



Request for Quotation

AK-040

For: Opioid Advertising Services - DOH

Event	Date	Time
Bidder's Electronic Question Due Date (Refer to RFQ Section 1.3.1 for more information.)	February 6, 2017	2:00 PM
Mandatory/Optional Pre-Quote Submission Conference (Refer to RFQ Section 1.3.6 for more information.)	NOT APPLICABLE	
Mandatory/Optional Site Visit (Refer to RFQ Section 1.3.5 for more information.)	NOT APPLICABLE	
Quote Submission Date (Refer to RFQ Section 1.3.2 for more information.)	February 15, 2017	2:00 PM

Dates are subject to change. All times contained in the RFQ refer to Eastern Time. All changes will be reflected in Addenda to the RFQ posted on the Division of Purchase and Property [website](#).

	Status	Category
Small Business Set-Aside	<input checked="" type="checkbox"/> Not Applicable	
	<input type="checkbox"/> Entire Contract	<input type="checkbox"/> I <input type="checkbox"/> IV
	<input type="checkbox"/> Partial Contract	<input type="checkbox"/> II <input type="checkbox"/> V
	<input type="checkbox"/> Subcontracting Only	<input type="checkbox"/> III <input type="checkbox"/> VI

RFQ Issued By

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

Using Agency/Agencies

State of New Jersey
 Department of Health
 Trenton, New Jersey 08608

Date: February 1, 2017

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1.0 INFORMATION FOR BIDDERS

1.1 PURPOSE AND INTENT

This Request for Quotation (RFQ) is issued by the Procurement Bureau, Division of Purchase and Property (Division), Department of the Treasury on behalf of the New Jersey Department of Health (DOH). The purpose of this RFQ is to solicit Quotes to create, design, write, produce, budget, and administer results of an advertising initiative. The campaigns within the initiative shall promote public awareness utilizing print, radio, television, Internet, and other forms of media as agreed upon at the time of project assignment.

The intent of this RFQ is to award a Contract to that responsible Bidder whose Quote, conforming to this RFQ is most advantageous to the State, price and other factors considered. The State may award any and all price lines. The State, however, reserves the right to separately procure individual requirements that are the subject of the Contract during the Contract term, when deemed by the Director of the Division of Purchase and Property (Director) to be in the State's best interest.

The State of NJ Standard Terms and Conditions (SSTC) accompanying this RFQ will apply to all Contracts made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in this RFQ and should be read in conjunction with them unless the RFQ specifically indicates otherwise.

1.2 BACKGROUND

The DOH is seeking Quotes for Creative Services: Television/Radio Commercials production, media placement, and supporting collateral that will enhance and promote awareness to support the following statistics:

- A. A 2015 national survey conducted at the University of Michigan found that among 8th grade students, 20% believed that prescription narcotics (the survey question noted Vicodin, OxyContin, and Percocet as examples) were "fairly easy or very easy" to obtain;¹
- B. The National Institute on Drug Abuse says one in 12 high school seniors reported having tried Vicodin for recreational use. One in 20 reported abusing OxyContin. And for college aged students, one in 10 reported having a prescription for OxyContin or Vicodin, but 20.2% said they took more than they were supposed to;
- C. A 2013 survey from the U.S. Department of Health and Human Services found that while young people perceive heroin to be the most dangerous drug, the number of 12-17 year olds who see the drug as "very risky" is on the decline;
- D. In 2014, 467,000 teens aged 12-17 reported using prescription pain meds, with 168,000 being addicted;
- E. In 2014, an estimated 28,000 12-17 year olds had used heroin in the past year, and an estimated 16,000 were current heroin users. An estimated additional 18,000 had a heroin use disorder;
- F. People often share their unused pain relievers, unaware of the dangers of nonmedical opioid use. Most adolescents who misuse prescription pain relievers are given them for free by a friend or relative;

¹ <http://www.monitoringthefuture.org/>

- G. The prescribing rates for prescription painkillers to patients in this age group nearly doubled from 1994 to 2007; and
- H. National data from the 2012 Partnership Attitudes Tracking Study found: “More than a quarter of teens (27%) mistakenly believe that “misusing and abusing prescription drugs to get high is safer than using street drugs.”

Bidders may refer to Executive Order 219 declaring the abuse of and addiction to opioid drugs a public health crisis in New Jersey. <http://www.nj.gov/infobank/circular/eocc219.pdf>

The goal of this initiative is to create awareness and provide education throughout the State about the dangers of addiction, particularly opioid addiction, and recovery services for New Jersey residents. All Bidders must be prepared to commence work in the second half of February, 2017. These services require a quick turnaround and production must begin on Day 1 of the Contract.

1.3 **KEY EVENTS**

1.3.1 **ELECTRONIC QUESTION AND ANSWER PERIOD**

The Procurement Bureau will accept questions pertaining to this RFQ, electronically, until 2:00 P.M. EST, Monday, February 6, 2017. Questions shall be directed via email to:

Megan Tagliaferri
megan.tagliaferri@treas.nj.gov

Communications with other representatives of the State regarding this RFQ are prohibited during the submission and selection processes. Failure to comply with these communications restrictions will result in rejection of a Bidder’s Quotation.

1.3.1.1 **EXCEPTIONS TO THE STATE OF NJ STANDARD TERMS AND CONDITIONS (SSTC)**

Questions regarding the SSTC and exceptions to mandatory requirements must be posed during this Electronic Question and Answer period and shall contain the Bidder’s suggested changes and the reason(s) for the suggested changes.

1.3.2 **SUBMISSION OF QUOTES**

In order to be considered for award, the Quote must be received by the Procurement Bureau of the Division at the appropriate location, by the required time. Bidders shall submit a Quote utilizing one (1) of the following methods:

- a. E-mail: Submit Quote via email to:

Megan Tagliaferri
megan.tagliaferri@treas.nj.gov

NOTE: The State’s e-mail system cannot accept file sizes greater than 5 MB per e-mail; or

- b. Hard copy: If the Bidder is submitting a hard copy Quote, it must be submitted to the physical location noted below:

Attn: Megan Tagliaferri
Department of the Treasury
Division of Purchase and Property

Directions to the Division are available on the web at <http://www.state.nj.us/treasury/purchase/directions.shtml>.

QUOTES NOT RECEIVED PRIOR TO THE QUOTE OPENING DEADLINE SHALL BE REJECTED. THE DATE AND TIME OF THE QUOTE OPENING ARE INDICATED ON THE RFQ COVER SHEET.

Note: A Bidder using U.S. Postal Service regular or express mail services should allow additional time since the U.S. Postal Service does not deliver directly to the Proposal Receiving Room. A Bidder should make every effort to submit its Quote well ahead of the Quote submission deadline to mitigate unforeseen delays or issues. The Bidder is solely responsible for the timely submission of its Quote in response to this RFQ.

1.4 **ADDITIONAL INFORMATION**

1.4.1 **ADDENDA: REVISIONS TO THIS RFQ**

In the event that it becomes necessary to clarify or revise this RFQ, such clarification or revision will be by an Addendum posted to the Division's Special Notices page. Any Addendum to this RFQ will become part of this RFQ and part of any Contract awarded as a result of this RFQ.

There are no designated dates for release of Addenda. Therefore, interested Bidders should check the Division's Special Notices page on a daily basis from time of RFQ issuance through the Quotation submission opening.

It is the sole responsibility of the Bidder to be knowledgeable of all Addenda related to this procurement. An interested Bidder should check the Division's Special Notices page on a daily basis to ensure review of the most updated information.

1.4.2 **BIDDER RESPONSIBILITY**

The Bidder assumes sole responsibility for the complete effort required in submitting a Quote in response to this RFQ. No special consideration will be given after Quotes are opened because of a Bidder's failure to be knowledgeable as to all of the requirements of this RFQ.

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 Quote in response to this RFQ.

1.4.4 **CONTENTS OF QUOTE**

Quotes can be released to the public pursuant to N.J.A.C. 17:12-1.2(b) and (c), or under the New Jersey Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 *et seq.*, or the common law right to know.

After the opening of sealed Quotes, all information submitted by a Bidder in response to a RFQ is considered public information, notwithstanding any disclaimers to the contrary submitted by a Bidder. Proprietary and confidential information may be exempted from public disclosure by OPRA and/or the common law. When the RFQ contains a negotiation component, the Quote will not be subject to public disclosure until intent to award a Contract is announced.

As part of its Quote, a Bidder may designate any data or materials it asserts are exempt from public disclosure under OPRA and/or the common law, explaining the basis for such assertion. The location in the Quote of any such designation should be clearly stated in a cover letter. The State reserves the right to make the determination as to what is proprietary or confidential, and will advise the Bidder accordingly. Any proprietary and/or confidential information in a Quote will be redacted by the State. **The State will not honor any attempt by a Bidder to designate its entire Quote and/or prices as proprietary, confidential and/or to claim copyright protection for its entire Quote.** Copyright law does not prohibit access to a record which is otherwise available under OPRA. In the event of any challenge to the Bidder's assertion of confidentiality with which the State does not concur, the Bidder shall be solely responsible for defending its designation, but in doing so, all costs and expenses associated therewith shall be the responsibility of the Bidder. The State assumes no such responsibility or liability.

By signing the RFQ Offer and Acceptance Page, 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 Program participants and thus have to be made public to allow all eligible purchasing entities access to the pricing information.

1.4.5 **ANNOUNCEMENT OF QUOTE INFORMATION**

Not applicable to this procurement.

1.4.6 **PRICE ALTERATION IN HARD COPY QUOTES**

Hard copy Quote 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 **QUOTE ERRORS**

Not applicable to this procurement.

1.4.8 **JOINT VENTURE**

If a Joint Venture is submitting a Quote, the agreement between the parties relating to such Joint Venture should be submitted with the Joint Venture's Quote. Authorized signatories from each party comprising the joint venture must sign the Offer and Acceptance Page. Each party to the Joint Venture must individually comply with all the forms and certification requirements in Sections 4.4.1 and 4.4.2 of this RFQ.

1.4.9 **RECIPROCITY FOR JURISDICTIONAL BIDDER PREFERENCE**

Not applicable to this procurement.

1.4.10 **QUOTE ACCEPTANCES AND REJECTIONS**

N.J.A.C. 17:12-2.7(d), the Director's right to waive minor irregularities or omissions in a Quote and N.J.A.C. 17:12-2.2 which defines causes for Quote rejection, apply to all Quotes. In addition, pursuant to N.J.S.A. 52:34-12, the Director retains the right to reject all Quotes if it is in the public interest.

2.0 DEFINITIONS

2.1 GENERAL DEFINITIONS

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

Addendum – Written clarification or revision to this RFQ issued by the Division of Purchase and Property. Addenda, if any, will be issued prior to Quote opening.

All-Inclusive Hourly Rate – An hourly rate comprised of all direct and indirect costs including, but not limited to: labor costs, 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.

Best and Final Offer or BAFO – Pricing timely submitted by a Bidder upon invitation by the Bureau after Quote opening, with or without prior discussion or negotiation.

Bidder – An entity offering a Quote in response to the Division’s RFQ.

Business Day - Any weekday, excluding Saturdays, Sundays, State legal holidays, and State-mandated closings unless otherwise indicated.

Calendar Day – Any day, including Saturdays, Sundays, State legal holidays, and State-mandated closings unless otherwise indicated.

Contract – The Contract consists of the State of NJ Standard Terms and Conditions (SSTC), the RFQ, the responsive Quote submitted by a responsible Bidder as accepted by the State, the notice of award, any Best and Final Offer, any subsequent written document memorializing the agreement, any modifications to any of these documents approved by the State and any attachments, Addenda or other supporting documents, or post-award documents including Contract Amendments agreed to by the State and the Contractor, in writing.

Contract Amendment – An alteration or modification of the terms of a Contract between the State and the Contractor. A Contract Amendment is not effective until it is signed and approved in writing by the Director or Deputy Director, Division of Purchase and Property.

Contractor – The Bidder awarded a Contract resulting from this RFQ.

Cooperative Purchasing Program – The Division’s intrastate program that provides procurement-related assistance to New Jersey local governmental entities and boards of education, State and county colleges and other public entities having statutory authority to utilize select State Contracts issued by the Division, pursuant to the provisions of N.J.S.A. 52:25-16.1 et seq.

Days After Receipt of Order (ARO) - means the number of calendar days ‘After Receipt of Order’ in which the Using Agency will receive the ordered materials and/or services.

Director – Director, Division of Purchase and Property, Department of the Treasury, who by statutory authority is the Chief Contracting Officer for the State of New Jersey.

Discount - Means the standard discount applied by the Bidder to all items.

Division – The Division of Purchase and Property.

Evaluation Committee – A committee established or Division staff member assigned by the Director to review and evaluate Quotes submitted in response to this RFQ and 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.

Freight - Means Freight on Board (FOB) Destination.

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 or recommended, not mandatory.

Ownership Disclosure Form – Refers to the Statement of Bidder/Vendor Ownership.

Procurement Bureau - The Division unit responsible for the preparation, advertisement, and issuance of RFQs, for the tabulation of Quotes and for recommending award of a Contract to the Director and the Deputy Director.

Project – The undertakings or services that are the subject of this RFQ.

Quote –Bidder’s timely response to the RFQ including, but not limited to, technical Quote, price Quote, and any licenses, forms, certifications, or other documentation required by the RFQ.

Retainage - The amount withheld from the Contractor payment that is retained and subsequently released upon satisfactory completion of performance milestones by the Contractor.

Request for Quotation (RFQ) – This series of documents, which establish the bidding and Contract requirements and solicits Quotes to meet the needs of the Using Agencies as identified herein, and includes the RFQ, State of NJ Standard Terms and Conditions (SSTC), price schedule, attachments, and Addenda.

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

Should – Denotes that which is permissible or recommended, not mandatory.

