANNING (ERP) SOFTWARE,  
IMPLEMENTATION, AND INTEGRATION SUPPORT SERVICES**

**CONTACT FOR ALL QUESTIONS**

The specific section, bid number, and page number to which each question refers are to be indicated. The College will have a reasonable amount of time to respond to questions or concerns. It is the College’s intent to respond to all appropriate questions and concerns; however, the College reserves the right to decline to respond to any question or concern.

Any response by the College to inquiries from one respondent will be furnished to all vendors as an amendment or clarification to this bid, if this information is necessary for submitting qualifications or if the lack of such information would be prejudicial to a uniform response.

Inquiries on matters requiring further clarification concerning the contents of this document should be directed in written form via email to:

Ms. Denise Williams, MBA, MS, QPA, RPPO, CPSM, CPSD  
Director of Purchasing  
Purchasing  
**RE: RFI # 8157 – ENTERPRISE RESOURCE PLANNING (ERP)  
SOFTWARE, IMPLEMENTATION, AND INTEGRATION  
SUPPORT SERVICES**  
E-mail: [purchasing@essex.edu](mailto:purchasing@essex.edu)

**RFI FORMAT**

Vendors must include (3) hard copies of their response and one (1) electronic copy on a portable USB flash drive.

# **FORMS THAT MUST BE COMPLETED AND SUBMITTED**

## BIDDERS CHECKLIST

Bidder is instructed to complete and return the following documents as a part of its proposal. **Initial next to the items and include the checklist in your submission.**

- |       |   |                    |
|-------|---|--------------------|
| _____ | Affirmative Action Compliance Notice              |                    |
| _____ | Mandatory Equal Employment Opportunity (EEO) Form | <b>(Notarized)</b> |
| _____ | New Jersey Anti-Discrimination Provision          | <b>(Notarized)</b> |
| _____ | Americans with Disabilities Act of 1990           | <b>(Notarized)</b> |
| _____ | Trade Reference                                   |                    |

**AFFIRMATIVE ACTION COMPLIANCE NOTICE**  
**N.J.S.A. 10:5-31 and N.J.A.C. 17:27**

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

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

A COPY OF AN EMPLOYEE INFORMATION REPORT (FORM AA302) PROVIDED BY THE DIVISION AND DISTRIBUTED TO THE PUBLIC AGENCY TO BE COMPLETED BY THE CONTRACTOR IN ACCORDANCE WITH N.J.A.C. 17:27-4;

OR

A COPY OF A VALID LETTER THAT THE CONTRACTOR IS OPERATING UNDER AN EXISTING FEDERALLY APPROVED OR SANCTIONED AFFIRMATIVE ACTION PROGRAM (GOOD FOR ONE YEAR FROM THE DATE OF THE LETTER);

OR

A COPY OF A CERTIFICATE OF EMPLOYEE INFORMATION REPORT (CEIR) APPROVAL, ISSUED IN ACCORDANCE WITH N.J.A.C. 17:27-4.

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

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

The undersigned vendor certifies that he/she is aware of the commitment to comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27.1 et seq. and agrees to furnish the required forms of evidence.

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

I CERTIFY THAT THE ABOVE INFORMATION IS CORRECT AND AUTHORIZED BY THE FOLLOWING SIGNATURE FOR COMPLIANCE AS SPECIFIED IF AWARDED THIS CONTRACT.

COMPANY NAME: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_ Bid/Proposal # \_\_\_\_\_

**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**  
**N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)**  
**N.J.A.C. 17:27-1.1 et seq.**

**GOODS, GENERAL SERVICES, AND PROFESSIONAL SERVICES CONTRACTS**

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

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, 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 of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

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

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

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

Letter of Federal Affirmative Action Plan Approval;

Certificate of Employee Information Report; or

Employee Information Report Form AA-302 (electronically provided by the Division and distributed to the public agency through the Division's website at [http://www.state.nj.us/treasury/contract\\_compliance](http://www.state.nj.us/treasury/contract_compliance).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

This Agreement entered into as of the day and year first written above.

_____	_____
Name	Signature
Attest:	
_____	_____
(Seal) Secretary Name	Signature (Seal)

Subscribed and sworn to \_\_\_\_\_  
(Type or print name of affiant along with signature)

Before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public of  
My Commission Expires

**NOTE: THIS STATEMENT MUST BE COMPLETED, SIGNED, NOTARIZED, AND RETURNED WITH YOUR BID/PROPOSAL.**

**NEW JERSEY ANTI-DISCRIMINATION PROVISIONS**

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

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

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

\_\_\_\_\_  
(name of firm)

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

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

Subscribed and sworn before me this ____ day of _____, 2 ____.	_____ (Affiant/Notary)
My Commission expires: _____	_____ (Print name & title of affiant/Notary) (Corporate Seal)

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

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

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

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

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

\_\_\_\_\_  
(name of firm)

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

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

Subscribed and sworn before me this ___ day of _____, 2__	_____
	(Affiant/Notary)
My Commission expires: _____	_____
	(Print name & title of affiant/Notary)
	(Corporate Seal)

**TRADE REFERENCES – FOR PROJECTS OF A SIMILAR SCOPE AND NATURE TO BE PROVIDED BY EACH BIDDER FOR THE PROJECT CONTRACT**

Bidders are to provide evidence of satisfactory completion of work of similar nature as outlined in the bid from a **minimum of three (3) similar contracts** with educational institutions, preferably in New Jersey, **within the past five (5) years.** (Attach additional pages as necessary)

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

Street Address \_\_\_\_\_ P.O. Box \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Business Phone Number ( ) \_\_\_\_\_ Extension \_\_\_\_\_

