

**REQUEST FOR PROPOSALS
FOR
INDIVIDUALIZED EDUCATION PROGRAM (IEP) MEETING FACILITATORS**

**Issued by
The State of New Jersey
Department of Education**

Date issued: May 5, 2016

Responses due by: May 19, 2016 at 2:00 p.m. Eastern Time

**State of New Jersey- Department of Education
Division of Finance and Administration
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REQUEST FOR PROPOSALS FOR INDIVIDUALIZED EDUCATION PROGRAM (IEP) MEETING FACILITATORS

1.0 PURPOSE AND INTENT

This Request for Proposals (RFP) is issued by The State of New Jersey, New Jersey Department of Education (“NJDOE” or “the Department”) to solicit Proposals from qualified individuals who will be pre-approved to serve as Individualized Education Program (IEP) Facilitators (i.e., Consultant Contractors).

IEP Facilitation is a collaborative dispute prevention and resolution process useful in improving the effectiveness and efficiency of IEP Team meetings. IEP Facilitators are trained, impartial individuals who assist members of the IEP Team in developing or reviewing a student’s IEP, with a focus on process, while also addressing conflicts and disagreements that may arise during the meeting. IEP Facilitators use effective communication and facilitation skills to assist the IEP Team in reaching consensus on IEP recommendations.

The purpose of this RFP is to prepare a list of approved Consultants (i.e., IEP Facilitators) who will be randomly contracted to work with IEP Teams on an as needed basis. To be selected for the approved list, all Consultants must meet the criteria specified in this RFP.

The intent of this RFP is to award contracts to those responsible Respondents whose Proposals conforming to this RFP is most advantageous to the State, price and other factors considered. However, the State reserves the right to separately procure individual requirements that are the subject of the contract during the contract term, when deemed by the Director to be in the State’s best interest.

The State of New Jersey Standard Terms & Conditions (please refer to Attachment #1) and the New Jersey Department of Education Consultant Agreement (please refer to Attachment #2) will apply to this RFP. These terms are in addition to the terms and conditions set forth in this RFP and should be read in conjunction with them unless the RFP specifically indicates otherwise.

1.1 BACKGROUND

The NJDOE is piloting IEP Facilitation as a process that fosters effective communication between parents and districts as they develop a mutually agreed upon IEP. This process may be used as a preventative measure in which a trained Facilitator promotes whole team participation, acknowledging and addressing differing opinions in a respectful and neutral manner. IEP facilitation can improve the relationships between school districts and parents in order to effectively plan services to meet student needs. For more information see:

<http://www.directionservice.org/cadre/>.

States and school districts are increasingly turning toward this less costly process and are reporting improved relationships between districts and parents, a greater number of mutually agreed upon IEPs, and a reduction in the number of districts and parents utilizing formal dispute resolution options.

State sponsored IEP Facilitation is a voluntary service offered at no cost to districts and parents of students with disabilities. A parent or district representative may make the request for the State-sponsored Facilitator. These services will initially be available to those districts who agree to participate in the pilot project and parents from those identified districts. A pilot program comprising approximately 25-40 meetings is anticipated to begin during the 2016-2017 school year.

An IEP Facilitator focuses on the *process* of the meeting and supporting all parties' full participation. The Facilitator is not a member of the IEP Team, nor an advocate for any person on the Team. The Facilitator does not make decisions for the group. The Facilitator keeps Team members on task, clarifies points of agreement and disagreement, and provides team members opportunities to consider alternative options.

As a result of the interest in IEP facilitation among districts and parents in New Jersey, the NJDOE's Office of Special Education Programs (OSEP) is piloting an IEP Facilitation program. As such, the NJDOE is seeking qualified individuals (i.e., Consultants) to serve as IEP Facilitators.

1.2 SUBMISSION OF PROPOSAL APPLICATION

In order to be considered to be an approved Consultant, the Proposal must be marked "IEP Meeting Facilitator" and received by the NJDOE at the appropriate location by the required time. The Date and Time are indicated on the cover page of the RFP. Any Proposal not received on time via e-mail, as indicated below, will be rejected. Submit via e-mail to purchasing@doe.state.nj.us with the subject line: Attention IEP_Purchasing Unit.

