

Contract No. NAT12001-STR_REST

**DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL**

DIVISION OF WATERSHED STEWARDSHIP



**PROJECT NAME: HAM RUN STREAM RESTORATION &
STORMWATER RETROFIT**

BID PACKAGE

AND

PROVISIONS

May 29, 2012

BIDS DUE BY: 3:00 P.M. on August 13, 2012

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NOTICE AND INVITATION TO BID

Sealed bids for **Contract No. NAT12001-STR_REST – Ham Run Stream Restoration & Stormwater Retrofit** will be received by the State of Delaware, Department of Natural Resources & Environmental Control, Division of Watershed Stewardship, for the Ham Run project. **Only those Contractors who have been PREQUALIFIED for the General Prequalification status may submit sealed bids on this project.** This project will consist of stabilizing approximately 600 feet of stream bank and realign the channel away from a bridge structure along Ham Run. The site parallels Duncan Road and is located northwest of the intersection of Greenbank Road and Duncan Road (south of the Kirkwood Highway) in New Castle County.

Contractors must submit a General Prequalification Application for Stream Restoration for this project by Friday, June 29, 2012. (NOTE: A Supplemental Prequalification is **not** required for this project). Please see the full text of the General Prequalification Application for Stream Restoration at <http://mymarketplace.delaware.gov/topics/agency.shtml> Follow the instructions as outlined in the application. Contractors will be notified by Thursday, July 12, 2012, regarding the status (approved/denied) of their General Prequalification application submittal. For a complete listing of approved Prequalified Stream Restoration Contractors go to <http://mymarketplace.delaware.gov/topics/agency.shtml>

A **MANDATORY** Pre-Bid Meeting will be held on Thursday, July 19, 2012, at 10:00 a.m. at the intersection of Greenbank Road and Duncan Road in New Castle County for the purpose of **APPROVED** prequalified (General) contractors interested in submitting a bid to walk the length of the project and to participate in a question/answer session. **ATTENDANCE OF THIS MEETING IS A PREREQUISITE FOR BIDDING ON THIS CONTRACT.**

Sealed bids for **Contract No. NAT12001-STR_REST – Ham Run Stream Restoration & Stormwater Retrofit** will be received by the State of Delaware, Department of Natural Resources & Environmental Control, Division of Watershed Stewardship, in the lobby of the Conservation Center, 2430 Old County Road, Newark, DE 19702 until 3:00 p.m. local time on Monday, August 13, 2012, at which time the bids will be publicly opened and read aloud in the Conservation Center lobby. The outer envelope should clearly indicate: "**Contract No. NAT12001-STR_REST – Ham Run Stream Restoration & Stormwater Retrofit - SEALED BID - DO NOT OPEN.**" Bidder bears the risk of late delivery. Any bids received after the stated time will be returned unopened.

Orders for a project plan set must be placed with Diane Fernandes at 302-832-3100, ext. 101, no less than 24-hours prior to pick-up at the Conservation Center, 2430 Old County Road, Newark, DE 19702. The cost of the plans and specifications is \$100.00 per set/non-refundable. Checks are to be made payable to "New Castle Conservation District."

Construction documents will be available for review at the following location: Conservation Center, 2430 Old County Road, Newark, DE 19702.

Minority Business Enterprises (MBE), Disadvantaged Business Enterprises (DBE) and Women-Owned Business Enterprises (WBE) will be afforded full opportunity to submit bids on this contract and will not be subject to discrimination on the basis of race, color, national origin or sex in consideration of this award. The successful bidder must post a performance bond and payment bond in a sum equal to 100 percent of the contract price upon execution of the contract.

The Owner reserves the right to reject any or all bids and to waive any informalities therein.

The Owner may extend the time and place for the opening of the bids from that described in the advertisement, with not less than two calendar days notice by certified delivery, facsimile machine or other electronic means to those bidders receiving plans.

INSTRUCTIONS TO BIDDERS

The scope of this contract is as described on the Department of Natural Resources & Environmental Control's (the "DEPARTMENT'S") plans entitled **Contract No. NAT12001-STR_REST – Ham Run Stream Restoration & Stormwater Retrofit** (sealed June 24, 2011) and these General and Special Provisions.

SUBMISSION OF BIDS

Enclose the Bid, the Bid Security, and any other documents required to be submitted with the Bid in a sealed opaque envelope. Address the envelope to the party receiving the Bids. Identify with the project name, contract number, bid opening date and time, and the Bidder's name and address. If the Bid is sent by mail, enclose the sealed envelope in a separate mailing envelope with the notation "BID ENCLOSED" on the face thereof. The State is not responsible for the opening of bids prior to bid opening date and time that are not properly marked.

Bid envelope shall carry a clear notation in the lower left quadrant, "**Contract No. NAT12001-STR_REST – Ham Run Stream Restoration & Stormwater Retrofit - SEALED BID - DO NOT OPEN.**"

Mailing Address: Department of Natural Resources & Environmental Control
Division of Watershed Stewardship
Conservation Center
2430 Old County Road
Newark, Delaware 19702

Bids shall be made by completing and submitting the "**Proposal and Schedule of Prices**" and the "**Bid Security**" portions of this booklet.

- Bid Bond: **REQUIRED**
- Performance Bond: **REQUIRED**
- Payment Bond: **REQUIRED**
- Retainage: **NOT/REQUIRED**

Deposit Bids at the designated location prior to the time and date for receipt of bids indicated in the Advertisement for Bids. Bids received after the time and date for receipt of bids will be marked "LATE BID" and returned.

Bidder assumes full responsibility for timely delivery at location designated for receipt of bids.

Oral, telephonic or telegraphic Bids are invalid and will not receive consideration.

Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids, provided that they are then fully in compliance with these Instructions to Bidders.

OPENING/REJECTION OF BIDS

Unless otherwise stated, Bids received on time will be publicly opened and will be read aloud. An abstract of the Bids will be made available to Bidders.

The Agency shall have the right to reject any and all Bids. A Bid not accompanied by a required Bid Security or by other data required by the Bidding Documents, or a Bid which is in any way incomplete or irregular is subject to rejection.

If the Bids are rejected, it will be done within thirty (30) calendar days of the Bid opening.

GENERAL PROVISIONS

SCOPE OF SERVICES

CONTRACTOR shall perform all construction in accordance with plans issued for this project by the DEPARTMENT. All work shall be done in compliance with all Federal, State and County permits issued for this project. As part of this construction, CONTRACTOR shall provide all services, structures and materials described in the design plans (sealed 6/24/11) and technical specifications contained in the plan set prepared by JMT. Additionally, CONTRACTOR shall perform all work under the supervision and direction of DNREC and/or an oversight contractor that will be selected and hired by the DEPARTMENT. The project shall be deemed complete when a "Certificate of Completion" has been recommended for issuance by the oversight contractor and issued by the DEPARTMENT.