Small Business – Pursuant to N.J.A.C. 17:13-1.2, “small business” means a business that meets the requirements and definitions of “small business” and has applied for and been approved by the New Jersey Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit as (i) independently owned and operated, (ii) incorporated or registered in and has its principal place of business in the State of New Jersey; (iii) has 100 or fewer full-time employees; and has gross revenues falling in one of the three following categories: For goods and services - (A) 0 to \$500,000 (Category I); (B) \$500,001 to \$5,000,000 (Category II); and (C) \$5,000,001 to \$12,000,000, or the applicable federal revenue standards established at 13 CFR 121.201, whichever is higher (Category III); For construction services: (A) 0 to \$3,000,000 (Category IV); (B) gross revenues that do not exceed 50 percent of the applicable annual revenue standards established at 13 CFR 121.201 (Category V); and (C) gross revenues that do not exceed the applicable annual revenue standards established at CFR 121.201, (Category VI).

State – The State of New Jersey.

State Contract Manager or SCM – The individual, as set forth in Section 8.0, responsible for the approval of all deliverables, i.e., tasks, sub-tasks or other work elements in the Scope of Work. The SCM cannot direct or approve a Contract Amendment.

State Standard Terms and Conditions (SSTC) – The Standard Terms and Conditions attached to this RFQ.

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

Subcontractor – An entity having an arrangement with a Contractor, whereby the 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 [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.

Unit Cost – All-inclusive, firm fixed price charged by the Bidder for a single unit identified on a price line.

Using Agency[ies] – A State department or agency, a quasi-State governmental entity, or a Cooperative Purchasing Program participant, authorized to purchase products and/or services under a Contract procured by the Division. In addition, with the approval of the Director of the Division of Purchase and Property and the agreement of the Contractor, the Contract may be used by any Using Agency or quasi-State governmental entity.

2.2 CONTRACT-SPECIFIC DEFINITIONS/ACRONYMS

This is not applicable to this procurement.

3.0 **SCOPE OF WORK**

The Contractor must commence work in the second half of February, 2017 as directed by DOH via task order as described in Section 3.4 of this RFQ. These services require a quick turnaround and production must begin on Day 1 of the Contract. No advertising activities shall be conducted, made public, or disseminated without the written approval of the SCM.

3.1 **GENERAL REQUIREMENTS**

The Contractor shall provide creative services to design, write, produce, budget, and administer this advertising initiative. The initiative shall include campaigns that will promote public awareness utilizing print, radio, television, Internet, and other forms of media as agreed upon at the time of project assignment by the DOH.

Beginning on approximately February 21, 2017 and ending on approximately June 30, 2017, the Contractor shall develop an advertising campaign and supporting promotional plans complete with the goals and objectives that outline promotional strategies and tactics to reinforce and enhance consistent messaging and meet specific program goals, based on the annual available funding.

Post implementation of the promotion plan, the Contractor shall provide analysis of its outreach efforts to determine the impact of its efforts on State residents' understanding of opioids and addiction and offer improved services based upon these measured results.

3.2 **ADVERTISING SERVICES**

The Contractor shall promote Opioid Addiction Awareness marketing services in support of the goals outlined in this RFQ. The Contractor shall create, develop and execute a promotion and messaging on a statewide audience basis on addiction and recovery services as noted in Section 1.2 of this RFQ. The requirements shall include, at minimum, the following:

- A. Recommend and develop objectives and strategies targeted to designated markets and/or the general public;
- B. Development and submission of a media plan with associated timelines that provides details of the media mix, recommended media outlets as well as a media schedule as per Section 4.4.3.1 B.4. The media plan must describe:
 1. identification of the target audience;
 2. specific media to be used;
 3. timing, frequency, penetration and length of placement;
 4. justification as to how recommended outlets match the target audience;
 5. justification as to how the various elements of the plan are to be integrated for maximum impact, cost effectiveness and return on investment; and
 6. a complete itemization of media cost.
- C. As part of the media mix, the Contractor shall propose to create, produce and distribute:
 1. television advertisements;
 2. out-of-home advertisements;
 3. radio spots;
 4. internet advertisements;
 5. print advertisements;
 6. pod casts/webcasts; and

7. e-blasts; and/or other advertising;
- D. Auditing the advertising and media placements released through the various media to verify that quality, timing, position, and distribution are consistent with the media plan and schedule;
- E. Design and production of integrated media advertising campaigns with budgets and schedules that are based on:
 1. relevancy;
 2. market research;
 3. cost effectiveness;
 4. target market reach and/or penetration;
 5. program development; and
 6. global approach including translation and foreign language services if necessary;
- F. Development and execution of a public relations plan that extends or exceeds its media plan including:
 1. How it will plan, assist, coordinate, provide sponsorship and participate in special public relations events and activities in conjunction with DOH;
- G. Development and execution of an internet enhancement plan that extends or exceeds internet advertising including but not limited to creative design, interactive features, digital applications, and integration with social media;
- H. For each component of the media mix (i.e. print, television, radio) project-specific Scope of Work, the Contractor shall prepare at least three (3) creative concepts to present to the State Contract Manager (SCM) or his/her designee. The Contractor shall obtain the written approval of the SCM before implementation of the final media plan;
- I. Upon approval by the SCM of the detailed collateral plan (including a minimum of three (3) rounds of review and input by the SCM), the Contractor shall arrange for the use, dissemination and distribution of the various forms of communication, literature, publications and advertising materials called for in the collateral plan, as approved by the SCM or his/her designee;
- J. The Contractor shall execute all Contracts with the media and other third parties for ad placement. The Contractor is responsible for all media buys, including the negotiation of the best possible rates for any contracts. The Contractor shall enter into all such contracts as the prime Contractor and not as an agent of the State.
- K. Contractor shall provide the following in its post-implementation plan: provide the SCM, or his/her designee, with reports concerning recommended media buys for each project with performance and pre- and post-analysis recommendations and evaluations, including but not limited to research-based measurements. These reports shall provide a rationale/ justification for buys with print and broadcast;
- L. Contractor shall provide the SCM or his/her designee, with **all documentation and material for each component of the media mix including any electronic**

documentation related to the internet and social media that is produced to fulfill the requirements of the Contract upon request;

- M. The Contractor shall supply photographic services as needed and approved by the SCM; and
- N. Design and produce collateral pieces (e.g., brochures, posters, flyers, newsletters, etc.).

3.3 **PROJECT MANAGEMENT**

DOH requires the successful Contractor to provide an Account Executive, or an equivalent, to manage this Contract.

Serving in this capacity, the Account Executive shall be the “point person” responsible for managing the Contract, ensuring timelines and deadlines are met, managing and following-up on status of each advertising campaign and the requirements of this Contract to ensure timely communication and completion of all tasks.

3.3.1 **COMMUNICATIONS - REPORTING/TEAM TELECONFERENCE MEETINGS:**

On a monthly basis, no later than the fifth (5th) business day of the following month, the Contractor will be required to submit to the SCM, or his/her designee, a written report summarizing the funds expended during the previous month, as well as a year-to-date total. The report will be in an Excel format provided by the Contractor to the SCM.

Additionally, on a weekly basis, the DOH Communications, in conjunction with the Contractor’s Account Executive, and any staff involved in the specific, current campaigns in process, shall participate in a “tracker call” teleconference, or in-person meeting estimated to be one (1) hour in duration, to address project timelines, bottlenecks and requirements, as they are identified.

No additional compensation will be provided for participation in this weekly meeting or for preparing and submitting the requisite reports.

3.3.2 **INITIAL ORGANIZATIONAL MEETING**

The **Contractor shall attend an *Initial Organizational Meeting* with the DOH, and other staff members**, as appropriate, to launch the Marketing program. The meeting will be held at the Department of Health offices located at 369 South Warren Street in Trenton. **The Initial Organizational Meeting must be held within two business (2) days of awarding the Contract and will encompass one (1) full business day** (i.e. 8:00 AM to 5:00 PM), the purpose of which is to allow the Contractor (and any staff assigned to perform work against the resulting contract) the opportunity to meet with the SCM or his/her designee and other members of DOH staff, to gain a clear understanding of performance expectations and preliminary timeline requirements.

At a minimum, the following individuals/positions (or the equivalent) from the Contractor must be present at this Initial Organizational Meeting:

- A. President;
- B. Account Executive;
- C. Advertising Account Manager; and
- D. Creative Director

3.3.3 ATTENDANCE AT MEETINGS:

Following the *Initial Organizational Meeting*, the successful Contractor shall be required to attend and participate in meetings with DOH staff, regarding the Scope of Work, as may be required. These meetings will be conducted within New Jersey and may take place at the DOH offices located at 369 South Warren Street in Trenton or at other locations within the State, as appropriate.

3.4 DELIVERABLES

As the DOH determines that it is ready to proceed with services on a project-by-project basis under the approved advertising plan, it will provide the Contractor with a project-specific task order. This will occur prior to the commencement of work for the particular advertising campaign. The Contractor shall respond with the following:

- A. a detailed cost estimate for the project-specific task order, based on the quotation pricing set forth in the awarded contract. The cost estimate will include a “not-to-exceed amount” on each individual task to be provided, specific and itemized deliverables, a detail of the positions assigned to perform the work and the corresponding All Inclusive Hourly Rates; and
- B. a timeline for completion and FIRM due date. If the Contractor is unable to meet the requisite deadline identified by the SCM, or his / her designee, it must clearly indicate this in its project-specific cost estimate / quotation response.

After the State Contract Manager approves the cost estimate, via e-mail, for a particular project; the work may begin. If the cost estimate for a particular project is rejected, the Contractor will be asked to amend or resubmit its cost quotation within three (3) business days for SCM approval. If the DOH rejects the Contractor’s cost estimate/ quotation for a given project; the DOH reserves the right, to negotiate the time and level/ title of employee assigned to the particular advertising campaign.

4.0 QUOTE PREPARATION AND SUBMISSION

4.1 GENERAL

Quotes including Bidder proposed terms and conditions may be accepted, but Bidder proposed terms or conditions that conflict with those contained in the RFQ as defined in Section 2.0 of this RFQ, or that diminish the State's rights under any Contract resulting from the RFQ, will be considered null and void. The State is not responsible for identifying conflicting Bidder proposed terms and conditions before issuing a Contract award. It is incumbent upon the Bidder to identify and remove its conflicting proposed terms and conditions prior to Quote submission. In the event that a Bidder intends to propose terms and conditions contrary to the RFQ, these Bidder proposed terms and conditions shall only be considered if submitted pursuant to the procedure set forth in Section 1.3.1 of this RFQ. Under no circumstance is the State required to accept a Bidder's exception to the RFQ.

In the event that prior to Notice of Award, the Division notifies the Bidder of any such conflicting Bidder proposed term or condition and the conflict it poses, the Division may require the Bidder to either withdraw it or withdraw its Quote.

After award of Contract:

- a. if conflict arises between a Bidder proposed term or condition included in the Quote and a term or condition of the RFQ, the term or condition of the RFQ will prevail; and
- b. if the result of the application of a Bidder proposed term or condition included in the Quote would diminish the State's rights, the Bidder proposed term or condition will be considered null and void.

The Bidder is advised to thoroughly read and follow all instructions contained in this RFQ, including the instructions on the RFQ's Offer and Acceptance Page, in preparing and submitting its Quote.

Use of URLs in a Quote should be kept to a minimum and may not be used to satisfy any material term of a RFQ. If a preprinted or other document included as part of the Quote contains a URL, a printed (or if a Quote is submitted electronically, electronic) copy of the URL page shall be provided and will be considered as part of the Quote. Additional URLs on the copy of the URL page shall not be considered as part of the Quote unless a copy of those URL pages are also provided.

The forms discussed herein and required for submission of a Quote in response to this RFQ are available on the [Division's website \(http://www.state.nj.us/treasury/purchase/forms.shtml\)](http://www.state.nj.us/treasury/purchase/forms.shtml) unless noted otherwise.

4.2 QUOTE DELIVERY AND IDENTIFICATION

A Quote must arrive at the Division in accordance with this RFQ's instructions within the time frames noted on the RFQ cover sheet. Bidders submitting electronic Quotes via **email** are cautioned to allow adequate time to ensure timely uploads of all Quote documents to mitigate unforeseen delays or issues. Bidders submitting hard copy Quotes are cautioned to allow adequate delivery time to ensure timely delivery of Quotes. **State regulation mandates that late Quotes, regardless of submission method, are ineligible for consideration. THE EXTERIOR OF ALL QUOTE PACKAGES ARE TO BE LABELED WITH THE RFQ IDENTIFICATION**

NUMBER AND THE FINAL QUOTE SUBMISSION DATE OR RISK NOT BEING RECEIVED IN TIME.

4.3 ELECTRONIC SUBMISSION VS. HARD COPY SUBMISSION INSTRUCTION

Bidders shall submit a Quote utilizing one (1) of the following methods:

- a. E-mail: Submit Quote via email to:

Megan Tagliaferri
megan.tagliaferri@treas.nj.gov

NOTE: The State's e-mail system cannot accept file sizes greater than 5 MB per e-mail; or

- b. Hard copy: If the Bidder is submitting a hard copy Quote, it must be submitted to the physical location noted below:

Attn: Megan Tagliaferri
Department of the Treasury
Division of Purchase and Property
9th Floor 33 West State Street
Trenton, NJ 08625

4.3.1 ELECTRONIC SUBMISSION OF QUOTE

If the Bidder is submitting an electronic Quote via email, hard copy submission is not required. If the Bidder submits both an electronic and a hard copy of the Bidder's Quote, the electronic Quote will prevail in the event of a discrepancy between the electronic and paper versions.

When submitting an electronic Quote, do not use any symbols (i.e., #, @, \$, &, *) in the filename. In addition, the Bidder should name each uploaded electronic file and folder as follows:

Bidder name, Volume #.

4.3.2 HARD COPY SUBMISSION

If the Bidder is submitting a hard copy Quote, the Bidder must submit the following:

- a. **One (1) complete Quote, comprising all volumes and including original, physical signature**, clearly marked as the "ORIGINAL" Quote.
- b. **Five (5) complete and exact ELECTRONIC copies** of the original Quote in PDF file format on disc (CD or DVD). These should be cover to cover copies, and should not be password protected. **THE PRICE SCHEDULE (VOLUME 3) SHALL NOT BE INCLUDED ON THIS DISC.**
- c. **One (1) complete and exact ELECTRONIC copy** of the original price schedule (Volume 3) in Microsoft Excel file format on disc (CD or DVD). This should be a cover to cover copy, and should not be password protected.

