

RESOLUTION

19-168

No.

Date of Adoption APR 18 2019

Approved as to Form and Legality

John Morelli
JOHN MORELLI, CITY ATTORNEY

Councilman /woman

Factual content certified by

Shing-fu Hsueh
DR. SHING-FU HSUEH, PH.D, P.E., P.P.

presents the following Resolution:

RESOLUTION ACCEPTING A BID AND AWARDING A CONTRACT TO SOUTH STATE, INC., P.O. BOX 68, BRIDGETON, NEW JERSEY 08302 FOR LEAD SERVICE LINE REPLACEMENT- PHASE 1B FOR LAWRENCE AND HAMILTON TOWNSHIP IN AN AMOUNT NOT TO EXCEED \$8,433,350.00-BID2019-13

WHEREAS, seven (7) sealed bids were received on March 26, 2019, for Lead Service Line Replacement- Phase 1B for Lawrence and Hamilton Townships for the City of Trenton, Department of Water and Sewer, 650 lead service lines replaced before December 31, 2019, substantial completion date of the project is July 1, 2020 and the final completion date is July 31, 2020; and

WHEREAS, the low bidder's bid, Roman E&G Corp., 14 Odgen Street, Newark, New Jersey 07104 is considered a fatal defect for failure to submit a subcontractor that is not registered with the New Jersey Department of Labor, Division of Wage and Hour Compliance prior to submittal of the bid opening. Pursuant to P.L. 1999, c.238 (C.34:11-56.48 et seq), no contractor shall bid on any contract for public work as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26) unless the contractor is registered pursuant to this act. No contractor shall list a subcontractor in a proposal for the contract unless the subcontractor is registered; and

WHEREAS, the second low bidder, South State, Inc., P.O. Bix 68, Bridgeton, New Jersey 08302 made pursuant to advertisement, be and is hereby accepted, as the responsive, responsible bidder complying with terms and specifications on file in the Division of Purchasing; and

WHEREAS, funds in an amount not to exceed \$8,433,350.00 have been certified to be available in account (s): C-06-19-55-016A-300.

NOW, THEREFORE, IT IS RESOLVED, by the City Council of the City of Trenton that the Mayor is hereby authorized to execute a contract with South State, Inc., P.O. Bix 68, Bridgeton, New Jersey 08302 for Lead Service Line Replacement- Phase 1B for Lawrence and Hamilton Townships for the City of Trenton, Department of Water and Sewer for the said purposes in the manner prescribed by law.

	Aye	Nay	Abstain	Absent		Aye	Nay	Abstain	Absent		Aye	Nay	Abstain	Absent
BETHEA	/				HOLLY WARD	/				CHESTER				
CALDWELL	/				MUSCHAL	/								
WILSON														
HARRISON	/				REYNOLDS JACKSON	/								

This Resolution was adopted at a Meeting of the City Council of the City of Trenton on

Kathy McBride
President of Council

City Clerk

John M. H.
APR 18 2019

CITY OF TRENTON, NEW JERSEY
BID2019-13- PHASE 1B
FOR LAWRENCE AND HAMILTON TOWNSHIPS
RES. NO. 19-168

PREVAILING WAGE APPLIES

This Agreement, entered into this 19TH Day of APRIL 2019 between the City of Trenton, a municipal corporation of the State of New Jersey, ('CITY') **319 EAST STATE STREET, TRENTON, NEW JERSEY 08608** and **SOUTH STATE, INC., P.O. BOX 68, BRIDGETON, NEW JERSEY 08302** (Contractor"), witnesseth that:

WHEREAS, Contractor has bid, proposed or offered to furnish and deliver to the City the materials, supplies and/or goods to perform the services **IN AN AMOUNT NOT TO EXCEED \$8,433,350.00**
650 LEAD SERVICE LINES REPLACED BEFORE DECEMBER 31, 2019, SUBSTANTIAL COMPLETION DATE OF THE PROJECT IS JULY 1, 2020 AND THE FINAL COMPLETION DATE IS JULY 31, 2020.

FIRST, Contractor, under the penalty expressed in the bond hereinafter mentioned, will furnish, supply and deliver to the City of Trenton the following materials, supplies or services as authorized by:

RESOLUTION ACCEPTING A BID AND AWARDING A CONTRACT TO SOUTH STATE, INC., P.O. BOX 68, BRIDGETON, NEW JERSEY 08302 FOR LEAD SERVICE LINE REPLACEMENT- PHASE 1B FOR LAWRENCE AND HAMILTON TOWNSHIP FOR THE CITY OF TRENTON, DEPARTMENT OF WATER AND SEWER

**PERFORMANCE BOND AND LABOR MATERIAL REQUIRED WITH SIGNED CONTRACTS
SUB-CONTRACTOR: COOPER PLUMBING & MECHANICAL, LLC; TRADE: PLUMBING**

below in strict accordance with the terms and conditions of the bid specifications, the bid response and the authorizing resolution, which are included above and is incorporated by reference,. Additionally, Contractor will furnish good and ample security in a sum equal to the said contract price for the said articles and services.