Emergency Phone Number ( ) \_\_\_\_\_ Fax Number ( ) \_\_\_\_\_

Email \_\_\_\_\_

1. How many years have you been engaged in the contracting business under your present firm or trading name?  
\_\_\_\_\_ Years

2. Have you ever failed to complete any work awarded to your company?

Yes                       No

If yes, explain \_\_\_\_\_  
\_\_\_\_\_

**#1: PROJECT TITLE:** \_\_\_\_\_

LOCATION: \_\_\_\_\_ \$VALUE: \_\_\_\_\_

CLIENT NAME: \_\_\_\_\_

CLIENT ADDRESS: \_\_\_\_\_

CLIENT PHONE NUMBER: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

**#2: PROJECT TITLE:** \_\_\_\_\_

LOCATION: \_\_\_\_\_ \$VALUE: \_\_\_\_\_

CLIENT NAME: \_\_\_\_\_

CLIENT ADDRESS: \_\_\_\_\_

CLIENT PHONE NUMBER: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

**#3: PROJECT TITLE:** \_\_\_\_\_

LOCATION: \_\_\_\_\_ \$VALUE: \_\_\_\_\_

CLIENT NAME: \_\_\_\_\_

CLIENT ADDRESS: \_\_\_\_\_

CLIENT PHONE NUMBER: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

**#4: PROJECT TITLE:** \_\_\_\_\_

LOCATION: \_\_\_\_\_ \$VALUE: \_\_\_\_\_

CLIENT NAME: \_\_\_\_\_

CLIENT ADDRESS: \_\_\_\_\_

CLIENT PHONE NUMBER: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

**#5: PROJECT TITLE:** \_\_\_\_\_

LOCATION: \_\_\_\_\_ \$VALUE: \_\_\_\_\_

CLIENT NAME: \_\_\_\_\_

CLIENT ADDRESS: \_\_\_\_\_

CLIENT PHONE NUMBER: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

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

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

Street Address \_\_\_\_\_ P.O. Box \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Business Phone Number ( ) \_\_\_\_\_ Extension \_\_\_\_\_

Emergency Phone Number ( ) \_\_\_\_\_

Fax Number ( ) \_\_\_\_\_ E-Mail \_\_\_\_\_

## MINORITY AND WOMEN OWNED BUSINESS DECLARATION FORM

Essex County College is attempting to identify vendors who qualify as a minority or women business in accordance with New Jersey Executive Order #34. If your business falls into one of the categories below and you would like to answer the following questions voluntarily, please do so. If your business does not fall into one of these categories, please leave this form blank.

Please be advised that Essex County College will continue to award all bid and purchase orders in accordance with the established New Jersey Statutes for Bidding and Contracts N.J.S.A.18A:64A-25.1 et seq.

The decision to complete this form will be done strictly on a voluntary basis. Essex County College guarantees that your company will not be penalized in anyway if you choose not to participate.

**COMPANY NAME:** \_\_\_\_\_

Are you Minority-Owned business?      **Yes**       **No**

If yes, please check the item that best describes your business

- African American**
- Asian American**
- Hispanic American**
- Native American**
- Caucasian American**
- Other Minority**

Are you a Women-Owned business?      **Yes**       **No**

If yes, please check the item that best describes your business

- Caucasian Woman**
- Minority Woman**

\_\_\_\_\_  
Signature of Vendor

**NOTE:** All vendors are required to submit a New Jersey Business Registration Certification (P.L. 200, c.134 & P.L. 2004, c.57). Vendors conducting business with any State/County agency will be required to be registered with the New Jersey Division of Revenue. The vendor will be required to submit, as part of a public bid or prior to issuing a purchase order, a Business Registration Certificate issued by the Department of Treasury, Division of Revenue, with the State of New Jersey. If your business is not register, you can go to the following website, <http://www.state.nj.us/treasury/revenue/busregcert.shtml>, or contact the New Jersey Division of Revenue to obtain information regarding how to register your business.

# **CONTRACT LANGUAGE YOU MUST READ**

## INSTRUCTIONS TO BIDDERS AND STATUTORY REQUIREMENTS

The word “bid” / “proposal” / “quote” herein is intended to be all-inclusive of any and all types of bids, proposals, etc., to be submitted.

