



May 15, 2012

**REQUEST FOR PROPOSALS (RFP)**

The New Jersey Schools Development Authority (NJSDA) is seeking quotes for from qualified firms who have a background in inter-state relocation of technology and data centers.

The Long Range Facility Plan system (LRFP) was developed by VFA, Inc. in 2005 for the New Jersey Department of Education (NJDOE) and Local School Districts. These systems are now being relocated from their present hosting location in Boston, MA to West Trenton, NJ. The systems are configured on sixteen file servers running Java based web platform, a Documentum electronic document management application and an Oracle database. The environment is configured with multiple web servers and a redundant database to ensure that the system is readily available should any single component fail.

NJSDA and NJDOE are flexible in the amount of down time expected for the relocation process. It is expected that the LRFP systems will be off-line for a minimum of one week during the scheduled relocation.

**NOTICE OF INTENT TO PARTICIPATE**

All firms wishing to submit a proposal **must** sign in electronically by sending a mandatory e-mail Notice of Intent to Participate to Daryl Johnson at [djohnson@njsda.gov](mailto:djohnson@njsda.gov) **no later than 2:00 PM on May 18, 2012.**

Firms may submit questions to the NJSDA by sending them by e-mail to Daryl Johnson at [djohnson@njsda.gov](mailto:djohnson@njsda.gov) **no later than 2:00 PM on May 18, 2012.** The questions and NJSDA answers will be provided electronically to each firm that submitted a timely e-mail Notice of Intent to Participate.

**PROPOSAL SUBMISSION**

Completed proposal addressed to Daryl Johnson, Procurement Analyst, NJ Schools Development Authority, P.O. Box 991, 1 West State Street (Wells Fargo Bank Building), Trenton, NJ 08625-0991 must be received **no later than 2:00 PM on May 25, 2012.** Proposal may also be emailed to [djohnson@njsda.gov](mailto:djohnson@njsda.gov) or faxed to 609-656-4642.

Any firm responding to this RFP shall thoroughly familiarize itself with the RFP to ensure responsiveness in its submission. To be considered complete, your submission must include:

1. Price Proposal
2. NJ Business Registration Certificate

The NJSDA will review all responsive proposals and determine the successful proposal based on the fee proposed and your firm's ability to complete the work in accordance with the Scope of Services.

This RFP consists of the following:

1. Attachment A: Scope of Services
2. Attachment B: System Equipment List
3. Attachment C: System Architectural Outline
4. Attachment D: Price Proposal
5. Attachment E: NJSDA Standard Terms and Conditions

### **NJ BUSINESS REGISTRATION**

Pursuant to N.J.S.A. 52:32-44(b), as amended by P.L. 2004, c. 57, each proposing firm must provide proof of valid business registration with the Division of Revenue of the New Jersey Department of the Treasury (the “Division of Revenue”) in its Proposal.

Any subcontracted firm must provide a firm selected as a Contractor with a copy of its business registration, which the Contractor must forward to the NJSDA. No firm selected as a Contractor may enter into any subcontract with a firm that has not provided proof of valid business registration to the selected firm, for forwarding to the NJSDA. The NJSDA shall duly file all business registrations with the other procurement documents relating to the contract. **Business registrations of proposed subcontractors, if any, are NOT required to be included in a firm’s Proposal.**

Firms may obtain New Jersey Business Registration assistance by going on-line to [www.state.nj.us/treasury/revenue/gettingregistered.shtm](http://www.state.nj.us/treasury/revenue/gettingregistered.shtm) or by calling the New Jersey Department of Treasury at (609) 292-9292. Please be advised, however, that business registrations are mailed generally within seven to ten days, so firms should plan accordingly.

### **PRE-AWARD REQUIREMENTS**

After determination of the successful bidder, the NJSDA shall request the following information prior to the award of the contract:

(a) **Political Contributions.** P.L. 2005, c. 51 amended and supplemented N.J.S.A. 19:44A-20.1 et seq., and superseded Executive Order 134 (2004), addresses the effect of political contributions on State contracting. Additionally, Executive Order 117 (2008), which is designed to enhance New Jersey’s efforts to protect the integrity of government contractual decisions and increase the public’s confidence in government. The Executive Order builds on the provisions of P.L. 2005, c. 51 (“Chapter 51”), which limits contributions to certain political candidates and committees by for-profit business entities that are, or seek to become, State government vendors. Accordingly, a selected Firm will be required to respond in a timely fashion to certification and disclosure requirements that will be stated in the Notice of Award issued by the NJSDA.

**Requirements for Selected Firm.** The Firm shall receive a Notice of Award that will, among other things, notify the Firm that it must submit a Certification and Disclosure of Political Contributions form and Business Entity Disclosure form as provided by NJSDA. Failure to submit these forms in a timely fashion shall be cause for rejection of the Firm.

**Firm’s Continuing Obligation to Comply with P.L. 2005, c. 51.** The Firm shall be required on a continuing basis to disclose and report to NJSDA any contributions made during the contract term by the Business Entity on forms provided by NJSDA, at the time it makes the contribution.

**(b) Political Contributions Disclosure.** Firms are advised of their 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-20.18 and 20.19 (P.L. 2005, c. 271, section 3), in the event they receive contracts in excess of \$50,000 from a public entity in a calendar year. It is a Firm’s responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at [www.elec.state.nj.us](http://www.elec.state.nj.us).

**(c) Outsourced Services Special Provisions.** Under P.L. 2005, c. 92 (formerly Executive Order No. 129 (2004)), the NJSDA shall not award a contract to a bidder that submits a bid proposal to perform services, or to subcontract with a firm to perform services, outside the United States, unless certain conditions is met. If, during the term of the contract, the Contractor or subcontracted firm, 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 Agreement, unless the Senior Director of the NJSDA Division of Procurement and Contract Services shall have first determined in writing that extraordinary circumstances require a shift of services or that a failure to shift the services would result in economic hardship to the NJSDA or the State.