SECOND. The City of Trenton will pay Contractor the total sum mentioned herein when the appropriate Department Director has executed a certification that the said articles or services have been furnished, delivered and accepted in full conformity to the aforementioned specifications and offer or proposal.

THIRD. The City of Trenton reserves the right to order a greater or lesser quantity, not to exceed twenty-five percent, of any or all of the articles named in the said offer or proposal than is stated therein, and it is distinctly agreed between the said parties that the price quoted in the offer or proposal of Contractor shall be regarded as a standard of prices, and the total sum mentioned herein as the consideration of this contract shall not be regarded as limiting the right of the City of Trenton to order such greater or lesser quantity.

FOURTH. In the event of the failure of Contractor to deliver to the City of Trenton, such articles or perform such work or labor as described in such quantities as ordered at the time stated for such delivery by the City of Trenton, or in the event that such articles as are delivered or work and labor performed do not meet the specifications or standards, as established by the City of Trenton for such articles or acceptance of such work and labor, then such delivery shall be rejected by telephone or written notice to the Agent or address indicated by the Contractor and by simultaneous and like notice to his surety. Additionally, if Contractor or his surety does not cure the default within the time set by the said Agent on behalf of the City of Trenton, then the said Agent on behalf of the City, shall have the right to procure such services or purchase such articles in their place and stead in the open market as are needed for replacement, and from the best source available in the judgment of the said Agent and to charge the expense of such articles or work performed to Contractor and to deduct the amount thereof from any moneys due or to become due to Contractor by virtue of this agreement. Provided, however, that the surety on the bond of Contractor for the faithful performance of this agreement shall be first notified of the necessity for such replacement, and given the same time allowance for such replacement as is given Contractor.

FIFTH. This contract shall not be amended, assigned or subcontracted without the consent of the City of Trenton in writing (if the total compensation payable thereunder shall thereby exceed \$2,500.00, approval

SIXTH. In case of any conflict between the provisions of this agreement and of any of the provisions of the specifications, the latter shall govern and control.

Applicable for Public Construction Contracts Only: "Dispute Resolution Procedures (N.J.S.A. 40A:11-50). Disputes arising under this contract shall be subject to mediation or non-binding arbitration at the sole discretion of the City of Trenton, before a construction industry mediator or arbitrator or panels thereof. The City of Trenton shall have the right to select a third party to mediate any disputes arising under this agreement and the mediation shall be conducted informally in a manner decided upon by the mediator".

SEVENTH. Contractor hereby agrees to pay all workmen as a minimum the prevailing wages rate in accordance with Chapter 150 of the New Jersey Laws of 1963, Prevailing Wages on Public Contracts and U.S. Department of Labor Wage Rates with the higher rate for any given occupation being the governing rate, and N.J.S.A. 10:2-1 et seq., prohibiting discrimination in employment on public contracts.

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

a. 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, or sex. CONTRACTOR will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, up-grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. (N.J.S.A. 10:5-33; N.J.A.C. 17:27-3.4)

b. CONTRACTOR or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation, disability, nationality or sex. (N.J.S.A. 10:5-33; N.J.A.C. 17:27-3.4)

c. CONTRACTOR or subcontractor where applicable, will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of CONTRACTOR's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment. (N.J.S.A. 10:5-33; N.J.A.C. 17:27-3.4)

d. CONTRACTOR or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time. (N.J.A.C. 17:27-3.4)

Note: A public works contract for a subcontractor with a total work force of four or fewer employees or for a contractor or subcontractor performing under an existing Federally approved or sanctioned affirmative action program shall contain as mandatory language only paragraphs a, b, and c above, and the contract shall not contain any other mandatory language prescribed by N.J.A.C. 17:27. (N.J.A.C. 17:27-3.4) (c)

e. All bidders and all contractors who are negotiating for a procurement or service contract with the public agency which is not subject to a federally approved or sanctioned affirmative action program are required to submit to the public agency, prior to or at the time the contract is submitted for signing by the public agency (in accordance with N.J.A.C. 17:27-4.3 promulgated by the Treasurer pursuant to P.L. 1975, c. 127), one of the following three documents:

1. Appropriate evidence that the contractor is operating under an existing federally approved or sanctioned affirmative action program; or

2. A certificate of employee information report approval issued in accordance N.J.A.C. 17:27-4; or

3. An initial employee information report consisting of forms provided by the affirmative action office and completed by the contractor in accordance with N.J.A.C. 17:27-4. (N.J.A.C. 17:27-3.3) (a)

f. CONTRACTOR or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the affirmative action office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time. (N.J.A.C. 17:27-5.3) (a) (1)

g. CONTRACTOR or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status or sex, gender identity or expression, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices. (N.J.A.C. 17:27-5.3) (a) (2)

h. 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. (N.J.A.C. 17:27-5.3) (a) (3)

i. CONTRACTOR or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status or sex, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions. (N.J.A.C. 17:27-5.3) (a) (4)

