



Request for Proposal 09-X-20634

For: One Call Damage Prevention System NJBPU

Event	Date	Time
Bidder's Electronic Question Due Date (Refer to RFP Section 1.3.1 for more information.)	April 14, 2009	5:00 PM
Mandatory Pre-bid Conference	NA	NA
Mandatory Site Visit	NA	NA
Bid Submission Due Date (Refer to RFP Section 1.3.2 for more information.)	May 7, 2009	2:00 PM

Dates are subject to change. All changes will be reflected in Addenda to the RFP posted on the Division of Purchase and Property website.

Small Business Set-Aside (Refer to RFP Section 4.4.2.2 for more information.)	Status <input type="checkbox"/> Not Applicable	Category <input checked="" type="checkbox"/> I <input checked="" type="checkbox"/> II <input checked="" type="checkbox"/> III
	<input type="checkbox"/> Entire Contract	
	<input type="checkbox"/> Partial Contract	
	<input checked="" type="checkbox"/> Subcontracting Only	

RFP Issued By

State of New Jersey
Department of the Treasury
Division of Purchase and Property
Trenton, New Jersey 08625-0230

Using Agency

State of New Jersey
New Jersey Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Date: April 6, 2009

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November 12, 2008

**IMPORTANT NOTICE -
NEW "PAY-TO-PLAY" RESTRICTIONS TO TAKE EFFECT NOVEMBER 15, 2008**

Note: This is for informational purposes only. Certification is to be completed upon award.

Governor Jon S. Corzine recently signed Executive Order No. 117, which is designed to enhance New Jersey's efforts to protect the integrity of government contractual decisions and increase the public's confidence in government. The Executive Order builds on the provisions of P.L. 2005, c. 51 ("Chapter 51"), which limits contributions to certain political candidates and committees by for-profit business entities that are, or seek to become, State government vendors.

Executive Order No. 117 extends the provisions of Chapter 51 in two ways:

1. The definition of "business entity" is revised and expanded so that contributions by the following individuals also are considered contributions attributable to the business entity:
 - Officers of corporations and professional services corporations, with the term "officer" being defined in the same manner as in the regulations of the Election Law Enforcement Commission regarding vendor disclosure requirements (N.J.A.C. 19:25-26.1), with the exception of officers of non-profit entities;
 - Partners of general partnerships, limited partnerships, and limited liability partnerships and members of limited liability companies (LLCs), with the term "partner" being defined in the same manner as in the regulations of the Election Law Enforcement Commission regarding vendor disclosure requirements (N.J.A.C. 19:25-26.1); and
 - Spouses, civil union partners, and resident children of officers, partners, LLC members and persons owning or controlling 10% or more of a corporation's stock are included within the new definition, except for contributions by spouses, civil union partners, or resident children to a candidate for whom the contributor is eligible to vote or to a political party committee within whose jurisdiction the contributor resides.
2. Reportable contributions (those over \$300.00 in the aggregate) to legislative leadership committees, municipal political party committees, and candidate committees or election funds for Lieutenant Governor are disqualifying contributions in the same manner as reportable contributions to State and county political party committees and candidate committees or election funds for Governor have been disqualifying contributions under Chapter 51.

Executive Order No. 117 applies only to contributions made on or after November 15, 2008, and to contracts executed on or after November 15, 2008.

Updated forms and materials are currently being developed and will be made available on the website as soon as they are available. In the meantime, beginning November 15, 2008, prospective vendors will be required to submit, in addition to the currently required Chapter 51 and Chapter 271 forms, the Certification of Compliance with Executive Order No. 117. The Certification of Compliance form for Executive Order No. 117 can be found here:

http://www.state.nj.us/treasury/purchase/forms/EO_117_NOTICE.doc

1.0 INFORMATION FOR BIDDERS

1.1 PURPOSE AND INTENT

This Request for Proposal (RFP) is issued by the Purchase Bureau, Division of Purchase and Property, Department of the Treasury on behalf of New Jersey Board of Public Utilities (NJBPU). The purpose of this RFP is to solicit bid proposals for a contractor to provide the NJBPU with the New Jersey One-Call Damage Prevention System to prevent Damage to underground facilities. The N.J. One-Call Damage Prevention System provides statewide protection of all underground facilities that are used for the conveyance of water, forced sewerage, telecommunications, cable television, electricity, oil, petroleum products, gas optical signals, traffic control, or for the transportation of hazardous liquid subject to the "Hazardous Liquid Pipeline Safety Act of 1979". The One-Call Damage Prevention System is a single statewide notification system that receives notice from excavators of intended excavation or demolition activities and then transmits those notices to operators of underground facilities in the area of proposed excavation or demolition.

The intent of this RFP is to award (a) contract to that responsible bidder whose bid proposals, conforming to this RFP is most advantageous to the State, price and other factors considered. However, the State reserves the right to separately procure individual requirements that are the subject of the contract during the contract term, when deemed by the Director to be in the State's best interest.

The NJ Standard Terms & Conditions version 07/27/07 will apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in this RFP and should be read in conjunction with them unless the RFP specifically indicates otherwise.

1.2 BACKGROUND

Introduction. Effective November 17, 1994, the Underground Facility Protection Act ("UFPA") (see Attachment 1), N.J.S.A. 48:2-73 et seq., established a comprehensive "One-Call Damage Prevention System" to reduce the frequency of damage to underground facilities caused by excavation and demolition activity. Pursuant to N.J.S.A. 48:2-74 and 76, the Board of Public Utilities was given the authority to designate the operator of, and provide policy oversight to, the "One-Call System" and to promulgate any necessary regulations to implement the provisions of the Act.

Pursuant to N.J.S.A. 48:2-77, the Board was required to designate as System Operator the Garden State Underground Plant Location Service ("GSUPLS"), a non-profit corporation, for an interim period of two years, subsequently extended by three more years to 1999. Beyond the interim period the Board determined to advertise the position of System Operator in the New Jersey Register and in newspapers of general circulation as set out in N.J.A.C. 14:2-31. This was done in 1999, and since November 1999 One-Call Systems, Inc. has been the System Operator. The term of that contract ends this year, and, accordingly, proposals are now being sought from parties interested in being the System Operator for the "One-Call Damage Prevention System" consistent with the statutory responsibilities of the System Operator. The System Operator has the statutory responsibilities of receiving incoming notifications from excavators, transmitting the notice to the appropriate operators of underground facilities and educating excavators and members of the public about the requirements of the Act, all as herein described.

The contractor is subject to the oversight of the Board or its designee, including final decision on any proposed schedule of fees charged to operators. Additionally, any contracts or sub-contracts

with vendors of goods or services to be paid out of operator fees shall be submitted to the Board or its designee for approval. Proposed budgets, monthly or quarterly reports may also be required to be approved and/or submitted.

The contractor shall not, without prior approval of the Board or its designee, provide any facility mark-outs, pre-screening, or screening to underground facility operators. For the purpose of this paragraph, "pre-screening" and "screening" are defined to mean reviewing tickets to confirm that an underground facility is not located at the proposed dig site.

Designation of a System Operator for the five year term from November 17, 2009 to November 16, 2014 will be made based on the determination that the contractor chosen will best operate the System to achieve the purposes of the Act. In evaluating the proposals, the Board will look at each element of the proposal to determine whether the best possible means of implementing the statute's requirements is being used.

This is a reprourement of the New Jersey One-Call Damage Prevention System term contract. The current contract is a BPU contract and is presently due to expire on **November 17, 2009**. This contract is included in this RFP as Attachment 2.

1.3 KEY EVENTS

1.3.1 ELECTRONIC QUESTION AND ANSWER PERIOD

The Purchase Bureau will accept questions and inquiries from all potential bidders electronically via web form. To submit a question, please go to Current Bid Opportunities webpage or to <http://ebid.nj.gov/QA.aspx>

Questions should be directly tied to the RFP and asked in consecutive order, from beginning to end, following the organization of the RFP. Each question should begin by referencing the RFP page number and section number to which it relates.

Bidders are not to contact the Using Agency directly, in person, by telephone or by email, concerning this RFP.

The cut-off date for electronic questions and inquiries relating to this RFP is indicated on the cover sheet. Addenda to this RFP, if any, will be posted on the Purchase Bureau website after the cut-off date (see Section 1.4.1. of this RFP for further information.)

1.3.2 SUBMISSION OF BID PROPOSAL

In order to be considered for award, the bid proposal must be received by the Purchase Bureau of the Division of Purchase and Property at the appropriate location by the required time. **ANY BID PROPOSAL NOT RECEIVED ON TIME AT THE LOCATION INDICATED BELOW WILL BE REJECTED. THE DATE AND TIME IS INDICATED ON THE COVER SHEET. THE LOCATION IS AS FOLLOWS:**

BID RECEIVING ROOM - 9TH FLOOR
PURCHASE BUREAU
DIVISION OF PURCHASE AND PROPERTY
DEPARTMENT OF THE TREASURY
33 WEST STATE STREET, P.O. BOX 230
TRENTON, NJ 08625-0230

Directions to the Purchase Bureau can be found at the following web address:
<http://www.state.nj.us/treasury/purchase/directions.htm>.

Note: Bidders using USPS Regular or Express mail services should allow additional time since USPS mail deliveries are not delivered directly to the Purchase Bureau.

Procedural inquiries on this RFP may be directed to RFP.procedures@treas.state.nj.us. This e-mail address may also be used to submit requests to review bid documents. The State will not respond to substantive questions related to the RFP or any other contract via this e-mail address.

To submit an RFP or contract related question, go to the Current Bidding Opportunities webpage or to <http://ebid.nj.gov/QA.aspx>.

1.4 ADDITIONAL INFORMATION

1.4.1 ADDENDA: REVISIONS TO THIS RFP

In the event that it becomes necessary to clarify or revise this RFP, such clarification or revision will be by addendum. Any addendum to this RFP will become part of this RFP and part of any contract awarded as a result of this RFP.

ALL RFP ADDENDA WILL BE ISSUED ON THE DIVISION OF PURCHASE AND PROPERTY WEB SITE. TO ACCESS ADDENDA, SELECT THE BID NUMBER ON THE BIDDING OPPORTUNITIES WEB PAGE AT THE FOLLOWING ADDRESS:

<http://www.state.nj.us/treasury/purchase/bid/summary/bid.shtml>.

There are no designated dates for release of addenda. Therefore interested bidders should check the Purchase Bureau "Bidding Opportunities" website on a daily basis from time of RFP issuance through bid opening.

It is the sole responsibility of the bidder to be knowledgeable of all addenda related to this procurement.

1.4.2 BIDDER RESPONSIBILITY

The bidder assumes sole responsibility for the complete effort required in submitting a bid proposal in response to this RFP. No special consideration will be given after bid proposals are opened because of a bidder's failure to be knowledgeable as to all of the requirements of this RFP.

1.4.3 COST LIABILITY

The State assumes no responsibility and bears no liability for costs incurred by a bidder in the preparation and submittal of a bid proposal in response to this RFP.

1.4.4 CONTENTS OF BID PROPOSAL

Subsequent to bid opening, all information submitted by bidders in response to the bid solicitation is considered public information, except as may be exempted from public disclosure by the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and the common law. Because the State proposes to negotiate and/or pursue a Best and Final Offer, bid proposals will not be made public until the Letter of Intent to Award is issued.

A bidder may designate specific information as not subject to disclosure when the bidder has a good faith legal/factual basis for such assertion. The State reserves the right to make the determination and will advise the bidder accordingly. The location in the bid proposal of any such designation should be clearly stated in a cover letter. **The State will not honor any attempt by a bidder either to designate its entire bid proposal as proprietary and/or to claim copyright protection for its entire proposal.**

By signing the cover sheet of this RFP, the bidder waives any claims of copyright protection set forth within the manufacturer's price list and/or catalogs. The price lists and/or catalogs must be accessible to State using agencies and cooperative purchasing partners and thus have to be made public to allow all eligible purchasing entities access to the pricing information.

All bid proposals, with the exception of information determined by the State or the Court to be proprietary, are available for public inspection after the Letter of Intent to Award is issued. At such time, interested parties can make an appointment with the Purchase Bureau to inspect bid proposals received in response to this RFP.

1.4.5 BID OPENING

On the date and time bid proposals are due under the RFP, only the names of the bidders submitting bid proposals will be publicly announced. The contents of the bid proposals shall remain confidential until the Notice of Intent to Award is issued by the Director.

1.4.6 PRICE ALTERATION

Bid prices must be typed or written in ink. Any price change (including "white-outs") must be initialed. Failure to initial price changes shall preclude a contract award from being made to the bidder.

1.4.7 BID ERRORS

In accordance with N.J.A.C. 17:12-1.22, "Bid Errors," a bidder may withdraw its bid as follows:

A bidder may request that its bid be withdrawn prior to bid opening. Such request must be made, in writing, to the Supervisor of the Business Unit. If the request is granted, the bidder may submit a revised bid as long as the bid is received prior to the announced date and time for bid opening and at the place specified.

If, after bid opening but before contract award, a bidder discovers an error in its proposal, the bidder may make written request to the Supervisor of the Business Unit for authorization to withdraw its proposal from consideration for award. Evidence of the bidder's good faith in making this request shall be used in making the determination. The factors that will be considered are that the mistake is so significant that to enforce the contract resulting from the proposal would be unconscionable; that the mistake relates to a material feature of the contract; that the mistake occurred notwithstanding the bidder's exercise of reasonable care; and that the State will not be significantly prejudiced by granting the withdrawal of the proposal. Note: a PB-36 complaint form may be filed and forwarded to the Division's Contract Compliance and Audit Unit (CCAU) for handling. A record of the complaint will also be maintained in the Division's vendor performance file for evaluation of future bids submitted.

All bid withdrawal requests must include the bid identification number and the final bid opening date and sent to the following address:

Department of the Treasury
Purchase Bureau, PO Box 230
33 West State Street – 9th Floor
Trenton, New Jersey 08625-0230
Attention: Supervisor, Business Unit

If during a bid evaluation process, an obvious pricing error made by a potential contract awardee is found, the Director shall issue written notice to the bidder. The bidder will have five days after receipt of the notice to confirm its pricing. If the vendor fails to respond, its bid shall be considered withdrawn, and no further consideration shall be given it.

If it is discovered that there is an arithmetic disparity between the unit price and the total extended price, the unit price shall prevail. If there is any other ambiguity in the pricing other than a disparity between the unit price and extended price and the bidder's intention is not readily discernible from other parts of the bid proposal, the Director may seek clarification from the bidder to ascertain the true intent of the bid.

1.4.8 JOINT VENTURE

If a joint venture is submitting a bid proposal, the agreement between the parties relating to such joint venture should be submitted with the joint venture's bid proposal. Authorized signatories from each party comprising the joint venture must sign the bid proposal. A separate Ownership Disclosure Form, Disclosure of Investigations and Actions Involving Bidder, Affirmative Action Employee Information Report, MacBride Principles Certification, and Business Registration or Interim Registration must be supplied for each party to a joint venture.

2.0 DEFINITIONS

2.1 GENERAL DEFINITIONS

The following definitions will be part of any contract awarded or order placed as result of this RFP.

Addendum – Written clarification or revision to this RFP issued by the Purchase Bureau.

All-Inclusive Hourly Rate – An hourly rate comprised of all direct and indirect costs including, but not limited to: overhead, fee or profit, clerical support, travel expenses, per diem, safety equipment, materials, supplies, managerial support and all documents, forms, and reproductions thereof. This rate also includes portal-to-portal expenses as well as per diem expenses such as food.

Amendment – A change in the scope of work to be performed by the contractor. An amendment is not effective until it is signed by the Director, Division of Purchase and Property.

Bidder – An individual or business entity submitting a bid proposal in response to this RFP.

Contract – This RFP, any addendum to this RFP, and the bidder's proposal submitted in response to this RFP, as accepted by the State.

Contractor – The bidder awarded a contract resulting from this RFP. Also referred to as the Implementation Contractor.

Director – Director, Division of Purchase and Property, Department of the Treasury. By statutory authority, the Director is the chief contracting officer for the State of New Jersey.

Division – The Division of Purchase and Property

Evaluation Committee – A committee established by the Director to review and evaluate bid proposals submitted in response to this RFP and to recommend a contract award to the Director.

Firm Fixed Price – A price that is all-inclusive of direct cost and indirect costs, including, but not limited to, direct labor costs, overhead, fee or profit, clerical support, equipment, materials, supplies, managerial (administrative) support, all documents, reports, forms, travel, reproduction and any other costs. No additional fees or costs shall be paid by the State unless there is a change in the scope of work.

Joint Venture – A business undertaking by two or more entities to share risk and responsibility for a specific project.

May – Denotes that which is permissible, not mandatory.

Project – The undertaking or services that are the subject of this RFP.

Request for Proposal (RFP) – This document which establishes the bidding and contract requirements and solicits bid proposals to meet the purchase needs of the using Agencies as identified herein.

Shall or Must – Denotes that which is a mandatory requirement. Failure to meet a mandatory requirement will result in the rejection of a bid proposal as materially non-responsive.

Should – Denotes that which is recommended, not mandatory.

State Contract Manager – The individual responsible for the approval of all deliverables, i.e., tasks, sub-tasks or other work elements in the Scope of Work as set forth in Sections 8.1, 8.1.1 and 8.1.2.

Subtasks – Detailed activities that comprise the actual performance of a task.

State – State of New Jersey.

Subcontractor – An entity having an arrangement with a State contractor, where the State contractor uses the products and/or services of that entity to fulfill some of its obligations under its State contract, while retaining full responsibility for the performance of all of its [the contractor's] obligations under the contract, including payment to the subcontractor. The subcontractor has no legal relationship with the State, only with the contractor.

Task – A discrete unit of work to be performed.

Using Agency[ies] – The entity[ies] for which the Division has issued this RFP and will enter into a contract.

2.2 CONTRACT SPECIFIC DEFINITIONS

Abandoned/Dropped Calls - refers to the number of calls that are disconnected prior to a customer service representative coming on line.

Answer Time - the interval from connection to a customer service representative coming on line ready to take ticket information.

Board staff or Staff - the staff of the New Jersey Board of Public Utilities.

Business Day - any day other than Saturday, Sunday, or a national or State holiday. The System's business day is from 6:00 a.m. to 6:00 p.m. (This twelve hour period refers to the mark-out period only).

Clear - Does not contain underground infrastructure owner by facility operator.

Confirmation Number - a unique number assigned to RFMs or ERMs that shall be sequential in nature and allow for the identification of when the RFM or ERM was processed.

Customer Service Representative (CSR) or Rep - a person employed by the contractor to receive and document Requests for Markouts at the Center.

Daily Incoming Non-Emergency Request Report – This report should read “0” at all times. A Non-Emergency Request should always be reported in the Incoming Requests Characteristics Reports (Section 3.6.11.3). This report is designed to catch any RFM that fall through the cracks.

Database - means, but is not limited to, all current information necessary for the operation of the System. This shall include but may not be limited to, a Global Positioning System (GPS) compatible mapping database, Operator facility database, excavator database, and new streets added. This term shall also extend to and include all information related to the operation of the call system.

Disaster Plan - a complete “step by step” plan to maintain the operation of the One-Call System in the event of any disruption to the operation of the system. The plan shall include emergency contact phone numbers, alternate site start-up instructions, alternate employee assignments, etc. The Plan shall also address and identify actions that need to be taken at any time during the day. This plan should provide for complete, uninterrupted continuity of all business functions.

Electronic Requests for Markouts (ERMs) – a notice of intent to excavate and a request for mark-out received from excavators by fax or computer, (i.e. internet, E-mail, etc).

Emergency - any condition constituting a clear and present danger to life, health or property caused by the escape of any material or substance transported by means of an underground facility or the interruption of a vital communication or public service that requires immediate action to prevent or mitigate loss or potential loss of communication or public service, or any condition on or affecting a transportation right-of-way or transportation facility that creates a risk to the public of potential injury or property damage.

Excavator - any person performing excavation, demolition or blasting activities.

Marked – Underground infrastructure identified and owned by facility operator (refer to defined [Attachment 2](#) 48:2-80)

Markout - Please refer to Attachment 2 48:2-80. Underground Facility Operator, Responsibilities; Underground Facility Markings.

Markout Request – is the equivalent of a serial number. Whenever a request for markout is called in, that equals one serial number.

Markout Request Form (MRF) - is a summary of the questions asked of the excavator as required by the UFPA.

No Response - Underground infrastructure operator did not respond for request for markout.

NJBPU or Board - means the New Jersey Board of Public Utilities.

Operator - a person owning or operating, or controlling the operation of, an underground facility. However, this excludes a homeowner who owns only residential underground facilities, such as an underground lawn sprinkler system or an underground structure for a residential low-voltage lighting system.

Outgoing Emergency Messages – This is a message that goes out to the facility operators. It could be an emergency on an active ticket or it could be an emergency at a location that was never called in to the One Call Center.

Regular – Request for markout that is responded to in the standard three (3) day period.

Request For Mark-out (RFM) or Request - a notice of intent to excavate and request for markout received from excavators to the One-Call System by telephone.

Serial Number – Is generated when a request for markout is communicated to the One Call Center.

Site - the specific place where excavation work is performed or will be performed. The site shall be identified by street address referenced to the nearest intersecting street and subdivision name, if applicable, as well as by lot and block number, if available, and by kilometer or mile marker for railways and highways.

System - the contractor's notification center/office through which a person may notify of the contractor of underground facility operators of the proposed excavations.

Tickets or Messages - RFM information from the System to facility operators. Ticket types include:

Emergency—Notification needing immediate action, as defined in New Jersey Statutes and regulations (see Attachment 3).

Free Form—Notifications that are for informational use only such as Good Morning and Good Night messages and a daily history of all notifications transmitted that day.

Routine or Regular – Notifications where the beginning work date and time is at least three (3) business days, but not more than ten (10) business days from the day following the day the System actually receives the notice of intent to excavate (see Attachment 4).

Update – Notifications that provide further information and refer to previously transmitted notifications (see Attachment 5).

UFPA or Act - the Underground Facilities Protection Act, N.J.S.A. 48:2-73 et seq.

WAAS - Wide Area Augmentation System is an air navigation aid developed by the Federal Aviation Administration to augment the Global Positioning System (GPS), with the goal of improving its accuracy, integrity, and availability.

3.0 SCOPE OF WORK

3.1 GENERAL INFORMATION

3.1.1 AREA OF JURISDICTION

The N.J. One-Call Damage Prevention System provides statewide protection of all underground facilities that are used for the conveyance of water, sewerage, telecommunications, cable television, electricity, oil, petroleum products, gas, optical signals, traffic control, or for the transportation of hazardous liquid subject to the "Hazardous Liquid Pipeline Safety Act of 1979". The One-Call Damage Prevention System is a single statewide notification system that receives notice from excavators of intended excavation or demolition activities and then transmits those notices to operators of underground facilities in the area of proposed excavation or demolition.

The contractor shall not, without prior approval of the Board or its designee, provide any facility mark-outs, pre-screening, or screening to underground facility operators. For the purpose of this paragraph, "pre-screening" and "screening" are defined to mean reviewing tickets to confirm that an underground facility is not located at the proposed dig site.

3.1.2 OBJECTIVE

Damage to underground facilities, especially natural gas facilities, caused by excavation and discharge of explosives poses a great risk to the public safety. The operation of the One-Call Damage Prevention System has and can continue to substantially reduce the frequency of damage caused by these activities.

3.1.3 SCHEDULE

It is the Board's intention to adhere to the schedule as proposed in Attachment 6.

3.1.4 RESPONSIBILITIES OF THE PARTIES

The general responsibilities of the Board, contractor and underground facility operators (operators) are as follows:

3.1.4.1 THE BOARD

The Board designates the operator of and provides policy oversight to, the One-Call Damage Prevention System. The Board or Board staff enforces the provisions of the Underground Facility Protection Act. Board staff is the sole point of contact for this RFP. Board staff, along with a member from the Division of Purchase and Property (Evaluation Committee), will evaluate submitted proposals; The Board will select the contractor; Board staff will monitor the contractor's conformance with the provisions of the Underground Facility Protection Act; and the Board has sole jurisdiction and authority for reviewing and granting or denying any waiver requested pursuant to the Act.

3.1.4.2 THE CONTRACTOR

The contractor is the operator of the NJ One-Call Damage Prevention System. The contractor responsibilities shall include, but is not limited to, the following:

- a) perform all the duties surrounding the maintaining of the One-Call System and all other services required by the Act;

- b) investigate complaints affecting both the internal and external operation of the System, made by any parties involved, such as contractors, utilities, Board staff, etc.;
- c) provide complete training to its CSR on their duties so they understand the need for accurate information and attempt to retain experienced CSR;
- d) supervise and manage its personnel and subcontractors; and
- e) refer to and make use of as appropriate the EFPA.

3.1.4.3 THE UNDERGROUND FACILITY OPERATORS

The underground facility operator is the operator of any underground facility. The operator receives the Requests for Markouts from the contractor and is responsible for compliance with the UFPA. The underground facility operator shall:

- a) (1) supply the System with a list of municipalities for which it requests to receive notification; (2) In municipalities served by multiple operators, each operator may supply the system with an alphabetical street index, preferably with address ranges, for those areas in which it requests to receive notification; (3) Each facility operator shall notify the System in writing of changes in area coverage as they occur;
- b) And/or supply the System with geographic information identifying the location of the area for which they desire to receive excavation notifications (tickets);
- c) Assure that the facility operator's receiving station is operated 24 hours per day.

3.2 GENERAL REQUIREMENTS

The contractor shall provide for the operation of the N.J. One-Call Damage Prevention System, which is a single statewide 24-hour, seven-day-a-week notification/call center. The notification/call center's operation shall be located in New Jersey. Specifications for the One-Call Damage Prevention System shall include, but not be limited to, the following:

- a) The set-up of the System's Call Center;
- b) Establishment of the actual System, operation of the System;
- c) Performance standards for the System; and
- d) Administrative requirements for the contractor and the System.

3.3 ESTABLISHMENT OF THE ONE-CALL DAMAGE PREVENTION SYSTEM'S CALL CENTER

The contractor's responsibilities in the creation of the System's One-Call Center shall include, but may not be limited to, the following:

- a) Office facility, equipment and all office services and staff necessary to operate the System's call center.
- b) Materials/services including, but not limited to the following: computer equipment, computer software, computer services, uninterruptible power supplies, communications equipment, communication recording equipment, Call Management System, Call Distribution System, office furniture, office supplies and duplicating and office services.
- c) Communications services from common carriers including nationwide access to the 800 number(s). The communication equipment shall have provisions for receipt of calls from the handicapped. The UFPA requires that all communication methods for the receipt of RFMs and ERMs shall be through nationwide 800 numbers.

- d) The System's call center shall be located within one half hour driving distance from the BPU Newark office and shall provide adequate office space and equipment for the Director/Manager and Supervisors of the contractor.
- e) Conference space that can be utilized for meetings for twenty-five people, as required, to effectively manage the business of the center, and for meetings convened by the Board staff. The conference room shall contain sufficient and appropriate equipment, including a telephone with conference calling and speakerphone capabilities, and network accessibility for computers.
- f) A suitably equipped, secure and private office for two people that is separate from the aforementioned conference space for use exclusively by Board staff. It should include a phone, a One-Call Center terminal, and network accessibility for computers in both digital and analog format.
- g) The development and maintenance of an adequate Disaster Recovery Plan to cover failure of utilities and physical loss of the contractor's office building. This plan shall include the complete and temporary operation of the System from another location, which shall be outside a 60 mile radius of the primary location or at a location approved by the State Contract Manager. The contractor shall be able to activate and operate this redundant site at a moments notice in the event of natural or man-made disasters, power failures, communication failures, and major computer system modifications. This Plan must be presented to Board staff for review and approval. The Plan shall include the use of Uninterruptible Power Supplies to maintain power at the contractor's office building for short electric outages and shall provide for the resumption of service within two (2) hours of reestablishing the System's communication capabilities. The contractor shall also detail those efforts that will be employed to assure the System's continued operation if a disruption of service lasts longer than two (2) hours. In addition, the contractor shall detail the measures to be taken to mitigate against telecommunication failure.
- h) The development and operation of a system for processing One Call Damage Reports (see Attachment 7). Processing shall include receiving the reports at One Call Offices, tracking reports received, organizing report information, creating notices, mailing notices, electronic transfer of information to BPU Newark, GIS mapping of report damages, timely updates to the Common Ground Alliance-Damage Information Reporting Tool (CGA-DIRT) database integration to Microsoft Professional Office Suite (www.cga-dirt.com). The system shall provide for sufficient connectivity to allow the BPU to connect a minimum of eight workstation operators with printing capability. All related system data and software shall become property of the BPU.
- i) Accept, convert, integrate and maintain all One Call System Data from the current One Call Operator. The current contractor, One Call Systems, Inc., operates the database management system with Stratus software and is required under the current contract to work with any new contractor to transition data. The geographic information system is managed by MapInfo/Arcview. In order to transition the data to the contractor, the awarded contractor shall purchase the necessary software and make the transition at its own expense. Any such data (incoming communication into the One Call System (phone calls/facsimiles)), records of communication between the One Call System and the facility operators, and any reports shall be maintained in an accessible format for a minimum period of seven (7) years from the date of the initial Ticket or Message. Based on the amount of calls referenced in Section 4.4.6 and the required reports referenced in Section 3.6.11 the contractor shall expect a significant amount of data that shall be properly maintained for the seven (7) year period.