NOTICE TO PROCEED

The obligations of each party to this Contract are not effective and no party is bound by the terms of this Contract unless and until a valid executed Purchase Order has been approved by the Secretary of Finance, and all the procedures of the Department of Finance have been complied with.

Work including material purchases shall not begin until the Contractor is in receipt of a bonafide State of Delaware Purchase Order. Any work performed or material purchases prior to the issuance of the Purchase Order is done at the Contractor's own risk and cost.

NON-DISCRIMINATION

The DEPARTMENT prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political belief and marital or family status. Contractors and subcontractors working on DEPARTMENT contracts shall comply with these requirements.

EQUALITY OF EMPLOYMENT OPPORTUNITY ON PUBLIC WORKS

For Public Works Projects financed in whole or in part by State appropriation, the Contractor agrees that during the performance of this Contract:

The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The Contractor will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex or national origin. 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 contracting Agency setting forth this nondiscrimination clause.

The Contractor 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 race, creed, color, sex or national origin."

STATE OF DELAWARE BUSINESS LICENSE AND TAX REQUIREMENTS

In conformance with 30 Del. C., Chapter 25, Section 2502, any person desiring to engage in business in the State of Delaware shall obtain a license upon making application to the Division of Revenue. This license must be obtained and proof of license compliance must be made prior to, or in conjunction with, the execution of a contract to such person. In the case of contracts in excess of \$50,000 which are competitively bid, such person shall have initiated the license application procedure required by this subsection with the Division of Revenue prior to, or in conjunction with, the submission of a bid on a contract, or, in the case of a Subcontractor, prior to the submission of a bid by the General Contractor.

Each Contractor and Subcontractor shall be licensed to do business in the State of Delaware and shall

pay all fees and taxes due under State laws. In conformance with 30 Del. C., Chapter 25, Section 2503, the Contractor “shall furnish the Department of Finance within 10 days after entering into any contract with a contractor or subcontractor not a resident of this State, a statement of the total value of such contract or contracts together with the names and addresses of the contracting parties.”

The Contractor shall comply with all requirements set forth in, 29 Del. C., Section 6962.

BONDING

➤ BID BOND

All bids shall be accompanied by a deposit of either a good and sufficient bond to the agency for the benefit of the agency, with corporate surety authorized to do business in this State, the form of the bond and the surety to be approved by the agency, and the bond form used shall be the standard form issued by the Office of Management and Budget (attached) for this purpose or a security of the bidder assigned to the agency, for a sum equal to at least 10% of the bid. The bid bond need not be for a specific sum, but may be stated to be for a sum equal to 10% of the bid to which it relates and not to exceed a certain stated sum, if said sum is equal to at least 10% of the bid. Any bid which, at the time it is submitted, is not accompanied by a bid bond or sufficient security as required by this paragraph shall not be opened or read, and shall be rejected.

The Agency has the right to retain the bid security of Bidders to whom an award is being considered until either a formal contract has been executed and bonds have been furnished or the specified time has elapsed so the Bids may be withdrawn or all Bids have been rejected.

In the event of any successful Bidder refusing or neglecting to execute a formal contract and bond within 20 days of the awarding of the contract, the bid bond or security deposited by the successful bidder shall be forfeited.

➤ PERFORMANCE BOND AND PAYMENT BOND

Simultaneous with the execution of the formal contract, the successful bidder shall also execute a Performance Bond and Payment Bond good and sufficient bond to the contracting agency for the benefit of the agency, with corporate surety authorized to do business in this State, in a sum equal to 100% of the contract price and the bond form used shall be the standard form issued by the Office of Management and Budget.

The Performance Bond and Payment Bond shall be conditioned upon the faithful compliance and performance by the successful bidder of each and every term and condition of the contract and the proposal and plans and specifications thereof, at the time and in the manner prescribed by the contract and the plans and specifications, including the payment in full, to every firm furnishing material or performing labor in the performance of the contract, of all sums of money due it for such labor or material. The bond shall also contain the successful bidder's guarantee to indemnify and save harmless the agency from all costs, damages and expenses growing out of or by reason of the successful bidder's failure to comply and perform the work and complete the contract in accordance with the contract.

Invoking a Performance Bond – The Agency may, when it considers that the interest of the State so requires, cause judgment to be confessed upon the bond.

The Performance Bond shall guarantee the satisfactory completion of the Project and that the Contractor will make good any faults or defects in his Work which may develop during the period of said guarantees as a result of improper or defective workmanship, material or apparatus, whether furnished by themselves or their Sub-Contractors. The Payment Bond shall guarantee that the Contractor shall pay in full all persons, firms or corporations who furnish labor or material or both labor and material for, or on account of, the work included herein. The bonds shall be paid for by this Contractor. The Owner shall have the right to demand proof that the parties signing the bonds are duly authorized to do so.

FAILURE TO COMPLY WITH CONTRACT

If any firm entering into a contract with the State, or Agency neglects or refuses to perform or fails to comply with the terms thereof, the Agency which signed the Contract may terminate the Contract and proceed to award a new contract in accordance with Chapter 69, Title 29 of the Delaware Code or may require the Surety on the Performance Bond to complete the Contract in accordance with the terms of the Performance Bond. Nothing herein shall preclude the Agency from pursuing additional remedies as otherwise provided by law.

CONTRACT INSURANCE AND CONTRACT LIABILITY

In addition to the bond requirements stated in the Bid Documents, each successful Bidder shall purchase adequate insurance for the performance of the Contract and, by submission of a Bid, agrees to indemnify and save harmless and to defend all legal or equitable actions brought against the State, any Agency, officer and/or employee of the State, for and from all claims of liability which is or may be the result of the successful Bidder's actions during the performance of the Contract.

The purchase or nonpurchase of such insurance or the involvement of the successful Bidder in any legal or equitable defense of any action brought against the successful Bidder based upon work performed pursuant to the Contract will not waive any defense which the State, its agencies and their respective officers, employees and agents might otherwise have against such claims, specifically including the defense of sovereign immunity, where applicable, and by the terms of this section, the State and all agencies, officers and employees thereof shall not be financially responsible for the consequences of work performed, pursuant to said contract.

INDEMNIFICATION

The CONTRACTOR agrees that in the event it is awarded a contract, it will indemnify and hold harmless the State of Delaware, the DEPARTMENT and the Division of Watershed Stewardship ("Division") from contingent liability to others for damages because of bodily injury, including death, to the extent resulting from the CONTRACTOR'S negligent performance under the contract, and any other liability for damages under which the CONTRACTOR is required to indemnify the State, the DEPARTMENT and the Division under any provision of the contract.

The Contractor shall hold the DEPARTMENT and its agents harmless from claims resulting from events pertaining to this contract such as, but not limited to, trespass, property damage, personal injury, poor workmanship, inferior materials, liens of suppliers and subcontractors, and theft.

CONTRACTOR shall require each and every contractor or subcontractor for the project to indemnify, save and hold harmless, and defend the DEPARTMENT, its directors, employees, representatives, or agents against any demand, claim, suit, loss, costs, or damages sustained in connection with performance of services provided under this agreement.