- A. It is the bidder's responsibility to present bids/proposals/quotes to the owner before or at the time and the place designated. Bids/Proposals may be hand-delivered or mailed; however, the owner disclaims any responsibility for bids/proposals forwarded by regular or overnight mail. Bids/Proposals sent by express mail or delivery service must either
  1. Include the designation, above on the outside of the express mail or service envelope; or
  2. Must be in a separate envelope inside the delivery envelope and the envelope marked as required above. Bids/Proposals/Quotes received after the designated time and date will be returned unopened.
- B. Sealed bids/proposals forwarded to the owner before the time of opening of bids/proposals may be withdrawn upon written application of the bidder who shall be required to produce evidence showing that the individual is or represents the principal or principals involved in the bid/proposal. Once bids/proposals have been opened, they shall remain firm for sixty (60) calendar days.
- C. More than one bid/proposal/quote from an individual, any business entity, regardless of structure, or association under the same names shall not be considered.
- D. All prices and amounts must be written in ink or preferably machine-printed. Bids/Proposals/Quotes containing any conditions, omissions, unexplained erasures or alterations, items not called for in the bid proposal form, attachment of additive information not required by the specifications, or irregularities of any kind, may be cause for rejection by the owner following applicable law. Any changes, whiteouts, strikeouts, etc. in the bid/proposal must be initialed in ink by the person signing the bid/proposal.
- E. Each bid/proposal/quote form must give the full business name and address, business phone, fax, e-mail, and the contact person of the bidder, and be signed by an authorized representative as follows:
  1. Bids/Proposals/Quotes by partnerships must be signed in the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing.
  2. Bids/Proposals/Quotes by corporations must be signed in the legal name of the corporation, followed by the name of the State in which incorporated, and must contain the signature and designation of the president, secretary, or other person authorized to bind the corporation in the matter.
  3. Bids/Proposals/Quotes by sole-proprietorship shall be signed by the proprietor.
  4. When requested, satisfactory evidence of the authority of the officer signing shall be furnished.
- F. Bidder should be aware of the following statutes that represent “Truth in Contracting” laws:
  1. N.J.S.A. 2C:21-34, et seq. governs false contract payment claims and representations by bidders. It is a serious crime for the bidder to knowingly submit a false contract payment claim and/or knowingly make a material misrepresentation.
  2. N.J.S.A. 2C:27-10 provides that a public servant commits a crime if said public servant solicits or receives a benefit directly or indirectly, for an official act performed or to be performed by a public servant, which is a violation of official duty.
  3. N.J.S.A. 2C:27-11 provides that a bidder commits a crime if a said person, directly or indirectly, confers or agrees to confer any benefit not allowed by law to a public servant.
  4. The bidder should consult the statutes or legal counsel for further information.
- G. LICENSING  
The contractor represents that it possesses any license or permits that may be required to perform its Contract work.
- H. OSHA  
The contractor shall comply with all applicable requirements of the Occupational Safety and Health Act, 29 U.S.C. 15, in the performance of the work and services of this Contract.
- I. APPLICABLE STATE LAW REGARDING CLAIMS  
**This Contract is subject to all provisions** of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.
- J. **Pay-to-Play Disclosure** - Business entities are advised of their responsibility to file an annual disclosure statement of political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-

20.27 if they receive contracts in excess of \$50,000 from public entities in a calendar year. Business entities are responsible for determining if filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or [www.elec.state.nj.us](http://www.elec.state.nj.us).

- K. Official Request for Bid/Proposal/Quotes packages is available from the owner's website at [purchasing@essex.edu](mailto:purchasing@essex.edu) with a non-refundable fee mentioned on the Legal Notice to Bidders to prospective respondents. All addenda are posted on this site. Potential respondents are cautioned that they respond at their own risk if a third party supplied the specifications that may or may not be complete. The owner is not responsible for the third-party-provided documents. Respondents are urged to register their contact information on the owner's website so that the college can send any addenda to these specifications to them.

## **BID SECURITY AND BONDING REQUIREMENTS**

### **A. BID GUARANTEE**

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

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

### **B. CONSENT OF SURETY**

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

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

### **C. PERFORMANCE BOND**

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

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

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

### **D. LABOR AND MATERIAL (PAYMENT) BOND**

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

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

### **E. MAINTENANCE BOND**

Upon acceptance of the work by the owner, the contractor shall submit a maintenance bond (N.J.S.A. 18A:64A-25.17) in an amount not to exceed 100% of the project costs guaranteeing against the defective quality of work or materials for the period of one year.

## REVISIONS AND ADDENDA

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

*When issuing addenda, the College shall provide required notice before the official receipt of bids/proposals/quotes to any person who has submitted a bid/proposal/quote or who has received a bid/proposal/quote package. They will be sent from certified mail or by certified facsimile transmission.*

- E. Discrepancies in Bids/Proposals/Quotes
  - 1. If the amount shown in words and its equivalent in figures do not agree, the written words shall be binding. Ditto marks are not considered writing or printing and shall not be used.
  - 2. If there is a discrepancy between the unit prices and the extended totals, the unit prices shall prevail. In the event there is an error in the summation of the extended totals, the computation by the owner of the extended totals shall govern.
- F. Optional Pre-Bid/Proposals Conference

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

## BRAND NAMES, STANDARDS OF QUALITY, AND PERFORMANCE

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

## CERTIFICATES OF THE REQUIRED INSURANCE

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

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

## **INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor will defend, indemnify and save harmless Owner, Owner's Representative, Architect, their affiliates and agents, their respective members, officers, directors, and employees, (each an "Indemnitee", collectively the "Owner Indemnitees") from and against any and all liability (including, but not limited to, statutory liability), loss, damages, interest, judgments, claims and liens growing out of, and any and all costs and expenses (including, but not limited to, attorneys' fees and disbursements) arising out of or incurred in connection with, any and all claims, demands, suits, actions, and/or proceedings which shall be made or brought against any of the Owner Indemnitees and without any contribution from any Indemnitee or insurer thereof for or in relation to: (a) any (or any alleged) injury to, or death of, any person or persons (including, but not limited to, officers, directors, and employees of any of the Owner Indemnitees or of Contractor or its Subcontractors) or any (or any alleged) damage to or loss of the use of property (including, but not limited to, property of any of the Owner Indemnitees) or otherwise, arising out of or in connection with the performance of the Work and which shall be (or shall be alleged to be) in whole or in part due to or the result of any act, omission, negligence, carelessness, or unlawful conduct on the part of Contractor, its agents, or subcontractors, or anyone directly or indirectly employed by any of them, or a default of Contractor in performance of any of its obligations hereunder; and (b) any infringement or alleged infringement of any patent, trademark, or copyright growing out of the performance of the Work and/or the use therein of any material, equipment, or process supplied by or through Contractor. The contractor's agreement to defend and indemnify extends to the Owner Indemnitee's concurrent or partial negligence, whether actual or alleged, to the fullest extent permitted by law. Notwithstanding anything to the contrary herein, the Contractor shall have no indemnity obligation under this paragraph to the extent such claim, loss, liability, damage, cost, or expense arises out of the sole proven negligence or unlawful conduct of an Owner Indemnitee.

The Contractor shall indemnify and hold harmless all of the Owner Indemnitees from and against any costs, and expenses (including reasonable attorney's fees) incurred by any of the Owner Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Agreement.