3.4 ESTABLISHMENT OF THE SYSTEM

The contractor's responsibilities in the creation of the System shall include, but may not be limited to, the provision/creation of:

3.4.1 PURCHASE OF COMPUTER HARDWARE AND SOFTWARE

The Contractor shall submit a detailed component list and cost specifications for all computer software and hardware needed under the terms of this RFP. Although the State anticipates the Contractor supplying all computer hardware and software, it does reserve the right to procure all System computer hardware components through the State of New Jersey's procurement mechanism. All hardware shall meet the State of New Jersey's Standard Specifications. The Contract price shall be reduced by any savings from the purchase of any software or hardware through the State's procurement mechanism,

3.4.2 MAPPING AND STREET INDEX SYSTEM

The contractor shall contact each operator and establish a process by which the contractor shall obtain the information necessary to create a mapping and street index system.

The contractor shall maintain and analyze all incoming excavation requests on a daily basis specifically searching for work that indicates the establishment of new street or new street segments.

The contractor shall staff and equip a vehicle with a GPS system supporting Wide Area Augmentation System (WAAS) (see [Section 2.2](#) Contract Specific Definitions) that will provide sub-meter positioning accuracy. This vehicle shall be dispatched to obtain the locations of new streets and new street segments in order that the maximum benefit is afforded to the excavating public. The results of this field research shall be used to update the New Jersey One Call mapping Data Base on a weekly basis. A report of this field work shall be provided to Board staff on a monthly basis.

The mapping system shall include but not be limited to:

- a) A maximum grid size of 1/16 square mile, or utilize any other system which identifies appropriate underground facilities as mandated by the Act while minimizing the number of facilities notified.
- b) A method to assure, at least quarterly, that each operator's area is properly recorded in the System's database;
- c) The capability to be updated on a weekly basis to reflect the results of the aforementioned field research that includes the updating of new streets and new street segments;
- d) The ability to process the proposed excavation site through the grid system, and after that process the site through a street index;
- e) A method to indicate how corrections of errors on old maps and updates of new features (streets, etc.) will be shared with other operators with facilities in that area.
- f) The ability to automatically determine if a proposed excavation is within the 1/16 square mile grid or other notification area used (see Section 3.1.4.3(a) either exclusively on or exclusively off the premises of certain designated large operators, such that said excavation will definitely affect only the underground facilities on those premises or, in the

alternative, only the underground facilities which are entirely off those premises. The system must be able to “filter” excavations meeting either of these criteria. This “filtering” process will determine if the proposed excavation will actually overlap the underground facilities of the large operator, or merely abut it. In the case of no actual overlap the large operator shall be removed from the ticket. This operator will not receive or be charged for these tickets, as they will be deleted from the list of operators to be notified at the time the Request for Markout is taken. Conversely, if the proposed excavation is entirely on the property of one of the designated large operators, other operators whose facilities are near but not overlapping the proposed excavation will be filtered off the ticket and likewise they will neither receive or be charged for these tickets. The large operators are the New Jersey Turnpike, the Garden State Parkway, the Atlantic City Expressway, and New Jersey Transit. Additional large operators may be designated in future, as appropriate, by Board staff.

- g) Have the ability to integrate the latest version of The New Jersey High Resolution Orthophotography Maps, as produced by the State of New Jersey Office of Information, with the 1/16 square mile grid map or other selected locating system.

3.4.3 SCREENING ON THE BASIS OF STREET ADDRESS

The contractor shall implement a system of Screening on the Basis of Street Address.

The mapping system shall, when a site has been identified with a specific street address, match that address against the street addresses provided by the underground facility operator for each underground facility which would otherwise receive a ticket. If the street address of a site does not match that provided for an underground facility, the System shall remove that underground facility from the list of facilities to be notified, regardless of whether the facility falls within the 1/16 square mile grid or within whatever other notification system is being utilized (see 3.4.2 (a) (Mapping and Street Index System)). The system shall also have the ability, when a site is identified by the excavator as being located exclusively within the roadway, inside the curb-to-curb area, to remove from the list of operators to be notified any operator who has identified its underground facilities by a specific street address and whose underground facilities do not extend beyond the boundaries of that address. The System shall remove such operators regardless of whether the facilities in question fall within the 1/16 square mile grid or within whatever other notification system is being utilized. In the event that some of the operator's facilities within the notification area are identified by a specific street address and some are not, the operator will receive a message.

EXAMPLE 1:

An operator has registered with the contractor an underground facility which is located entirely within the roadway, such as Main Street, inside the curb-to-curb area. If an excavator called for a markout for a specific address, such as 5 Main Street, with a dig site of the ‘entire property’ or any portion of the entire property marked in white paint, which is used to signify the excavation area, that utility would not receive a Request for Markout message. If there is any variation from the above, such as a Request for Markout for “entire property and ten feet into the street,” the operator will receive a markout.

EXAMPLE 2:

An operator has registered with the contractor for a specific street address, such as 5 Main Street. If an excavator calls for a markout for a different address, such as 4 Main Street, or for a markout exclusively within the roadway, in the curb-to-curb area, the operator should not receive a message.

EXAMPLE 3:

An operator has registered with the contractor for a specific street address, such as 5 Main Street. If an excavator calls for a markout exclusively within the roadway, in the curb-to-curb area, the operator would not receive a message.

EXAMPLE 4:

A Responsible Contractor as defined N.J.A.C. 14:2-1.2 of the UFPA calls for a markout. The One-Call center shall be responsible and liable for ensuring that all excavation or demolition performed with rented equipment complies with NJ law. Therefore, the One Call center shall implement and maintain an appropriate process that details the appropriate use of rental equipment by facility operators during all demolition and excavation work.

3.4.4 CUSTOMER SERVICE REPRESENTATIVE COMPONENT OF THE SYSTEM

The contractor shall provide a computer system to be used by the Customer Service Representative (CSR) that shall at a minimum:

- a) Provide the CSR the capability to retain the excavator information from one Request for Markout (RFM) or Electronic Request for Markout (ERM) (Attachment 8) screen to the next screen;
- b) Allow the CSR the capability of retrieving any notice previously entered into the system in the past thirty (30) days;
- c) Alert the CSR as to which RFMs or ERMs require operator voice notification. The center shall keep a log of those notices awaiting voice notification; and
- d) Send or electronically fax a copy of the approved message (including the ticket number) to all excavators by utilizing the fax number in the database. A copy of the approved message shall be mailed to those excavators who do not have fax numbers.

3.4.5 ADDITIONAL SYSTEM REQUIREMENTS

The system shall also have the following:

- a) Automatic data communication equipment (maintained by the contractor) that meets the needs of the system and has sufficient capacity to meet the transmitting standards as set forth above.
- b) A series of bell alarms, or other effective means on computer terminals and fax machines, that alerts the receiving centers of an emergency message and the word "EMERGENCY" shall be printed at the beginning of the message.
- c) A series of bell alarms, or other effective means on computer terminals and fax machines, that alerts the receiving centers of an update message and the word "UPDATE" shall be printed at the beginning of the message.
- d) A standardized computer readable ticket format.
- e) The ability to accept excavation sites by address, referenced to the nearest intersecting street, and Latitude/Longitude by decimal and minute, second, degree, and be able to deliver this information as well as the site description to operators in normal format (address number/street/nearest cross street, mile marker, etc.).

- f) An electronic format with import/export capabilities to standard mapping and database formats (DXF, DBF, etc.) able to interface between the operator's GIS files and the operators' portion of the System's database, and for access to ticket and excavator data. The database and mapping system shall remain the property of the NJBPU.
- g) Provide and outfit eight (8) operation field staff with laptops for the purpose of accessing the one-call system remotely. In addition the contractor shall provide the field operations staff with real-time, read-only database query capabilities, printing capability and MS Office capabilities including but not limited to word processing, spreadsheet, e-mail etc. The contractor shall provide appropriate minimum hardware specifications as determined by the NJBPU. The query capabilities will include, but not be limited to, a twelve (12) month search by ticket type, confirmation number, excavator, county, municipality, and street. The system and data, as well as all laptops provided to operational field staff, shall become NJBPU property. The Contractor Shall be responsible for the successful setting up of all laptops, their daily system operations, configurations, security, appropriate communication service to access the one-call system remotely and system maintenance for the term of the Contract. If a replacement laptop is required for any reason, the Contractor shall provide and configure it.
- h) Identify excavators working within New Jersey and maintain and continually update excavator information in the database. The contractor shall obtain as much information as possible regarding the pager, cell-phone and other numbers for primary contacts in the excavator database. The updated information in this part of the database shall also be in a standard import/export electronic format and shall remain the property of the NJBPU.
- i) Provide excavator and operator search capabilities for data such as monthly calls, year to date calls and excavation location by county.
- j) Handle necessary correspondence relative to the operation of the System.
- k) Execute billing agreements with operators as approved by Board staff. The contractor shall conduct all invoicing of the Operators.
- l) Pursuant to N.J.S.A. 48:2-76(d), the contractor shall retain all records and voice recordings at the System for a period of seven (7) years from the date of the notice of intent to excavate. All records and voice recordings must be accessible to Board staff and is the property of the NJBPU. At the expiration or cancellation of the contract, all records and voice recordings must be provided to the NJBPU, its designee, and/or replacement contractor, in a standard electronic format compatible with it's systems. The contractor shall ensure a successful transfer, including ensuring accessibility of all systems and data to the NJBPU or its designee
- m) Obtain from each operator the normal hours of operation when emergency messages are received at the receiving center. The contractor shall obtain from each operator the method that the contractor shall use to deliver after-hours emergency locate requests if different from the method used during normal hours of operation. For example, a small operator may want a page sent to an on-call employee after normal business hours.

3.4.6 OPERATION OF THE SYSTEM

The contractor's responsibilities in the operation of the System shall include, but may not be limited to, the following:

- a) Creation of a single statewide twenty-four (24) hour a day seven (7) days a week notification center.
- b) Hiring and training of System personnel. System personnel shall be the responsibility of the contractor and be assigned as necessary to accomplish the performance requirements as set forth herein. The System personnel shall include, but not be limited to:
 - 1. An Executive Director/Manager with a high level of authority, who shall be available during the business day. Duties shall include, at a minimum: Liaison to the NJBPU contract manager and Board staff, operators, and excavators; oversee the update of new streets, education/outreach, advertising, training, monitoring the CSR, billing (invoicing) and any other functions as needed.
 - 2. An appropriate number of assistant managers and/or supervisors to accomplish the above duties. A minimum of two assistant managers is required.
- c) Provision of a toll-free voice telephone number with a nationwide access as previously specified shall be designated to receive all incoming voice calls for RFMs. Additional toll-free telephone numbers shall be designated for the receipt of ERMs through other non-voice methods. The contractor shall provide sufficient telephone lines, separate from the RFM/ERM-taking lines, for the conduct of the administrative business of the System and for the timely transmission of outgoing messages.
- d) Voice recording all incoming and outgoing calls concerning requests to locate utilities. The recordings will be subject to the retention rules in N.J.S.A. 48:2-76 (d) as described in Section 3.4.5.(l) of this RFP. Furthermore, upon notice of any litigation involving the subject matter of incoming or outgoing calls, the recordings involved shall be held until such time as the litigation is settled, plus two (2) years.
- e) Provision of computer terminals (PC or equivalent) and CSR sufficient to meet the performance requirements set forth herein.
- f) Provision of relevant UFPA information to callers “on-hold”, along with approximate hold times for the next available CSR. There shall be a series of messages that are rotated daily and the message series shall be changed on a seasonal basis.
- g) Processing of all calls from excavators at the System as follows:
 - 1) CSRs secure the necessary information, as identified in the Mark-out Request Form, (Attachment 6), from the excavator and shall enter it into the computer database.
 - 2) The system shall record the time of receipt of the RFM as well as the time the RFP is transmitted to operators and that information shall appear on the tickets. The RFM shall also be assigned a unique confirmation number by the computer. The confirmation number shall be sequential in nature and allow for the identification of “when” the ticket RFM was processed without the need to reference a deciphering “key”. The caller must be given the confirmation number as well as the expiration date and the names of all operators to be notified of the RFM for future reference.
 - 3) All Electronic Requests for Mark-outs (ERMs) must be reviewed by a CSR before being given a confirmation number and inputted into the computer.

- 4) The CSR shall accurately establish the location of the proposed excavation site in the database mapping system and street index system, and verify such with the excavator.
 - 5) The CSR shall determine from the mapping and/or street index all operators with underground facilities in the excavation area.
 - 6) The CSR shall advise the excavator of the names of all operators that have notified the system that they have underground facilities located within the excavation area. The contractor shall send a message via the computer network or fax to each operator who has notified the system that it has underground facilities located within the proposed excavation or demolition area. Messages shall be transmitted to operators by priority; Emergency and Updates first; followed by Routine (3 day) RFMs. The contractor shall assure that all answer-back codes are properly received.
 - 7) If an automated message has not been verified as having been received by an operator by the end of the business day, the contractor shall notify such operator that messages are still outstanding, and use all appropriate measures to assure that the operator gets all tickets that have not been verified.
 - 8) If the contractor receives a call for proposed excavation activities which do not provide at least three (3) business days notice to member operators and is not an emergency request as defined by the UFPA, the contractor shall advise the caller that the Notice does not comply with State law. The contractor shall further advise the caller that the request will be transmitted to applicable operators but that such operators have three (3) business days to respond. If the contractor receives a call for proposed excavation that does not contain the information required by the UFPA or Administrative Rules, the contractor shall notify the caller that the Notice cannot be processed further until the caller provides the additional information.
 - 9) The CSR shall screen emergency requests to assure compliance with UFPA and to minimize the burden these requests place upon operators. However, the contractor shall be conservative and accept questionable messages for emergency processing.
- h) Providing an Internet, web-based positive response system to provide the means for a facility operator to notify the excavator if the facility operator is going to mark its facilities for a particular ticket or is "clear". This internet system shall provide, at a minimum, the following features:
- 1) For the Excavator
 - a. A secure web site that lists all the currently active tickets for this excavator in summary form, showing the serial number, date and time, street address and current marking status of all affected facility owner. The secure website shall display activity related to all serial numbers, including but not limited to, "Clear" (does not contain underground infrastructure owned by facility operator), "Marked" (underground infrastructure identified and owned by facility operator) and "No-Response" (underground infrastructure operator did not respond for RFM) Clicking on these one-line summaries will open a window displaying the entire original ticket. This web site will be user name and password protected and will allow only the Excavator to view his tickets.

- b. For excavators that do not have Internet access, an (800) number to provide, via a System operator, the same information listed in “a” above.
- c. For both “a” and “b” above, the capability for an excavator to re-notify a facility operator that has failed to respond positively within the allotted time.

2) For the Facility Operator

- a. A secure web site that lists in summary form all the currently active tickets for this facility operator, showing serial number, date and time, street address, and current marking status , such as “Clear”, “Marked”, “No Response”, etc. Clicking on these summary lines will open a window displaying the entire original ticket. The facility operator may change the status of his/her own ticket on this website, thus positively responding to the excavator. This website will be user name and password protected, allowing only the facility operator to view and update his tickets. All updates will be logged and saved by date, time and user.
- b. The implementation of a secure, electronic, internet system for filing one call damage reports. The contractor shall provide to the facility operators all training, promotion, operation and support needed by operators to interface with the internet system.

3) For Board Staff

- a. A web site that lists all the currently active tickets for all excavators in summary, showing serial number, date and time, street address and current marking status, such as “Clear”, “Marked”, “No Response”, etc. Clicking on these summary lines will open a window displaying the entire original ticket, and Board staff may select tickets by excavator name, facility operator, dig address, status, etc. This website will be user name and password protected to only allow the Board staff to view all tickets. The website shall be formatted for a standard desktop Internet Browser format and for the RIM Blackberry Browser.
 - b. Provide a monthly report on the timeliness of responses by the system to facility operators.
 - c. Provide Board staff with portable wireless interface to the website to allow field verification of excavation information as needed.
- i) Transmit a “Close of Business Day” message, to each operator and include a list of the tickets transmitted during the preceding 24-hour period. The messages shall, at a minimum, show the date, time of transmission, the number of requests transmitted, and the sequential numbering.
 - j) Identify the confirmation number on each outgoing ticket and provide end-of-day reports.
 - k) CSRs shall communicate emergency requests to operators via telephone in the event of machine or communications failures. When normal service is restored, hard copy tickets shall be transmitted.

3.5 PERFORMANCE STANDARDS FOR THE SYSTEM

The contractor shall provide the following system performance standards:

- a) Sufficient equipment and staff to answer RFM calls with an average Answer Time of 30 seconds or less.
- b) Install sufficient incoming phone lines and answering equipment such that the utilization shall be in the 75%-85% range. The average lines in use shall be calculated daily and monthly for each of the following time periods:
 - 1) Non-holiday weekdays from 6:00 a.m. through 6:00 p.m.; and
 - 2) Weeknights from 6:00 p.m. through 6:00 a.m. on Monday through Friday;
 - 3) Weekends from 6:00 p.m. Friday through 6:00 a.m. Monday, and all day on holidays.
- c) Outbound Operator notification message transmissions shall be completed within the following time periods:

Electronic Media – Emergency and Updates queued for immediate transmission but shall not be delayed more than an average of 5 minutes, with no message queued for more than 20 minutes.

Routine – All messages transmitted within one hour.

Manual (direct phone-ups and manual FAX)

Emergency – within 10 minutes

Routine/Updates/Free Form – within 3 hours or next business day in case of after-hours receipt.

- d) Establish a quality assurance program that will monitor at least one percent (1%) of incoming calls, either real time, or later by review of the voice recording and the tickets generated, to verify the quality of the ticket taking. All CSRs shall be monitored at least once every two weeks and refresher training shall be provided as needed to maintain the required accuracy standard of the program. An appropriate report should be generated listing deficiencies, if any, and submitted to Board staff on a monthly basis.
- e) Performance requirements of the System will be subject to the penalty provision of the UFPA (Attachment 1).

3.6 ADMINISTRATIVE REQUIREMENTS FOR THE CONTRACTOR AND SYSTEM

3.6.1 STANDARD OPERATING PROCEDURES MANUAL / DISASTER PLAN MANUAL

The contractor shall prepare, and maintain properly updated, a Standard Operating Procedures Manual and a Disaster Plan Manual that describes the steps necessary to accomplish all tasks including office administration, report preparation, RFM/ERM processing, business contacts and procedures involving emergencies.

3.6.2 ADVERTISING, EDUCATION AND OUTREACH

The contractor shall spend no less than \$400,000 per contract year on advertising, education, outreach and promotional items relating solely to the promotion of the New Jersey One Call Damage Prevention System. This \$400,000 is part of the contractor's fixed costs that are built into the price per ticket charged to operators and is part of the rate per serial number. All proposed expenditures shall be presented to Board Staff for approval. The contractor may be required to use State Contracts for the purchase of media buys and advertising if directed to do so by the State Contract Manager. These State Contracts do not presently exist but will be bid within the next year. If the contractor spends less than \$400,000 for promotional purposes in any contract year, the difference shall be placed into an interest bearing checking account entitled "New Jersey One Call Damage Prevention System Advertising/Education Account". All funds deposited and so held shall be held in trust for the purpose of complying with N.J.S.A. 48:2-79(d) or other such purpose as directed by the Board or Board staff. Allowable advertising, education, outreach and promotional expenses are as follows:

- a) Promotional Items – letter openers, color code cards, hats, brochures, key chains, bumper stickers, and similar items. The contractor shall obtain approval of Board staff prior to purchasing any promotional items.
- b) Advertising – Radio, television and print media. The contractor shall obtain prior approval from Board staff for all advertising.
- c) Trade shows and contractor nights – For such events held at New Jersey venues, the costs of registration, lodging and meals for a maximum of three representatives shall be allowed without prior approval of Board staff. However, prior approval must be given for more than three representatives. Lodging and meals will be allowed at actual cost not to exceed the State of New Jersey per diem rates published in the OMB Circular Letter 08-19-OMB (<http://www.state.nj.us/infobank/circular/cir0819b.pdf>). Transportation costs shall not be allowed for New Jersey venues. The contractor shall obtain prior approval of Board staff for all events it wishes to attend outside New Jersey. If approved, registration, lodging and meals shall be allowed as above. Transportation costs shall be allowed for out-of-state venues.

3.6.3 COLLECTION / BILLING / FINANCIAL REPORTING REQUIREMENTS

The contractor shall provide all billing and collection activities to or from the operators for the services provided.

The contractor shall be compensated pursuant to N.J.S.A. 48:2-79, through a schedule of fees contained in a Tariff to be approved by the BPU, paid by the operators of underground facilities in New Jersey and collected by the Contractor. The contractor's proposed rate per serial number generated (a markout/serial number is generated for each RFM, each ERM and each update) shall be established as the rate per serial number for the duration of the contract. Billing to Operators, however is an outgoing notification ("Ticket"). Each RFM, ERM and each update may generate multiple tickets if multiple facility operators are affected by the RFM or ERM (see Section 4.4.6 of this RFP). Therefore, a predicted number of Tickets per serial number ("the Ratio") shall be established, and the Tariff charge per Ticket shall be set by dividing the rate per serial number generated by the Ratio. The Ratio is established to assure that the charges for Tickets shall provide sufficient revenue to pay the Contractor the rate per serial number generated and to cover uncollectibles during the term of the contract.

The contractor shall execute separate billing agreements with Operators and be responsible for billing and collection under the Board approved Tariff. The contractor shall report to the State

contract manager those operators who are three (3) or more months delinquent in payment of bills for services. Invoicing procedures shall be reviewed with each operator. The contractor shall take all reasonable steps to collect delinquent accounts, including filing suit. The contractor shall make reasonable efforts to accommodate special billing requirements of individual Operators.

The contractor shall keep accurate records and books of account showing all charges, disbursements, or expenses made or incurred by the contractor in the performance of the services herein. The BPU has the right, upon reasonable notice, to audit at any time during the course of this contract, the direct costs, expenses and disbursements made or incurred in connection with the services to be performed herein, as well as for the validity of the representations made under any provision of this Contract, and may examine the contractor's books and records relating to these areas.

The contractor shall afford the State Contract Manager full access to any facilities providing any services on-site or at any support facilities described herein to enable inspection and audit of the contractor's operations.

The contractor shall provide unlimited instant access to the State Contract Manager, Board staff or any person authorized by the Board at any time in the case of an investigation, or reasonable access and cooperation during regular business hours for routine audits, of any and all business or call records at the Call Center location in New Jersey or such other location at the Board's option. If a location is outside the State, the contractor shall reimburse the State of New Jersey for all travel, lodging, subsistence and other additional expenditures. The contractor shall make all required business and call records available at the Call Center location in New Jersey.

By each October 25th of each year during the term of the contract, the contractor shall file a detailed statement ("annual reconciliation"), including all documentation, listing the following since September 30:

Total Ticket fees billed, plus other fees billed (in itemized categories)
 Minus Contract Revenues to the Contractor
 Minus Accounts deemed Uncollectible (reported by Operator)
 Equals Net over {under} collection.

This annual reconciliation, including advertising allowance and expenses, shall apply to each year, without consideration of whether this Contract is in place for the whole year. For example, the first annual reconciliation under this contract shall be for the period October 1, 2009 through September 30, 2010, including billings and expenses accrued under the predecessor contract during that period. Therefore, it is not necessary for the transfer of data/information to occur between contractors as the reconciliation is intended to satisfy all billings and expenses accrued under the predecessor contract during a given period.

Any receipts in excess of the rate per serial number generated shall be applied to reduce future charges per Ticket or, in the event such over-collections exist at the end of this contract, said over-collections shall be paid over, within 60 days and after approval by the NJBPU, to the next contractor, to reduce future Tariff charges per Ticket for that contractor. Similarly, should a net under-collection shall be determined to exist at the end of this contract, said under-collection shall be included in the future per Ticket charge, and the successor contractor shall be required to pay the BPU approved under-collection amount to this contractor, in equal quarterly installments during the first year of the new contract.

The contractor shall make every effort to minimize any over or under recoveries in the final year of the contract, including the submission of any estimated over or under recovery to the BPU audits division at least six months prior to the end of the contact.

The contractor shall adhere to all reporting requirements including, but not limited to, by reference, all reports called for in this RFP and the BPU approved Tariff. The contractor shall provide all reports necessary for the BPU to perform all audit functions and overview of the operation of the System, including all information necessary for the BPU or its designated representative to assess and approve all expenditures and business plans regarding public education and outreach programs. All financial reports shall be prepared on an accrual basis. The Reports will include but are not limited to the following:

- 1) At the beginning of the contract period, and thereafter annually, the contractor shall submit its chart of accounts to the BPU's Audit Division. Any subsequent change shall be reported to the Audits Division within 10 days of the change.
- 2) A detailed income statement for each calendar quarter by the 25th day following the end of the quarter, detailing every category of income earned by the contractor's New Jersey operations and collections on account for the BPU, and every category of expense relating to the contractor's New Jersey operations. In conjunction with the Income Statement, a separate statement of advertising, promotion, education and outreach expenses on the accrual basis. Each quarterly report shall also include a summary of employees, by title, utilized at the system Call Center at the beginning of the quarter and a schedule of hires, transfers in/out terminations, and resignations during the quarter, and final number by title at the end of the quarter. Upon request, the basis and rates for allocation for all intra-department or inter-location shall be furnished for review.
- 3) Balance Sheets for the beginning and end of the quarterly period.
- 4) By November 30 of each year, the Contractor shall submit to BPU a proposed budget for an advertising/education/public promotion. Such budget shall be reviewed, revised as appropriate, and approved by the BPU or its designated representative in writing not later than December 31 of that year.

A detailed statement for each calendar quarter, by the 25th day following the end of the quarter, detailing the average ratio of incoming calls to chargeable Tickets during that calendar quarter and year-to-date.

3.6.4 COMMUNICATION LINES

The contractor shall arrange for the installation of the communication line and message receiving equipment at operator locations. The monthly invoicing for the associated communications network shall be the responsibility of the contractor. The operator companies shall be responsible for the installation costs of the receiving equipment and the facilities to tie into or interconnect to the network.

3.6.5 BACK-UP TELEPHONE LINES

The contractor shall obtain backup telephone numbers from operators for each contact location and name and telephone number of a single liaison representative. This list shall be updated quarterly and is considered the property of the NJBPU.

3.6.6 ADVERTISING, EDUCATION AND OUTREACH

The contractor shall, on an annual basis, contact each NJBPU approved operator to ascertain the holidays that each member recognizes. This information shall be utilized to determine the "business days" of each member for ticket transmission purposes.

3.6.7 RFM / ERM FORMAT

The contractor shall notify operators of any changes in the RFM/ERM format, thirty (30) days in advance of such change.

3.6.8 SPECIAL MEETINGS

The contractor shall schedule, coordinate and/or attend any special meetings as directed by Board staff.

3.6.9 PHONE CONVERSATIONS

The contractor shall respond and comply with all reasonable requests for information or copies of phone conversations. The contractor may charge all parties except the BPU for this service. The charge must be in accordance with their tariff on file and approved by the BPU.

3.6.10 TICKET FORMATTING

The contractor shall maintain, as close as possible, this same ticket format with the following exception: The addition of as many fields needed to provide accurate information to properly describe the excavation site including expiration date and depth of excavation.

Copies of the information found on the existing tickets are included as Attachments 2, 3, and 4.