**(d) Anti-Discrimination Requirements.** In addition, the Contractor shall not discriminate in employment and shall abide by all anti-discrimination laws including those contained within N.J.S.A. 10:5-1 et seq. and all rules and regulations issued there under, including N.J.A.C. 17:27-1.1 et seq. **Accordingly, a firm shall be required to submit to the NJSDA, with its executed Agreement, one of the following three documents:**

- (1) appropriate evidence that the contractor is operating under an existing Federally approved or sanctioned affirmative action program;
- (2) a certificate of employee information report approval issued in accordance with N.J.A.C. 17:27-4.2; or
- (3) an initial employee information report (Form AA302) provided by the NJSDA and completed by the contractor in accordance with N.J.A.C. 17:27-4.2.

**(e) Insurance and Indemnification.** The successful Firm shall be required to provide evidence of the insurance coverages required by this document, at the time of execution of the Agreement. In addition, proposing Firms should take note of the provisions for indemnification of the NJSDA. Please ensure that the NJSDA (the “Authority”), the New Jersey Economic Development Authority (the “NJEDA”), and the State of New Jersey, Department of Education, Hosted Solutions, VFA and their respective directors, officers, members, employees and agents shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 (or a substitute form providing equivalent coverage), and under the Commercial Umbrella, if any. In addition, the Consultant may also be required to name other parties as additional insureds prior to the initiation of Services. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Authority.

**(f) Moral Integrity Review.** The successful Firm shall be required to submit to the NJSDA a completed Moral Integrity Questionnaire for submission to the New Jersey State Police, in the form to be provided by the NJSDA. Moral Integrity approval is a prerequisite for contract award.

## **QUESTIONS**

Please direct all questions concerning this RFP to Daryl Johnson, Procurement Analyst, at 609-292-8775 or [djohnson@njsda.gov](mailto:djohnson@njsda.gov).

## ATTACHMENT A

### SCOPE OF SERVICES

#### **LRFP Data Center Relocation Services**

The vendor selected for the relocation services will be required to perform the following steps and provide documented deliverables in planning, packing, moving and setup of LRFP application and data systems.

1. Define the Present Method of Operation (PMO)
  - a. The awardee will visit the existing hosting center in Boston, MA to identify and validate the equipment to be moved from Boston, MA to West Trenton, NJ.
  - b. NJSDA and the Application Developer will define the current method of operation along with the appropriate methods required to shut down systems, re-start systems as well as system requirements to bring systems back online once relocated to West Trenton, NJ.
2. Define and fitout of the New Future Site Requirements (NFS)
  - a. NJSDA in conjunction with NJDOE will identify the configuration, design and fitout of the New Future Site located in West Trenton, NJ. NJSDA will provide a written description of system positioning, network configuration along with network diagrams of the West Trenton, NJ data center to the awardee.
3. Design a plan to move PMO → NFS
  - a. The awardee will provide a written description of how systems will be packed, transported and setup in the new data center.
  - b. The Application Developer will be in Boston, MA to physically shut down the existing systems in preparation for packing and shipping.
4. Prepare the Implementation Plan including Project Risks
  - a. The awardee will provide a written IT technology plan which must include a project timeline as well as any identified risks as well as recommendations to mitigate any possible risks identified. Systems must be removed from Boston, MA hosting center no later than end of business June 23, 2012.
5. Physically shutdown, pack and transport systems from Boston, MA to West Trenton, NJ
  - a. The Application Developer will be onsite in Boston, MA to shut down system in preparation for the move.
  - b. The awardee will label each piece of equipment so they can more easily be reassembled, breakdown systems to manageable movable units, securely pack systems with protective wrap and boxes, and ship systems from Boston, MA to West Trenton, NJ ensuring systems security throughout the point to point travel path.
  - c. The equipment may not be left unaccompanied while in transport.
6. Physically setup and test equipment systems in new operating area
  - a. The awardee will reassemble, power up and test the system hardware in the new West Trenton, NJ data center.
  - b. Application testing will be performed by NJSDA, NJDOE and the Application Developer.

Access to current hosting center will be facilitated through the existing Application Developer: VFA, Inc. - 266 Summer Street, Boston, MA; <http://www.vfa.com/> . *Note: Point of contact will be provided to the awardee.*

The current Hosting Center is located: Hosted Solutions, LLC - 500 Rutherford Ave # 303, Charlestown, MA 02129-1647; <http://www.hostedsolutions.com/>. *Note: Point of contact will be provided to the awardee.*

The new data center will be located at: Marie Katzenbach School for the Deaf, 320 Sullivan Way, West Trenton, NJ 08628; <http://www.mksd.org/>

**ATTACHMENT B**

**SYSTEM EQUIPMENT LIST**

**LRFP Data Center Relocation Services**

	<b>Product Description</b>	<b>Support Description</b>
1	HP DL360G4 X3.4 2GB SCSI RPS US Rck Svr	Post Warranty Service, 4-Hour, 24x7 Onsite, HW Support, 1 year
2	HP DL380R04 X3.6/800-1MB HPM US Server	Post Warranty Service, 4-Hour, 24x7 Onsite, HW Support, 1 year
3	HP DL380R04 X3.6/800-1MB HPM US Server	Post Warranty Service, 4-Hour, 24x7 Onsite, HW Support, 1 year
4	HP DL380R04 X3.6/800-1MB HPM US Server	Post Warranty Service, 4-Hour, 24x7 Onsite, HW Support, 1 year
5	HP DL380R04 X3.6/800-1MB HPM US Server	Post Warranty Service, 4-Hour, 24x7 Onsite, HW Support, 1 year
6	HP DL360G4 X3.4GHz 1P SCSI US Rck Server	Post Warranty Service, 4-Hour, 24x7 Onsite, HW Support, 1 year
7	HP DL360G4 X3.4GHz 1P SCSI US Rck Server	Post Warranty Service, 4-Hour, 24x7 Onsite, HW Support, 1 year
8	HP DL360G4 X3.4 2GB SCSI RPS US Rck Svr	Post Warranty Service, 4-Hour, 24x7 Onsite, HW Support, 1 year
9	HP DL360G4 X3.4 2GB SCSI RPS US Rck Svr	Post Warranty Service, 4-Hour, 24x7 Onsite, HW Support, 1 year
10	HP DL360G4 X3.4 2GB SCSI RPS US Rck Svr	Post Warranty Service, 4-Hour, 24x7 Onsite, HW Support, 1 year
11	HP DL360G4 X3.4 2GB SCSI RPS US Rck Svr	Post Warranty Service, 4-Hour, 24x7 Onsite, HW Support, 1 year
12	HP DL360G4 X3.4 2GB SCSI RPS US Rck Server	Post Warranty Service, 4-Hour, 24x7 Onsite, HW Support, 1 year
13	HP DL360G4 X3.4 2GB SCSI RPS US Rck Server	Post Warranty Service, 4-Hour, 24x7 Onsite, HW Support, 1 year
14	HP DL360G4 X3.4 2GB SCSI RPS US Rck Svr	Post Warranty Service, 4-Hour, 24x7 Onsite, HW Support, 1 year
15	HP DL360G4 X3.4 2GB SCSI RPS US Rck Svr	Post Warranty Service, 4-Hour, 24x7 Onsite, HW Support, 1 year

