

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC WORKS

GUARANTEED MAXIMUM PRICE AMENDMENT

To Agreement dated

October 27, 2009

Between the State of Connecticut and
The Whiting-Turner Contracting Company

For Project No. BI-2B-179 CMR

This amendment to the hereinafter-mentioned Agreement is entered into this 17th day of May, 2010, by and between the State of Connecticut, hereinafter called the Owner, acting herein by its Commissioner of the Department of Public Works (DPW), under the provisions of Sections 4-8 and 4b-1 and 4b-103 of the Connecticut General Statutes, as revised, and

The Whiting-Turner Contracting Company
195 Church Street, 16th Floor
New Haven, CT 06510

hereinafter called the CMR.

WITNESSETH

Whereas the Owner and CMR entered into an Agreement on October 27, 2009 in connection with the project entitled Department of Public Health State Laboratory Building, Rocky Hill, Connecticut, Project No. BI-2B-179 CMR (the "Agreement"); and

Whereas, Article 4 of the Agreement provides compensation for preconstruction services in the amount of Eighty-Six Thousand Two Hundred Ninety-Five Dollars (\$86,295.00); and

Whereas the Owner and CMR wish to establish a Guaranteed Maximum Price and Contract Time for the Work as contemplated by the Agreement and described in Section 2.2 thereof; and

Whereas, the Owner and CMR desire to further amend the Agreement to modify certain provisions of the Agreement pursuant to Section 9.2.2 thereof.

Now, therefore, in consideration of the mutual covenants, terms, and conditions herein contained, the parties hereto do hereby agree to amend the Agreement as follows:

1. The CMR's Guaranteed Maximum Price ("GMP") for the Work is:

Forty-Nine Million Seven Hundred Seventy-Seven Thousand Nine Hundred Eighty-Four Dollars (\$49,777,984.00)

2. The GMP is for the performance of the Work in accordance with the Contract Documents and items listed below, which items are compiled as the Guaranteed Maximum Price Submission and attached hereto and by this reference made a part of this GMP Amendment. The GMP Submission consists of the following items marked Exhibits A through G as follows:

Exhibit A: Letter dated May 14, 2010 from CMR to the Owner through DPW regarding Department of Public Health State Laboratory Project Guaranteed Maximum Price Submission Revision No. 3. Said Letter includes statements pertinent to the following:

- (a) Total GMP Price
- (b) Substantial Completion Date with confirmation of associated Liquidated Damages
- (c) Date of Acceptance with confirmation of associated Liquidated Damages
- (d) Formal recommendation for approval of the listed Trade Contractors
- (f) Debarred Trade Contractors

- (g) Trade Contractor's Licenses
- (h) CMR Insurance Certificates
- (i) CMR Bonds
- (j) Wage Certifications

Exhibit B: Guaranteed Maximum Price Submission Summary

Exhibit C: Guaranteed Maximum Price Assumptions and Qualifications [note: referred to as Assumptions and Clarifications in the Agreement and shall be understood to be the same reference herein]

Exhibit D: Schedule

Exhibit E: Subcontractors Bid Comparisons

Exhibit F: Small Business Enterprise and Minority Business Enterprise Status with accompanying Draft Log

Exhibit G: Voluntary Alternates

3. The date of Substantial Completion established by this GMP Amendment is: December 2, 2011.
4. The dated of Acceptance established by this GMP Amendment is: March 1, 2012.
5. Section 2.1.6.3.5 of the Agreement is amended in its entirety to read as follows:

"5 Any issue that arises from, involves, or is related to, the bidding process, including issues pertaining to bidder qualifications and bidder responsibility, shall be the responsibility and obligation of the CMR to manage, control, supervise and resolve exclusively, except as provided in Exhibit C to the GMP Amendment, Item No. 2, by taking any and all reasonable and necessary measures, or engaging in any necessary proceedings, for the benefit of the Owner. In so doing, CMR and its agents or representatives assisting CMR, shall act in good faith and in a commercially reasonable and competent manner in accordance with all legal requirements. The resolution of any issue referenced herein that will result in either a change to the award of contracts for Project Elements to a responsible qualified contractor or to the agreed upon GMP for the cost of construction shall require prior consultation with, and approval by, the Owner. The CMR shall receive a fixed lump sum amount for its managing, controlling, supervising and resolving issues arising from, involving or related to the bidding process, including issues pertaining to bidder qualifications and bidder responsibility. The fixed lump sum amount shall be determined at the time of, and included in, the GMP (the "Bid Process Administration Cost"). The Bid Process Administration Cost shall be paid to CMR in six (6) equal and successive billing installments commencing with the CMR's first application for payment. The Bid Process Administration Cost shall be excluded from the calculation of the CMR's fee."