3.6.11 CENTER OPERATIONAL REPORTING

The contractor shall be responsible for preparing reports each month and providing them to the State Contract Manager, with a copy to Board staff. All monthly reports requested of the contractor shall be made available within 10 days of the end of the reporting period. A failure to meet the performance requirements specified herein may subject the operator to the penalty provision in the UFPA. The contractor shall produce the following reports:

3.6.11.1 CENTER ACTIVITY REPORTS

- a) "Call Volume Overview" – Year-to-date (YTD) by month of incoming requests and outgoing messages. Current month call ratio, cumulative YTD incoming and transmitted values to be provided.
- b) "RFMs and ERMs" – YTD by month by type, phone, facsimile, electronic entry and miscellaneous.
- c) "Incoming Daily Markout Requests/Serial Number" – Daily for the month by type; phone facsimile, electronic entry and miscellaneous.
- d) "Outgoing Messages" – YTD by month by type; routine emergency, and update.
- e) "Outgoing Daily Messages" – Daily for the month by type; phone, facsimile, electronic entry and miscellaneous.
- f) "Serial numbers generated" – YTD of total ERMs, RFMs and updates.

3.6.11.2 PHONE PERFORMANCE OVERVIEW REPORTS

- a) "Phone System" – YTD by month by types of calls, direct calls to System, - RMSs and ERMs per call, calls abandoned.
- b) "Phone Line Utilization" – YTD by month by: available lines, lines in use, time to answer, abandoned times, talk time, broken down by non-holiday weekdays, weekends (and holiday weekends) and weeknights.
- c) "Daily Phone Line/Utilization" – Daily for the month by: available lines, lines in use, time to answer, abandoned times, talk time, broken down by non-holiday weekdays, weekends (and holiday weekends) and weeknights.
- d) "Incoming Requests by Type (received by phone, fax and/or web and was it an emergency or regular call)" – YTD by month by: routine by phone, routine by facsimile, routine by electronic entry, emergency, and update by phone.

3.6.11.3 INCOMING REQUESTS CHARACTERISTICS REPORT

- a) "Daily Incoming RFMs and ERMs by Type" – Daily for the month.
- b) "Incoming RFM Request by Type" – YTD by month by excavator, excavator ID.
- c) "Daily Incoming RFM Requests" – Daily for the month by excavator, excavator ID.

3.6.11.4 EXCAVATOR REPORTS

- a) "Incoming Update Request by Phone" – YTD by month by excavator, excavator ID.
- b) "Daily Incoming Update Requests" – Daily for the month by excavator, excavator ID.
- c) "Incoming Emergency Request by Phone" – YTD by month by excavator, excavator ID.
- d) "Daily Emergency Incoming Request by Phone" – YTD by month by excavator, excavator ID.
- e) "Incoming Non-Emergency Requests Less than three (3) days" – YTD by month by excavator, excavator ID.
- f) "Daily Incoming Non-Emergency Requests Less than three (3) days" – Daily for the month by excavator, excavator ID.

3.6.11.5 OPERATOR REPORTS

- a) "Outgoing Emergency Messages" – YTD by month, operator.
- b) "Daily Outgoing Emergency Messages" – Daily for the month, operator.
- c) "Outgoing Non-Emergency Messages Less Than Three (3) Days" – YTD by month by operator.
- d) "Daily Outgoing Non-Emergency Messages Less Than Three (3) Days" – Daily for the month by operator.

- e) "Outgoing Update Messages" – YTD by month by operator.
- f) "Daily Outgoing Update Messages" – Daily for the month by operator.
- g) "Total tickets issued" – Total YTD, by month and by operator.

3.6.11.6 CENTER FINANCIAL REPORTS

- a) Detailed financial report(s) including, but not limited to: Summary of Operating Expenses, Stock Inventories/Financial Expenditures of the preceding month, year to date (YTD) and forecasted expenditures for the remainder of the budget year.
- b) Monthly and YTD review of billings (invoices) to operators with approved per ticket tariff rate and number of tickets per operator.

3.6.11.7 OPERATOR'S NOTIFICATION AREA REPORTS

The contractor shall provide a quarterly report containing map(s), diagram(s) and or technical definition(s) of each operator's notification area for the operators review and approval.

3.6.11.8 SPECIAL REPORTS

The contractor shall provide ad hoc reports at the request of the State Contract Manager and the Board or Board staff.

3.6.12 PUBLIC RELATIONS AND EDUCATION PROGRAMS

The contractor shall appoint an individual that shall be the primary point of contact for Public Relations and Educational Programs.

The contractor, at a minimum, shall provide the following:

- a) Develop a training program for customer service representatives ("CSR"), management and staff, including written procedure manuals that meet or exceed the UFPA requirements. The training shall include a component on recognizing and appropriately responding to possible security threats. The contractor shall provide documentation that each employee has successfully completed the training course. The contractor shall also provide a methodology for retraining experienced CSRs. The contractor shall ensure that all staff is fully trained, facilities are business ready and systems are operational on or before the contract start date of November 17, 2009.
- b) The contractor shall design and conduct an Education/Public Relations Program approved by Board staff. Topics covered shall include, but may not be limited to:
 - 1) Training of excavators in safe excavation techniques;
 - 2) Training of excavators in proper ticket preparation;
 - 3) Training of excavators to properly specify the areas in which the operator wishes to be notified of planned excavation;
 - 4) Training of operators in proper screening of tickets;

- c) The contractor shall be active in promoting the use of the System and shall participate in contractor, municipal, county, state and service organization, meetings, conferences and conventions. The contractor shall also make other visits and contacts appropriate for the promotion of the system.
- d) The contractor shall keep a written record of all public appearance and promotional contacts.
- e) The contractor shall complete a quarterly mailing to all excavators of record within the System's database, excavation contractors that are on record with the State licensing authorities, and those who have excavation related advertising in New Jersey phone books. This list shall be updated at least annually.

3.7 LITIGATION SUPPORT

The contractor shall provide expert testimony regarding any litigation resulting from work performed in fulfillment of the requirements of this RFP upon request by the State Contract Manager.

4.0 BID PROPOSAL PREPARATION AND SUBMISSION

4.1 GENERAL

The bidder is advised to thoroughly read and follow all instructions contained in this RFP, including the instructions on the RFP's signatory page, in preparing and submitting its bid proposal.

Note: Bid proposals shall not contain URLs (Uniform Resource Locators, i.e., the global address of documents and other resources on the world wide web) or web addresses. Inasmuch as the web contains dynamically changing content, inclusion of a URL or web address in a bid response is indicative of potentially changing information. Inclusion of a URL or web address in a bid response implies that the bid's content changes as the referenced web pages change.

4.2 BID PROPOSAL DELIVERY AND IDENTIFICATION

In order to be considered, a bid proposal must arrive at the Purchase Bureau in accordance with the instructions on the RFP signatory page <http://www.state.nj.us/treasury/purchase/bid/summary/09-x-20634.shtml>. Bidders are cautioned to allow adequate delivery time to ensure timely delivery of bid proposals. **State regulation mandates that late bid proposals are ineligible for consideration. THE EXTERIOR OF ALL BID PROPOSAL PACKAGES ARE TO BE LABELED WITH THE BID IDENTIFICATION NUMBER AND THE FINAL BID OPENING DATE OR RISK NOT BEING RECEIVED IN TIME.**

4.3 NUMBER OF BID PROPOSAL COPIES

The bidder must submit **one (1) complete ORIGINAL bid proposal**, clearly marked as the "ORIGINAL" bid proposal. The bidder should submit **eight (8) full, complete and exact copies and one (1) unbound, complete and exact copy** of the original. The copies requested are necessary in the evaluation of the bid proposal. A bidder failing to provide the requested number of copies will be charged the cost incurred by the State in producing the requested number of copies. It is suggested that the bidder make and retain a copy of its bid proposal.

4.4 BID PROPOSAL CONTENT

The bid proposal should be submitted in one volume and that volume divided into four (4) sections with tabs (separators), and the content of the material located behind each tab, as follows:

- Section 1 - Forms (Section 4.4.1 - 4.4.3.)
- Section 2 - Technical Proposal (Section 4.4.4)
- Section 3 - Organizational Support and Experience (Section 4.4.5)
- Section 4 - Cost Proposal (Section 4.4.6)

4.4.1 FORMS THAT MUST BE SUBMITTED WITH BID PROPOSAL

4.4.1.1 SIGNATORY PAGE

The bidder shall complete and submit the Signatory page provided on the Advertised Solicitation, Current Bid Opportunities webpage

<http://www.state.nj.us/treasury/purchase/bid/summary/09-x-20634.shtml>. The Signatory page shall be signed by an authorized representative of the bidder. If the bidder is a limited partnership, the Signatory page must be signed by a general partner. If the bidder is a joint venture, the Signatory page must be signed by a principal of each party to the joint venture. Failure to comply will result in rejection of the bid proposal.

4.4.1.2 OWNERSHIP DISCLOSURE FORM

In the event the bidder is a corporation, partnership or sole proprietorship, the bidder must complete the attached Ownership Disclosure Form. A current completed Ownership Disclosure Form must be received prior to or accompany the bid proposal. Failure to do so will preclude the award of a contract.

The Ownership Disclosure Form is located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/09-x-20634.shtml>.

4.4.1.3 DISCLOSURE OF INVESTIGATIONS/ACTIONS INVOLVING BIDDER

The bidder shall provide a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five years including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. The bidder shall use the Disclosure of Investigations and Actions Involving Bidder form located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/09-x-20634.shtml>.

4.4.2 PROOFS OF REGISTRATION THAT MUST BE SUBMITTED WITH THE BID PROPOSAL

4.4.2.1 BUSINESS REGISTRATION CERTIFICATE FROM THE DIVISION OF REVENUE

FAILURE TO SUBMIT A COPY OF THE BIDDER'S BUSINESS REGISTRATION CERTIFICATE (OR INTERIM REGISTRATION) FROM THE DIVISION OF REVENUE WITH THE BID PROPOSAL MAY BE CAUSE FOR REJECTION OF THE BID PROPOSAL.

The bidder may go to www.nj.gov/njbgs to register with the New Jersey Division of Revenue or to obtain a copy of an existing Business Registration Certificate.

Refer to Section 1.1. of the NJ Standard Terms and Conditions version 07/27/07 located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/09-x-20634.shtml>.

4.4.2.2 SMALL BUSINESS SET-ASIDE CONTRACTS

This is a contract with set aside subcontracting goals for Small Businesses. All bidders must include in their bid proposal a completed and signed **Notice of Intent to Subcontract** form located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/09-x-20634.shtml>. Bidders intending to utilize subcontractors must also include a completed and signed Subcontractor Utilization Plan form located on the Advertised Solicitation, Current Bid Opportunities webpage

<http://www.state.nj.us/treasury/purchase/bid/summary/09-x-20634.shtml>. Failure to submit the required forms shall result in a determination that the bid is materially non-responsive. Bidders seeking eligible small businesses should contact the New Jersey Commerce, Economic Growth and Tourism Commission at (609) 292-2146.

4.4.3 FORMS THAT MUST BE SUBMITTED BEFORE CONTRACT AWARD AND SHOULD BE SUBMITTED WITH THE BID PROPOSAL.

4.4.3.1 MACBRIDE PRINCIPLES CERTIFICATION

The bidder is required to complete the attached MacBride Principles Certification evidencing compliance with the MacBride Principles. The requirement is a precondition to entering into a State contract. The MacBride Principles Certification Form is located on the Advertised Solicitation, Current Bid Opportunities webpage:

<http://www.state.nj.us/treasury/purchase/bid/summary/09-x-20634.shtml>.

4.4.3.2 AFFIRMATIVE ACTION

The bidder is required to submit a copy of Certificate of Employee Information or a copy of Federal Letter of Approval verifying that the bidder is operating under a federally approved or sanctioned Affirmative Action program. If the bidder has neither document of Affirmative Action evidence, then the bidder must complete the attached Affirmative Action Employee Information Report (AA-302). This requirement is a precondition to entering into a State contract. The Affirmative Action Employee Information Report (AA-302) is located on the Advertised Solicitation, Current Bid Opportunities webpage:

<http://www.state.nj.us/treasury/purchase/bid/summary/09-x-20634.shtml>.

4.4.3.3 SERVICES SOURCE DISCLOSURE FORM

Pursuant to N.J.S.A. 52:34-13.2, the bidder is required to submit with its bid proposal a completed source disclosure form. The Services Source Disclosure Form is located on the Advertised Solicitation, Current Bid Opportunities webpage

<http://www.state.nj.us/treasury/purchase/bid/summary/09-x-20634.shtml>. Refer to section 7.1.2 of this RFP.

4.4.3.4 NOTICE OF INTENT TO SUBCONTRACT FORM

All bidders should complete the attached Notice of Intent to Subcontract Form <http://www.state.nj.us/treasury/purchase/bid/summary/09-x-20634.shtml> to advise the State as to whether or not a subcontractor will be utilized to provide any goods or services under the contract.

If this is a Small Business Subcontracting set-aside contract, the bidder must comply with the Procedures for Small Business Participation as Subcontractors set forth in <http://www.state.nj.us/treasury/purchase/bid/summary/09-x-20634.shtml>.

4.4.3.5 SUBCONTRACTOR UTILIZATION FORM

If the bidder intends to utilize a subcontractor, the Subcontractor Utilization Form <http://www.state.nj.us/treasury/purchase/bid/summary/09-x-20634.shtml> should be completed and submitted with the bid proposal.

4.4.4 TECHNICAL PROPOSAL

In this Section, the bidder shall describe its approach and plans for accomplishing the work outlined in the Scope of Work Section, i.e., Section 3.0. The bidder must set forth its understanding of the requirements of this RFP and its ability to successfully complete the contract. This Section of the bid proposal should contain at least the following information:

- a) Set-up and operation of the System which includes the following:
 - 1) The bidder should describe how it will establish a One-Call Damage Prevention System to receive and record Request for Markouts as provided by excavators and transmit these Requests (Tickets) to Operators as defined by the UFPA.
 - 2) The bidder should describe the operation of the system in accordance with the specifications and all attachments thereto and under the general direction of Board staff.
 - 3) The bidder should describe its "TURN KEY" operation.
 - 4) The bidder should describe how it will install and satisfactorily operate a computerized map based and street indexed system that fully meets the performance specifications found herein. The bidder should provide a timetable with specified milestones for the transition from the existing system to the new system. All other capabilities such as a fax, remote entry system and electronic fax-back capabilities must be available from the inception of the System's operation.
 - 5) The bidder should describe its "real time" system and that shall provide to the caller a confirmation number, a list of operators that will be notified, and meet the requirements of the UFPA for each Request For Markout (RFM/ERM).
 - 6) The bidder should describe how it will fully satisfy all the reporting and performance requirements contained herein.
 - 7) The bidder should explain how it will comply with the mutually agreed upon performance goals for center operations contained herein.
 - 8) The bidder should describe how it will assume a proactive role in:
 - a. Advising Board staff of new technologies applicable to the operation of the System;
 - b. advising Board staff of matters pertinent to the efficient operation of the System; and,
 - c. representing the System at meetings, seminars or at legislative or regulatory hearings when requested.
 - 9) The bidder should explain how it will provide unsurpassed customer service as required by the NJBPU and the RFP.
 - 10) The bidder should describe how it will reference and refer to appropriate New Jersey laws as required by the NJBPU.

- 11) The bidder should describe how it will implement the public relation and educational programs required of this RFP.
- 12) The bidder should describe its plan for the transition schedule for assumption of the service, including all deliverables and milestones generated by the transition.
- 13) The bidder should explain how it will comply with all regulatory standards and Utility policies dealing with safety, insurance and work specifications.
- 14) The bidder should submit any other information that may assist in the review of its submitted proposal, such as brochures, literature or samples of recent projects.

4.4.4.1 MANAGEMENT OVERVIEW

The bidder shall set forth its overall technical approach and plans to meet the requirements of the RFP in a narrative format. This narrative should convince the State that the bidder understands the objectives that the contract is intended to meet, the nature of the required work and the level of effort necessary to successfully complete the contract. This narrative should convince the State that the bidder's general approach and plans to undertake and complete the contract are appropriate to the tasks and subtasks involved.

Mere reiterations of RFP tasks and subtasks are strongly discouraged, as they do not provide insight into the bidder's ability to complete the contract. The bidder's response to this section should be designed to convince the State that the bidder's detailed plans and approach proposed to complete the Scope of Work are realistic, attainable and appropriate and that the bidder's bid proposal will lead to successful contract completion.

The bidders shall submit samples of the reports contained in Section 3.7 (k) of this RFP as part of its Technical Proposal.

4.4.4.2 CONTRACT MANAGEMENT

The bidder should describe its specific plans to manage, control and supervise the contract to ensure satisfactory contract completion according to the required schedule. The plan should include the bidder's approach to communicate with the State Contract Manager including, but not limited to, status meetings, status reports, etc.

4.4.4.3 CONTRACT SCHEDULE

The bidder should include a contract schedule. If key dates are a part of this RFP, the bidder's schedule should incorporate such key dates and should identify the completion date for each task and sub-task required by the Scope of Work. Such schedule should also identify the associated deliverable item(s) to be submitted as evidence of completion of each task and/or subtask.

The bidder should identify the contract scheduling and control methodology to be used and should provide the rationale for choosing such methodology. The use of Gantt, PERT or other charts is at the option of the bidder.

4.4.4.4 MOBILIZATION AND IMPLEMENTATION PLAN

It is essential that the State move forward quickly to have the contract in place. Therefore, the bidder must include as part of its proposal a mobilization and implementation plan, beginning with the date of notification of contract.

Such mobilization and implementation plan should include the following elements:

a) A detailed timetable for the mobilization and implementation period.

This timetable should be designed to demonstrate how the bidder will have the contract up and operational from the date of notification of award.

(b) The bidder's plan for the deployment and use of management, supervisory or other key personnel during the mobilization and implementation period. The plan should show all management, supervisory and key personnel that will be assigned to manage, supervise and monitor the bidder's mobilization and implementation of the contract up to the contract start date of November 17, 2009.

NOTE: The bidder should clearly identify management, supervisory or other key staff that will be assigned only during the mobilization and implementation period.

The bidder's plan for recruitment shall identify all services required by the RFP on the contract start date at the end of the mobilization and implementation period.

The bidder should submit a plan for the purchase and distribution of equipment, inventory, supplies, materials, etc. that will be required to fully implement the contract on the required start date.

The bidder should submit a plan for the use of subcontractor(s), if any, on this contract. Emphasis should be on how any subcontractor identified will be involved in the mobilization and implementation plan.

4.4.4.5 POTENTIAL PROBLEMS

The bidder should set forth a summary of any and all problems that the bidder anticipates during the term of the contract. For each problem identified, the bidder should provide its proposed solution.

4.4.5 ORGANIZATIONAL SUPPORT AND EXPERIENCE

The bidder should include information relating to its organization, personnel, and experience, including, but not limited to, references, together with contact names and telephone numbers, evidencing the bidder's qualifications, and capabilities to perform the services required by this RFP.

4.4.5.1 LOCATION

The bidder should include the location of the bidder's office that will be responsible for managing the contract. The bidder should include the telephone number and name of the individual to contact.

4.4.5.2 ORGANIZATION CHART (CONTRACT SPECIFIC)

The bidder should include a contract organization chart, with names showing management, supervisory and other key personnel (including sub-vendor's management, supervisory or other key personnel) to be assigned to the contract. The chart should include the labor category and title of each such individual.

4.4.5.3 RESUMES

Detailed resumes should be submitted for all management, supervisory and key personnel to be assigned to the contract. Resumes should be structured to emphasize relevant qualifications and experience of these individuals in successfully completing contracts of a similar size and scope to those required by this RFP. Resumes should include the following:

Clearly identify the individual's previous experience in completing similar contracts.

Beginning and ending dates should be given for each similar contract.

A description of the contract should be given and should demonstrate how the individual's work on the completed contract relates to the individual's ability to contribute to successfully providing the services required by this RFP.

With respect to each similar contract, the bidder should include the name and address of each reference together with a person to contact for a reference check and a telephone number.

4.4.5.4 BACKUP STAFF

The bidder should include a list of backup staff that may be called upon to assist or replace primary individuals assigned. Backup staff must be clearly identified as backup staff.

In the event the bidder must hire management, supervisory and/or key personnel if awarded the contract, the bidder should include, as part of its recruitment plan, a plan to secure backup staff in the event personnel initially recruited need assistance or need to be replaced during the contract term.

4.4.5.5 ORGANIZATION CHART (ENTIRE FIRM)

The bidder should include an organization chart showing the bidder's entire organizational structure. This chart should show the relationship of the individuals assigned to the contract to the bidder's overall organizational structure.

4.4.5.6 EXPERIENCE OF BIDDER ON CONTRACTS OF SIMILAR SIZE AND SCOPE

The bidder should provide a comprehensive listing of contracts of similar size and scope that it has successfully completed, as evidence of the bidder's ability to successfully complete the services required by this RFP. Emphasis should be placed on contracts that are similar in size and scope to the work required by this RFP. A description of all such contracts should be

included and should show how such contracts relate to the ability of the firm to complete the services required by this RFP. For each such contract, the bidder should provide two names and telephone numbers of individuals for the other contract party. Beginning and ending dates should also be given for each contract.

4.4.5.7 FINANCIAL CAPABILITY OF THE BIDDER

In order to provide the State with the ability to judge the bidder's financial capacity and capabilities to undertake and successfully complete the contract, the bidder should submit certified financial statements to include a balance sheet, income statement and statement of cash flow, and all applicable notes for the most recent calendar year or the bidder's most recent fiscal year. If certified financial statements are not available, the bidder should provide either a reviewed or compiled statement from an independent accountant setting forth the same information required for the certified financial statements, together with a certification from the Chief Executive Officer and the Chief Financial Officer, that the financial statements and other information included in the statements fairly present in all material respects the financial condition, results of operations and cash flows of the bidder as of, and for, the periods presented in the statements. In addition, the bidder should submit a bank reference.

If the information is not supplied with the bid proposal, the State may still require the bidder to submit it. If the bidder fails to comply with the request within seven (7) business days, the State may deem the proposal non-responsive.

A bidder may designate specific financial information as not subject to disclosure when the bidder has a good faith legal/factual basis for such assertion. Bidder may submit specific financial documents in a separate, sealed package clearly marked "Confidential-Financial Information" along with the Bid Proposal.

The State reserves the right to make the determination to accept the assertion and shall so advise the bidder.

4.4.5.8 SUBCONTRACTOR(S)

All bidders should complete the **Notice of Intent to Subcontract Form** whether or not they intend to utilize subcontractors in connection with the work set forth in this RFP. If the bidder intends to utilize subcontractor(s), then the **Subcontractor Utilization Plan** should also be submitted with the bid.

N.J.A.C. 17:13-4 and Executive Order 71 mandate that if the bidder proposes to utilize a subcontractor, the bidder must make a good faith effort to meet the set-aside subcontracting targets of awarding a total of twenty-five percent (25%) of the value of the contract to New Jersey-based, New Jersey Commerce, Economic Growth & Tourism Commission registered small businesses, with a minimum of five (5) percent awarded to each of the three categories set forth below, and the balance of ten (10) percent spread across the three annual gross revenue categories: Category I – \$1 to \$500,000; Category II - \$500,001 to \$5,000,000; Category III - \$5,000,001 to \$12,000,000.

Should the bidder choose to use subcontractors and fail to meet the Small Business Subcontracting targets set forth above, the bidder must submit documentation demonstrating its

good faith effort to meet the targets with its bid proposal or within seven (7) business days upon request.

Should the bidder propose to utilize a subcontractor(s) to fulfill any of its obligations, the bidder shall be responsible for the subcontractor's(s): (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws.

The bidder must provide a detailed description of services to be provided by each subcontractor, referencing the applicable Section or Subsection of this RFP.

The bidder should provide detailed resumes for each subcontractor's management, supervisory and other key personnel that demonstrate knowledge, ability and experience relevant to that part of the work which the subcontractor is designated to perform.

The bidder should provide documented experience to demonstrate that each subcontractor has successfully performed work on contracts of a similar size and scope to the work that the subcontractor is designated to perform in the bidder's proposal.

4.4.6 PRICE SCHEDULE

The bidder must submit its pricing using the format set forth in the State supplied price sheet(s) in Section 9.0 of this RFP. Failure to submit all information required may result in the bid being considered non-responsive. Each bidder is required to hold its prices firm through issuance of contract.

Refer to the term, Labor Rate (Fully Loaded Firm Fixed Price) as defined in Standard Definitions ([Section 2.1](#)) for a thorough understanding of this term.

The Total Firm Fixed Unit Price column in the Price Schedule shall reflect the bidder's proposed rate for markout/serial numbers generator. If awarded a contract, the Total Firm Fixed Unit Price shall be multiplied by the actual number of incoming calls in a given year for a Total Firm Fixed Price to be paid to the contractor for that year. The Total Firm Fixed Price populated by the bidder is based on an estimated number of calls in a given year, which is an average of years 2005, 2006 and 2007 listed below and does not represent an actual amount to be paid to the contractor.

The following background on markout calls/serial numbers (RFMs/ERMs and updates) received and tickets generated are for informational purposes only.

In 2005, 550,505 markout calls were received and the same number of serial numbers were generated. As a result of those calls, 3,421,807 tickets were generated;
in 2006, 577,032 markout calls were received and the same number of serial numbers were generated. As a result of those calls, 3,686,421 tickets were generated; and
in 2007, 558,160 markout calls were received and the same number of serial numbers were generated. As a result of those calls, 3,499,750 tickets were generated.

It should be noted that markout/serial number volume may increase while ticket volume may stabilize or decrease due to more stringent operating requirements and technological improvements. Also, it should be noted that the contractor functions under a tariff approved by the NJBPU details of which are included in Section 3.6.3.

5.0 SPECIAL CONTRACTUAL TERMS AND CONDITIONS

5.1 PRECEDENCE OF SPECIAL CONTRACTUAL TERMS AND CONDITIONS

The contract awarded as a result of this RFP shall consist of this RFP, addendum to this RFP, the contractor's bid proposal and the Division's Notice of Award.

Unless specifically stated within this RFP, the Special Contractual Terms and Conditions of the RFP take precedence over the NJ Standard Terms and Conditions version 07/27/07 located on the Advertised Solicitation, Current Bid Opportunities webpage:

<http://www.state.nj.us/treasury/purchase/bid/summary/09-x-20634.shtml>.

In the event of a conflict between the provisions of this RFP, including the Special Contractual Terms and Conditions and the NJ Standard Terms and Conditions version 07/27/07, and any Addendum to this RFP, the Addendum shall govern.

In the event of a conflict between the provisions of this RFP, including any Addendum to this RFP, and the bidder's bid proposal, the RFP and/or the Addendum shall govern.

5.2 CONTRACT TERM AND EXTENSION OPTION

The term of the contract shall be for a period of **five (5)** years. The anticipated "Contract Effective Date" is provided on the signatory page of this RFP located on the Advertised Solicitation, Current Bid Opportunities webpage, <http://www.state.nj.us/treasury/purchase/bid/summary/09-x-20634.shtml>. If delays in the bid process result in an adjustment of the anticipated Contract Effective Date, the bidder agrees to accept a contract for the full term of the contract.

The contract may be extended for **up to two (2)** additional periods of up to one (1) year, by mutual written consent of the contractor and the Director at the same terms, conditions and pricing. The length of each extension shall be determined when the extension request is processed.

Should the contract be extended, the contractor shall be paid at the rates in effect in the last year of the contract.

5.3 CONTRACT TRANSITION

In the event that a new contract has not been awarded prior to the contract expiration date, as may be extended herein, it shall be incumbent upon the contractor to continue the contract under the same terms and conditions until a new contract can be completely operational. At no time shall this transition period extend more than **ninety (90)** days beyond the expiration date of the contract.

5.4 CONTRACT AMENDMENT

Any changes or modifications to the terms of the contract shall be valid only when they have been reduced to writing and signed by the contractor and the Director.

5.5 CONTRACTOR RESPONSIBILITIES

The contractor shall have sole responsibility for the complete effort specified in the contract. Payment will be made only to the contractor. The contractor shall have sole responsibility for all payments due any subcontractor.

The contractor is responsible for the professional quality, technical accuracy and timely completion and submission of all deliverables, services or commodities required to be provided under the contract. The contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its deliverables and other services. The approval of deliverables furnished under this contract shall not in any way relieve the contractor of responsibility for the technical adequacy of its work. The review, approval, acceptance or payment for any of the services shall not be construed as a waiver of any rights that the State may have arising out of the contractor's performance of this contract.

5.6 SUBSTITUTION OF STAFF

If it becomes necessary for the contractor to substitute any management, supervisory or key personnel, the contractor will identify the substitute personnel and the work to be performed.

The contractor must provide detailed justification documenting the necessity for the substitution. Resumes must be submitted evidencing that the individual(s) proposed as substitution(s) have qualifications and experience equal to or better than the individual(s) originally proposed or currently assigned.

