

DIVISION 0 - SECTION 00330 - MANDATORY AFFIRMATIVE ACTION LANGUAGE

The following pages entitled **MANDATORY AFFIRMATIVE ACTION LANGUAGE CONSTRUCTION CONTRACTS** as set forth by the State of New Jersey, is hereby made part of this document.

Each Bidder must submit with his Bid the Affirmative Action Statement which follows:

MANDATORY AFFIRMATIVE ACTION LANGUAGE CONSTRUCTION CONTRACTS

- A. The Bidder (Contractor) agrees to comply with the anti-discrimination provision of N.J.S.A. 10:2-1 et. seq., the Laws Against Discrimination, N.J.S.A. 10:5-1 et. seq., N.J.S.A. 6:4-1.6 and N.J.S.A. 17:27-1.1 et. seq. as set forth at length in Exhibit B attached hereto and made a part hereof. When the total cost of a construction contract is equal to or greater than \$2,500,000, the Owner shall set aside one-half of one percent of the contract amount to the financing of minority and female worker outreach and training programs in accordance with N.J.S.A. 17:27-7.5. This set aside amount shall be treated as retainage until the successful completion of the project and the affirmative action goals and responsibilities of the contractor.
- B. The Board, the contractor and all subcontractors hereby agree and guarantee to afford equal opportunity in performance of the contracts in accordance with an affirmative action program approved by the State Treasurer. During the design and construction of the school facilities project, the Board and the contractors and subcontractors shall abide by the following provision and shall provide in any contract provisions as follows:
 1. The Board and the contractor and subcontractors shall not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. The Board, the contractor and subcontractors shall take affirmative action to ensure that such applicants are recruited and employed, the employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Board, the contractor and subcontractors agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
 2. The Board, the contractor and subcontractors shall, in all solicitations or advertisements for employees placed by or on behalf of the district and its contracted parties state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex.
 3. The Board, the contractor and all subcontractors shall send to each labor union or representative of workers with whom they have a collective bargaining agreement or other contract or understanding, a notice, to be provided by the district, advising the labor union or workers' representative of the Board's, the contractor's and the subcontractor's commitments under the grant agreement and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 4. The District and its Contracted Parties shall not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. The District and its Contracted Parties shall take affirmative action to ensure that such applicants are recruited and employed, that employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The District and its Contracted Parties agree to post in

conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

5. The District and its Contracted Parties shall, in all solicitations or advertisements for employees placed by or on behalf of the District and its Contracted Parties state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex.

Exhibit "B"

PL. 1975 C. 127 (N.J.A.C.17:27) **MANDATORY AFFIRMATIVE ACTION LANGUAGE** **CONSTRUCTION CONTRACTS**

During the performance of this contract, the Contractor and subcontractor agrees as follows:

1. The Contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status or sex. The Contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency Compliance Officer setting forth the provisions of this nondiscrimination clause.
2. The Contractor or subcontractor, where applicable, will in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.
3. The Contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or undertaking, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to PL. 1975, c. 127, as amended and supplemented from time to time, and pursuant to the Americans with Disabilities Act.
5. The Contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.S.A. 17:27-5.2 promulgated by the Treasurer pursuant to PL. 1975, c. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.S.A. 17:27-5.2 promulgated by the Treasurer pursuant to PL. 1975, c. 127, as amended and supplemented from time to time.
6. The Contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

7. The Contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the state of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
8. The Contractor or subcontractor agrees to review all procedures related to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions
9. The Contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be required by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.S.A. 17:27).
10. When hiring workers in each construction trade, the Contractor or subcontractor agrees to attempt in good faith to employ minority workers in each construction trade consistent with the applicable employment goal prescribed by Section 7.3 of said Regulations; provided, however, that the Affirmative Action Office may in its discretion, exempt a Contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions A, B and C as long as the Affirmative Action Office is satisfied that the Contractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Affirmative Action Office, that its percentage of active "card carrying" members who are minority workers is equal to or greater than the applicable employment goal prescribed by Section 7.3 of the Regulations promulgated by the Treasurer pursuant to PL. 1975, c. 127, as amended and supplemented from time to time. The Contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:
 - A. If the Contractor or subcontractors has a referral agreement or arrangement with a union for a construction trade, the Contractor or subcontractor shall within three (3) days of the contract award, seek assurances from the union that it will cooperate with the Contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the Regulations promulgated by the Treasurer pursuant to PL. 1975, c. 127, as is supplemented and amended from time to time. If the Contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five (5) days prior to the commencement of construction work, the Contractor or subcontractor agrees directly to attempt to hire minority workers consistent with the applicable employment goal. If the Contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances indicates a significant possibility that the trade union will not refer sufficient minority workers consistent with the applicable employment goal, the Contractor or subcontractor agrees to be prepared to hire minority workers consistent with the applicable employment goal by complying the following hiring procedures prescribed under (B). The Contractor or subcontractor further agrees immediately to take said action if it determines or is so notified by the Affirmative Action Office that the union is not referring to minority workers consistent with the applicant employment goal.
 - B. If the hiring of a work force consistent with the employment goal has not or cannot be achieved for each construction trade, by adhering to the procedures of the preceding provisions (A), or if the Contractor or subcontractor does not have a referral agreement or arrangement with a union for a construction trade, the Contractor or subcontractor agrees to take the following actions consistent with the applicable county employment goal:
 - (1) To notify the Public Agency Compliance Officer, Affirmative Action Office and at least one minority organization of its employment needs, and request the referral of minority workers;