Copies are necessary in the evaluation of the Quote and for record retention purposes. 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. The Bidder should make and retain a copy of its Quote.

4.4 **QUOTE CONTENT**

The Quote should be submitted in three (3) volumes with the content of each volume as indicated below.

Volume 1

Section 1 - Forms (Sections 4.4.1 and 4.4.2)

Volume 2

Section 2 - Technical Quote (Section 4.4.3)

Section 3 - Organizational Support and Experience (Section 4.4.4)

Section 3A – Oral Presentation Materials (Section 4.4.4.7)

Section 3B - Any other miscellaneous documents to be included by the Bidder

Volume 3

Section 4 – Price Schedule (Section 4.4.5)

4.4.1 **FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED WITH QUOTE**

4.4.1.1 **OFFER AND ACCEPTANCE PAGE**

The Bidder shall complete, including signature of an authorized representative of the Bidder, and submit the Offer and Acceptance Page accompanying this RFQ (whether submitted electronically or as a hard copy). If the Bidder is a limited partnership, the Offer and Acceptance Page must be signed by a general partner. All information requested must be submitted. If the Bidder is a joint venture, the Offer and Acceptance Page must be signed by a principal of each party to the joint venture. Failure to comply will result in rejection of the Quote.

4.4.1.1.1 **NO SUBCONTRACTOR CERTIFICATION**

For a Quote that does NOT include the use of any Subcontractors, by signing the RFQ Offer and Acceptance Page, the Bidder is *automatically* certifying that:

- a. In the event the award is granted to the Bidder's firm and the Bidder later determines at any time during the term of the Contract to engage Subcontractors to provide certain goods and/or services, pursuant to the attached SSTC, the Bidder shall submit a Subcontractor Utilization Plan form for approval to the Division in advance of any such engagement of Subcontractors; and
- b. If the Contract is a small business subcontracting set-aside, the Bidder certifies that in engaging Subcontractors, it shall make a good faith effort to achieve the subcontracting set-aside goals, and shall attach to the Subcontractor Utilization Plan documentation of such efforts in accordance with N.J.A.C. 17:13-4 et seq.

4.4.1.1.2 **NON-COLLUSION**

By submitting a Quote and signing the RFQ Offer and Acceptance Page, the Bidder certifies as follows:

- a. The price(s) and amount of its Quote have been arrived at independently and without consultation, communication or agreement with any other Vendor or any other party;

- b. Neither the price(s) nor the amount of its Quote, and neither the approximate price(s) nor approximate amount of this Quote, have been disclosed to any other firm or person who is a Bidder or potential Bidder, and they will not be disclosed before the Quote submission;
- c. No attempt has been made or will be made to induce any firm or person to refrain from bidding on this Contract, or to submit a Quote higher than this Quote, or to submit any intentionally high or noncompetitive Quote or other form of complementary Quote;
- d. The Quote of the firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Quote; and
- e. The Bidder, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last five (5) years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

4.4.1.1.3 **NEW JERSEY BUSINESS ETHICS GUIDE CERTIFICATION**

The Treasurer has established a business ethics guide to be followed by Vendors in its dealings with the State. The guide provides further information about compliance with the SSTC. The guide can be found at:

http://www.state.nj.us/treasury/purchase/ethics_guide.shtml

By signing the RFQ Offer and Acceptance Page, the Bidder is automatically certifying that it has complied with all applicable laws and regulations governing the provision of State goods and services, including the Conflicts of Interest Law, N.J.S.A. 52:13D-12 to -28.

4.4.1.2 **SUBCONTRACTOR UTILIZATION PLAN**

The Subcontractor Utilization Plan form is located on the [Division's website](#), should the Bidder include a Subcontractor on its team.

4.4.1.3 **SMALL BUSINESS REGISTRATION FOR SET-ASIDE CONTRACTS**

As defined at N.J.A.C. 17:13-1.2, "Small Business" means a business that is incorporated or registered in and has its principal place of business in the State of New Jersey, is independently owned and operated, and has no more than 100 full-time employees. The program places small business into the following categories:

For good and services - (i) those with gross revenues not exceeding \$500,000; (ii) those with gross revenues not exceeding \$5 million; and (iii) those with gross revenues that do not exceed \$12 million or the applicable federal revenue standards established at 13 CFR 121.201, whichever is higher. While companies registered as having revenues below \$500,000 can bid on any Contract, those earning more than the \$500,000 and \$5 million amounts will not be permitted to bid on Contracts designated for revenue classifications below its respective levels.

For construction services: (iv) those with gross revenues not exceeding \$3,000,000; (v) those with gross revenues that do not exceed 50 percent of the applicable annual revenue standards established at 13 CFR 121.201; and (vi) those with gross revenues that do not exceed the applicable annual revenue standards established at CFR 121.201. While companies registered as having revenues below \$3,000,000 can bid on any Contract, those earning more than the revenue standards established at CFR 121.201 will not be permitted to bid on Contracts designated for revenue classifications below their respective levels.

Application and registration requirements are presented on the web at <http://www.nj.gov/njbusiness/contracting/> or by contacting that agency as indicated below during business hours.

New Jersey Department of the Treasury
Division of Revenue and Enterprise Services
Small Business Registration and M/WBE Certification Services Unit
33 West State Street – Fifth Floor
PO Box 026
Trenton, NJ 08625-0026
Telephone: 609-292-2146
Fax #: 609-292-8764

4.4.1.3.1 **SMALL BUSINESS SET-ASIDE CONTRACTS**

Not applicable to this procurement.

4.4.1.3.2 **SMALL BUSINESS SUBCONTRACTING SET-ASIDE CONTRACTS**

Not applicable to this procurement.

4.4.1.4 **BID SECURITY**

Not applicable to this procurement.

4.4.1.5 **BUSINESS REGISTRATION**

In accordance with N.J.S.A. 52:32-44(b), a Bidder and its named Subcontractors must have a valid Business Registration Certificate (“BRC”) issued by the Department of the Treasury, Division of Revenue and Enterprise Services prior to the award of a Contract. To facilitate the Quote evaluation and Contract award process, the Bidder should submit a copy of its valid BRC and those of any named Subcontractors with its Quote. See the SSTC.

Any Bidder, inclusive of any named Subcontractors, not having a valid business registration at the time of the Quote opening, or whose BRC was revoked prior to the submission of the Quote, should proceed immediately to register its business or seek reinstatement of a revoked BRC.

The Bidder is cautioned that it may require a significant amount of time to secure the reinstatement of a revoked BRC. The process can require actions by both the Division of Revenue and Enterprise Services and the Division of Taxation. For this reason, a Bidder’s early attention to this requirement is highly recommended. The Bidder and its named Subcontractors may register with the Division of Revenue and Enterprise Services, obtain a copy of an existing BRC or obtain information necessary to seek re-instatement of a revoked BRC online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

A Bidder otherwise identified by the Division as a responsive and responsible Bidder, inclusive of any named Subcontractors, but that was not business registered at the time of submission of its Quote must be so registered and in possession of a valid BRC by a deadline to be specified in writing by the Division. A Bidder failing to comply with this requirement by the deadline specified by the Division will be deemed ineligible for Contract award. Under any circumstance, the Division will rely upon information available from computerized systems maintained by the State as a basis to verify independently compliance with the requirement for business registration.

A Bidder receiving a Contract award as a result of this procurement and any Subcontractors named by that Bidder will be required to maintain a valid business registration with the Division of Revenue and Enterprise Services for the duration of the executed Contract, inclusive of any Contract extensions.

4.4.2 **FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED WITH WAIVERED SERVICES PACKET**

The Bidder must complete the Waivered Services Packet prior to the award of a Contract. To facilitate the Quotation evaluation and Contract award process, the Bidder shall submit its Waivered Services Packet with its Quotation. The Packet is available at <http://www.state.nj.us/treasury/purchase/forms/WaiveredServicesPacket.pdf>

The Waivered Services Packet contains the following documents further described in this section:

- a. Reviewed and signed Waivered Terms and Conditions for Services Contracts;
- b. Completed and signed Source Disclosure;
- c. Completed and signed Notice to all Bidders for Set-Off for State Tax;
- d. Completed and signed Ownership Disclosure Form;
- e. Completed and signed Disclosure of Investigations and Other Actions Involving Bidder Form;
- f. Completed and signed Disclosure of Investment Activities in Iran;
- g. Completed Certification of MacBride Principles and Northern Ireland Act of 1989;
- h. Completed and signed Ch. 51/EO 117 Vendor Certification & Disclosure of Political Contributions;
- i. Completed and signed Ch. 271 Vendor Certification & Contribution Disclosure Form; and
- j. Affirmative Action Employee Information Report/New Jersey Affirmative Action Certificate/other AA/EEO evidence.

Bidders must complete the required forms listed above and may refer to instructions included within the forms on the [Division's website](#) and within this section.

Bidders are under a continuing obligation to report updates to the information contained in its required forms whether submitting electronically or as a hard copy.

Unless otherwise specified, forms must contain an original, physical signature, or an electronic signature.

Failure to submit any of the required forms in this section may result in your firm's Quote being deemed non-responsive.

4.4.2.1 **SOURCE DISCLOSURE**

Pursuant to N.J.S.A. 52:34-13.2, prior to an award of Contract, the Bidder is required to submit a completed Source Disclosure Form. The Bidder's inclusion of the completed Source Disclosure Form with the Quote is requested and advised. See RFQ Section 7.1.2 for additional information concerning this requirement.

The Source Disclosure Form is located on the [Division's website](#).

4.4.2.2 **NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE**

Pursuant to P.L. 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or s corporation under contract to provide goods or services or construction projects to the state of new jersey or its agencies or

instrumentalities, including the legislative and judicial branches of state government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any state tax, the director of the division of taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or s corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

4.4.2.3 **OWNERSHIP DISCLOSURE FORM**

Pursuant to N.J.S.A. 52:25-24.2, in the event the Bidder is a corporation, partnership or sole proprietorship, the Bidder must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote. A Bidder's failure to submit the completed and signed form with its Quote will result in the rejection of the Quote as non-responsive and preclude the award of a Contract to said Bidder unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote.

4.4.2.4 **DISCLOSURE OF INVESTIGATIONS AND OTHER ACTIONS INVOLVING BIDDER FORM**

The Bidder should submit the Disclosure of Investigations and Other Actions Involving Bidder Form, with its Quote, to provide a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five (5) 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. If a Bidder does not submit the form with the Quote, the Bidder must comply within seven (7) business days of the State's request or the State may deem the Quote non-responsive.

4.4.2.5 **DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM**

Pursuant to N.J.S.A. 52:32-58, the Bidder must utilize this Disclosure of Investment Activities in Iran form to certify that neither the Bidder, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Bidder, nor one of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Bidder is unable to so certify, the Bidder shall provide a detailed and precise description of such activities as directed on the form. A Bidder's failure to submit the completed and signed form with its Quote will result in the rejection of the Quote as non-responsive and preclude the award of a Contract to said Bidder.

4.4.2.6 **MACBRIDE PRINCIPLES CERTIFICATION**

The Bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it is in compliance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in

conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of its compliance with those principles. See the SSTC and N.J.S.A. 52:34-12.2 for additional information about the MacBride principles.

By signing the RFQ Offer and Acceptance Page, the Bidder is automatically certifying that either:

- a. The Bidder has no operations in Northern Ireland; or
- b. The Bidder has business operations in Northern Ireland and is committed to compliance with the MacBride principles.

A Bidder electing not to certify to the MacBride Principles must nonetheless sign the RFQ Offer and Acceptance Page AND must include, as part of its Quote, a statement indicating its refusal to comply with the provisions of this Act.

4.4.2.7 **PAY TO PLAY PROHIBITIONS**

Pursuant to N.J.S.A. 19:44a-20.13 et seq. (P.L. 2005, c. 51), and specifically, N.J.S.A. 19:44a-20.21, it shall be a breach of the terms of the contract for the business entity to:

- a. Make or solicit a contribution in violation of the statute;
- b. Knowingly conceal or misrepresent a contribution given or received;
- c. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- d. 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;
- e. 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;
- f. Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- g. Engage in any exchange of contributions to circumvent the intent of the Legislation; or
- h. 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.

4.4.2.8 **POLITICAL CONTRIBUTION DISCLOSURE**

The 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 N.J.S.A.19:44a-20.27 (P.L. 2005, c. 271, §3 as amended) if in a calendar year the contractor receives one or more contracts valued at \$50,000.00 or more. It is the contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888)313-3532 or on the internet at <http://www.elec.state.nj.us/>.

4.4.2.9 **PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS –**

N.J.S.A. 10:2-1 requires that during the performance of this contract, the contractor must agree as follows:

- a. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- b. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
- c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and
- d. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree 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 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, N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows:
 1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2;
 2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;
 3. 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; and
 4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

4.4.3 TECHNICAL QUOTE

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 RFQ and its ability to successfully complete the Contract. The Bidder should include the level of detail it determines necessary to assist the evaluation committee in its review of Bidder's Quote.

In addition to criteria listed elsewhere in this RFQ, Bidders should note that the technical evaluation will include, but not be limited to the sample campaign and mobilization plan requested in this section.

4.4.3.1 MANAGEMENT OVERVIEW

A. General

The Bidder shall set forth its overall technical approach and plans to meet the requirements of the RFQ in a narrative format. This narrative should demonstrate to 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

demonstrate to the State that the Bidder's general approach and plans to undertake and complete the Contract are appropriate to the tasks and subtasks involved. This narrative should demonstrate a plan for commencing work in the second half of February, 2017 and addressing that these services require a quick turnaround, production must begin on Day 1 of the Contract, and the management of a robust advertising campaign. This requirement shall be further demonstrated in the Mobilization Plan submitted with the Quote pursuant to Section 4.4.3.3.2 of this RFQ.

Mere reiterations of RFQ 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 demonstrate to 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 Quote will lead to successful Contract completion.