The contractor shall forward a request to substitute staff to the State Contract Manager for consideration and approval. No substitute personnel are authorized to begin work until the contractor has received written approval to proceed from the State Contract Manager.

5.7 SUBSTITUTION OR ADDITION OF SUBCONTRACTOR(S)

This Subsection serves to supplement but not to supersede Section 3.11 of the NJ Standard Terms and Conditions version 07/27/07 located on the Advertised Solicitation, Current Bid Opportunities webpage.

If it becomes necessary for the contractor to substitute a subcontractor, add a subcontractor or substitute its own staff for a subcontractor, the contractor will identify the proposed new subcontractor or staff member(s) and the work to be performed. The contractor must provide detailed justification documenting the necessity for the substitution or addition.

The contractor must provide detailed resumes of its proposed replacement staff or of the proposed subcontractor's management, supervisory and other key personnel that demonstrate knowledge, ability and experience relevant to that part of the work which the subcontractor is to undertake.

The qualifications and experience of the replacement(s) must equal or exceed those of similar personnel proposed by the contractor in its bid proposal.

The contractor shall forward a written request to substitute or add a subcontractor or to substitute its own staff for a subcontractor to the State Contract Manager for consideration. If the State

Contract Manager approves the request, the State Contract Manager will forward the request to the Director for final approval.

No substituted or additional subcontractors are authorized to begin work until the contractor has received written approval from the Director.

5.8 OWNERSHIP OF MATERIAL

All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the contract, including, but not limited to, all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the services required under this contract shall be and remain the property of the State of New Jersey and shall be delivered to the State of New Jersey upon 30 days notice by the State. With respect to software computer programs and/or source codes developed for the State, the work shall be considered "work for hire", i.e., the State, not the contractor or subcontractor, shall have full and complete ownership of all software computer programs and/or source codes developed. To the extent that any of such materials may not, by operation of the law, be a work made for hire in accordance with the terms of this Agreement, contractor or subcontractor hereby assigns to the State all right, title and interest in and to any such material, and the State shall have the right to obtain and hold in its own name and copyrights, registrations and any other proprietary rights that may be available.

Should the bidder anticipate bringing pre-existing intellectual property into the project, the intellectual property must be identified in the bid proposal. Otherwise, the language in the first paragraph of this section prevails. If the bidder identifies such intellectual property ("Background IP") in its bid proposal, then the Background IP owned by the bidder on the date of the contract, as well as any modifications or adaptations thereto, remain the property of the bidder. Upon contract award, the bidder or contractor shall grant the State a non-exclusive, perpetual royalty free license to use any of the bidder/contractor's Background IP delivered to the State for the purposes contemplated by the Contract.

5.9 DATA CONFIDENTIALITY

All financial, statistical, personnel and/or technical data supplied by the State to the contractor are confidential. The contractor is required to use reasonable care to protect the confidentiality of such data. Any use, sale or offering of this data in any form by the contractor, or any individual or entity in the contractor's charge or employ, will be considered a violation of this contract and may result in contract termination and the contractor's suspension or debarment from State contracting. In addition, such conduct may be reported to the State Attorney General for possible criminal prosecution.

5.10 NEWS RELEASES

The contractor is not permitted to issue news releases pertaining to any aspect of the services being provided under this contract without the prior written consent of the Director.

5.11 ADVERTISING

The contractor shall not use the State's name, logos, images, or any data or results arising from this contract as a part of any commercial advertising without first obtaining the prior written consent of the Director.

5.12 LICENSES AND PERMITS

The contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this contract. The contractor shall supply the State Contract Manager with evidence of all such licenses, permits and authorizations. This evidence shall be submitted subsequent to the contract award. All costs associated with any such licenses, permits and authorizations must be considered by the bidder in its bid proposal.

5.13 CLAIMS AND REMEDIES

5.13.1 CLAIMS

All claims asserted against the State by the contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

5.13.2 REMEDIES

Nothing in the contract shall be construed to be a waiver by the State of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in a writing executed by the Director.

5.13.3 REMEDIES FOR FAILURE TO COMPLY WITH MATERIAL CONTRACT REQUIREMENTS

In the event that the contractor fails to comply with any material contract requirements, the Director may take steps to terminate the contract in accordance with the State administrative code and/or authorize the delivery of contract items by any available means, with the difference between the price paid and the defaulting contractor's price either being deducted from any monies due the defaulting contractor or being an obligation owed the State by the defaulting contractor.

5.14 LATE DELIVERY

The contractor must immediately advise the State Contract Manager of any circumstance or event that could result in late completion of any task or subtask called for to be completed on a date certain.

5.15 RETAINAGE

Not applicable to this procurement.

5.16 STATE'S OPTION TO REDUCE SCOPE OF WORK

The State has the option, in its sole discretion, to reduce the scope of work for any task or subtask called for under this contract. In such an event, the Director shall provide advance written notice to the contractor.

Upon receipt of such written notice, the contractor will submit, within five (5) working days to the Director and the State Contract Manager, an itemization of the work effort already completed by task or subtask. The contractor shall be compensated for such work effort according to the applicable portions of its price schedule.

5.17 SUSPENSION OF WORK

The State Contract Manager may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director and the contractor shall negotiate an equitable adjustment, if any, to the contract price.

5.18 CHANGE IN LAW

Whenever an unforeseen change in applicable law or regulation affects the services that are the subject of this contract, the contractor shall advise the State Contract Manager and the Director in writing and include in such written transmittal any estimated increase or decrease in the cost of its performance of the services as a result of such change in law or regulation. The Director and the contractor shall negotiate an equitable adjustment, if any, to the contract price.

5.19 CONTRACT PRICE INCREASE (PREVAILING WAGE)

If the Prevailing Wage Act (N.J.S.A. 34:11-56 et seq.) is applicable to the contract, the contractor may apply to the Director, on the anniversary of the effective date of the contract, for a contract price increase. The contract price increase will be available only for an increase in the prevailing wages of trades and occupations covered under this contract during the prior year. The contractor must substantiate with documentation the need for the increase and submit it to the Director for review and determination of the amount, if any, of the requested increase, which shall be available for the upcoming contract year. No retroactive increases will be approved by the Director.

5.20 PUBLIC WORKS CONTRACT-ADDITIONAL AFFIRMATIVE ACTION REQUIREMENT

N.J.S.A. 10:5-33 requires that:

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

a) 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, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, 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, affectional or sexual orientation, gender identity or expression, disability, nationality 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 contracting officer setting forth the provisions of this nondiscrimination clause;

b) 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, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;

c) 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 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."

5.21 ADDITIONAL WORK AND/OR SPECIAL PROJECTS

The contractor shall not begin performing any additional work or special projects without first obtaining written approval from both the State Contract Manager and the Director.

In the event of additional work and/or special projects, the contractor must present a written proposal to perform the additional work to the State Contract Manager. The proposal should provide justification for the necessity of the additional work. The relationship between the additional work and the base contract work must be clearly established by the contractor in its proposal.

The contractor's written proposal must provide a detailed description of the work to be performed broken down by task and subtask. The proposal should also contain details on the level of effort, including hours, labor categories, etc., necessary to complete the additional work.

The written proposal must detail the cost necessary to complete the additional work in a manner consistent with the contract. The written price schedule must be based upon the hourly rates, unit costs or other cost elements submitted by the contractor in the contractor's original bid proposal submitted in response to this RFP. Whenever possible, the price schedule should be a firm, fixed cost to perform the required work. The firm fixed price should specifically reference and be tied directly to costs submitted by the contractor in its original bid proposal. A payment schedule, tied to successful completion of tasks and subtasks, must be included.

Upon receipt and approval of the contractor's written proposal, the State Contract Manager shall forward same to the Director for the Director's written approval. Complete documentation from the Using Agency, confirming the need for the additional work, must be submitted. Documentation forwarded by the State Contract Manager to the Director must include all other required State approvals, such as those that may be required from the State of New Jersey's Office of Management and Budget (OMB) and Office of Information and Technology (OIT).

No additional work and/or special project may commence without the Director's written approval. In the event the contractor proceeds with additional work and/or special projects without the Director's written approval, it shall be at the contractor's sole risk. The State shall be under no obligation to pay for work performed without the Director's written approval.

5.22 FORM OF COMPENSATION AND PAYMENT

Not applicable to this procurement.

5.22.1 PAYMENT TO CONTRACTOR - OPTIONAL METHOD

See Section 3.6.3.

5.23 MODIFICATIONS AND CHANGES TO THE NJ STANDARD TERMS AND CONDITIONS VERSION 07/27/07

NJ Standard Terms and Conditions version 07/27/07 are located on the Advertised Solicitation, Current Bid Opportunities webpage
<http://www.state.nj.us/treasury/purchase/bid/summary/09-x-20634.shtml>.

5.23.1 PATENT AND COPYRIGHT INDEMNITY

Section 2.1 of the NJ Standard Terms and Conditions version 07/27/07 is deleted and replaced with the following:

2.1 Patent and Copyright Indemnity

a) The Contractor shall hold and save the State of New Jersey, its officers, agents, servants and employees, harmless from liability of any nature or kind for or on account of the use of any copyrighted or uncopied composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of the contract.

b) The State of New Jersey agrees: (1) to promptly notify the Contractor in writing of such claim or suit; (2) that the Contractor shall have control of the defense of settlement of such claim or suit; and (3) to cooperate with the Contractor in the defense of such claim or suit, to the extent that the interests of the Contractor and the State are consistent.

c) In the event of such claim or suit, the Contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

5.23.2 INDEMNIFICATION

Section 2.2 of the NJ Standard Terms and Conditions version 07/27/07, is deleted and replaced with the following:

2.2 Indemnification

The contractor's liability to the State for actual, direct damages resulting from the contractor's performance or non-performance, or in any manner related to the contract, for any and all claims, shall be limited in the aggregate to 500 % of the value of the contract, except that such limitation of liability shall not apply to the following:

1. The contractor's obligation to indemnify the State of New Jersey and its employees from and against any claim, demand, loss, damage or expense relating to bodily injury or the death of any person or damage to real property or tangible personal property, incurred from the work or materials supplied by the contractor under the contract caused by negligence or willful misconduct of the contractor;
2. The contractor's breach of its obligations of confidentiality; and,
3. Contractor's liability with respect to copyright indemnification.

The contractor's indemnification obligation is not limited by but is in addition to the insurance obligations contained in Section 2.3 of the NJ Standard Terms and Conditions version 07/27/07.

The contractor shall not be liable for special, consequential, or incidental damages.

5.23.3 INSURANCE - PROFESSIONAL LIABILITY INSURANCE

Section 2.3 of the NJ Standard Terms and Conditions version 07/27/07 regarding insurance is modified with the addition of the following section regarding Professional Liability Insurance.

d) Professional Liability Insurance: The Contractor shall carry Errors and Omissions, Professional Liability Insurance and/or Professional Liability Malpractice Insurance sufficient to protect the Contractor from any liability arising out the professional obligations performed pursuant to the requirements of the Contract. The insurance shall be in the amount of not less than \$5,000,000 and in such policy forms as shall be approved by the State. If the Contractor has claims-made coverage and subsequently changes carriers during the term of the Contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

5.24 CONTRACT ACTIVITY REPORT

Not applicable to this procurement.

6.0 PROPOSAL EVALUATION

6.1 PROPOSAL EVALUATION COMMITTEE

Bid proposals may be evaluated by an Evaluation Committee composed of members of affected departments and agencies together with representative(s) from the Purchase Bureau. Representatives from other governmental agencies may also serve on the Evaluation Committee. On occasion, the Evaluation Committee may choose to make use of the expertise of outside consultant in an advisory role.

6.2 ORAL PRESENTATION AND/OR CLARIFICATION OF BID PROPOSAL

After the submission of bid proposals, unless requested by the State as noted below, vendor contact with the State is still not permitted.

A bidder may be required to give an oral presentation to the Evaluation Committee concerning its bid proposal. The Evaluation Committee may also require a bidder to submit written responses to questions regarding its bid proposal.

The purpose of such communication with a bidder, either through an oral presentation or a letter of clarification, is to provide an opportunity for the bidder to clarify or elaborate on its bid proposal. Original bid proposals submitted, however, cannot be supplemented, changed, or corrected in any way. No comments regarding other bid proposals are permitted. Bidders may not attend presentations made by their competitors.

It is within the Evaluation Committee's discretion whether to require a bidder to give an oral presentation or require a bidder to submit written responses to questions regarding its bid proposal. Action by the Evaluation Committee in this regard should not be construed to imply acceptance or rejection of a bid proposal.

The Purchase Bureau buyer will be the sole point of contact regarding any request for an oral presentation or clarification.

6.3 EVALUATION CRITERIA

The following evaluation criteria categories, not necessarily listed in order of significance, will be used to evaluate bid proposals received in response to this RFP. The evaluation criteria categories may be used to develop more detailed evaluation criteria to be used in the evaluation process:

6.3.1 TECHNICAL EVALUATION CRITERIA

- A) The bidder's general approach and plans in meeting the requirements of this RFP.
- B) The bidder's detailed approach and plans to perform the services required by the Scope of Work of this RFP.
- C) The bidder's documented experience in successfully completing contracts of a similar size and scope to the work required by this RFP.

- D) The qualifications and experience of the bidder's management, supervisory or other key personnel assigned to the contract, with emphasis on documented experience in successfully completing work on contracts of similar size and scope to the work required by this RFP.
- E) The overall ability of the bidder to mobilize, undertake and successfully complete the contract. This judgment will include, but not be limited to, the following factors: the number and qualifications of management, supervisory and other staff proposed by the bidder to complete the contract, the availability and commitment to the contract of the bidder's management, supervisory and other staff proposed and the bidder's contract management plan, including the bidder's contract organizational chart.

6.3.2 BIDDER'S PRICE SCHEDULE

For evaluation purposes, bidders will be ranked according to the total bid price located on the Price Sheet located on the Advertised Solicitation, Current Bid Opportunities webpage, <http://www.state.nj.us/treasury/purchase/bid/summary/09-x-20634.shtml>.

6.3.3 BID DISCREPANCIES

In evaluating bids, discrepancies between words and figures will be resolved in favor of words. Discrepancies between unit prices and totals of unit prices will be resolved in favor of unit prices. Discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated total of multiplied unit prices and units of work and the actual total will be resolved in favor of the actual total. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the corrected sum of the column of figures.

6.3.4 EVALUATION OF THE BID PROPOSALS

The Evaluation Committee will complete its evaluation and recommend to the Director for award the responsible bidder(s) whose bid proposal, conforming to this RFP, is most advantageous to the State, price and other factors considered. The Evaluation Committee considers and assesses price, technical criteria, and other factors during the evaluation process.

6.4 NEGOTIATION AND BEST AND FINAL OFFER (BAFO)

Following the opening of bid proposals, the State shall, pursuant to N.J.S.A. 52:34-12(f), negotiate one or more of the following contractual issues: the technical services offered, the terms and conditions and/or the price of a proposed contract award with any bidder, and/or solicit a Best and Final Offer (BAFO) from one or more bidders.

Initially, the Evaluation Committee will conduct a review of all the bids and select bidders to contact to negotiate and/or conduct a BAFO based on its evaluation and determination of the bid proposals that best satisfy the evaluation criteria and RFP requirements, and that are most advantageous to the State, price and other factors considered. The Committee may not contact all bidders to negotiate and/or to submit a BAFO.

In response to the State's request to negotiate, bidders must continue to satisfy all mandatory RFP requirements but may improve upon their original technical proposal in any revised technical

proposal. However, any revised technical proposal that does not continue to satisfy all mandatory requirements will be rejected as non-responsive and the original technical proposal will be used for any further evaluation purposes in accordance with the following procedure.

In response to the State's request for a BAFO, bidders may submit a revised price proposal that is equal to or lower in price than their original submission, but must continue to satisfy all mandatory requirements. Any revised price proposal that is higher in price than the original will be rejected as non-responsive and the original bid will be used for any further evaluation purposes.

After receipt of the results of the negotiation and/or the BAFO(s), the Evaluation Committee will complete its evaluation and recommend to the Director for award that responsible bidder(s) whose bid proposal, conforming to this RFP, is most advantageous to the State, price and other factors considered.

All contacts, records of initial evaluations, any correspondence with bidders related to any request for negotiation or BAFO, any revised technical and/or price proposals, the Evaluation Committee Report and the Award Recommendation, will remain confidential until a Notice of Intent to Award a contract is issued.

7.0 CONTRACT AWARD

7.1 DOCUMENTS REQUIRED BEFORE CONTRACT AWARD

7.1.1 REQUIREMENTS OF N.J.S.A. 19:44A-20.13-25 (FORMERLY EXECUTIVE ORDER 134)

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the negotiation and award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, the Legislature enacted N.J.S.A. 19:44A-20.13 – 25 on March 22, 2005 the “Legislation”), retroactive to October 15, 2004, superseding the terms of Executive Order 134. Pursuant to the requirements of the Legislation, the terms and conditions set forth in this section are material terms of any contract resulting from this RFP:

7.1.1.1 DEFINITIONS

For the purpose of this section, the following shall be defined as follows:

a) Contribution – means a contribution reportable as a recipient under “The New Jersey Campaign Contributions and Expenditures Reporting Act.” P.L. 1973, c. 83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq. Through December 31, 2004, contributions in excess of \$400 during a reporting period were deemed "reportable" under these laws. As of January 1, 2005, that threshold was reduced to contributions in excess of \$300.

b) Business Entity – means any natural or legal person, business corporation, professional services corporation, Limited Liability Company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. The definition of a business entity includes (i) all principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate; (ii) any subsidiaries directly or indirectly controlled by the business entity; (iii) any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and (iv) if a business entity is a natural person, that person’s spouse or child, residing in the same household.

7.1.1.2 BREACH OF TERMS OF THE LEGISLATION

It shall be a breach of the terms of the contract for the Business Entity to (i) make or solicit a contribution in violation of the Legislation, (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange of contributions to circumvent the intent of the Legislation; or (viii) directly or indirectly

through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

7.1.1.3 CERTIFICATION AND DISCLOSURE REQUIREMENTS

a) The State shall not enter into a contract to procure from any Business Entity services or any material, supplies or equipment, or to acquire, sell or lease any land or building, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor, or to any State or county political party committee during certain specified time periods

b) Prior to awarding any contract or agreement to any Business Entity, the Business Entity proposed as the intended awardee of the contract shall submit the Certification and Disclosure form, certifying that no contributions prohibited by the Legislation have been made by the Business Entity and reporting all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C.527 of the Internal Revenue Code that also meets the definition of a “continuing political committee” within the mean of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The required form and instructions, available for review on the Purchase Bureau website at

<http://www.state.nj.us/treasury/purchase/forms.htm#eo134>, shall be provided to the intended awardee for completion and submission to the Purchase Bureau with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Contract, the intended awardee shall submit to the Division, in care of the Purchase Bureau Buyer, the Certification and Disclosure(s) within five (5) business days of the State’s request. Failure to submit the required forms will preclude award of a contract under this RFP, as well as future contract opportunities.

c) Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the contract, and any extension(s) thereof, at the time any such contribution is made. The required form and instructions, available for review on the Purchase Bureau website at <http://www.state.nj.us/treasury/purchase/forms.htm#eo134>, shall be provided to the intended awardee with the Notice of Intent to Award.

7.1.1.4 STATE TREASURER REVIEW

The State Treasurer or his designee shall review the Disclosures submitted pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended awardee, prior to award, or during the term of the contract, by the contractor. If the State Treasurer determines that any contribution or action by the contractor constitutes a breach of contract that poses a conflict of interest in the awarding of the contract under this solicitation, the State Treasurer shall disqualify the Business Entity from award of such contract.

7.1.1.5 ADDITIONAL DISCLOSURE REQUIREMENT OF P.L. 2005, C. 271

Contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to P.L. 2005, c. 271, section 3 if the contractor receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the contractor’s responsibility to determine if filing is necessary. Failure to

so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

7.1.2 SOURCE DISCLOSURE REQUIREMENTS

7.1.2.1 REQUIREMENTS OF N.J.S.A. 52:34-13.2

Under the referenced statute, effective August 3, 2005, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

7.1.2.2 SOURCE DISCLOSURE REQUIREMENTS

Pursuant to the statutory requirements, the intended awardee of a contract primarily for services with the State of New Jersey must disclose the location by country where services under the contract, including subcontracted services, will be performed. The Source Disclosure Certification form is located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/09-x-20634.shtml>.

FAILURE TO SUBMIT SOURCING INFORMATION WHEN REQUESTED BY THE STATE SHALL PRECLUDE AWARD OF A CONTRACT TO THE BIDDER.

If any of the services cannot be performed within the United States, the bidder shall state with specificity the reasons why the services cannot be so performed. The Director shall determine whether sufficient justification has been provided by the bidder to form the basis of his certification that the services cannot be performed in the United States and whether to seek the approval of the Treasurer.

7.1.2.3 BREACH OF CONTRACT OF EXECUTIVE ORDER 129

A SHIFT TO PROVISION OF SERVICES OUTSIDE THE UNITED STATES DURING THE TERM OF THE CONTRACT SHALL BE DEEMED A BREACH OF CONTRACT.

If, during the term of the contract, the contractor or subcontractor, who had on contract award declared that services would be performed in the United States, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 3.5b.1 of the Standard Terms and Conditions version 07/27/07 of the RFP, unless previously approved by the Director and the Treasurer.

7.2 FINAL CONTRACT AWARD

Contract award[s] shall be made with reasonable promptness by written notice to that responsible bidder(s), whose bid proposal(s), conforming to this RFP, is(are) most advantageous to the State, price, and other factors considered. Any or all bid proposals may be rejected when the State Treasurer or the Director determines that it is in the public interest to do so.

7.3 INSURANCE CERTIFICATES

The contractor shall provide the State with current certificates of insurance for all coverages required by the terms of this contract, naming the State as an Additional Insured.

7.4 PERFORMANCE BOND

Not applicable to this procurement.

8.0 CONTRACT ADMINISTRATION

8.1 CONTRACT MANAGER

The State Contract Manager is the State employee responsible for the overall management and administration of the contract. All communication to Board staff shall be through the State Contract Manager unless the State Contract Manager specifies otherwise. If an approval or review is performed by the Board or Board staff other than the State Contract Manager, the State Contract Manager shall forward all documents to the appropriated Board staff.

The State Contract Manager for this project will be identified at the time of execution of contract. At that time, the contractor will be provided with the State Contract Manager's name, department, division, agency, address, telephone number, fax phone number, and email address.

8.1.1 STATE CONTRACT MANAGER RESPONSIBILITIES

For an agency contract where only one State office uses the contract, the State Contract Manager will be responsible for engaging the contractor, assuring that Purchase Orders are issued to the contractor, directing the contractor to perform the work of the contract, approving the deliverables and approving payment vouchers. The State Contract Manager is the person that the contractor will contact **after the contract is executed** for answers to any questions and concerns about any aspect of the contract. The State Contract Manager is responsible for coordinating the use and resolving minor disputes between the contractor and any component part of the State Contract Manager's Department.

If the contract has multiple users, then the State Contract Manager shall be the central coordinator of the use of the contract for all Using Agencies, while other State employees engage and pay the contractor. All persons and agencies that use the contract must notify and coordinate the use of the contract with the State Contract Manager.

8.1.2 COORDINATION WITH THE STATE CONTRACT MANAGER

Any contract user that is unable to resolve disputes with a contractor shall refer those disputes to the State Contract Manager for resolution. Any questions related to performance of the work of the contract by contract users shall be directed to the State Contract Manager. The contractor may contact the State Contract Manager if the contractor can not resolve a dispute with contract users.

9.0 PRICE SCHEDULE

Line Number	Commodity - Service Description	Estimated Quantity	Unit	Total Firm Fixed Unit Price per Serial Number	Total Firm Fixed Price
1	All Inclusive firm fixed price for Markout/Serial Number – Year 1	562,000	Each	\$	\$
2	All Inclusive firm fixed price for Markout/Serial Number – Year 2	562,000	Each	\$	\$
3	All Inclusive firm fixed price for Markout/Serial Number – Year 3	562,000	Each	\$	\$
4	All Inclusive firm fixed price for Markout/Serial Number – Year 4	562,000	Each	\$	\$
5	All Inclusive firm fixed price for Markout/Serial Number – Year 5	562,000	Each	\$	\$
* Total Bid Price					\$

Line Number	Commodity - Service Description Estimated Quantity	Unit	All Inclusive Hourly Rate
6	** Additional Services (Section 5.21)	Hour	\$
7	*** Litigation Support (Section 3.7)	Hour	\$

Note - Refer to the term, Labor Rate (Fully Loaded Firm Fixed Price) as defined in Standard Definitions (Section 2.1) for a thorough understanding of this term.

See section 4.4.6 and 3.6.3.

*** Price Lines 6 and 7 should not be included in the “Total Cost Proposal”. The Total Cost Proposal” shall be the aggregate amount of price lines 1 through 5 only.**

**** The contractor shall submit blended all inclusive hourly rate quotes for additional work that may be utilized if additional work is authorized under Section 5.21.**

***** The contractor shall submit an all inclusive hourly rate for expert testimony regarding any litigation resulting from work performed in fulfillment of the requirements of this RFP upon request by the State Contract Manager (see Section 3.7).**

The bidder must provide a price for each bid item or the bid proposal may be considered non-responsive.

The bidder should submit a budget that supports and explains each Firm Fixed Unit Price (Price Lines 1 – 5) submitted on its price schedule. The budget should include, but not be limited to, staff, estimated hours for each staff person and an all inclusive hourly rate for each staff person. Prices will be ranked using the Total Bid Price (Fully Loaded Firm Fixed Price).

All payments to the contractor shall come from tariff payments paid by operators. NJBPU will not pay the contractor for operating the system.

Please note: A firm fixed unit price is an all-inclusive of direct cost and indirect costs, including, but not limited to, direct labor costs, overhead, fee or profit, clerical support, equipment, materials, supplies, managerial (administrative) support, all documents, reports, forms, travel, reproduction and any other costs. No additional fees or costs shall be paid by the State unless there is a change in the scope of work.

All-Inclusive Hourly Rate – An hourly rate comprised of all direct and indirect costs including, but not limited to: overhead, fee or profit, clerical support, travel expenses, per diem, safety equipment, materials, supplies, managerial support and all documents, forms, and reproductions thereof. This rate also includes portal-to-portal expenses as well as per diem expenses such as food.

ATTACHMENT 1 - 8

Attachment 1

NEW JERSEY BOARD OF PUBLIC UTILITIES

Underground Facilities: One-Call Damage Prevention System

N.J.S.A. 48:2-73 et seq. and enabling rules – N.J.A.C. 14:2

TITLE 48. PUBLIC UTILITIES

CHAPTER 2. DEPARTMENT OF PUBLIC UTILITIES; BOARD OF COMMISSIONERS

ARTICLE 9. EMERGENCIES AND DAMAGE PREVENTION

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§ 48:2-73. Short title

Sections 1 through 19 of this act shall be known and may be cited as the "Underground Facility Protection Act."

§ 48:2-74. Findings, declarations, determinations

The Legislature finds and declares that damage to underground facilities caused by excavation and the discharge of explosives poses a significant risk to the public safety; that such damage to underground natural gas facilities poses a substantial risk to the public

safety; and that the implementation of a comprehensive One-Call Damage Prevention System can substantially reduce the frequency of damage caused by these activities.

The Legislature therefore determines that it is in the public interest for the State to require all operators of underground facilities to participate in a One-Call Damage Prevention System and to require all excavators to notify the One-Call Damage Prevention System prior to excavation or demolition.

The Legislature further determines that the Board of Public Utilities is the appropriate State agency to designate the operator of, and provide policy oversight to, the One-Call Damage Prevention System and enforce the provisions of this act.

§ 48:2-75. Definitions

As used in this act:

"Board" means the Board of Public Utilities;

"Business day" means any day other than Saturday, Sunday, or a nationally or State recognized holiday;

"Damage" means any impact or contact with an underground facility, its appurtenances or its protective coating or any weakening of the support for the facility or protective housing, including, but not limited to a break, leak, dent, gouge, groove, or other damage to the facility, its lines, or their coating or cathodic protection.