## **LIABILITY FOR DEFECTIVE SERVICES:**

Notwithstanding any payment or payments by Owner hereunder, Contractor shall be liable to Owner for all injuries sustained by Owner, its employees, officers, trustees, officials, directors, managers, and agents' employees, and any third party, by reason of any failure of Contractor to properly discharge its contractual obligations to Owner, its unsafe activities, its negligence, or its intention misconduct.

## **PRICING INFORMATION FOR PREPARATION OF BIDS/PROPOSALS**

- A. The owner is exempt from any local, state, or federal sales, use, or excise tax. The owner will not pay for N.J. State Sales and Use Tax that is included in any invoices.
- B. Estimated Quantities: The owner has attempted to identify the item(s) and the estimated amounts of each item bid/proposal/quote to cover its requirements; however, experience shows that the amount ordered may be different than that submitted for bidding. The right is reserved to decrease or increase the quantities specified in the specifications. NO MINIMUM PURCHASE IS IMPLIED OR GUARANTEED.
- C. The contractor shall be responsible for obtaining any applicable permits or licenses from any government entity that has jurisdiction to require the same. All bids/proposals/quotes submitted shall have included this cost.
- D. Bidders shall insert prices for furnishing goods and services required by these specifications. Prices shall be net, including any charges for packing, crating, containers, etc. All transportation charges shall be fully prepaid by the contractor, F.O.B. destination, and placement at locations specified by the owner. As specified, placement may require inside deliveries. No additional charges will be allowed for any transportation costs resulting from partial shipments made for the contractor's convenience.
- E. In the event of a public emergency declared at the local, state, or federal level before the expiration of the contract, if the owner opts to extend the terms and conditions of the contract, the contractor agrees to extend the terms and conditions of this specification, whether existing or expiring for no longer than six months, for construction for the duration of the emergency.

## **APPLICABLE LAW**

This Contract and all litigation arising from or related to the Contract shall be governed by the County Colleges Contracts Law, N.J.S.A. 18A:64A-25.1 *et seq.*, and shall be governed by the applicable laws, and regulations, of the State of New Jersey without

reference to conflict of laws principles. The Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations. To the extent that applicable law requires that certain language be included in the Contract, such language shall be deemed included by reference.

## **VENUE**

Any litigation resulting from this Contract shall be brought to the Superior Court of New Jersey, Essex County.

## **CONTRACT MODIFICATIONS**

The owner reserves the right to issue Contract modifications, subject to mutual agreement between the Parties as to an equitable adjustment of the Contractor's compensation. All such amendments shall be in writing. Where the Parties cannot agree upon an equitable adjustment, the Owner may direct that the modification be implemented and adjust compensation in a reasonable matter as the Owner sees fit. In such circumstance, Contractor shall comply with the modification and, if so inclined, pursue a claim against Owner. In order for the Contractor to pursue such a claim, it must have notified the Owner in writing of its intent to do so within seven business days of its receipt of the written directive from the Owner to proceed over the Contractor's objection. All Contract modifications must be signed by the Owner's Representative designated below on behalf of the Owner.

## **WAIVER BY OWNER**

Notwithstanding any language found elsewhere in the Contract, the Owner shall not be deemed to have waived any right of Owner or requirement of Contractor unless such waiver is found in a writing signed by the Owner's Representative designated below and specifically and expressly stating the precise nature of the intended waiver. No such waiver by the Owner shall be implied.

## **INTERPRETATION**

If any provision in this Contract is found to be ambiguous, it is agreed that such ambiguity need not be resolved against the drafter.

## **COUNTERPARTS**

This Contract may be executed in any number of counterparts and all of such counterparts shall for all purposes constitute one agreement binding on the parties hereto, notwithstanding that all Parties are not signatories to the same counterpart. For purposes of this Contract, a counterpart signed by facsimile or other electronic means shall constitute an original. Any Party delivering an executed counterpart of this Contract by electronic means shall, if requested, also deliver an original executed counterpart, but the failure to deliver an originally executed counterpart shall not affect the validity of this Contract.

## **STATUTORY AND OTHER REQUIREMENTS**

**The following are mandatory requirements of this bid and contract.**

### **A. MANDATORY AFFIRMATIVE ACTION CERTIFICATION**

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

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

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

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

with the regulations

**B. NEW JERSEY ANTI-DISCRIMINATION**

The contract for this bid shall require that the contractor agrees not to discriminate in employment and agrees to abide by all anti-discrimination laws including but not limited to N.J.S.A. 10:2-1 as included in Attachment B of this document.

**C. AMERICANS WITH DISABILITIES ACT OF 1990**

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

**D. STATEMENT OF OWNERSHIP**

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

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

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

**E. PROOF OF BUSINESS REGISTRATION**

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

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

During the course of contract performance:

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

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

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of business registration as required, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000, for each proof of business registration not properly provided under a contract with a contracting agency.

**Emergency Purchases or Contracts**

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

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

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

**G. PURCHASE ORDER REQUIRED**

No contractor or vendor shall commence any project, provide any service or deliver any goods until he/she receives an approved purchase order authorizing work to begin or goods to be delivered.

**H. DEBARMENT, SUSPENSION, OR DISQUALIFICATION – Federal Executive Orders #12549, #12689, and N.J.S.A. 52:32-44.1 (P.L. 2019, c.406).**

Essex County College 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, the State of New Jersey Consolidated Debarment Report; and the Federal Debarred Vendor List – Exclude Parties List System. ([www.state.nj.us/treasury/debarred](http://www.state.nj.us/treasury/debarred)).