<b>Equipment</b>	<b>Manufacturer</b>	<b>S/N</b>	<b>Description</b>
EMC - Fiber	EMC	MC5T2022260	SAN
EMC - Fiber	EMC	MC5T2022265	SAN
EMC - Netwin	CX300	WCANW5BYQ361	SAN
EMC - Storage	CX300	APM00045201247	SAN
EMC - Storage	CX300	APM00045005516	SAN
EMC - Power	CX300	AC105043800249	SAN
TAPE DRIVE	HP STORAGE WORKS	TBD	BACKUP TAPE
TAPE DRIVE MAINTENANCE	HP	N/A	BACKUP TAPE
NETBACKUP SOFTWARE	SYMANTEC	N/A	BACKUP TAPE

## ATTACHMENT C

### SYSTEM ARCHITECTURAL OUTLINE

#### **LRFP Data Center Relocation Services**

##### I. LRFP System Overview

The existing [LRFP system](#) provides a mechanism for New Jersey school districts to communicate strategic facilities information, including projected enrollments and anticipated construction projects, to the DOE for their review and approval. The DOE and other government agencies also use the system to review specific district information, assess statewide school facility's needs, and determine state funding eligibility.

All school districts with students enrolled in district-operated facilities are required to maintain a five-year LRFP. Proposed school construction projects must be accurately represented in an approved LRFP in order to receive DOE approval. The LRFP must be amended at least once every five years or as needed when a school construction project is advanced.

LRFP reporting elements include historic and projected enrollments; site, building, and room inventories; capital maintenance needs; proposed facilities upgrades to meet capacity and educational needs; and projected yearly budgets. The LRFP system uses the data to calculate critical LRFP and project approval criteria, such as school capacity and state funding. Data is also used by other government agencies to assess state-wide conditions and funding.

The LRFP system consists of the following five components:

##### 1. Web based application and database

The system utilizes a web based application with an Oracle database for storage. The software system is deployed on a scalable and reliable hardware platform set but the hardware has exceeded its useful expected life. Both the application and database are configured so users are not impacted even during peak utilization.

##### 2. Data collection

The LRFP system collects detailed data for each school district pertaining to historic and projected enrollments, district-operated assets, and proposed facilities changes. School districts and their consultants are typically responsible for updating the data although the DOE may at times edit data to facilitate approval. The DOE is responsible for updating historic enrollments each year.

##### 3. Document storage

LRFP reporting requirements for each district include the submission of supporting documentation, such as site and floor plans, program information, correspondences, and Board of Education approvals, to the DOE. DOE documentation includes review and approval letters. LRFP system users should be able to upload these documents directly into the system where they are permanently archived.

##### 4. LRFP and project approval tracking

The current system tracks workflow and the various approval stages of a LRFP (in progress, in review, deficient, draft approval, final approval, amendable, etc.).

All DOE approval letters are currently processed with an electronic signature and stored in an integrated electronic document management system.

## 5. Data analysis and reports

The LRFP system provides automated reports that both summarize district data and perform calculations to facilitate the review and approval of the LRFP and subsequent projects. Critical calculations include the determination of educational adequacy in accordance with State laws and regulations, school capacities according to three different methodologies, and funding eligibility. Data is assessed on both a district-level and statewide to facilitate comparison among multiple districts. Complex reports are scheduled through reporting services.

## II. Application Details

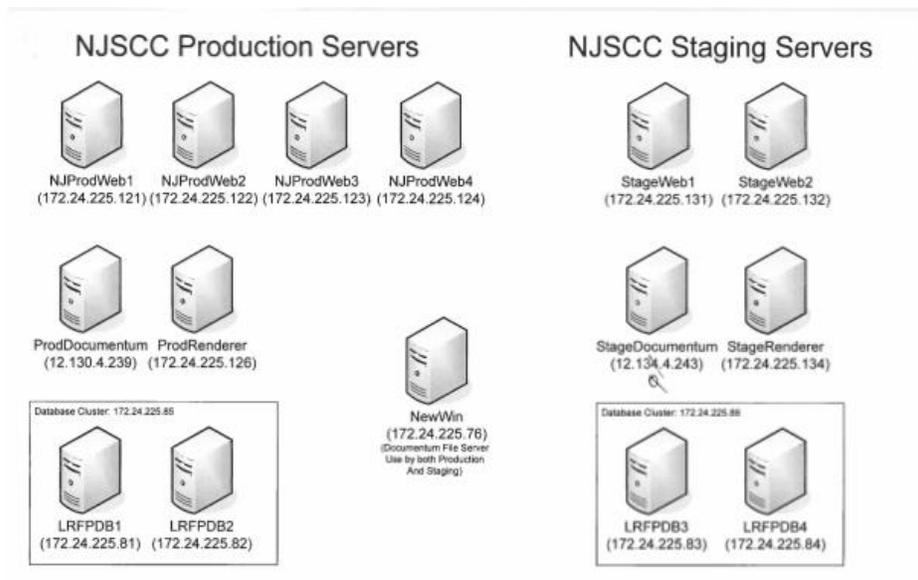
The LRFP database was developed as a custom solution by VFA, Inc. in 2004 and 2005. The system is running on a Java platform, a Documentum electronic document management application and an Oracle database. The environment is configured to perform load balancing using multiple web servers and a fault tolerant database to ensure that the system is readily available should any one component fail.