"Emergency" means any condition constituting a clear and present danger to life, health or property caused by the escape of any material or substance transported by means of an underground facility or the interruption of a vital communication or public service that requires immediate action to prevent or mitigate loss or potential loss of the communication or public service, or any condition on or affecting a transportation right-of-way or transportation facility that creates a risk to the public of potential injury or property damage;

"Excavate" or "excavating" or "excavation" or "demolition" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosive, and includes but is not limited to drilling, grading, boring, milling to a depth greater than six inches, trenching, tunneling, scraping, tree and root removal, cable or pipe plowing, fence post or pile driving, and wrecking, razing, rending, or removing any structure or mass material, but does not include routine residential property or right-of-way maintenance or landscaping activities performed with non-mechanized equipment, excavation within the flexible or rigid pavement box within the right-of-way, or the tilling of soil for agricultural purposes to a depth of 18 inches or less;

"Excavator" means any person performing excavation or demolition and may include a contractor having oversight for an excavation or demolition to be performed by rented, operated equipment under the contractor's on-site direction provided the contractor contacts the One-Call Damage Prevention System in the contractor's name, thereby assuming responsibility and liability, to give notice of the intent to engage in excavation or demolition work in that manner;

Note: This is a courtesy copy of the Underground Facility Protection Act. The official version is found in the New Jersey Statutes Annotated at N.J.S.A. 48:2-73 et seq. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

"Hand digging" means any excavation involving non-mechanized tools or equipment, including but not limited to digging with shovels, picks and manual post-hole diggers;

"Mechanized equipment" means equipment powered by a motor, engine, or hydraulic, pneumatic or electrical device, including but not limited to trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows, and other equipment used for plowing-in cable or pipe, but does not include tools manipulated solely by human power;

"One-Call Damage Prevention System" means the communication system established pursuant to section 4 [C.48:2-76] of this act;

"Operator" means a person owning or operating, or controlling the operation of, an underground facility, but shall not include a homeowner who owns only residential underground facilities, such as an underground lawn sprinkler system or an underground structure for a residential low-voltage lighting system;

"Person" means any individual, firm, joint venture, partnership, corporation, association, State, county, municipality, public agency or authority, bi-state or interstate agency or authority, public utility, cooperation association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof;

"Public entity" means any federal, State, county or municipal entity responsible for issuing road opening, building, blasting, demolition or excavation permits;

"Site" means the specific place where excavation work is performed or to be performed and shall be identified by street address referenced to the nearest intersecting street and subdivision name, if applicable, as well as by lot and block number, if available and by kilometer or mile marker for railways;

"State department or agency" means any department, public authority, public agency, public commission, or other political subdivision of the State, including any county, municipality or political subdivision thereof; and

"Underground facility" means any public or private personal property which is buried, placed below ground, or submerged on a right-of-way, easement, public street, other public place or private property and is being used or will be used for the conveyance of water, forced sewage, telecommunications, cable television, electricity, oil, petroleum products, gas, optical signals, or traffic control, or for the transportation of a hazardous liquid regulated pursuant to the "Hazardous Liquid Pipeline Safety Act of 1979" (49 U.S.C. app. § 2001 et seq.), but does not include storm drains or gravity sewers.

§ 48:2-76. One-Call Damage Prevention System, established; rules, regulations

The Board of Public Utilities shall establish a One-Call Damage Prevention System pursuant to the provisions of this act, and may adopt, pursuant to the "Administrative Procedure Act", P.L.1968, c. 410 (C. 52:14B-1 et seq.), such rules and regulations as it deems necessary to implement the provisions of this act. This system shall be a single Statewide 24-hour, seven-day-a-week notification center which shall:

a. Receive and record the notice of intent to excavate provided by excavators pursuant to subsection a. of section 10 [C.48:2-82] of this act;

b. Assign a confirmation number to each notice of intent to engage in an excavation, inform the excavator of the confirmation number, and maintain a register showing the name, address, and telephone number of the excavator, the site to which the notice pertains, and the assigned confirmation number;

c. Promptly transmit to the appropriate operators the information received from an excavator regarding any intended excavation in areas where the operators have underground facilities;

d. Maintain a record of each notice of intent received pursuant to subsection a. of this section for a period of seven years from the date of notice; and

e. Provide to the excavator the names of the operators who will be notified by the One-Call Damage Prevention System of the intended excavation.

§ 48:2-77. Operation of One-Call Damage Prevention System

a. Five years after the effective date of this act, the board shall designate, through an appropriate administrative mechanism, a person to operate the One-Call Damage Prevention System. The board may, as necessary, adopt rules establishing the process by which it shall select a person to operate the system.

b. The board shall designate the Garden State Underground Plant Location Service (GSUPLS), a nonprofit corporation of this State, to operate the One-Call Damage Prevention System, on an interim basis, for five years after the effective date of this act. During this interim period, GSUPLS will operate the system in conformance with the provisions of this act and the board shall have policy oversight over operation of the system.

§ 48:2-78. Appropriate waiver conditions

The board may grant a waiver from the requirements of section 8 [C.48:2-80] of this act for such reasons as it deems appropriate. The board shall have sole jurisdiction and authority for reviewing and granting or denying any waiver requested pursuant to this section. However, a waiver shall be deemed appropriate in those instances when an operator demonstrates that:

a. Damage to the underground facilities owned, operated, or controlled by the operator would pose no threat to the public safety; or

b. There is no possibility that an underground facility owned, operated or controlled by the operator will be damaged by excavating activities.

An operator who has requested a waiver pursuant to this section shall participate in the One-Call Damage Prevention System while the request is being considered by the board.

§ 48:2-79. System operator, responsibilities

The system operator shall:

- a. Operate the One-Call Damage Prevention System, which shall include but not be limited to the services described in section 4 [C.48:2-76] of this act;
- b. Establish a schedule of fees under which each operator shall pay an equitable share of the costs of maintaining the One-Call Damage Prevention System. This schedule of fees shall be submitted to the board for review and approval and shall be subject to the continuing jurisdiction of the board;
- c. Ensure that the One-Call Damage Prevention System operates in all areas of the State. The telephone number of the One-Call Damage Prevention System for providing any notice required by this act shall be a toll-free number;
- d. Notify the public and known excavators of the requirement pursuant to this act for the mandatory use of the One-Call Damage Prevention System to locate underground facilities; and
- e. Comply with all other provisions of this act.

§ 48:2-80. Underground facility operator, responsibilities; underground facility markings

- a. Except as provided in sections 6 and 9 [C.48:2-78 and C.48:2-81] of this act, the operator of an underground facility shall:
 - (1) Participate in and comply with the requirements of the One-Call Damage Prevention System established pursuant to section 4 [C.48:2-76] of this act; and
 - (2) Mark, stake, locate or otherwise provide the position and number of its underground facilities which may be affected by a planned excavation or demolition within three business days after receipt of the information concerning a notice of intent to excavate transmitted pursuant to subsection a. of section 10 [C.48:2-82] of this act. An underground facility shall be marked in accordance with standards approved by the board, which shall be based upon approved industry standards, and shall be marked at the site within 18 inches horizontally from the outside wall of the facility, in a manner that will enable the excavator to employ prudent techniques, which may include hand-dug test holes, to determine the precise position of the operator's underground facility. An underground facility shall be marked from information available in the operator's records or by use of standard locating techniques other than excavation. In temporarily marking the approximate position of an underground facility, an operator shall utilize the following color coding:

Utility and Type Product	Identifying color
Electric Power Distribution and Transmission	Safety Red
Municipal Electric Systems	Safety Red
Gas Distribution and Transmission	High Visibility Safety Yellow
Oil Distribution and Transmission	High Visibility Safety Yellow
Dangerous Materials, Product	High Visibility Safety Yellow

Note: This is a courtesy copy of the Underground Facility Protection Act. The official version is found in the New Jersey Statutes Annotated at N.J.S.A. 48:2-73 et seq. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

Lines, Steam Lines	
Telephone and Telecommunications	Safety Alert Orange
Police and Fire Communications	Safety Alert Orange
Cable Television	Safety Alert Orange
Water Systems	Safety Precaution Blue
Slurry Systems	Safety Precaution Blue
Sewer Lines	Safety Green

b. If an operator does not own, operate or control any underground facilities at the site concerning which he received information of a notice of intent to excavate transmitted pursuant to subsection c. of section 4 of this act, the operator shall make a reasonable effort to so advise the person giving the notice of intent to excavate, providing the notice is given within the time frame set forth in subsection a. of section 10 of this act.

c. An operator shall maintain a record of all damage to its underground facilities, including all damage reported by an excavator pursuant to subsection e. of section 10 of this act. An operator shall provide an updated copy of this record to the board on a quarterly basis.

d. Any underground facilities operator that fails to mark, locate, or otherwise provide the position and number of its underground facilities which may be affected by a planned excavation or demolition, in accordance with the provisions of paragraph (2) of subsection a. of this section, shall be liable for any costs, labor, parts, equipment and personnel downtime, incurred by an excavator damaging a facility owned, operated or controlled by the underground facility operator. An excavator that damages an underground facility in violation of the provisions of the "Underground Facility Protection Act," P.L. 1994, c. 118 (C. 48:2-73 et seq.) shall be liable for any costs, labor, parts, equipment and personnel downtime, incurred by the underground facilities operator that owns or controls the damaged underground facility. Any dispute arising from the provisions of this subsection, where the claim is less than \$ 25,000, shall be subject to an alternative dispute resolution process as established within the Office of Dispute Settlement in the Office of the Public Defender. Nothing in this act shall be construed to discourage parties from pursuing alternative dispute resolution processes for an amount greater than \$ 25,000. The parties may by mutual agreement designate another alternative dispute resolution association for all matters.

§ 48:2-81. Marking of facilities; nonapplicability; excavation, permitting process on State property

a. The requirement, pursuant to paragraph (2) of subsection a. of section 8 [C.48:2-80] of this act, for an operator to mark, stake, locate or otherwise provide the position of its underground facilities shall not apply to an underground non-metallic water pipe or non-metallic water distribution facility installed prior to the effective date of this act. An operator that qualifies for this exemption shall cooperate with the excavator in reasonable efforts to determine the location of such facilities.

b. The requirement pursuant to paragraph (2) of subsection a. of section 8 of this act for an operator to mark, stake, locate or otherwise provide the position of its underground facilities shall be deemed met by a State department or agency when an excavation is conducted on property or a right-of-way owned or controlled by the State department or agency and the excavation is subject to an excavation permitting process by the State department or agency if:

(1) The underground facilities of the State department or agency at the proposed excavation site comprise only traffic signals and lights or street and highway lights and their associated electrical feeds, control lines and traffic sensing loops;

(2) The State department or agency excavation permit is conditional upon the excavator notifying the One-Call Damage Prevention System; and

(3) The State department or agency provides the excavator with plans of the position and number of its underground facilities during the permitting process and agrees to cooperate on a continuing basis with the excavator in reasonable efforts to determine the location of such facilities, including notifying an excavator of any changes which may occur in the position or number of underground facilities after the initial issuance of plans to the excavator. However, the State department or agency may elect to mark, stake, or locate its underground facilities pursuant to the requirements of paragraph (2) of subsection a. of section 8 of this act.

If a State department or agency elects not to mark or stake its facilities under this subsection, an excavator who has conformed with the requirements of this act and all other applicable permit requirements, and uses reasonable care while excavating shall not be liable for damage to the State department or agency's underground facilities.

§ 48:2-82. Notification of the One-Call Damage Prevention System; excavator's duties

a. An excavator shall notify the One-Call Damage Prevention System established pursuant to section 4 [C.48:2-76] of this act of his intent to engage in excavation or demolition not less than three business days and not more than 10 business days prior to the beginning of the excavation or demolition.

b. Upon notifying the One-Call Damage Prevention System, an excavator shall provide the following information:

(1) The name and telephone number of the person notifying the system;

(2) The name, address, and office and field telephone numbers and facsimile numbers of the excavator;

(3) The name, address and telephone number of the person for whom the excavation work is to be performed; and

(4) The specific site location, starting date, starting time and description of the intended excavation or demolition, including the approximate depth of the excavation or demolition.

c. Where appropriate to provide clarification, an excavator shall mark and identify the perimeter of the proposed site of the excavation by the color white prior to notifying the One-Call Damage Prevention System of his intent to engage in excavation or demolition.

d. An excavator shall:

(1) Not operate any mechanized equipment within two feet horizontally of the outside wall of any underground facility marked in accordance with the provisions of this act, or marked in accordance with any rule, regulation, or order adopted pursuant to this act, unless the underground facility has first been located by hand digging. Mechanized equipment shall be used with proper care and under adequate supervision to avoid damage to the underground facility;

(2) Plan the excavation or demolition to avoid damage to and to minimize interference with underground facilities;

(3) Use reasonable care during excavation or demolition to avoid damage to or interference with underground facilities; and

(4) After commencement of excavation or demolition, protect and preserve the marking, staking, or other designation of an underground facility until the marking, staking, or other designation is no longer necessary for safe excavation or demolition.

e. An excavator shall immediately report to the operator of an underground facility any damage to the underground facility caused by or discovered by the excavator in the course of an excavation or demolition.

f. Notice for an excavation that is commenced within 10 business days, as pursuant to the provisions of subsection a. of this section, shall remain valid for 45 business days from the notification, providing that the excavator maintains any mark out that is made by an operator in accordance with the provisions of paragraph (4) of subsection d. of this section. Any excavation occurring after 45 business days from the time of such notification shall require a new notification, in accordance with the provisions of this section.

§ 48:2-83. Proof of notification required for permission to excavate

The provisions of any other law, rule, regulation or ordinance to the contrary notwithstanding, any permit or permission for a road opening, building, blasting, demolition or excavation granted by a public entity to an excavator that will result in excavation or demolition activity shall not be effective until the excavator provides proof to the public entity that the excavator has notified the One-Call Damage Prevention System pursuant to section 10 [C.48:2-82] of this act. This proof may be provided by supplying the public entity with the confirmation number assigned to the notice of intent pursuant to subsection b. of section 4 [C.48:2-76] of this act.

§ 48:2-84. Nonapplicability to emergencies

The provisions of this act shall not apply when an excavation or demolition is undertaken in response to an emergency, provided that the One-Call Damage Prevention System is

notified at the earliest reasonable opportunity and that all reasonable precautions are taken to protect underground facilities.

§ 48:2-85. Map of pipeline; filing

a. An operator of an interstate natural gas pipeline or an interstate hazardous liquid underground pipeline shall file a map depicting the route of the pipeline in this State with the clerk of each municipality in the State through which the interstate pipeline passes, with the board, and with the Department of Environmental Protection.

b. Nothing in this act shall be construed to modify or interfere with the enforcement jurisdiction of the United States Department of Transportation with regard to the operators of interstate pipelines.

§ 48:2-86. Violation of act; injunction; civil penalties

a. Whenever it appears to the board that a person has violated any provision of P.L.1994, c.118 (C.48:2-73 et al.), or any rule, regulation or order adopted pursuant thereto, it may issue an order specifying the provision or provisions of P.L.1994, c.118, or the rule, regulation or order of which the person is in violation, citing the action which constituted the violation, ordering abatement of the violation, and giving notice to the person of his right to a hearing on the matters contained in the order. Such order shall be effective upon receipt and any person to whom such order is directed shall comply with the order immediately.

b. The board may institute an action or proceeding in the Superior Court for injunctive and other relief for any violation of P.L.1994, c.118 (C.48:2-73 et al.), or of any rule or regulation adopted pursuant to P.L.1994, c.118 and the court may proceed in the action in a summary manner. In any such proceeding the court may grant temporary or interlocutory relief, notwithstanding the provisions of R.S.48:2-24.

Such relief may include, singly or in combination:

(1) A temporary or permanent injunction; and

(2) Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection. Assessments under this subsection shall be paid to the State Treasurer.

The board or an affected operator may institute an action in the Superior Court to enjoin a person whose repeated failure to comply with the provisions of P.L.1994, c.118 constitutes a threat to public safety from engaging in any further excavation or demolition work within the State, except under such terms and conditions as the Superior Court may prescribe to ensure the safety of the public.

c. The provisions of section 16 of P.L.1994, c.118 (C.48:2-88) to the contrary notwithstanding, a person who is determined by the board, after notice and opportunity to be heard, to have violated any provision of P.L.1994, c.118 (C.48:2-73 et al.) or any rule,

regulation, or order adopted pursuant thereto with respect to a natural gas underground pipeline or distribution facility, or a hazardous liquid underground pipeline or distribution facility, shall be liable to a civil penalty not to exceed \$ 100,000 for each violation for each day the violation continues, except that the maximum civil penalty may not exceed \$ 1,000,000 for any related series of violations.

Any civil penalty imposed pursuant to this subsection may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the board shall consider the nature, circumstances, and gravity of the violation; the degree of the violator's culpability; any history of prior violations; the prospective effect of the penalty on the ability of the violator to conduct business; any good faith effort on the part of the violator in attempting to achieve compliance; the violator's ability to pay the penalty; and other factors the board determines to be appropriate.

The amount of the penalty when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the State to the person charged, or may be recovered, if necessary, in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999" in connection with P.L.1994, c.118.

d. Pursuit of any remedy specified in this section shall not preclude the pursuit of any other remedy, including any civil remedy for damage to an operator's underground facilities or for damage to a person's property, provided by any other law. Administrative and judicial remedies provided in this section may be pursued simultaneously.

§ 48:2-87. Illegal excavation; disorderly persons offense, third degree crime

Any person who knowingly engages in an excavation without:

a. First using the One-Call Damage Prevention System to determine the location of underground facilities in the area being excavated; or

b. Heeding appropriate location information or markings established by any operator; or

c. Otherwise complying with the provisions of this act; is guilty of a disorderly persons offense. If, because of the violation, damage occurs to an underground facility resulting in death, serious bodily harm, or actual damage to property or loss of service revenue exceeding \$ 50,000, or damage occurs to an underground hazardous liquid pipeline facility resulting in the release of more than 50 barrels of product, the person shall, upon conviction, be guilty of a crime of the third degree.

Nothing in this section shall limit the jurisdiction of the board with respect to natural gas pipeline safety or limit the jurisdiction of the board or a court of competent jurisdiction with respect to the civil administrative penalty and enforcement provisions of this act.

§ 48:2-88. Penalty for operator violations

a. An operator or excavator, or the person who operates the One-Call Damage Prevention System, who violates any provision of this act or any rule or regulation or order adopted pursuant thereto shall be liable to a civil penalty of not less than \$ 1,000 and not

more than \$ 2,500 per day for each day the violation continues, except that the maximum civil penalty may not exceed \$ 25,000 for any related series of violations.

b. Any civil action pursuant to subsection a. of this section may be brought in a court of this State by the board or by an affected operator. Nothing in this act shall affect any civil remedy for damage to an operator's underground facility or for actual damage to any person's property.

§ 48:2-89. Notice failure, prima facie evidence of negligence

Evidence that an excavation or demolition that results in any damage to an underground facility was performed without providing the notice required pursuant to section 10 [C.48:2-82] of this act shall be prima facie evidence in any civil or administrative proceeding that the damage was caused by the negligence of the person engaged in the excavation or demolition.

§ 48:2-90. Civil penalties to the State

All civil penalties recovered pursuant to this act shall be paid into the General Fund.

§ 48:2-91. Board's jurisdiction not affected

Nothing in this act shall limit the jurisdiction of the board:

- a. Over public utilities pursuant to R.S. 48:2-1 et seq., notwithstanding the fact that a public utility may be an operator or excavator as defined in section 3 [C.48:2-75] of this act; or
- b. Concerning natural gas pipeline safety pursuant to R.S. 48:9-33.

Note: This is a courtesy copy of the rules. The official version is found in the New Jersey Administrative Code at N.J.A.C. 14:2. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

NEW JERSEY BOARD OF PUBLIC UTILITIES

Readoption With Amendments of N.J.A.C. 14:2

Underground Facilities: One-Call Damage Prevention System

Adopted August 23, 2007

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CHAPTER 2. UNDERGROUND FACILITIES: ONE-CALL DAMAGE PREVENTION SYSTEM

SUBCHAPTER 1. SCOPE

14:2-1.1 Scope and applicability

(a) This chapter implements the Underground Facility Protection Act, N.J.S.A. 48:2-73 et seq.

(b) This chapter governs the following, as these terms are defined at N.J.A.C. 14:2-1.2:

1. The Board-designated One-Call System Operator;
2. Underground facility operators;
3. Excavators; and
4. Responsible contractors.

(c) This chapter establishes the one-call damage prevention system (also called the One-Call System). The One-Call System receives information from excavators that plan to perform excavation or demolition, and relays that information to those persons that own, operate, or control the operation of underground facilities, and have registered with the One-Call System Operator. This chapter is intended to ensure that underground facilities are marked to enable excavators to avoid damaging underground facilities.

(d) This chapter applies to a homeowner as follows:

1. Because a homeowner that owns only residential underground facilities, including but not limited to an underground sprinkler system or an underground structure for lighting, is excluded from the definition of "underground facility operator," such a homeowner is not subject to the requirements for underground facility operators at N.J.A.C. 14:2-4; and
2. Any homeowner that performs excavation or demolition is acting as an excavator and therefore shall comply with all requirements of this chapter that apply to excavators, including the requirement at N.J.A.C. 14:2-3.1 for notice to the One-Call center prior to excavation or demolition.

(e) This chapter does not affect or apply to the requirements for identification of utility equipment under N.J.A.C. 14:3-2.5.

14:2-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this chapter can be found at N.J.A.C. 14:3-1.1.

"Act" means the Underground Facility Protection Act, N.J.S.A. 48:2-73 et seq.

"Business day" means any day other than Saturday, Sunday, or a State recognized holi-

day.

"Damage" means any impact or contact with an underground facility, its appurtenances or its protective coating or any weakening of the support for the facility or protective housing, including, but not limited to, a break, leak, dent, gouge, groove, or other damage to the facility, its lines, or their coating or cathodic protection.

"Emergency" means:

1. Any condition constituting a clear and present danger to life, health or property caused by the escape of any material or substance transported by means of an underground facility, or by the interruption of a vital communication or public service that requires immediate action to prevent or mitigate loss or potential loss of the communication or public service; or
2. Any condition on or affecting a transportation right-of-way or transportation facility that creates a risk to the public of potential injury or property damage.

"Excavate" or "excavation" or "demolition" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosive, and includes, but is not limited to, drilling, grading, boring, milling to a depth greater than six inches, trenching, tunneling, scraping, tree and root removal, cable or pipe plowing, fence post or pile driving, and wrecking, razing, rending, or removing any structure or mass material. This term includes utility pole removal, but does not include:

1. Routine maintenance of residential property or of a residential right-of-way, performed with non-mechanized equipment;
2. Routine use of a hand tool on a residential property or a residential right-of-way, to remove earth for the repair of a sprinkler system or to locate a property boundary marker, which does not remove earth to a depth of more than six inches;
3. Excavation or demolition that remains entirely within the flexible or rigid pavement box within a right-of-way, such that it does not disturb any material except for the pavement;
4. Tilling of soil for agricultural purposes to a depth of eighteen inches or less, on land that has received or is eligible to receive a farmland assessment under the New Jersey Farmland Assessment Act, N.J.S.A 54:4-23.1 et seq.;
5. Routine landscaping activities with mechanized equipment that are intended to cut only vegetation, including lawn edging and de-thatching;
6. Routine maintenance of residential property for pest management purposes performed with non-mechanized equipment.

"Excavator" means any person performing excavation or demolition, including a homeowner or person performing excavation or demolition on a residential property on behalf of a homeowner.

"Hand digging" means any excavation involving non-mechanized tools or equipment, including, but not limited to, digging with shovels, picks, probe bars and manual post-hole diggers.

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“Mark” means any line, arrow, curve, whiskers, flag, stake, or other symbol, placed or made as part of a markout.

“Markout” means letters, symbols and marks, as defined in this section, placed on the ground or other surface in order to show the location and characteristics of an underground facility.

"Mechanized equipment" means equipment powered by a motor, engine, or hydraulic, pneumatic or electrical device, including, but not limited to, trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows, and other equipment used for plowing-in cable or pipe, but does not include tools manipulated solely by human power.

“Nominal” means, in relation to the size of a pipe or other underground facility, a stake, or other object, the commonly used name of the size of the object, rather than the actual size of the object. For example, since dimensional lumber is named based on its size before drying and planing, the nominal or common-named sizes of dimensional lumber are usually expressed in terms of the nearest inch, regardless of the actual size of the lumber. Thus, a board that is 2 x 4 inches in nominal size is closer to 1 ½ inches by 3 ½ inches in actual size.

"One-Call Damage Prevention System" means the communication system established in New Jersey pursuant to N.J.S.A. 48:2-76.

“One-Call System operator” or “System operator” means the person, as defined at N.J.A.C. 14:3-1.1, that the Board has designated to operate the New Jersey One-Call Damage Prevention System. The System operator’s duties are detailed in a tariff, approved by the Board.

“One-Call incident” means any of the following, if it involves an underground facility and results from excavation or demolition:

1. Death of a person;
2. Serious disabling or incapacitating injuries to one or more persons, including employees or contractors of an excavator or underground facility operator;
3. Evacuation of a building that normally is occupied by more than twenty-five people;
4. Evacuation of a school, hospital, public transit station, or similar public building;
5. Damage to the property of others estimated at more than \$5,000;
6. Damage to the property of the underground facility operator, which materially affects electric, gas, water or wastewater service to the public;
7. Major disruption of traffic, business, media operations, transportation, or any other vital communication or public service;
8. Significant environmental impact; or
9. An event that attracts the presence of media personnel at the event, or that attracts telephone or other contact from media personnel at the time of the event; and

10. Any other occurrence similar to those at 1 through 9 above, which has a significant impact on community or public safety functions.

"Person" means any individual, firm, joint venture, partnership, corporation, association, State, county, municipality, public agency or authority, bi-state or interstate agency or authority, public utility, cooperation association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

"Probe bar" means a rigid bar that is pushed through the earth in order to determine the exact location of underground facilities.

"Rented equipment" means mechanized equipment which is rented complete with its operator for use in an excavation or demolition.

"Rented equipment operator" means a person that performs excavation or demolition using rented equipment.

"Responsible contractor" means a person that takes responsibility for ensuring that excavation or demolition that is performed by a rented equipment operator complies with this chapter.

"Routine" means an activity which is conducted on a cyclical basis, such as annually or seasonally, which is unlikely to result in damage to an underground facility.

"Routine maintenance of residential property or of a right-of-way" means an activity which meets all of the following criteria:

1. Is repeated on a cyclical basis, such as annually or seasonally;
2. Is conducted on a residential property or a right-of-way;
3. Is conducted with a hand tool and without the use of mechanized equipment, as defined in this section; and
4. Is unlikely to result in damage to any underground facility.

"Site" means the specific place where the excavation or demolition is performed or is to be performed and shall be identified by street address referenced to the nearest intersecting street and sub-division name, if applicable, as well as by lot and block number, if available, and by kilometer or mile marker for railways. The boundaries of a site are determined by the excavator that will be doing the excavation or demolition.

"State department or agency" means any department, public authority, public agency, public commission, or other political subdivision of the State, including any county, municipality or political subdivision thereof.

"Underground facility" means any public or private personal property:

1. Which is buried, placed below ground, or submerged on a right-of-way, easement, public street, other public place or private property; and
2. Which is being used, or will be used:

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- i. For the conveyance of water, forced sewage, telecommunications, cable television, electricity, oil, petroleum products, gas, optical signals, or traffic control; or
- ii. For the transportation of a hazardous liquid regulated pursuant to 49 U.S.C. §§60101 et seq.

This term does not include storm drains or gravity sewers. For the purpose of this definition, "personal property" means a single conduit, or multiple conduits of the same facility type within a rigid envelope such as a concrete envelope. This envelope shall be considered one facility for the purposes of these rules, except as otherwise specifically provided.

"Underground facility operator" or "operator" means a person that owns or operates, or controls the operation of, an underground facility, except that this term does not include a homeowner who owns only residential underground facilities, such as an underground lawn sprinkler system or an underground structure for a residential low-voltage lighting system.

"Whiskers" means a small sheaf of plastic fibers, bent double and fastened together at the bent end, used to create a marker that may be used in place of paint under N.J.A.C. 14:2-5.2(c).

SUBCHAPTER 2. ONE-CALL System operator

14:2-2.1 Duties of System operator

(a) The System operator shall operate a one-call center that is open twenty-four hours per day, seven days per week, and serves the entire State. The telephone number for the One-Call center shall be 1-800-272-1000 or 811.