All bidders are required to submit a sworn statement indicating whether or not the bidder is, at the time of the bid, included on the State Department of Labor and Workforce Development; Prevailing Wage Debarment List, or the State of New Jersey Consolidated Debarment Report, or the Federal Debarred Vendor List – Excluded Parties List System.

**I. QUALIFICATION OF BIDDERS – CONTRACTOR QUESTIONNAIRE CERTIFICATION FORM**

Essex County College may make such investigations as it seems necessary to determine the ability of the bidder to perform the terms of the contract. The bidder shall complete a Contractor Questionnaire Certification Form and return same with the proposal and shall furnish all information to the College that the College may require to determine the contractor's ability to perform the duties and obligations as outlined in these specifications.

All bidders are reminded that proposals may be rejected as not being responsive, therefore bidders are asked to complete the Questionnaire and to provide any supporting documents with the proposal package.

**J. NOTICE OF EQUIPMENT AND MATERIALS CHANGES**

The contractor shall notify Essex County College of impending changes in or discontinuation of models or specifications in materials or equipment known to him at the time of delivery and to deliver only the latest model and design of equipment specified at the time of delivery unless notified otherwise by the College.

**K. WARRANTY**

The contractor will replace without charge for materials, labor, or transportation any and all parts found defective within one year from the date of final acceptance.

If equipment fails to function properly for any reason whatsoever (other than negligence on the part of a College employee) within the first thirty days after delivery, it shall be replaced with new equipment under the conditions of warranty and manufacturer's guarantee as stated for new equipment or replacement.

**SERVICE**

During the warranty period, the Contractor will furnish field service within a twenty-four (24) hour period. The Contractor will provide loaner equipment, comparable to the equipment furnished, at no cost to Essex County College, if any equipment breakdown occurs which cannot be repaired within the twenty-four (24) hour service period.

The contractor shall provide at the time of delivery, service and operational manuals, schematics, parts lists, and any other technical data on each category of equipment purchased; listing the manufacturer's name, model number, and modifications. All the above data shall correspond to the equipment purchased.

Vehicles and equipment are to receive pre-delivery inspection and service according to the manufacturer's specifications.

Operation instructions and manuals will be provided by the Contractor's representative to Essex County College personnel at the time of equipment delivery.

L. DOCUMENTS

A certificate of ownership will be furnished.

Vehicles shall conform to Motor Vehicle Laws of the State of New Jersey and State inspection to be acquired before acceptance by the College.

In addition to equipment specified in basic specifications, vehicles shall be equipped with all other standard equipment as specified by the manufacturer and must be so equipped and constructed to permit Gross Vehicle Weight specified. Equipment shall be equipped following federal regulations, including OSHA.

M. AUTHORITY OF ESSEX COUNTY COLLEGE

On all questions concerning the interpretations of specifications, the acceptability, quality of materials of items furnished and work performed the classification of materials, the execution of the work, and the determination of payment due or to become due, the decision of the Essex County College Board of Trustees, or its designate, shall be final and binding.

N. FORCE MAJEURE

As used in this Agreement, an event of "Force Majeure" shall mean any event that: (a) prevents the affected Party (the "Affected Party") from performing its obligations under this Agreement or complying with any conditions required by the other Party under this Agreement, and (b) is unforeseeable and is beyond the reasonable control of and not the result of the fault or negligence of the Affected Party or such Affected Party's Personnel (or their Affiliates), and (c) could not have been prevented by the Affected Party's or its Personnel's (or their Affiliates) exercise of reasonable diligence. For purposes of clause (b) above, the following events shall be considered to be beyond the reasonable control of an Affected Party or its Personnel: war, civil insurrection, flash floods, hurricanes, tornadoes, typhoons, lightning strikes, earthquakes, epidemics, quarantines, embargoes, riots, and sabotage. Notwithstanding anything in this Section to the contrary, in no instance will the following be considered events beyond Contractor's reasonable control or constitute a Force Majeure event: (i) strikes or labor disturbances involving the employees of Contractor or any of its Subcontractors or caused by any violation by Contractor or its Subcontractors of any labor agreements; (ii) price fluctuations with respect to labor or materials, supplies or components of equipment related to items to be supplied by Contractor under this Agreement; (iii) mere economic hardship (including as suffered by the Affected Party or its Personnel or any of their Affiliates), or (iv) normal climatic conditions (based upon a one hundred year period) at the Project Site.

Burden of Proof. The burden of proof as to whether a Force Majeure event has occurred shall be upon the party claiming a Force Majeure event.

Excused Performance. If the Affected Party is rendered wholly or partly unable to perform its obligations under this Agreement because of a Force Majeure event, such Affected Party will be excused from whatever performance is affected by the Force Majeure Event to the extent so affected, provided that:

1. the Affected Party, within twenty-four (24) hours after knowing of the occurrence of the Force Majeure event, gives the other Party written notice describing the particulars of the occurrence;
2. the suspension of performance resulting from such Force Majeure event shall be of no greater scope and no longer duration than is reasonably required by the Force Majeure event;
3. no obligations of either Party which arose before the occurrence causing the suspension of performance are excused as a result of the occurrence;
4. the Affected Party must continue to perform its obligations under this Agreement to the extent possible, and the Affected Party must use all reasonable efforts to overcome, mitigate and remedy the damages, delays, and effects of the Force Majeure and its inability to perform its obligations under this Agreement as a result thereof; and
5. when the Affected Party is able to resume the performance of its obligations hereunder, that Party shall give the other Party written notice to that effect and shall promptly resume such performance.

O. SUBCONTRACTS

Prior to awarding any subcontract, the Contractor shall notify the Owner and Architect or Engineer of the name of each proposed subcontractor and the amount of the subcontract. The owner shall have the right to reject any subcontractor who does not establish to the satisfaction of the Owner its experience, competence, and financial ability to perform the Work.