In addition to the production environment, the system includes a parallel staging environment which allows system changes to be thoroughly tested without impacting the production application or data. Like production, the staging area includes multiple web servers and fault tolerant database servers.

## III. File Server Environment

The LRFP system is comprised of fifteen (15) file servers. Eight (8) servers are dedicated to the production environment, six (6) are dedicated to the staging area and one (1) is shared by both environments.

The web and Documentum servers are running Windows 2003 and the Web Servers are running JBOSS internet services. The database servers are running on Linux platforms. The server environment is connected through via Cisco 2948G 10/100 MB Ethernet switch and 2 GB fiber fabric switch.



**Figure 1: Server Layout**

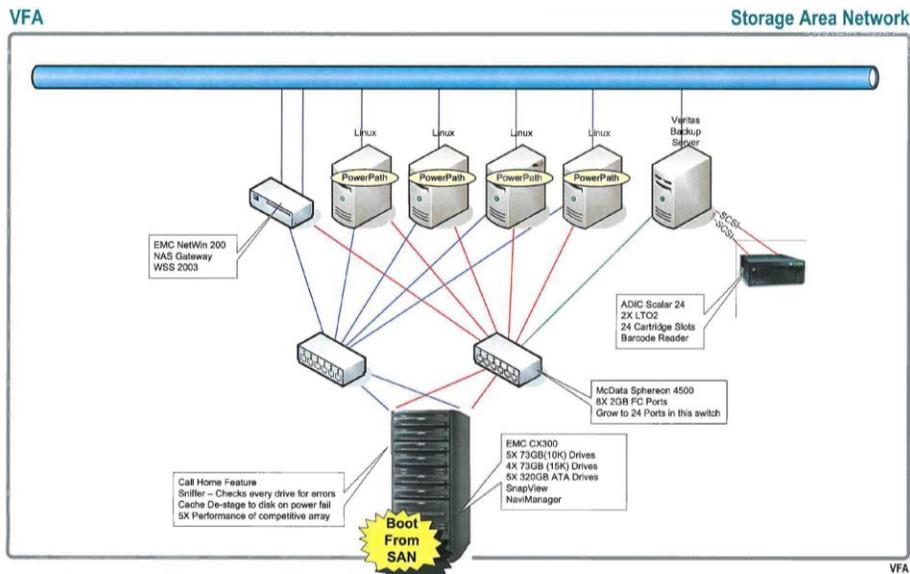
The web servers (NJProdWeb1 through 4) provide web based application access to the oracle database through the LRFPDB1 and DB2 servers as well as reporting services. The database storage is located on the CX300 SAN. Load balancing is managed through RadWare's AppDirector appliance.

Reports are managed through a report service running on each web server. Users report requests are placed in queue where they are executed through reporting services, the data is compiled and converted PDF output, the PDF files are stored on the document management system with version information and a link to the report is inserted in the LRFP database. Users are alerted when reports are available.

The Documentum servers (ProdDocumentum and ProdRenderer) render and index files into the document management system. The indexed documents are stored on the CX300 SAN and a link to the report is inserted in the LRFP database.

#### IV. Storage and Database Environments

The SAN storage and database servers configured on a 2.0 gbit backbone configured with multipath redundancy using a [McData Sphereon 4500](#) Fabric Switches. There is a EMC NetWin 200 NAS Gateway allowing Windows 2003 based servers to access data points on the [EMC CX300](#) SAN. The CX300 storage environment includes nine (9) 73GB drives and five (5) 320 GB drives. The environment includes a HP Storage Works System with a [ADIC Scalar LTO-2 24-tape Library](#) running Symantec Backup.



**Figure 2: Fiber Fabric**

## V. Systems Data and Storage

The EMC 300 SAN consists of nine 73GB drives and five 320GB drives. The Nine 72GB drives are divided into two logical drives configured as Raid level 5 yielding 220GB partitions. These are used for OS and application controls. The five 320GB drives are configured as RAID 5 yielding 1.2TB of total data storage. The 1.2 TB of storage is divided into two logical partitions to store both database files and Documentum document images.

The system has far more disk capacity than required by the existing 1.2 TB of total data storage. The oracle database absorbs 12GB of storage and the document storage absorbs 64GB of storage.

## VI. Systems Software and Versions

### [Oracle Database version 10.1](#)

Documentum server – Documentum version 5.2.5

Documentum Administrator

Documentum Application Builder 5.2.5

Documentum Application Installer 5.2.5

Documentum Content Server 5.2

Documentum DFC Runtime Environment

Documentum Webtop

Documentum document renderer software is running on the ProdRenderer server

Java 2 Runtime Environment, SE v1.4.2\_06

Java 2 SDK, SE v1.4.2\_06

JBOSS:

Windows 2003:

Linux:

## VII. Vendor information

### Application Developer

- VFA - 266 Summer Street, Boston, MA
- Phone - (617) 451-5100
- Contact - Tim Dunn
- <http://www.vfa.com/>

### Hosting location

- Hosted Solutions, LLC - 500 Rutherford Ave # 303, Charlestown, MA 02129-1647
- Phone - (617) 305-1400
- <http://www.hostedsolutions.com/>

## VIII. Shared System Infrastructure

VFA provides the State of NJ along with its other client's access to systems through several shared components which are owned and operated by VFA. These components are noted below.

1. Check Point UTM-1 570 Firewall
2. Router
3. T3 Internet off load is provided in the hosting center of which 1.5 mb (aka T1) is apportioned the State of NJ LRF Application.
4. RadWare AppDirector assures application access, full application continuity and redundancy. AppDirector enables fine tuning of network behavior based on granular application-specific classification of packets to optimize traffic flows for enterprise applications and other web-based applications.