(b) The System operator shall staff the one-call center with representatives that will do all of the following:

1. Receive and record the notice of intent to excavate provided under N.J.A.C. 14:2-3.1;
2. Assign a confirmation number to each notice of intent to engage in an excavation;
3. Inform the excavator or responsible contractor of the confirmation number;
4. For each notice of intent, maintain a register showing the name, address, and telephone number of the excavator or responsible contractor, the site to which the notice pertains, and the assigned confirmation number;
5. Promptly transmit to the appropriate underground facility operator(s) the information received from an excavator or responsible contractor regarding intended excavation or demolition;
6. Maintain a record of each notice of intent, for seven years from the date of the System operator's receipt of the notice; and
7. Provide to the excavator or responsible contractor the names of the underground facility operators who will be notified by the One-Call center of the intended excavation.

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(c) The System operator shall provide a form to excavators for the purpose of reporting a condition or configuration which has the potential to pose a danger to health and safety, in accordance with N.J.A.C. 14:2-3.4(d). Once this form is completed, the System operator shall send the completed form to the appropriate underground facility operator, in conformance with the System operator's tariff.

14:2-2.2 Designation and term of System operator

(a) The Board shall designate a System operator who shall operate the One-Call Damage Prevention System in accordance with a tariff approved by the Board.

(b) The term of the System operator shall be five years, but the Board may rescind this designation if it determines, after hearing, that the designee is not operating the system in conformance with N.J.S.A. 48:2-73 et seq., this chapter and its Board-approved tariff.

(c) In the fifth year of a System operator's term, the Board shall advertise the System operator position in the New Jersey Register and in newspapers of general circulation and comply with all applicable rules of the New Jersey Department of the Treasury.

(d) The Board shall accept applications and shall designate a person as the System operator for a new five year term. In choosing a System operator, the Board shall select the applicant that will best operate the system to achieve the purposes of the Underground Facility Protection Act, in accordance with N.J.S.A. 52:34-12 and N.J.A.C. 17:12.

(e) The Board shall announce its choice of System operator for the next term at least three months prior to the expiration of the existing term.

SUBCHAPTER 3. EXCAVATORS AND RESPONSIBLE CONTRACTORS

14:2-3.1 Notice of intent to excavate - timing

(a) A person shall not perform excavation or demolition, as defined at N.J.A.C. 14:2-1.2, unless the person performing the excavation or demolition, or a responsible contractor, has provided notice of the excavation or demolition to the One-Call center by dialing 811 or 1-800-272-1000, or by electronic notice as directed by the One-Call System operator in accordance with its Board-approved tariff. Requests provided electronically or through any procedure other than that directed for use by the One-Call System operator shall not constitute notice in compliance with this section.

(b) An excavator or responsible contractor, as defined at N.J.A.C. 14:2-1.2, shall notify the One-Call center of the intent to engage in any excavation or demolition not less than three business days before beginning the excavation or demolition, and not more than ten business days prior to beginning the excavation or demolition, except if the excavation or demolition is necessary because of an emergency, as defined at N.J.A.C. 14:2-1.2. An excavator that performs emergency excavation or demolition shall comply with the notice

requirements at N.J.A.C. 14:2-3.6.

(c) Notice provided in accordance with (a) above, for an excavation or demolition that is commenced within ten business days after the notice, shall remain valid for forty-five business days from the notification, provided that the excavator maintains any markout that is made by an underground facilities operator. Any excavation or demolition continuing after the forty-five business days shall require a new notification that meets the requirements of (a) above.

(d) If the excavation or demolition is not commenced within ten business days after notice is provided to the One-Call center in accordance with (a) above:

1. The notice shall no longer be valid;
2. The excavator shall not perform any excavation or demolition on the site until the excavator or responsible contractor submits a new notification to the One-Call center; and
3. The new notification shall comply with (a) above in all respects; that is, the excavator shall notify the One-call center at least three business days before, but no more than ten business days before, beginning the excavation or demolition.

(e) By providing notice to the One-Call center, an excavator or responsible contractor assumes responsibility and liability for ensuring that the excavation or demolition is performed in accordance with this chapter and other applicable law.

(f) An excavation that is undertaken in order to repair or replace the vent or filler pipe of an underground heating oil tank or a heating system shall not be subject to the three-business day advance notice requirement at N.J.A.C. 14:2-3.1(a), provided it meets all of the requirements at 1 through 3 below. Instead, such an excavation may be started immediately after notice to the One-Call center:

1. The excavation is undertaken in response to a service call by a customer;
2. The excavation or demolition uses only non-mechanized equipment; and
3. The excavation begins after October 1 and ends before April 30 of the following year.

14:2-3.2 Notice of intent to excavate – contents, perimeter marking

(a) An excavator or responsible contractor shall provide notice of a planned excavation or demolition to the One-Call center by telephone (dial 811 or 1-800-272-1000), or by electronic notice as directed by the One-Call System Operator in accordance with its Board-approved tariff. Requests provided electronically or through any procedure other than that directed for use by the One-Call System operator shall not constitute notice in compliance with this section.

(b) An excavator or responsible contractor shall provide all of the following in its notice to the One-Call center:

1. The name and telephone number of the person notifying the One-Call center;

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2. All of the following information regarding the excavator, any rented equipment operators that will be used, and the responsible contractor, if any:
 - i. Name and address;
 - ii. Office telephone numbers and e-mail addresses; and
 - iii. Field telephone number and, if available, field e-mail or text message addresses and/or facsimile numbers;
3. The name, address and telephone number, and e-mail address if available, of the person for whom the excavation or demolition is to be performed;
4. The starting time and date of the planned excavation or demolition;
5. A description of the intended excavation or demolition, including the approximate depth of the excavation or demolition; and
6. A description of the site, sufficient to enable the underground facility operator to accurately determine the location and boundaries of the site. The excavator shall utilize as many of the following methods as are necessary to ensure that the underground facility operator can accurately identify the site:
 - i. The street address of the site;
 - ii. The block and lot of the site; and/or
 - iii. A description of any white perimeter markings the excavator has made in accordance with (c) below.

(c) Where appropriate to clearly identify the site of a planned excavation or demolition, an excavator or responsible contractor may choose to mark the perimeter of the site in white, prior to notifying the One-Call center. White perimeter marking is encouraged in order to minimize unnecessary marking and locating by the underground facility operators, for example to indicate small sites, nonlinear excavations, and spot excavations such as a soil borings, mailboxes, sign posts, or tree plantings.

(d) The excavator or responsible contractor shall determine the size and shape of the site based on the planned excavation or demolition. In order to avoid unnecessary markouts, the site shall be the minimum size necessary to safely accommodate the planned excavation or demolition.

(e) If an excavator chooses to mark the site perimeters under (c) above, the excavator shall:

1. Use white paint or other appropriate white marking materials such as white flags or stakes;
2. Mark the site boundaries in a manner that is reasonably calculated to enable an underground facility operator to determine the site boundaries with sufficient accuracy so that the operator can comply with the markout provisions at N.J.A.C. 14:2-5;
3. Ensure that the white perimeter markings do not interfere with traffic or pedestrian control; and
4. If multiple excavation or demolition sites are marked in one area, each site shall be numbered, and the excavator shall provide the numbers to the One-Call center.

14:2-3.3 Excavators - onsite requirements

(a) An excavator or responsible contractor shall:

1. Not operate any mechanized equipment within two feet horizontally of the outside wall of any underground facility marked in accordance with this chapter, unless the underground facility has been first located by hand digging. Mechanized equipment shall be used with proper care and under adequate supervision to avoid damage to the underground facility;
2. Plan the excavation or demolition with reasonable care so as to avoid damage to, and minimize interference with, underground facilities;
3. Use reasonable care during excavation or demolition to avoid damage to or interference with underground facilities, including protecting each underground facility from freezing, traffic, and/or other loads or hazard in accordance with (b) below; and
4. After commencement of excavation or demolition, protect and preserve the marking, staking or other designation of an underground facility until the marking, staking or other designation is no longer necessary for safe excavation or demolition.

(b) At all times throughout the course of an excavation or demolition, an excavator shall provide adequate physical support of all underground facilities on the site, as follows:

1. An excavator shall comply with all reasonable support specifications that the underground facility operator provides pursuant to N.J.A.C. 14:2-4.2(d);
2. If the underground facility operator does not provide support specifications under 1 above, the excavator shall provide support in accordance with generally accepted engineering practice. The support shall be at least equivalent to the support to the underground facility prior to the excavation;
3. The excavator shall maintain the physical support during excavation, backfilling and, if necessary, after backfilling is completed; and
4. The underground facility operator may, by mutual agreement with the excavator, choose to itself provide the physical support.

(c) If a representative of an underground facility operator determines that an excavator is not adequately protecting or supporting the facility, resulting in an unsafe condition or situation relating to the excavation or demolition, the representative may require the excavator to suspend the excavation or demolition until the problem is corrected. The representative may impose this requirement verbally only if the representative believes that an emergency exists, and shall provide a written confirmation of the verbal directive to suspend work as soon as feasible thereafter. In all other situations, the representative shall provide the directive to suspend the excavation or demolition in writing.

14:2-3.4 Responsible contractors

(a) If rented equipment, as defined at N.J.A.C. 14:2-1.2, will be used for an excavation or demolition, either the rented equipment operator or a responsible contractor shall notify the One-Call center in accordance with N.J.A.C. 14:2-3.1 and 3.2. The person who notifies the One-Call center shall be responsible and liable for ensuring that all excavation or demolition performed with rented equipment complies with this chapter.

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(b) Each responsible contractor shall keep all logbooks and records required by this chapter for at least seven years, and shall make them available to the Board or Board staff upon request.

(c) A responsible contractor that notifies the One-Call center under N.J.A.C. 14:2-3.1 and 3.2 shall do all of the following:

1. Provide information as required by the One-Call center regarding all rented equipment that will be used in the excavation or demolition;
2. Wait the three business days required under N.J.A.C. 14:2-3.1 prior to performing any excavation or demolition on the site; and
3. Notify the One-Call center of each rented equipment operator that performs excavation or demolition on a site, specifying when the rented equipment operator begins working on the site; and
4. Notify the One-Call center when each rented equipment operator stops working on the site.

(d) At any time during the period that a One-Call notice is valid under N.J.A.C. 14:2-3.1(c), the responsible contractor may add or remove one or more rented equipment operators to the site, provided that the responsible contractor notifies the One-Call center before each rented equipment operator performs any excavation or demolition. No additional waiting period is required for the addition of a rented equipment operator under this subsection.

(e) A rented equipment operator shall contact the One-Call center directly to verify that the responsible contractor has notified the One-Call center of the rented equipment operator's participation in the excavation or demolition on the site.

(f) A responsible contractor shall not permit a rented equipment operator to perform excavation or demolition on a site unless the responsible contractor has notified the One-Call center that the responsible contractor will be working on that particular site.

(g) If a responsible contractor utilizes a rented equipment operator to perform excavation or demolition, the responsible contractor shall do all of the following:

1. Continuously visually monitor all hand digging and locating required under this chapter; and
2. Inspect the excavation or demolition performed by the rented equipment operator at least once each day during which the rented operator is on the site.

(h) The responsible contractor shall maintain all of the following records at the site, available for inspection by the Board or Board staff, throughout the duration of the excavation or demolition:

1. A log, updated daily, of the time and location of all hand-digging and locating performed by the rented equipment operator; and
2. A list, updated daily, of all rented equipment operators performing excavation or demolition on the site and the date and time the One-Call Center was notified of the rented equipment operator's work on the site.

14:2-3.5 Excavation or demolition in response to an emergency

(a) If an excavator undertakes an excavation or demolition in response to an emergency that does not permit compliance by the excavator with the notification requirements of N.J.A.C. 14:2-3.1, the excavator shall comply with this section.

(b) An excavator that is subject to this section shall notify the One-Call center of an emergency excavation or demolition as soon as reasonably possible without causing a delay in addressing the emergency, and shall include in the notice a description of the nature of the emergency.

(c) In a case where the excavator must perform excavation or demolition in order to address the emergency, the notice to the One-Call center shall also include a brief explanation of the circumstances that prevented the excavator from providing notice in accordance with N.J.A.C. 14:2-3.1.

(d) An excavator that performs excavation or demolition in response to an emergency shall take all reasonable precautions to protect any underground facilities that may be located at the site of the excavation or demolition.

(e) If an excavation is undertaken in order to repair or replace the vent or filler pipe of an underground heating oil tank or a heating system, the excavation may be started immediately after notice has been given to the One-Call center, provided the excavation meets all of the requirements at 1 through 3 below:

1. The excavation is undertaken in response to a service call by a customer;
2. The excavation or demolition uses only non-mechanized equipment; and
3. The excavation begins after October 1 and ends before April 30 of the following year.

(f) An excavation performed in accordance with (e) above shall meet all other requirements of this section and this chapter.

14:2-3.6 Excavators - incident and damage reporting

(a) If an excavator causes or discovers any damage, as defined at N.J.A.C. 14:2-1.2, to a line or pipe carrying natural gas, liquid petroleum or any other hazardous liquid, the excavator shall immediately call 911, and shall immediately thereafter report the damage to the appropriate representative of the underground facility operator. If the excavator cannot reach the underground facility operator, the excavator shall report the damage to the One-Call center at 811 or 1-800-272-1000.

(b) If an excavator causes or discovers any damage to an underground facility that carries anything other than natural gas, liquid petroleum or another hazardous liquid, the excavator shall immediately report the damage to the appropriate representative of the underground facility operator. Immediately thereafter, the excavator shall report the damage to

the One-Call center at 1-800-272-1000 or 811.

(c) All requirements in this section apply regardless of whether the damage results in an emergency, accident, or a dangerous condition.

(d) If, during excavation or demolition, an excavator causes or discovers any of the following, the excavator may complete and submit to the One-Call center a dangerous condition reporting form:

1. An underground facility that is, in the excavator's judgment, buried at a depth that is insufficient for safety; or
2. Any other condition or configuration relating to an underground facility, which, in the excavator's judgment, has the potential to pose a danger to health and safety, and which is not covered under (a) or (b) above

(e) The form required under (d) above shall be provided by the System operator in accordance with N.J.A.C. 14:2-2.1(c).

SUBCHAPTER 4. UNDERGROUND FACILITY OPERATORS

14:2-4.1 Applicability

(a) This subchapter applies to underground facility operators, as defined at N.J.A.C. 14:2-1.2, except as specified in this section.

(b) An operator of an underground non-metallic water pipe or non-metallic water distribution facility that was installed prior to November 18, 1994 is exempt from the requirement at N.J.A.C. 14:2-4.2(a)2 to mark out the facility, but shall, within three business days of the notice to the One-Call center, cooperate with excavators in reasonable efforts to determine the location of the facility.

(c) An underground facility operator that is a State department or agency is exempt from the requirement at N.J.A.C. 14:2-4.2(a)2 to mark out its facilities in accordance with N.J.A.C. 14:2-4.2(a)2 if all of the following criteria are met:

1. The excavation or demolition is conducted on property or a right-of-way owned or controlled by the State department or agency;
2. The only underground facilities of the State department or agency at the site are traffic signals and lights, or street and highway lights; and their associated electrical feeds, control lines and traffic sensing loops;
3. The excavation or demolition requires a permit from the State department or agency;
4. The required permit is conditioned upon the excavator notifying the One-Call center in accordance with N.J.A.C. 14:2-4.2(a)2;
5. During the permitting process, the State department or agency provides the excavator with plans showing the position and number of its underground facilities on the site; and

Note: This is a courtesy copy of the rules. The official version is found in the New Jersey Administrative Code at N.J.A.C. 14:2. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

6. The State department or agency agrees to cooperate on a continuing basis with the excavator in reasonable efforts to determine the location of its underground facilities, including notifying the excavator of any changes in the position or number of underground facilities after the initial issuance of plans to the excavator.

(d) If a State department or agency chooses to comply with (c) above rather than to mark out its underground facilities in accordance with N.J.A.C. 14:2-4.2(a)2, an excavator shall not be liable for any damage to the State department or agency's underground facilities, provided that the excavator has:

1. Complied with this chapter;
2. Complied with all applicable requirements of the permit described at (b)3 above; and
3. Used reasonable care while excavating.

(e) An underground facility operator that is exempt from markout requirements in accordance with (b) or (c) above shall comply with all other requirements in this chapter.

14:2-4.2 Underground facility operators – basic requirements

(a) An underground facility operator shall ensure that it is fully equipped and available to receive from the One-Call center the information required under N.J.A.C. 14:2-3.2 regarding a planned excavation or demolition.

(b) Within three business days after receiving information from the One-Call center regarding a planned excavation or demolition, an underground facility operator shall do either of the following:

1. If the underground facility operator owns, operates or controls any underground facilities on the site, the underground facility operator shall mark out the site as required under N.J.A.C. 14:2-5, except if a facility is exempt from markout requirements under N.J.A.C. 14:2-4.1(b) or (c). If an underground facility operator does not own or operate a facility, but controls it, the operator is responsible for compliance with this paragraph; or
2. If the underground facility operator does not own, operate or control any underground facilities on the site, the underground facility operator shall make a reasonable effort to notify the excavator of that fact.

(c) For the purposes of (b) above, an underground facility operator shall be deemed to control all portions of an underground facility carrying metered service, which are not located on the customer's side of the meter, regardless of who owns the property. For example, if a residential electric customer owns an underground electric line, which provides electricity from the street to the customer's electric meter in an area served by overhead electric lines, the electric utility shall be deemed to control that underground electric line.

(d) An underground facility operator shall provide to the excavator specifications for supporting any underground facility on the site which requires physical support during excavation or demolition, including the type, strength and arrangement of the support. In accor-

dance with N.J.A.C. 14:2-3.3 (b)4, if the parties mutually agree, the underground facility operator shall provide such support.

(e) If an underground facility operator receives a request from the One-Call center for an emergency markout, the underground facility operator shall:

1. Immediately dispatch appropriate personnel to the site in accordance with the emergency provisions at N.J.A.C. 14:2-4.4; or
2. If the underground facility operator does not own, operate or control any underground facilities on the site, the operator shall immediately notify the excavator of that fact. If the underground facility operator cannot confirm that the excavator is aware that the underground facility operator does not own, operate or control any underground facilities on the site, the operator shall immediately dispatch appropriate personnel to the site.

(f) The requirements at (e) above shall apply to all underground facility operators that receive a request from the One-Call center for an emergency markout, regardless of whether the underground facility operator's facilities are involved in the emergency or not.

14:2-4.3 Underground facility operators – markout records

(a) An underground facility operator shall make a record of each markout that it performs. The underground facility operator shall maintain these records for seven years, and shall make them available to the Board or Board staff upon request.

(b) Each markout record shall include, at a minimum, all of the following:

1. The location of the markout, identified by street address(es) or lot and block number(s), and any other information necessary to enable a person to easily locate the site;
2. The names of all persons who performed the markout, including the names of any contractors;
3. The time and date the markout was performed;
4. The type of markout, as described at N.J.A.C. 14:2-5.3; for example, centerline markout, centerline offset markout, outside dimension markout and/or outside dimension offset markout; and
5. Whether stakes, whiskers and/or flags were used in the markout in addition to paint.

(c) In addition to the markout record required under (a) above, an underground facility operator may choose to make and maintain a visual record of the markout using photography or other visual documentation. If the underground facility operator chooses to make a photographic record, the record should:

1. Be made in color;
2. Show the entire markout;
3. Show landmarks in the vicinity of the markout in sufficient detail to enable a person to easily establish the location of the markout; and

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4. Be emblazoned with an automatic date or time stamp at the time the record is made.

(d) An underground facility operator shall submit any records required under this section to the Board upon request, on paper or electronically, as directed by the Board or Board staff.

14:2-4.4 Underground facility operators – accidents and emergencies

(a) An underground facility operator shall ensure that employees who are qualified to accept and respond to reports of accidents, damage and emergencies that involve its underground facilities, are available at all times of day and night throughout the year. Each underground facility operator shall provide the Board with the names and titles of these qualified response personnel, as part of every report required under (h) below.

(b) When an underground facility operator receives a report of an emergency, the underground facility operator shall do both of the following immediately, and in all cases within two hours after learning of the emergency:

1. Dispatch appropriate personnel to the site to assist in locating and protecting underground facilities; and
2. Take any other action necessary to assist in minimizing danger and/or damage.

(c) Each underground facility operator shall report any One-Call incident, as defined at N.J.A.C. 14:2-1.2, to the Board in accordance with the reporting procedures for reportable accidents found in the Board's rules for all utilities at N.J.A.C. 14:3-6.4. Should there be any inconsistency between the reporting procedures at N.J.A.C. 14:3-6.4 and those of this subchapter, the more stringent requirement shall govern.

(d) Whenever an underground facility operator is notified of a One-Call incident, the operator shall immediately, and in no event later than one hour after notice of the incident, contact the Board's Division of Reliability and Security at (973) 648-2066, or at (800) 817-6715 outside of business hours, and shall verbally provide the location and a brief description of the incident.

(e) If the underground facilities of a public utility are affected by an occurrence that meets both the definition of a reportable accident under N.J.A.C. 14:3-6 and a One-Call incident under this chapter, the utility shall comply with the procedures for a reportable accident under N.J.A.C. 14:3-6, and shall also notify the Board in accordance with the requirements for a One-Call incident under (d) above.

(f) As soon as possible after a One-Call incident, and in no case later than fifteen calendar days afterwards, the underground facility operator shall follow up the initial notice required under this section with a detailed written report. The written report shall include all significant facts of which the underground facility operator is aware regarding the location and cause of the incident, and the extent of any damage and/or injuries.

Note: This is a courtesy copy of the rules. The official version is found in the New Jersey Administrative Code at N.J.A.C. 14:2. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

(g) Each operator of an underground facility that handles natural gas or hazardous liquids shall submit a “hits report” listing any damage, emergency or One-Call incident involving the operator’s natural gas or hazardous liquids facilities. The report shall be made on forms provided by the Board on its website at www.bpu.state.nj.us, and shall be submitted to the Board by the close of business on Tuesday of the week following any two-week period in which any such damage, emergency or One-Call incident has occurred.

(h) All underground facility operators shall submit the following report(s) to the Board, as applicable:

1. An underground facility operator with facilities that have sustained any damage, as defined at N.J.A.C. 14:2-1.2, during a quarter shall submit a “hits report,” including all damage occurring to its facilities during that quarter. No quarterly report is required from an underground facility operator that has had no damage to its facilities during that quarter;
2. Any underground facility operator that has had no damage to its facilities during a year shall submit an annual “no hits” report. The “no hits” report shall be submitted on January 30th of each year; and
3. Both the quarterly and annual reports required under this subsection shall contain the contact information for the qualified response personnel described under N.J.A.C. 14:2-4.4(a).

(i) Each underground facility operator shall maintain a paper or electronic record of all damage, as defined at N.J.A.C. 14:2-1.2, to its underground facilities, including any damage reported by an excavator in accordance with N.J.A.C. 14:2-3.4, for seven years after the damage occurred.

(j) All reports and records may be submitted to the Board on paper or electronically, except where another method is required under this chapter or a Board rule or order.

SUBCHAPTER 5. MARKOUTS

14:2-5.1 General markout provisions

(a) When an underground facility operator is required under N.J.A.C. 14:2-2.1(b) to mark out a site, the underground facility operator shall perform the markout in accordance with this subchapter.

(b) When more than one underground facility of the same type is located within a rigid structure or envelope such as a concrete pipe or a conduit, the markout shall indicate the envelope and not the individual underground facilities inside the envelope.

(c) If an excavator has marked the perimeter of a proposed excavation or demolition site with white in accordance with N.J.A.C. 14:2-3.2(c) through (e), an underground facility operator shall mark out all of the operator's facilities that lie within the white perimeter marking, and in addition all facilities outside the white perimeter that are within ten feet of the white marking.

14:2-5.2 Specifications for marks used in markouts

(a) An underground facility operator shall perform all markouts using paint. In addition, if the markout must be made on a non-firm surface including but not limited to grass, dirt, gravel or sand; or if weather or site conditions may make paint difficult to use or see, the underground facility operator shall utilize paint, and in addition shall utilize stakes and/or flags. If used, the location of any stakes or flags shall conform to the diagrams in appendix A.

(b) The underground facility operator shall ensure that all paint used for markouts has sufficient lasting properties so as to withstand vehicular traffic during the course of the excavation or demolition, but shall be sufficiently removable or degradable with time so as not to be permanent.

(c) If necessary to avoid placing paint on decorative gravel, stone or pavers, an underground facility operator may elect to substitute eight inch whiskers, as defined at N.J.A.C. 14:2-1.2, for one or more paint marks. The whiskers shall be the appropriate color, shall be laid flat on the ground in the position that would be covered by a paint mark, and fastened to the ground with a nail or other appropriate fastener. The required letter designation code and other numbers and letters may be placed on a flag. An underground facility operator shall not use whiskers as a substitute for a stake or flag.

(d) All references in this subchapter to paint shall be construed to include any marking material that makes an equivalent mark and meets all other applicable requirements of this chapter.

(e) An underground facility operator shall perform all markouts in a manner that will clearly indicate the location and direction of each underground facility.

(f) An underground facility operator shall place all marks used to indicate a particular facility at intervals of twenty-five feet or less. However, the underground facility operator shall place marks closer together than twenty-five feet, if necessary to clearly indicate the location and direction of the underground facility. For example, site conditions or directional changes of the underground facility may necessitate a shorter distance between marks in order to clearly indicate the location and direction of an underground facility.

(g) All paint marks used in markouts shall be one to two inches wide and eight to ten inches long, unless otherwise specified in this chapter. All letters and numbers used in painted markouts shall be six to eight inches high, unless otherwise expressly specified in this chapter.

(h) An underground facility operator shall arrange all marks, except for the arrowhead marks in an offset markout, in a line following or paralleling the course of the underground facility. The arrowhead marks used in an offset markout shall be perpendicular to the course of the underground facility.

Note: This is a courtesy copy of the rules. The official version is found in the New Jersey Administrative Code at N.J.A.C. 14:2. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

- (i) All markouts shall conform to the diagrams set forth in Appendix A to this subchapter.
- (j) Markouts shall indicate the type of underground facility, using the following colors and letter designation codes in Table A below:

Note: This is a courtesy copy of the rules. The official version is found in the New Jersey Administrative Code at N.J.A.C. 14:2. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

TABLE A
COLORS AND LETTER DESIGNATION CODES FOR MARKOUTS

Facility or Product	Letter Designation Code	Color
Water Systems	W	Safety Precaution Blue
Slurry Systems	SP	Safety Precaution Blue
Sewer Lines	S	Safety Green
Telephone and Telecommunications	T	Safety Alert Orange
Fiber Optic Cable	FOC	Safety Alert Orange
Cable Television	TV	Safety Alert Orange
Police and Fire Communications	FA	Safety Alert Orange
Electric Power Distribution and Transmission/Municipal Electric	E	Safety Red
Traffic Control (communications)	TC	Safety Alert Orange
Traffic Control (power)	TC	Safety Red
Gas Distribution and Transmission	G	High Visibility Safety Yellow
Petroleum products, Oil Distribution and Transmission	PP	High Visibility Safety Yellow
Steam	ST	High Visibility Safety Yellow
Hazardous liquids/Chemicals	CH	High Visibility Safety Yellow
Excavation or demolition boundaries		White Pink

(k) The underground facility operator shall ensure that all colors used in markouts meet the standards in Standard Z53.1 of the American National Standards Institute, Inc., as amended and supplemented, which is incorporated herein by reference and is available at <http://www.nema.org/stds/complimentary-docs/upload/Z535.1.pdf>.

- (l) The underground facility operator shall ensure that all flags used in markouts shall be:
1. Made of plastic or other equally durable and weatherproof material;
 2. Rectangular, four inches by five inches in nominal size;
 3. Attached to a staff that is a minimum of twenty-four inches long;
 4. Not less than eighteen inches of the staff of the flag shall be exposed above the surface of the ground;
 5. Placed at the top of the staff;
 6. Marked with a letter designation code indicating the type of underground facility in accordance with Table A in N.J.A.C. 14:2-5.2. The letters shall be at least one inch high;
 7. Marked with the underground facility operator's initials or logo in black letters or symbols at least one inch high; and

Note: This is a courtesy copy of the rules. The official version is found in the New Jersey Administrative Code at N.J.A.C. 14:2. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

8. Marked with the underground facility operator's telephone number or the telephone number of the New Jersey One-Call Damage Prevention Center (811 or 1-800-272-1000), in letters at least one inch high.

(m) The underground facility operator shall ensure that all stakes used in markouts shall be:

1. Two inches by two inches by twenty-four inches in nominal dimension;
2. Colored in accordance with the color coding requirements of N.J.A.C. 14:2-5.2. The color shall cover the top six inches of the stake;
3. Marked with a letter designation code indicating the type of underground facility in accordance with Table A in N.J.A.C. 14:2-5.2. The letters shall be at least one inch high;
4. Marked with the underground facility operator's initials or logo in black letters or symbols at least one inch high; and
5. Not less than eighteen inches of the stake shall be exposed above the surface of the ground.

