

INVITATION TO BID  
SP-11 Rev. 10/11  
(Prev. Rev. 9/11)

**Paul Greco**  
Contract Specialist

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**STATE OF CONNECTICUT**  
**DEPARTMENT OF ADMINISTRATIVE SERVICES**  
**PROCUREMENT SERVICES**  
165 Capitol Avenue, 5<sup>th</sup> Floor South  
HARTFORD, CT 06106-1659



**NOTICE TO VENDORS:** Logon to the DAS web page,  
click on **Subscribe** (in the right-hand column) and  
complete the form to automatically receive notification  
of new Bids & RFP's **via e-mail.**

<http://das.ct.gov/Marketplace>  
DAS CT State Web Site

## Invitation to Bid

*SPECIFICATIONS & BID DOCUMENTS ATTACHED*

Bid Number: **11PSX0337** Bid Opening Date & Time: **2 January 2013 at 2:00 PM Eastern Time**

Bid Description: **B-20 Bio Diesel for the CT Department of Transportation**

*Special Instructions: Read product and delivery requirements thoroughly.*

### **LOOK WHAT'S NEW!**

**Form SP-49 "Bidder's Guide" contains important information regarding new policies and procedures for submitting forms via BIZNET!**

**If hand delivering a bid, bring hand-delivered bids to:**

**DAS Procurement Services, Room 161, 165 Capitol Avenue, Hartford, CT between 1:30 and 2:00**

If you hand deliver a bid to DAS Procurement Services at any other time, please call (860)713-5095 for further instruction.

Vendors cannot enter state buildings without a valid photo ID and should anticipate security delays.

Allow ample time for delivery as bids delivered after Bid Opening Date/Time cannot be accepted.

This contract replaces the following contract award(s) in part or in total: **11PSX0056**

**SEALED BID NO.: 11PSX0337**

**NOT TO BE OPENED UNTIL: 4 January 2012  
2:00 PM Eastern Time**

**Return Bid To:**

**PROCUREMENT SERVICES  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
STATE OF CONNECTICUT  
165 CAPITOL AVE 5<sup>th</sup> FLOOR SOUTH  
HARTFORD CT 06106-1659**

**BID**

***NOTE: Always use mailing label at left on all packages when returning the ORIGINAL & ONE COPY of your bid response.***

Bids must be time & date stamped by DAS Procurement Personnel. Receipt at the State's main mailroom does not constitute receipt by DAS Procurement.

Allow ample time for delivery as bids delivered after Bid Opening Date/Time cannot be accepted.

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**HARTFORD, CT 06106-1659**

BID NO. <b>11PSX0337</b>
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**Read & Complete**  
**Carefully**

Page 1 of 3

Bidder Name: \_\_\_\_\_

BID NO: <b>11PSX0337</b>	BID DUE DATE: <b>4 January 2012</b>	BID DUE TIME: <b>2:00 PM Eastern Time</b>	BID SURETY: <b>\$0.00</b>	DATE ISSUED: <b>6 December 2011</b>
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DESCRIPTION: **B-20 Bio Diesel for the CT Department of Transportation**

FOR: **CT Department of Transportation**

TERM OF CONTRACT <b>Through the delivery and consumption of 600,000 gallons</b> Agency Requisition Number(s): <b>61663</b>
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**INVITATION FOR BIDS:** Pursuant to the provisions of Section 4a-57 of the Connecticut General Statutes as amended, Procurement Services is soliciting bids for the State of Connecticut, at the address above for the furnishing of the subject commodities and/or services to state agencies.

**IMPORTANT: ALL pages of this form, Sections 1 through 4 must be completed, signed and returned by the bidder as part of the bid package. Failure to submit all pages of this form may constitute grounds for rejection of your bid.**

Section 1 of 4 - **BIDDER INFORMATION**

<b>COMPLETE BIDDER LEGAL BUSINESS NAME:</b>  PRINCIPAL PLACE OF BUSINESS:	<b>Taxpayer ID # (TIN):</b> <input type="checkbox"/> SSN <input type="checkbox"/> FEIN   WRITE/TYPE SSN/FEIN NUMBER ABOVE
---	--

BUSINESS NAME , TRADE NAME, DOING BUSINESS AS (IF DIFFERENT FROM ABOVE)  PRINCIPAL PLACE OF BUSINESS (IF DIFFERENT FROM ABOVE)
--

BUSINESS ENTITY: <input type="checkbox"/> LLC <input type="checkbox"/> NON-PROFIT <input type="checkbox"/> INDIVIDUAL/SOLE PROPRIETORSHIP <input type="checkbox"/> PARTNERSHIP (ATTACH NAMES AND TITLES OF ALL PARTNERS) <input type="checkbox"/> CORPORATION <input type="checkbox"/> GOVERNMENT TYPE OF CORPORATION: - STATE ORGANIZED IN:
--

**NOTE:** IF INDIVIDUAL/SOLE PROPRIETOR, INDIVIDUAL'S NAME (AS OWNER) MUST APPEAR IN THE LEGAL BUSINESS NAME BLOCK ABOVE.

BUSINESS TYPE:    A. SALE OF COMMODITIES    B. MEDICAL SERVICES    C. ATTORNEY FEES    D. RENTAL OF PROPERTY (REAL ESTATE & EQUIPMENT) E. OTHER (DESCRIBE IN DETAIL)
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UNDER THIS TIN, WHAT IS THE PRIMARY TYPE OF BUSINESS YOU PROVIDE TO THE STATE? (ENTER LETTER FROM ABOVE)	
--	--

UNDER THIS TIN, WHAT OTHER TYPES OF BUSINESS MIGHT YOU PROVIDE TO THE STATE? (ENTER LETTER FROM ABOVE)	
--	--

**AFFIRMATION OF BIDDER:** The above named bidder fully acknowledges and agrees with all of the terms and conditions contained in this Bid Form SP-26, the accompanying invitation to bid, Form SP-19, entitled Standard Bid Terms and Conditions and Contract #11PSX0337. Further, if the above named bidder is awarded a contract for the goods and/or services called for in the invitation to bid, the bidder's signature on this Bid Form SP-26 shall mean that the bidder shall be bound by and perform fully in accordance with all of the terms and conditions set forth in the invitation to bid, Form SP-19 and Contract #11PSX0337 as if the bidder had actually executed Form SP-19 and Contract #11PSX0337 itself.

WRITTEN SIGNATURE OF PERSON AUTHORIZED TO SIGN BIDS ON BEHALF OF THE ABOVE NAMED BIDDER ←SIGN HERE	DATE EXECUTED
---	---------------

TYPE OR PRINT NAME OF AUTHORIZED PERSON	TITLE OF AUTHORIZED PERSON
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BID NO. <b>11PSX0337</b>
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**Read & Complete**  
**Carefully**

Bidder Name: \_\_\_\_\_

Section 1 of 4 - **BIDDER INFORMATION** (CONTINUED)

BIDDER ADDRESS	STREET	CITY	STATE	ZIP CODE
Add Additional Business Address information on back of this form, if needed.				
BIDDER E-MAIL ADDRESS			BIDDER WEB SITE	
<b>REMITTANCE INFORMATION: INDICATE BELOW THE REMITTANCE ADDRESS OF YOUR BUSINESS.</b> <input type="checkbox"/> SAME AS BIDDER ADDRESS ABOVE.				
REMIT ADDRESS	STREET	CITY	STATE	ZIP CODE

**Notice:** Provision pursuant to Section #35. Notice, for all communications as required by Section #35 of Contract 11PSX0337, provide the Bidder Contact Information below.

BIDDER CONTACT INFORMATION: NAME (TYPE OR PRINT)

BIDDER ADDRESS	STREET	CITY	STATE	ZIP CODE
Add Additional Bidder Contact & Address information on back of this form, if needed.				
1 <sup>ST</sup> BUSINESS PHONE:	Ext. #	HOME PHONE:		
2 <sup>ND</sup> BUSINESS PHONE:	Ext. #	1 <sup>ST</sup> PAGER:		
CELLULAR:		2 <sup>ND</sup> PAGER:		
1 <sup>ST</sup> FAX NUMBER:		TOLL FREE PHONE:		
2 <sup>ND</sup> FAX NUMBER:		TELEX:		

IS YOUR BUSINESS CURRENTLY A DAS CERTIFIED SMALL BUSINESS ENTERPRISE?  YES (ATTACH CERTIFICATE COPY TO BID)  NO

IS YOUR BUSINESS A MICROBUSINESS?  YES  NO

IF YOU ARE A **STATE EMPLOYEE**, INDICATE YOUR POSITION, AGENCY & AGENCY ADDRESS.

**PURCHASE ORDER DISTRIBUTION:**  
 (E-MAIL ADDRESS)

**NOTE: THE E-MAIL ADDRESS INDICATED IMMEDIATELY ABOVE WILL BE USED TO FORWARD PURCHASE ORDERS TO YOUR BUSINESS.**

**ADD FURTHER BUSINESS ADDRESS, E-MAIL & CONTACT INFORMATION ON SEPARATE SHEET IF REQUIRED**

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Page 3 of 3

Bidder Name: \_\_\_\_\_  
**Section 2 of 4 - RESIDENT BIDDERS**

In accordance with C.G.S. § 4e-48, "resident bidder" means a business that submits a bid in response to an invitation to bid by a state contracting agency has paid unemployment taxes or income taxes in Connecticut during the twelve calendar months immediately preceding submission of this bid, has a business address in the state and has affirmatively claimed such status in the bid submission.

The above signed bidder affirmatively claims that the bidder has paid unemployment taxes or income taxes in Connecticut during the twelve calendar months immediately preceding this bid submission.

YES  NO

The above signed bidder affirmatively claims that the bidder has a business address in the State of Connecticut.

YES  NO

If Yes, List Connecticut Business Address:  
\_\_\_\_\_

The above signed bidder affirmatively claims the status of a resident bidder.

YES  NO

**Section 3 of 4 - BIDDER DEBARMENT AND/OR SUSPENSION**

Is the bidder, any company official, or any subcontractor to the bidder, currently debarred, disqualified or suspended from bidding or contracting with the State of Connecticut, the Federal Government or any other governmental entity?

YES  NO

Does the bidder, any company official, or any subcontractor to the bidder, have a debarment, disqualification or suspension proceeding pending with the State of Connecticut, the Federal Government or any other governmental entity?

YES  NO

If the above signed bidder, any company official or any subcontractor to the bidder *has* received notices of debarment and/or suspension from contracting with the State of Connecticut, the Federal Government or any governmental entity, said notices must be attached to this document when submitting this bid.

Number of notices attached \_\_\_\_\_

**Section 4 of 4 - OTHER INFORMATION**

Refer to "Guidance for Vendor Authorizations" at:  
[http://das.ct.gov/Purchase/Info/Vendor\\_Authorization\\_and\\_Guidance\\_081106.pdf](http://das.ct.gov/Purchase/Info/Vendor_Authorization_and_Guidance_081106.pdf)

Refer to "Guide to the Code of Ethics for Current or Potential State Contractors" at:  
[http://www.ct.gov/ethics/lib/ethics/guides/contractors\\_guide\\_09\\_final.pdf](http://www.ct.gov/ethics/lib/ethics/guides/contractors_guide_09_final.pdf)

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**Standard Bid Terms and Conditions - Page 1 of 3**

**The following Terms and Conditions govern the Invitation To Bid issued by the Department of Administrative Services (DAS). Incorporated by reference into these Terms and Conditions are applicable provisions of the Connecticut General Statutes, including but not limited to, those in Title 4a, Chapter 58 or Title 4d, Chapter 61 and applicable provisions of the Regulations of Connecticut State Agencies, including but not limited to, those that begin with and follow Section 4a-52-1 or 4d-3-1.**

**Bidders shall comply with the statutes and regulations as they exist on the date of their bid and as they may be modified from time to time during the term of the contract, as it may be amended.**

**Pursuant to Connecticut General Statutes 4a-60b,, The Department of Administrative Services, at its sole discretion, may elect to solicit Bid pricing through a Reverse Auction.**

**Submission of Bids**

1. Bids must be submitted on forms specified by DAS and must be submitted no later than the date and time specified in the Invitation To Bid. Telephone or facsimile bids will not be accepted in response to an Invitation To Bid.