j. CONTRACTOR agrees that 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. (N.J.S.A. 10:2-1) (a)

k. 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. (N.J.S.A. 10:2-1) (b)

l. 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. (N.J.S.A. 10:2-1) (c)

m. 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. (N.J.S.A. 10:2-1) (d)

n. The parties of this contract do hereby agree that the provisions of N.J.S.A. 10:2-1 through 10:2-4, dealing with discrimination in employment on public contracts, and the rules and regulations promulgated pursuant thereto, are hereby made a part of this contract and are binding upon them. (N.J.A.C. 13:6-1.1)

o. Contractor and subcontractor agree and guarantee to afford equal opportunity in performance of the contract and, except with respect to affectional or sexual orientation, and gender identity or expression in accordance with an affirmative action program approved by the State Treasurer. (N.J.S.A. 10:5-32 and 10:5-35) (a)

p. The parties of this contract do hereby agree that the provisions of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq., which prohibits discrimination on the basis of disability by public entities in all services programs and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereto, are made a part of this contract. The contractor agrees to conduct all activities in compliance with the provisions of Title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and the U.S. Department of Labor's regulations at 29 CFR Parts 31, 32 and 34.

Contractor shall cooperate with any state or federal reviews aimed at determining compliance with nondiscrimination laws and regulations authorized by State Law and expressly specified herein.

IN WITNESS WHEREOF, the City of Trenton has caused this agreement to be signed by the Mayor of the City of Trenton and its corporate seal to be hereto affixed, attested by the City Clerk, and Contractor has likewise caused this agreement to be executed the day and year first above written.

CITY OF TRENTON

Attest:

Dwayne M. Harris
Municipal Clerk

Date

W. Reed Gusciora, Esq., Mayor

Date

and

SOUTH STATE, INC. P.O. BOX 68, BRIDGETON, NEW JERSEY 08302

Attest:

Assistant Secretary Robert Bryan

President

Chester J. Ottinger, Jr.

Date

May 1, 2019

South Water, Inc.

(2)

BID2019-13 (Phase 1B)

PRICE SCHEDULE
TRENTON WATER WORKS
LEAD SERVICE LINE REPLACEMENT PROJECT - PHASE 1B
BID2019-13
BASE BID

Item No.	Bid Item Description	Estimated Quantities	Units	Unit Price in Figures	Amount in Figures
1.	A1. WATER SERVICE FULL REPLACEMENT TYPE 1 (FULL - MAIN TO CURB STOP - TWW-OWNED PORTION OF A FULL REPLACEMENT)	1,170	EACH		
	<u>Seven hundred fifty dollars</u> (write Unit Price in words)			\$ 750.00	\$ 877,500.00
1.	A2. WATER SERVICE FULL REPLACEMENT TYPE 1 (FULL - CURB STOP TO METER - CUSTOMER-OWNED PORTION OF A FULL REPLACEMENT)	1,170	EACH		
	<u>Three thousand two hundred fifty dollars</u> (write Unit Price in words)			\$ 3,250.00	\$ 3,822,500.00
1.	B. WATER SERVICE PARTIAL REPLACEMENT TYPE 2 (MAIN TO CURB STOP - TWW-OWNED PORTION - PARTIAL ONLY)	130	EACH		
	<u>Three thousand one hundred dollars</u> (write Unit Price in words)			\$ 3,900.00	\$ 507,000.00
1.	C. WATER SERVICE PARTIAL REPLACEMENT TYPE 3 (CURB STOP TO METER - CUSTOMER-OWNED PORTION - PARTIAL ONLY)	100	EACH		
	<u>Nine hundred dollars</u> (write Unit Price in words)			\$ 900.00	\$ 90,000.00
1.	D. NEW CURB STOP AT MAIN	325	EACH		
	<u>Five hundred dollars</u> (write Unit Price in words)			\$ 500.00	\$ 162,500.00
TRANSFER WATER SERVICE CONNECTION TO NEW/LARGER WATER					
1.	E. MAIN	30	EACH		
	<u>One thousand one hundred fifty dollars</u> (write Unit Price in words)			\$ 1,150.00	\$ 34,500.00
1.	F. WATER METER REPLACEMENT	650	EACH		
	<u>Three hundred dollars</u> (write Unit Price in words)			\$ 300.00	\$ 195,000.00
1.	G. BALL VALVE	1,170	EACH		
	<u>One hundred sixty-five dollars</u> (write Unit Price in words)			\$ 165.00	\$ 193,050.00
1.	H. RIGHT OF ENTRY NOT GRANTED	200	EACH		
	<u>One hundred sixty-five dollars</u> (write Unit Price in words)			\$ 165.00	\$ 33,000.00
1.	I. ACCESS NOT PROVIDED	80	EACH		
	<u>Three hundred twenty-five dollars</u> (write Unit Price in words)			\$ 325.00	\$ 26,000.00
1.	J. CURB STOP IN CONCRETE	400	EACH		
	<u>Five hundred dollars</u> (write Unit Price in words)			\$ 500.00	\$ 200,000.00

(2)