PERSONNEL

CONTRACTOR represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract.

CONTRACTOR, or persons under CONTRACTOR'S supervision, shall perform all of the services required by this Contract, and all personnel engaged in the work shall be fully qualified and shall be authorized to perform such services.

CONTRACTOR shall not subcontract any of the work or services covered by this Contract without the prior written approval of DEPARTMENT.

TERMINATION OF CONTRACT FOR CAUSE

If, for any reasons, or through any cause, CONTRACTOR shall fail to fulfill in a timely or proper manner its obligations under this Contract, or if CONTRACTOR shall violate any of the covenants, agreements, or

stipulations of this Contract, DEPARTMENT shall then have the right to terminate this Contract by giving written notice to CONTRACTOR of such termination and specifying the effective date, at least 5 days before the effective date of such termination.

TERMINATION OF CONVENIENCE

DEPARTMENT may terminate this Contract in its sole discretion at any time for any reason by giving written notice of such termination and specifying the effective date, at least 15 days before the effective date of such termination. Exercise of this right by DEPARTMENT shall not be deemed a breach of this Contract, and no damages shall be awarded to CONTRACTOR for exercise of this paragraph. If this Contract is terminated due to the fault of CONTRACTOR,

SUSPENSION AND DEBARMENT

Per Section 6962(d)(14), Title 29, Delaware Code, "Any Contractor who fails to perform a Public Works Contract or complete a Public Works Project within the time schedule established by the Agency in the invitation to bid, may be subject to Suspension or Debarment for one or more of the following reasons: a) failure to supply the adequate labor supply ratio for the project; b) inadequate financial resources; or, c) poor performance on the Project."

Upon such failure for any of the above stated reasons, the Agency that contracted for the Public Works Project may petition the Director of the Office of Management and Budget for Suspension or Debarment of the Contractor. The Agency shall send a copy of the petition to the Contractor within three (3) working days of filing with the Director. If the Director concludes that the petition has merit, the Director shall schedule and hold a hearing to determine whether to suspend the Contractor, debar the Contractor or deny the petition. The Agency shall have the burden of proving, by a preponderance of the evidence, that the Contractor failed to perform or complete the Public Works Project within the time schedule established by the Agency and failed to do so for one or more of the following reasons: a) failure to supply the adequate labor supply ratio for the project; b) inadequate financial resources; or, c) poor performance on the project. Upon a finding in favor of the Agency, the Director may suspend a Contractor from Bidding on any project funded, in whole or in part, with public funds for up to 1 year for a first offense, up to 3 years for a second offense and permanently debar the Contractor for a third offense. The Director shall issue a written decision and shall send a copy to the Contractor and the Agency. Such decision may be appealed to the Superior Court within thirty (30) days for a review on the record.

TOTAL COST AND COMPENSATION

It is agreed that the total cost for the services provided under this Contract shall not exceed the accepted bid price. Payment to the CONTRACTOR shall be awarded based upon: (1) receipt of invoices and (2) the completion of all product deliverables to the DEPARTMENT.

CONTRACTOR is responsible for costs incurred in excess of the total cost of this Contract and the DEPARTMENT is not liable for such costs.

Condition Precedent: The rights and obligations of each party to this Contract are not effective and no party is bound by the terms of this Contract unless and until a valid executed purchase order is approved by the Secretary of Finance and received by CONTRACTOR. The rights and obligations of DEPARTMENT under this Contract are limited to the amount of any approved purchase order.

OBLIGATIONS AND PAYMENT

The obligations of the DEPARTMENT under this Contract shall be subject to the receipt of sufficient funds appropriated by the General Assembly and the U.S. Environmental Protection Agency and the obligations of the DEPARTMENT are limited to the amount of such appropriation.

Payments to the CONTRACTOR shall be made monthly upon satisfactory completion, in DEPARTMENT'S sole discretion, of the tasks outlined in the design plans and project specifications, and supported by submission of an invoice by CONTRACTOR, which are acceptable to the Division of

Watershed Stewardship's Stream Restoration Program. Invoices shall be paid within 30 days after receipt by DEPARTMENT, if services are performed satisfactorily, in DEPARTMENT'S sole discretion.

CONTRACTOR will maintain accurate financial records and make them available to Federal and State auditors, as needed, up to 3 years following Contract termination.

INSURANCE

The Contractor shall carry all insurance required by law, such as Unemployment Insurance, etc. The Contractor shall carry such insurance coverage as they desire on their own property such as a field office, storage sheds or other structures erected upon the project site that belong to them and for their own use. The Subcontractors involved with this project shall carry whatever insurance protection they consider necessary to cover the loss of any of their personal property, etc.

Upon being awarded the Contract, the Contractor shall obtain a minimum of two (2) copies of all required insurance certificates called for herein, and submit one (1) copy of each certificate, to the Owner, within 20 days of contract award.

Bodily Injury Liability and Property Damage Liability Insurance shall, in addition to the coverage included herein, include coverage for injury to or destruction of any property arising out of the collapse of or structural injury to any building or structure due to demolition work and evidence of these coverages shall be filed with and approved by the Owner.

The Contractor's Property Damage Liability Insurance shall, in addition to the coverage noted herein, include coverage on all real and personal property in their care, custody and control damaged in any way by the Contractor or their Subcontractors during the entire construction period on this Project.

Certificates of the insurance company or companies stating the amount and type of coverage, terms of policies, etc., shall be furnished to the Owner, within 20 days of contract award.

The Contractor shall, at their own expense, (in addition to the above) carry the following forms of insurance:

Contractor's Contractual Liability Insurance

Minimum coverage to be:

| | | |
|---------------------------------|-------------|---------------------|
| ➤ <u>BODILY INJURY</u> | \$ 500,000 | for each person |
| | \$1,000,000 | for each occurrence |
| | \$1,000,000 | aggregate |
| ➤ <u>PROPERTY DAMAGE</u> | \$ 500,000 | for each occurrence |
| | \$1,000,000 | aggregate |

Contractor's Protective Liability Insurance

Minimum coverage to be:

| | | |
|---------------------------------|-------------|---------------------|
| ➤ <u>BODILY INJURY</u> | \$ 500,000 | for each person |
| | \$1,000,000 | for each occurrence |
| | \$1,000,000 | aggregate |
| ➤ <u>PROPERTY DAMAGE</u> | \$ 500,000 | for each occurrence |
| | \$ 500,000 | aggregate |

Automobile Liability Insurance

Minimum coverage to be:

- **BODILY INJURY** \$1,000,000 for each person
- \$1,000,000 for each occurrence
- **PROPERTY** \$ 500,000 per accident
- DAMAGE**

Prime Contractor's and Subcontractors' policies shall include contingent and contractual liability coverage in the same minimum amounts as stated above.

Workmen's Compensation (including Employer's Liability):

Minimum Limit on employer's liability to be as required by law.