2. Bids received after the time and date of bid opening specified in each Invitation To Bid shall not be accepted for consideration. Bid envelopes must clearly indicate the bid number as well as the date and time of the opening of the bid. The name and address of the Bidder should appear in the upper left hand corner of the envelope.

3. Late bids shall be rejected. Incomplete bid forms may result in the rejection of the bid. Amendments to bids received by DAS after the time specified for opening of bids shall not be considered. With the exception of pricing submission through Reverse Auction participation, an original and one copy of the Price Schedule shall be returned to DAS. Bids shall be computer prepared, typewritten or handwritten in ink. Bids submitted in pencil shall be rejected. All bids shall be signed by a person duly authorized to sign bids on behalf of the bidder. Unsigned bids may be rejected. Errors, alterations or corrections on both the original and one copy of the Price Schedule to be returned must be initialed by the person signing the bid or their authorized designee. If an authorized designee initials the correction, there must be written authorization from the person signing the bid to the person initialing the erasure, alterations, or correction. Failure to do so shall result in rejection of bid for those items erased, altered or corrected and not initialed.

4. Conditional bids are subject to rejection in whole or in part. A "conditional bid" is defined as one limiting or modifying any of the terms and conditions and/or specifications of the Invitation to Bid.

5. Alternate bids will not be considered unless the Invitation to Bid specifically requests alternate bids. An alternate bid is one which is submitted in addition to and is not dependent upon the bidder's primary response to the Invitation To Bid.

6. In the event of a discrepancy between the unit price and the extension, the unit price shall govern. Prices should be extended in decimal form, not fractions, to be net, and shall include transportation and delivery charges fully prepaid by the Contractor to the destination specified in the Invitation To Bid, and subject only to cash discount.

7. Pursuant to Section 12-412 of the Connecticut General Statutes, the State of Connecticut is exempt from the payment of excise, transportation and sales taxes imposed by the Federal Government and/or the State. Such taxes must not be included in bid prices.

8. All bids will be opened publicly on the date specified in the Invitation To Bid and, upon award, are subject to public inspection.

9. The Bidder fully acknowledges and agrees with all of the terms and conditions contained in this Bid Form SP-19, the accompanying Invitation To Bid, Form SP-26, and Contract #11PSX0337. Further, if the bidder is awarded a contract for the goods and/or services called for in the Invitation To Bid, the bidder's signature on Bid Form SP-26 shall mean that the bidder shall be bound by and perform fully in accordance with all of the terms and conditions set forth in the Invitation To Bid, this Form SP-19 and Contract #11PSX0337 as if the bidder had actually executed Form SP-19 and Contract #11PSX0337 itself.

**Guaranty or Surety**

10. Bid and or performance bonds may be required. Bonds must meet the following requirements: Corporation - must be signed by an official of the corporation above their official title and the corporate seal must be affixed over the signature; Firm or Partnership - must be signed by all the partners and indicate they are "doing business as"; Individual - must be signed by the owner and indicated as "Owner". The surety company executing the bond or countersigning must be licensed in Connecticut and the bond must be signed by an official of the surety company with the corporate seal affixed over their signature. Signatures of two witnesses for both the principal and the surety must appear on the bond. Power of attorney for the official signing the bond for the surety company must be submitted with the bond.

**Samples**

11. The quality of accepted bid samples does not supersede specifications for quality in the Invitation to Bid unless the sample is superior in quality. All deliveries shall have at least the same quality as the accepted bid sample.

12. Samples are furnished free of charge. Bidders must indicate if their return is desired, which DAS shall do provided that they are returned at Bidder's sole cost and expense, FOB Bidder's destination, and that they have not been made useless by testing. If they are made useless by testing, the State may dispose of the samples as it deems to be appropriate. Samples may be held for comparison with deliveries.

**Award**

13. Award of a contract will be made to the lowest responsible qualified bidder and shall be based on quality of the goods or services to be supplied, their conformance with specifications,

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**Standard Bid Terms and Conditions - Page 2 of 3**

delivery terms, price, administrative costs, past performance, and financial responsibility.

14. DAS may reject any bidder in default of any prior contract or guilty of misrepresentation or any bidder with a member of its firm in default or guilty of misrepresentation.

15. DAS may correct inaccurate awards resulting from clerical or administrative errors.

16. Bidders have ten days after notice of award of the contract to refuse acceptance. After ten days the contract will be binding on the Contractor. If the Contractor rejects the award within the ten day period, DAS will award the contract to the next lowest responsible qualified bidder.

**Other Requirements**

17. Section 4a-81 (the "Act") of the Connecticut General Statutes requires that the Invitation to Bid of which these Terms and Conditions are a part include a notice of the consulting affidavit requirements described in the Act. Accordingly, pursuant to the Act, vendors are notified as follows:

(a) No state agency or quasi-public agency shall execute a contract for the purchase of goods or services, which contract has a total value to the state of fifty thousand dollars or more in any calendar or fiscal year, unless the state agency obtains the written affidavit described in subsection (b) of this section.

(b) (1) The chief official of the vendor awarded a contract described in subsection (a) of this section or the individual awarded such contract who is authorized to execute such contract, shall attest in an affidavit as to whether any consulting agreement has been entered into in connection with such contract. Such affidavit shall be required if any duties of the consultant included communications concerning business of such state agency, whether or not direct contact with a state agency, state or public official or state employee was expected or made. "Consulting agreement" means any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (A) providing counsel to a contractor, vendor, consultant or other entity seeking to conduct, or conducting, business with the State, (B) contacting, whether in writing or orally, any executive, judicial, or administrative office of the state, including any department, institution, bureau, board, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction or requests for information or (C) any other similar activity related to such contract. "Consulting agreement" does not include any agreements entered into with a consultant who is registered under the provisions of Chapter 10 of the Connecticut General Statutes concerning the State's Codes of Ethics, as of the date such affidavit is submitted. (2) Such affidavit shall be sworn as true to the best knowledge and belief of the person signing the certification on the affidavit and shall be subject to the penalties of false statement. (3) Such affidavit shall include the name of the consultant, the consultant's firm, the basic terms of the consulting agreement, a brief description of the services provided, and an indication as to whether the consultant is a former state employee or public official. If the consultant is a former state employee or public official, such affidavit shall indicate his or her former agency and the date

such employment terminated. (4) Such affidavit shall be updated no later than 30 days after the effective date of any such change contained in the most recently filed affidavit or upon submittal of any new bid or proposal, whichever is earlier.

(c) If a vendor refuses to submit the affidavit required under subsection (b) of this section, then the state agency shall not award the Contract to such vendor and shall award the contract to the next highest ranked vendor or the next lowest responsible qualified bidder or seek new bids or proposals.

18. Section 4-252 (the "Statute") of the Connecticut General Statutes requires that the Invitation to Bid, of which these Terms and Conditions are a part, include a notice of the vendor certification requirements described in the Statute. Accordingly, pursuant to the Statute, vendors are notified as follows:

(a) The terms "gift," "quasi-public agency," "state agency," "large state contract," "principals and key personnel" and "participated substantially" as used in this section shall have the meanings set forth in the Statute.

(b) No state agency or quasi-public agency shall execute a large state contract unless the state agency or quasi-public agency obtains the written certifications described in this section. Each such certification shall be sworn as true to the best knowledge and belief of the person signing the certification, subject to the penalties of false statement.

(c) Any principal or key personnel of the person, firm or corporation submitting a bid or proposal for a large State contract shall certify on such forms as the State shall provide:

(1) That no gifts were made by (A) such person, firm, corporation, (B) any principals and key personnel of the person, firm or corporation, who participates substantially in preparing bids, proposals or negotiated State contracts, or (C) any agent of such person, firm, corporation or principals and key personnel, who participate substantially in preparing bids, proposals or negotiating state contracts, to (i) any public official or state employee of the state agency or quasi-public agency soliciting bids or proposals for state contracts, who participates substantially in the preparation of bid solicitations or requests for proposals for state contracts or the negotiation or award of state contracts, or (ii) any public official or state employee of any other state agency, who has supervisory or appointing authority over such state agency or quasi-public agency;

(2) That no such principals and key personnel of the person, firm or corporation, or agent of such person, firm or corporation or principals and key personnel, knows of any action by the person, firm or corporation to circumvent such prohibition on gifts by providing for any other principals and key personnel, official, employee or agent of the person, firm or corporation to provide a gift to any such public official or state employee; and

(3) That the person, firm or corporation is submitting bids or proposals without fraud or collusion with any person.

(d) Any bidder or proposer that does not make the certification required under this section shall be disqualified and the state agency or quasi-public agency shall award the contract to the next highest ranked proposer or the next lowest responsible qualified bidder or seek new bids or proposals.

(e) Each state agency and quasi-public agency shall include in the bid specifications or request for proposals for a large state contract a notice of the certification requirement of this section.

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BID NO.: <b>11PSX0337</b>
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**Standard Bid Terms and Conditions - Page 3 of 3**

19. The existence of the contract shall be determined in accordance with the requirements set forth above. However, the award of the contract is not an order to ship. Contractors may not begin to perform under the awarded contract until the Contractor and the State have executed the contract and thereafter the Contractor receives a written purchase order from an appropriate State entity.

20. With regard to a State contract as defined in Section 9-612 of the Connecticut General Statutes having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this submission in response to the State's solicitation expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising prospective state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of

the contents of the notice. See Contract Exhibit C, SEEC Form 11.

21. Public Act 11-55 and Public Act 11-229 have amended the nondiscrimination provisions of the Connecticut General Statutes to add gender identity or expression to the existing protected classes and to require State contractors to adopt policies in support of the new statutes by means of an affidavit or resolution. Accordingly, attached as Form NDC is a form certification that the successful contractor must deliver executed at the time that it executes the Contract. The execution and submittal of this affidavit or resolution is a condition precedent to the State's executing the Contract, unless the contractor is exempt from this statutory requirement, in which case the contractor must obtain a written waiver from the State's Commission on Human Rights and Opportunities.

# STATE OF CONNECTICUT

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## Vendor Authorization Guidelines- Page 1 of 2

**All contracts must include appropriate vendor documentation that does the following three things:**

- A. Authorizes the vendor to enter into contracts,
- B. Authorizes a particular officer to execute contracts on behalf of the vendor and
- C. Evidences that the officer signing in fact holds his/her office.

**CORPORATIONS** - Appropriate vendor documentation usually involves a certificate from the Secretary or other appropriate officer setting forth a copy of a board resolution. Sometimes this is not possible, in which case the vendor should observe the following:

- 1) In lieu of the secretary's certificate, the vendors must submit:
  - a) a current certified copy of the applicable section of the corporation's bylaws which authorizes the execution of contracts by the signing person and
  - b) a current certification that the officer signing the assignment agreement in fact holds that office.
- 2) In lieu of the certified resolution or bylaws, the vendor must include a certified copy of the corporate minutes of their respective boards of directors, which must specifically authorize the person signing the assignment agreement to execute it.

NOTE: If the bylaws or resolutions cannot be found, a formal legal opinion must be obtained attesting to:

- a. the authority of the company and
- b. the officer's ability to bind the company

to enter into a contract.

**LIMITED LIABILITY COMPANIES (LLC'S)** – LLC's that do not have boards of directors, must submit the following:

- 1) a document indicating unanimous consent from all members or managers or
- 2) a certified copy of all of those relevant portions of their management agreement or operations agreement that identify which members or managers have the authority to bind the LLC in contracts. The certification must also show that the signing party is in fact a manager/member or that a manager/member has duly (in accordance with the management agreement or operations agreement) delegated signatory authority to the signing person.

If the company can't find the management agreement or operations agreement, a formal legal opinion must be obtained attesting to:

- a. the authority of the company and
- b. the signing party's ability to bind the company

to enter into a contract.