6. Section 2.2.3 (11) of the Agreement is amended in its entirety to read as follows:

" (11) professional expenses, including legal expenses, incurred to obtain guidance, consultation, and recommendation, provided that such expenses are limited to issues that: 1) relate primarily and directly to the performance of the work or the Cost of the Work; 2) do not arise primarily and directly from the bidding process; 3) do not concern or involve any matter between and among the CMR, Owner and/or Architect; 4) do not concern, or were incurred as part of, litigation matters; and, 5) have received Owner's prior written approval which shall not be unreasonably withheld;"

7. All of the terms and conditions of the Agreement as it may have been previously amended to the date hereof, not hereby amended by this GMP Amendment shall remain in full force and effect.
8. This GMP Amendment shall take effect upon its approval as to form as noted in Paragraph 9.
9. This GMP Amendment shall not be binding on the State unless and until it is approved as to form by the Attorney General of the State of Connecticut, the Deputy Attorney General of the State of Connecticut or an Associate Attorney General of the State of Connecticut.
10. Campaign Contribution Restriction Provision. For all State contracts as defined in Section 1(g)(i)(c) of Public Act 07-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this First Amendment expressly acknowledges receipt of the State Elections Enforcement Commission's notice ("Notice") advising state

contractors, as defined in Public Act 07-1, of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of such Notice. The Notice issued by the State Elections Enforcement Commission, SEEC Form 11, is appended as "Attachment" and incorporated herein by reference.

IN WITNESS WHEREOF, the Owner, acting herein by the Commissioner of the Department of Public Works, and the CMR have executed this GMP Amendment.

Attested by:

Denise M. Gumpel
Witness signature
Print name Denise M. Gumpel

Kevin J. Kopetz
Witness signature
Print name Kevin J. Kopetz

Attested by:

Helen Putnam
Witness signature
Print name Helen Putnam

William J. White, Jr.
Witness signature
Print name William J. White, Jr.

State of Connecticut (the "Owner")

By: Raeanne V. Curtis

Raeanne V. Curtis
Its Commissioner
of the Department of Public Works

Date signed: May 17, 2010

The Whiting-Turner Contracting Company

By: Daniel M. Bauer
Daniel M. Bauer

Its Senior Vice President, Duly Authorized

Date signed: 5/17/2010

Approved as to form:

William B. Miller
Attorney General
ASSOC. ATTY GENERAL

Date signed: 5/18/10

ATTACHMENT

SEEC FORM 11

NOTICE TO EXECUTIVE BRANCH STATE CONTRACTORS AND PROSPECTIVE STATE CONTRACTORS OF CAMPAIGN CONTRIBUTION AND SOLICITATION BAN

This notice is provided under the authority of Connecticut General Statutes 9-612(j)(2), as amended by P.A. 07-1, and is for the purpose of informing state contractors and prospective state contractors of the following law (*italicized words are defined below*):

Campaign Contribution and Solicitation Ban

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

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

Duty to Inform

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

Penalties for Violations

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

Civil penalties—\$2000 or twice the amount of the prohibited contribution, whichever is greater, against a principal or a contractor. Any state contractor or prospective state contractor which fails to make reasonable efforts to comply with the provisions requiring notice to its principals of these prohibitions and the possible consequences of their violations may also be subject to civil penalties of \$2000 or twice the amount of the prohibited contributions made by their principals.

Criminal penalties—Any knowing and willful violation of the prohibition is a Class D felony, which may subject the violator to imprisonment of not more than 5 years, or \$5000 in fines, or both.

Contract Consequences

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

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

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

Additional information and the entire text of P.A. 07-1 may be found on the website of the State Elections Enforcement Commission, www.ct.gov/seec. Click on the link to "State Contractor Contribution Ban."

Definitions:

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

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

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

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

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

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

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

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