Minimum Limit for all employees working at one site.

Certificates of Insurance must be filed with the Owner guaranteeing fifteen (15) days prior notice of cancellation, non-renewal, or any change in coverages and limits of liability shown as included on certificates.

Social Security Liability

With respect to all persons at any time employed by or on the payroll of the Contractor or performing any work for or on their behalf, or in connection with or arising out of the Contractor's business, the Contractor shall accept full and exclusive liability for the payment of any and all contributions or taxes or unemployment insurance, or old age retirement benefits, pensions or annuities now or hereafter imposed by the Government of the United States and the State or political subdivision thereof, whether the same be measured by wages, salaries or other remuneration paid to such persons or otherwise.

Upon request, the Contractor shall furnish Owner such information on payrolls or employment records as may be necessary to enable it to fully comply with the law imposing the aforesaid contributions or taxes.

If the Owner is required by law to and does pay any and/or all of the aforesaid contributions or taxes, the Contractor shall forthwith reimburse the Owner for the entire amount so paid by the Owner.

TIME OF PERFORMANCE

The services of CONTRACTOR are to commence as soon as practicable after the execution of this Contract and shall be undertaken in such sequence as to assure their expeditious completion in the light of the purposes of this Contract, but in any event all of the services required by this CONTRACT shall be completed no later than **October 31, 2012**.

UTILITIES

It shall be the Contractor's responsibility to accurately locate all existing utilities such as gas, sewer, electric, water, telephone, etc. The Contractor shall take every precaution to prevent damage to any utility facilities. The Contractor shall be financially responsible for the repair of any utilities damaged as a result of his construction activities. The following shall be contacted for assistance in identifying the locations of utilities prior to commencing any activities on the project.

MISS UTILITY

1-800-282-8555

PERMITS AND EASEMENTS

The Contractor shall be responsible for any permits, ingress/egress and construction rights-of-way not provided by the DEPARTMENT, including any required DelDOT Temporary Construction Entrance permit.

PROPERTY MARKERS

The Contractor shall be responsible to protect any identified or found property markers or monuments and shall replace, at the Contractor's own expense, any markers or monuments disturbed during construction using a Delaware Professional Land Surveyor (PLS) or Delaware Professional Engineer (PE). The PLS or PE shall provide a letter certifying and describing the work done in resetting any markers or monuments.

THIRD PARTY AGREEMENTS

The Contractor shall obtain the DEPARTMENT'S consent prior to making any third party agreements with regard to this contract.

EXAMINATION OF SITE, PLANS AND SPECIFICATIONS

The bidder shall examine carefully the site of the proposed work, the proposal, plans and specifications and contract forms before submitting a proposal. The submittal of a bid shall be prima facie evidence that the bidder has made such examinations and is satisfied as to the conditions to be encountered in performing the work and as to the requirements of the plans, specifications and contract. No additional payments shall be made for the completion of this contract, other than payment for the bid items included herein except as provided in these specifications.

CHANGE IN SCOPE OF WORK

The DEPARTMENT reserves the right to change the scope of work through alteration, addition or deletion. The DEPARTMENT will initiate cost negotiations based upon any revisions to the project.

EPA FUNDING

CONTRACTOR shall comply with all applicable State and Federal laws and regulations. If applicable State and Federal laws and regulations conflict with the provisions of this section, then applicable laws and regulations supersede the provisions of this section. The provisions of this section shall apply to the work to be performed under this Contract and such provisions shall supersede any conflicting provisions of this Contract.

This Contract is partially funded by a grant from the EPA. Neither the United States nor any of its departments, agencies, or employees is a party to this Contract.

The rights and remedies of DEPARTMENT provided for in these clauses are in addition to any other rights and remedies provided by law or under this Contract.

Remedies: Except as may be otherwise provided in this Contract all claims, counterclaims, disputes and other matters in question between DEPARTMENT and CONTRACTOR arising out of or relating to this Contract or the breach thereof will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the State of Delaware.

Audit: Access to Records: CONTRACTOR shall maintain books, records, documents and other evidence directly pertinent to performance on EPA grant work under this Contract in accordance with generally accepted accounting principles and practices. CONTRACTOR shall also maintain the financial information and data used by CONTRACTOR in the preparation or support of the cost submission, and a copy of the cost summary submitted to DEPARTMENT. The United State's Department of Labor, DEPARTMENT (and the State of Delaware) or any of their duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. CONTRACTOR will provide proper facilities for such access and inspection.

Subcontracts: Any subcontractors and outside associates or consultants required by CONTRACTOR in connection with the services covered by this Contract will be limited to such individuals or firms as were specifically identified and agreed to in writing during negotiations, or as are specifically authorized in writing by DEPARTMENT during the performance of this Contract. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of DEPARTMENT.

Equal Employment Opportunity: CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin.

Utilization of Small and Minority Business: CONTRACTOR agrees that qualified small business and minority business enterprises shall have the maximum practicable opportunity to participate in the performance of EPA grant-assisted contracts and subcontracts.

Covenant Against Contingent Fees: CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty, DEPARTMENT shall have the right to annul this Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

Gratuities: If it is found, after notice and hearing, by DEPARTMENT that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by CONTRACTOR, or any agent of DEPARTMENT or of EPA with a view toward securing a Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of this Contract, DEPARTMENT may, by written notice to CONTRACTOR, terminate the right of CONTRACTOR to proceed under this Contract and/or may pursue such other rights and remedies provided by law or under this agreement; provided that the existence of the facts upon which DEPARTMENT makes such findings shall be in issue and may be reviewed in proceedings pursuant to the Remedies clause of this Contract.

In the event this Contract is terminated as provided in previous paragraph, DEPARTMENT shall be entitled (i) to pursue the same remedies against CONTRACTOR, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by DEPARTMENT), which shall be not less than three nor more than ten times the costs incurred by CONTRACTOR in providing any such gratuities to any such officer or employee.

Patents: If this Contract involves research, developmental, experimental, or demonstration work and any discovery or invention arises or is developed in the course of or under this Contract, such invention or discovery shall be subject to the reporting and rights provisions of Subpart D of 40 C.F.R. Part 30, in effect on the date of execution of this Contract including the Appendix of said Part 30. In such case, CONTRACTOR shall report the discovery or invention to EPA directly or through DEPARTMENT and shall otherwise comply with DEPARTMENT'S responsibilities in accordance with Subpart D of 40 C.F.R. Part 30. CONTRACTOR hereby agrees that the disposition of rights to inventions made under this Contract shall be in accordance with the terms and conditions of aforementioned Appendix. CONTRACTOR shall include provisions appropriate to effectuate the purposes of this condition in all subcontracts involving research, developmental, experimental, or demonstration work.

INSPECTIONS

A semi-final inspection will be held at the request of the Contractor, at completion of the project. Any deficiencies will be noted at that time. Contractor will address deficiencies and request final inspection. Final payment will be made if all work is found satisfactory and all required reports, drawings, etc. turned in and accepted.