Owner agrees to act diligently upon receipt from Contractor of the names of proposed subcontractors and shall not delay the award of any subcontract to a subcontractor deemed acceptable to Owner.

If Owner disapproves of a proposed subcontractor, it may direct the Contractor to award such work to an alternate subcontractor of the Owner's choosing provided that if an increase in the cost of performing the Work or furnishing the materials caused by the award of a such subcontract to the alternate subcontractor shall result, Owner, shall have the option to permit the original subcontractor to work or approve a Change Order in accordance with "Changes in the Work" herein, and an appropriate adjustment of the Contract Sum.

By appropriate written agreement, the Contractor shall require each subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all obligations and responsibilities which the Contractor assumes toward the Owner. The contractor shall make available to each subcontractor copies of the Contract Documents to which the subcontractor will be bound.

All subcontracts and purchase orders shall include provisions that: (a) they are assignable to Owner, or another contractor designated by Owner, without consent of the subcontractor; (b) that upon such an assignment becoming effective such subcontractor will be bound to Owner or such contractor designated by Owner as fully and in the same manner as such subcontractor is bound to Contractor under such subcontract; and (c) that upon such assignment becoming effective all sureties of the obligations of such subcontractor shall be bound to Owner or such contractor designated by Owner as fully and in the same manner as such sureties are bound to the Contractor. The assignment of such subcontracts shall not become effective unless an event of default has occurred hereunder and Owner has terminated this Contract.

The contractor shall include in its subcontracts all requirements concerning affirmative action and equal employment opportunity set forth in "Equal Employment Opportunity and Affirmative Action Requirements" set forth, and require that subcontractors submit all applicable forms.

The contractor shall include in its subcontracts the dispute resolution provisions herein.

**P. ASSIGNMENT**

Owner and Contractor each bind themselves, their successors, assigns and legal representatives to the other party hereto, and to the successors, assigns, and legal representatives of such other party in respect to all covenants, agreements, and obligations contained in the Contract Documents. However, the obligations of the Contractor arising hereunder may not be assigned without the Owner's prior written consent. Contractor further agrees to insert in all subcontracts the requirement that the subcontract shall not be assigned other than to the Owner or to another Contractor designated by the Owner without the Owner's prior written consent.

**Q. PROHIBITED INTEREST**

No official of the College who is authorized in such capacity and on the behalf of the College to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any material or supply contract or any subcontract in connection with the furnishings of supplies and/or equipment, shall become directly or indirectly interested personally in this contract or in any part thereof.

**R. THE COLLEGE RESERVES**

The right to cancel part of all of the awards in the event of a failure by the Contractor to deliver the materials as required and/or the failure to furnish materials as specified.

In case of rejection or non-delivery, the College may procure the articles or services from other sources and hold the Contractor responsible for any excess cost occasioned thereby as well as up to 15% for any and all fees, legal and otherwise.

**S. MAINTENANCE OR RECORDS**

Pursuant to N.J.A.C. 17:44-2.2, the contractor shall maintain all documents related to products, transactions, or services under this contract for a period of five (5) years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

**DOCUMENT CHECKLIST**

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

A. NON-COLLUSION AFFIDAVIT

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

B. NEW JERSEY WORKER AND COMMUNITY RIGHT TO KNOW ACT

The manufacturer or supplier of chemical substances or mixtures shall label them in accordance with N.J. Worker and Community Right to Know Law (N.J.S.A. 34:5A-1 et seq., and N.J.A.C 8:59 et seq). All direct use containers shall bear a label indicating the chemical name(s) and Chemical Abstracts Service number(s) of all hazardous substances in the container, and all other substances which are among the five most predominant substances in the container, or their trade secret registry number(s) pursuant to N.J.A.C. 8:59-5. "Container" means a receptacle used to hold a liquid, solid or gaseous substance such as bottles, bags, barrels, cans, cylinders, drums, and cartons. (N.J.A.C. 8:59-1.3). Further, all applicable Material Safety Data Sheets (MSDS) - hazardous substance fact sheets - must be furnished. All containers which are stored at an owner's facilities by the contractor or subcontractors shall display RTK labeling. Vendors with questions concerning labeling should contact the New Jersey Department of Health and Senior Services Right to Know Program for assistance in developing proper labels. [www.nj.gov/health/workplacehealthandsafety/right-to-know/](http://www.nj.gov/health/workplacehealthandsafety/right-to-know/).

C. PREVAILING WAGE ACT

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

The contractor is also responsible for obtaining and submitting all subcontractors' certified payroll records within the aforementioned period. The contractor shall submit said certified payrolls in the form outlined in N.J.A.C. 12:60-2.1(c). It is the contractor's responsibility to obtain any additional copies of the certified payroll form to be submitted by contacting the New Jersey Department of Labor and Workforce Development, Division of Workplace Standards. Additional information is available at

[http://lwd.dol.state.nj.us/labor/wagehour/wagerate/pwr\\_construction.html](http://lwd.dol.state.nj.us/labor/wagehour/wagerate/pwr_construction.html).

D. PUBLIC WORKS CONTRACTOR REGISTRATION ACT

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

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

To register, a contractor must provide the State Department of Labor and Workforce Development with a full and accurately completed application form.

The form is available online at [www.state.nj.us/labor/lsse/lspubcon.html](http://www.state.nj.us/labor/lsse/lspubcon.html).

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

E. EQUIPMENT CERTIFICATION

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

**METHOD OF CONTRACT AWARD**

A. The length of the contract shall be stated in the technical specifications. Please see Section "Termination of Contract" for additional information.

B. Depending on the nature of the bid and as the college determines in its best interest, the college may award the bid as per N.J.S.A. 18A:64A-25.1 et seq.