(n) Stake markouts and plastic flag markouts shall conform to the diagrams in Appendix A, figures 1 and 6.

(o) Markouts of utility junctions, crossings, changes of direction, dead ends, and other configurations shown in Appendix A, figure 6, shall comply with the diagrams in figure 6.

14:2-5.3 Types of markouts

(a) There are four types of markouts, as follows:

1. A centerline markout. A centerline markout is required for an underground facility that is twelve inches or less in nominal outside dimension;
2. A centerline offset markout. A centerline offset markout may be used only when both of the following criteria are met:
 - i. The underground facility is twelve inches or less in nominal outside dimension; and
 - ii. Site conditions make it impossible to adequately markout the centerline of the underground facility;
3. An outside dimension markout. An outside dimension markout is required for an underground facility that is more than twelve inches in nominal outside dimension; and
4. An outside dimension offset markout. An outside dimension offset markout may be used only when both of the following criteria are met:
 - i. The underground facility is more than twelve inches in nominal outside dimension; and
 - ii. Site conditions make it impossible to adequately mark out the centerline or outside walls of the underground facility.

14:2-5.4 Centerline markouts

(a) An underground facility operator shall utilize a centerline markout to indicate an underground facility that is twelve inches or less in nominal outside dimension, unless exceptional site conditions would either make it impossible to clearly mark the centerline of the underground facility in accordance with this section, or would make it impossible for the excavator to see the markings in a centerline markout. In a case with such exceptional site conditions, an underground facility operator may utilize a centerline offset markout, described at N.J.A.C. 14:2-5.6.

(b) A centerline markout shall meet all of the following requirements:

1. The markout shall consist of paint marks that run parallel to the course of the underground facility, with the eight inch to ten inch side of each paint mark over the center line of the underground facility;
2. The marks shall be placed as directly as possible over the center line of the underground facility, and in no case shall the marks be more than eighteen inches away from the point on the ground that is directly above the center line of the underground facility;
3. A minimum of three separate paint marks shall be made for each underground facility. Additional marks shall be placed along the course of the underground facility as needed to clearly identify the location of the facility;
4. The marks shall be the appropriate color as indicated in Table A in N.J.A.C. 14:2-5.2; and
5. The appropriate letter designation code from Table A in N.J.A.C. 14:2-5.2, and the nominal outside dimension of the underground facility in inches, shall be centered between the paint strokes. Whenever more than one facility is located within a rigid envelope, the markout shall state the dimension of the envelope, not of the individual facilities.

(c) Illustrations of a centerline markout are set forth in Appendix A, figures 2 and 6.

14:2-5.5 Outside dimension markouts

(a) An underground facility operator shall utilize an outside dimension markout to indicate an underground facility that is more than twelve inches in nominal outside dimension, unless exceptional site conditions would either make it impossible to clearly mark the outside walls of the underground facility in accordance with this section; or would make it impossible for the excavator to see the markings in an outside dimension markout. In a case with such exceptional site conditions, an underground facility operator may utilize an outside dimension offset markout, described at N.J.A.C. 14:2- 5.6.

(b) An outside dimension markout shall meet all general requirements for markouts under N.J.A.C. 14:2-5.1 and 5.2, and in addition shall meet all of the following requirements:

1. The markout shall consist of pairs of parallel paint marks, with marks over each outside wall of the underground facility, but no more than 18 inches from either outside wall of the underground facility;

Note: This is a courtesy copy of the rules. The official version is found in the New Jersey Administrative Code at N.J.A.C. 14:2. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

2. A minimum of three separate pairs of parallel paint marks shall be made for each underground facility; and
3. The following shall be placed within each pair of parallel linear marks, centered in the space between the two marks:
 - i. The appropriate letter designation code from Table A in N.J.A.C. 14:2-5.2;
 - ii. Numbers indicating the nominal outside dimension of the underground facility in inches; and
 - iii. If a non-firm surface requires stakes and/or flags in addition to paint in accordance with N.J.A.C. 14:2-5.2(a), a stake shall be placed on each paint mark, and a flag shall be centered between the two paint marks, over the required numbers and letters.

(c) Illustrations of an outside dimension markout are set forth in Appendix A, figures 3 and 6.

14:2-5.6 Offset markouts

(a) An underground facility operator shall utilize an offset markout only if exceptional site conditions make it impossible to clearly mark the underground facility with a centerline markout under N.J.A.C. 14:2-5.4 or an outside dimension markout under N.J.A.C. 14:2-5.5.

(b) An offset markout shall be made with paint on a firm surface.

(c) An offset markout symbol shall consist of the following:

1. Two T-shaped paint marks that:
 - i. Are one inch to two inches in width and eight inches to ten inches in length;
 - ii. Have the top of each T running parallel to the centerline of the underground facility; and
 - iii. Have an arrowhead on the leg of each T, pointing in the direction of the underground facility;
2. The following shall appear above the arrow:
 - i. The appropriate letter designation code from Table A in N.J.A.C. 14:2-5.2;
 - ii. Numbers indicating the nominal outside dimension of the underground facility in inches; and
 - iii. Numbers indicating the distance from the centerline or outside wall of the underground facility to the top line of the T, measured in inches; and
3. The letters "OFF" shall appear in capital letters below the arrow.

(d) An offset markout shall consist of a pair of offset markout symbols, as described in (c) above. The base of each symbol shall be over the offset center line of the underground facility, but no more than 18 inches horizontally, plus the offset distance, from either wall of the underground facility. A minimum of three separate offset symbols shall be made for each underground facility.

(e) Illustrations of an offset centerline markout are set forth in Appendix A, figures 4 and 6.

Note: This is a courtesy copy of the rules. The official version is found in the New Jersey Administrative Code at N.J.A.C. 14:2. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

(f) An offset markout for an underground facility of greater than 12 inches nominal outside dimension shall consist of a pair of parallel offset markout symbols as described in (c) above. The base of each symbol shall be over one offset outside wall of the underground facility, but no more than 18 inches horizontally, plus the offset distance, from either wall of the underground facility. A minimum of three separate offset paint markouts shall be made for each underground facility.

(g) Illustrations of an offset outside dimension markout are set forth in Appendix A, figures 5 and 6.

(h) The distance between an underground facility and an offset markout shall be as small as possible while enabling an excavator to clearly see the location of the underground facility. If site conditions permit this distance to be eighteen inches or less, the underground facility operator shall not utilize a centerline offset markout but instead shall utilize a centerline markout or outside dimension markout.

SUBCHAPTER 6. VIOLATIONS, PENALTIES, ENFORCEMENT

14:2-6.1 Violations in general

(a) Whenever it appears to the Board that a person has violated any provision of this chapter, or an order adopted pursuant to this chapter, the Board may issue an order:

1. Specifying the provision or provisions of which the person is in violation;
2. Citing the action which constituted the violation;
3. Ordering abatement of the violation; and
4. Giving notice to the person of the right to a hearing on the matters contained in the order.

(b) An order issued under (a) above shall be effective upon receipt, and any person to whom such order is directed shall comply with the order immediately.

(c) If statutory amendments are enacted after {effective date of this chapter}, which authorize additional or increased penalties or remedies for violation of this chapter, the Board shall have the authority to apply such penalties or remedies upon the effective date of the statutory amendment.

14:2-6.2 Injunction, civil penalties

(a) The Board may institute an action or proceeding in the Superior Court for injunctive and other relief for any violation of this chapter, or of an order issued pursuant to this chapter.

(b) In an action instituted under (a) above, the Board may seek one or more of the following:

Note: This is a courtesy copy of the rules. The official version is found in the New Jersey Administrative Code at N.J.A.C. 14:2. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

1. A temporary or permanent injunction, in accordance with (c) below;
2. A civil penalty, in accordance with (d) below;
3. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation; and/or
4. Assessment of the violator for the reasonable costs of preparing and litigating the case.

(c) If a person whose repeated failure to comply with this chapter constitutes a threat to public safety, the Board or an affected underground facility operator may institute an action in the Superior Court to enjoin the person from engaging in any further excavation or demolition within New Jersey, except under such terms and conditions as the Superior Court may prescribe to ensure public safety.

(d) An underground facility operator or an excavator, or the One-Call System operator, that violates any provision of this chapter or an order adopted pursuant thereto, shall be liable to a civil penalty not to exceed the amount set forth in N.J.S.A 48:2-88, as amended or supplemented, except as provided at (e) below. As of {effective date of this chapter} N.J.S.A 48:2-88 provided for a penalty of not less than \$1,000 and not more than \$2,500 per day for each day the violation continues, except that the maximum civil penalty may not exceed \$25,000 for any related series of violations.

(e) Notwithstanding any provisions of this chapter or N.J.S.A 48:2-88 to the contrary, a person who is determined by the Board, after notice and opportunity to be heard, to have violated any provision of this chapter, the Underground Facility Protection Act, or an order adopted pursuant thereto, with respect to a natural gas underground pipeline or distribution facility, or a hazardous liquid underground pipeline or distribution facility, shall be liable to a civil penalty not to exceed the amount set forth in N.J.S.A 48:2-86, as amended or supplemented. As of {effective date of this chapter} N.J.S.A 48:2-86 provided for a penalty not to exceed \$25,000 for each violation for each day the violation continues, except that the maximum civil penalty may not exceed \$500,000 for any related series of violations.

(f) Any civil penalty imposed pursuant to this section may be compromised by the Board. In determining the amount of the penalty, or the amount agreed upon in compromise, the Board shall consider the nature, circumstances, and gravity of the violation; the degree of the violator's culpability; any history of prior violations; the prospective effect of the penalty on the ability of the violator to conduct business; any good faith effort on the part of the violator in attempting to achieve compliance; the violator's ability to pay the penalty; and other factors the Board may determine appropriate concerning a particular violator.

(g) The amount of the penalty when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the State to the person charged, or may be recovered, if necessary, in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.).

(h) Pursuit of any remedy specified in this subchapter shall not preclude the pursuit of any other remedy, including any civil remedy for damage to an operator's underground facilities

Note: This is a courtesy copy of the rules. The official version is found in the New Jersey Administrative Code at N.J.A.C. 14:2. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

or for damage to a person's property, provided by any other law. Administrative and judicial remedies provided in this section may be pursued simultaneously.

14:2-6.3 Notice failure, prima facie evidence of negligence

Evidence that an excavation or demolition that results in any damage to an underground facility was performed without providing the notice required pursuant to this chapter shall be prima facie evidence in any civil or administrative proceeding that the damage was caused by the negligence of the excavator or responsible contractor, as applicable, that performed the excavation or demolition.

14:2-6.4 Civil penalties to the State

All civil penalties recovered pursuant to this chapter shall be paid into the General Fund.

Attachment 2

**AGREEMENT FOR OPERATION OF THE
ONE-CALL DAMAGE PREVENTION SYSTEM
PURSUANT TO N.J.S.A. 48:2-74, et seq.**

BETWEEN

NEW JERSEY BOARD OF PUBLIC UTILITIES

AND

ONE CALL SYSTEMS, INC.

DOCKET NO. AX04030176

AGREEMENT FOR OPERATION OF
THE ONE-CALL DAMAGE PREVENTION CENTER

This Agreement is entered into effective as of the 17th day of November, 2004, between the New Jersey Board of Public Utilities ("NJBP" or "Board") and One-Call Systems, Inc., ("OCS")

ARTICLE 1

LEGAL JURISDICTION

This Agreement shall be construed and shall be governed in accordance with the Constitution and laws of the State of New Jersey ("State").

Neither the State of New Jersey nor the NJBP, in entering into this Agreement, waives any Sovereign Immunity except as explicitly provided in the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

ARTICLE 2

LAWS TO BE OBSERVED

OCS shall keep fully informed of all Federal, State, and local laws, ordinances, and regulations, and all orders and decrees of bodies and/or tribunals having any jurisdiction or authority over this Agreement, which in any manner affect those engaged or employed in work under this Agreement, or which in any way affect the conduct of OCS's work. OCS shall at all times observe and comply with, and shall cause its agents, subcontractors and employees to observe and comply with, all such laws, ordinances, regulations, orders and decrees; and shall protect and indemnify the NJBP and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by itself or its agents, subcontractors or employees. If any discrepancy or inconsistency is discovered between this Agreement and any such law, ordinance, regulation, order or decree, OCS shall immediately report the same to the NJBP in writing. This Agreement shall not contradict any Federal, State, or local law, ordinance or regulation including regulatory Orders. Should a discrepancy exist between said laws, ordinances, regulations, or orders (including NJBP Board Orders) and this Agreement; the laws, ordinances, regulations and orders take precedence and will be determinative of the matter.

ARTICLE 3

INDEPENDENT CONTRACTOR

The relationship of OCS to the NJBP is that of an independent contractor, and OCS, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the NJBP by reason hereof. OCS will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the NJBP, including but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

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ARTICLE 4

THIRD PARTY BENEFICIARY CLAUSE

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to make the public or any member thereof or any entity a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain any action for personal injuries, property damage or other claims pursuant to the terms or provisions of this Agreement.

It is the further intent of the NJBPU and OCS in executing this Agreement that no individual, firm, corporation, or any combination thereof, which supplies materials, labor, services or equipment to OCS for the performance of the work becomes thereby a third party beneficiary of this Agreement. The NJBPU and OCS understand and agree that any such individual, firm, corporation, or combination thereof, has no right to bring an action in the courts of this State against the NJBPU, by virtue of its lack of standing and also by virtue of the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., which allows suit against the NJBPU in contract only on the basis of express contracts or contracts implied in fact.

ARTICLE 5

ASSIGNMENT OF FUNDS AND CLAIMS

OCS shall not transfer or assign to any individual, firm, corporation, or combination thereof any funds, due or to become due, under this Agreement, or any claims of any nature it has against the NJBPU without the written approval of the NJBPU or its designated representative having first been obtained. The NJBPU or its designated representative, in its sole discretion, and considering primarily the interests of the NJBPU, may grant or deny such approval.

ARTICLE 6

PERSONAL LIABILITY OF PUBLIC OFFICIALS

In carrying out any of the provisions of this Agreement, or in exercising any power or authority granted to them by or within the scope of this Agreement, there shall be no liability upon the members of the NJBPU, or other NJBPU officers or employees of the NJBPU, either personally or as officials of the NJBPU, it being understood that in all such matters they act solely as agents and representatives of the NJBPU.

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ARTICLE 7

RECOVERY OF MONIES BY THE STATE

Whenever it is provided that the State withhold or deduct money from the monies due or to become due OCS, or that OCS is to pay or return monies to the State for any reason, or that the State can charge against OCS certain costs, assessments or fines, or that the State can recover any sum for any reason from OCS, it is understood that the State has available to it all monies due or to become due OCS under this Agreement as well as under other agreements between OCS and the State. Such other agreements shall include joint ventures in which OCS is a participant, but only to the extent of its participation. The right to recover against OCS as herein provided is in addition to and does not affect the right of the State to seek recovery against OCS as otherwise allowed by law.

ARTICLE 8

NO WAIVER OF LEGAL RIGHTS

A waiver on the part of either party to this Agreement of any breach of any part of this Agreement shall not be held to be a waiver of any other or subsequent breach.

ARTICLE 9

LIMITATIONS OF LIABILITY

In no event, whether under the provisions of this Agreement, as a result of a breach hereof, tort (including negligence) or otherwise, shall the NJBPU be liable to OCS for any special, consequential, incidental or penal damages including, but not limited to, loss of profit or revenues, cost of capital, or interest of any nature.

ARTICLE 10

INDEMNIFICATION

OCS shall defend, indemnify, protect, and hold harmless the NJBPU, 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 any alleged negligent act, error, or omission of OCS, its agents, servants, employees and subcontractors in the performance of this Agreement. OCS shall, at its own expense, appear, defend and pay all charges for attorneys and all costs and other expenses arising from such suit or claim or incurred in connection therewith. If any judgment shall be rendered against the NJBPU for which indemnification is provided under this paragraph, OCS shall at its own expense satisfy and discharge the same.

The NJBPU or its designated representative shall promptly, after a claim has been made against it, give written notice thereof to OCS along with full and complete particulars of the claim. If suit is brought against the NJBPU or any of its agents, servants, and employees for which indemnity may be sought, the NJBPU or its designated representative shall expeditiously

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forward or have forwarded to OCS every demand, complaint, notice, summons, pleading, or other process received by the NJBPU or its representatives.

It is expressly agreed and understood that any approval by the NJBPU or its designated representative of the services performed and/or reports provided by OCS shall not operate to limit the obligations of OCS assumed in this Article or in the other provisions of this Agreement. It is further understood and agreed that the NJBPU assumes no obligation to indemnify or hold harmless OCS, its agents, employees and subcontractors from and against any claim which may arise out of their performance of this Agreement. Furthermore, OCS expressly understands and agrees that the provisions of this indemnification clause shall in no way limit OCS's obligations assumed in this Agreement, nor preclude the NJBPU from taking any other actions available to it under any other provisions of this Agreement or otherwise in law.

ARTICLE 11

INSURANCE

OCS shall procure and maintain at its own expense, until at least one year after the completion of all work performed under this Agreement and any modification hereto, liability insurance for damages imposed by law and assumed under this Agreement, of the kinds and in the amounts hereinafter provided, from insurance companies admitted or approved to do business in the State of New Jersey. OCS expressly understands and agrees that any insurance protection required by this Agreement shall in no way be construed to relieve OCS from liability in excess of such coverage, nor shall it preclude the NJBPU from taking such other actions as are available to it under any other provisions of this Agreement or otherwise in law.

1. The types and minimum amount of insurance are as follows:

a) Comprehensive General Liability Insurance

The minimum limits of liability for this insurance shall be as follows:

Bodily Injury Liability

<u>Each Occurrence</u>	<u>Aggregate</u>
\$10,000,000	\$10,000,000

Property Damage Liability

<u>Each Occurrence</u>	<u>Aggregate</u>
\$10,000,000	\$10,000,000

The above required Comprehensive General Liability Insurance shall name the NJBPU as an additional insured. The coverage to be provided under this policy shall be at least as broad as the standard, basic unamended and unendorsed comprehensive general liability policy and shall include contractual liability coverage.

b) Comprehensive Automobile Liability Insurance

The Comprehensive Automobile Liability policy shall cover owned, non-owned and hired vehicles with minimum limits as follows:

Bodily Injury Liability

<u>Each Occurrence</u>	<u>Aggregate</u>
\$3,000,000	\$3,000,000

Property Damage Liability

Each Occurrence

\$3,000,000

c) Workers' Compensation and Employers' Liability

Workers' Compensation Insurance shall be provided in accordance with the requirements of the laws of this State and shall extend coverage to any State which may be interpreted to have legal jurisdiction. Employers' Liability Insurance shall be provided with a limit of liability of not less than \$100,000 for each accident.

d) Professional Liability Insurance

The Professional Liability Insurance policy shall have the minimum limits as follows:

Each Occurrence

\$5,000,000

e) Pollution Legal Liability

The Pollution Legal Liability Insurance Policy shall have the minimum limit as follows:

<u>Per Claim</u>	<u>Aggregate</u>
\$2,000,000	\$2,000,000

2. OCS shall, prior to commencement of this Agreement, provide the NJBPU with valid Certificates of Insurance as evidence of OCS insurance coverage in accordance with the above provisions. Such Certificates of Insurance shall specify that the insurance provided is of the types and is in the amounts required in 1 (a), (b), (c), (d) and (e) above.

The Certificates submitted shall clearly set forth all exclusions and deductible clauses. The NJBPU in its sole discretion may allow certain deductible clauses which it does not consider excessive, overly broad or harmful to the interest of the NJBPU. Standard exclusions will be allowed provided they are not inconsistent with the requirements set forth in 1(a), (b), (c), (d) and

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(e) above. Allowance of any additional exclusions will be in the discretion of the NJBPU or its designated representative. Regardless of the allowance of exclusions or deductions by the NJBPU or its designated representative, OCS shall be responsible for the deductible limit of the policy and all exclusions consistent with the risks assumed under this Agreement and as imposed by law.

The Certificates shall provide for thirty (30) days notice in writing to the NJBPU prior to any cancellation, expiration, or non-renewal during the term the insurance is required in accordance with this Agreement. OCS shall further be required to provide the NJBPU with valid certificates of renewal of the insurance upon the expiration of the policies. All certificates and copies of insurance policies shall be forwarded to the New Jersey Board of Public Utilities, Attn: Walter Szymanski, 2 Gateway Center, Newark, New Jersey 07102.

In the event that OCS provides evidence of insurance in the form of Certificates of Insurance valid for a period of time less than the period during which OCS is required by the terms of this Agreement to maintain insurance, said certificates shall be acceptable, but OCS shall be obligated to renew its insurance policies as necessary and to provide new Certificates of Insurance from time to time, so that the NJBPU is continuously in possession of evidence of OCS's insurance in accordance with the forgoing provisions.

3. During any period when the required insurance is not in effect, the NJBPU or its designated representative may, at its option, either suspend work under this Agreement or proceed to default OCS and thereby terminate this Agreement.

ARTICLE 12

NOTICE

Written notice shall be sufficiently given when delivered or sent by United States Mail, Certified, Return Receipt Requested, to OCS's representative, or to the NJBPU's designated representative, respectively.

Addresses of the parties are:

NJBPU: Secretary, N.J.B.P.U.
Two Gateway Center, Newark, NJ 07102-5003

WITH COPY TO: Director, Division of Reliability and Security
N.J.B.P.U.
Two Gateway Center, Newark, NJ 07102-5003

OCS: One Call Systems, Inc.
Attention: Michael T. McNamara
115 Evergreen Heights Drive
Pittsburgh, PA 15228

WITH COPY TO: One Call Systems, Inc.
Attention: Barbara Bye
399 Hoes Lane

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Piscataway, NJ 08854

ARTICLE 13

SUBCONTRACTING

When OCS intends to subcontract any work under this Agreement, the subcontract must be consented to by the NJBPU or its designated representative prior to OCS entering into the subcontract. This includes the use of any outside agencies used for education and outreach programs. It is understood, however, that consent of the NJBPU or its designated representative for the subcontracting of any work under this Agreement in no way relieves OCS from its full obligations under this Agreement. OCS shall at all times give personal attention to the fulfillment of this Agreement and shall keep the work under its control. Consent to the subcontracting of any part of the work shall not be construed to be an approval of said subcontract or of any of its terms, but shall operate only as an approval of OCS's request for the making of a subcontract between OCS and its chosen subcontractor. OCS shall be responsible for all work performed by the subcontractor, which shall conform to the provisions of this Agreement.

ARTICLE 14

OCS'S REPRESENTATIVE

OCS shall assign to the work a competent manager who shall coordinate all phases of the work, including additions and revisions thereto. The manager's educational background and job experience shall be submitted to the NJBPU or its designated representative for review. The manager shall be available to the NJBPU at all reasonable times and all correspondence from the NJBPU to OCS relative to the operation of the One-Call System ("System") shall be directed to him or her, with copies provided by NJBPU to the OCS President.

ARTICLE 15

OWNERSHIP OF DOCUMENTS, DATA BASES, REPORTS

Ownership of any and all data, databases, records, material, documentation, reports, and information provided by NJBPU in connection with the performance of this contract, including computerized databases and any modifications thereto (the "Records"), shall remain the exclusive property of NJBPU and shall be held in the strictest confidence by OCS. Use of these Records by OCS is limited to the specific work under this Agreement as well as the NJBPU's Request For Proposal to Operate the New Jersey "One Call Damage Prevention System", docket No. AX04030176, dated April, 2004 ("RFP"); OCS's response to the RFP, submitted to the NJBPU May 12, 2004 ("OCS's Response"); and a One Call Systems, Inc. Tariff for Facilities Protection Services (to be filed by OCS pursuant to the RFP and OCS's Response) ("Tariff") by reference. All Records and other property defined below must be returned to the NJBPU upon termination of this Agreement or upon the request of NJBPU. The materials include but are not limited to the following:

1. Webpage and address;

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2. "800" telephone number;
3. Computer databases, including Mapping databases (subject to rights of owner/licensor);
4. Display booth and equipment;
5. Historical records currently in storage;
6. Miscellaneous handouts including remaining key chains, brochures and the like;
7. Data tape machine;
8. NJ1C Wall logo;
9. Name of System - "New Jersey One Call" and its logo "NJ1C"

The software and database program (hereinafter collectively called "Program") developed by OCS to provide its service under this Agreement is and shall be the exclusive property of OCS. OCS may develop, use, market, lease, sell, enhance, license, sublicense or otherwise deal in the Program or programs similar to the Program for itself or for others in any manner it deems in its best interest. All programs developed by or for OCS constitute confidential information and trade secrets to OCS and shall remain the property of OCS.

The current telephone number for the New Jersey One-Call service areas is 1-800-272-1000 (the "Designated Telephone Number"). OCS will be the customer of record for the Designated Telephone Number; however, ownership of the number will remain with the NJBPU. As the customer of record, OCS will receive the bill from the telecommunication service provider. OCS will transfer and assign the Designated Telephone Number to the NJBPU or the designee of the NJBPU upon the earlier to occur of (i) the request of NJBPU or its designated representative or (ii) the expiration, cancellation or termination of this Agreement.

ARTICLE 16

CHANGES - OCS AGREEMENT MODIFICATIONS

OCS shall not proceed with work which it believes or claims involves a change in the scope of work set forth in this Agreement without prior written notice from the NJBPU or its designated representative authorizing the work. In such event OCS shall give written notice to the NJBPU advising the NJBPU of its claim. If it is determined pursuant to Article 23 that the work does, in fact, constitute a change, an appropriate OCS Agreement Modification will be issued. However, if the determination made pursuant to Article 23 is that the work does not constitute a change, then the NJBPU or its designated representative will give written notice to OCS to proceed with the work in accordance with this Agreement.

OCS shall not be reimbursed for work of any nature made necessary because of failure to perform in accordance with this Agreement.

ARTICLE 17

ASSIGNMENT

At the option of the NJBPU, this Agreement shall bind the heirs, representatives, successors, or assigns of OCS. Any purported transfer or assignment of this obligation without written approval or consent by the NJBPU or its designated representative shall be void, unless the NJBPU or its designated representative subsequently gives written approval or consent.

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ARTICLE 18

SOLICITATION

OCS warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for OCS, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for OCS, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the NJBPU shall have the right either to annul this Agreement without liability, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or consideration.

ARTICLE 19

BUY AMERICAN

This Agreement shall comply with N.J.S.A. 52:32-1 and N.J.S.A. 52:33-1 et seq., which, except as expressly provided therein, prohibit on any public work the use of farm products or materials produced or manufactured outside the United States.

ARTICLE 20

INFORMATION CONCERNING OPERATION
OF ONE-CALL SYSTEM

OCS will not under any circumstances, except as may be required by law and with the approval of the NJBPU or its designated representative, divulge information obtained in the course of operation of the System to anyone other than the NJBPU without prior approval or direction of the NJBPU or its designated representative. It will obtain similar agreements from persons and firms employed by it. The NJBPU reserves the right to release all information as well as to time its release, form and content. Access to Records is to be delineated in the Tariff.

ARTICLE 21

EXTENT OF AGREEMENT

This Agreement, and by reference the RFP, OCS's Response, and the Tariff, represent the entire and integrated agreement between the NJBPU and OCS and supersede all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written "One Call System Operator Agreement Modification" signed by both the NJBPU or its designated representative and OCS.

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ARTICLE 22

OTHER WORK

Neither OCS nor any company, association, partnership or other entity affiliated with it in any way, including but not limited to any commonality in ownership shall, without prior approval of the Board or its designee, provide any supplemental services, including but not limited to facility mark-outs, pre-screening, or screening to underground facility operators. For the purpose of this paragraph, "pre-screening" and "screening" are defined to mean reviewing tickets to confirm that an underground facility is not located at the proposed dig site. OCS shall be permitted to provide a management information system to users of such systems, including underground facility operators.

ARTICLE 23

SCOPE MODIFICATION

Upon mutual agreement of the parties, the scope of work to be performed under this Agreement may be modified upon written request from the NJBPU or its designated representative, including appropriate increases or decreases in compensation based on the increases or decreases of the work involved. A One Call System Agreement Modification will be entered into to incorporate the change in scope into this Agreement. In addition, if the Tariff is to change, OCS will submit a revised tariff to the NJBPU for approval prior to the change.