All Respondents must limit their Proposals to five (5) single-sided pages or less, at no smaller than 12-point font.

Subsequent to Proposal submission, all information submitted by Respondents in response to the Proposal solicitation is considered public information, except as may be exempted from public disclosure by the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and the common law.

1.3 QUESTION AND ANSWER

The NJDOE will accept questions electronically, pertaining to this RFP, until 5:00 p.m. on Thursday, May 12, 2016, from all potential bidders. Questions shall be directed via e-mail to:

purchasing@doe.state.nj.us with the subject line: Attention IEP_Purchasing Unit.

- A. Questions should be directly tied to the RFP and asked in consecutive order, from beginning to end, following the organization of the RFP;
- B. Each question should begin by referencing the RFP page number and section number to which it relates;
- C. Communication with other representatives of the State regarding this RFP are prohibited during the submission and selection processes. Failure to comply with these communications restrictions may result in rejection of a bidder's Proposal;
- D. The State will not be responsible for any expenses in the preparation and/ or presentation of the Proposals, oral interviews, or for the disclosure of any information or material received in connection with this RFP; and
- E. The State reserves the right to reject any and all Proposals received in response to this RFP, when determined to be in the State's best interest, and to waive minor noncompliance in a Proposal. The State further reserves the right to make such investigations as it deems necessary as to the qualifications of any and all Respondents submitting Proposals in response to this RFP. In the event that all Proposals are rejected, the State reserves the right to re-solicit Proposals.

1.4 NJSTART

Bidders interested in doing business with the State must register in NJSTART, New Jersey's eProcurement system. Registration is easy and takes only a few minutes. Visit www.njstart.gov and click on "Register" to start the process. Respondents to this RFP are strongly encouraged to visit the NJSTART Vendor Support Page, which contains Quick Reference Guides (QRGs), supporting videos, a glossary of NJSTART terms, and helpdesk contact information. The NJSTART Vendor Support Page is located at: <http://www.nj.gov/treasury/purchase/njstart/vendor.shtml>.

1.5 ADDENDA: REVISIONS TO THIS RFP

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

2.0. GENERAL DEFINITIONS

Addendum – Written clarification or revision to this RFP issued by the New Jersey Department of Education (NJDOE).

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

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

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

Contractor – The bidder awarded a contract resulting from this RFP.

Director – Director, Office of Budget & Accounting and Grants Management, Division of Administration and Finance, Department of Education. By statutory authority, the Director is the chief fiscal contracting officer for the State of New Jersey.

Division – The Division of Administration and Finance.

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

May – Denotes that which is permissible, not mandatory.

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

Request for Proposal (RFP) – The document which establishes the response and contract requirements and solicits Proposals to meet the purchase needs of the State as identified herein.

Respondent – An individual or business entity submitting a Proposal in response to this RFP.

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

Should – Denotes that which is recommended, not mandatory.

State Contract Manager – State employee responsible for the approval of all deliverables and the main point of contact for the Contractor.

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

State – State of New Jersey.

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

Task – A discrete unit of work to be performed.

2.1 CONTRACT-SPECIFIC DEFINITIONS/ACRONYMS

Individuals with Disabilities Education Act (IDEA).

Individualized Education Program (IEP) – A written plan which sets forth present levels of academic achievement and functional performance, measurable annual goals and short-term objectives or benchmarks and describes an integrated, sequential program of individually designed instructional activities and related services necessary to achieve the stated goals and objectives. This plan shall establish the rationale for the student’s educational placement, serve as the basis for program implementation and comply with the mandates set forth in applicable law and regulations.

Facilitated Individualized Education Program (FIEP) – IEP Facilitation is specific to IEP development. The facilitation takes place during an IEP meeting with all required participants engaging in respectful collaboration to achieve the goal of developing a mutually agreed upon IEP.

Local Education Agency (LEA) – A school district; an entity which operates local public primary and secondary schools in the United States.

New Jersey Department of Education (“NJDOE” or “the Department”) – The State agency that administers State and federal aid programs affecting more than 1.4 million public and non-public elementary and secondary school children in the state of New Jersey.

Office of Special Education Programs (OSEP) – The office within the NJDOE that administers IEP development.