B. Sample Campaign – based on a budget of up to \$1,000,000

The campaign shall focus on promoting **addiction and recovery services available to New Jersey residents.**

The Bidder shall provide an advertising plan that includes the elements below for advertising and public relations:

1. Overall Customer Information and Public Awareness Plan promoting drug addiction and recovery.

The Bidder shall submit a comprehensive plan that describes an advertising and public relations campaign for a period beginning approximately February 21, 2017 ending approximately on June 30, 2017. The plan should include, but not necessarily be limited to, strategic direction, advertising concepts, monthly schedule, budget, target audience, and products and services offered;

2. Creative Concepts Plan

The Bidder shall present one (1) creative concept that supports its advertising campaign outlined in the plan. Electronic media, artwork, and copy shall be presented in photocopied materials. Photocopies of storyboards are acceptable. No original sets of creative concepts need be submitted in the Quote;

3. Detailed Implementation Plans

The Bidder shall present a detailed implementation plan representing an approach to the campaign. This section shall detail the program's needs and implementation plans for providing all required functional support and for completing all required tasks. This approach shall serve to demonstrate to the State that the plans are realistic, attainable, and appropriate and that the proposed plans will lead to increased awareness of drug addiction and recovery;

4. Media Plan

This section shall describe the media plan and include a complete description of media production and placement costs. The Bidder shall provide a strategy, recommendations, and comprehensive allocation of the budget for the major media to be used. The plan may include details such as a media schedule, electronic media with data relating to total estimated gross impressions for internet

advertising, and for radio with reach, frequency, length of broadcast, and demographics of audience among the selected media. The Bidder should also explain how public relations vehicles, such as public service announcements, talk shows, etc. are to be integrated for maximum impact, cost effectiveness, and return on investment;

5. Collateral Plan

This section shall consist of a detailed plan, including budget, for the use of collateral materials including, but not limited to, posters, brochures and flyers, to be used in the campaign. The Collateral Plan must be submitted with an explanation as to how these materials will be developed and incorporated into the overall campaign; and

6. Web and Social Media

This section shall consist of a plan for utilizing the web and social media as a vehicle for advertising and/or public relations where appropriate.

4.4.3.2 **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 SCM including, but not limited to, status meetings, status reports, etc.

4.4.3.3 **CONTRACT SCHEDULE AND PLANS**

4.4.3.3.1 **CONTRACT SCHEDULE**

The Bidder shall include a draft Contract schedule. If key dates are a part of this RFQ, 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.

4.4.3.3.2 **MOBILIZATION PLAN**

It is essential that the State have quick use of the functionality this Contract is to provide. Therefore, each Bidder shall include as part of its Quote a mobilization plan, detailing how the Bidder would begin campaign assignments on Day 1 of the Contract award.

Such mobilization plan should include the following elements:

- a. A detailed timetable for the mobilization on Day 1. This timetable should be designed to demonstrate how the Bidder will have the personnel and equipment it needs to begin work on 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 period. The plan should show all management,

supervisory and key personnel that will be assigned to manage, supervise and monitor the Bidder's mobilization of the Contract on Day 1;

- c. **NOTE:** The Bidder should clearly identify management, supervisory or other key staff that will be assigned only during the mobilization;
- d. The Bidder's plan for recruitment of staff required to provide all services required by the RFQ on the Contract start date; and
- e. The Bidder's plan for the purchase and distribution of equipment, inventory, supplies, materials, etc. that will be required to begin work on the Contract on the required start date.

4.4.3.3.3 **PROJECT PLAN**

Not applicable to this procurement.

4.4.3.3.4 **CONTINGENCY PLAN**

Not applicable to this procurement.

4.4.3.3.5 **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.

4.4.4 **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 RFQ.

The Bidder should include the level of detail it determines necessary to assist the evaluation committee in its review of Bidder's Quote.

In addition to criteria listed elsewhere in this RFQ, Bidders should note that the technical evaluation will include, but not be limited to the experience with Contracts of similar size and scope requested in this section.

4.4.4.1 **LOCATION**

The Bidder should include the address of the Bidder's office where responsibility for managing the Contract will take place. The Bidder should include the telephone number and name of the individual to contact.

4.4.4.2 **ORGANIZATION CHARTS**

- a. **Contract -Specific Chart.** The Bidder should include a Contract organization chart, with names showing management, supervisory and other key personnel (including Subcontractor 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; and

- b. **Chart for 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.

4.4.4.3 **RESUMES**

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

- a. The individual's previous experience in completing each similar Contract;
- b. Beginning and ending dates for each similar Contract;
- c. A description of the Contract demonstrating 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 RFQ; and
- d. With respect to each similar Contract, the name and address of each reference together with a person to contact for a reference check and a telephone number.

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. When a Bidder submits resumes pursuant to this paragraph, the Bidder shall redact the social security numbers, home addresses, personal telephone numbers, and any other personally identifying information other than the individual's name from the resume.

4.4.4.4 **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.

4.4.4.5 **EXPERIENCE WITH 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 services similar to those required by this RFQ. Emphasis should be placed on Contracts that are similar in size and scope to the work required by this RFQ. 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 RFQ. For each such Contract, the Bidder should provide two (2) names and telephone numbers of individuals for the other Contracts party. Beginning and ending dates should also be given for each Contract. The Bidder should list at least one (1) Contract with a \$5,000,000 price point.

If applicable, please note the following components within each description of similar Contract experience:

- A. Campaign production schedule;
- B. Market penetration; and
- C. Any metrics, if used.

As applicable, please also provide samples of the following creative output from similar Contract experience:

- A. Public awareness television advertisements;
- B. Radio spots;
- C. Social media campaigns;
- D. Videos;
- E. Audios; and
- F. Graphic designs.

The Bidder must provide details of any negative actions taken by other contracting entities against them in the course of performing these projects including, but not limited to, receipt of letters of potential default, default, cure notices, termination of services for cause, or other similar notifications/processes. Additionally, the Bidder should provide details, including any negative audits, reports, or findings by any governmental agency for which the Bidder is/was the Contractor on any Contracts of similar scope. In the event a Bidder neglects to include this information in its Quote, the Bidder's omission of necessary disclosure information may be cause for rejection of the Bidder's Quote by the State.

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 Quote. The Bidder must provide a detailed description of services to be provided by each Subcontractor.

4.4.4.6 **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 opined certified financial statements in accordance with applicable standards by a Certified Public Accountant which 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 Quote, 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 Quote 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. A Bidder may submit specific financial documents in a separate, sealed package clearly marked "Confidential-Financial Information" along with the Quote.

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

4.4.4.7 **SAMPLE CAMPAIGN MATERIALS**

The Bidder should include in its Quote the following:

- A. Bidder's sample campaign (as provided in the Bidder's Quote pursuant to Section 4.4.3.1 of this RFQ) and associated collateral plans and materials;
- B. Bidder's Mobilization Plan as provided in its Quote pursuant to Section 4.4.3.3.2; and
- C. Portfolio samples of Bidder's cited Contracts of similar size and scope submitted in response to Section 4.4.4.5, including:
 - 1. Video;
 - 2. Audio;
 - 3. Graphic design; and
 - 4. Community impact measures, as applicable.

4.4.5 **PRICE SCHEDULE/SHEET**

The Bidder must submit its pricing using the State-supplied price sheet/schedule(s) accompanying this RFQ.

4.4.5.1 **PRICE SHEET/SCHEDULE ATTACHMENT INSTRUCTIONS**

The Bidder must submit its pricing using the format set forth in the State-supplied price sheet/schedule accompanying this RFQ. Failure to submit all information required will result in the quote being considered non-responsive. Each Bidder is required to hold its prices firm through issuance of Contract.

Part A, Campaign Scenario

The Bidder must provide pricing for all cells of the Price Schedule **Part A, Campaign Scenario**. The Campaign scenario included in Section 4.4.3.1 is for evaluation purposes only. The sample budget will not be the price paid to the Bidder awarded the Contract resulting from this RFQ. However, all cells containing a "\$" or "%" will be used for Contract lines.

Part B, Hourly Rates

Bidders must provide All-Inclusive Hourly Rates for each staff title of the Price Schedule **Part B, Hourly Rates**. Refer to RFQ Section 2.1 for the definition of "All-Inclusive Hourly Rate." All Bidders must fit the labor titles of personnel it will use in performing the requirements of this RFQ into the labor titles presented in Part B. Bidders should note that all project management requirements pursuant to Section 3.0 must be included in the hourly pricing. No additional fees will be paid for meetings and reports.

Part C, Campaign Budget

Using the hourly rates submitted for Part B, a Bidder must submit a budget that supports its plans for the Campaign Scenario, by labor title for Price Schedule **Part C, Campaign Budget**. A Bidder's pricing for the Campaign scenario and supporting budget cannot exceed the hypothetical budget of up to \$1,000,000.

Part D, Collateral Items

Bidders must include a schedule with the estimated number of hours by labor title that would be required to develop collateral items based on the All-Inclusive Hourly Rates submitted in Part B for Price Schedule **Part D, Collateral Items**.

BIDDERS SHOULD NOTE THAT THE ESTIMATED BUDGET PROVIDED IN PRICE SCHEDULE IS NOT GUARANTEED.

4.4.5.2 DELIVERY TIME AND COSTS

Unless otherwise noted elsewhere in the RFQ, all delivery times are 30 calendar days after receipt of order (ARO) and prices for items in Quotes shall be submitted Freight On Board (F.O.B.) Destination (30 calendar days ARO/F.O.B.). Quotes submitted other than 30 calendar days ARO/F.O.B. may be deemed non-responsive. The Contractor shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to the State's Using Agency or designated purchaser. 30 calendar days ARO/F.O.B. does not cover "spotting" but does include delivery on the receiving platform of the ordering agency at any destination in the State of New Jersey unless otherwise specified.

No additional charges will be allowed for any additional transportation costs resulting from partial shipments made at the Contractor's convenience when a single shipment is ordered.

The weights and measures of the State's Using Agency receiving the shipment shall govern.

4.4.5.3 COLLECT ON DELIVERY (C.O.D.) TERMS

C.O.D. terms are not acceptable as part of a Quote and shall be deemed non-responsive.

4.4.5.4 CASH DISCOUNTS

The Bidder is encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts, but discounts will not be considered in determining the price rankings of Quotes.

Should the Bidder choose to offer a cash discount the following shall apply:

- a. Discount periods shall be calculated starting from the next business day after the Using Agency has accepted the goods or services, received a properly signed and executed invoice and, when required, a properly executed performance security, whichever is latest.
- b. The date on the check issued by the State in payment of that invoice shall be deemed the date of the State's response to that invoice.

5.0 SPECIAL CONTRACTUAL TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT

5.1 PRECEDENCE OF SPECIAL CONTRACTUAL TERMS AND CONDITIONS

This Contract awarded, and the entire agreement between the parties, as a result of this RFQ shall consist of this RFQ, SSTC, Addenda to this RFQ, the Contractor's Quote, any Best and Final Offer, and the Division's Notice of Award.

In the event of a conflict in the terms and conditions among the documents comprising this Contract, the order of precedence, for purposes of interpretation thereof, listed from highest ranking to lowest ranking, shall be:

- a. Executed Offer and Acceptance Page;
- b. RFQ Section 5, as may be amended Addenda;
- c. The State of NJ Standard Terms and Conditions (SSTC) accompanying this RFQ;
- d. All remaining sections of the RFQ, as may be amended by Addenda;
- e. The Contractor's final submitted Best and Final Offer; and
- f. The Contractor's Quote as accepted by the State.

5.2 TERM AND EXTENSION OPTION

The term of this Contract shall be for a period of **one (1) year**. If delays in the procurement process result in a change to the anticipated Contract Effective Date, the Bidder agrees to accept a Contract for the full term of this Contract.

This Contract may be extended up to **five (5) years** with no single extension exceeding one (1) year, by the mutual written consent of the Contractor and the Director at the same terms, conditions, and pricing at the rates in effect in the last year of this Contract or rates more favorable to the State.

5.3 CONTRACT TRANSITION

In the event that a new Contract has not been awarded prior to this Contract expiration date, including any extensions exercised, and the State exercises this Contract transition, the Contractor shall continue this 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 **180 DAYS** beyond the expiration date of this Contract, including any extensions exercised.

5.4 CONTRACT AMENDMENT

Any changes or modifications to the terms of this 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 this 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 this 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 shall 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 substitute(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 SCM for consideration and approval. No substitute personnel are authorized to begin work until the Contractor has received written approval to proceed from the SCM.

5.7 **SUBSTITUTION OR ADDITION OF SUBCONTRACTOR(S)**

This Subsection serves to supplement but not to supersede the SSTC accompanying this RFQ.

The Contractor shall forward a written request to substitute or add a Subcontractor or to substitute its own staff for a Subcontractor to the SCM for consideration. If the SCM approves the request, the SCM 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.

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 Quote.

5.8 OWNERSHIP OF MATERIAL

All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of this 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 thirty (30) days' notice by the State. With respect to software computer programs and/or source codes developed for the State, except those modifications or adaptations made to Bidder's/Contractor's Background IP as defined below, 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 Contract, 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 Quote. Otherwise, the language in the first paragraph of this section prevails. If the Bidder identifies such intellectual property ("Background IP") in its Quote, then the Background IP owned by the Bidder on the date of this Contract, as well as any modifications or adaptations thereto, remain the property of the Bidder. Upon Contract award, the Bidder/Contractor shall grant the State a nonexclusive, perpetual royalty free license to use any of the Bidder's/Contractor's Background IP delivered to the State for the purposes contemplated by this Contract.

5.9 SECURITY AND CONFIDENTIALITY

5.9.1 DATA CONFIDENTIALITY

All financial, statistical, personnel, customer and/or technical data supplied by the State to the Contractor are confidential (State Confidential Information). The Contractor must secure all data from manipulation, sabotage, theft or breach of confidentiality. The Contractor is prohibited from releasing any financial, statistical, personnel, customer and/or technical data supplied by the State that is deemed confidential. 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.

The Contractor shall assume total financial liability incurred by the Contractor associated with any breach of confidentiality.