## IX. Client requirements - LRF System 2.1.2

1. Internet Explorer: 5.5 SP 2 or later (IE 6 SP1 + Q806515 w/ 256M recommended for Windows XP)
2. Operating System: Microsoft Windows 2000/XP
3. Screen Resolution: 800 x 600 or higher, 256 colors or higher
4. Internet Connection Speed: 56K (minimum), T1 (recommended)

5. Other Components: Adobe Reader 6.0 or later

**ATTACHMENT D**

**PRICE PROPOSAL**

**LRFP Data Center Relocation Services**

Lump Sum Bid\*: \$ \_\_\_\_\_

**\* Additional charges, if any, shall be detailed on a separate page and attached to this Price Proposal.**

I am duly authorized to sign this Price Proposal on behalf of the named firm.

Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Date: \_\_\_\_\_

## ATTACHMENT E

### NJSDA STANDARD TERMS AND CONDITIONS

#### LRFP Data Center Relocation Services

- I. The following terms and conditions will apply to the contract made with by New Jersey Schools Development Authority (“NJSDA”) to which these terms and conditions are annexed.
- II. All of the following terms and conditions will become a part of the contract. In the event the vendor’s terms and conditions conflict, these terms and conditions will prevail.
- III. The statutes, regulations, laws or codes cited are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.
- IV. The vendor’s status shall be that of an independent principal and not as an employee of the State of New Jersey or NJSDA.

#### **1. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL VENDORS**

**1.1 BUSINESS REGISTRATION** – Effective September 1, 2004, pursuant to an amendment to N.J.S.A. 52:32-44, State and local entities are prohibited from entering into a contract with an entity unless the vendor has provided a copy of its business registration certificate or interim registration as part of its bid submission. Submission of a copy of the Business Registration Certificate is a contractual requirement.

**1.2 SALES AND USE TAX** - The vendor, 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. This requirement shall apply to all contracts awarded on and after September 1, 2004. 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.htm>.

**1.3 NON-DISCRIMINATION AND AFFIRMATIVE ACTION** – All parties to any contract with NJSDA 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. 10:5-38, and all rules and regulations issued thereunder. The vendor and its subcontractors shall abide by affirmative action rules established by the New Jersey Department of the Treasury at N.J.A.C. 17:27-1.1 et seq. under P.L. 1975, c. 127, the small business set-aside rules for the procurement of goods and services established by the Commerce and Economic Growth Commission at N.J.A.C. 12A:10-1.1 et seq. and by Executive Order No. 71 (2003), and the affirmative action program established by the NJSDA pursuant to Section 48 of the Educational Facilities Financing and Construction Act, P.L. 2000, c. 72, and any rules and regulations associated therewith. The Consultant shall comply with the *MacBride* principles of nondiscrimination in employment, or have no business operations in Northern Ireland, under N.J.S.A. 52:34-12.2.

**1.4 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 NJSDA, except those contracts which are not within the contemplation of the Act. The vendor hereby guarantees that neither he nor any subcontractors

he might employ to perform the work covered by the contract has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act.

- 1.5 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> .
- 1.6 AMERICANS WITH DISABILITIES ACT** – The vendor 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.
- 1.7 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 NJSDA must be labeled by the vendor in compliance with the provisions of the Act.
- 1.8 OWNERSHIP DISCLOSURE** – Contracts for any work, goods or services cannot be issued to any corporation or partnership unless prior to or at the time of bid submission, the bidder has disclosed the names and addresses of all its owners holding 10% or more of the corporation or partnership’s stock or interest. Refer to N.J.S.A. 52:25-24.2.
- 1.9 COMPLIANCE – LAWS** – The vendor 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.
- 1.10 COMPLIANCE – STATE LAWS** – It is agreed and understood that any contracts entered into with NJSDA 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.
- 1.11 COMPLIANCE – CODES** – The vendor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The vendor will be responsible for securing and paying all necessary permits, where applicable.
- 1.12 POLITICAL CONTRIBUTIONS --** The vendor shall, on a continuing basis, disclose and report to the NJSDA any “contributions,” as that term is defined in P.L. 2005, c. 51 (formerly Executive Order No. 134 (2004)), made during the term of the contract by it or any “Business Entity,” as that term is defined in P.L. 2005, c. 51, associated with the vendor, on the “Disclosure of Political Contribution” form provided by the Authority, at the time such contribution is made. As part of this obligation, the vendor shall comply with Executive Order No. 117, which was issued to enhance New Jersey’s efforts to protect the integrity of government contractual decisions and increase the public’s confidence in government. The Executive Order builds on the provisions of P.L. 2005, c. 51 (“Chapter 51”), which limits contributions to certain political candidates and committees by for-profit business entities that are, or seek to become, State government vendors.
- 1.13 POLITICAL CONTRIBUTIONS DISCLOSURE.** The vendor shall comply with 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-20.13 (P.L. 2005, c. 271, section 3), in the event it receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the vendor’s responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at [www.elec.state.nj.us](http://www.elec.state.nj.us) .

**1.14 OUTSOURCING OF SERVICES.** In accordance with P.L. 2005, c. 92 (formerly Executive Order No. 129 (2004)), the vendor shall have a continuing duty to comply with the provisions of P.L. 2005, c. 92, as applicable. If, during the Term, the vendor or a subcontracted firm, 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 vendor shall be deemed in breach of the Agreement, which shall be subject to termination for cause, unless the Senior Director of the NJSDA's Division of Procurement & Contract Services shall determine in writing that extraordinary circumstances require a shift of services or that a failure to shift the services would result in economic hardship to the NJSDA or the State.

## **2. LIABILITIES**

**2.1 LIABILITY – COPYRIGHT** – The vendor shall hold and save NJSDA and 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 his contract.

**2.2 INDEMNIFICATION** – The vendor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless NJSDA and the State of New Jersey and their respective directors, officers, members, employees and agents, 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.

**2.3 INSURANCE** – Prior to undertaking any work under this Agreement, the Consultant, at no expense to the Authority, shall obtain and provide to the Authority evidence of a policy or policies of insurance as enumerated below.