PREVAILING WAGE REQUIREMENTS

Contract No. NAT12001-STR_REST – Ham Run Stream Restoration & Stormwater Retrofit is being funded by (refer to category which has been marked with an “X”):

 Federal Funds (100%). This will require that the prevailing wage rates as required by the Davis-Bacon Act and Related Acts (DBRA) be administered for this project. Refer to the following section entitled “Federal Prevailing Wage Requirements.”

 State Funds (100%). This will require that the prevailing wage rates as required by the Delaware Department of Labor be administered for this project. Refer to the following section entitled “State Prevailing Wage Requirements.”

 X State and Federal Funds. This will require that the higher rate between the State and Federal wage rates (or whichever rate benefits the employee the most) prevail. Refer to the following sections entitled “Federal Prevailing Wage Requirements” and “State Prevailing Wage Requirements” to make the appropriate determination and for related information.

➤ **FEDERAL PREVAILING WAGE REQUIREMENTS**

• **Who is Covered**

The Davis-Bacon and Related Acts (DBRA) are administered by the Wage and Hour Division. These Acts apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works.

• **Basic Provisions/Requirements**

The Davis-Bacon Act requires that all contractors and subcontractors performing on federal contracts (and contractors or subcontractors performing on federally assisted contracts under the related Acts) in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits listed in the contract’s Davis-Bacon wage determination for corresponding classes of laborers and mechanics employed on similar projects in the area. Davis-Bacon labor standards clauses must be included in covered contracts.

Apprentices may be employed at less than predetermined rates if they are in an apprenticeship program registered with the Department of Labor or with a state apprenticeship agency recognized by the Department. Trainees may be employed at less than predetermined rates if they are in a training program certified by the Department.

Contractors and subcontractors on prime contracts in excess of \$100,000 are required, pursuant to the Contract Work Hours and Safety Standards Act, to pay employees one and one-half times their basic rates of pay for all hours over 40 worked on covered contract work in a workweek. Covered contractors and subcontractors are also required to pay employees weekly and to submit weekly certified payroll records to the contracting agency. For the purposes of **Contract No. NAT12001-STR_REST – Ham Run Stream Restoration & Stormwater Retrofit** the employee work week SHALL NOT exceed 40 hours.

• **Employee Rights**

The Davis-Bacon and Related Acts provide laborers and mechanics on covered federally financed or assisted construction contracts the right to receive at least the locally prevailing wage rate and fringe benefits, as determined by the Department of Labor, for the type of work performed. The [Wage and Hour Division](#) and respective federal contracting agencies accept complaints of alleged Davis-Bacon violations.

Recordkeeping, Reporting, Notices and Posters

• Notices and Posters

Every employer performing work covered by the labor standards of the DBRA must post the WH-1321 [“Employee Rights Under the Davis-Bacon Act” poster](#) at the site of the work in a prominent and accessible place where it may be easily seen by employees. There is no particular size requirement. The wage determination must be similarly posted.

• Recordkeeping

Under the DBRA, covered contractors must maintain payroll and basic records for all laborers and mechanics during the course of the work and for a period of three years thereafter. Records to be maintained include:

- Name, address, and Social Security number of each employee
- Each employee's work classifications
- Hourly rates of pay, including rates of contributions or costs anticipated for fringe benefits or their cash equivalents
- Daily and weekly numbers of hours worked
- Deductions made
- Actual wages paid

If applicable, detailed information regarding various fringe benefit plans and programs, including records that show that the plan or program has been communicated in writing to the laborers and mechanics affected

If applicable, detailed information regarding approved apprenticeship or trainee programs
Some of the records required to be kept under the law are also required under the Fair Labor Standards Act. See Wage and Hour Division [Fact sheet #21: Recordkeeping Requirements under the Fair Labor Standards Act \(FLSA\)](#) .

• Reporting

Each covered contractor and subcontractor must, on a weekly basis, provide the federal agency a copy of all payrolls providing the information listed above under “Recordkeeping” for the preceding weekly payroll period. Each payroll submitted must be accompanied by a “Statement of Compliance.” The contractor, subcontractor or the authorized officer or employee of the contractor or subcontractor who supervises the payment of wages must sign the weekly statement. Statements of Compliance are to be made on the form [WH-347 "Payroll \(For Contractors Optional Use\)"](#) or on any form with identical wording. This must be completed within seven days after the regular pay date for the pay period.

Contractors may also be asked to submit, via survey, wage data that may be used by the Wage and Hour Division to determine the locally prevailing wage rates that will apply to workers on Davis-Bacon and DBRA-covered projects. The submission of wage data is encouraged, but voluntary. Contractors and others may use the [WD-10 Form, Report of Construction Contractor's Wage Rates](#) .

Penalties/Sanctions

Contractors or subcontractors found to have disregarded their obligations to employees, or to have committed aggravated or willful violations while performing work on Davis-Bacon covered projects, may be subject to contract termination and debarment from future contracts for up to three years. In addition, contract payments may be withheld in sufficient amounts to satisfy liabilities for unpaid wages and liquidated damages that result from overtime violations of the Contract Work Hours and Safety Standards Act (CWHSSA).

Contractors and subcontractors may challenge determinations of violations and debarment before an Administrative Law Judge. Contractors and subcontractors may appeal decisions by Administrative Law Judge's with the Department's Administrative Review Board. Final Board determinations on violations may be appealed to and are enforceable through the federal courts.

Falsification of certified payroll records or the required kickback of wages may subject a contractor or subcontractor to civil or criminal prosecution, the penalty for which may be fines and/or imprisonment.

DAVIS-BACON HEAVY WAGE RATES

General Decision Number: DE120009 01/20/2012 DE9

Superseded General Decision Number: DE20100012

State: Delaware

Construction Type: Heavy

County: New Castle County in Delaware.

| Modification Number | Publication Date |
|----------------------------|-------------------------|
| 0 | 01/06/2012 |
| 1 | 01/20/2012 |