When requested, the Contractor and all project staff including its Subcontractor(s) must complete and sign confidentiality and non-disclosure agreements provided by the State. The Contractor may be required to view yearly security awareness and confidentiality training modules provided by the State. Where required, it shall be the Contractor's responsibility to ensure that any new staff sign the confidentiality agreement and complete the security awareness and confidentiality training modules within one month of the employees' start date.

The State reserves the right to obtain, or require the Contractor to obtain, criminal history background checks from the New Jersey State Police for all Contractor and project staff (to protect the State of New Jersey from losses resulting from Contractor employee theft, fraud or dishonesty). If the State exercises this right, the results of the background check(s) must be made available to the State for consideration before the employee is assigned to work on the State's project. Prospective employees with positive criminal backgrounds for cyber-crimes will not be approved to work on State Projects. Refer to the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-12, An Introduction to Computer Security: The NIST Handbook, Section 10.1.3, Filling the Position – Screening and Selecting.

5.9.1.1 **CONTRACTOR'S CONFIDENTIAL INFORMATION**

- a. The obligations of the State under this provision are subject to the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq., the New Jersey common law right to know, and any other lawful document request or subpoena.
- b. By virtue of this Contract, the parties may have access to information that is confidential to one another. The parties agree to disclose to each other only information that is required for the performance of their obligations under this Contract. Contractor's Confidential Information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure and anything identified in Contractor's Quote as Background IP ("Contractor Confidential Information"). Notwithstanding the previous sentence, the terms and pricing of this Contract are subject to disclosure under OPRA, the common law right to know, and any other lawful document request or subpoena.
- c. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.
- d. The State agrees to hold Contractor's Confidential Information in confidence, using at least the same degree of care used to protect its own Confidential Information.
- e. In the event that the State receives a request for Contractor Confidential Information related to this Contract pursuant to a court order, subpoena, or other operation of law, the State agrees, if permitted by law, to provide Contractor with as much notice, in writing, as is reasonably practicable and the State's intended response to such order of law. Contractor shall take any action it deems appropriate to protect its documents and/or information.
- f. In addition, in the event Contractor receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, Contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Contractor's intended response to such order of law. The State shall take any action it deems appropriate to protect its documents and/or information.
- g. Notwithstanding the requirements of nondisclosure described in these Sections 5.9.1 and 5.9.1.1, either party may release the other party's Confidential Information (i) if directed to do so by a court or arbitrator of competent jurisdiction, (ii) pursuant to a lawfully issued subpoena or other lawful document request, (iii) in the case of the State, if the State determines the documents or information are subject to disclosure and Contractor does

not exercise its rights as described in Section 5.9.1.1(e), or if Contractor is unsuccessful in defending its rights as described in Section 5.9.1.1(e), or (iv) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the State does not exercise its rights described in Section 5.9.1.1(f), or if the State is unsuccessful in defending its rights as described in Section 5.9.1.1(f).

5.9.2 **DATA SECURITY STANDARDS**

Data Security: The Contractor at a minimum must protect and maintain the security of data traveling its network in accordance with generally accepted industry practices.

- a. Any Personally Identifiable Information must be protected. All data must be classified in accordance with the State's Asset Classification and Control policy, 08-04-NJOIT (www.nj.gov/it/ps). Additionally, data must be disposed of in accordance with the State's Information Disposal and Media Sanitation policy, 09-10-NJOIT (www.nj.gov/it/ps).
- b. Data usage, storage, and protection is subject to all applicable federal and state statutory and regulatory requirements, as amended from time to time, including, without limitation, those for Health Insurance Portability and Accountability Act of 1996 (HIPAA), Personally Identifiable Information (PII), Tax Information Security Guidelines for Federal, State, and Local Agencies (IRS Publication 1075), New Jersey State tax confidentiality statute, N.J.S.A. 54:50-8, New Jersey Identity Theft Prevention Act, N.J.S.A. 56:11-44 et. seq., the federal Drivers' Privacy Protection Act of 1994, Pub.L.103-322, and the confidentiality requirements of N.J.S.A. 39:2-3.4. Contractor must also conform to Payment Card Industry (PCI) Data Security Standard.

Data Transmission: The Contractor must only transmit or exchange State of New Jersey data with other parties when expressly requested in writing and permitted by and in accordance with requirements of the State of New Jersey. The Contractor must only transmit or exchange data with the State of New Jersey or other parties through secure means supported by current technologies. The Contractor must encrypt all data defined as personally identifiable or confidential by the State of New Jersey or applicable law, regulation or standard during any transmission or exchange of that data.

Data Storage: All data provided by the State of New Jersey or State data obtained by the Contractor in the performance of the Contract must be stored, processed, and maintained solely in accordance with a project plan and system topology approved by the SCM. No State data shall be processed on or transferred to any device or storage medium including portable media, smart devices and/or USB devices, unless that device or storage medium has been approved in advance in writing by the SCM. The Contractor must encrypt all data at rest defined as personally identifiable information by the State of New Jersey or applicable law, regulation or standard. The Contractor must not store or transfer State of New Jersey data outside of the United States.

Data Scope: All provisions applicable to State data include data in any form of transmission or storage, including but not limited to: database files, text files, backup files, log files, XML files, and printed copies of the data.

Data Re-Use: All State data must be used expressly and solely for the purposes enumerated in the Contract. Data must not be distributed, repurposed or shared across other applications, environments, or business units of the Contractor. No State data of any kind must be transmitted, exchanged or otherwise passed to other Contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by the SCM.

Data Breach: Unauthorized Release Notification: The Contractor must comply with all applicable State and Federal laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law ("Notification Event"), the Contractor must assume responsibility for informing the SCM within 24 hours and all such individuals in accordance with applicable law and to indemnify, hold harmless and defend the State of New Jersey, its officials, and employees from and against any claims, damages, or other harm related to such Notification Event. All communications must be coordinated with the State of New Jersey.

End of Contract Data Handling: Upon termination/expiration of this Contract the Contractor must first return all State data to the State in a usable format as defined in the Contract, or in an open standards machine-readable format if not. The Contractor must then erase, destroy, and render unreadable all Contractor copies of State data according to the standards enumerated in accordance with the State's most recent Information Disposal and Media Sanitation policy, currently 09-10-NJOIT (www.nj.gov/it/ps) and certify in writing that these actions have been completed within thirty (30) days after the termination/expiration of the Contract or within seven (7) days of the request of an agent of the State whichever shall come first.

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 comply with all New Jersey Department of Labor requirements. Notwithstanding the requirements of the RFQ, the Contractor shall supply the SCM with evidence of all such licenses, permits and authorizations. This evidence shall be submitted subsequent to this Contract award. All costs associated with any such licenses, permits, and authorizations must be considered by the Bidder in its Quote.

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 this 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 this Contract in accordance with the SSTC, 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, as provided for in the State administrative code, or take any other action or seek any other remedies available at law or in equity.

5.14 **LIQUIDATED DAMAGES**

Not applicable to this procurement.

5.15 **RETAINAGE**

Not applicable to this procurement.

5.16 **ADDITIONAL WORK AND/OR SPECIAL PROJECTS**

The Contractor shall not begin performing any additional work or special projects without first obtaining the SCM's recommendation and the Director's written approval.

In the event of additional work and/or special projects, the Contractor must present a written Quote to perform the additional work to the SCM. The Quote 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 Quote.

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

The written Quote must detail the cost necessary to complete the additional work in a manner consistent with this 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 Quote submitted in response to this RFQ. Whenever possible, the price schedule should be a firm, fixed price 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 Quote. A payment schedule, tied to successful completion of tasks and subtasks, must be included.

Upon receipt and approval of the Contractor's written Quote, the SCM 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 SCM 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 and Office of Information Technology.

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.

5.17 MODIFICATIONS AND CHANGES TO THE STATE OF NJ STANDARD TERMS AND CONDITIONS (SSTC)

5.17.1 INDEMNIFICATION

The SSTC is supplemented with the following:

LIMITATION OF LIABILITY

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 this Contract, for any and all claims, shall be limited in the aggregate to 100% of the total value of this Contract, except that such limitation of liability shall not apply to the following:

- a. 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 this Contract caused by negligence or willful misconduct of the Contractor;
- b. The Contractor's breach of its obligations of confidentiality; and,
- c. The 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 the SSTC.

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

5.17.2 INSURANCE - PROFESSIONAL LIABILITY INSURANCE

The SSTC 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 this 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 this Contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance, and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

5.18 ACCESSIBILITY COMPLIANCE

The Contractor shall abide by the State's website standards and guidelines which include the mandatory accessibility information for Section 508 and Chapter 191 compliance for any web based systems. The standards can be located at the following links:

- a. http://nj.gov/it/ps/07-12-NJOIT_web_accessibility_policy.pdf; and
- b. http://www.state.nj.us/it/ps/Web_Site_Standards_Guidelines.pdf.

5.19 CONTRACT ACTIVITY REPORT

The Contractor must provide, on a calendar quarterly basis, a record of all purchases made under this Contract resulting from this RFQ. This reporting requirement includes sales to State using agencies, political sub-divisions thereof and, if permitted under the terms of this Contract, sales to counties, municipalities, school districts, volunteer fire departments, first aid squads and rescue squads, independent institutions of higher education, state and county colleges and quasi-state agencies. Quasi-state agencies include any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member.

This information must be provided in Microsoft excel such that an analysis can be made to determine the following:

- a. Contractor's total sales volume, with line item detail, to each purchaser under this Contract;
- b. Subtotals by product, including, if applicable, catalog number and description, price list with appropriate page reference, and/or Contract discount applied; and
- c. Total dollars paid to Subcontractors.

Submission of purchase orders, confirmations, and/or invoices do not fulfill this Contract requirement for information. Failure to report this mandated information may be a factor in future award decisions.

The Contractor must submit the required information in Microsoft Excel format to NJSupplierReports@treas.nj.gov.

Reports are due:

- Quarter 1: February 21st through March 31st – due by April 15th
Quarter 2: April 1st through June 30th – due by July 15th

5.20 ELECTRONIC PAYMENTS

With the award of this Contract, the successful Contractor will be required to receive its payment(s) electronically. In order to receive your payments via automatic deposit from the State of New Jersey, complete and return the "Credit Authorization Agreement for Automatic Deposits (ACH Credits)" Form with an **original voided check or bank letter**. The form must include ABA number (routing or transit number), bank account number, and if the bank account is a checking or savings account. The form and instructions are located on the Office of Management & Budget's website at: <http://www.state.nj.us/treasury/omb/forms/index.shtml>. The completed form along with the required voided check or bank letter should be mailed or faxed to: Department of the Treasury, Office of Management and Budget, PO Box 221, 6TH Floor – Room 674, Trenton, N.J. 08625-0221; fax: (609)-984-5210. To assist in identifying payments, the State offers Contractors access to the Vendor Payment Inquiry web application (VPI) which offers check stub information online. Contact the State of New Jersey at AAIUNIT@treas.nj.gov to request access to this application.

5.21 PROGRAM EFFICIENCY ASSESSMENT FOR STATE USING AGENCIES

The Program Efficiency Assessment shall not be charged against the winning Contractor and therefore is not to be included in the Bidder's pricing. The State Using Agencies shall be charged an assessment equal to one-quarter of one percent (0.25%) of the value of all transactions under

this Contract. This assessment is authorized by N.J.S.A. 52:27B-56 and N.J.A.C. 17:12-1.5, to maintain the State's procurement system at a level to meet industry standards of efficiency.

For purposes of this section, "transaction" is defined as the payment or remuneration to the Contractor for services rendered or products provided to the State pursuant to the terms of this Contract, including but not limited to the following: purchase orders, invoices, hourly rates, firm fixed price, commission payments, progress payments and contingency payments.

6.0 QUOTE EVALUATION

6.1 RIGHT TO WAIVE

The Director reserves the right to waive minor irregularities or omissions in a Quote. The Director also reserves the right to waive a requirement provided that the requirement does not materially affect the procurement or the State's interests associated with the procurement.

6.2 DIRECTOR'S RIGHT OF FINAL QUOTE ACCEPTANCE

The Director reserves the right to reject any or all Quotes, or to award in whole or in part if deemed to be in the best interest of the State to do so. The Director shall have authority to award orders or Contracts in accordance with N.J.S.A. 52:34-12. Tie Quotes will be awarded by the Director in accordance with N.J.A.C. 17:12-2.10.

6.3 STATE'S RIGHT TO INSPECT BIDDER FACILITIES

The State reserves the right to inspect the Bidder's establishment before making an award, for the purposes of ascertaining whether the Bidder has the necessary facilities for performing the Contract.

The State may also consult with clients of the Bidder during the evaluation of Quotes. Such consultation is intended to assist the State in making a Contract award that is most advantageous to the State.

6.4 STATE'S RIGHT TO REQUEST FURTHER INFORMATION

The Director reserves the right to request all information which may assist him or her in making a Contract award, including factors necessary to evaluate the Bidder's financial capabilities to perform the Contract. Further, the Director reserves the right to request a Bidder to explain, in detail, how the Quote price was determined.

6.5 QUOTE EVALUATION COMMITTEE

Quotes may be evaluated by an Evaluation Committee composed of members of affected departments and agencies together with representative(s) from the Division. 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(s) in an advisory role.

6.6 CLARIFICATION OF QUOTE

After the submission of Quotes, unless requested by the State as noted below, Bidder contact with the State is still not permitted.

After the Quotes are reviewed, one, some or all of the Bidders may be asked to clarify certain aspects of its Quotes. A request for clarification may be made in order to resolve minor ambiguities, irregularities, informalities or clerical errors. Clarifications cannot correct any deficiencies or material omissions, or revise or modify a Quote, except to the extent that correction of apparent clerical mistakes results in a modification.

It is within the State's discretion whether to require the Bidder to submit written responses to questions regarding its Quote. Action by the State in this regard should not be construed to

imply acceptance or rejection of a Quote. The Division will be the sole point of contact regarding any request for a clarification.

6.7 **EVALUATION CRITERIA**

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

6.7.1 **TECHNICAL EVALUATION CRITERIA**

Each criterion will be scored and each score multiplied by a predetermined weight to develop the Technical Evaluation Score.