- C. The form of contract shall be submitted by the owner to the successful bidder. Terms of the specifications/bid package prevail. Bidder exceptions must be formally accepted by the owner; material exceptions shall not be approved.
- D. The successful bidder/respondent shall complete the W-9 Form and submit it to the college before the contract award. The form is available at the following link: [www.irs.gov/pub/irs-pdf/fw9.pdf](http://www.irs.gov/pub/irs-pdf/fw9.pdf).

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

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

- A. No bid/proposal/quote shall be accepted which does not conform to the specifications. Nothing contained in this specification shall be construed as depriving any county college of the right to reject all bids/proposals.
- B. Bidder acknowledges that this bid and the award of a contract are governed by the County College Contracts Law, N.J.S.A. 18A:64A-25.1 et seq. and that any legal challenges to the bidding process, the award of contract, or the rejection of any bids shall be pursued before the Board of Trustees of Essex County College following P.L. 1994, Ch. 48, Sec 6f and the Rules Governing Hearings Before the Board of Trustees of Essex County College.
- C. If a Bidder challenges or protests the award of a Bid, it shall reimburse the Owner for all costs, expenses, and losses incurred by the Owner, including all attorney's fees, because of such challenge or protest, except to the extent that the Bidder may be adjudicated to be a prevailing party against the Owner as to such challenge or protest. Under no circumstances shall the Owner reimburse to any party any fees, costs, or expenses related to a bid challenge or protest.

#### **TERMINATION OF CONTRACT**

- A. **Termination for Convenience.** The owner may terminate this Agreement for convenience without cause at any time upon ten days' written notice. Upon receipt of the notice, the Contractor shall discontinue its Work, remove its equipment, materials, and employees from the site and take such action as necessary to terminate its agreements with subcontractors and suppliers. The contractor shall then promptly deliver to the Owner a statement covering the balance owed under this Agreement for Work completed and materials ordered prior to receiving the notice of termination for convenience, for demobilization, and for any other costs for which it is liable to others by reason of such termination. Under no circumstances will Contractor be entitled to any lost profits by reason of termination for convenience. If the Owner terminates this Agreement pursuant to the provision entitled "Termination for Cause" and it is ultimately decided by a court of law or an arbitration panel that the Contractor has not failed to comply with any of the provisions of this Agreement or should not have had this Agreement terminated for cause, such termination shall be treated as a Termination for Convenience pursuant to this Clause and Contractor shall have no further or additional recourse in connection with such termination.
- B. **Termination for Cause.** The owner shall have the right to terminate this Contract after giving ten days' written notice of termination to the Contractor in the event of any default by the Contractor.
- C. **Default.** It shall be considered a default by the Contractor whenever the Contractor shall:
  1. declare bankruptcy, become insolvent, or assign its assets for the benefit of its creditors;
  2. disregard or violate provisions of the Contract Documents or fail to prosecute the work according to the agreed Schedule of Completion, including extensions thereof;
  3. fail to provide a qualified superintendent, competent workers or subcontractors, or proper materials, or fail to make prompt payment therefor;
  4. shall repeatedly refuse or fail to supply enough properly skilled workers or proper materials;
  5. repeatedly disregards applicable laws, statutes, ordinances, codes, rules, and regulations, or lawful orders of a public authority.
- D. In the event of termination of the Contract by the Owner because of default by the Contractor, the Owner may take possession of the Work and all materials and equipment thereon and may finish the Work by whatever method and means it may select.
- E. Upon termination of the Contract by the Owner, no further payments shall be due to the Contractor until the Work is completed. If the unpaid balance of the contract price shall exceed the cost of completing the Work including all overhead costs, the excess shall be paid to the Contractor. If the cost of completing the Work shall exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The cost incurred by the Owner, as herein provided, and the damage incurred through the Contractor's default shall be certified by the Owner.

## **DISPUTE RESOLUTION PROCEDURES**

- A. All claims, disputes, and other matters in question between the Owner and the Contractor arising out of or relating to this Contract or any breach thereof, except for claims which have been waived by the acceptance of Final Payment, shall be submitted to mediation within thirty days after a final determination is made by the Owner with regard to the claim, dispute or matter. The mediator shall be selected by mutual agreement between the parties or by the American Arbitration Association if an agreement cannot be reached among the parties. The mediation shall be conducted at the Essex County College, Newark, New Jersey. The cost of the mediation shall be borne equally among the parties. The mediation shall be attended by an executive officer of the Contractor who shall have full authority to act for and bind the Contractor and with duly authorized representatives of the Owner. Mediation shall be a condition precedent to arbitration.
- B. All claims, disputes, and other matters in question between the Owner and the Contractor arising out of or relating to this Contract or any breach thereof, not settled by mediation, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association and applicable State statutes then in effect unless the parties mutually agree otherwise. The scope of the authority of the arbitrators in issuing any award shall be limited by any statute or regulation which governs the liability or damages from the Owner. The award rendered by the arbitrators in any such arbitration proceeding shall be final and binding, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
- C. The parties acknowledge that by choosing arbitration as their sole means of dispute resolution, they are waiving their right to trial, whether by jury or by a judge and agree to submit all statutory, contractual, and equitable claims that may arise out of this Contract and the performance of the Work to binding arbitration. The parties further acknowledge that they are choosing arbitration, in part, in order to expedite the disposition of any disputes and, toward that end, they agree to work cooperatively with the arbitrator to limit discovery while preserving their rights to effectuate a thorough prosecution of their claims and/or defense against any claims that may be raised in the arbitration.
- D. Notice of the demand for arbitration shall be filed in writing with the other party to this agreement and the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after the claim, dispute, or another matter in question has arisen, and in no event shall it be made before the mediation has been requested or after the date when the institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
- E. The Owner, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided, however, that (1) the arbitration agreement governing the other arbitration permits consolidation, and (2) the arbitrations to be consolidated substantially invoke common questions of law or fact.
- F. The mediation and arbitration process shall not affect the Owner's right to terminate the Contractor's Work, in whole or part, whether for the Owner's convenience or due to the Contractor's default; and/or otherwise act in the public interest