The Consultant shall maintain, and/or cause their subconsultants to maintain, at their own cost and expense, the following insurance coverages/policies insuring the Consultant, its employees, subconsultants and agents. The Consultant shall obtain this insurance from insurance companies that are authorized to transact the business of insurance in the State of New Jersey and that are "A- VII" (or better) rated, as determined by A. M. Best Company. In each policy, the Consultant shall have incorporated a provision, in accordance with the laws of the State of New Jersey, requiring written notice to the Authority at least thirty (30) Days prior to cancellation or non-renewal of any insurance coverage required under this Section. The Consultant warrants that if the insurer or coverage is not subject to the provisions requiring (30) day prior notification, that it will notify the Authority in writing of any cancellation or non-renewal of any insurance coverage required under this Section. Any and all deductibles shall be paid by the Consultant. The Consultant warrants that its insurance carriers are accurately informed regarding the business activities of the Consultant and intend to cover those business exposures. All insurance policies, exclusive of Professional Liability and Workers' Compensation, shall name the Authority as Primary Additional Insured and will include a Waiver of Subrogation. In addition, the Consultant may also be required to name other parties as Additional Insureds prior to the initiation of such work, and shall comply with all laws, ordinances, rules and regulations of Federal, State, county and municipal authorities in the performance of said work. The types and minimum amounts of insurance required are as follows:

Professional Liability Insurance (Errors & Omissions). The Consultant shall maintain Professional Liability Insurance with coverage retroactive to the Effective Date, sufficient to protect the Consultant from any liability arising from the Services and professional obligations performed pursuant to this Agreement in an amount not less than \$2,000,000 per claim and \$2,000,000 in the aggregate for all operations conducted. The Consultant warrants they will notify the Authority in writing of any reduction

in the aggregate coverage within thirty (30) days. The Consultant warrants that coverage shall not be circumscribed by any endorsements excluding coverage arising out of services performed pursuant to this Agreement.

Commercial General Liability Insurance. The Consultant shall maintain Commercial General Liability Insurance (CGL), and, if necessary, Commercial Umbrella Insurance with a limit of not less than \$5,000,000 for each occurrence, \$5,000,000 aggregate limit for products/completed operations and \$5,000,000 general aggregate limit. CGL insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include liability arising out of, occasioned by or resulting from premises, operations, independent contractors, products, completed operations, personal injury and advertising injury, and liability assumed under an insured contract in connection with Services performed under this Agreement. The NJEDA, the Authority, the State of New Jersey, Department of Education, Hosted Solutions, VFA and their respective directors, officers, members, employees and agents shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 (or a substitute form providing equivalent coverage), and under the Commercial Umbrella, if any. In addition, the Consultant may also be required to name other parties as additional insureds prior to the initiation of Services. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Authority.

Worker's Compensation Insurance. The Consultant shall, at its own cost and expense, maintain Workers' Compensation and Employers' Liability insurance prescribed by the laws of the State of New Jersey and any other jurisdiction required to protect employees of the Consultant while engaged in the performance of the Services under this Agreement. Workers' Compensation coverage shall be statutory and the Employers' liability limits (including Umbrella coverage) shall not be less than \$1,000,000 per accident for bodily injury by accident and \$1,000,000 for each employee for bodily injury by disease and \$1,000,000 policy limit for bodily injury by disease.

Business Automobile Liability Insurance. The Consultant shall, at its sole cost and expense, maintain Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$1,000,000 for each accident. Such insurance shall cover liability arising out of any automobile, including coverage for all owned, non-owned and hired vehicles. The Business Automobile coverage shall be written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage). If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

Certificates of Insurance. Attached to this Agreement shall be valid insurance certificates, executed by a duly authorized representative of each insurer, in form and substance satisfactory to the Authority, evidencing compliance with the insurance requirements. An insurance certificate must be submitted to evidence each insurance renewal required by this Section. Failure of the Authority to demand such certificates or other evidence of full compliance with the insurance requirements set forth herein or failure of the Authority to identify a deficiency in the insurance provided shall not be construed as a waiver of the Consultant's obligation to maintain such insurance. Failure to maintain the required insurance may result in termination of this Agreement at the Authority's sole option. The Consultant shall provide certified copies of all insurance policies, including any and all amendatory endorsements, within ten (10) Days of the Authority's written request for such policies.

Liability in Excess of Coverage. By executing this Agreement, the Consultant expressly agrees that any insurance protection required herein or by the Consultant's Documents shall in no way limit the Consultant's obligations under this Agreement or the Consultant's Documents and shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it preclude the Authority from taking such other actions as are available to it under other provisions of this Agreement or the Consultant's Documents or otherwise in law or equity. By requiring insurance herein, the Authority does

not represent that coverage and limits will necessarily be adequate to protect the Consultant, and such coverage and limits shall not be deemed as a limitation on the Consultant's liability under this Agreement.

Right to Remedy. If the Consultant fails to obtain and/or maintain the insurance as required in this Section, fails to renew any of its insurance policies as necessary, or in the event any policy is canceled, terminated or modified so that the insurance does not meet the requirements of this Agreement, the Authority may: (i) purchase insurance at the Consultant's sole expense; (ii) refuse to make payment of any further amounts due under this Agreement; (iii) refuse to make payments due or coming due under other agreements between the Consultant and the Authority; (iv) suspend performance by the Consultant under this Agreement; or (v) terminate this Agreement. Any funds retained pursuant to this Section may be used, at the Authority's discretion, to renew or purchase the Consultant's insurance for the periods and amounts as set forth in this Agreement. In the event the Authority purchases said insurance the Authority may, at its discretion, reduce the Consultant's Compensation under this Agreement by the amount paid for such insurance plus reasonable attorney's fees.

Additional Insurance. The Consultant shall also provide such additional types of insurance in such amounts as the Authority shall reasonably require. In the event that any such additional insurance is required, the Consultant shall deliver certified copies of each policy to the Authority within ten (10) days of the Authority's written request for such insurance.