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## Vendor Authorization Guidelines- Page 2 of 2

**PARTNERSHIPS** – Partnerships, like LLC’s, do not have boards of directors. Generally, any general partner can bind the partnership. However, it is prudent to make every effort to obtain a partnership authorization that includes some evidence of a partner's authority to bind the partnership. This can include partnership resolutions that read very much like a corporation’s resolutions or a copy of the partnership agreement (or all relevant sections) that address the authority of partners to bind the partnership, again taking into account any limitations, or a consent from the appropriate partners. The partnership agreement governs in the same way as the LLC’s management or operations agreement.

**SOLE PROPRIETORS** - Sole Proprietors do not need to submit any documentation with regards to vendor authorization or certification. Sole Proprietors must submit a letter on company letterhead stating:

- 1) that the company holds Sole Proprietor status,
- 2) the name(s) of those authorized to execute contracts on behalf of the company and
- 3) the signature of Sole Proprietor.

**NOTE:** You may review and/or download the Vendor Authorization Guidelines and Samples from the DAS/Procurement website <http://das.ct.gov/mp1.aspx?page=8>. Scroll down until you see the heading “**Quick Links**” on the far right side of the screen. Click on “**Vendor Information**” then “**Vendor Authorization Guidelines and Sample**”.

# STATE OF CONNECTICUT

## BIDDER'S GUIDE

### READ CAREFULLY

## GUIDE FOR COMPLETING STATE OF CONNECTICUT FORMS

### I. INTRODUCTION TO BIZNET

It is now a requirement of DAS/Procurement Services that all Companies create a Business Network (BizNet) Account and add your company profile in our BizNet system. Companies are responsible for maintaining company information as updates occur. Please Note: If you are certified through the Supplier Diversity or the Pre-Qualification Program, you have already created a BizNet account.

The BizNet login is: <https://www.biznet.ct.gov/AccountMaint/Login.aspx>

New Companies: Create an account by clicking the link above and then clicking the button on the right. Once you have created your account, Login and select CT Procurement and Company Information.

Existing Companies Needing to Update Their Information: Login to BizNet and select CT Procurement and Company Information.

Note: If you are having difficulty connecting to your account or downloading/uploading forms, please call Procurement Services at 860-713-5095.

### II. BUSINESS FRIENDLY LEGISLATION

As a result of Public Act 11-229, DAS/Procurement Services' goal is to make doing business with the State of Connecticut more business friendly. To eliminate redundancy, forms that were repetitively filled out with each invitation to bid are being automated in BizNet.

DAS/Procurement Services is also beginning the transition to on-line bidding by automating completion of Affidavits and Non-Discrimination forms effective October 1, 2011. Companies will submit forms electronically to their BizNet account if they haven't already done so and also on an annual basis rather than having to complete them with each bid submittal. Contractors that have already filed forms with DAS/Procurement Services will have the ability to view, verify and update their information prior to submitting responses to bids.

#### **Instructions for Uploading Affidavits and Non-Discrimination Forms:**

**Click on the following link for instructions on how to upload Affidavits and Non-Discrimination forms:**  
<http://das.ct.gov/images/1090/Upload%20Instructions.pdf>

#### A. AFFIDAVITS

**THE FOLLOWING FORMS MUST BE SIGNED, DATED, NOTARIZED, UPLOADED OR UPDATED ON BIZNET. TO OBTAIN A COPY OF THESE FORMS, YOU MUST LOGIN INTO BIZNET AND FOLLOW THE INSTRUCTIONS LISTED ABOVE.**

1. OPM Ethics Form 1 – Gift & Campaign Contribution Certification
2. OPM Ethics Form 5 – Consulting Agreement Affidavit
3. OPM Ethics Form 6 – Affirmation of Receipt of State Ethics Laws Summary

For information regarding these forms, please access the Office of Policy & Management's website by clicking on the following link:

<http://www.ct.gov/opm/cwp/view.asp?a=2982&q=386038>

# STATE OF CONNECTICUT

## BIDDER'S GUIDE

### B. NON-DISCRIMINATION –

**CHOOSE ONE (1) FORM THAT APPLIES TO YOUR BUSINESS. COMPLETE AND UPLOAD OR UPDATE ON BIZNET ANNUALLY. TO OBTAIN A COPY OF THESE FORMS, YOU MUST LOGIN INTO BIZNET AND FOLLOW THE INSTRUCTIONS LISTED ABOVE.**

1. Form A – Representation by Individual (Regardless of Value)
2. Form B – Representation by Entity (Valued at \$50,000 or less)
3. Form C – Affidavit by Entity (RECOMMENDED) (Valued at \$50,00 or more)
4. Form D – New Resolution by Entity
5. Form E – Prior Resolution by Entity

For information regarding these forms and on which form your company should complete, please access the Office of Policy & Management's website by clicking following link:

[http://www.ct.gov/opm/cwp/view.asp?a=2982&q=390928&opmNav\\_GID=1806](http://www.ct.gov/opm/cwp/view.asp?a=2982&q=390928&opmNav_GID=1806)

### III. OTHER BID FORMS

Forms listed below are those that are typically requested with each bid submittal and have not yet been automated. DAS/Procurement Services expects to automate additional forms as the on-line transition continues. Please note that the list is not meant to be all-inclusive of every form that may actually be required for a particular bid. Please be sure to read the document in its entirety and submit ALL required information with your submittal.

- A. Form SP-26 – Bidder Information
- B. Form DAS-45 – Employment Information Form / Commission on Human Rights & Opportunities (CHRO)
- C. Form SP-14 - Bidder's Statement of Qualifications
- D. Form SP-12 – OSHA Compliance
- E. Form SP-28 - Vendor Authorization Guidelines

This form must be signed by the person identified in the Corporate Resolution or By-Laws, as the party legally authorized to bind the company – a link to sample forms is provided below:

[http://das.ct.gov/Purchase/Info/Vendor\\_Authorization\\_and\\_Guidance\\_081106.pdf](http://das.ct.gov/Purchase/Info/Vendor_Authorization_and_Guidance_081106.pdf)

# STATE OF CONNECTICUT

## BIDDER'S STATEMENT OF QUALIFICATIONS

<b>Bid Number:</b> 11PSX0337
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Page 1 of 2

THIS FORM WILL BE USED IN ASSESSING A BIDDER'S QUALIFICATIONS AND TO DETERMINE IF THE BID SUBMITTED IS FROM A RESPONSIBLE BIDDER. STATE LAW DESIGNATES THAT CONTRACTS BE AWARDED TO THE LOWEST RESPONSIBLE QUALIFIED BIDDER. FACTORS SUCH AS PAST PERFORMANCE, INTEGRITY OF THE BIDDER, CONFORMITY TO THE SPECIFICATIONS, ETC. WILL BE USED IN EVALUATING BIDS. ATTACH ADDITIONAL SHEETS IF NECESSARY

COMPANY NAME: \_\_\_\_\_  
&  
ADDRESS: \_\_\_\_\_

NUMBER OF YEARS COMPANY HAS BEEN ENGAGED IN BUSINESS UNDER THIS NAME: \_\_\_\_\_ YEARS

LIST ANY CONTRACT AWARDS TO YOUR COMPANY BY THE STATE OF CONNECTICUT WITHIN THE LAST THREE (3) YEARS, **THAT YOU ACTUALLY PERFORMED SERVICE AGAINST**. INDICATE WHICH STATE AGENCY, AND PROVIDE CONTRACT NAME AND NUMBER, AND THE NAME AND TELEPHONE NUMBER OF THE PURCHASING AGENT ADMINISTERING THE CONTRACT.

<u>CONTRACT NO.</u>	<u>CONTRACT NAME</u>	<u>STATE AGENCY</u>	<u>PURCHASING AGENT</u>	<u>TEL. NO.</u>
_____	_____	_____	_____	_____
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_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

LIST OTHER NAMES YOUR COMPANY GOES BY: \_\_\_\_\_  
\_\_\_\_\_

LIST PREVIOUS COMPANY NAME (S) \_\_\_\_\_  
\_\_\_\_\_

LIST AT LEAST THREE COMPLETED PROJECTS SIMILAR IN NATURE TO THIS **INVITATION FOR BIDS** WHICH DEMONSTRATES YOUR COMPANY'S ABILITY TO PERFORM THE REQUIRED SERVICES.

	<u>Company Name and Address</u>	<u>Telephone No.:</u>	<u>Dollar Value:</u>
1.	_____	_____	_____
	_____	_____	_____
2.	_____	_____	_____
	_____	_____	_____
3.	_____	_____	_____
	_____	_____	_____

# STATE OF CONNECTICUT

## BIDDER'S STATEMENT OF QUALIFICATIONS

**Bid Number:**  
11PSX0337

Page 2 of 2

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

SIZE OF COMPANY

OR CORPORATION: NUMBER OF EMPLOYEES: FULL TIME \_\_\_\_\_ PART TIME \_\_\_\_\_

COMPANY VALUE: EQUIPMENT ASSETS \_\_\_\_\_ TOTAL ASSETS \_\_\_\_\_

IS YOUR COMPANY REGISTERED WITH THE OFFICE OF THE CONNECTICUT SECRETARY OF STATE?  YES  NO

REGISTRATION DATE, IF AVAILABLE: \_\_\_\_\_

IF REQUESTED, WOULD YOUR COMPANY PROVIDE A "GOOD STANDING" CERTIFICATE  
ISSUED BY THE CONNECTICUT SECRETARY OF STATE'S OFFICE?

YES  NO

LIST OF EQUIPMENT TO BE USED FOR THIS SERVICE (INCLUDE MODEL, YEAR & MANUFACTURER):

<u>MODEL</u>	<u>YEAR</u>	<u>MANUFACTURER</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Attach additional sheets if necessary)

LIST ANY RELEVANT CERTIFICATIONS, LICENSES, REGISTRATIONS, ETC. WHICH QUALIFY YOUR COMPANY TO MEET THE REQUIREMENTS  
OF THIS BID.

\_\_\_\_\_  
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(Attach additional sheets if necessary)

LIST ANY CRIMINAL CONVICTIONS, GUILTY PLEAS OR NOLO CONTENDERES AGAINST YOUR COMPANY AND ANY OF YOUR  
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DEMANDS, INVESTIGATIONS AND LEGAL, ADMINISTRATIVE OR ARBITRATION PROCEEDINGS PENDING IN ANY FORUM.  
INCLUDE A LISTING OF OSHA VIOLATIONS AND ANY ACTIONS OR ORDERS PENDING OR RESOLVED WITH ANY STATE AGENCY  
SUCH AS THE DEPARTMENT OF CONSUMER PROTECTION, THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, ETC. DETAIL  
THIS INFORMATION ON A SEPARATE SHEET OF PAPER. SUCH INFORMATION SHOULD BE FOR THE LAST THREE (3) YEARS.

(Attach additional sheets if necessary)

I HEREBY CERTIFY UNDER PENALTY OF FALSE STATEMENT THAT ALL THE INFORMATION SUPPLIED IS COMPLETE AND TRUE.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TITLE

# STATE OF CONNECTICUT

## COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES (CHRO)

### WORKPLACE ANALYSIS AFFIRMATIVE ACTION REPORT

#### EMPLOYMENT INFORMATION FORM

**Bid Number:**  
11PSX0337

Company Name Street Address City State	Contact Person	Phone Number	Date
---	----------------	--------------	------

**Report all permanent full-time or part-time employees, including apprentice and on-the-job trainees. Enter the number on all lines and in all columns.**

JOB CATEGORY	A OVERALL TOTALS (Sum of all columns, A-F Male & Female)	B WHITE (NOT OF HISPANIC ORIGIN)		C BLACK (NOT OF HISPANIC ORIGIN)		D HISPANIC		E ASIAN / PACIFIC ISLANDER		F AMERICAN INDIAN OR ALASKAN NATIVE	
		Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Officials/Managers											
Professionals											
Technicians											
Sales Workers											
Office/Clerical											
Craft Workers (Skilled)											
Operatives(Semi-skilled)											
Laborers (Unskilled)											
Service Workers											
<b>TOTALS ABOVE</b>											

Do you use minority businesses as subcontractors or suppliers? <input type="checkbox"/> Yes <input type="checkbox"/> No	Explain:
If CT based, do you post all employment openings with the State of Connecticut Employment Service? <input type="checkbox"/> Yes <input type="checkbox"/> No	Explain:
Do you use an Affirmative Action Plan? <input type="checkbox"/> Yes <input type="checkbox"/> No	Explain:

Describe your recruitment, hiring, training and promotion anti-discrimination practices.