Parent – The natural or adoptive parent, the legal guardian, foster parent when willing to so serve, or surrogate parent who has been appointed according to N.J.A.C. 6A:14.2.2(a) through (i), a person acting in the place of a parent (such as a grandparent or stepparent with whom the student lives or a person legally responsible for the student’s welfare). Unless parental rights have been terminated by a court of appropriate jurisdiction, the parent retains all rights under this chapter. The term “parent” shall include the adult student.

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

Special Education – Defined in accordance with the definition of the term set forth in IDEA and its implementing regulations.

Student – A person age three through 21 who is entitled to receive educational programs and services in accordance with Federal or State law or regulation.

Student with a Disability – A student who has been determined to be eligible for special education and related services according to N.J.A.C. 6A:14-3.5 or 3.6.

Training – Any activity that provides direct support to increase general understanding and the knowledge base of participants on a specific skill or set of skills related to IEP Facilitation.

3.0 SCOPE OF WORK

To become an approved Contractor, the Respondent must meet the following requirements:

3.1 GENERAL REQUIREMENTS

The IEP Facilitation program will be managed by a NJDOE-assigned State Contract Manager, or his/ her designee. The State Contract Manager will be responsible for engaging the Consultant, and is the person that the Consultant must contact after the contract is executed for answers to any questions and concerns about any aspect of the contract, such as reviewing the policies and procedures for the IEP Facilitation program, including reimbursement policies, once a Respondent becomes an approved Consultant (i.e., Contractor).

3.1.1 SELECTION PROCESS

To be eligible, an individual must, at a minimum:

- A. Hold a bachelor's degree or higher from an accredited college or university;
- B. Have documented leadership skills as well as strong oral and written communication skills;
- C. Be available to serve as Facilitators in IEP Team meetings held anywhere in New Jersey, during the regular business day and possibly after typical school hours;
- D. Be available to attend, and successfully complete, a three-day specialized training to be held in Trenton, New Jersey. Proof of prior attendance at a three-day specialized training, successfully completed in New Jersey within the last two years, may be substituted in lieu of attending the upcoming mandatory three-day training, and the proof must be submitted at the time of Proposal application; and
- E. Demonstrate knowledge of special education and/or conflict resolution preferred.

Additional requirements:

- F. Consultants must be individuals and not be current employees of the State of New Jersey agencies or local education agencies;
- G. Consultants may be required to attend additional trainings pertaining, but not limited to, meeting management, dispute resolution strategies, and Federal and State special education law and regulations; and
- H. Consultants shall have a valid driver's license and/or proof of reliable transportation, and proof must be immediately available for inspection if requested by the State Contract Manager.

3.1.2 CONFIDENTIALITY

All data that is supplied by the State, LEA or parent/guardian of a student is confidential. The Consultant shall be prohibited from releasing any information obtained from the FIEP process that is deemed confidential. Any non-Contractual use, sale or offering of information or data in any form by the Consultant, or any individual or entity in the Contractor's charge of 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.

3.1.3 REIMBURSEMENT SCHEDULE

- A. Trained IEP Facilitators shall be compensated an All-Inclusive Rate of \$500.00 per completed Facilitated IEP Meeting, inclusive of travel expenses; and
- B. Attendance at mandatory training sessions (e.g., the June 21, 22, and 23, 2016 training sessions or other trainings as outlined in Section 3.1.1 G of this RFP) shall be compensated an All-Inclusive Rate of \$50.00 per training, inclusive of travel expenses.

4.0 REQUIRED COMPONENTS OF THE PROPOSAL APPLICATION

Note: Proposals in response to this RFP must respond to each of the following requirements in the order indicated:

- A. The Proposal (i.e., the Application) should include:
 1. Respondent's current resume, as follows:
 - a. Clearly identify the individual's previous experience in completing similar contracts;
 - b. Beginning and ending dates should be given for each similar contract;
 - c. Demonstrate how the individual's previous work relates to the individual's ability to contribute to successfully providing the services required by this RFP; and
 - d. With respect to each previous work, include the name, e-mail address, and telephone number of a reference;
 2. Letter of interest (not more than two (2) pages) identifying: Why you are interested in being an IEP meeting Facilitator;
 3. A statement describing any potential conflict(s) of interest in serving as an IEP Facilitator;
 4. Personal, professional and/or volunteer experience that might benefit serving as an IEP meeting Facilitator;
 5. Any diverse cultural background or experience you possess;
 6. Language(s) spoken, other than English; and
 7. Availability to attend the three-day specialized training in Trenton, New Jersey, or proof of previous successful completion in New Jersey of same within the prior two years. For 2016, the three-day specialized training will be held on June 21, 22, and 23, 2016.