| | <u>Rates</u> | <u>Fringes</u> |
|---|---------------------|-----------------------|
| CARP0454-005 07/01/2011 PILEDRIVERMAN: | \$ 38.15 | 28.27 |
| <i>Footnote: PAID HOLIDAYS: Washington's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day (provided the employee works the day before the holiday and the day after the holiday).</i> | | |
| CARP0626-002 05/01/2011 CARPENTER: | | |
| Carpenter | \$ 30.07 | 18.99 |
| Scaffold Building | \$ 30.82 | 18.99 |
| CARP1906-007 05/01/2011 MILLWRIGHT | \$ 33.47 | 27.23 |
| ELEC0313-001 06/01/2011 ELECTRICIAN | \$ 35.00 | 23.70 |
| ENGI0542-006 05/01/2011 Operating Engineers: | \$ 34.54 | \$21.27 |
| Bulldozer and Forklift: | \$ 34.54 | \$21.27 |
| <i>Footnote: PAID HOLIDAYS: Washington's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day (provided the employee works the day before the holiday and the day after the holiday).</i> | | |
| IRON0451-002 07/01/2009 Ironworkers: | | |
| Ornamental, Reinforcing, Rigger and Structural | \$ 31.60 | 23.90 |
| LABO0199-003 05/01/2009 Laborers: | | |
| Brick Mason Tender | \$ 22.80 | 13.30 |
| Common or General | \$ 22.80 | 13.30 |
| PAIN0021-027 05/01/2011 PAINTER, Bridge | \$ 39.31 | 16.39 |
| SUDE2007-005 08/16/2007 CEMENT MASON/CONCRETE FINISHER | \$ 22.92 | 2.88 |
| LABORER: Pipelayer | \$ 17.43 | 4.51 |
| OPERATOR: Backhoe | \$ 24.58 | 9.87 |
| OPERATOR: Crane | \$ 23.83 | 12.13 |

| | | |
|---------------------------------|----------|------|
| OPERATOR: Excavator | \$ 24.99 | 3.85 |
| OPERATOR: Loader | \$ 21.83 | 7.30 |
| OPERATOR: Roller | \$ 18.94 | 3.25 |
| TRUCK DRIVER: Dump Truck | \$ 16.11 | 1.68 |

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

➤ **STATE PREVAILING WAGE REQUIREMENTS**

Wage Provisions: In accordance with Delaware Code, Title 29, Section 6960, renovation projects whose total cost shall exceed \$15,000, and \$100,000 for new construction, the minimum wage rates for various classes of laborers and mechanics shall be as determined by the Department of Labor, Division of Industrial Affairs of the State of Delaware.

The prevailing wage shall be the wage paid to a majority of employees performing similar work as reported in the Department’s annual prevailing wage survey or in the absence of a majority, the average paid to all employees reported.

The employer shall pay all mechanics and labors employed directly upon the site of work, unconditionally and not less often than once a week and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the specifications, regardless of any contractual relationship which may be alleged to exist between the employer and such laborers and mechanics.

The scale of the wages to be paid shall be posted by the employer in a prominent and easily accessible place at the site of the work.

Every contract based upon these specifications shall contain a stipulation that sworn payroll information, as required by the Department of Labor, be furnished weekly. The Department of Labor shall keep and maintain the sworn payroll information for a period of 6 months from the last day of the work week covered by the payroll.

A “Request for Certified Prevailing Wage Rates” has been submitted to the Delaware Department of Labor for this project. These rates will be provided to all contractors in attendance at the mandatory pre-bid meeting.

STANDARD SPECIFICATIONS

The specifications shown in the construction design plans, general provisions, standard specifications and special provisions will prevail on this job. Any questions concerning specifications should be directed to the Department.

CONSTRUCTION PLANS AND SPECIFICATIONS

Construction plans prepared by JMT entitled “Ham Run Stream Restoration & Stormwater Retrofit” (sealed 6/24/11) shall govern the construction and specifications of this project.

UNIT QUANTITY ESTIMATE SHEET

Contractors bidding on this project are responsible for determining the actual materials and unit quantities required for this project. The Unit Quantity Estimate Sheet shown below prepared by JMT only serves as a guide and its accuracy is not guaranteed.

| Item No. | Item Description | Quantity | Unit |
|----------|---|----------|------|
| | CLEARING AND GRUBBING | N/A | L.S. |
| | CHANNEL EXCAVATION | 1025 | C.Y. |
| | REINFORCED SILT FENCE | 90 | 90 |
| | SUMP PIT, TYPE 1 | 4 | EA |
| | STREAM DIVERSION | N/A | LS |
| | STABILIZED CONSTRUCTION ENTRANCE | 60 | 20 |
| | DEWATERING BAG | 1 | 1 |
| | TEMPORARY TIMBER MAT | N/A | LS |
| | REINFORCED CONCRETE PIPE, 12", CLASS IV | 12 | L.F. |
| | REINFORCED CONCRETE PIPE, 18", CLASS IV | 51 | L.F. |
| | PVC PIPE, 4" | 15 | L.F. |
| | REINFORCED CONCRETE END SECTION | 2 | EA |
| | DRAINAGE INLET, 34" X 18" | 2 | EA |
| | MANHOLE, ROUND | 2 | EA |
| | RIPRAP, R-4 | 20 | S.Y. |
| | CHANNEL BED FILL | 42 | C.Y. |
| | CROSS VANE | 17 | EA |
| | BOULDER BANK STABILIZATION | 42 | TON |
| | TOPSOIL, 4" DEPTH | 1329 | S.Y. |
| | PLANTING | 22 | EA |
| | SEED MIX #2 | 259 | S.Y. |
| | SEED MIX #7 | 525 | S.Y. |
| | SOIL RETENTION BLANKET MULCH, TYPE 4 | 752 | S.Y. |
| | LIVE FASCINES | 135 | L.F. |
| | LIVE STEM STAKING | 179 | EACH |

SPECIAL PROVISIONS

SCOPE:

- 1) The work to be performed under this Contract includes, but is not limited to, furnishing all materials, labor, equipment, tools, plants, seed, superintendence, transportation and performing all work in strict accordance with these Specifications and Plans.
- 2) The work consists of stabilizing the stream channel and banks with rock, logs and vegetation; creating j-hooks, cross vanes, boulder bank/toe protection; grade controls; planting and seeding; and completing all of the necessary incidentals described and illustrated in the Contract Documents.
- 3) The work shall be performed under contract and the supervision of the Delaware Department of Natural Resources and Environmental Control (DNREC) or their assignee. The term "Delaware Department of Natural Resources and Environmental Control" throughout these Special Provisions shall be included to mean Delaware Department of Natural Resources and Environmental Control's assignee.
- 4) The work shall be completed in all its parts and ready for use in the working days specified and in strict accordance with the terms and conditions of the Contract Documents. Any deviation shall be subject to the approval of Delaware Department of Natural Resources and Environmental Control.
- 5) The Contractor shall adhere to the terms of the various permits issued to this project. This shall include permits from the U.S. Army Corps of Engineers, the Delaware Department of Natural Resources and Environmental Control, and any other applicable permits.
- 6) The Contractor shall assume all responsibility for the project and construction site until accepted by the Delaware Department of Natural Resources and Environmental Control.
- 7) The Contractor shall be prepared to execute a finished project in every particular without any extra charge, unless specifically provided for within the Contract.
- 8) The contractor must provide for the safe and contiguous maintenance of both vehicular and pedestrian traffic throughout the project site and to minimize accidents and accident severity, while at the same time minimizing inconvenience to the traveling public and the Contractor. All work shall be performed in accordance with Subsection 014.09 Maintaining Traffic within Section 104 – Scope of Work of the Delaware Department of Transportation Standard Specifications 2001.
- 9) Work shall be completed according to the Delaware Department of Transportation, Standard Specifications 2001. In case of conflict with other portions of the Specifications, the Special Provisions shall govern. The Special Provisions are hereby made a part of this Contract.