PRICE SCHEDULE
TRENTON WATER WORKS
LEAD SERVICE LINE REPLACEMENT PROJECT - PHASE 1B
BID2018-18
BASE BID

Item No.	Bid Item Description	Estimated Quantities	Units	Unit Price in Figures	Amount in Figures
1. K. LONG-SIDE REPLACEMENT	<u>One thousand seventy-five dollars</u> (write Unit Price in words)	650	EACH	\$ 1,075.00	\$ 678,750.00
2. TEST PIT AT CURB STOP	<u>Five hundred dollars</u> (write Unit Price in words)	300	EACH	\$ 500.00	\$ 150,000.00
3. A. FINAL PAVEMENT RESTORATION (Infa-red)	<u>Fifty dollars</u> (write Unit Price in words)	950	SY	\$ 50.00	\$ 47,500.00
B. FINAL PAVEMENT RESTORATION (Mill and Paving)	<u>Forty-three dollars</u> (write Unit Price in words)	6,000	SY	\$ 43.00	\$ 258,000.00
4. MISCELLANEOUS WORK AT DIRECTION OF THE OWNER	<u>ONE HUNDRED AND FIFTY THOUSAND DOLLARS</u> (write Unit Price in words)		ALLOWANCE	\$150,000	\$150,000
5. TRAFFIC CONTROL	<u>THREE HUNDRED AND FIFTY THOUSAND DOLLARS</u> (write Unit Price in words)		ALLOWANCE	\$350,000	\$350,000
6. PERMITS	<u>THREE HUNDRED THOUSAND DOLLARS</u> (write Unit Price in words)		ALLOWANCE	\$300,000	\$300,000
7. ENVIRONMENTAL PROTECTION	<u>ONE HUNDRED THOUSAND DOLLARS</u> (write Unit Price in words)		ALLOWANCE	\$100,000	\$100,000
TOTAL BID PRICE IN FIGURES (1 through 7)					
\$ <u>8,175,300.00</u>					
TOTAL BID PRICE IN WORDS (1 through 7)					
\$ <u>Eight million one hundred seventy-five thousand three hundred dollars</u>					

PRICE SCHEDULE
TRENTON WATER WORKS
LEAD SERVICE LINE REPLACEMENT PROJECT - PHASE 1B
CONTRACT NO. 2019-13
SUPPLEMENTAL BID

Item No.	Bid Item Description	Estimated Quantities	Units	Unit Price in Figures	Amount in Figures
S-1A.	LEAD SERVICE LINE EXCAVATION GREATER THAN 5 FEET <u>Fifty dollars</u> (write Unit Price in words)	400	CY	\$ 50.00	\$ 20,000.00
S-2A.	IMPORTED COMMON FILL <u>Thirty dollars</u> (write Unit Price in words)	40	CY	\$ 30.00	\$ 1,200.00
S-2B.	CRUSHED STONE <u>Fifty dollars</u> (write Unit Price in words)	20	CY	\$ 50.00	\$ 1,000.00
S-2C.	DENSE-GRADED AGGREGATE <u>Fifty dollars</u> (write Unit Price in words)	40	CY	\$ 50.00	\$ 2,000.00
S-2D.	FLOWABLE FILL <u>One hundred twenty-five dollars</u> (write Unit Price in words)	10	CY	\$ 125.00	\$ 1,250.00
S-3A.	FINAL PAVEMENT CURB TO CURB <u>Thirty-one dollars</u> (write Unit Price in words)	7,600	SY	\$ 21.00	\$ 159,600.00
S-3B.	INITIAL PAVEMENT RESTORATION WITH CONCRETE SUBBASE <u>Five hundred fifty dollars</u> (write Unit Price in words)	60	SY	\$ 550.00	\$ 33,000.00
S-3C.	GRAVEL DRIVEWAY <u>One hundred fifty dollars</u> (write Unit Price in words)	30	SY	\$ 150.00	\$ 4,500.00
S-3D.	BRICK OR ROCK PAVERS <u>One hundred seventy-five dollars</u> (write Unit Price in words)	20	SY	\$ 275.00	\$ 5,500.00
S-3E	ASPHALT PRICE ADJUSTMENT <u>TWO THOUSAND DOLLARS</u> (write Unit Price in words)		ALLOWANCE	\$2,000	\$2,000
S-4.	MISC. CONCRETE <u>One thousand four hundred dollars</u> (write Unit Price in words)	20	CY	\$ 1,400.00	\$ 28,000.00
TOTAL SUPPLEMENTAL PRICE IN FIGURES (S-1 through S-4)		\$ 258,050.00			
TOTAL SUPPLEMENTAL PRICE IN WORDS (S-1 through S-4)		\$ Two hundred fifty-eight thousand, fifty dollars			
TOTAL BASE BID PRICE PLUS SUPPLEMENTAL PRICE IN FIGURES		\$ 8,433,350.00			
TOTAL BASE BID PRICE PLUS SUPPLEMENTAL PRICE IN WORDS		\$ Eight million four hundred thirty-three thousand, three hundred fifty dollars			

Contract award will be based on the total of the base bid price plus all supplemental bid items, even if some or all of the supplemental bid items are not ultimately included in the contract.