5.0 SELECTION PROCESS

5.1 EVALUATION CRITERIA

The following evaluation criteria categories, separate or combined in some manner, and not necessarily listed in order of significance, will be used to evaluate Proposals received in response to this RFP.

After a determination is made that all of the minimum requirements in Section 4.0 of the RFP are met, Proposals will be evaluated by an Evaluation Committee on the quality of the response and overall experience, including, but not limited to:

- A. Training and/or experience in dispute or conflict resolution;
- B. Knowledge of the IDEA and state laws, regulations, policies;
- C. Knowledge of the IEP process;
- D. Specific leadership skills;
- E. Experience in interest-based problem solving and effective meeting facilitation;
- F. Experience working with diverse cultures; and
- G. Fluency in language(s) other than English.

Non-responsive Proposal Applications will be rejected without evaluation.

5.2 ORAL INTERVIEW

The State may require oral interviews, and reserves the right to do so, in person or by telephone. Proposals should be complete on their face. The State reserves the right to request clarifying information subsequent to submission of the Proposal Application.

6.0 SPECIAL TERMS AND CONDITIONS

6.1 DISCONTINUATION OF AND/OR MODIFICATIONS TO THE PROGRAM

If the Contractor voluntarily wishes to discontinue participation in the Facilitated IEP program, the NJDOE must be notified as soon as the decision has been made. The NJDOE will remove the Contractor from the approved list.

6.2 DISQUALIFICATION OF PROGRAM

The NJDOE will evaluate the Facilitated IEP program at the conclusion of the pilot year. Program success will be determined based on data collected, including feedback from participating districts and parents, as well as the number of mediation and due process requests filed by/against the pilot districts. Continuation of the program and possible statewide application will be determined by the NJDOE.

7.0 PRICE SCHEDULE

Instruction: Approved Consultant Contractors (i.e., IEP Facilitators) shall be reimbursed as follows:

Price Line No.	Description	Unit	Unit Price
01 RFP Section 3.1.3 A	Facilitate IEP Meeting	Task	\$500.00
02 RFP Section 3.1.3 B	Attendance at Mandatory Training Sessions	Task	\$50.00

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1. **STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT**- Unless the bidder/offeror is specifically instructed otherwise in the Request for Proposals (RFP), the following terms and conditions shall apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in the RFP and should be read in conjunction with same unless the RFP specifically indicates otherwise. In the event that the bidder/offeror would like to present terms and conditions that are in conflict with either these terms and conditions or those set forth in the RFP, the bidder/offeror must present those conflicts during the Question and Answer period for the State to consider. Any conflicting terms and conditions that the State is willing to accept will be reflected in an addendum to the RFP. The State's terms and conditions shall prevail over any conflicts set forth in a bidder/offeror's proposal that were not submitted through the question and answer process and approved by the State. Nothing in these terms and conditions shall prohibit the Director of the Division of Purchase and Property (Director) from amending a contract when the Director determines it is in the best interests of the State.
2. **STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS** - The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.
- 2.1 **BUSINESS REGISTRATION** – Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 *et seq.*) on all their sales of tangible personal property delivered into the State. 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 <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

- 2.2 **ANTI-DISCRIMINATION** - All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference.
- 2.3 **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] shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.
- 2.4 **AMERICANS WITH DISABILITIES ACT** - The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101, et seq.
- 2.5 **MACBRIDE PRINCIPLES** – The bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance 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 their compliance with those principles.
- 2.6 **PAY TO PLAY PROHIBITIONS** – Pursuant to N.J.S.A. 19:44A-20.13 et seq. (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;

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- 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.