## **DELIVERY**

- A. Deliveries must be made within the time specified by the College on the order. Under no circumstances will a purchase order be valid for a period in excess of 90 days, unless otherwise specified. Such time shall be computed on the basis of the number of stated calendar days from the date on the order or as agreed prior to the date on the order. If delivery is not made within such time, the College reserves the right to cancel the order and upon specific agreement, a new purchase order may be issued or placed the order as stated herein. Packages will NOT be received by Essex County College unless all delivery charges have been paid.
- B. Bidders shall acquaint themselves with conditions to be found at the site and shall assume all responsibility at no cost to the College for placing and installing the equipment furnishings in the locations required. All finished surfaces shall be cleaned and polished by the Contractor prior to final payment.
- C. **DELIVERY TIME.** Unless otherwise stipulated:
  - 1. Deliveries shall be made between 8:30 A.M. and 4:00 P.M. Monday through Friday at the College Receiving Department or as otherwise specified.  
  
NOTE: The College will be closed on Fridays during July and August; therefore, deliveries shall be made between 8:30 A.M. and 4:00 P.M. Monday through Thursday.
  - 2. The College reserves the right to reject any delivery made before or after the aforesaid times unless the schedule(s) provides(s) for different delivery times.

3. All areas affected by delivery shall remain unobstructed so “business” can operate as usual unless otherwise stated by the College.
- D. All containers are to be removed from the building(s) and campus.
  - E. When the bid standard in the purchase order is “as per sample,” delivery shall conform to such sample when it was new and unused. Unless otherwise stated in the purchase order, deliveries must consist only of new and unused merchandise.
  - G. The vendor accepts responsibility for damages to persons and property that may result from any act of his or his agent in making deliveries.
  - H. Where possible all goods delivered are to be manufactured or produced in the United States or its territorial possessions.
  - I. Open market orders are subject to audit by the Purchasing Department as to the reasonableness and justness of the prices charged.
  - J. EXCESS ON ORDER Only the College reserves the right to require any specified additional delivery on any item in excess of the quantity originally ordered.
  - K. NOTICE TO VENDORS. Vendors are authorized to ship only those items covered by the contract. If a review of material received indicates that material other than that covered by the contract has been ordered and delivered, the Director of Purchasing will take such steps as are necessary to have the material returned regardless of the time lapsed between the date of delivery and discovery of the violation. Full credit will be demanded. Compliance with this requirement is the full responsibility of the vendor. Violation of this clause may also result in the removal of the offending vendor’s name from the mailing list for a period of up to three years.

## PAYMENT

- A. No payment will be made unless duly authorized by the owner’s authorized representative and accompanied by proper documentation.
- B. Payment will be made following the owner’s policy and procedures. Invoices shall specify, in detail, the period for which payment is claimed, the Purchase Order number, the services performed during the prescribed period, the amount claimed, and the correlation between the services claimed and this proposal.
- C. Purchase Order (P.O.) Number must appear on all invoices and must be submitted to the Accounts Payable Department at [accountspayable@essex.edu](mailto:accountspayable@essex.edu).
- D. The owner may withhold all or partial payments on account of subsequently discovered evidence including but not limited to the following:
  1. Deliverables not complying with the project specification;
  2. Claims filed or responsible evidence indicating the probability of filing claims;
  3. A reasonable doubt that the contract can be completed for the balance then unpaid.

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

- E. Public funds may be used to pay only for goods delivered or services rendered. The owner shall not pay penalties and/or interest on overdue bills unless otherwise required by law. No employee is authorized to sign a letter of credit or any other document that represents a legal commitment on the part of the owner to pay additional fees.
- F. **Owner’s right to withhold payment:** The owner shall have the right to withhold payment to the Contractor in the event that a 10-day cure notice has been issued to the Contractor and the required cure has yet to be fully implemented. Such payment withholding shall be in such amount to cover 120% of the Owner’s estimated cost of having to implement the needed cure at its cost. Where a termination notice has been issued to Contractor, no further payment shall issue to Contractor, except in accordance with the termination-for-cause provision elsewhere in this Contract. Where Contractor has caused the Owner to be exposed to third-party claims, Owner shall have the right to withhold payment in an amount equal to 120% of the estimated liability of the Owner on such claims.

## **CONTRACT RENEWAL OR EXTENSION**

In the event, the Contract has an extension or renewal option by the Owner and the Owner determines that it is in its best interest to extend or renew the contract, the Contractor will be so notified in writing at least 30 days prior to the expiration date of the existing Contract. In the event that Owner determines to exercise the renewal or extension option, the Contractor agrees to provide the Services for the period of renewal or extension determined by the Owner. The contractor agrees to pay at least the minimum wage, as such rate may be increased over the term of the Contract, as may be extended at the sole discretion of the Owner in accordance with the provisions of the Request for Bids.

## **OTHER PROVISIONS**

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

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

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

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

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

### **NOTICE TO CONTRACTORS**

The Essex County College requires as a condition precedent to acceptance of proposals, a sworn statement executed by, or on behalf of, the person, firm association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract. The form for this sworn statement is included in the proposal and shall be properly executed in order to have the proposal considered. Failure to execute the Equal Employment Opportunities, Non-Collusion Statement, Statement of Ownership Disclosure, Affirmative Action, Business Registration Certificate, and other specified prerequisites will automatically disqualify the proposal.