



## State of New Jersey

DEPARTMENT OF TRANSPORTATION

P.O.Box 600

Trenton, New Jersey 08625-0600

JON S. CORZINE  
*Governor*

KRIS KOLLURI, Esq.  
*Commissioner*

February 28, 2008

Mr. Kean Burenga, President  
Black River & Western Railroad  
P.O. Box 200  
Ringoos, NJ 08551

Dear Mr. Burenga:

To permit a more thorough and timely review of eligible rail construction project costs, the Bureau of Rail Services is initiating several changes that pertain to the submission of invoices to the New Jersey Department of Transportation. Effective this date, each agreement project contractor shall enclose with the State of New Jersey Payment Voucher (Vendor Invoice) form supporting documentation that includes the following:

1. A detailed description of the work effort covered by the specific invoice. Please include rail line mileposts for project start and ending points.
2. A certified payroll schedule listing all employees of the contractor (railroad) and any subcontractors, separately, who performed direct work activity on the specific project. The schedule shall include employee name, work title, hourly wage rate, hours worked and employee cost.
3. A detailed summary of expendable materials consumed and equipment rentals used on the project during the invoice period.
4. A copy of any invoices received from either a project subcontractor or vendor.

The changes noted above will be incorporated into new rail construction agreement packages being issued by the Department.

Please contact Mr. James Badgley, Manager, Bureau of Rail Services, at 609-530-8026 if there are any questions.

As always, your assistance in this matter is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Robert Miller".

Robert Miller, Director  
Division of Multimodal Services

## APPENDIX A NONDISCRIMINATION

During the performance of this Agreement, the Railroad, for itself, its assignees and successors in interest (hereinafter referred to as the "Railroad"), agrees as follows:

1. Compliance with Regulations: The Railroad will comply with Regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21 through Appendix H, and Title 23CFR Part 710.405(b), hereinafter referred to as the Regulations), which are incorporated herein by reference and made a part of this Agreement.
2. Nondiscrimination: The Railroad, with regard to the work performed by it after award and prior to completion of the work, will not discriminate on the basis of race, color, age, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Railroad will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Railroad for work to be performed under a subcontract, including procurement of materials or equipment, such potential subcontractor or supplier shall be notified by the Railroad of the Railroad's obligations under this Agreement and the Regulations relative to nondiscrimination on the basis of race, color, age, sex or national origin.
4. Information and Reports: The Railroad will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Railroad is in the exclusive possession of another who fails or refuses to furnish this information, the Railroad shall so certify to the State or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the Railroad's noncompliance with the nondiscrimination provisions of this contract, the STATE shall impose such sanctions as are appropriate and available under the laws of the STATE.
6. Incorporation of Provisions: The Railroad will include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders or instructions, issued pursuant thereto.
7. This Agreement is subject to all federal, state, and local laws, rules, and regulations, including, but not limited to, those pertaining to non-discrimination in employment and affirmative action for equal employment opportunity.
8. If at any time following the execution of this Agreement, the Railroad intends to sublet any additional portion(s) of the work or intends to purchase materials or

lease equipment not contemplated during the original proposal preparation, the Railroad shall:

- a. Notify the project initiator, in writing, of the type and approximate value of the work which the Railroad intends to accomplish by such subcontract, purchase order or lease.
- b. Give DBE firms equal consideration with non-minority firms in negotiations for any such subcontracts, purchase orders or leases.

APPENDIX B  
STATE OF NEW JERSEY  
AFFIRMATIVE ACTION RULES FOR PROFESSIONAL SERVICE CONTRACTS

The parties to this Agreement understand that the provisions of (L. 1975, C. 127 (N.J. A.C. 17:27), as amended and supplemented) dealing with Affirmative Action Rules on public contracts, and the rules and regulations promulgated pursuant thereto, are a part of this Agreement and are binding on them.

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

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. 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, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, up-grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor or subcontractor, where applicable, agrees to comply with the regulations promulgated by the Treasurer pursuant to P.L.1975, c. 127 as amended and supplemented from time to time and the Americans with Disabilities Act. 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.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975,c.127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the treasurer pursuant to p.. 1975,c.127, as amended and supplemented from time to time.

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. 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. The contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, 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. The contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (NJAC 17:27).

APPENDIX C  
NJDOT CODE OF ETHICS FOR VENDORS

1. No vendor\* shall employ any NJDOT officer or employee in the business of the Vendor or professional activity in which the vendor is involved with the Department officer or employee.
2. No vendor shall offer or provide any interest, financial or otherwise, direct or indirect, in the business of the vendor or professional activity in which the vendor is involved with the Department officer or employee.
3. No vendor shall cause or influence, or attempt to cause or influence any NJDOT employee or officer in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of that NJDOT officer or employee.
4. No vendor shall cause or influence, or attempt to cause or influence, any NJDOT officer or employee to use or attempt to use his or her official position to secure any unwarranted privileges or advantages for that vendor or for any other person.
5. No vendor shall offer any NJDOT officer or employee any gift, favor, service or other thing of value under circumstances from which it might be reasonable inferred that such gift, service or other thing of value was given or offered for the purpose of influencing the recipient in the discharge of his or her official duties. In addition, employees or officers of NJDOT will not be permitted to accept breakfasts, lunches, dinners, alcoholic beverages, tickets to entertainment and/or sporting events or any other item which could be construed as having more than nominal value.  
NOTE: This section would permit an NJDOT employee or officer to accept food or refreshments of relatively low monetary value provided during the course of a meeting, conference or other occasion where the employee is properly in attendance (for example—coffee, danish, tea or soda served during a conference break). Acceptance of unsolicited advertising or promotional materials of nominal value (such as inexpensive pens, pencils or calendars) would also be permitted.  
Any questions as to what is or is not acceptable or what constitutes proper conduct for a Departmental employee or officer should be referred to the Department's Ethics Liaison Officer or his or her designee.
6. This code is intended to augment, not to replace, existing administrative orders and the current Departmental Code of Ethics.
7. This code shall take effect immediately upon approval of the N.J. Executive Commission on Ethical Standards and adoption by the NJDOT.

\* Vendor is defined as any general contractor, subcontractor, consultant, person, firm, corporation or organization engaging in or seeking to do business with NJDOT.

APPENDIX D  
AMERICANS WITH DISABILITIES ACT

Equal Opportunity For Individuals With Disabilities.

The Railroad and the STATE do hereby agree that the provisions of Title II of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. Sec. 12101 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the STATE pursuant to this contract, the Railroad agrees that the performance shall be in strict compliance with the Act. In the event that the Railroad, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the Railroad shall defend the STATE in any action or administrative proceeding commenced pursuant to this Act. The Railroad shall indemnify, protect, and save harmless the STATE, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The Railroad shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith.

In any and all complaints brought pursuant to the STATE'S grievance procedure, the Railroad agrees to abide by any decision of the STATE which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the STATE or if the STATE incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the Railroad shall satisfy and discharge the same at its own expense.

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

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

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