# STATE OF CONNECTICUT

## Certificate of Compliance with Connecticut General Statute Section 31 - 57b

**Bid Number:**  
11PSX0337

I hereby certify that all of the statements herein contained below have been examined by me, and to the best of my knowledge and belief are true and correct.

The \_\_\_\_\_ **HAS / HAS NOT**  
*Company Name* (Cross out Non-applicable)

been cited for three (3) or more willful or serious or serious violations of any Occupational Safety and Health Act (OSHA) or of any standard, order or regulation promulgated pursuant to such act, during the three year period preceding the bid, provided such violations were cited in accordance with the provisions of any State Occupational Safety and Health Act of 1970, and not abated within the time fixed by the citation and such citation has not been set aside following appeal to the appropriate agency of court having jurisdiction or **HAS / HAS NOT** (Cross out Non-applicable) received one or more criminal convictions related to the injury or death of any employee in the three-year period preceding the bid.

The list of violations (if applicable) is attached.

\_\_\_\_\_  
*(Name of Firm, Organization or Corporation)*

**Signed:**

\_\_\_\_\_  
*Written Signature:*

\_\_\_\_\_  
*Name Typed: (Corporation Seal)*

**Title:**

\_\_\_\_\_  
*(Title of Above Person, typed)*

**Dated:**

\_\_\_\_\_

*State of* \_\_\_\_\_ )

*County of* \_\_\_\_\_ ) **ss:** *A.D., 20* \_\_\_\_\_ )

Sworn to and personally appeared before me for the above, \_\_\_\_\_,  
*(Name of Firm, Organization, Corporation)*

Signer and Sealer of the foregoing instrument of and acknowledged the same to be the free act and deed of

\_\_\_\_\_, and his/her free act and deed as  
*(Name of Person appearing in front of Notary or Clerk)*

\_\_\_\_\_.  
*(Title of Person appearing in front of Notary or Clerk)*

My Commission Expires:

\_\_\_\_\_  
*(Notary Public) (Seal)*

# STATE OF CONNECTICUT

## BIDDER'S STATEMENT OF QUALIFICATIONS

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1. _____ _____	_____	_____
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11PSX0337

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\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TITLE

**11PSX0337, Exhibit A**  
**Purchase and Delivery of Bio-Diesel (B20) for the Connecticut Department of Transportation**

**INDEX OF ABBREVIATIONS**

B20	Bio-Diesel Fuel
ConnDOT	State of Connecticut, Department of Transportation
F.E.I.N.	Federal Employee Identification Number
E.P.A.	Environmental Protection Agency
ASTM	American Society for Testing and Materials
CP	Cloud Point
CFPP	Cold Filter Plugging Point
DAS	State of Connecticut, Department of Administrative Services
TMU	Tank Monitoring Unit
DPUC	State of Connecticut, Department of Public Utility Control
DEP	State of Connecticut, Department of Environmental Protection
CGS	Connecticut General Statute

## **OVERVIEW**

This Invitation to Bid (ITB) is intended to fulfill the State of Connecticut, Department of Transportation's (ConnDOT), requirements for the purchase of six hundred thousand (600,000) gallons of Bio-Diesel (B20). The contract period will be for a term that will expire when six hundred thousand (600,000) gallons of Bio Diesel has been delivered and consumed by the CT DOT. It is estimated that the amount required will be depleted within a one year time period.

At the time of this bid, ConnDOT owns and operates the sixteen (16) B20 fueling sites as follows:

- \* Station 201, Darien, Brookside Drive 10,000 gallon tank
- \* Station 204, Milford, 440 Banner Drive 6,000 gallon tank
- \* Station 209, Old Saybrook, 660 Middlesex Tpke. 10,000 gallon tank
- \* Station 506, Haddam, Saybrook Rd. 4,000 gallon tank
- \* Station 514, Beacon Falls, Route 42 two (2) 4,000 gallon tanks
- \* Station 519, Danbury, Stadley Rough Dr. 6,000 gallon tank
- \* Station 548, Willington, 41 Tolland Tpke. 4,000 gallon tank
- \* Station 560, Windsor, Bloomfield Ave. 6,000 gallon tank
- \* Station 566, Putnam, 3 Industrial Park Rd. 8,000 gallon tank
- \* Station 570, Winchester, Route 800 6,000 gallon tank
- \* Station 576, Trumbull, 576 Nichols Ave. 4,000 gallon tank
- \* Station 1548, Meriden, Miller Ave. 4,000 gallon tank
- \* Station 590 235 Oak Street Glastonbury, CT 4,000 gallon tank
- \* Station 211 171 Salem Turnpike, Norwich, CT 4,000 gallon tank
- \* Station 569 311 State Street North Haven, CT 4,000 gallon tank
- \* Station 578 100 Chase River Road Waterbury, CT 8,000 gallon tank

ConnDOT reserves the right to add additional facilities to the contract at any time during the term of the contract. However this shall not increase the required 600,000 gallon quantity.

## **PRODUCT and SERVICE REQUIREMENTS**

- Bidders are required to complete the Exhibit A –1 Bidder's Information Sheet and include it with their bid submittal.
- Bidders are responsible for having all necessary equipment for the safe and proper handling, transportation and delivery of B20 in accordance with all applicable State and Federal Regulations.
- Blending of B20 shall be done so utilizing preferred and best practices to ensure that the delivered product is B20 compliant prior to being dispensed from vendors' delivery vehicle to CT DOT storage tanks. Blending the product at the delivery or destination point will not be acceptable.
- The product being bid and awarded under these requirements will meet the American Society for Testing and Materials (ASTM) standard D 6751 of latest issue prior to blending with petrol-diesel. Bidder shall provide with the bid response, certification by an independent laboratory and certified lab analysis supporting B100 compliance to this specification of 1° C or lower.
- Upon the State's request, continued lab analysis of deliveries thereafter will be made available to the CT DOT.
- If a shortage should occur during the contract period, the Department of Administrative Services (DAS) Procurement Services may waive the ASTM standard fuel specifications requirement of this contract.
- Feedstock offered as the bio component of the product is subject to review by CT DOT prior to a contract award.

- Bidder shall provide credibility by certification with the bid supporting that the Bio-Diesel Producers and Marketers are registered under the BQ-9000 fuel quality program developed by the National Bio-Diesel Accreditation Commission. They shall also provide when requested, written assurance with their bid that the terminal locations being utilized to provide product are being operated consistent with the BQ-9000 fuel quality program at such other certified facilities and or terminals
- Delivered B20 Bio-Diesel must have a Cloud Point (CP) and Cold Filter Plugging Point (CFPP) required for the geographical region and the time of year the fuel is being delivered. The fuel will be used in emergency snow removal equipment that is subject to cold weather operations. The Vendor shall provide written documentation of the CP and CFPP and all other Diesel Fuel properties with the bid response and if awarded with delivered load(s) when requested by the CT DOT Fuel Control Division.
- In the event a malfunction occurs due to product quality, the vendor shall be responsible for repairing any and all equipment to include diesel powered on and off road equipment, underground tanks and dispensers that have been subjected to the fuel no later than (2) days after the CT DOT has informed the vendor of such a malfunction.
- Winter blend Bio-diesel (B20) shall be an appropriate blend of diesel, kerosene and B100 to achieve at all times a resulting B20 bio diesel with the required CP and CFPP. Performance. Additives are not permitted.
- It is the sole responsibility of the vendor to insure the proper method and appropriate quantities blended are conditioned to the appropriate ambient temperature to avoid cold weather starting difficulties of equipment in the winter months while maintaining a B20 product.
- A certification of analysis of B100 received by the vendor prior to shipment to the facilities must be provided to the CT DOT.
- When requested by the CT DOT, failure to comply may result in refusal of receipt of product.

#### **QUANTITIES**

It is anticipated that the CT DOT may add facilities requiring deliveries of Bio-diesel during the term of this contract. DOT reserves the right to re-direct portions of this awarded quantities to those locations when authorized.

**REPORTING:**

Awarded vendor will be responsible for working with the CT DOT regarding AFV credits based on the amount of Bio-diesel purchased in accordance with EPA regulations. This will include, but not be limited to providing written confirmation and completion of necessary forms required showing proof of purchase of an alternative fuel.

Awarded vendor shall provide upon request a "Model Year" report to the CT DOT detailing the amounts of Bio-Diesel utilized.

Awarded vendor shall notify the CT DAS of all quantities delivered at the end of each month throughout the term of the contract period. This notification shall be sent to Paul Greco, DAS Contract Specialist at [paul.greco@ct.gov](mailto:paul.greco@ct.gov)

**DELIVERY**

**METERS:** Delivery of B20 will be metered at the delivery point. Delivery trucks must be equipped with meters to accurately measure the quantity of fuel. The meters must be sealed in accordance with regulations established and enforced by the state government in which the delivery truck is registered. ConnDOT reserves the right to cancel and/or refuse deliveries from any vehicle with a broken or unsealed meter. All meters must be equipped with a ticket printer which will provide an accurate accounting of the amount of fuel delivered on a printed receipt. Delivery tickets will be locked in the printer from the start of the delivery until the delivery is completed and recorded. Printed receipts at the time of delivery must contain the following information:

- ConnDOT fuel station number and location
- ConnDOT assigned Purchase Order number
- Type of product
- Vendor name and address
- Delivery date
- Truck motor vehicle registration number
- Before and after stick reading
- Before and after meter reading
- Signature of vendor representative making delivery
- Signature of agency representative receiving product (if available)

**DELIVERY SCHEDULE**

The Vendor is responsible for delivery of B20 on the days and times specified by the ordering agency. The Vendor is responsible to insure their company representative delivering product to any ConnDOT fuel facility provides constant surveillance at the point of product transfer and is aware of the following emergency procedure:

• **PRODUCT SPILLS DURING NORMAL WORKING HOURS – NOTIFY SUPERVISOR ON SITE** and immediately report to the Department of Environmental Protection – Spill Incident Field Operations at 860-424-3377.

• **PRODUCT SPILLS BEFORE OR AFTER NORMAL WORKING HOURS – Immediately report to the State Police Troop nearest to the location of the spill** (In accordance with State Statute 22A-450). Utilize either the Emergency Spill Reporting twenty-four (24) hour line at 860-424-3338 or dial 911.

**STICKING TANKS**

The Vendor is required to have the driver stick the B20 tank **BEFORE** and **AFTER EACH DELIVERY** in the presence of an authorized representative (if available). The stick reading for both fuel and water must be noted on the delivery ticket.

**FILLER CAPS**

B20 filler caps are yellow and clearly marked B20. It will be the Vendor's responsibility to place B20 in the appropriately designated tanks. If the product is placed in the incorrect color coded tank or in a non-color coded tank in error, the vendor will be held liable for the cost of removing the product and any and all damage which may arise from the error. Vendor representatives are cautioned to seek assistance from a ConnDOT representative if they are unsure of the location of the B20 tank.

## **TANK ACCESS**

The Vendor will be supplied with a key to unlock the filler cap at the designated ConnDOT fueling facilities. If the filler caps or locked padlocks are damaged by the Vendor's driver due to forcing the lock with a foreign object, the Vendor will be charged for the cost of all repairs.

## **OVERFILLED STORAGE TANKS**

Tank Monitoring Units (TMU) dictate the amount of product (B20) that a tank can hold. Since the TMU manufacturer's optimum percent of tank capacity varies by manufacturer, ConnDOT orders fuel based on tank capacity of 90%. If the contract Vendor overfills a storage tank, the Vendor will be responsible for any and all damages incurred to the TMU, cleanup of the area and proper removal of cleanup products.

The Vendor is required to make a delivery of the entire product quantity within two (2) working days after notification. Working days are hereby defined as weekday or workday deliveries. If the product is not received within two (2) working days, the State will exercise its right to purchase product from the open market and the contract Vendor will be held liable for the price difference. The decision of ConnDOT is final.

## **SUBCONTRACTING VENDORS**

ConnDOT reserves the right to deal directly with any Vendor who is subcontracted by the Vendor for the purpose of fuel delivery under the requirements of this contract. This is required to insure that ConnDOT is dealing directly with the Vendor that is performing the services and that the delivery of product is made in compliance with the contract. It will be understood and agreed that direct communications between subcontractors and ConnDOT shall not release the Vendor of primary and sole responsibility of contract performance.

## **PAYMENTS**

Payment for B20 fuel delivered to ConnDOT will be based on the gallons noted on the METERED PRINTED TICKET. If in the opinion of ConnDOT, there is any issue pertaining to accountability of the delivered product, ConnDOT reserves the right to require the Vendor or subcontractor to produce the terminal ticket. If the terminal ticket indicates a greater amount of product loaded into the truck at the terminal, then the Vendor will be required to furnish delivery tickets to account for the entire amount of product loaded at the terminal and so indicated on the terminal ticket. In this occurrence, the Vendor will have no more than eight (8) hours after notification to provide the required documentation.

## **SAMPLES & TESTING**

ConnDOT reserves the right and will take samples at any time prior to the product being metered into the ConnDOT storage tanks. The purpose is to determine product suitability for use in ConnDOT equipment and to confirm the product's compliance with specifications. Such tests will include Flash Point, Water and Sediment, Cloud Point, Acid Number, Oxidation Stability and Bio Diesel Content. An authorized ConnDOT representative will oversee the collecting of the sample from the Vendor's delivery truck prior to filling the storage tank. Sample cans will be provided by ConnDOT.

ConnDOT will have the sample tested at an independent laboratory of its choice and will assume the cost of the testing if the product quality meets or exceeds the application specification. If the product quality does not comply with the applicable specification, the Vendor will be responsible for the cost of the test, removal of the product and any and all incurred damages (See ADJUSTMENTS).

## **DEMURRAGE**

Demurrage charges will be specified by the Bidder on the Proposal Schedule. Demurrage is defined as any delivery time delays caused by the receiving agency in excess of the one (1) hour free time indicated under Department of PublicUtilityControl(DPUC) regulations. Demurrage charge will not affect the contract award determination except in the case of a tie bid. All demurrage charges must be documented by an authorized ConnDOT representative (if possible) by so noting the reason for the delay and the length of time on the delivery ticket at the time of occurrence. In the event no one is at the ConnDOT fueling site, the Vendor must notify ConnDOT's Fuel Control unit at 860-594-2263 or 860-594-2264. ConnDOT's Fuel Control unit will assist in rerouting the product that is unable to be delivered. The one (1) hour free time will begin when the ConnDOT Fuels Control unit is notified. In the event a delivery cannot be made due to improper ordering and/or it is before or after normal working hours Monday thru

Friday 8:00 A.M. to 3:30 P.M., the Vendor must submit a copy of the terminal ticket and delivery ticket to account for the product listed on the terminal ticket before a demurrage charge will be considered for payment by ConnDOT. Demurrage is not applicable to any other delivery situations for any reason except delivery time delays at the ConnDOT fueling site in accordance with that on the previous page.

#### **REMEDY OF NON COMPLIANCE**

If B20 is tested by an independent laboratory and the product is deemed unsuitable, then testing, product removal, tank cleaning, proper disposal of the product and replacing the contaminated product costs will be at the Vendor's expense. ConnDOT will exercise its right to purchase B20 from the next acceptable low bidder and the Vendor will be liable for any and all additional cost(s) incurred for the remainder of the contract term. The decision of ConnDOT will be final.

Whenever damages and/or losses to equipment result from B20 that does not meet ConnDOT specifications noted herein, the Vendor will be charged for said damages and/or losses and further shipment(s) will be suspended until ConnDOT is satisfied that the B20 is acceptable per specifications. Any additional costs resulting to ConnDOT will be charged to the Vendor. No payments will be rendered for B20 that does not meet ConnDOT specifications. The decision of ConnDOT will be final.

#### **BID PRICES**

One fixed price per gallon for a complete blended product purchased and delivered at all current and potential added on locations is required. Net prices shall include all costs incidental to the loading and delivery into State storage tanks both current and future with all labor, equipment, tools, blending of and including the Bio-diesel fuel. The Gross Receipts Tax Shall not be included in the fixed price offering at time of bid. Additional discounts will be taken as offered.

#### **PRICE ADJUSTMENTS**

It is understood that the awarded fixed price will not be subject to any increase over the term of this contract award.

#### **ConnDOT PAYMENTS**

The Vendor is to promptly mail their invoices after deliveries of B20 to:  
State of Connecticut  
Department of Transportation  
Fuels Control Unit  
2800 Berlin Turnpike  
Newington, CT 06131

Payment questions, issues or concerns should be directed to the Fuels Control unit by calling 860-594-2263 or 860-594-2264, Monday through Friday 7:30 A.M. to 3:30 P.M.

#### **ConnDOT ORDERING PROCEDURES**

ConnDOT's ordering procedures are by fax only and are outlined below:

- Routine orders are faxed to the Vendor by 9:00 A.M. daily.
- ConnDOT Order Sheets include the following:

- \* Station number and location.
- \* Number of gallons of B20 required.
- \* Required delivery date.
- \* Contract Vendor name.

When the faxed order confirmation is received, it is kept with the Order Sheet.

Unless otherwise specified, delivery of B20 will be within the two (2) working day requirement. If the Vendor is unable to meet this requirement, the Vendor must immediately contact the ConnDOT Fuels Control unit by phone at 860-594-2263 or 860-594-2264.

From November 1 to April 30 each year, ConnDOT maintains fifty percent (50%) tank capacity at all its B20 facilities. Bidders are advised to be aware of this procedure and understand that ConnDOT will not modify this procedure for any reason.

From May 1 to October 31, ConnDOT maintains twenty-five percent (25%) tank capacity at all B20 facilities under its jurisdiction. Bidders please take notice that the two (2) working day period is critical to B20 inventory levels as ConnDOT is responsible for civil preparedness and homeland security activities.

The Vendor is not to deliver any quantity over the amount ordered without approval from the ConnDOT Fuels Control unit, phone numbers: 860-594-2263 or 860-594-2264.

### **INSURANCE CERTIFICATES REQUIRED**

Before any purchase order is issued, the successful Vendor/Contractor(s) will be required to file with the Department of Transportation, within twenty (20) days from the date of notification a Certificate of Insurance. Insurance types and amounts are found in the Contract document.

Insurance requirements will be enforced. Vendor/Contractor(s) should hand carry or mail Insurance Certificates to the Department of Transportation, Bid Unit. Under no circumstances should insurance certificates be sent to DAS Procurement Services or to any district office.

Please mail or hand carry certificates to:

State of Connecticut

Department of Transportation

Bureau of Finance and Administration

Attn: Debbie Ello

P.O. Box 317546

2800 Berlin Turnpike

Newington, CT 06131-7546

Purchase orders will not be issued without receipt of properly executed insurance certificates.

### **BIDDER QUALIFICATIONS AND BASIS OF AWARD:**

The State reserves the right to take into consideration the following: Bidders are required to provide with their bid response, all documentation supporting the following.

- One fixed price per gallon for required quantities (Exhibit B).
- Availability of the materials and quantities with respect to the location of the plants or storage points
- Vendor past performance - emphasis on established reputable distributors/dealers, to include current or previous customer accounts for like product(s).
- Ability of vendor to service the State for both Routine and Emergency delivery needs
- Ability to comply with product specifications including but not limited to ASTM D6751 specifications, pour point requirements, DOT Vehicle Manufacturer warranties, CP and CFFP requirements, etc.
- National Bio-Diesel Accreditation Commission and all relevant certifications.
- Favorable Federal Highway Administration Safety Status review for vehicles weighing over 18,000 lb GVW as determined by the CT Department of Motor Vehicles.
- All Federal and State required permits and licenses to operate and deliver fuel(s)
- Identification off Fleet and or Transport vehicle to be utilized for this service.
- All motor transports and tank wagons owned or subcontracted by the awarded vendor and used to deliver bio-diesel product must have the dispensing meters certified every six (6) months by the State in which the company is doing business. Bidder must furnish proof that the meters used on the delivery trucks have been sealed and certified and their company is in compliance with all CT Consumer Protection applicable regulations for the term of this contract. Proof must be SUBMITTED WITH THE BID RETURN.



**CHANGE OF ADDRESS:**

In the event that the awarded vendor re-locates, updates telephone and fax numbers, changes name, contacts or e-mail addresses, the vendor shall inform the State of such changes in writing. The State will not be held responsible if payments or purchase orders are delayed due to additional routing caused by lack of such notification. Any change must be immediately forwarded to:

CT State Office Building  
165 Capitol Ave.  
Hartford, CT 06106  
Department of Administrative Services, 5th floor South  
Attention: Paul Greco, DAS Contract Specialist  
E-mail: [paul.greco@ct.gov](mailto:paul.greco@ct.gov)

**CANCELLATION:**

The State reserves the right to cancel any unfulfilled portion of the contract if the product supplied by the awarded vendor is not satisfactory, does not perform, or is not in compliance with established bid terms and conditions.

**QUESTIONS:**

Questions regarding this bid should be submitted in writing no later than December 28, 2011 prior to the bid opening date to: [paul.greco@ct.gov](mailto:paul.greco@ct.gov) Verbal responses shall be considered non-binding.

PRICE SCHEDULE  
 SP-16 Rev. 05/08  
 Prev NEW. 5/07

# STATE OF CONNECTICUT

## PROCUREMENT DIVISION

### EXHIBIT B

BID NO 11PSX0337

Contract Specialist  
 Paul Greco  
 Telephone Number  
 (860) 713-5189

**PRICE SCHEDULE**  
**400,000 GALLONS OF**  
**BIO-DIESEL FUEL (B20)**

DELIVERY:

Page **1** OF **1**

Bidder's US DOT Trucking Number \_\_\_\_\_

TERMS: CASH DISCOUNT:  
 % Days

BIDDER NAME:

ITEM #	DESCRIPTION OF COMMODITY AND/OR SERVICES	EST. ANN. QUANTITY	UNIT OF MEASURE	\$ TOTAL FIXED PRICE PER GALLON ALL LOCATIONS
	<b>LOCATION TANK CAPACITY</b>			
	Station 201 10,000 Gallons	52,927	Gallons	\$ _____ per gallon
	Station 204 6,000 Gallons	43,578	Gallons	
	Station 209 10,000 Gallons	66,612	Gallons	
	Station 211 4,000 Gallons	40,714	Gallons	
	Station 506 4,000 Gallons	30,995	Gallons	
	Station 514 (2)10,000 Gallons	24,587	Gallons	
	Station 519 6,000 Gallons	45,551	Gallons	
	Station 548 4,000 Gallons	21,866	Gallons	
	Station 560 6,000 Gallons	33,184	Gallons	
	Station 566 8,000 Gallons	29,038	Gallons	
	Station 569 4,000 Gallons	42,461	Gallons	
	Station 570 6,000 Gallons	27,954	Gallons	
	Station 576 4,000 Gallons	41,093	Gallons	
	Station 578 8,000 Gallons	57,221	Gallons	
	Station 590 4,000 Gallons	33,455	Gallons	
	Station 1548 4,000 Gallons	32,431	Gallons	
		total		
		623,667		
	Demurrage charges		½ hour	\$ _____ per ½ hr.

# **CONTRACT**

**11PSX0337**

Between

**THE STATE OF CONNECTICUT**

Acting by its

**DEPARTMENT OF ADMINISTRATIVE SERVICES**

**AND**

---

Awarded Contractor

FOR THE PURCHASE AND DELIVERY OF  
B-20 BIO DIESEL

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**Contract # 11PSX0337**

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This Contract (the “Contract”) is made as of the contract award date shown on the contract award form, number SP-38 corresponding to the subject procurement and is by and between, the contractor identified on such Form SP-38 (the “Contractor,”) with a principal place of business as indicated on the bid form, number SP-26, acting by the duly authorized representative as indicated on the SP-26, and the State of Connecticut, Department of Administrative Services (“DAS”), with a principal place of business at 165 Capitol Ave, Hartford, Connecticut 06106-1659, acting by Paul Greco, its Contract Specialist, in accordance with Sections 4a-2 and 4a-51 of the Connecticut General Statutes.

Now therefore, in consideration of these presents, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Contractor and the State agree as follows:

1. Definitions. Unless otherwise indicated, the following terms shall have the following corresponding definitions:
  - (a) Bid: A Bidder’s submittal in response to an Invitation to Bid.
  - (b) Bidder: A person or entity submitting a competitive Bid in response to an Invitation to Bid.
  - (c) Bidder Parties: A Bidder’s members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Bidder is in privity of oral or written contract and the Bidder intends for such other person or entity to Perform under the Contract in any capacity.
  - (d) Claims: All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
  - (e) Client Agency: Department of Administrative Services and Department of Transportation
  - (f) Confidential Information: This shall mean any information about a client, including but not limited to first name and last name, or first initial and last name, in combination with any one or more of the following related to such client: (a) Social Security Number; (b) driver’s license number or State-issued identification card number; (c) date of birth; and (d) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a client’s financial account. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as “confidential” or “restricted”. Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
  - (g) Confidential Information Breach: This shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information

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together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.

- (h) Contract: The agreement, as of its effective date, between the Bidder and the State for any or all Goods or Services at the Bid price.
- (i) Contractor: A person or entity who submits a Bid and who executes a Contract.
- (j) Contractor Parties: A Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity.
- (k) Day: All calendar days other than Saturdays, Sundays and days designated as national or State of Connecticut holidays upon which banks in Connecticut are closed.
- (l) Force Majeure: Events that materially affect the cost of the Goods or Services or the time schedule within which to Perform and are outside the control of the party asserting that such an event has occurred, including, but not limited to, labor troubles unrelated to the Contractor, failure of or inadequate permanent power, unavoidable casualties, fire not caused by the Contractor, extraordinary weather conditions, disasters, riots, acts of God, insurrection or war.
- (m) Goods: For purposes of the Contract, all things which are movable at the time that the Contract is effective and which include, without limiting this definition, supplies, materials and equipment, as specified in the Invitation to Bid and set forth in the specifications.
- (n) Goods or Services: Goods, Services or both, as specified in the Invitation to Bid.
- (o) Invitation to Bid: A State request inviting bids for Goods or Services. This Contract shall be governed by the statutes, regulations and procedures of the State of Connecticut, Department of Administrative Services.
- (p) Records: All working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.
- (q) Services: The performance of labor or work, as specified in the Invitation to Bid.
- (r) State: The State of Connecticut, including DAS, the Client Agency and any office, department, board, council, commission, institution or other agency of the State.
- (s) Termination: An end to the Contract prior to the end of its term whether effected pursuant to a right which the Contract creates or for a breach.
- (t) Title: all ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Goods or Services.

2. Term of Contract; Contract Extension. The Contract will be in effect from The purchase and delivery of 600,000 gallons of B-20 Bio Diesel.

The parties may extend this Contract, prior to Termination, Expiration or Cancellation, one or more times for a combined total period not to exceed the complete length of the original term, but only in accordance with the section in this Contract concerning Contract Amendments.

3. Description of Goods or Services. The Contractor shall perform as set forth in Exhibit A. For purposes of this Contract, to perform and the performance in Exhibit A is referred to as “Perform” and the “Performance.”
4. Price Schedule, Payment Terms and Billing.
  - (a) Price Schedule: Price Schedule under this Contract is set forth in Exhibit B.
  - (b) Payment Terms and Billing: Payment shall be made only after the Client Agency receives and accepts the Goods or Services and after it receives a properly completed invoice. Unless otherwise specified in the Contract, payment for all accepted Goods or Services shall be due within forty-five (45) days after acceptance of the Goods or Services, or thirty (30) days if the Contractor is a certified small contractor or minority business enterprise as defined in Conn. Gen. Stat. § 4a-60g. The Contractor shall submit an invoice to the Client Agency for the Performance. The invoice shall include detailed information for Goods or Services, delivered and performed, as applicable, and accepted. Any late payment charges shall be calculated in accordance with the Connecticut General Statutes.
  - (c) If applicable to and during the term of this Contract, the Price Schedule will be adjusted to reflect any increase in the minimum wage rate that may occur, as mandated by state law. The Price Schedule will not be adjusted until the Contractor provides documentation, in the form of certified payroll or other documentation acceptable to the State, substantiating the increase in minimum wage rate.
5. Rejected Items; Abandonment.
  - (a) The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any State premises or other destination, Goods, as samples or otherwise, and other supplies, materials, equipment or other tangible personal property. The State may, by written notice and in accordance with the terms and conditions of the Contract, direct the Contractor to remove any or all such Goods (“the “Rejected Goods”) and any or all other supplies, materials, equipment or other tangible personal property (collectively, the “Contractor Property”) from and out of State premises and any other location which the State manages, leases or controls. The Contractor shall remove the Rejected Goods and the Contractor Property in accordance with the terms and conditions of the written notice. Failure to remove the Rejected Goods or the Contractor Property in accordance with the terms and conditions of the written notice shall mean, for itself and all Contractor Parties and Bidder Parties, that:
    - (1) they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Goods and Contractor Property and relinquished all ownership, title, licenses, rights, possession and interest of, in and to (collectively, “Title”) the Rejected Goods and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Goods and Contractor Property, (B) vesting Title to the Rejected Goods and Contractor Property in the State of Connecticut and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Goods and Contractor Property;

- (2) there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Goods or Contractor Property;
  - (3) they vest authority, without any further act required on their part or the State's part, in the Client Agency and the State to use or dispose of the Rejected Goods and Contractor Property, in the State's sole discretion, as if the Rejected Goods and Contractor Property were the State's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;
  - (4) if the State incurs any costs or expenses in connection with disposing of the Rejected Goods and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Goods and Contractor Property, auction and other activities, the State shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the State no later than thirty (30) days after the date of invoice; and
  - (5) they do remise, release and forever discharge the State and its employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively, the "State and Its Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the State and Its Agents arising from the use or disposition of the Rejected Goods and Contractor Property.
- (b) The Contractor shall secure from each Contractor Party or Bidder Party, as appropriate, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties and Bidder Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this section. The Contractor shall provide, no later than fifteen (15) days after receiving a request from the State, such information as the State may require to evidence, in the State's sole determination, compliance with this section.
6. Order and Delivery. The Contract shall bind the Contractor to furnish and deliver the Goods or Services in accordance with Exhibit A and at the prices set forth in Exhibit B. Subject to the sections in this Contract concerning Force Majeure, Termination, Cancellation Expiration and Open Market Purchases, the Contract shall bind the Client Agency to order the Goods or Services from the Contractor, and to pay for the accepted Goods or Services in accordance with Exhibit B.
  7. Contract Amendments. No amendment to or modification or other alteration of the Contract, including extensions, shall be valid or binding upon the parties unless made in writing, signed by the parties and, if applicable, approved by the Connecticut Attorney General.
  8. Assignment. The Contractor shall not assign any of its rights or obligations under the Contract, voluntarily or otherwise, in any manner without the prior written consent of DAS. DAS may void any purported assignment in violation of this section and declare the Contractor in breach of Contract. Any Cancellation by DAS for a breach is without prejudice to DAS's or the State's rights or possible Claims.
  9. Termination.
    - (a) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may Terminate the Contract whenever the Agency makes a written determination that such Termination is in the best interests of the State. The Agency shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Contract prior to such date.



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- (b) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Terminate the Contract in accordance with the provisions in the Breach section of this Contract.
- (c) The Agency shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Agency for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Agency, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Agency all Records. The Records are deemed to be the property of the Agency and the Contractor shall deliver them to the Agency no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from the Agency for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
- (d) Upon receipt of a written notice of Termination from the Agency, the Contractor shall cease operations as the Agency directs in the notice, and take all actions that are necessary or appropriate, or that the Agency may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which the Agency directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
- (e) The Agency shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Agency in accordance with Exhibit A, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Agency is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the Agency, the Contractor shall assign to the Agency, or any replacement contractor which the Agency designates, all subcontracts, purchase orders and other commitments, deliver to the Agency all Records and other information pertaining to its Performance, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Agency may request.
- (f) For breach or violation of any of the provisions in the section concerning Representations and Warranties, the Agency may Terminate the Contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.
- (g) Upon Termination of the Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.
- (h) Termination of the Contract pursuant to this section shall not be deemed to be a breach of contract by the Agency.

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10. Cost Modifications. The parties may agree to a reduction in the cost of the Contract at any time during which the Contract is in effect. Without intending to impose a limitation on the nature of the reduction, the reduction may be to hourly, staffing or unit costs, the total cost of the Contract or the reduction may take such other form as the State deems to be necessary or appropriate.
11. Breach. If either party breaches the Contract in any respect, the non-breaching party shall provide written notice of such breach to the breaching party and afford the breaching party an opportunity to cure the breach within ten (10) days from the date that the breaching party receives such notice. Any other time provided for in the notice shall trump such ten (10) days. Such right to cure period shall be extended if the non-breaching party is satisfied that the breaching party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. The notice may include an effective Contract Cancellation date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching party in writing prior to the Cancellation date, no further action shall be required of any party to effect the Cancellation as of the stated date. If the notice does not set forth an effective Contract Cancellation date, then the non-breaching party may Cancel the Contract by giving the breaching party no less than twenty four (24) hours' prior written notice. If DAS believes that the Contractor has not performed according to the Contract, the Client Agency may withhold payment in whole or in part pending resolution of the Performance issue, provided that DAS notifies the Contractor in writing prior to the date that the payment would have been due in accordance with Exhibit B.
12. Waiver.
  - (a) No waiver of any breach of the Contract shall be interpreted or deemed to be a waiver of any other or subsequent breach. All remedies afforded in the Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided in the Contract or at law or in equity.
  - (b) A party's failure to insist on strict performance of any provision of the Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or breach.
13. Open Market Purchases. Except to the extent that the Contractor is performing within a right to cure period, failure of the Contractor to Perform within the time specified in the Contract, or failure to replace rejected or substandard Goods or fulfill unperformed Services when so requested and as the Contract provides or allows, constitutes a breach of the Contract and as a remedy for such breach, such failure shall constitute authority for DAS, if it deems it to be necessary or appropriate in its sole discretion, to Cancel the Contract and/or to purchase on the open market, Goods or Services to replace those which have been rejected, not delivered, or not performed. The Client Agency shall invoice the Contractor for all such purchases to the extent that they exceed the costs and expenses in Exhibit B and the Contractor shall pay the Client Agency's invoice immediately after receiving the invoice. If DAS does not Cancel the Contract, the Client Agency will deduct such open market purchases from the Contract quantities. However, if the Client Agency deems it to be in the best interest of the State, the Client Agency may accept and use the Goods or Services delivered which are substandard in quality, subject to an adjustment in price to be determined by the Client Agency.
14. Purchase Orders.
  - (a) The Contract itself is not an authorization for the Contractor to ship Goods or begin Performance in any way. The Contractor may begin Performance only after it has received a duly issued purchase order against the Contract for Performance.

- (b) The Client Agency shall issue a purchase order against the Contract directly to the Contractor and to no other party.
- (c) All purchase orders shall be in written or electronic form, bear the Contract number (if any) and comply with all other State and Client Agency requirements, particularly the Client Agency's requirements concerning procurement. Purchase orders issued in compliance with such requirements shall be deemed to be duly issued.
- (d) A Contractor making delivery without a duly issued purchase order in accordance with this section does so at the Contractor's own risk.
- (e) The Client Agency may, in its sole discretion, deliver to the Contractor any or all duly issued purchase orders via electronic means only, such that the Client Agency shall not have any additional obligation to deliver to the Contractor a "hard copy" of the purchase order or a copy bearing any hand-written signature or other "original" marking.

15. Indemnification.

- (a) The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.
- (b) The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.
- (c) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.
- (d) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
- (e) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Agency prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the policy to the Agency. The Agency shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Agency or the State is contributorily negligent.

(f) The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.

(g) This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.

16. Forum and Choice of Law. The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

17. Contractor Guaranties. Contractor shall:

(a) Perform fully under the Contract;

(b) Guarantee the Goods or Services against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Client Agency's option, replace them;

(c) Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the premises, Goods, the Contractor's work or that of Contractor Parties;

(d) With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices;

(e) Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law; and

(f) Neither disclaim, exclude nor modify the implied warranties of fitness for a particular purpose or of merchantability.

18. Implied Warranties. DAS does not disclaim, exclude or modify the implied warranty of fitness for a particular purpose or the warranty of merchantability.

19. Goods, Standards and Appurtenances. Any Goods delivered must be standard new Goods, latest model, except as otherwise specifically stated in the Contract. Remanufactured, refurbished or reconditioned equipment may be accepted but only to the extent allowed under the Contract. Where the Contract does not specifically list or describe any parts or nominal appurtenances of equipment for the Goods, it shall be understood that the Contractor shall deliver such equipment and appurtenances as are usually provided with the manufacturer's stock model.

20. Delivery.

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- (a) Delivery shall be made as ordered and in accordance with the Contract. Unless otherwise specified in the Contract, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Goods from the carrier and placement on the Client Agency loading dock or receiving platform. The receiving personnel of the Client Agency are not required to assist in this process. The decision of DAS as to reasonable compliance with delivery terms shall be final and binding. The burden of proof of proper receipt of the order shall rest with the Contractor.
  - (b) In order for the time of delivery to be extended, the Client Agency must first approve a request for extension from the time specified in the Contract, such extension applying only to the particular item or shipment.
  - (c) Goods shall be securely and properly packed for shipment, according to accepted standard commercial practice, without extra charge for packing cases, baling or sacks. The containers shall remain the property of the Client Agency unless otherwise stated in the Bid.
  - (d) All risk of loss and damage to the Goods transfers to the Client Agency upon Title vesting in the Client Agency.
21. Goods Inspection. The Client Agency shall determine the manner and prescribe the inspection of all Goods and the tests of all samples submitted to determine whether they comply with all of the specifications in the Contract. If any Goods fail in any way to meet the specifications in the Contract, the Client Agency may, in its sole discretion, either reject it and owe nothing or accept it and pay for it on an adjusted price basis, depending on the degree to which the Goods meet the specifications. Any decision pertaining to any such failure or rejection shall be final and binding.
  22. Setoff. In addition to all other remedies that DAS may have, the State, in its sole discretion, may setoff (1) any costs or expenses that the State incurs resulting from the Contractor's unexcused nonperformance under the Contract and under any other agreement or arrangement that the Contractor has with the State and (2) any other amounts that are due or may become due from the State to the Contractor, against amounts otherwise due or that may become due to the Contractor under the Contract, or under any other agreement or arrangement that the Contractor has with the State. The State's right of setoff shall not be deemed to be the State's exclusive remedy for the Contractor's or Contractor Parties' breach of the Contract, all of which shall survive any setoffs by the State.
  23. Force Majeure. The State and the Contractor shall not be excused from their obligation to Perform in accordance with the Contract except in the case of Force Majeure events and as otherwise provided for in the Contract. In the case of any such exception, the nonperforming party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.
  24. Advertising. The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without DAS's prior written approval.
  25. Americans With Disabilities Act. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the term of the Contract. DAS may Cancel the Contract if the Contractor fails to comply with the Act.
  26. Representations and Warranties. The Contractor, and the Bidder, as appropriate, represent and warrant to DAS for itself, Contractor Parties and Bidder Parties, as appropriate, that:

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- (a) if they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Contract. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance of the Bid and the Contract and have the power and authority to execute, deliver and Perform their obligations under the Contract;
- (b) they will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the State under and pursuant to the Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) Title 4a concerning State purchasing, including, but not limited to 22a-194a concerning the use of polystyrene foam;
- (c) the execution, delivery and Performance of the Contract will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court or the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;
- (d) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
- (e) as applicable, they have not, within the three years preceding the Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under the Contract, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (f) they are not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
- (g) they have not within the three years preceding the Contract had one or more contracts with any governmental entity Cancelled;
- (h) they have not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure the Contract and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract or any assignments made in accordance with the terms of the Contract;
- (i) to the best of their knowledge, there are no Claims involving the Bidder, Bidder Parties, Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract;
- (j) they shall disclose, to the best of their knowledge, to DAS in writing any Claims involving them that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to DAS, the ten (10) Days in the section of this Contract concerning

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Disclosure of Contractor Parties Litigation shall run consecutively with the ten (10) Days provided for in this representation and warranty;

- (k) their participation in the Invitation to Bid process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
- (l) the Bid was not made in connection or concert with any other person, entity or Bidder, including any affiliate (as defined in the Tangible Personal Property section of this Contract) of the Bidder, submitting a Bid for the same Goods or Services, and is in all respects fair and without collusion or fraud;
- (m) they are able to Perform under the Contract using their own resources or the resources of a party who is not a Bidder;
- (n) the Contractor shall obtain in a written contract all of the representations and warranties in this section from any Contractor Parties and to require that provision to be included in any contracts and purchase orders with Contractor Parties;
- (o) they have paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;
- (p) they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- (q) they owe no unemployment compensation contributions;
- (r) they are not delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- (s) all of their vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- (t) each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties and Bidder Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms and conditions of the Contract and that all appropriate parties shall also provide to DAS, no later than fifteen (15) days after receiving a request from DAS, such information as DAS may require to evidence, in DAS's sole determination, compliance with this section;
- (u) except to the extent modified or abrogated in the Contract, all Title shall pass to the Client Agency upon complete installation, testing and acceptance of the Goods or Services and payment by the Client Agency;
- (v) if either party Terminates or Cancels the Contract, for any reason, they shall relinquish to the Client Agency all Title to the Goods delivered, accepted and paid for (except to the extent any invoiced amount is disputed) by the Client Agency;
- (w) with regard to third party products provided with the Goods, they shall transfer all licenses which they are permitted to transfer in accordance with the applicable third party license;
- (x) they shall not copyright, register, distribute or claim any rights in or to the Goods after the effective date of the Contract without DAS's prior written consent;

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- (y) they either own or have the authority to use all Title of and to the Goods, and that such Title is not the subject of any encumbrances, liens or claims of ownership by any third party;
- (z) the Goods do not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (aa) the Client Agency's use of any Goods shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (bb) if they procure any Goods, they shall sub-license such Goods and that the Client Agency shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Goods; and
- (cc) they shall assign or otherwise transfer to the Client Agency, or afford the Client Agency the full benefits of any manufacturer's warranty for the Goods, to the extent that such warranties are assignable or otherwise transferable to the Client Agency.

27. Representations and Warranties Concerning Motor Vehicles. If in the course of Performance or in any other way related to the Contract the Contractor at any time uses or operates “motor vehicles,” as that term is defined by Conn. Gen. Stat. §14-1(53) (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, and the Bidder, as appropriate, represent and warrant for itself, the Contractor Parties and Bidder Parties, as appropriate, that:

- (a) It is the owner of record or lessee of record of each such motor vehicle used in the Performance of the Contract, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles (“ConnDMV”) in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state’s or commonwealth’s applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.
- (b) Each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of the Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.
- (c) Each Contractor Party who uses or operates a motor vehicle at any time in the Performance of the Contract shall have and maintain a motor vehicle operator’s license or commercial driver’s license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.
- (d) Each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment,



marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for motor vehicles having a gross vehicle weight rating of 18,000 pounds or more or motor vehicles otherwise described by the provisions of Conn. Gen. Stat. § 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations.

28. Disclosure of Contractor Parties Litigation. The Contractor shall require that all Contractor Parties, as appropriate, disclose to the Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. Disclosure shall be in writing.
29. Entirety of Contract. The Contract is the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, bids, offers, counteroffers and understandings of the parties, whether written or oral. The Contract has been entered into after full investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Contract.
30. Exhibits. All exhibits referred to in and attached to this Contract are incorporated in this Contract by such reference and shall be deemed to be a part of it as if they had been fully set forth in it.
31. Executive Orders. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Client Agency or DAS shall provide a copy of these orders to the Contractor.
32. Non-discrimination. References in this section to "contract" shall mean this Contract and references to "contractor" shall mean the Contractor.
  - (a) For purposes of this Section, the following terms are defined as follows:
    - (1) "Commission" means the Commission on Human Rights and Opportunities;
    - (2) "Contract" and "contract" include any extension or modification of the Contract or contract;
    - (3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;
    - (4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or

behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

(5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

(6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

(7) "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

(8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

(9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

(10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government, or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b)

- (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.
- (c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor

shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

(f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.

(g)

(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

(h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

### 33. Tangible Personal Property.

(a) The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:

- (1) For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;
  - (2) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
  - (3) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
  - (4) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
  - (5) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.
- (b) For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.
- (c) The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.
34. **Whistleblowing.** This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state

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contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

35. **Notice.** All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this section collectively called “Notices”) shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to DAS:

State of Connecticut Department of Administrative Services  
165 Capitol Ave, 5<sup>th</sup> Floor South  
Hartford, CT 06106-1659  
Attention: Paul Greco

36. **Insurance.** Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the duration of the Contract, the following insurance as described in (a) through (h) below. Contractor shall assume any and all deductibles in the described insurance policies. The Contractor’s insurers shall have no right of recovery or subrogation against the State and the described Contractor’s insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State.

(a) Owner’s and Contractor’s Protective Liability:

(b) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include, Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the occurrence limit.

(c) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.

(d) Workers’ Compensation and Employers Liability: Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer’s Liability with minimum limits of \$100,000 each accident, \$500,000 Disease – Policy limit, \$100,000 each employee.

- (e) Reserved
- (f) **Umbrella Liability:** Excess/umbrella liability insurance may be included to meet minimum requirements. Umbrella coverage must indicate the existing underlying insurance coverage.
- (g) **Claims Made:** Not acceptable with the exception of Professional Liability when specified.
- (h) **Other Insurance:**

- 38. **Headings.** The headings given to the sections in the Contract are inserted only for convenience and are in no way to be construed as part of the Contract or as a limitation of the scope of the particular section to which the heading refers.
- 39. **Number and Gender.** Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.
- 40. **Parties.** To the extent that any Contractor Party or Bidder Party is to participate or Perform in any way, directly or indirectly in connection with the Bid or the Contract, any reference in the Bid and the Contract to “Contractor” or “Bidder” shall also be deemed to include “Contractor Parties” or “Bidder Parties,” respectively, as if such reference had originally specifically included “Contractor Parties” or “Bidder Parties,” since it is the parties’ intent for the terms “Contractor Parties” and “Bidder Parties” to be vested with the same respective rights and obligations as the terms “Contractor” and “Bidder.”
- 41. **Contractor Changes.** The Contractor shall notify DAS in writing no later than ten (10) Days from the effective date of any change in:
  - a. its certificate of incorporation or other organizational document;
  - b. more than a controlling interest in the ownership of the Contractor; or
  - c. the individual(s) in charge of the Performance.

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. DAS, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to DAS’s satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of the Contract. The Contractor shall deliver such documents to DAS in accordance with the terms of DAS’s written request. DAS may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under the Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under the Contract until Performance is fully completed.

- 42. **Further Assurances.** The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably

requested by the other party which are not inconsistent with the provisions of this Contract and which do not involve the vesting of rights or assumption of obligations other than those provided for in the Contract, in order to give full effect to the Contract and to carry out the intent of the Contract.

43. Audit and Inspection of Plants, Places of Business and Records.

- (a) The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.
- (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- (c) The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- (d) All audits and inspections shall be at the State's expense.
- (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- (f) The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- (g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

44. Background Checks. The State may require that the Contractor and Contractor Parties undergo criminal background checks as provided for in the State of Connecticut Department of Public Safety Administration and Operations Manual or such other State document as governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.

45. Continued Performance. The Contractor and Contractor Parties shall continue to Perform their obligations under the Contract while any dispute concerning the Contract is being resolved.

46. Working and Labor Synergies. The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties and their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or



Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under the Contract.

47. Contractor Responsibility.

- (a) The Contractor shall be responsible for the entire Performance under the Contract regardless of whether the Contractor itself performs. The Contractor shall be the sole point of contact concerning the management of the Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of the Contract.
- (b) The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.

48. Severability. If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.

49. Confidential Information. The State will afford due regard to the Bidder's and Contractor's request for the protection of proprietary or confidential information which the State receives. However, all materials associated with the Bid and the Contract are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request, the Bidder or Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the vendor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Bidder or Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. To the extent that any other provision or part of the Contract, especially including the Bid, the Records and the specifications, conflicts or is in any way inconsistent with this section, this section controls and shall apply and the conflicting provision or part shall not be given effect. If the Bidder or Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL, DAS will endeavor to keep said information confidential to the extent permitted by law. DAS, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The Contractor shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall DAS or the State have any liability for the disclosure of any documents or information in its possession which the State or DAS believes are required to be disclosed pursuant to the FOIA or other requirements of law.

50. Interpretation. The Contract contains numerous references to statutes and regulations. For purposes of interpretation, conflict resolution and otherwise, the content of those statutes and

regulations shall govern over the content of the reference in the Contract to those statutes and regulations.

51. Cross-Default.

- (a) If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under the Contract, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to perform under any or all other agreements or arrangements (“Other Agreements”) that the Contractor or Contractor Parties have with DAS. Accordingly, DAS may then exercise at its sole option any and all of its rights or remedies provided for in the Contract or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS, as if the Contractor or Contractor Parties had suffered a breach, default or failure to perform under the Other Agreements.
- (b) If the Contractor or Contractor Parties breach, default or in any way fail to perform satisfactorily under any or all Other Agreements with DAS or the State, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to Perform under the Contract. Accordingly, the State may then exercise at its sole option any and all of its rights or remedies provided for in the Other Agreements or the Contract, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS or the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under the Contract.

52. Disclosure of Records. This Contract may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

53. Summary of State Ethics Laws. Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract.

54. Sovereign Immunity. The parties acknowledge and agree that nothing in the Invitation to Bid or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.

55. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that this provision shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

56. Reserved

57. Campaign Contribution Restriction. For all State contracts as defined in P.A. 07-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice. See Exhibit C [SEEC Form 11].

58. Health Care Portability and Accountability Act.

- (a) If the Contactor or Contractor Parties is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Contractor or Contractor Parties must comply with all terms and conditions of this Section of the Contract. If the Contractor or Contractor Parties is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor or Contractor Parties for this Contract.
- (b) The Contractor or Contractor Parties is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
- (c) The Client Agency is a “covered entity” as that term is defined in 45 C.F.R. § 160.103; and
- (d) The Contractor or Contractor Parties, on behalf of the Client Agency, performs functions that involve the use or disclosure of “individually identifiable health information,” as that term is defined in 45 C.F.R. § 160.103; and
- (e) The Contractor or Contractor Parties is a “business associate” of the Department, as that term is defined in 45 C.F.R. § 160.103; and
- (f) The Contractor or Contractor Parties and the Client Agency agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the HITECH Act), (Pub. L. 111-5, sections 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E.
- (g) Definitions. For the purposes of this Section of the Contract:
  - (1) “Breach” shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(1)).’
  - (2) “Business Associate” shall mean the or Contractor or Contractor Parties.
  - (3) “Covered Entity” shall mean the Client Agency.
  - (4) “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.
  - (5) “Electronic Health Record” shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5)).

- (6) “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
- (7) “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (8) “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to information created or received by the Business Associate from or on behalf of the Covered Entity.
- (9) “Required by Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.
- (10) “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- (11) “More stringent” shall have the same meaning as the term “more stringent” in 45 C.F.R. § 160.202.
- (12) “This Section of the Contract” refers to the HIPAA Provisions stated herein, in their entirety.
- (13) “Security Incident” shall have the same meaning as the term “security incident” in 45 C.F.R. § 164.304.
- (14) “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
- (15) “Unsecured protected health information” shall have the same meaning as the term as defined in § 13402(h)(1)(A) of HITECH. Act. (42 U.S.C. §17932(h)(1)(A)).

(h) Obligations and Activities of Business Associates.

- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.
- (2) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Contract.
- (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
- (6) Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on

behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Section of the Contract to Business Associate with respect to such information.

- (7) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
- (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner agreed to by the parties.
- (9) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (11) Business Associate agrees to provide to Covered Entity, in a time and manner agreed to by the parties, information collected in accordance with clause h. (10) of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees that at the Covered Entity's direction to provide an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. sections 164.504(e), 164.308, 164.310, 164.312, and 164.316.
- (14) In the event that an individual requests that the Business Associate (a) restrict disclosures of PHI; (b) provide an accounting of disclosures of the individual's PHI; or (c) provide a copy of the individual's PHI in an electronic health record, the Business Associate agrees to notify the covered entity, in writing, within two business days of the request.
- (15) Business Associate agrees that it shall not directly or indirectly receive any remuneration in exchange for PHI of an individual without (1) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and (2) the valid authorization of the individual, except for

the purposes provided under section 13405(d)(2) of the HITECH Act,(42 U.S.C. § 17935(d)(2)) and in any accompanying regulations

(16) Obligations in the Event of a Breach

- (A) The Business Associate agrees that, following the discovery of a breach of unsecured protected health information, it shall notify the Covered Entity of such breach in accordance with the requirements of section 13402 of HITECH (42 U.S.C. § 17932(b) and the provisions of this section of the contract.
- (B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to section 13402 (g) of HITECH (42 U.S.C. § 17932(g)) . A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
- (C) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:
  - 1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.
  - 2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
  - 3. The steps the Business Associate recommends that individuals take to protect themselves from potential harm resulting from the breach.
  - 4. A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
  - 5. Whether a law enforcement official has advised either verbally or in writing the Business Associate that he or she has determined that notification or notice to individuals or the posting required under section 13402 of the HITECH Act would impede a criminal investigation or cause damage to national security and contact information for said official.
- (D) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed by the Covered Entity of a breach by the Business Associate have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor or Contractor Parties.

- (E) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.

(i) Permitted Uses and Disclosure by Business Associate.

- (1) General Use and Disclosure Provisions Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- (2) Specific Use and Disclosure Provisions.
  - (A) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
  - (B) Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
  - (C) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(j) Obligations of Covered Entity.

- (1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(k) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.

(l) Term and Termination.

- (1) Term. The Term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with clause h. (10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (2) Termination for Cause Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - (A) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
  - (B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or
  - (C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(3) Effect of Termination.

- (A) Except as provided in (1)(2) above, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with clause h. (10) of this Section of the Contract to the Covered Entity within ten business days of the notice of termination. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
- (B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

(m) Miscellaneous Provisions.

- (1) Regulatory References. A reference in this Section of the Contract to a section in the Privacy Rule means the section as in effect or as amended.
- (2) Amendment. The Parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.



- (3) **Survival.** The respective rights and obligations of Business Associate shall survive the termination of this Contract.
- (4) **Effect on Contract.** Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.
- (5) **Construction.** This Section of the Contract shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.
- (6) **Disclaimer.** Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees, contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the provisions of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.
- (7) **Indemnification.** The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this section of the contract, under HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

59. Protection of Confidential Information.

- (a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
- (b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
  - (1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;

- (2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  - (3) A process for reviewing policies and security measures at least annually;
  - (4) Creating secure access controls to Confidential Information, including but not limited to passwords; and
  - (5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.
- (c) The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.
- (d) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- (e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

60. Reserved



## Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations

This notice is provided under the authority of Connecticut General Statutes §9-612(G)(2), as amended by P.A. 10-1, and is for the purpose of informing state contractors and prospective state contractors of the following law (italicized words are defined on the reverse side of this page).

### CAMPAIGN CONTRIBUTION AND SOLICITATION LIMITATIONS

No *state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor*, with regard to a *state contract* or *state contract solicitation* with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee (which includes town committees).

In addition, no holder or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of State senator or State representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

On and after January 1, 2011, no state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall **knowingly solicit** contributions from the state contractor's or prospective state contractor's employees or from a *subcontractor or principals of the subcontractor* on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

### DUTY TO INFORM

State contractors and prospective state contractors are required to inform their principals of the above prohibitions, as applicable, and the possible penalties and other consequences of any violation thereof.

### PENALTIES FOR VIOLATIONS

Contributions of solicitations of contributions made in violation of the above prohibitions may result in the following civil and criminal penalties:

**Civil Penalties** – Up to \$2,000 or twice the amount of the prohibited contribution, whichever is greater, against a principal or a contractor. Any state contractor or prospective state contractor which fails to make reasonable efforts to comply with the provisions requiring notice to its principals of these prohibitions and possible consequences of their violations may also be subject to civil penalties of up to \$2,000 or twice the amount of the prohibited contributions made by their principals.

**Criminal penalties** – Any knowing and willful violation of the prohibition is a Class D felony, which may subject the violator to imprisonment of not more than 5 years, or not more than \$5,000 in fines, or both.

### CONTRACT CONSEQUENCES

In the case of a state contractor, contributions made or solicited in violation of the above prohibitions may result in the contract being voided.

In the case of a prospective state contractor, contributions made or solicited in violation of the above prohibitions shall result in the contract described in the state contract solicitation not being awarded to the prospective state contractor, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

The State shall not award any other state contract to anyone found in violation of the above prohibitions for a period of one year after the election for which such contribution is made or solicited, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

Additional information may be found on the website of the State Elections Enforcement Commission, [www.ct.gov/seec](http://www.ct.gov/seec). Click on the link to "Lobbyist/Contractor Limitations."



## DEFINITIONS

“State contractor” means a person, business entity or nonprofit organization that enters into a state contract. Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. “State contractor” does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person’s capacity as a state or quasi-public agency employee.

“Prospective state contractor” means a person, business entity or nonprofit organization that (i) submits a response to a state contract solicitation by the state, a state agency or a quasi-public agency, or a proposal in response to a request for proposals by the state, a state agency or a quasi-public agency, until the contract has been entered into, or (ii) holds a valid prequalification certificate issued by the Commissioner of Administrative Services under section 4a-100. “Prospective state contractor” does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person’s capacity as a state or quasi-public agency employee.

“Principal of a state contractor or prospective state contractor” means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has *managerial or discretionary responsibilities with respect to a state contract*, (v) the spouse or a *dependent child* who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

“State contract” means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. “State contract” does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan, a loan to an individual for other than commercial purposes or any agreement or contract between the state or any state agency and the United States Department of the Navy or the United States Department of Defense.

“State contract solicitation” means a request by a state agency or quasi-public agency, in whatever form issued, including, but not limited to, an invitation to bid, request for proposals, request for information or request for quotes, inviting bids, quotes or other types of submittals, through a competitive procurement process or another process authorized by law waiving competitive procurement.

“Managerial or discretionary responsibilities with respect to a state contract” means having direct, extensive and substantive responsibilities with respect to the negotiation of the state contract and not peripheral, clerical or ministerial responsibilities.

“Dependent child” means a child residing in an individual’s household who may legally be claimed as a dependent on the federal income tax of such individual.

“Solicit” means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, treasurer or deputy treasurer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. Solicit does not include: (i) making a contribution that is otherwise permitted by Chapter 155 of the Connecticut General Statutes; (ii) informing any person of a position taken by a candidate for public office or a public official, (iii) notifying the person of any activities of, or contact information for, any candidate for public office; or (iv) serving as a member in any party committee or as an officer of such committee that is not otherwise prohibited in this section.

“Subcontractor” means any person, business entity or nonprofit organization that contracts to perform part or all of the obligations of a state contractor’s state contract. Such person, business entity or nonprofit organization shall be deemed to be a subcontractor until December thirty first of the year in which the subcontract terminates. “Subcontractor” does not include (i) a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or (ii) an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person’s capacity as a state or quasi-public agency employee.

“Principal of a subcontractor” means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a subcontractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a subcontractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a subcontractor, which is not a business entity, or if a subcontractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any subcontractor who has managerial or discretionary responsibilities with respect to a subcontract with a state contractor, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the subcontractor.