**PROVIDE A LIST SUB-CONTRACTORS
COPY OF LICENSES SUBMITTED WITH BID (MANDATORY)**

NAME Cooper Plumbing & Mechanical LLC
ADDRESS 40 Patterson Ave
CITY, STATE, ZIP Hamilton NJ 08810
TELEPHONE: 609. 586. 1813
FAX NO. 609. 586. 1814
TRADE Plumbing
LICENSE NO. 36B101579000

NAME _____
ADDRESS _____
CITY, STATE, ZIP _____
TELEPHONE: _____
FAX NO. _____
TRADE _____
LICENSE NO. _____

NAME _____
ADDRESS _____
CITY, STATE, ZIP _____
TELEPHONE: _____
FAX NO. _____
TRADE _____
LICENSE NO. _____

NAME _____
ADDRESS _____
CITY, STATE, ZIP _____
TELEPHONE: _____
FAX NO. _____
TRADE _____
LICENSE NO. _____

NAME _____
ADDRESS _____
CITY, STATE, ZIP _____
TELEPHONE: _____
FAX NO. _____
TRADE _____
LICENSE NO. _____

PROMPT PAYMENT CERTIFICATION

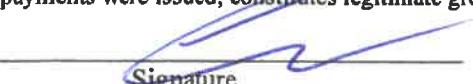
I make this certification on behalf of myself as a representative of the contractor named below ("Contractor") and on behalf of the Contractor. I certify that for each application for payment submitted in connection with this project: (1) the work covered by that application for payment has been completed in accordance with the contract documents; (2) the payment requested is due; and (3) all amounts have been paid by the Contractor for work for which previous payments were issued. No application for payment will be submitted without Contractor having paid all subcontractors and suppliers their share of any funds received by Contractor pursuant to any previous application(s) for payment. I understand and acknowledge that this entire certification will be considered incorporated into every request for payment. I understand and acknowledge that if Contractor submits an application for payment without (1) having completed work in accordance with the contract documents, (2) payment requested being due, and/or (3) having paid all subcontractors and suppliers their share of any funds received by Contractor pursuant to any previous application(s) for payment, then Contractor has submitted a false claim and false certification, subjecting Contractor to liability, damages and penalties under the New Jersey False Claims Act, N.J.S.A. 2A:32C-1 et seq.

If there is some legitimate reason Contractor cannot timely pay a subcontractor or supplier, then Contractor must submit a signed certification or affidavit to the owner/government entity fully explaining the situation, when the situation arose, and when it will be resolved. A failure to submit such an explanatory certification waives any defenses Contractor may later seek to assert in connection with liability under the New Jersey False Claims Act, N.J.S.A. 2A:32C-1 et seq. or any other law, including N.J.A.C. 7:1 D et seq.

I further understand and acknowledge that a false certification, whether express or implied, that (1) the work covered by an application for payment has been completed in accordance with the contract documents, (2) the payment requested is due, and/or (3) all amounts have been paid by the Contractor to subcontractors or suppliers for work for which previous payments were issued, is misleading with respect to the goods and services Contractor is providing. I also understand and acknowledge that the requirements that (1) work has been completed in accordance with the contract documents, (2) the payment requested is due, and (3) all amounts have been paid by the Contractor for work for which previous payments were issued, are material to the State's decision to allocate State funding dollars for this contract, and also material to any local government entity's decision to retain and make payment to the contractor. I understand and acknowledge that if owner/government entity makes payment knowing of such violations, that does not demonstrate that the requirements are not material and does not constitute a waiver of liability under the New Jersey False Claims Act, N.J.S.A. 2A:32C-1 et seq. To the contrary, Contractor recognizes that owner/government entity may decide to continue to pay Contractor due to contractual and/or logistical requirements or considerations.

Additionally, I understand and acknowledge that a false certification, whether express or implied, that (1) the work covered by an application for payment has been completed in accordance with the contract documents, (2) the payment requested is due, and/or (3) all amounts have been paid by the Contractor for work for which previous payments were issued, constitutes legitimate grounds for debarment pursuant to N.J.A.C. 7:1D et. Seq.

May 1, 2019


Signature

Date

Chester J. Ottinger, Jr., President

Name and Title of Signer (please type)

LFN 2006-21

November 1, 2006

Jon S. Corzine
Governor

Susan Bass Levin
Commissioner

Susan Jacobucci
Director

Local Finance Notice

Contact Information

Director's Office
V. 609.292.6613
F. 609.292.9073

Local Government Research
V. 609.292.6110
F. 609.292.9073

**Financial Regulation
and Assistance**
V. 609.292.4806
F. 609.984.7388

Local Finance Board
V. 609.292.0479
F. 609.633.6243

Local Management Services
V. 609.292.7842
F. 609.633.6243

Authority Regulation
V. 609.984.0132
F. 609.984.7388

Mail and Delivery
101 South Broad St.
PO Box 803
Trenton, New Jersey
08625-0803

Web: www.nj.gov/dca/lgs
E-mail: dgls@dca.state.nj.us

Distribution

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of Commissioners**
School Business Administrators