ARTICLE 24

UNACCEPTABLE WORK; WARRANTY

OCS warrants to the NJBPU that the services to be rendered hereunder, as set forth in Article 30, will be performed by qualified personnel in a professional manner and in accordance with industry standards, and consistent with the statutory obligations of OCS to avoid damage to underground facilities and the substantial risk to public safety that may be caused by excavation and the discharge of explosives.

OCS agrees and acknowledges that, in addition to recovery of contract damages, including recovery of monies paid pursuant to Article 31, COMPENSATION, OCS may be subject to actions for injunctive relief and civil penalties including civil administrative penalties pursuant to N.J.S.A. 48:2-86 and 88 for violation of its lawful obligations under the Underground Facilities Protection Act, N.J.S.A. 48:2-74 et seq. (the "UFPA").

ARTICLE 25

STOP WORK

OCS shall stop all work promptly, if so directed in writing by the NJBPU or its designated representative.

ARTICLE 26

TERMINATION

The NJBPU may terminate OCS services under this Agreement upon a finding of failure of OCS to perform in accordance with the terms of this Agreement, the RFP, Tariff, and the JFPA, after notice and the opportunity for hearing. (N.J.A.C. 14:2-3.1) OCS in such case shall have no right to compensation for work performed that does not meet the requirements of this Agreement or for payment of any closeout costs which OCS may incur.

Nothing herein shall limit the right of the NJBPU to recover any and all costs and damages resulting from OCS's failure to perform the work in accordance with this Agreement.

OCS shall have no right to, nor shall it make any claim for, damages or additional compensation of any type whatever by reason of termination regardless of fault, except for amounts remaining due and payable hereunder.

All documents, records, data bases, funds being held and equipment owned by the NJBPU shall be immediately turned over to the NJBPU upon termination consistent with the provisions of Article 15.

ARTICLE 27

NONDISCRIMINATION

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

1. Nondiscrimination: OCS, 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, sex, disability or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment.
2. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by OCS for work to be performed under a subcontract, including procurement of materials or equipment, such potential subcontractor or supplier shall be notified by OCS of OCS's obligations under this Agreement and the regulations relative to nondiscrimination on the basis of race, color, age, sex, disability or national origin.
3. Information and Reports: OCS will provide all information and reports required by the Regulations, Tariff, RFP 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 NJBPU or its designated representative to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of OCS is in the exclusive possession of another who fails or refuses to furnish this information, OCS shall so certify to the NJBPU as appropriate, and shall set forth what efforts it has made to obtain the information.

Sanctions for Noncompliance: In the event of OCS's noncompliance with the nondiscrimination provisions of this contract, the NJBPU shall impose such sanctions as are appropriate and available under the laws of the State of New Jersey.

Incorporation of Provisions: OCS will include the provisions of paragraph (1) through (6) of every subcontract specific to this Agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders or instructions, issued pursuant thereto.

This Agreement is subject to all federal, NJBPU, and local laws, rules, and regulations, including, but not limited to, those pertaining to nondiscrimination in employment and affirmative action for equal employment opportunity.

ARTICLE 28

STATE OF NEW JERSEY AFFIRMATIVE ACTION RULES FOR PROFESSIONAL SERVICE CONTRACTS

The parties to this Agreement understand that the provisions of P.L. 1975, c. 127 (including 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 of 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.L. 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, downloading 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 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 (N.J.A.C. 17:27).

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ARTICLE 29

AMERICANS WITH DISABILITIES ACT

OCS and the NJBPU 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 NJBPU pursuant to this contract, OCS agrees that the performance shall be in strict compliance with the Act. In the event that OCS, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, OCS shall defend the NJBPU in any action or administrative proceeding commenced pursuant to this Act. OCS shall indemnify, protect, and hold harmless the NJBPU, 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. OCS 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, OCS 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 NJBPU or if the NJBPU incurs any expense to cure a violation of the ADA which has been brought pursuant to the State grievance procedure, OCS shall satisfy and discharge the same at its own expense.

The NJBPU or its designated representative shall, promptly after a claim has been made against it and for which indemnity may be sought, give written notice thereof to OCS along with full and complete particulars of the claim. If any action or administrative proceeding is brought against the NJBPU or its designated representative or any of its agents, servants, and employees for which indemnity may be sought, the NJBPU or its designated representative shall expeditiously forward or have forwarded to OCS every demand, complaint, notice, summons, pleading, or other process received by the NJBPU or its representatives.

It is expressly agreed and understood that any approval by the NJBPU or its designated representative of the services provided by OCS pursuant to this contract will not relieve OCS of the obligation to comply with the Act and to defend, indemnify, protect, and hold harmless the NJBPU pursuant to this paragraph.

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

ARTICLE 30

SCOPE OF WORK

This Agreement replaces a prior agreement between the NJBPU and OCS for the operation of the System's One-Call Center, which was effective November 17, 1999 for a term expiring November 16, 2004. The services to be provided pursuant to this Agreement are those provided under the prior agreement, as modified by this Agreement and by the RFP and OCS's Response, both of which are attached hereto and incorporated by reference herein.

OCS's responsibilities in the continuation of the System's One-Call Center shall include, but shall not necessarily be limited to, the provision of:

- a) Housing, equipment and all in-house services and staff necessary to operate the System's call center.
- b) Materials/services including, but not limited to the following: computer equipment, computer software, computer services, uninterruptible power supplies, communications equipment, communication recording equipment, Call Management System, Call Distribution System, office furniture, office supplies and duplicating and office services.
- c) Communications services from common carriers including nationwide access to the 800 number(s). The communication equipment shall have provisions for receipt of calls from the handicapped. The UFPA requires that all communications methods for the receipt of Requests For Markouts ("RFMs") and Emergency Requests for Markouts ("ERMs") shall be through nationwide 800 numbers.
- d) Adequate office space and equipment at the System's call center office for the Director/Manager and Supervisors.
- e) Conference space that can be utilized for meetings for twenty-five people, as required, to effectively manage the business of the center, and for meetings convened by the Board staff. The conference room shall contain sufficient and appropriate equipment, including a telephone with conference calling and speakerphone capabilities, and Internet access.
- f) A suitably equipped, secure and private office for two people that is separate from the aforementioned conference space for use exclusively by Board staff. It should include a phone, a One-Call Center terminal, and Internet access.
- g) The development and maintenance of an adequate Disaster Plan to cover failure of utilities and physical loss of the building including the capability of performing the System's operation temporarily from another location in the event of natural or man-made disasters, power failures, communication failures, and major computer system modifications. This Plan must be presented to Board staff for review and approval. The Plan shall include the use of Uninterruptible Power Supplies to maintain power for short electric outages and shall provide for the resumption of service within two (2) hours of re-establishing the System's communication capabilities. OCS shall also detail those efforts that will be employed to assure the System's continued operation after two (2) hours. In addition, OCS shall detail the measures to be taken to mitigate against telecommunication failure.

[Handwritten signature]

- 1) Hardware and software necessary to provide real-time, read-only database query capabilities and local printing capability to Board staff with at least seven (7) phone links, six (6) wireless and one (1) hard wire, at two (2) locations to be designated by Board staff. The query capabilities will include, but not be limited to, a twelve (12) month search by ticket type, confirmation number, excavator, county, municipality, and street.

CCS shall also:

- a) Provide an Internet, web-based positive response system to provide the means for a facility operator to notify the excavator if the facility operator is going to mark its facilities for a particular ticket or is "clear." This system will provide, at a minimum, the following features:

1. For the Excavator

- a) A secure web site that lists all the currently active tickets for this excavator in summary form, showing the serial number, date and time, street address and current marking status of all affected facility owner, such as "Clear," "Marked," "No-Response," etc. Clicking on these one-line summaries will open a window displaying the entire original ticket. This web site will be user name and password protected and will allow only the excavator to view his tickets.
- b) For excavators that do not have Internet access, an (800) number to provide, via a System operator, the same information listed in "A" above.
- c) For both "A" and "B" above, the capability for an excavator to re-notify a facility operator that has failed to respond positively within the allotted time.

2. For the Facility Operator

- a) A secure web site that lists in summary form all the currently active tickets for this facility operator, showing serial number, date and time, street address, and current marking status, such as "Clear," "Marked," "No Response," etc. Clicking on these summary lines will open a window displaying the entire original ticket. The facility operator may change the status of his/her own ticket on this website, thus positively responding to the excavator. This website will be user name and password protected, allowing only the facility operator to view and update his tickets. All updates will be logged and saved by date, time and user.

3. For Board Staff

- a) A web site that lists all the currently active tickets for all excavators in summary, showing serial number, date and time, street address and current marking status, such as "Clear," "Marked," "No Response," etc. Clicking on these summary lines will open a window displaying the entire original ticket, and Board staff may select tickets by excavator name, facility operator, dig address, status, etc. This website will be user name and password protected and only allow the Board staff to view all tickets.

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- (l) A monthly report on this timeliness of responses to the system by facility operator.
- (c) A portable wireless interface for Board Staff to the above web site to allow field verification of excavation information as needed.
- (b) Transmit a "Close of Business Day" message, after 6:00 p.m., to each operator and include a list of the tickets transmitted during the preceding 24-hour period. The messages shall, at a minimum, show the date, time of transmission, the number of requests transmitted, and the sequential numbering.
- (c) Identify the confirmation number on each outgoing ticket and end-of-day reports.
- (c) Communicate emergency requests to operators via telephone in the event of machine or communications failures. When normal service is restored, hard copy tickets shall be transmitted.
- (a) OCS shall upgrade its mapping system such that its system shall:
 1. Have a maximum grid size of 1/16 square mile;
 2. Indicate the method used to assure, at least quarterly, that each operator's area is properly recorded in the System's database;
 3. be updated on a weekly basis to reflect the results of the aforementioned field research;
 4. after processing the proposed excavation site through the grid system, will then process the same through a street index;
 5. indicate how corrections of errors on old maps and updates of new features (streets, etc.) will be shared with other operators with facilities in that area;
 6. have the ability to automatically determine if a proposed excavation will be within the 1/16 square mile grid but will also be either exclusively on or exclusively off the premises of certain designated large operators, such that said excavation will definitely affect only the underground facilities on those premises or, in the alternative, only the underground facilities which are entirely off those premises. The system must be able to "filter" excavations meeting either of these criteria. This "filtering" process will determine if the proposed excavation will actually overlap the underground facilities of the large operator, or merely abut it. In the case of no actual overlap the large operator shall be removed from the ticket. This operator will not receive or be charged for these tickets, as they will be deleted from the list of operators to be notified at the time the Request for Markout is taken. Conversely, if the proposed excavation is entirely on the property of one of the designated large operators, other operators whose facilities are near but not overlapping the proposed excavation will be filtered off the ticket and likewise they will neither receive or be charged for these tickets. Initially the large operators will be the New Jersey Turnpike, the Garden State Parkway, the Atlantic City Expressway, and New Jersey Transit. Additional large operators will be designated in future, as appropriate, by Board staff; and
 7. have the ability to integrate the latest version of The New Jersey 2002 High Resolution Orthophotography Maps, as produced by the State of New Jersey Office of Information, with the 1/16 square mile grid map.

Implement Screening on Basis of Street Address

The mapping system shall have the ability, when a site has been identified with a specific street address, to match that address against the street address, if any, which has been provided by the underground facility operator for each underground facility which would otherwise receive a ticket. If the street address of a site does not match that provided for an underground facility, the System shall remove that underground facility from the list of facilities to be notified, regardless of whether the facility falls within the 1/16 square mile. The system shall also have the ability, when a site is identified by the excavator as being located exclusively within the roadway, inside the curb-to-curb area, to remove from the list of operators to be notified any operator who has identified its underground facilities by a specific street address and whose underground facilities do not extend beyond the boundaries of that address. The System shall remove such operators regardless of whether the facilities in question fall within the 1/16 square mile grid. In the event that some of the operator's facilities within the notification area are identified by a specific street address and some are not, the operator will receive a message.

EXAMPLE 1:

An operator has registered with OCS for a specific street address, such as 5 Main Street. If an excavator calls for a markout for a different address, such as 4 Main Street, or for a markout exclusively within the roadway, in the curb-to-curb area, the operator would not receive a message.

EXAMPLE 2:

An operator has registered with OCS for a specific street address, such as 5 Main Street. If an excavator calls for a markout exclusively within the roadway, in the curb-to-curb area, the operator would not receive a message.

- c) staff and equip a vehicle with a Global Positioning Satellite ("GPS") system supporting Wide Area Augmentation System ("WAAS") that will provide positioning accuracy of better than one (1) meter. This vehicle shall be dispatched to obtain the locations of new streets and new street segments in order that the maximum benefit is afforded to the excavating public. The results of this field research shall be used to update the New Jersey One Call mapping Data Base on a weekly basis. A report of this field work shall be provided to Board staff on a monthly basis.
- b) Regularly update the OCS mapping database.

ARTICLE 31

COMPENSATION

OCS shall be compensated pursuant to N.J.S.A. 48:2-79 and this Agreement, through a schedule of fees contained in the Tariff, paid by the operators of underground facilities in New Jersey and collected by OCS.

A rate of \$7.68 per serial number generated (a serial number is generated for each RFM, each ERM and each update) has been established for the duration of this Agreement by the RFP, OCS's Response and the NJBPU's selection of OCS to operate the System. Billing to Operators, however, is by outgoing notification ("Ticket"). Therefore, a predicted number of Tickets per serial number (the "Ratio") is established, and the charge per Ticket is set by dividing \$7.68 by the Ratio. The Ratio is established to assure that the charges for Tickets will provide sufficient revenue to pay OCS at the rate of \$7.68 per serial number and to cover uncollectibles during the term of this agreement and the expectation that the ratio will be less than past experience and will diminish further over time. Any amounts uncollectible may be accounted for in the ratio set at the reconciliation following the conclusion of OCS' collection efforts pursuant to Article 33. Any receipts in excess of \$7.68 per serial number shall be applied to reduce future charges per Ticket or paid over by OCS to the NJBPU pursuant to Article 37.

The Ratio is established as 6 for the 12-month period November 17, 2004 through November 15, 2005. Therefore, the charge per Ticket for the same 12-month period is established as \$7.68 divided by 6, or \$1.28.

The Ratio for each subsequent 12-month period during the term of this Agreement shall be established as two-tenths less than the average ratio actually experienced by OCS during the second and third calendar quarters immediately preceding, rounded up to two decimal places. The charge per Ticket shall be rounded to the nearest penny. For example, if the average ratio for the second and third calendar quarters of 2005 (April through September, 2005) is 5.92, the Ratio starting November 17, 2005 will be 5.72. This is equivalent to a charge per Ticket of \$1.336, which is rounded to \$1.34. OCS shall, at the request of NJBPU staff, set a lower charge per Ticket if sufficient funds are available from prior 12-month periods or collections.

The ratio shall be expressed in the Tariff as the reciprocal of the Ratio defined above, and will therefore be multiplied by \$7.68 to obtain the ticket price. For example, the initial ratio in the Tariff will be the reciprocal of 6, or 0.1667, which will be multiplied by \$7.68 to get a ticket price of \$1.2803, which will be rounded to \$1.28.

ARTICLE 32

TARIFF

OCS shall file an initial Tariff pursuant to this Agreement. Any subsequent changes thereto are subject to NJBPU approval. All modifications to the Tariff rates will also be subject to NJBPU approval.

ARTICLE 33

BILLING AND INVOICING

In consideration of the undertaking of OCS and the performance of the work as herein set forth, OCS shall be reimbursed through charges rendered to Operators pursuant to this Agreement and the applicable Tariff.

OCS agrees to execute separate billing agreements with Operators, if necessary. OCS will be responsible for billing and collection under the Tariff. OCS will report to the NJBPU those Operators who are three or more months delinquent in payment of bills for service. Invoicing procedures shall be reviewed with each Operator.

OCS shall take all reasonable steps to collect delinquent accounts, including filing suit. OCS will make reasonable efforts to accommodate special billing requirements of individual Operators.

ARTICLE 34

ADVERTISING; SEPARATE BANK ACCOUNT

OCS shall spend no less than \$300,000 per contract year on advertising, promotion, education, outreach and promotional items relating solely to the promotion of the New Jersey One Call Damage Prevention System. All proposed expenditures shall be presented to Board Staff for approval.

If OCS spends less than \$300,000 for advertising, promotion, education and outreach purposes in any contract year, the shortfall shall be placed into a separate and distinct interest bearing checking account entitled "New Jersey One Call Damage Prevention System Advertising/Education Account". All funds deposited and so held shall be held in trust for the purpose of complying with N.J.S.A. 48:2-79(d) or other such purpose as directed by the Board or Board staff.

Advertising, promotion, education and outreach expenses shall be accounted for separately and subject to audit by the NJBPU's Staff and/or an independent third party at any time deemed necessary by the NJBPU. Quarterly reports, including all necessary operating, financial and accounting information, will be provided to the Board's Audit Staff.

ARTICLE 35

RECORDS RETENTION AND AUDIT

Records of all services performed under this Agreement shall be kept by OCS for a minimum of seven (7) years from the date of notice of intent pursuant to N.J.S.A. 48:2-76(d). Thirty (30) days prior to the destruction of such records, OCS will notify the NJBPU of such planned destruction. By reference, retention also includes all records delineated in the RFP and Tariff.

OCS must retain all records and voice recordings regarding actual Underground Location Requests at the Call System Center for a period of seven (7) years from the date of the notice of intent to excavate pursuant to N.J.S.A. 48:2-76 (d).

All records and voice recordings must be accessible to the NJBPU or its designated representative, and will be the property of the NJBPU. At the expiration or cancellation of the contract, all records and voice recordings must be released to the NJBPU upon request of the NJBPU.

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OCS shall keep accurate records and books of account showing all charges, disbursements, or expenses made or incurred by OCS in the performance of the services herein. The NJBPU shall have the right, upon reasonable notice, to audit at any time during the course of this Agreement, the direct costs, expenses and disbursements made or incurred in connection with the services to be performed herein, as well as for the validity of the representations made under any provision of this Agreement, and may examine OCS books and records relating to these areas.

ARTICLE 36

ACCESS/INSPECTIONS

OCS shall afford the NJBPU or its designated representative full access to any facilities providing any services on-site or at any support facilities described herein to enable inspection and audit of OCS operations.

OCS shall provide unlimited instant access at any time in the case of an investigation, or reasonable access and cooperation during regular business hours for routine audits, of any and all business or call records at the Call Center location in New Jersey or such other location at the Board's option. If the location is outside the State, OCS agrees to reimburse the State of New Jersey for all travel, lodging, subsistence and other additional expenditures. OCS shall make all required business and call records available at the Call Center location in New Jersey.

In the event of the NJBPU's waiver of the right to inspect any equipment and work, such waiver shall not relieve OCS in any way from its obligation under this Agreement, nor prejudice any claim, right or privilege which the NJBPU may have because of the use of defective or unsatisfactory equipment or work.

ARTICLE 37

ANNUAL RECONCILIATION

By each October 25, OCS shall file a detailed statement, including all supporting documentation, listing as of the prior September 30:

Total Ticket fees billed, plus other fees billed, in itemized categories
Minus Contract Revenues to OCS
Minus Accounts Deemed Uncollectible (reported by Operator)
Equals Net over <under> collection. Over collection shall be used for reduction of charge per Ticket or held for the NJBPU and paid within 90 days of the end of the term of this Agreement.

The Annual reconciliation, including advertising allowance and expenses, shall apply to each year, without consideration of whether this Agreement is in place for the whole year. For example, the first Annual Reconciliation under this Agreement shall be for the period October 1, 2004 through September 30, 2005, including billings and expenses accrued under the predecessor agreement during that period.

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ARTICLE 38

TURN KEY OPERATION

OCS shall perform "TURN KEY" services. "TURN KEY" is defined as providing complete management for and contracting and controlling all necessary employees and contractors during the term of this Agreement.

ARTICLE 39

REPORTING REQUIREMENTS

Reporting requirements include, but are not limited to, by reference, all reports called for in the RFP and Tariff. OCS must also provide all reports necessary for the NJBPU to perform all audit functions and overview of the operation of the One-Call System, including all information necessary for the NJBPU or its designated representative to assess and approve all expenditures and business plans regarding public education and outreach programs.

The Reports include but are not limited to the following:

1. At the beginning of the Agreement period, and thereafter annually, OCS shall submit its chart of accounts to the NJBPU's Audits Division. Any subsequent change shall be reported to the Audits Division within 10 days of the change.
2. All financial reports shall be prepared on an accrual basis.
3. A detailed Income Statement for each calendar quarter by the 25th day following the end of the quarter, detailing every category of income earned by OCS's New Jersey operations and collections on account for the NJBPU, and every category of expense relating to OCS's New Jersey operations. Balance Sheets for the beginning and the end of the period shall be included with the previously mentioned reports.
4. Upon request, the basis and rates for allocation for all intra-department or inter-location furnished for review.
5. In conjunction with the Income Statement, a separate statement of advertising, promotion, education and outreach expenses on the accrual basis.
6. Not later than November 30 of each year, OCS shall submit to NJBPU a proposed budget for advertising/education/public promotion. Such budget shall be reviewed, revised as appropriate, and approved by NJBPU or its designated representative in writing not later than December 31 of that year. With the quarterly Income Statement reports, OCS shall also submit requested budget modifications which also shall be approved in writing.
7. Each Quarterly Report shall show a summary of number of employees by title, utilized at the New Jersey One Call System Center at the beginning of the Quarter. It shall also

include hires, transfers in/out terminations, and resignations during the quarter, and final number by title at the end of the quarter.

B. A detailed statement for each calendar quarter, by the 25th day following the end of the quarter, detailing the average ratio of incoming calls to chargeable Tickets during that calendar quarter and year-to-date.

ARTICLE 40

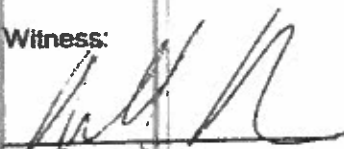
TERM OF AGREEMENT

This Agreement shall continue in full force and effect for an initial term of five (5) years from the effective date of November 17, 2004. It shall terminate on November 16, 2009, unless extended by mutual written agreement of the parties hereto for such additional term as specified in such extension agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date above mentioned.

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

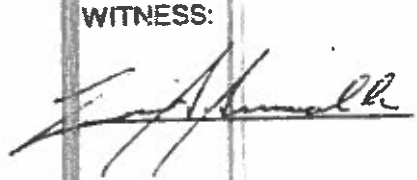
Witness:



By: 
Kristi Izzo
Secretary of the Board

ONE CALL SYSTEMS, INC.

WITNESS:



By: 
Michael T. McNamara, President

Attachment 3

MARKOUT TICKET

New Jersey One-Call System

CONFIRMATION NO. _____

Transit Date: At: _____

**** EMERGENCY****

Request No _____

Operator's Notified:

ABG=/ ABC GAS SE/ XYZ CABLE/ MCD=/ MCI HAZLET/ BAS=/ BELLATL SREG/
DUW=HAZLET WTR/ ATE=/ ATT EAST NJ/ NJP=/ NJ PIPELINE/ OXY=OXY CHEM/ NJN=NJ
NAT GAS/

Local Information:

County: _____ Municipality: _____

Subdivision/ Community: _____

Street: _____

Lot: _____ Block: _____

Nearest Intersection: _____

Other Intersection: _____

Type of Work: _____

Extent of Work: _____

Approximate Depth: _____

Start Date/ Time: _____ At: _____

Remarks: _____

Working For: _____

Address: _____

City: _____

Phone: _____

Contact: _____

Excavator Information:

Caller: _____ Title: _____

Phone: _____

Excavator: _____

Address: _____

City: _____

Phone: _____ Fax: _____

Contact: _____ Title: _____

Phone: _____ Best Time: _____

Cellular: _____

Alternate Field Contact:

(Optional)

Name: _____ Title: _____

Phone: _____ Fax: _____

Cellular: _____ Best Time: _____

END TICKET

Attachment 4

MARKOUT TICKET

New Jersey One-Call System

CONFIRMATION NO. _____

Transit Date: At: _____

**** Regular ****

Request No. _____

Operator's Notified:

ABG=/ ABC GAS SE/ XYZ CABLE/ MCD=/ MCI HAZLET/ BAS=/ BELLATL SREG/
DUW=HAZLET WTR/ ATE=/ ATT EAST NJ/ NJP=/ NJ PIPELINE/ OXY=OXY CHEM/ NJN=NJ
NAT GAS/

Local Information:

County: _____ Municipality: _____

Subdivision/ Community: _____

Street: _____

Lot: _____ Block: _____

Nearest Intersection: _____

Other Intersection: _____

Type of Work: _____

Extent of Work: _____

Approximate Depth: _____

Start Date/ Time: _____ At: _____

Remarks: _____

Working For: _____

Address: _____

City: _____

Phone: _____

Contact: _____

Excavator Information:

Caller: _____ Title: _____

Phone: _____

Excavator: _____

Address: _____

City: _____

Phone: _____ Fax: _____

Contact: _____ Title: _____

Phone: _____ Best Time: _____

Cellular: _____

Alternate Field Contact:

(Optional)

Name: _____ Title: _____

Phone: _____ Fax: _____

Cellular: _____ Best Time: _____

END TICKET

Attachment 5

MARKOUT TICKET

New Jersey One-Call System

CONFIRMATION NO. _____

Transit Date: At: _____

**** UPDATE ****

Request No. _____

Operator's Notified:

ABG=/ ABC GAS SE/ XYZ CABLE/ MCD=/ MCI HAZLET/ BAS=/ BELLATL SREG/
DUW=HAZLET WTR/ ATE=/ ATT EAST NJ/ NJP=/ NJ PIPELINE/ OXY=OXY CHEM/ NJN=NJ
NAT GAS/

Local Information:

County: _____ Municipality: _____

Subdivision/ Community: _____

Street: _____

Lot: _____ Block: _____

Nearest Intersection: _____

Other Intersection: _____

Type of Work: _____

Extent of Work: _____

Approximate Depth: _____

Start Date/ Time: _____ At: _____

Remarks: _____

Working For: _____

Address: _____

City: _____

Phone: _____

Contact: _____

Excavator Information:

Caller: _____ Title: _____

Phone: _____

Excavator: _____

Address: _____

City: _____

Phone: _____ Fax: _____

Contact: _____ Title: _____

Phone: _____ Best Time: _____

Cellular: _____

Alternate Field Contact:

(Optional)

Name: _____ Title: _____

Phone: _____ Fax: _____

Cellular: _____ Best Time: _____

END TICKET

Attachment 6

SCHEDULE

- | | | |
|----|---|-------------------|
| 1. | Treasury RFP released | 3/01/09 |
| 2. | Treasury Q&A Posted on Treasury Website | 4/23/09 |
| 3. | Bid Opening Date | 5/07/09 |
| 4. | Contractor Transition (if necessary) | 8/18/09 – 2/16/10 |
| 5. | Contractor assumes operations | 2/17/10 |

CONTINUATION OF QUARTERLY REPORT OF FACILITIES DAMAGED

DETAILS OF DAMAGED FACILITIES

PAGE: _____ OF _____

EXCAVATOR NAME, ADDRESS & ZIP CODE	DATE OF INCIDENT	LOCATION	DESCRIPTION OF DAMAGE	NJ ONE CALL #	DID OPERATOR DO MAKE-UP JOB - NO	MARK WITH X EXCAVATOR : EXCAVATOR DISCOVERED : CAUSED DAMAGE : DAMAGE
# __.						
# __.						
# __.						
# __.						
# __.						
# __.						
# __.						
# __.						
# __.						

ATTACH ADDITIONAL
FORMS IF NECESSARY

MAIL TO: SECRETARY, BOARD OF PUBLIC UTILITIES
TWO GATEWAY CENTER, NEWARK, NJ 07102

Attachment 7

Attachment 8

RFM/ERM

EXCAVATOR ID# _____

DIG LOCATION: _____

MUNICIPALITY: _____

SUBDIVISION OR COMMUNITY
(ALSO KNOWN AS): _____

STREET ADDRESS (MILEPOST): _____

STREET NAME: _____

LOT: _____ BLOCK _____

NEAREST INTERSECTION: _____

COUNTY: _____

TYPE OF WORK: _____

EXTENT OF WORK: _____

DEPTH OF WORK: _____

DURATION OF WORK: _____

FULL NAME OF CALLER: _____
(Must be asked)

TITLE: _____

PHONE#: _____

FAX#: _____

CELLUAR#: _____

BEST TIME TO CALL BACK: _____

ALTERNATE CONTACT: _____
(Optional)

TITLE: _____

PHONE#: _____

FAX#: _____

CELLUAR#: _____

BEST TIME TO CALL BACK: _____