- (2) To notify any minority workers who have been listed with it as available vacancies;
- (3) Prior to commencement of work, to request the local construction trade union, if the Contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, to refer workers to fill job openings;
- (4) To leave standing requests for additional referral of minority workers with the local construction trade union, if the Contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and the other approved referral sources until such time as the work force is consistent with the employment goal;
- (5) If it is necessary to lay off some of the workers in a given trade on the construction site, to assure, consistent with the applicable state and federal statutes and court decision, that sufficient minority employees remain on the site consistent with the employment goal; and to employ any minority workers laid off by the Contractor or any other construction site in the area on which its work force composition is not consistent with an employment goal established pursuant to Regulations implementing PL. 1975, c. 127;
- (6) To adhere to the following procedures when minority workers apply or are referred to the Contractor or subcontractor:
 - i) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required, the Contractor or subcontractor shall determine the qualifications of such individuals and if the Contractor's or subcontractor's work force in each construction trade is not consistent with the applicable employment goal, it shall employ such persons which satisfy appropriate qualification standards; provided, however, that a Contractor or subcontractor shall determine that the individual at least possesses the skills and experience recognized by any worker's skills and expertise recognized by any worker's skills and experience classification determination which may have been made by a Public Agency, provided the referral agency is acceptable to the Affirmative Action Office and provided further, that if necessary, the Contractor or subcontractor shall hire minority workers who qualify as trainees pursuant to subsection 2(k) of the Regulations. All of the requirements of this paragraph, however, are limited by the provisions of paragraph ©) below.
 - ii) If the Contractor's or subcontractor's work force is consistent with the applicable employment goal, the name of said minority group individual shall be maintained on a waiting list for the first consideration in the event the Contractor's or subcontractor's work force is no longer consistent with the applicable employment goal.
 - iii) If for any reason said Contractor or subcontractor determines said minority group individual is not qualified or if said individual qualifies as an advanced trainee or apprentice, said Contractor or subcontractor shall inform said individual in writing with the reasons for the determination and maintain a copy in its files, and send a copy to the Public Agency Compliance Officer and the Affirmative Action Office.
- (18) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, and said records shall be kept on forms made available by the Affirmative Action Office and shall be submitted promptly to that Office upon request.

- C. The Contractor or subcontractor agrees that nothing contained in the preceding provision (B) will preclude the Contractor or subcontractor from complying with the hiring hall or apprenticeship provisions in any applicable collective bargaining agreement or hiring hall agreement, and, where required by custom or agreement, it will send journey workers and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement; provided, however, that where the practices of a union or apprenticeship program will result in the exclusion of minority persons or the failure to refer

minority group persons consistent with the county employment goal, the Contractor or subcontractor will consider for employment persons referred pursuant to said provisions (B) without regard to such agreement or arrangement; Provided further, however, that the Contractor or subcontractor shall not be required to employ minority advanced trainees and trainees in numbers which result in the employment of advanced trainees as a percentage of the total work force for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ration established by practice in the area for said construction trade. Also the Contractor or subcontractor agrees that, in implementing the procedures of the preceding provision (B), it shall, where practicable, employ minority workers residing within the geographical jurisdiction of the union.

- D. The Contractor agrees to complete monthly project Manning Reports on forms provided by the Affirmative Action Office or in the form prescribed by the Affirmative Action Office and submit an initial copy of said form no later than three (3) days after signing a construction contract; provided, however, that the public agency may extend in the particular case the allowable time for submitting the initial form to no more than fourteen (14) days; and to submit a copy of said form once a month thereafter for the duration of this contract to the Affirmative Action Office and to the Public Agency Compliance Officer, provided, however, that for construction projects with a toll cost of less than \$50,000, the initial and monthly Project Manning Reports shall not be submitted except when requested by the Affirmative Action Office. The Contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job programs for outreach and training of minority trainees employed on the construction projects.

Provisions (d) and (e) are not required for Contractors or subcontractors with four (4) or fewer employees or a Contractor who has presented evidence of a federally approved or sanctioned Affirmative Action Program.

All successful construction Contractors must submit the following form of evidence:

Completed form AA-201 "Initial Project Manning Report - Construction"

The completed form AA-201 should be submitted at the time the signed contract is returned to the Board of Education. The Form AA-201 must be submitted by the third (3rd) calendar day after the signing of the construction contract. If the construction Contractor does not submit Form AA-201 within the required time period, the Board of Education may extend the time period to the fourteenth (14th) calendar day. If by the fourteenth (14th) calendar day the contractor does not submit the form, the Board of Education must declare the contractor is non-responsive and award the contract to the next lowest responsible bidder.

AFFIDAVIT

I, _____ representing _____
(Name of Representative) (Name of Bidder)

acknowledge that I have read and understand the above Affirmative Action Language and agree that neither I, nor the company I represent, nor any subcontractors hired by the above named company, will discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status or sex and that I will take affirmative action to ensure that such applicants are recruited and employed, and that all employees abide by the provisions set forth above.

END OF SECTION 00330