PROMPT PAYMENT OF CONSTRUCTION CONTRACTS P.L. 2006, c. 96

On September 1, 2006 Governor Corzine signed Senate Bill 1726 into law as P.L. 2006, c.96 of the Laws of 2006. Known as the "Prompt Payment" Law, Chapter 96 establishes timing standards for the payment of bills by both public and private sector organizations for a wide range of construction-related contractors. The "default" payment procedure in the law may conflict with existing procedures in some government agencies. The bill, however, provides alternate procedures for these local units (see Section III).

Codified as N.J.S.A. 2A:30A-1 et seq., the law took affect immediately upon signing. It affects construction-related contracts of all local units (municipalities, schools, counties, fire districts, local authorities, etc.) that took effect after September 1, 2006. Given that the law is currently in effect, immediate attention must be paid by all local units to ensure their interests are protected.

The law intends to ensure that contractors submitting bills for completed work are paid on a timely, established schedule, and that the full chain of subcontractors receive timely payment from their hiring contractor. When payments are not made pursuant to the schedule, the law allows contractors to receive interest on the outstanding balance and, under certain circumstances, to halt work without being subject to breach of contract clauses.

The law affects all contracts for "improvements" (defined below) regardless of dollar amount. This means it affects contracts for which public bidding is required as well as those contracts under the bid threshold that are traditionally authorized through solicitation of quotes.

This Local Finance Notice reviews the general provisions of the law. Section VI is a "to-do" list local units should consider in meeting the obligations of the law. Because local units have a wide range of policies regarding payment of bills, careful analysis and application of the law is warranted.

Local payment procedures should immediately be reviewed by the chief financial officer, purchasing agent, legal counsel, consulting engineers, and other staff as appropriate in order to develop local procedures to meet the requirements of the law.

Local units subject to the Local Public Contracts Law should also include payments required by N.J.S.A. 40A:11-16.2, in its periodic billing schedule. This section requires a monthly payment for construction projects in excess of \$100,000. This provision does not apply to the Public School Contracts Law.

N.J.S.A. 40A:5-17 establishes procedures local units (except schools) must follow for payment of bills. The law requires governing bodies to approve all bills, unless the local unit adopts other procedures that permit payments without governing body approval. Many local units have used this authority to permit the chief financial officer to pay bills in between governing body meetings, and submit a list of bills paid at the following meeting for inclusion in the official minutes. Similarly, N.J.S.A. 18A:19-1 et seq. and associated rules at N.J.A.C. 6A:23-2.11(a)1 set forth procedures to be used by public schools.

Finally, the law uses the phrase “payment cycle” to describe when actual payment is made after the governing body has approved payment. While not directly required by the law, it is concluded that the law intends that contractors have some certainty of when they will receive payment. To meet this expectation, local units should formally adopt a payment cycle and provide the information to contractors so they know when payments will be made.

III. Required Procedures and Processes

N.J.S.A. 2A:30A-2a sets out two procedures: a **default**, covering **any public or private entity** that enters into a contract for described services; and an “alternate,” specifically created for public entities where the governing body must vote to authorize the payment of bills.

The **default procedure** applies to local units that **do not require governing body approval** to authorize the payment of bills. It imposes the following payment process:

- If the contractor has performed in accordance with the contract; and
- The work has been approved and certified by the owner or the owner’s “authorized approving agent,”
- The owner shall pay the bill not more than 30 calendar days after the billing date;
- Provided that the billing shall be deemed “approved” and “certified” 20 calendar days after the owner receives it, unless the owner provides, **before the end** of the 20-day period, a written statement of the amount withheld and the reason for withholding payment.

The **alternate procedure** for local units applies when local policies **require governing body approval** authorizing the payment of bills. In addition to ensuring the contractor has performed in accordance with the contract and that the work has been approved and certified by the owner or the owner’s “authorized approving agent,” the following provisions apply:

- The 20th calendar day deadline of the default procedure to approve and certify, or decide to withhold full or partial payment is **deferred until the public meeting following 20 calendar days of the billing date**, at which time the bill must be approved for payment or notice provided as to why the bill or any portion of it will not be approved.
- If the billing is approved, the 30-day payment requirement of the default is replaced by the requirement that the bill be paid in the payment cycle following the meeting.

Local units that awarded contracts after September 1, 2006 that did not include Prompt Payment provisions in their contracts should work with their contractors to develop reasonable procedures or contract amendments that do not conflict with either the Prompt Payment Law or N.J.S.A. 40A:5-17.

If an amount is withheld, the local unit is obligated to take good faith action to resolve the matter. Failure to make a timely payment permits a contractor to add interest to unpaid amounts and can, barring a good faith effort to resolve the matter, result in a work stoppage.