- a. **Personnel:** The qualifications and experience of the Bidder's management, supervisory, and key personnel assigned to the Contract, including the candidates recommended for each of the positions/roles required.
- b. **Experience of firm:** The Bidder's documented experience in successfully completing Contracts of a similar size and scope in relation to the work required by this RFQ.
- c. **Ability of firm to complete the Scope of Work based on its Technical Quote:** The Bidder's demonstration in the Quote that the Bidder understands the requirements of the Scope of Work and presents an approach that would permit successful performance of the technical requirements of the Contract.

6.7.2 **BIDDER'S PRICE SCHEDULE**

The Division will utilize the rates provided on the State supplied Price Sheet/Schedule to evaluate pricing.

6.7.3 **QUOTE DISCREPANCIES**

In evaluating Quotes, 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 correct sum of the column of figures.

6.7.4 **EVALUATION OF THE QUOTES**

After the Evaluation Committee completes its evaluation, it recommends to the Director for award the responsible Bidder whose Quote, conforming to this RFQ, is most advantageous to the State, price and other factors considered. The Evaluation Committee considers and assesses price, technical criteria, oral presentations, and other factors during the evaluation process and makes a recommendation to the Director. The Director may accept, reject or modify the recommendation of the Evaluation Committee. Whether or not there has been a negotiation process as outlined in Section 6.8 below, the Director reserves the right to negotiate price reductions with the selected Bidder.

6.8 NEGOTIATION AND BEST AND FINAL OFFER (BAFO)

In accordance with N.J.S.A. 52:34-12(f) and N.J.A.C. 17:12-2-7, after evaluating Quotes, the Division may establish a competitive range and enter into negotiations with one Bidder or multiple Bidders within this competitive range. The primary purpose of negotiations is to maximize the State's ability to obtain the best value based on the mandatory requirements, evaluation criteria, and cost. Multiple rounds of negotiations may be conducted with one Bidder or multiple Bidders. Negotiations will be structured by the Division to safeguard information and ensure that all Bidders are treated fairly.

Similarly, the Division may invite one Bidder or multiple Bidders to submit a Best and Final Offer (BAFO). Said invitation will establish the time and place for submission of the BAFO. Any BAFO that does not result in more advantageous pricing to the State will not be considered, and the State will evaluate the Bidder's most advantageous previously submitted pricing.

If required, after review of the BAFO, clarification may be sought from the Bidder. The Division may conduct more than one round of negotiation and/or BAFO in order to attain the best value for the State.

After evaluation of Quotes and as applicable, negotiation, and/or BAFO, the Division will recommend, to the Director, the responsible Bidder whose Quote, conforming to the RFQ, is/are most advantageous to the State, price, and other factors considered. The Director may accept, reject or modify the recommendation of the Division. The Director may initiate additional negotiation or BAFO procedures with the selected Bidder.

Negotiations will be conducted only in those circumstances where they are deemed by the Division or Director to be in the State's best interests and to maximize the State's ability to get the best value. Therefore, the Bidder is advised to submit its best technical and price Quote in response to this RFQ since the State may, after evaluation, make a Contract award based on the content of the initial submission, without further negotiation and/or BAFO with any Bidder.

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

6.9 POOR PERFORMANCE

A Bidder with a history of performance problems may be bypassed for consideration of an award issued as a result of this RFQ. The following materials may be reviewed to determine Bidder performance: Contract cancellations for cause pursuant to the attached SSTC; information contained in Vendor performance records; information obtained from audits or investigations conducted by a local, state or federal agency of the Bidder's work experience; current licensure, registration, and/or certification status and relevant history thereof; or its status or rating with established business/financial reporting services, as applicable. Bidders should note that this list is not exhaustive.

7.0 **CONTRACT AWARD**

7.1 **DOCUMENTS REQUIRED BEFORE CONTRACT AWARD**

7.1.1 **REQUIREMENTS OF PUBLIC LAW 2005, CHAPTER 51, N.J.S.A. 19:44A-20.13 - N.J.S.A. 19:44A-20.25 (FORMERLY EXECUTIVE ORDER NO. 134), EXECUTIVE ORDER NO. 117 (2008) AND N.J.A.C. 17:12-5 et seq.**

- a. The State shall not enter into a Contract to procure services or any material, supplies or equipment, or to acquire, sell, or lease any land or building from any Business Entity, 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 Lieutenant Governor, to any State, county, municipal political party committee, or to any legislative leadership 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 Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions, certifying that no contributions prohibited by either Chapter 51 or Executive Order No. 117 have been made by the Business Entity and reporting all contributions the Business Entity made during the preceding four (4) 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 means 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 Division's website at <http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf>, shall be provided to the intended awardee for completion and submission to the Division 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 Division Procurement Specialist, 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 RFQ, 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 Division's website at <http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf>, shall be provided to the intended awardee with the Notice of Intent to Award.

The Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form is located on the [Division's website](#).

7.1.2 **SOURCE DISCLOSURE REQUIREMENTS**

Pursuant to N.J.S.A. 52:34-13.2, 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. Also refer to Service Performance Within U.S. of the SSTC.

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 Form

accompanies the subject RFQ. 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 or her certification that the services cannot be performed in the United States and whether to seek the approval of the Treasurer.

The Source Disclosure Form is located on the [Division's website](#).

7.1.2.1 **BREACH OF CONTRACT**

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 upon 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. Such Contract shall be subject to termination for cause pursuant to the attached SSTC, unless such shift in performance was previously approved by the Director and the Treasurer.

7.1.3 **AFFIRMATIVE ACTION**

The intended awardee must submit a copy of a New Jersey Certificate of Employee Information Report, or a copy of Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program. Intended awardee(s) not in possession of either a New Jersey Certificate of Employee Information Report or a Federal Letter of Approval must complete the Affirmative Action Employee Information Report (AA-302) located on the web at http://www.nj.gov/treasury/purchase/forms/AA_%20Supplement.pdf.

7.1.4 **BUSINESS REGISTRATION**

In accordance with N.J.S.A. 52:32-44(b), a Bidder and its named Subcontractors must have a valid Business Registration Certificate ("BRC") issued by the Department of the Treasury, Division of Revenue and Enterprise Services prior to the award of a Contract. See Section 4.4.2.1 of this RFQ for further information.

7.2 **FINAL CONTRACT AWARD**

Contract award will be made with reasonable promptness by written notice to that responsible Bidder, whose Quote, conforming to this RFQ, is(are) most advantageous to the State, price, and other factors considered. Any or all Quotes 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. See Section the SSTC accompanying this RFQ.

7.4 **PERFORMANCE SECURITY**

Not applicable to this procurement.

8.0 CONTRACT ADMINISTRATION

8.1 STATE CONTRACT MANAGER

The State Contract Manager (SCM) is the State employee responsible for the overall management and administration of the Contract.

The SCM for this project will be identified at the time of execution of Contract. At that time, the Contractor will be provided with the SCM's name, department, division, agency, address, telephone number, fax phone number, and e-mail address.

8.1.1 STATE CONTRACT MANAGER RESPONSIBILITIES

For an agency Contract where only one State office uses the Contract, the SCM 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 SCM is the person who the Contractor will contact **after the Contract is executed** for answers to any questions and concerns about any aspect of the Contract. The SCM is responsible for coordinating the use of the Contract and resolving minor disputes between the Contractor and any component part of the SCM's Department. The SCM is also responsible for notifying OIT and other appropriate parties of security and privacy violations or incidents. The SCM cannot modify the Contract, direct or approve a Contract Amendment.

If the Contract has multiple users, the SCM 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 using the Contract must notify and coordinate the use of the Contract with the SCM.

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 SCM for resolution. Any questions related to performance of the work of the Contract by Contract users shall be directed to the SCM. The Contractor may contact the SCM if the Contractor cannot resolve a dispute with Contract users.

9.0 NEW JERSEY DIVISION OF PURCHASE AND PROPERTY WAIVERED SERVICES **CONTRACTS STANDARD TERMS AND CONDITIONS**

February 1, 2017

By submitting a proposal in response to the Agency Request for services, the bidder certifies that it understands and agrees that all of the following terms, conditions and definitions (collectively, "Standard Terms and Conditions") are part of any contract(s) awarded or order(s) placed as a result of the Agency Request unless specifically and expressly modified by reference in the Agency Request or in a writing executed by the Director, Division of Purchase and Property or the designee thereof.

- I. **DEFINITIONS:** As used in these Standard Terms and Conditions the following terms shall have the definitions set forth in this paragraph. These definitions shall also apply to the entire contract unless otherwise defined therein.

"Agency" means the entity on whose behalf the Division of Purchase and Property entered into the Contract. The Agency is the intended beneficiary of the Contract.

"Agency Request" means a request made by an Agency for offers or proposals to provide the sought after goods and/or services as specified herein.

"Bidder" means any person or entity submitting a proposal in response to the Agency Request for the purpose of obtaining a contract to provide the tangible items and/or services specified in the Agency Request.

"Contract" means a mutually binding legal relationship obligating the Contractor to furnish supplies and/or services and the buyer to pay for them, subject to appropriation where the Agency derives its annual budget by means of appropriation from the State Legislature. The Contract consists of these Standard Terms and Conditions, the Agency Request, the proposal submitted by the Contractor, the subsequent written document memorializing the agreement (if any), any amendments or modifications and any attachments, addenda or other supporting documents of the foregoing.

The Contract and/or its terms cannot be modified or amended by conduct or by course of dealings. Thus, the "contract" does not include the aforementioned actions and such actions, or reliance thereon, afford no rights whatsoever to any party to the Contract. The Contract can only be modified or amended by the Director; using Agencies have no authority to modify or amend the Contract. The State will not be bound by any attempt to modify or amend the Contract without the prior written approval of the Director.

"Contractor" means the person or entity which submits a proposal in response to the Agency Request and to whom (or which) the Contract is awarded.

"Designee" means the representative of a specific public official or Agency, as defined above, duly authorized by same to conduct specific activities and who also has the power to legally bind the official or Agency within the scope of the Contract. Actions taken by an unauthorized designee or which are beyond the scope of the designee's authorization or beyond the scope of the Contract are ultra vires and have no legal or equitable effect.

"Director" means the Director of the New Jersey Division of Purchase and Property or the designee thereof.

"Division" means the New Jersey Division of Purchase and Property.

“Fixed-Price Contract” means a contract that provides for a firm price for the entire term of the Contract (including all extensions), subject to any contractual conditions allowing price adjustment, under which the contractor bears the full responsibility for profit or loss.

“Project” means the initiative, enterprise, undertaking or services for which the Contractor was contracted.

“Shall” denotes a mandatory condition.

“State” means the State of New Jersey and its agencies.

II. APPLICABILITY AND INCORPORATION OF STANDARD TERMS AND CONDITIONS:

These Standard Terms and Conditions will apply to all services contracts made by the Director on behalf of the Agency. These Standard Terms and Conditions are automatically incorporated into the Contract unless the Contractor is specifically instructed otherwise in the Agency Request or in any amendment thereto. These Standard Terms and Conditions are in addition to the terms and conditions set forth in the Agency Request and should be read in conjunction with same unless the Agency Request specifically indicates otherwise.

III. CONTRACTOR’S STATUS AND RESPONSIBILITIES:

- A. **CONTRACTOR’S STATUS:** The Contractor’s status shall be that of an independent contractor and not that of an employee of the State.
- B. **CONTRACTOR’S CERTIFICATION AS TO ITS REPRESENTATIONS:** The Contractor certifies that all representations made by it in its proposal or other related and/or supporting materials are true, subject to penalty of law. Further, the Contractor agrees that its violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact in the proposal, award or performance of the Contract may be cause for rescission of the contract award. In addition, the Contractor’s violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact in the proposal, award or performance of the Contract shall serve as a legal bar to the Contractor’s enforcement of its rights under the Contract including any and all claims at law or equity.
- C. **CONTRACTOR’S PERFORMANCE:** The Contractor agrees to perform in a good, skillful and timely manner all services set forth in the Contract. To perform these services, the Contractor shall employ or engage the services of qualified persons and/or entities at its own expense except as otherwise specified in the Contract. The Contractor has an affirmative obligation to promptly notify, in writing, the State of any changes in circumstances which might affect the Contractor’s ability to be awarded or to perform its obligations under the Contract.

D. RESPONSIBILITIES OF CONTRACTOR:

- 1) The Contractor is responsible for the quality, technical accuracy and timely completion and delivery of all deliverables and other services to be furnished by the Contractor under the Contract. If circumstances beyond the control of the Contractor result in a late delivery, it is the responsibility and obligation of the Contractor to make the details known immediately to the Division and Agency.
- 2) The Contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its services and deliverables furnished under the Contract. The approval of interim deliverables furnished under the Contract shall

not in any way relieve the Contractor of fulfilling all of its obligations under the Contract. The acceptance or payment for any of the services rendered under the Contract shall not be construed as a waiver by the State or Agency, of any rights under the agreement or of any cause of action arising out of the Contractor's performance of the Contract.

- 3) The acceptance of, approval of or payment for any of the services performed by the Contractor under the Contract shall not constitute a release or waiver of any claim the State or Agency, has or may have for latent defects or errors or other breaches of warranty or negligence.
- 4) Should the Contractor hire, employ or otherwise engage subcontractors, the Contractor shall be considered the prime Contractor and the sole point of contact with regard to contractual matters. The Contractor assumes sole and full responsibility for the complete performance contemplated by the Contract including the performance of all subcontractors.
- 5) When the Contractor intends to subcontract for any work under the Contract, the subcontractor must be approved by the Director in writing. It is understood, however, that consent of the Director for the subcontracting of any work under the Contract in no way relieves the Contractor from its full obligations under the Contract. In addition, the Contractor must notify and receive the approval of the Agency Project Manager before hiring any sub-contractor for the contract work. The Contractor shall at all times give due attention to the fulfillment of the Contract and shall keep the work under its control. Consent to the subcontracting of any part of the work by the Director in writing 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 the subcontractor. The Contractor, shall be responsible for all work performed by the subcontractor, which shall conform to the provisions of the Contract and all requirements of law. The failure of any subcontractor to adhere to the terms of the Contract or requirements of law may, in the Director's discretion, be cause for rescission of the contract award.
- 6) All payments for services under the Contract will be made only to the Contractor. The Contractor assumes sole and full responsibility for any payments due to its subcontractors under the Contract.
- 7) Nothing herein or in the Contract shall be construed as creating a contractual relationship between any subcontractor and the State and/or the Agency.
- 8) The Contractor's obligations under this clause are in addition to the Contractor's other expressed or implied assurances under the Contract or law and in no way diminish any other rights that the State or Agency may have against the Contractor.

E. **INVESTIGATION:** By submitting a proposal in response to the Agency Request, the bidder certifies and warrants that it has satisfied itself, from its own investigation, of the conditions to be met and that it fully understands its obligations and if awarded the Contract agrees that it will not make any claim for, or have right to, cancellation or relief from the Contract without penalty because of its misunderstanding or lack of information.

F. **PRICE FLUCTUATION DURING CONTRACT:** Unless otherwise set forth in writing by the Director, or the Director's designee, all prices quoted shall be firm and not be subject to increase during the duration of the Contract. However, in the event of a manufacturer's price or contractor's cost decrease during the Contract period, the State shall receive the full benefit of such price/cost reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified in writing of any price

reduction within five (5) days of the effective date. Failure to report and/or pass on price reductions may result in the rescission of the contract award for cause.

G. **COST LIABILITY:** The State assumes no responsibility and no liability for costs incurred by the bidder prior to the award of the Contract and thereafter only as specifically provided in the Contract.

H. **INDEMNITY/LIABILITY TO THIRD PARTIES:**

- 1) The Contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract. This indemnification obligation is not limited by, but is in addition to the insurance obligations contained in this agreement.
- 2) 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 uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.
- 3) The Contractor further agrees that:
 - a) any approval by the State or Agency of the work performed and/or reports, plans or specifications provided by the Contractor shall not operate to limit the obligations of the Contractor assumed in the Contract;
 - b) the State and Agency assume no obligation to indemnify or save harmless the Contractor, its agents, servants, employees or subcontractors for any claim which may arise out of its performance of the Contract; and
 - c) the provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in the Contract, nor shall they be construed to relieve the Contractor from any liability, nor preclude the State or Agency from taking any other actions available to it under any other provisions of the Contract or otherwise at law or equity.

I. **INSURANCE:** The Contractor shall procure and maintain at its own expense, until at least two years after the completion of all work performed under the Contract, extensions and/or modifications thereto, liability insurance for damages imposed by law and assumed under the Contract, of the kinds and in the amounts hereinafter provided, from insurance companies admitted or approved to do business in the State of New Jersey. By submitting a proposal in response to the Agency Request, the Contractor expressly agrees that any insurance protection required herein or by the Contract shall in no way limit the Contractor's obligations assumed in the Contract and shall not be construed to relieve the Contractor from liability in excess of such coverage nor shall it preclude the State from taking such other actions as are available to it under other provisions of the Contract or otherwise in law or equity.

- 1) The insurance to be provided by the contractor shall be as follows:
 - a. a Commercial General Liability policy as broad as the standard coverage forms in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breadth of coverage.

The limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit.

- b. Automobile liability insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit.
- c. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than

\$1,000,000 BODILY INJURY, EACH OCCURRENCE

\$1,000,000 DISEASE EACH EMPLOYEE

\$1,000,000 DISEASE AGGREGATE LIMIT

- d) Professional Liability Insurance: When it is common to the Contractor's profession to do so, 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.
- 2) The Contractor shall, prior to commencement of the work required under the Contract, provide the Director with a valid original Certificates of Insurance (and a copy thereof to the Agency) as evidence of the Contractor's insurance coverage in accordance with the foregoing 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) and (d) above.

The certificates shall provide for thirty (30) days written notice to the Director and Agency prior to any cancellation, expiration or non-renewal of insurance during the term required in the Contract, extensions and/or modifications thereto. The Contractor shall further be required to provide the Director with valid original certificates of renewal of the insurance (and a copy thereof to the Agency) upon the expiration of the policies. The Contractor shall also, upon request, promptly provide the Division and/or Agency with copies of each policy required under these Standard Terms and Conditions and the Contract, certified by the agent or underwriter to be true copies of the policies provided to the Contractor. All certificates and copies of insurance policies shall be forwarded to the State's address as listed herein.

In the event that the Contractor provides evidence of insurance in the form of certificates of insurance valid for a period of time less than the period during which the Contractor is required by the terms of these Standard Terms and Conditions and the Contract to maintain insurance, i.e. two (2) years after the expiration of the Contract, said certificates shall be acceptable, but the vender shall be obligated to renew its insurance policies as necessary and to provide new certificates of insurance from time to time, so that the Agency is continuously in possession of evidence of the Contractor's insurance in accordance with the foregoing provisions.

In the event the Contractor fails or refuses to renew any of its insurance policies as

necessary, or any policy is canceled, terminated or modified so that the insurance does not meet the requirements of these Standard Terms and Conditions or the Contract, the State and/or Agency may refuse to make payment of any further amounts due under the Contract or refuse to make payments due or coming due under other agreements between the Contractor and the State. The State, in its sole discretion, may use funds retained under this paragraph to renew the Contractor's insurance for the periods and amounts referred to above. During any period when the required insurance is not in effect, the Director may, at the Director's option, either suspend work under the Contract or proceed to default the Contractor and thereby rescind the contract award.

- J. **AVAILABILITY OF RECORDS:** The Contractor shall maintain and retain weekly payroll, overhead, cost and accounting records and all other records related to the services performed on the Project, including expenses pertaining to additional services required by the State on the Project. Such records shall be maintained and available for the State's and/or Agency's inspection as to all aspects of the work, whether performed by the Contractor or any independent firms. These records shall be kept in accordance with generally accepted accounting principles and practices for a period of three (3) fiscal years after the expiration of the State's fiscal year in which the Contract expires or in which final payment is received by the Contractor under the Contract, whichever occurs later. (The State's fiscal year is from July 1 through June 30). The Director has the right to request, and Contractor agrees to furnish free of charge, all information and copies of all records which the Director requests. The Contractor shall allow the Director and/or Agency to visit the office(s) of the Contractor periodically, upon reasonable notice, in order to review any document related to the Contract or to otherwise monitor work being performed by the Contractor pursuant to the Contract. Any failure by the Contractor to maintain or produce such records or to otherwise cooperate with the Director and/or Agency may be, at the Director's discretion, cause for rescission of the contract award and/or suspension or debarment of the Contractor from State contracts.
- K. **DATA CONFIDENTIALITY:** All data contained in documents supplied by the State or Agency after the award of the Contract, any data gathered by the Contractor in fulfillment of the Contract and any analysis thereof (whether in fulfillment of the Contract or not) are to be considered confidential and shall be solely for the use of the provider of the information. The Contractor is required to use reasonable care to protect the confidentiality of the data including, but not limited to, requiring incorporation of this term into its contract with its subcontractor(s), if any. Any use, sale or offering of this data in any form by the Contractor, its employees, subcontractors or assignees will be considered a violation of this contract and will cause the infraction to be reported to the State Attorney General for possible prosecution. Penalties for violations of such guarantees include, but are not limited to, rescission of the contract award and/or legal action without the State being liable for damages, costs and/or attorney fees. The Contractor shall be liable for any and all damages arising from its breach of this confidentiality provision.
- L. **NO WAIVER OF WARRANTIES OR REMEDIES AT LAW OR EQUITY:** Nothing in the Contract shall be construed to be a waiver by the State or Agency of any warranty, expressed or implied, except as specifically and expressly stated in a writing executed by the Director. Further, nothing in the Contract shall be construed to be a waiver by the State or Agency of any remedy available to the State or Agency under the Contract, at law or equity except as specifically and expressly stated in a writing executed by the Director.
- M. **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 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 copyright, and the State shall have the right to obtain and hold in its own name any copyrights, registrations and any other proprietary rights that may be available.

- N. **PUBLICITY:** Publicity and/or public announcements pertaining to the project shall be approved by the Agency prior to release.

IV. **CONTRACTUAL RELATIONSHIP:**

- A. **ASSIGNMENT:** The Contractor shall not assign or transfer its obligations or rights under the Contract without the prior written consent of the Director. Any assignment or transfer of the Contractor's rights under the Contract without the prior written consent of the Director shall not relieve the Contractor of any duty; obligation or liability assumed by it under the Contract and shall be cause for rescission of the contract award.

B. **MERGERS, ACQUISITIONS AND DISSOLUTION:**

- 1) Merger or Acquisition: If, subsequent to the award of any contract resulting from the Agency Request, the Contractor shall merge with or be acquired by another firm, for purposes of this contract only, the documents set forth below must be submitted to the Director for approval within thirty (30) days of completion of the merger or acquisition. Failure to do so may result in rescission of the contract award for cause. Any such merger or acquisition will require the assignment of the Contract pursuant to the provisions related thereto set forth herein.
 - a) Corporate resolutions prepared by the awarded Contractor and new entity ratifying acceptance of the Contract terms, conditions and prices, as may be amended.
 - b) State of New Jersey Bidders Application reflecting all updated information including ownership disclosure, pursuant to the provisions contained herein.
 - c) Vendor Federal Employer Identification Number.
 - d) Ownership Disclosure: Within thirty (30) days after any merger or acquisition, the Contractor must disclose the names and addresses of all of its owners and potential owners which hold or may acquire 10% or more of its stock or interest. The Contractor has the continuing obligation to notify the Division of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed. Compliance with this provision does not give rise to any rights to the Contract to the acquirer or resulting entity (in the case of a merger) without the written consent of the Director.
- 2) Dissolution: If, during the term of the Contract, the Contractor's partnership,

joint venture or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved partnership or corporation must submit to the Director, in writing, the names of the parties proposed to perform the contract and the names of the parties to whom payment should be made. No payment will be made until all parties to the dissolved partnership, joint venture or corporation submit the required documents to the Director. If the Contractor is (1) a corporation, it must provide a copy of the corporate resolution to dissolve; (2) a partnership, the written statement of the partnership, general partner, receiver or custodian thereof that the partnership has dissolved; and (3) a joint venture, the written agreement of the principal parties thereto to dissolve the joint venture.

- C. **NOTICE:** The Contractor shall promptly provide notice to the Director and Agency of all information related to its merger, acquisition and/or dissolution.

V. **ADDITIONAL TERMS:**

- A. **CONTRACT AMOUNT:** The estimated amount of the contract(s), when stated in the Agency Request, shall not be construed as either the maximum or minimum amount which the State and/or the Agency shall be obligated to order or expend as the result of the Agency Request or any contract entered into as a result of the Agency Request.

- B. **PERFORMANCE SECURITY:**

- 1) Performance Security: If performance security is required in the Agency Request, the successful bidder shall furnish performance security in such amount on any award of the Contract or line item purchase. See, N.J.A.C. 17:12-2.5. Acceptable forms of performance security are as follows:
 - a) an irrevocable security in the amount listed in the Agency Request payable to the Treasurer, State of New Jersey, binding the Contractor to provide faithful performance of the Contract; and
 - b) a properly executed individual or annual performance bond issued by an insurance or security company authorized to do business in the State of New Jersey, a certified or cashier's check drawn to the order of the Treasurer, State of New Jersey, or an irrevocable letter of credit drawn naming the Treasurer, State of New Jersey, as beneficiary issued by a federally insured financial institution.
 - c) the amount of the performance security will be stated on the cover sheet to the Agency Request. If the requirement for performance security is expressed as a percentage, security will be required only if the total amount of the Contract exceeds \$250,000.

The Performance Security must be submitted to the Director within thirty (30) days of the effective date of the contract award and cover the period of the Contract and any extensions thereof. Failure to submit performance security may result in rescission of the contract award for cause and nonpayment for work performed.

- C. **TIME PERIODS:** The Director may extend or shorten any time period specified in the Contract for good cause. Moreover, when, in the discretion of the Director, non-performance by the Contractor may affect the health, safety or welfare of the State, the Director may dispense with any time period specified Paragraph VII B herein.

D. TAX CHARGES: The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

VI. MANDATORY COMPLIANCE WITH LAW: The Contractor's compliance with the legal requirements set forth in this paragraph as well as any other applicable laws, regulations or codes is mandatory and cannot be waived by the State, the Director, the Division or the Agency. The list of laws, regulations and/or codes cited herein is not intended to be an exhaustive list and is available for review at the State Library, 185 W. State Street, Trenton, New Jersey 08625.

A. BUSINESS REGISTRATION:

- 1) All New Jersey and out of State Corporations must obtain a Business Registration Certificate (BRC) from the Department of the Treasury, Division of Revenue prior to conducting business in the State of New Jersey.
- 2) Proof of valid business registration with the Division of Revenue, Department of the Treasury, State of New Jersey, shall be submitted by the bidder and, if applicable, by every subcontractor of the bidder, with the bidder's bid. No contract will be awarded without proof of business registration with the Division of Revenue. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG. can be filed online at www.state.nj.us/njbgs/services.html
- 3) Before performing work under the contract, all sub-contractors of the contractor must provide to the contractor proof of New Jersey business registration. The contractor shall forward the business registration documents on to the using agency.

B. PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS -

N.J.S.A. 10:2-1 requires that during the performance of this contract, the contractor must agree as follows:

- e. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- f. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
- g. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

- h. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:

- d. 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;
- e. 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;
- f. 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, N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows:
 - 5. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2;
 - 6. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;
 - 7. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions; and

8. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.
- C. **AMERICANS WITH DISABILITIES ACT:** The Contractor shall abide by the provisions of the Americans With Disabilities Act, 42 U.S.C. §12101, et seq.
- D. **PREVAILING WAGE ACT** - The New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.26 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The bidder's signature on this proposal is his guarantee that neither he nor any subcontractors he might employ to perform the work covered by this proposal has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder's signature on the proposal is also his guarantee that he and any subcontractors he might employ to perform the work covered by this proposal will comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.
- 1) **PUBLIC WORKS CONTRACTOR REGISTRATION ACT** - The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractors who bid on or engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464 or <http://www.nj.gov/labor/lsse/lspubcon.html>.
- E. **OWNERSHIP DISCLOSURE:** Pursuant to N.J.S.A. 52:25-24.2, contracts for any work, goods or services cannot be issued to any corporation or partnership unless prior to or at the time of the bid submission, the bidder disclosed the names and addresses of all of its owners holding 10% or more of the corporation or partnership's stock or interest during the term of the Contract. The Contractor has the continuing obligation to notify the Division of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed.
- F. **BIDDER'S WARRANTY:** By submitting a proposal in response to the Agency Request, the bidder warrants and represents that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. The penalty for breach or violation of this provision may result in rescission of the contract award without the State being liable for damages, costs and/or attorney fees or, in the Director's discretion, a deduction from the Contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.
- G. **MACBRIDE PRINCIPLES:** The Contractor shall comply with the MacBride

principles of nondiscrimination in employment as set forth in N.J.S.A. 52:34-12.2.

- H. **CODES:** The Contractor shall comply with the requirements of the New Jersey Uniform Commercial Code, the latest National Electrical Code, Building Officials & Code Administrators International, Inc. (B.O.C.A.) Basic Building Code and Occupational Safety and Health Administration to the extent applicable to the Contract.
- I. **P.L. 2004, C.57.** The contractors and its subcontractors must comply with P.L. 2004, C.57, which requires the contractor and its subcontractors to collect and remit applicable State use tax to the New Jersey Division of Taxation on the sale of all goods and services in the State of New Jersey subject to the provisions of the "Sales and Use Tax Act," P.L. 1966, C.30 (N.J.S.A. 54:32B-1 et seq.).
- J. **COMPLIANCE WITH NJSA 19:44A-20.13 ET SEQ.** All contractors are required to comply with the "pay to play" disclosure requirements set forth in the statutes. Compliance requires the contractor to submit the Executive Order 134 Certification and Disclosure (DPP134-C & D). In addition, the contractor is under a continuing duty to disclose during the time of the contract all contributions made during the term of the contract covered under the statute. Towards satisfying that duty, the contractor shall submit the Continuing Disclosure of Political Contributions (DPP134-CD) when required under the statute. Failure to comply with any of the requirements of the statute may result in the termination of the contract. All forms and instructions are available on the Division of Purchase and Property web-site: <http://www.state.nj.us/treasury/purchase/forms.htm>.
- K. **COMPLIANCE WITH REQUIREMENTS OF NJSA 52:34-13.2.**
- 1) NJSA 52:34-13.2 requires that all contracts that are "primarily for the performance of services" shall be performed within the United States. This provision applies to all contractors and sub-contractors performing such contracts for the State. This provision is not applicable to a contract that is "primarily for the performance of services" if:
 - a) the Director, Division of Purchase and Property or the Director, Division of Property Management and Construction certifies in writing a finding that a service is required by the Executive Branch of the State and that the service cannot be provided by a contractor or sub-contractor within the United States and the certification is approved by the State Treasurer; or
 - b) the Director, Division of Purchase and Property, or the Director, Division of Property Management and Construction, certifies in writing that the inclusion of the provision set forth within the statute for a contract would violate the terms, conditions, or limitations of any grant, funding or financial assistance from the federal government or any agency thereof, and the certification is approved by the appropriate approval officer.

10.0 2) SOURCE DISCLOSURE REQUIREMENTS

Pursuant to NJSA 52:34-13.2, all vendors seeking a contract with the State of New Jersey must disclose:

- a) The location by country where services under the contract will be performed; and
- b) The location by country where any subcontracted services will be performed.

Accordingly, the vendor should submit the Source Disclosure Certification Form filled out with the sourcing information required for it and any proposed subcontractor under the contract with the State. If the information is not submitted with the vendor's proposal, it shall be submitted within five (5) business days of the State's request for the information.

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

11.0 3) BREACH OF CONTRACT

A SHIFT TO OUTSOURCED SERVICES DURING THE TERM OF THE CONTRACT SHALL BE DEEMED A BREACH OF THE 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 the services outside of the United States, the contractor shall be deemed in breach of the contract, which contract shall be subject to termination for cause pursuant to Section VII B (3) (c). of the Waivered Contracts Standard Terms and Conditions, unless the Director shall have first determined in writing that the service can not be performed in the United States.

L. **SET-OFF FOR STATE TAXES AND CHILD SUPPORT:** Pursuant to N.J.S.A. 54:49-19, if the Contractor is entitled to payment under the Contract at the same time as it is indebted for any State tax (or is otherwise indebted to the State) or child support, the State Treasurer may set off that payment by the amount of the indebtedness.

M. **STANDARDS PROHIBITING CONFLICTS OF INTEREST:** The following prohibitions on vendor activities shall apply to all contracts and purchase agreements made with the State or Agencies:

- 1) No Contractor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such Contractor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i of any such officer or employee, or partnership, firm or corporation with which they are employed or associated or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
- 2) The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical

Standards.

- 3) No Contractor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Contractor to, any State officer or employee or special State officer or employee or having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding the present or proposed relationship does not present the potential, actual or appearance, of a conflict of interest.
- 4) No Contractor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- 5) No Contractor shall cause or influence, or attempt to cause or influence, any State officer or employees or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
- 6) The provisions cited in this paragraph shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with the Contractor under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines in the Executive Commission on Ethical Standards may promulgate under the provisions contained herein.

N. SUBCONTRACTORS: A vendor that will subcontract any of the work or services to be provided under the contract shall submit with its proposal to the agency a **Notice of Intent to Subcontract** form located on the Advertised Solicitation, Current Bid Opportunities webpage
<http://www.state.nj.us/treasury/purchase/forms/SubContracting.pdf>

O. 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.elect.state.nj.us/

VII. PROJECT SUSPENSION AND RESCISSION OF THE CONTRACT AWARD:

A. SUSPENSION OF PROJECT: If, for any reason, the project for which the Contractor's services were contracted should be suspended, the Director may suspend this contract upon seven (7) days written notice to the Contractor. Upon receipt of such notice, unless otherwise directed in writing by the Director, the

Contractor shall immediately discontinue all work under the Contract. Upon such notification the Contractor shall be paid a proportion of the fee which the services actually and satisfactorily performed by it shall bear to the total services completed under the Contract, less payments previously made. The State may order that the work on the project be stopped temporarily, and upon seven (7) days written notice from the Director, the Contractor shall cease all work on the project except as necessary to properly secure the project. If the State directs that the work on the project resume within six (6) months, the Contractor shall be obliged to complete the project for the basic fee provided for in this contract, plus additional compensation for any work necessitated by the stop order as approved by the Director in writing.

However, in the event that services are scheduled to end either by contract expiration or by rescission of the contract award by the Director (at the State's discretion), it shall be incumbent upon the Contractor to continue the service if requested by the Director to do so, until new services, if any, are completely operational. At no time shall this transitional period extend more than ninety (90) days beyond the expiration or rescission date of the existing contract, except by agreement of the parties. The Contractor will be reimbursed for this service at the rate in effect when this transitional period clause is invoked by the Director.

B. RESCISSION OF THE CONTRACT AWARD: The Director may rescind the contract award at any time during the duration of the Contract, without penalty, subject to the following provisions:

- 1) For Convenience: Notwithstanding any provision or language in this contract to the contrary, the Director may terminate at any time, in whole or in part, any contract entered into as a result of this Agency Request for the convenience of the State, upon no less than 30 days written notice to the contractor.
- 2) For Cause:
 - a) Where a Contractor fails to perform or comply with the Contract and/or fails to comply with the complaints procedure set forth in N.J.A.C. 17:12-4.1, et seq., the Director may rescind the contract award upon ten (10) days notice to the Contractor with an opportunity to protest said rescission and/or request an informal hearing. If the Contractor protests, the Director will complete the informal hearing, if necessary, and issue a final agency decision regarding rescission of the contract.
 - b) Where a Contractor continues to perform a contract poorly as demonstrated by one or more formal complaints resolved against it, the Director, or the Director's designee, may issue a Notice of Intent to Rescind the Contract Award with a ten (10) day opportunity for the Contractor to protest such rescission and/or request an informal hearing. If the Contractor protests, the Director will complete the hearing, if necessary, and issue a final agency decision regarding rescission and related issues including, but not limited to, damages payable to the State, subject to Paragraph VII B(5).
 - c) The Director's right to rescind the contract award for cause includes any reason set forth in any other provision contained in the Contract.
 - d) The failure of a Contractor to respond to the Director's notice of intent to rescind the contract award within the ten (10) day period automatically converts said notice into a final agency decision without further action of the Director.
 - e) The Director's right to rescind the contract award for cause includes the

Contractor's performance on any other State contract, a violation of state or federal law (as demonstrated by the Contractor's admissions of same or a final decision of an appropriate decision-making body), or any reason related to the ability of the contractor to fulfill its contractual obligations. The Director may also rescind any contract with a federally debarred contractor or a contractor which is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

- 3) In cases of emergency, the Director may shorten the time periods of notification and may dispense with an opportunity to respond.
- 4) Upon a rescission of the contract award under this or any other paragraph herein, the Contractor shall be entitled to receive as full compensation for services rendered to the date of rescission that portion of the fee which the services actually and satisfactorily performed by it, as determined by the Director, shall bear to the total services contemplated under this contract, less payments previously made.
- 5) Except for termination of the contract by the Director for convenience, upon rescission of the contract award, the Director may acquire the services which are the subject of the Contract from another source and may charge the Contractor whose contract award has been rescinded the difference in price, and the said Contractor shall be liable for same.
- 6) All protests of the Director's intent to rescind a contract award must be accompanied by a statement of the factual and/or legal basis of the protest and copies of all documents which the Contractor believes support its position.
- 7) If Director determines that an informal hearing is required, said informal hearing shall be conducted by the Director, or the designee thereof, prior to the issuance of the final agency decision regarding the interpretation of the Contract, Contractor performance and/or rescission of the contract award.

VIII. CONTRACTOR COMPENSATION:

- A. **PAYMENT TO CONTRACTOR:** The Contractor is authorized to submit invoices monthly for tasks and/or sub-tasks satisfactorily completed. However, payment for goods and/or services purchased by the State or Agency will only be made against Official New Jersey Payment Voucher along with supporting documentation substantiating that the work has been satisfactorily completed. Invoices must reference the tasks and/or sub-tasks detailed in the scope of work and must be in strict accordance with the firm fixed prices submitted for each task and/or sub-task of the Contract and shall otherwise be in accordance with the terms of the Contract. The State bill form in duplicate together with the original Bill of Lading, express receipt or other related papers must be sent to the consignee on the date of each delivery. Responsibility for payment rests with the Agency. Notwithstanding Section VIII B, payment will not be made until the Agency has approved payment.
- B. **NEW JERSEY PROMPT PAYMENT ACT:** The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32, et. seq. requires State agencies to pay for goods and services within sixty (60) days of the Agency's receipt of a properly executed New Jersey Payment Voucher or within sixty (60) days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the Division prior to processing any payments for goods and services accepted by the State and/or the Agency. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest will not be paid unless it exceeds \$5.00 per properly executed invoice. A good faith dispute creates an

exception to the Prompt Payment Act. Except as noted above, cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

- C. **AVAILABILITY OF FUNDS:** The State's obligation to make payment under the Contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are made available each fiscal year to the using agency by the State Legislature.
- D. **RETAINAGE:** If retainage is required on the Contract, the State and/or Agency will retain the stated percentage or retainage from each invoice. Payment of retainage will be authorized after satisfactory completion and submission of all services, deliverables or work products by the Contractor and acceptance by the Agency of all services, deliverables or work products required by the Contract.

For ongoing term contracts, the Agency will retain the stated percentage of each invoice submitted. At the end of the three (3) month period after payment of each invoice, the Agency will review the Contractor's performance and if performance has been satisfactory, the Agency will release the retainage for the preceding three (3) month period. Following the expiration of the Contract, retained fees will be released to the Contractor after certification by the Agency's project manager, if any, that all services have been satisfactorily performed.

IX. **NOTICES:** All notices required under this contract shall be in writing and shall be validly and sufficiently served by the Agency and/or Division upon the Contractor, and vice versa, if addressed and mailed by certified mail to the addresses set forth in the Contract.

X. **CLAIMS:** The following shall govern claims made by the Contractor against the State concerning interpretation of the Contract, Contractor performance and/or rescission of the contract award:

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

XI. **APPLICABLE LAW:** This agreement and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles.

I HEREBY ACCEPT THE TERMS
AND CONDITIONS OF THIS
AGREEMENT

NAME

TITLE

COMPANY NAME

DATE

EXHIBIT A

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)

N.J.A.C. 17:27

GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

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, 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 ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, 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 equal employment opportunity 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 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, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter 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 any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27 5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, 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.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at www.state.nj.us/treasury/contract_compliance)

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance 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 Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code at N.J.A.C. 17:27-1 et seq.**

EXHIBIT B

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)

N.J.A.C. 17:27

CONSTRUCTION CONTRACTS

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, 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 ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, 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 equal employment opportunity 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, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, 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 any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Division may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Division is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Division, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

(1) To notify the public agency compliance officer, the Division, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

(2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;

(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;

(5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;

(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) The contractor or subcontractor shall interview the referred minority or women worker.

(ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith

determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Division. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Division, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Division.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Division and submitted promptly to the Division upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Division an initial project workforce report (Form AA 201) electronically provided to the public agency by the Division, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7.

The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on the job and/or off the job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the Division 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 Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27-1 et seq.).

EXECUTIVE ORDER NO. 151 REQUIREMENTS

It is the policy of the Division of Purchase and Property that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the Division of Purchase and Property to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

The contractor must demonstrate to the Division of Purchase and Property's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the Division of Purchase and Property's contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but is not limited to:

1. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at <http://NJ.gov/JobCentralNJ>;
2. The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;
3. The Contractor shall actively solicit and shall provide the Division of Purchase and Property with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and
4. The Contractor shall provide evidence of efforts described at 2 above to the Division of Purchase and Property no less frequently than once every 12 months.
5. The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27.

This language is in addition to and does not replace good faith efforts requirements for construction contracts required by N.J.A.C. 17:27-3.6, 3.7 and 3.8, also known as Exhibit B.