2.7 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 (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/>.

2.8 STANDARDS PROHIBITING CONFLICTS OF INTEREST - The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

- a. No vendor 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 vendor 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.
- b. 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.
- c. No vendor 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 vendor to, any State officer or employee or special State officer or employee 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: 130-13g. 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 that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
- d. No vendor 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.
- e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee 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.
- f. The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of Executive Order No. 189.

2.9 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE - Pursuant to 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

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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.

- 2.10 COMPLIANCE - LAWS** - The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.
- 2.11 COMPLIANCE - STATE LAWS** - It is agreed and understood that any contracts and/or orders placed as a result of [this proposal] shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the STATE OF NEW JERSEY.
- 3. STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT**
- 3.1 COMPLIANCE - CODES** – The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.
- 3.2 PUBLIC WORKS CONTRACTOR REGISTRATION ACT** - The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who 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.
- 3.3 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS** - 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.

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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.
 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.
- 3.4 **BUILDING SERVICE** – Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.
- 3.5 **THE WORKER AND COMMUNITY RIGHT TO KNOW ACT** - The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the statute.
- 3.6 **SERVICE PERFORMANCE WITHIN U.S.** – Under 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.

A shift to performance 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, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b)(1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

- 3.7 **BUY AMERICAN** – Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the contractor shall be required to so certify.

4. INDEMNIFICATION AND INSURANCE

- 4.1 **INDEMNIFICATION** - The contractor's liability to the State and its employees in third party suits shall be as follows:
- (a) Indemnification for Third Party Claims - 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 which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract, including 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.
 - (b) The contractor's indemnification and liability under subsection (a) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions.
 - (c) In the event of a patent and copyright claim or suit, the contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

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- 4.2 INSURANCE** - The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best & Company. The contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof, and the certificates shall reflect that the insurance policies shall not be canceled for any reason except after sixty (60) days written notice to the State. Certificates of renewals shall be provided within thirty (30) days of the expiration of the insurance. The contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, PO Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancellation shall be emailed to the State at:

ccau.certificate@treas.state.nj.us

The insurance to be provided by the contractor shall be as follows:

- a. Occurrence Form Comprehensive General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Comprehensive General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic, unamended, and unendorsed Comprehensive General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage.
- 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. The State must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property.
- 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. This \$1 million amount may have been raised by the RFP when deemed necessary by the Director.
- e. In the case of a contract entered into pursuant to N.J.S.A. 52:32-17, et.seq., (small business set asides) the minimum amount of insurance coverage in subsections a., b., and c. above may have been lowered in the RFP for certain commodities when deemed in the best interests of the State by the Director.

5. TERMS GOVERNING ALL CONTRACTS

- 5.1 CONTRACTOR IS INDEPENDENT CONTRACTOR** – The contractor's status shall be that of any independent contractor and not as an employee of the State.
- 5.2 CONTRACT AMOUNT** - The estimated amount of the contract(s), when stated on the RFP form, shall not be construed as either the maximum or minimum amount which the State shall be obliged to order as the result of the RFP or any contract entered into as a result of the RFP.
- 5.3 CONTRACT TERM AND EXTENSION OPTION** - If, in the opinion of the Director, it is in the best interest of the State to extend a contract, the contractor shall be so notified of the Director's Intent at least thirty (30) days prior to the expiration date of the existing contract. The contractor shall have fifteen (15) calendar days to respond to the Director's request to extend the term and period of performance of the contract. If the contractor agrees to the extension, all terms and conditions including pricing of the original contract shall apply unless more favorable terms for the State have been negotiated.
- 5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK** – The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, the Director shall provide to the contractor advance written notice of the change in scope of work and what the

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Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- (a) If the contractor does not agree with the Director's proposed adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price.
- (b) If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

5.5 CHANGE IN LAW – Whenever a change in applicable law or regulation affects the scope of work, the Director shall provide written notice to the contractor of the change and the Director's determination as to the corresponding adjusted change in the scope of work and corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- (a) If the contractor does not agree with the adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the adjusted contract price. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price.
- (b) If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

5.6 SUSPENSION OF WORK - The State may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the contract price. The contractor shall provide whatever information that Director may require related to the equitable adjustment.

5.7 TERMINATION OF CONTRACT

- a. For Convenience
Notwithstanding any provision or language in this contract to the contrary, the Director may terminate this contract at any time, in whole or in part, for the convenience of the State, upon no less than thirty (30) days written notice to the contractor.
- b. For Cause
 - 1. Where a contractor fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17: 12-4.2 et seq., the Director may terminate the contract, in whole or in part, upon ten (10) days notice to the contractor with an opportunity to respond.
 - 2. Where in the reasonable opinion of the Director, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days notice to the contractor with an opportunity to respond.
- c. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond.
- d. In the event of termination under this section, the contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

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5.8 **SUBCONTRACTING OR ASSIGNMENT** –

- a. **Subcontracting**: The contractor may not subcontract other than as identified in the contractor's proposal without the prior written consent of the Director. Such consent, if granted in part, shall not relieve the contractor of any of his responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws.
- b. **Assignment**: The contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Director.

5.9 **NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND STATE** - Nothing contained in any of the contract documents, including the RFP and vendor's bid or proposal shall be construed as creating any contractual relationship between any subcontractor and the State.

5.10 **MERGERS, ACQUISITIONS** - If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than thirty (30) days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within thirty (30) days of the request. Failure to do so may result in termination of the contract for cause.

If, at any time during the term of the contract, the contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity 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 shall be made until all parties to the dissolved business entity submit the required documents to the Director.

5.11 **PERFORMANCE GUARANTEE OF CONTRACTOR** - The contractor hereby certifies that:

- a. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.
- b. All equipment supplied to the State and operated by electrical current is UL listed where applicable.
- c. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the State. The contractor shall render prompt service without charge, regardless of geographic location.
- d. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters.
- e. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice.
- f. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract.
- g. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

5.12 **DELIVERY REQUIREMENTS** -

- a. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract.
- b. The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract and in accordance with good commercial practice.
- c. Items delivered must be strictly in accordance with the contract.
- d. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

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- 5.13 APPLICABLE LAW AND JURISDICTION** - This contract 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 and shall be filed in the appropriate Division of the New Jersey Superior Court.
- 5.14. CONTRACT AMENDMENT** – Except as provided herein, the contract may only be amended by written agreement of the State and the contractor.
- 5.15 MAINTENANCE OF RECORDS** - The contractor shall maintain records for products and/or services delivered against the contract for a period of five (5) years from the date of final payment unless otherwise specified in the RFP. Such records shall be made available to the State, including the Comptroller, for audit and review.
- 5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)** - The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract.

In connection with this assignment, the following are the express obligations of the contractor:

- a. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder.
- b. It shall advise the Attorney General of New Jersey:
 1. in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;
 2. immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- c. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey.
- d. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

6. TERMS RELATING TO PRICE AND PAYMENT

- 6.1 PRICE FLUCTUATION DURING CONTRACT** - Unless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract.

In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price 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 price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1.

- 6.2 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.

6.3 PAYMENT TO VENDORS -

- a. The using agency(ies) is (are) authorized to order and the contractor is authorized to ship only those items covered by the contract resulting from the RFP. If a review of orders placed by the using agency(ies) reveals that goods and/or services other than that covered by the contract have been ordered and delivered, such delivery shall be a violation of the terms of the contract and may be considered by the Director as a basis to terminate the contract and/or not award the contractor a subsequent contract. The Director may take such steps as are necessary to have the items returned by

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- the agency, regardless of the time between the date of delivery and discovery of the violation. In such event, the contractor shall reimburse the State the full purchase price.
- b. The contractor must submit invoices to the using agency with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily completed or delivered. For commodity contracts, the invoice, together with the original Bill of Lading, express receipt and other related papers must be sent to the State Contract Manager or using agency on the date of each delivery. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work section of the RFP and must be in strict accordance with the firm, fixed prices submitted for each task or subtask on the RFP pricing sheets. When applicable, invoices should reference the appropriate RFP price sheet line number from the contractor's bid proposal. All invoices must be approved by the State Contract Manager or using agency before payment will be authorized.
 - c. In all time and materials contracts, the State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls.
 - d. The contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Chief of Operations, Division of Revenue, P.O. Box 628, Trenton, NJ 08646.

6.4 OPTIONAL PAYMENT METHOD: P-CARD - The State offers contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State agency's use of the p-card are optional. P-card transactions do not require the submission of a contractor invoice; purchasing transactions using the p-card will usually result in payment to a contractor in three (3) days. A contractor should take note that there will be a transaction-processing fee for each p-card transaction. To participate, a contractor must be capable of accepting the MasterCard. Additional information can be obtained from banks or merchant service companies.

6.5 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 State 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 State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds \$5.00 per properly executed invoice.

Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

6.6 AVAILABILITY OF FUNDS – The State's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues 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 appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenues.

Agreement Number
C.-----

ATTACHMENT 2

NEW JERSEY DEPARTMENT OF EDUCATION

CONSULTANT AGREEMENT

Agreement made the ___day of ___ between the New Jersey Department of Education (DOE) and _____ Consultant).

THE DEPARTMENT OF EDUCATION AND (CONSULTANT) desire to enter into an agreement whereby the CONSULTANT will perform certain professional services as an independent contractor.

In consideration of the mutual promises in this agreement, the CONSULTANT agrees to perform the professional services set forth in paragraph 1 with the standard of professional care and skill customarily provided in the performance of such services. In return, Department of Education agrees to pay the CONSULTANT such amounts as are specified upon the following conditions:

1. You are hereby retained by the New Jersey Department of Education as a CONSULTANT and shall perform the following services:

Total fee to be paid by DOE to the CONSULTANT for the services and travel in paragraph 1 shall not exceed \$_____ and shall be paid for work actually performed or completed over the life of this agreement as follows:

Department of Education shall not be liable for any other costs or expenses in connection with CONSULTANT's work not detailed in paragraph 1. Any additional services beyond those set forth in paragraph 1 above shall be performed by the CONSULTANT only after an agreement in writing between CONSULTANT and Department of Education is executed:

2. Payment shall be made by the New Jersey State Department of Education (DOE) in accordance with the prompt payment act N.J.S.A. 52:32-32 et seq.
3. CONSULTANT is an independent contractor and shall not be considered an employee or agent of the Department of Education or the State of New Jersey. CONSULTANT acknowledges full responsibility for compliance with all Federal, State, and City tax regulations regarding taxes that may accrue on the fee paid as a result of services rendered by the Department of Education.
4. CONSULTANT agrees to hold the Department of Education, State of New Jersey and their officers and employees harmless, and to defend and indemnify them against all

claims, actions, liability, damage, loss and expenses by reason of injury, illness or death to any person or damaged property arising or alleged to have arisen out of CONSULTANT's actions or inactions in connection with this agreement.

5. The Department of Education reserves the right to suspend indefinitely or to terminate this contract and the services to be rendered by CONSULTANT without cause at any time. In the event of such suspension or termination prior to completion of work set forth in paragraph 1 above, CONSULTANT shall not be liable for any other item or amount. Any such termination or suspension shall not affect the Department of Education or CONSULTANT's other obligations under the terms of this Agreement.
6. CONSULTANT, during the period of this Agreement, shall not, without prior written consent of the Department of Education, enter into any arrangement, contract, or employment or engage in any other activity that will conflict or negatively impact performance with the task undertaken pursuant to this Agreement.
7. CONSULTANT, shall not assign or subcontract any of the work or services covered by this Agreement nor shall any interest in the Agreement be assigned or transferred without prior written approval by the Department of Education.
8. CONSULTANT recognizes that all records, information and materials that are received by CONSULTANT, or copies made by CONSULTANT of these records, information and materials are and shall remain the property of Department of Education and shall be returned at the termination of this Agreement or at the specific request of Department of Education.
9. CONSULTANT agrees to keep all such records, information and materials confidential. If CONSULTANT receives any pupil records while fulfilling its obligations pursuant this agreement, CONSULTANT agrees to maintain their confidentiality pursuant to the dictates of Federal and State law including, but not limited to, 20 U.S.C. 1232G; N.J.S.A. 18a:36-19; N.J.A.C. 6:3-6.1 et seq.
10. CONSULTANT shall disclose promptly to the Department all inventions, discoveries, formulas, processes computer programs, algorithms, design trade secrets, workshop authorship whether or not fixed in a tangible medium of expression and other information and know-how (collectively hereinafter "TECHNOLOGY") made, discovered or developed by CONSULTANT either alone or in conjunction with any other person or entity associated with Department of Education during the term of this Agreement. CONSULTANT agrees that a TECHNOLOGY made, discovered, developed, authored, prepared or conceived by CONSULTANT in connection with the furtherance of this Agreement, whether alone or in combination with another, whether or not on Department of Education's premises, shall belong exclusively to Department of Education. CONSULTANT waives all rights whatsoever in the TECHNOLOGY including the right to prepare derivative works. CONSULTANT acknowledges work of authorship shall be deemed work made for hire.
11. To the extent permitted by external funding agreements CONSULTANT agrees to and hereby does assign all rights, title and interest in and to any TECHNOLOGY made, discovered, developed, authorized, prepared or conceived by CONSULTANT in connection with the furthermore of the agreement to the Department of Education. The

Department of Education shall have all rights and property interests arising from or in connection with the TECHNOLOGY. CONSULTANT agrees to cooperate with and provide all reasonable assistance to the Department of Education, its designees, assignees or licensees in connection with the foregoing.

12. CONSULTANT has no actual authority, nor shall the CONSULTANT give the impression of having apparent authority, to bind or represent Department of Education with regard to any third parties.
13. ANTI-DISCRIMINATION – CONSULTANT agrees not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder.
14. AMERICAN with DISABILITIES ACT – the CONSULTANT must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101 et seq.
15. PREVAILING WAGE ACT – The New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.26 et seq. is hereby made a part of this agreement. CONSULTANT’s signature on this agreement is CONSULTANT’s guarantee that none of those persons who will perform the work under this agreement have been suspended or debarred by the Commissioner, Department of Labor, for violation of the provisions of the Prevailing Wage Act.
16. INSURANCE – The CONSULTANT shall secure and maintain in force for the term of the contract liability insurance as follows:
 - a. General liability policy as broad as the standard coverage forms currently in use in the state of New Jersey which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall be endorsed to include:
 1. BROAD FORM COMPREHENSIVE GENERAL LIABILITY
 2. PRODUCTS/COMPLETED OPERATIONS
 3. PREMISES/OPERATIONS

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:

\$100,000 BODILY INJURY, EACH OCCURRENCE
\$100,000 DISEASE EACH EMPLOYEE
\$500,000 DISEASE AGGREGATE LIMIT.

17. MAINTENANCE OF RECORDS – The CONSULTANT shall maintain records for products and/or services delivered against the contract for a period of three (3) years from the date of final payment. Such records shall be made available to the Department upon request for purposes of conducting an audit or for ascertaining information regarding dollar volume or number of transactions.
18. 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 State 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 State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest will not be paid until it exceeds \$5.00 per properly executed invoice. Case discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.
19. STANDARDS PROHIBITING CONFLICTS OF INTEREST – The following prohibitions on vendor activities shall apply to all contracts of purchase agreements made with the State of New Jersey, pursuant to executive Order No. 189 (1988).
 - a. No vendor shall pay, offer 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 vendor 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-i, 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.
 - b. 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.
 - c. No vendor 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 vendor to, any State officer or employee, or special State officer or employee, 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 that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

- d. No vendor 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 judgement of said officer or employee.
- e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee 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.
- f. The provisions cited above in paragraph 20a. through 20e. shall not be construed to prohibit a State office or employee or special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 20c.

21. During the performance of this contract, the CONSULTANT agrees as follows:

The consultant 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 or sex. The consultant 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 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 consultant 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 the nondiscrimination clause.

22. NOTICE OF ALL STATE VENDORS OR SET-OFF FOR STATE TAX

Please be advised that 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 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 so much of that payment as shall be necessary to satisfy the indebtedness. The amount set-off shall not allow for the deduction of any expense 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 of the set-off to the taxpayer, partner or shareholder and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No request for conference, protest, or subsequent appeal to the Tax Court from any protest shall stay the