If the local unit challenges the billing, it should reach a clear determination of what is not satisfactory, and act accordingly to accept or reject portions of the bill. The local unit must then provide prompt and timely notice to the contractor as to why the bill was rejected and what is necessary to cure the defect. Finally, the local unit must pay the undisputed portion of the bill. Denial of payment to an entire bill should occur when the circumstances warrant it.

Combining an ADR process with other policies, including documentation to address billing disputes, can lead to what the Prompt Payment law refers to as a “good faith effort to resolve the reason for the withholding.” [N.J.S.A. 2A:30A-2(d)] Engaging in a good faith effort will reduce the possibility of a contractor stopping work due to the local unit’s failure to make payment.

Without a good faith effort on the part of the local unit, a contractor can stop work and not be held liable for a breach of contract (See Section V). The local unit should include in its bid specifications, contracts, and if appropriate, purchase orders covered by Prompt Payment an explanation of its ADR policies.

V. Enforcement and Exceptions

The law has enforcement provisions a contractor can use when the contractor is not paid in full as required; either by 30 calendar days after submitting the bill or, in the alternate, after the payment date of the payment cycle following the meeting where the bill was to have been approved.

There are two enforcement provisions:

1. N.J.S.A. 2A:30A-2(c) permits contractors to charge interest when a bill is not paid in accordance with the schedule and notice has not been provided as to why a bill or portion of it was not paid.

In this case, a contractor can charge interest at the prime rate¹ plus one percent from the day after the required payment date and ending on the day the check for payment is drawn. Thus, it is exceptionally important that if a bill is not fully paid in accordance with the local unit’s established schedule, the contractor is notified in writing of the amount withheld and the reasons for the withholding. It is presumed that the written notice will contain information as to how the deficiency can be cured.

If payment is not made in a timely manner and notice is not given, the contractor may be able to recover interest. Further, care should be taken and legal counsel consulted when deciding to withhold payment. Depending on the specific circumstances, a local unit could be responsible for paying interest, if the reason for withholding payment is found to be without merit.

¹ This web link leads to an explanation of the prime rate, how it is calculated, and the current figure. The prime rate at the time of debt is incurred should be maintained until the payment is made.

procedures. In particular, finance staff should be trained to pay careful attention to incoming bills, and if appropriate, ensure logging, transmittal, and tracking of bills.

5. When governing bodies approve bills, add “**payment of bills**” as a **routine agenda item for all public meetings** to allow the governing body to approve or reject any bills or portion of one whenever they meet.
6. When a bill or portion of a bill is denied, immediately notify the contractor **in writing** of any denial of payment, its deficiency, and what is required to remedy the deficiency.
7. **Add a bill payment provision/schedule to bid specifications and contracts.** The law permits use of the alternate governing body approval practice **only** if it is reflected in bid specifications and contract documents. All bid specifications, contract documents, and purchase order “boilerplate” text (as appropriate to local circumstances) should be amended to describe the process used by the local unit for approval and payment of bills, including billing dates and payment dates.
8. **Update outstanding contracts and bid proposals.** The law does not apply to contracts for the improvement of structures awarded before the effective date of September 1, 2006. Local units may currently have outstanding bid advertisements or have received bids but not yet awarded contracts. In these cases, local officials should act, as appropriate to amend bid specifications through the addenda process, or work with legal counsel to amend pending or issued contracts to include the appropriate language, or work with contractors to otherwise meet the intent of the law.
9. **Review alternative dispute resolution provisions for construction contracts.** N.J.S.A. 40A:11-50 has required for several years that all construction contracts include an alternative dispute resolution process. Local units should carefully review their existing procedure in context of Prompt Payment and update it as appropriate.

VII. Conclusion

The Prompt Payment Law presents new challenges to local units in managing their payment procedures. Its immediate effect adds to that challenge. Local unit officials should act expeditiously to ensure they do not violate the law while they consider implementing long-term policies.

Local finance officials can use GovConnect to share information via the Discussion Forums. They can submit sample language to the Division for posting in the Chief Financial Officer, Authority, and Fire District Document Libraries.

As there are many variations on policies that can be adopted, the Division is not at this time recommending specific language for inclusion in bid specifications and contracts. Local units are urged to carefully review this Notice and the law to adopt practices that meet their needs, and the intent and spirit of the law.

Approved: Susan Jacobucci, Director

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reason for withholding payment, except that in the case of a public or governmental entity that requires the entity's governing body to vote on authorizations for each periodic payment, final payment or retainage monies, the amount due may be approved and certified at the next scheduled public meeting of the entity's governing body, and paid during the entity's subsequent payment cycle, provided this exception has been defined in the bid specifications and contract documents.

b. If a subcontractor or subsubcontractor has performed in accordance with the provisions of its contract with the prime contractor or subcontractor and the work has been accepted by the owner, the owner's authorized approving agent, or the prime contractor, as applicable, and the parties have not otherwise agreed in writing, the prime contractor shall pay to its subcontractor and the subcontractor shall pay to its subsubcontractor within 10 calendar days of the receipt of each periodic payment, final payment or receipt of retainage monies, the full amount received for the work of the subcontractor or subsubcontractor based on the work completed or the services rendered under the applicable contract. In the case of ongoing work on the same project for which partial payments are made, the amount of money owed for work already completed shall only be payable if the subcontractor or subsubcontractor is performing to the satisfaction of the prime contractor or subcontractor, as applicable.