PROJECT SITE:

- 1) The project site is located in New Castle County, Delaware. The project site parallels Duncan Road and is located northwest of the intersection of Greenbank Road and Duncan Road (south of the Kirkwood Highway).
- 2) The project site boundaries are illustrated on the plans as the Limit of Construction. The Contractor shall perform all activities related to this contract within the Limits of Construction. Due to the proximity of the improved properties, the Contractor shall exercise extreme care in this construction operation. Final adjustment of the LOC will be made at the pre-construction meeting with approval from Delaware Department Natural Resources and Environmental Control.
- 3) The project site shall be accessed through the designated access point illustrated on the Plans. The Contractor is responsible for maintaining access throughout all construction activities. Upon completion of all construction activities, the area is to be restored to a condition equal to or better than found prior to undertaking work.
- 4) The existing elevations and contours shown on the plans, cross sections, and profiles were surveyed in 2007. Existing elevations and grades may have changed since the original survey was completed due to erosion, sediment accretion, and fill. It is the Contractor's responsibility to confirm existing grades and adjust quantities, earthwork, and work efforts as necessary at no additional cost to DNREC.
- 5) The Contractor, before submitting a proposal for this project, shall visit the construction site and thoroughly familiarize himself/herself with all existing conditions above and below ground. The Contractor shall satisfy himself/herself as to the accuracy and completeness of these Specifications and Plans regarding the nature and extent of the work described.
- 6) The Contractor shall make all field measurements necessary to lay out the lines and grades as called for in the Plans. The Contractor shall lay out the lines of work, limits of grading, elevations, and locations of specific items of work.
- 7) Should there be any discrepancies between the Plans, Specifications and/or field conditions after bidding and prior to beginning work, the Contractor shall bring such discrepancies to the attention of DNREC at the preconstruction meeting.
- 8) THERE SHALL BE NO CLEARING OR REMOVAL OF ANY TREES, OTHER THAN THOSE INDICATED ON THE PLANS BY GRADING OR AS DIRECTED BY DNREC.
- 9) The Contractor shall exercise care in activities involving either cut and fill or grading in the vicinity of trees at the construction site. All earth cuts in the vicinity of trees not identified for removal shall be made in a manner that does not disturb the root system within the drip line of the tree.
- 10) The Contractor is responsible for any damage to existing utilities that may occur as a result of this operation. Any damage to existing structures, including existing sewer pipes/manholes, storm drain pipes/structures shall be immediately repaired to DNREC's satisfaction by the Contractor at his/her own expense. If a sanitary sewer line break occurs, the contractor must also immediately notify the New Castle County Sewer Emergency Service at (302) 395-5700.
- 11) The Contractor shall take all necessary precautions and measures to protect all properties from damage. The Contractor shall repair all damage caused by his/her operations to all public and private property and leave the property in good condition and/or at least equivalent to the conditions found.
- 12) The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of his/her employees as may be necessary to comply with requirements and regulations of the Delaware Department of Transportation Standard Specifications 2001, or other authorities having jurisdiction and shall commit no public nuisance.

- 13) The Contractor shall, at all times, keep the premises free from accumulation of waste materials and rubbish, surplus materials, etc., and shall leave the work area completely clean.
- 14) The work under this Contract includes all necessary temporary items required for good, safe, and sanitary construction practice and administration of the project. These requirements are subject to the approval of DNREC.
- 15) All incidental work required by the Contract Documents for which no payment is specifically provided, and any work or materials not specified therein which are required to complete the work, and which may fairly be implied as included in the Contract, and which DNREC shall judge to be so included, shall be performed and furnished by the Contractor without additional compensation from DNREC.
- 16) Prior to start of work, the Contractor shall submit the source of materials, including rock and logs, to DNREC for review. No work shall be performed until the source of material is approved by DNREC.
- 17) The use of a mini excavator with a "live" hydraulic thumb, opposing the bucket is recommended for the correct and efficient placement of all rock and channel substrate material.

MEASUREMENT AND PAYMENT:

- 1) This project will be bid as a lump sum price.

END OF SECTION

***** THE FOLLOWING PAGES, "PROPOSAL AND SCHEDULE OF PRICES" AND "BID SECURITY" REQUIREMENTS MUST BE FILLED OUT AND RETURNED TO CONSTITUTE SUBMITTING A BID.**

PROJECT NAME: **Ham Run Stream Restoration & Stormwater Retrofit**

DNREC Contract No. **NAT12001-STR REST**

Bid Opening: Date: **Monday, August 13, 2012**

Time: **3:00 p.m. EST**

Location of Bid Opening: **Conservation Center**
2430 Old County Road, Newark, DE 19702

Location of Proposed Work: **Greenbank and Duncan Road, Delaware**
County: **New Castle**

Performance & Payment Bond: **REQUIRED** – 100% of contract amount

PROPOSAL AND SCHEDULE OF PRICES

The undersigned bidder has carefully examined the site of the proposed work, Standard Specifications, General and Special Provisions, Drawings and Addenda, if any, forming a part of this contract designated as **Contract No. NAT12001-STR_REST**. Upon notice of award by the DEPARTMENT, the Bidder agrees to execute a contract within **20** calendar days which shall incorporate said plans and specifications, and further, upon notice to proceed shall, at his own cost and expense, furnish the materials, supplies, machinery, equipment, tools, labor, supervision, insurance, any other accessories and services to complete said work either with his own organization or subcontractors. The work shall be completed to the satisfaction of the DEPARTMENT in accordance with the plans, specifications and terms of the contract for the lump sum and/or unit prices for the items on the preceding proposal page(s).

Addendum Number(s)_____ have been considered.

*****NOTE - It is the contractor's responsibility to check if any Addendum(s) have been issued and include them in his bid price(s).**

Total Amount of Proposal: \$ _____
(Amount in figures)

(Amount written in words)

For Individuals and Partnerships:

Witness

Contractor SEAL
Address: _____

For Corporations:

Witness

Name of Corporation & Corporate Seal

Signature of Officer & Title
Address: _____

**STATE OF DELAWARE
BID BOND**

TO ACCOMPANY PROPOSAL
(Not necessary if security is used)

KNOW ALL MEN BY THESE PRESENTS That: _____
_____ of _____ in the County of _____
_____ and State of _____ as **Principal**, and _____
_____ of _____ in the County of _____
and State of _____ as **Surety**, legally authorized to do business in the State of
Delaware ("**State**"), are held and firmly unto the **State** in the sum of _____
_____ Dollars (\$ _____), or _____ percent not to
exceed _____
Dollars (\$ _____) of amount of bid on Contract No. _____, to be
paid to the **State** for the use and benefit of _____ (*insert State
agency name*) for which payment well and truly to be made, we do bind ourselves, our and
each of our heirs, executors, administrators, and successors, jointly and severally for and in the
whole firmly by these presents.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH That if the above bonded
Principal who has submitted to the _____ (*insert State agency
name*) a certain proposal to enter into this contract for the furnishing of certain material and/or
services within the **State**, shall be awarded this Contract, and if said **Principal** shall well and
truly enter into and execute this Contract as may be required by the terms of this Contract and
approved by the _____ (*insert State agency name*)
this Contract to be entered into within twenty days after the date of official notice of the award
thereof in accordance with the terms of said proposal, then this obligation shall be void or else
to be and remain in full force and virtue.