Waiver of Subrogation. The Consultant waives all rights of subrogation and recovery against the Authority, agents or employees of the Authority to the extent these damages are covered by the CGL, Business Automobile Liability or Commercial Umbrella Liability Insurance obtained by the Consultant. If the policies of insurance purchased by the Consultant as required above do not expressly allow the insured to waive rights of subrogation prior to loss, the Consultant shall cause them to be endorsed with a waiver of subrogation as required herein.

Any deductible or self-insured retention (SIR) applicable to the aforementioned insurance shall be declared to and approved by the Authority and written using ISO endorsement CG 03 00 (or a substitute providing equivalent terms and conditions). The Consultant shall not be permitted to have a SIR larger than \$100,000 unless it obtains the express, written consent of the Authority to the larger SIR. FAILURE TO COMPLY WITH SECTION 5.1.8 IS A MATERIAL BREACH OF CONTRACT.

If any of the aforementioned insurance is written on a "claims made basis," the Consultant warrants that continuous coverage will be maintained or an extended discovery period will be exercised for a period of five (5) years after the date of Final Payment by the Authority and the Consultant will provide Certificates of Insurance evidencing continuance of coverage with the original claims made retroactive date. Within the Certificate of Insurance, in the blocks designated "Policy Number," in addition to the policy number, the Consultant shall insert a note "claims made retroactive date \_\_\_/\_\_\_/\_\_\_" (with the date inserted).

### **3. OTHER TERMS**

#### **3.1 TERMINATION OF CONTRACT**

**3.1.1 Termination for Convenience of the NJSDA.** Notwithstanding any provision or language in the contract to the contrary, the NJSDA, in its sole discretion, may terminate at any time, in whole or in part, the contract entered into for the convenience of NJSDA. Any such termination shall be effected by delivery of a "Notice of Termination" specifying the extent to which the contract is being terminated and the date upon which the termination becomes effective. If so terminated, the vendor shall be entitled only to that proportion of the compensation that the goods and/or services actually and satisfactorily provided by the vendor bear to the total goods and/or services required to be rendered under the contract, less payments previously made.

**3.1.2 Termination for Cause.** Without prejudice to any other remedy, the NJSDA may terminate this contract if the vendor: (i) disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction; (ii) refuses or fails to supply enough properly skilled workers or proper materials; (iii) fails to make payments to subcontractors for materials or labor; (iv) fails to maintain or produce any records required by the contract or purchase order to be so maintained or produced; (v) fails to cooperate with the NJSDA where such cooperation is deemed necessary by the NJSDA for the implementation of the contract or purchase order; (vi) fails to obtain and properly maintain the level of insurance coverage required; (vii) assigns or transfers its obligations, privileges or rights under the contract or purchase order without the prior written consent of the NJSDA; (viii) makes any misrepresentation or conceals any material fact; or (ix) commences or has commenced against it any action under the United States Bankruptcy Code or any state or federal insolvency law, the commencement of which, in the NJSDA's judgment, may effectively impair the ability of the vendor to perform its obligations under the contract; or (x) violates or breaches the contract or any provision or material term thereof. For all such causes of termination except those contained in subsections (viii) and (ix), the NJSDA may choose to retract its Notice of Termination in writing if, within seven (7) calendar days of Notice of Termination, the vendor, to the NJSDA's satisfaction, cures or commences to cure its default, neglect or violation, with diligence and promptness. Absent issuance of written retraction of the Notice of Termination within seven (7) calendar days of Notice of Termination, the contract or purchase order shall be deemed terminated.

**3.1.3** In the event that this contract is terminated for cause, the NJSDA reserves the right not to make any further payments to the vendor and may require the vendor to repay all or a portion of the monies already paid.

**3.1.4** No action withholding of action by the NJSDA shall operate to waive or release any claim it may have against the vendor.

**3.2 SUBCONTRACTING OR ASSIGNMENT** – The contract may not be subcontracted or assigned by the vendor, in whole or in part, without the prior written consent of NJSDA. Such consent, if granted, shall not relieve the vendor of any of his responsibilities under the contract. The NJSDA, in its sole discretion, may assign this contract to any other State agency, authority or instrumentality, or any local or municipal instrumentality, and, in such case, the vendor shall continue to perform all of its obligations under this contract. Nothing contained herein shall be construed as creating any contractual relationship between any subcontractor and NJSDA. Nothing contained in this contract shall be construed to create a cause of action in favor of a third party against either party. No individual, firm, entity, or any combination thereof, which supplies materials, labor, services or equipment to the vendor shall become thereby a third party beneficiary under the Agreement.

**3.3 MERGERS, ACQUISITIONS** – If, subsequent to the execution of the contract, the vendor proposes to merge with or be acquired by another firm or in the event of a proposed dissolution by the vendor, the vendor shall immediately notify the NJSDA and shall submit documentation to the NJSDA describing the proposed transaction.

**3.3.1** The NJSDA, in its sole discretion, may approve the continuation of the contract following the proposed transaction or terminate the contract for cause. The NJSDA will notify the vendor of its decision within thirty (30) days of receipt by the NJSDA of documentation from the vendor describing the proposed transaction.

**3.3.2** If the NJSDA approves a merger or acquisition, the vendor shall submit to the NJSDA: (i) corporate resolutions prepared by the vendor and the new entity ratifying acceptance of the contract; (ii) information necessary to ensure that the new entity satisfies the NJSDA's pre-qualification policies and procedures, where applicable; (iii) the names and addresses of all owners and potential owners which hold or may acquire five percent (5%) or more of its stock or interest; (iv) any new or changed Federal

Employer Identification Number(s); (v) acknowledgment of the assumption of the contract by the new entity; and (vi) any other information the NJSDA may require.

**3.3.3** If the NJSDA approves a dissolution, the vendor shall submit to the NJSDA: (i) a copy of the corporate resolution, or the written statement of the partnership, general partner, receiver or custodian thereof, or the written agreement of the principal parties of a joint venture to dissolve the NJSDA, partnership or joint venture, respectively; (ii) information necessary to ensure that the new entity satisfies the NJSDA's pre-qualification policies and procedures, where applicable; (iii) any new or changed Federal Employer Identification Number(s); (iv) acknowledgment of the assumption of the contract by the new parties; and (v) any other information the NJSDA may require.

**3.4 MAINTENANCE OF RECORDS** – The vendor 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 State upon request for purposes of conducting an audit or for ascertaining information regarding dollar volume or number of transactions.

**3.5 ASSIGNMENT OF ANTITRUST CLAIM(S)** – The vendor 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 vendor, 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 vendor;

- a. It will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder.
- b. It will 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 will notify the defendants in any antitrust suit of the fact of the within assignment at the earliest practicable opportunity after the vendor 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 will be sent to the Attorney General of New Jersey.

Furthermore, it is understood and agreed that in the event any payment under any such claim or cause of action is made to the vendor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

#### **4. TERMS RELATING TO PRICE**

**4.1 PRICE FLUCTUATION DURING CONTRACT** – Unless otherwise noted by NJSDA, all prices quoted shall be firm through issuance of contract and shall not be subject to increase during the period of the contract.

In the event of a manufacturer's or vendor's price decrease during the contract period, NJSDA shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. NJSDA must be notified, in writing, of any price reduction within five (5) days of the effective date.

Failure to report price reductions will result in cancellation of contract for cause.

- 4.2 DELIVERY COSTS** – All prices for items must be F.O.B. delivery point. Regardless of the method of quoting shipments, the vendor shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to NJSDA's designated delivery point.

F.O.B. destination does not cover "spotting" but does include delivery on the receiving platform 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 vendor's convenience when a single shipment is ordered. The weights and measures of NJSDA shall govern.

- 4.3 C.O.D. TERMS** – C.O.D. terms are not acceptable.

- 4.4 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.

- 4.5 PAYMENT TO VENDORS/NEW JERSEY PROMPT PAYMENT ACT** – Within thirty (30) Days after receipt of the vendor's properly supported invoice, the NJSDA, pursuant to New Jersey's Prompt Payment Act, N.J.S.A. 52:32-32 and 2A:30A-2, will make payment of the approved amount of such invoice, unless within twenty (20) days of receipt the NJSDA issues a notice in accordance with the Prompt Payment Act indicating that funds will be withheld, the amount of the funds to be withheld and the reason for such withholding. The twenty (20) day period for providing notice to the vendor that the NJSDA will withhold funds shall be extended if authority for payment by the NJSDA's Board of Directors is required. The thirty (30) day payment requirement shall be extended if the vendor fails to provide complete and sufficient documentation in support of the amounts claimed and the NJSDA reserves the right to refuse payment as a result.

- 5. AUDIT** – The contract and any subcontract of the obligations thereunder is subject to audit by NJSDA at NJSDA's sole discretion and by the Unit of Fiscal Integrity of the New Jersey State Police.

- 6. MODIFICATIONS** – No contract may be modified except by written instrument signed by an authorized officer of NJSDA.

- 7. CLAIMS** – The parties agree that this contract shall be deemed to be governed in accordance with the New Jersey Tort Claims Act, N.J.S.A. 59:1.1, et seq., the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. and the New Jersey False Claims Act, N.J.S.A. 2A:32, et seq. (collectively "the Acts"), such that a claim against the NJSDA shall be treated in the same manner as a claim against the State of New Jersey under the Acts. All notice, claims and limitations periods set forth in the Acts shall apply to claims by the vendor against the NJSDA.

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

- 8.1** The vendor shall not 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: (i) an NJSDA officer or employee with which the vendor transacts, or offers or proposes to transact, business; or (ii) any member of the

immediate family (defined by N.J.S.A. 52:13D-13i) of any such NJSDA officer or employee; or (iii) any partnership, firm or authority with which such NJSDA officer or employee is employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

- 8.2** The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any NJSDA officer or employee from the vendor shall be reported in writing forthwith by the vendor to the State Attorney General and the State Ethics Commission.
- 8.3** The vendor shall not directly or indirectly undertake any private business, commercial or entrepreneurial relationship (whether or not pursuant to employment, contract or other agreement, express or implied) with, or sell any interest in the vendor to, any NJSDA officer or employee having any duties in connection with the purchase, acquisition or sale of any property or services by or to the NJSDA; and shall not undertake any such relationship with, or sell any such interest to, any person, firm or entity with which such NJSDA officer or employee is employed or associated, or in which such NJDA officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13(g). Any relationship subject to this provision shall be reported in writing forthwith to the State Ethics Commission, which may grant a waiver of this restriction upon application of the officer or employee and upon a finding that the present or proposed relationship presents neither an actual conflict of interest, nor the potential for, or appearance of, such a conflict of interest.
- 8.4** The vendor shall not influence, attempt to influence, or cause to be influenced any NJSDA officer or employee in such officer's or employee's official capacity in any manner that might tend to impair the objectivity or independence of judgment of said officer or employee.
- 8.5** The vendor shall not cause or influence or attempt to cause or influence, any NJSDA officer or employee to use or attempt to use such officer's or employee's official position to secure unwarranted privileges or advantages for the vendor or any other person.
- 8.6** Under N.J.S.A. 52:34-19, it is a misdemeanor to offer, pay or give any fee, commission, compensation, gift or gratuity to any person employed by the NJSDA. It is the policy of the NJSDA to treat the offer of any gift or gratuity by the vendor, its officers or employees, to any person employed by the NJSDA as grounds for debarment or suspension from submitting proposals and providing work or materials to the NJSDA.
- 8.7** These provisions shall not be construed to prohibit an NJSDA officer or employee from receiving gifts from or contracting with the vendor under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines that the State Ethics Commission may promulgate.

**9. NOTICE TO ALL VENDORS SET-OFF FOR STATE TAX NOTICE**

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 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 30 days of such notice under the procedures for protests established

under N.J.S.A. 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 (N.J.S.A. 52:32-32 et seq.), to the taxpayer shall be stayed.

10. **APPLICABLE LAW** – 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.