c. If a payment due pursuant to the provisions of this section is not made in a timely manner, the delinquent party shall be liable for the amount of money owed under the contract, plus interest at a rate equal to the prime rate plus 1%. Interest on amounts due pursuant to this section shall be paid to the prime contractor, subcontractor or subsubcontractor for the period beginning on the day after the required payment date and ending on the day on which the check for payment has been drawn. The provisions of this subsection c. shall not apply to any transportation project as defined in section 3 of P.L. 1984, c.73 (C.27:1B-3), if that project receives federal funding and the awarding agency has been notified by the federal government that it will be classified as a high risk grantee pursuant to 49 C.F.R. 18.12.

d. A prime contractor, subcontractor or subsubcontractor may, after providing seven calendar days' written notice to the party failing to make the required payments, suspend performance of a construction contract, without penalty for breach of contract, until the payment required pursuant to this section is made, if the contractor, subcontractor or subsubcontractor: is not paid as required by this section; is not provided a written statement of the amount withheld and the reason for the withholding; and the payor is not engaged in a good faith effort to resolve the reason for the withholding. The provisions of this subsection d. shall not apply to any transportation project as defined in section 3 of P.L. 1984, c.73 (C.27:1B-3), if that project receives federal funding and the application of this provision would jeopardize the funding because the owner could not meet the federal standards for financial management systems as outlined in 49 C.F.R. 18.20.

e. (1) The rights, remedies or protections provided by this section for prime contractors, subcontractors and subsubcontractors shall be in addition to other remedies provided pursuant to any other provision of State law. To the extent that the provisions of this section provide greater rights, remedies or protections for prime contractors, subcontractors and subsubcontractors than other provisions of State law, the provisions of this section shall supersede those other provisions.

(2) No provision of this section shall be construed as restricting in any way the rights or remedies provided by any other applicable State or federal law to an owner who is a resident homeowner or purchaser with respect to the real property being improved.

f. All contracts for the improvement of structures entered into after the effective date of P.L.2006, c.96 between owners, prime contractors, subcontractors or subsubcontractors shall provide that disputes regarding whether a party has failed to make payments required pursuant to this section may be submitted to a process of alternative dispute resolution. Alternative dispute resolution permitted by this section shall not apply to disputes concerning the bid solicitation or award process, or to the

(2) In the case of a municipality, by check drawn on the municipality, signed by the mayor or other chief executive officer and the municipal clerk and countersigned by such other officer or officers as are designated by ordinance.

c. Required general books of account. The bureau shall prescribe the kind and manner of keeping of general books of account for the financial officers of the local units and said officers shall be required to keep and maintain said books.

Amended by L. 1985, c. 127, s. 1, eff. April 12, 1985.

40A:11-16.2 Partial payments; deposit bonds.

1. Any contract, the total price of which exceeds \$100,000.00, entered into by a contracting unit involving the construction, reconstruction, alteration, repair or maintenance of any building, structure, facility or other improvement to real property, shall provide for partial payments to be made at least once each month as the work progresses, unless the contractor shall agree to deposit bonds with the contracting unit pursuant to P.L.1979, c.152 (C.40A:11-16.1).

L.1979,c.464,s.1; amended 1999, c.440, s.25.

40A:11-50. Process of resolution for construction contract disputes

1. All construction contract documents entered into in accordance with the provisions of P.L.1971, c.198 (C.40A:11-1 et seq.) after the effective date of P.L.1997, c.371 (C.40A:11-50) shall provide that disputes arising under the contract shall be submitted to a process of resolution pursuant to alternative dispute resolution practices, such as mediation, binding arbitration or non-binding arbitration pursuant to industry standards, prior to being submitted to a court for adjudication. Nothing in this section shall prevent the contracting unit from seeking injunctive or declaratory relief in court at any time. The alternative dispute resolution practices required by this section shall not apply to disputes concerning the bid solicitation or award process, or to the formation of contracts or subcontracts to be entered into pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.).

Notwithstanding industry rules or any provision of law to the contrary, whenever a dispute concerns more than one contract, such as when a dispute in a contract involving construction relates to a contract involving design, architecture, engineering or management, upon the demand of a contracting party, other interested parties to the dispute shall be joined unless the arbitrator or person appointed to resolve the dispute determines that such joinder is inappropriate. Notwithstanding industry rules or any provision of law to the contrary, whenever more than one dispute of a similar nature arises under a construction contract, or related construction contracts, upon the demand of a contracting party, the disputes shall be joined unless the arbitrator or person appointed to resolve the dispute determines that the disputes are inappropriate for joinder.

For the purposes of this section, the term "construction contract" means a contract involving construction, or a contract related thereto concerning architecture, engineering or construction management

L.1997, c.371.