Sealed with _____ seal and dated this _____ day of _____ in the year of our
Lord two thousand and _____ (20____).

SEALED, AND DELIVERED IN THE
Presence of

| | | |
|-------------------|-----|--|
| | | _____ Name of Bidder (Organization) |
| Corporate Seal | By: | _____ Authorized Signature |
| Attest _____ | | _____ Title |
| | | _____ Name of Surety |
| Witness: _____ | By: | _____ Title |

**STATE OF DELAWARE
PAYMENT BOND**

Bond Number: _____

KNOW ALL PERSONS BY THESE PRESENTS, that we, _____, as principal ("**Principal**"), and _____, a _____ corporation, legally authorized to do business in the State of Delaware, as surety ("**Surety**"), are held and firmly bound unto the _____ ("**Owner**") (*insert State agency name*), in the amount of _____ (\$_____), to be paid to **Owner**, for which payment well and truly to be made, we do bind ourselves, our and each and every of our heirs, executors, administrations, successors and assigns, jointly and severally, for and in the whole firmly by these presents.

Sealed with our seals and dated this _____ day of _____, 20__.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH, that if **Principal**, who has been awarded by **Owner** that certain contract known as Contract No. _____ dated the _____ day of _____, 20__ (the "Contract"), which Contract is incorporated herein by reference, shall well and truly pay all and every person furnishing materials or performing labor or service in and about the performance of the work under the Contract, all and every sums of money due him, her, them or any of them, for all such materials, labor and service for which **Principal** is liable, shall make good and reimburse **Owner** sufficient funds to pay such costs in the completion of the Contract as **Owner** may sustain by reason of any failure or default on the part of **Principal**, and shall also indemnify and save harmless **Owner** from all costs, damages and expenses arising out of or by reason of the performance of the Contract and for as long as provided by the Contract; then this obligation shall be void, otherwise to be and remain in full force and effect.

Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of **Surety** and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition or change in or to the Contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any work to be performed or any monies due or to become due thereunder; and **Surety** hereby waives notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to **Surety** as though done or omitted to be done by or in relation to **Principal**.

Surety hereby stipulates and agrees that no modifications, omission or additions in or to

the terms of the Contract shall in any way whatsoever affect the obligation of **Surety** and its bond.

Any proceeding, legal or equitable, under this Bond may be brought in any court of competent jurisdiction in the State of Delaware. Notices to **Surety** or Contractor may be mailed or delivered to them at their respective addresses shown below.

IN WITNESS WHEREOF, **Principal** and **Surety** have hereunto set their hand and seals, and such of them as are corporations have caused their corporate seal to be hereto affixed and these presents to be signed by their duly authorized officers, the day and year first above written.

PRINCIPAL

Name: _____

Witness or Attest: Address: _____

Name:

(Corporate Seal)

By: _____(SEAL)
Name:
Title:

SURETY

Name: _____

Witness or Attest: Address: _____

Name:

(Corporate Seal)

By: _____(SEAL)
Name:
Title:

**STATE OF DELAWARE
PERFORMANCE BOND**

Bond Number: _____

KNOW ALL PERSONS BY THESE PRESENTS, that we, _____,
as principal (“**Principal**”), and _____, a
_____ corporation, legally authorized to do business in the State
of Delaware, as surety (“**Surety**”), are held and firmly bound unto the
_____ (“**Owner**”) (*insert State agency
name*), in the amount of _____ (\$_____), to be paid to **Owner**,
for which payment well and truly to be made, we do bind ourselves, our and each and
every of our heirs, executors, administrations, successors and assigns, jointly and
severally, for and in the whole, firmly by these presents.

Sealed with our seals and dated this _____ day of _____, 20__.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH, that if **Principal**, who has
been awarded by **Owner** that certain contract known as Contract No. _____
dated the _____ day of _____, 20__ (the “Contract”), which Contract is
incorporated herein by reference, shall well and truly provide and furnish all materials,
appliances and tools and perform all the work required under and pursuant to the terms
and conditions of the Contract and the Contract Documents (as defined in the Contract)
or any changes or modifications thereto made as therein provided, shall make good and
reimburse **Owner** sufficient funds to pay the costs of completing the Contract that
Owner may sustain by reason of any failure or default on the part of **Principal**, and
shall also indemnify and save harmless **Owner** from all costs, damages and expenses
arising out of or by reason of the performance of the Contract and for as long as
provided by the Contract; then this obligation shall be void, otherwise to be and remain
in full force and effect.

Surety, for value received, hereby stipulates and agrees, if requested to do so by
Owner, to fully perform and complete the work to be performed under the Contract
pursuant to the terms, conditions and covenants thereof, if for any cause **Principal** fails
or neglects to so fully perform and complete such work.

Surety, for value received, for itself and its successors and assigns, hereby stipulates
and agrees that the obligation of **Surety** and its bond shall be in no way impaired or
affected by any extension of time, modification, omission, addition or change in or to the
Contract or the work to be performed thereunder, or by any payment thereunder before
the time required therein, or by any waiver of any provisions thereof, or by any
assignment, subletting or other transfer thereof or of any work to be performed or any
monies due or to become due thereunder; and **Surety** hereby waives notice of any and
all such extensions, modifications, omissions, additions, changes, payments, waivers,
assignments, subcontracts and transfers and hereby expressly stipulates and agrees
that any and all things done and omitted to be done by and in relation to assignees,
subcontractors, and other transferees shall have the same effect as to **Surety** as
though done or omitted to be done by or in relation to **Principal**.

Surety hereby stipulates and agrees that no modifications, omissions or additions in or to the terms of the Contract shall in any way whatsoever affect the obligation of **Surety** and its bond.

Any proceeding, legal or equitable, under this Bond may be brought in any court of competent jurisdiction in the State of Delaware. Notices to **Surety** or Contractor may be mailed or delivered to them at their respective addresses shown below.

IN WITNESS WHEREOF, **Principal** and **Surety** have hereunto set their hand and seals, and such of them as are corporations have caused their corporate seal to be hereto affixed and these presents to be signed by their duly authorized officers, the day and year first above written.

PRINCIPAL

Name: _____

Witness or Attest: Address: _____

(SEAL)

Name:

(Corporate Seal)

By: _____

Name:

Title:

SURETY

Name: _____

Witness or Attest: Address: _____

(SEAL)

Name:

(Corporate Seal)

By: _____

Name:

Title: