

***REQUESTS FOR PROPOSAL***

***for***

**ACTUARY SERVICES**

***for***

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY**

**Contract No.: GP-0159-R01**

**Issued: Monday, May 17, 2010**

**Mandatory Electronic Notice of Intent to Participate:  
Tuesday, June 1, 2010 by 5 PM**

**Due Date: Tuesday, June 22, 2010 by 2 PM**

## ACTUARY SERVICES

### REQUEST FOR PROPOSALS

#### INTRODUCTION

The New Jersey Schools Development Authority (NJSDA) is seeking proposals to engage a consultant to provide an actuarial valuation report, as of January 1, 2010, for the GASB 45 retiree post-employment benefit liability for the active, terminated and retired employees for the NJSDA. This report will be due to the NJSDA within sixty (60) days of engagement. During term of the engagement, the NJSDA may request additional computations of the GASB 45 liability.

The selected Consultant shall be responsible for providing the services as outlined in the Scope of Services and any additional services set forth in their technical proposal.

This PROFESSIONAL SERVICES CONSULTANT REQUEST FOR PROPOSALS consists of the following:

1. Request for Proposals
2. Attachment A: Actuary Services Agreement
3. Attachment B: Price Proposal Form
4. Attachment C: Moral Integrity Questionnaire

These documents must be read in their entirety as they define the scope of services and responsibilities of the Consultant and the Authority. A firm wishing to submit a Proposal for Actuary Services must review and be thoroughly familiar with all terms and conditions of these documents.

**The NJSDA shall not hold a traditional pre-proposal conference for this procurement. All firms wishing to submit a proposal must sign in electronically by sending a mandatory e-mail Notice of Intent to Participate to Megan Cox at [mcox@njsda.gov](mailto:mcox@njsda.gov) no later than **5:00 PM on Tuesday, June 1, 2010**.**

**Firms may submit questions to the NJSDA by sending them by email to Megan Cox at [mcox@njsda.gov](mailto:mcox@njsda.gov) no later than **5:00 PM on Tuesday, June 1, 2010**. The questions and answers, as well as insurer assignments, shall be provided electronically to each firm that submitted a timely e-mail Notice of Intent to Participate.**

**Proposals must be received by Tuesday, June 22, 2010  
No Later Than 2:00 PM at  
New Jersey Schools Development Authority  
1 West State Street  
(Wachovia Bank Building)  
P. O. Box 991  
Trenton, New Jersey 08625-0991**

Upon award, the NJSDA shall forward the Agreement for Actuary Services (the “Agreement”) to the selected firms for immediate execution, **without modification.**

## **1.0 INSTRUCTIONS FOR SUBMITTING A TECHNICAL PROPOSAL**

Firms responding to the RFP shall thoroughly familiarize themselves with the RFP to ensure responsiveness in their Proposal. All of the below items must be addressed in the Proposal in the same order as stated below. The Proposal is to consist of the following:

1. Cover Letter
2. Firm Experience - Case Studies
3. Organization Chart
4. Moral Integrity Questionnaire
5. Business Registration

**Moral Integrity Questionnaire approval is a prerequisite for contract award.**

**Proposal Package Mailing Instructions.** The firm must submit one (1) original and 3 (three) copies of the Proposal no later than **2:00 PM, Tuesday, June 22, 2010**, as follows:

***If submitting by hand or overnight delivery, at the:***

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY  
Procurement & Contract Services  
1 West State Street – 3rd Floor  
Trenton, New Jersey 08625-0991  
Attention: Megan Cox, Senior Procurement Analyst  
Subject: Actuary Services Proposal – GP-0159-R01**

***If submitting by U.S. Mail, address packages to:***

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY  
Procurement & Contract Services  
P.O. Box 991  
Trenton, New Jersey 08625-0991  
Attention: Megan Cox, Senior Procurement Analyst  
Subject: Actuary Services Proposal – GP-0159-R01**

**Faxed or e-mailed Proposals shall not be accepted.**

### **1.1 Cover Letter**

Present a statement that indicates that your firm can produce the required actuarial valuation report within sixty (60) days of engagement.

#### 1.2 Firm Experience - Case Studies

Firm experience shall be assessed through a summary of the firm's general relevant experience through **no more than five specific case studies**. The case studies **must** address examples of the proposing firm's past provision of services of the type and scale outlined in the Scope of Services. Thus, the case studies must concisely set forth the basic background information (e.g., dates and location), the scope of services provided, and results of said engagement. **Please include a sample of similar contracts performed with public sectors or those similar to the NJSDA.** A sampling of materials specifically and directly utilized in the project must accompany each case study, **provided such material is non-confidential and may appropriately be subject to later release as a "public document."** The case studies must describe the effectiveness of the project, and the methodology used to measure such effectiveness. The firm must identify the name and address of the contracting entity and the name, title and telephone number of a contact person associated with the contracting entity who is familiar with and able to comment on the firm's performance on each project. The summary of general experience must be approximately 500 words or less; the narrative for the case study approximately 1,000 words or less.

#### 1.3 Organization Chart

The organization chart must include all Key Team Members, their titles for this engagement and the firm they represent. In the event the proposing firm is a "joint venture," the proposing firm must indicate from which participating firm each Key Team Member originates. For the purpose of this engagement, a "Key Team Member" is a principal, partner or officer of the firm, project executive, project manager, senior principal, studio head, or job captain represented in the Technical Proposal as having a responsible role in the successful completion of the required Services.

#### 1.4 Moral Integrity Questionnaire

Firms **must** also submit to the NJSDA one (1) original (and no copies) of a completed questionnaire for submission to the New Jersey State Police, in the form set forth as Attachment C to this RFP. The NJSDA shall hold all Questionnaires submitted, unopened, until all firms are ranked, unless special circumstances warrant otherwise. At such time, staff will forward the Questionnaire of the top-ranked firm to the State Police for review. **Moral Integrity approval is a prerequisite for contract award.**

#### 1.5 Business Registration

**Pursuant to N.J.S.A. 52:32-44, 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 the firm selected as a Consultant with a copy of its business registration, which the Consultant must forward to the NJSDA. No firm selected as a Consultant 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 subconsultants, 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.htm](http://www.state.nj.us/treasury/revenue/gettingregistered.htm), or by calling the New Jersey Department of Treasury at (609) 292-1730. Please be advised, however, that business registrations are mailed generally within seven to ten days, so firms should plan accordingly.

**2.0 INSTRUCTIONS FOR SUBMITTING A FEE PROPOSAL**

Firms must complete and return a Fee Proposal in the form set forth in Attachment B to this RFP. The Fee Proposal must be submitted with the firm's Technical Proposal, **but the Fee Proposal must be enclosed in a separately sealed, addressed envelope placed within the Technical Proposal package.**

The firm must submit its Fee Proposal (Attachment B) for **a**) a report of the January 1, 2010 measurement of the GASB 45 retiree post-employment benefit liability for the active, terminated and retired employees for the NJSDA; and **b**) a report of the January 1, 2011, and January 1, 2012 measurement of the GASB 45 retiree post-employment benefit liability for active, terminated and retired employees for the NJSDA, if needed.

**Faxed or e-mailed Fee Proposals will not be accepted.**

**3.0 SELECTION PROCEDURES**

Each Proposal will be reviewed to determine responsiveness. Responsive Proposals will be evaluated by a Selection Committee ("Committee") established for this purpose. Such evaluation will be based upon the information provided by the firms in response to this RFP. Evaluations will be based on the following Evaluation Criteria:

	Maximum Points
Price Proposal	40
Firm Experience	60
Total:	100

Firms will receive a technical score and/or ranking based on the above-described evaluation process, except that, at its sole option, the NJSDA may conduct interviews. Following the interviews, if any, the final technical scores and/or rankings shall be determined, based on the interview evaluation criteria and technical scores.

**4.0 PRE-AWARD REQUIREMENTS**

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

(b) **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 Consultant 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 Consultant shall be deemed in breach of the Agreement, unless the 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.

(c) **Anti-Discrimination Requirements.** In addition, the Consultant 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 *et seq.* **Accordingly, in a notice of award, a firm shall be required to submit to the NJSDA, with its executed Agreement, a copy of 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; or
- (3) an initial employee information report (Form AA302) provided by the Affirmative Action Office and completed by the contractor in accordance with N.J.A.C. 17:27-4.

**\*The original of this document shall be provided to the New Jersey Department of Treasury.** Please see following link for details. [http://www.state.nj.us/treasury/contract\\_compliance/pdf/aa302ins.pdf](http://www.state.nj.us/treasury/contract_compliance/pdf/aa302ins.pdf)

ATTACHMENT A

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**AGREEMENT**

*Between the*

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY**

*And*

**THE CONSULTANT**

*For*

**ACTUARY SERVICES**

**CONTRACT NO.: GP-0159-R01**

**THIS AGREEMENT** is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”) between the New Jersey Schools Development Authority (the “Authority”), having an office located at 1 West State Street, Trenton, New Jersey 08625-0991, and \_\_\_\_\_ (“Actuary Consultant” or “Actuary”), a \_\_\_\_\_ corporation with its principal place of business at \_\_\_\_\_.

Actuary, for and in consideration of the payments hereinafter specified and agreed to be made by the Authority, hereby covenants and agrees to perform all of the Services to be performed in accomplishing this Agreement for the Project identified as

Contract Number: GP-0159-R01

Project Name: Actuary Services

in strict conformity with this Agreement, which includes the following terms and conditions, as well as Appendices “A” through “F” and any other attachments hereto or matters incorporated herein by reference.

Provided that Actuary strictly, completely and timely performs all of the Services specified and all other obligations set forth in this Agreement and subject only to such increases or decreases as are effectuated by Amendments to the Agreement as provided by the Agreement, compensation is addressed in Appendix C of this Agreement.

**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement:

**ACTUARY**

**NEW JERSEY SCHOOLS  
DEVELOPMENT AUTHORITY**

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

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

Sworn and subscribed to before me

Reviewed and Approved

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_:

By: \_\_\_\_\_  
Name:

\_\_\_\_\_  
Notary Public of \_\_\_\_\_

My commission expires: \_\_\_\_\_, 20\_\_.

Distribution: Authority Central File, Authority Consultant Selection File and Actuary.

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## 1.0 DEFINITIONS

The terms set forth in this Agreement shall have the meanings ascribed to them for all purposes of this Agreement unless the context clearly indicates some other meaning. Words in the singular shall include the plural and words in the plural shall include the singular where the context so requires.

- 1.1 **“Actuary”** means the firm engaged by the SDA for the Services required by this Agreement.
- 1.2 **“Additional Services”** means services other than the Services set forth in the Scope of Services on the Effective Date.
- 1.3 **“Amendment”** means an amendment to this Agreement executed by the Parties.
- 1.4 **“Contractual Documents”** means all documents setting forth Actuary and SDA obligations and responsibilities and includes, but is not limited to, the RFP, the Proposal, this Agreement, any Amendments and addenda, and all exhibits and schedules attached to such documents.
- 1.5 **“Deliverable”** the report as detailed in Appendix B.
- 1.6 **“Effective Date”** means the date on which this Agreement became effective, and for purposes of this Agreement, as that date so identified and set forth on page 1.
- 1.7 **“Fee Proposal”** means the Fee Proposal submitted by the Actuary in response to the RFP.
- 1.8 **“SDA” or “New Jersey Schools Development Authority** The SDA was established on August 6, 2007 to replace the New Jersey Schools Construction Corporation (“SCC”) pursuant to reform legislation (P.L.2007, c.137) enacted by Governor Jon S. Corzine. As of the date of the legislation, the SCC was dissolved and all its functions, powers, duties and employees were transferred to the SDA. The SCC was formed pursuant to N.J.S.A. 34:1B-159 as a subsidiary of the Authority for the purpose of implementing provisions of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72. The SDA is the Party that has engaged the Actuary pursuant to this Agreement.
- 1.9 **“Notice to Proceed”** means a notice from the SDA to the Actuary, directing the Actuary to commence performing its responsibilities pursuant to this Agreement.
- 1.10 **“Program Manager”** means the SDA staff member(s) designated to manage the Actuary’s performance of Services.
- 1.11 **“Scope of Services”** means the scope of services required to be provided by the Actuary, as set forth in Appendix B (Scope of Services).
- 1.12 **“Special Conditions”** means that document attached as Appendix A to this Agreement, and made a part thereof, as such document may be amended from time to time.
- 1.13 **“State”** means the State of New Jersey.
- 1.14 **“Technical Proposal”** means the proposal submitted by the Actuary in response to the RFP.

- 1.15 **“Unit of Fiscal Integrity”** means a unit created within the New Jersey State Police and Office of the Attorney General by Section 70 of the Educational Facilities Financing and Construction Act, P.L. 2000, c. 72.

## **2.0 RESPONSIBILITIES OF THE ACTUARY**

### **2.1 General**

- 2.1.1 The Actuary shall be responsible for being thoroughly familiar with: (i) GASB 45 retiree post-employment benefit liability for the active, terminated and retired employees for the SDA.
- 2.1.2 The Actuary understands and agrees that any change to this Agreement must be made in writing in the form of an Amendment.
- 2.1.3 Any Services performed by the Actuary, without an Amendment that differ from or are in addition to the Services prescribed by this Agreement shall be done at the Actuary’s own financial risk. Additional Services, if any, shall be the subject of an Amendment, and shall be compensated in accordance with terms negotiated at the time of Amendment.
- 2.1.4 The Actuary shall, without additional compensation, cure any errors, omissions, or other deficiencies in the Deliverables. The approval of interim Deliverables shall not relieve the Actuary of fulfilling its obligations under the Contractual Documents. Acceptance or payment for any of the Deliverables shall not be construed as a waiver by the SDA of any of its rights under the Contractual Documents or of any cause of action arising out of the Actuary’s performance or non-performance under the Contractual Documents.
- 2.1.5 For all Services rendered, the Actuary shall, in accordance with generally accepted accounting principles and practices, maintain weekly payroll, overhead, cost and accounting records, as well as all other records the Actuary may customarily maintain in its business. Such records shall be maintained and made available for inspection by the SDA and the State Police (or their agents) as to all aspects of the Services provided under the Contractual Documents, whether the Services are performed by the Actuary, or any other firm. The Actuary shall retain all electronic records for a period of six (6) Fiscal Years following final payment by the SDA or the end of the Fiscal Year in which this Agreement expires, whichever occurs later. After this period, the Actuary may dispose of these records after first offering them (at no cost) to the SDA in writing; the SDA shall have thirty (30) Days within which to accept them.
- 2.1.6 The Actuary agrees that it shall assist and cooperate with the SDA in any legal action or proceeding that is related to or that arises out of or in connection with its performance under the Contractual Documents and in which action or proceeding the SDA and the Actuary are not named as adverse parties. Such assistance shall include, but not be limited to, testifying as an expert witness or preparing exhibits, reports or models. Any Services provided by the Actuary pursuant to this paragraph shall be deemed Additional Services and shall be compensated as such in accordance with terms negotiated at the time of an appropriate Amendment.

- 2.1.7 The Actuary shall designate a Key Team Member at the Actuary's firm, satisfactory to the Program Manager, as the Actuary Client Manager. So long as the Actuary Client Manager's performance is acceptable, he or she shall remain in charge of the firm's Services, shall represent the Actuary, and be available for general consultation throughout the Term.
- 2.1.8 The Actuary, to the best of its knowledge, information, and belief, shall abide by all applicable local, state, and national regulatory requirements, as well as all regulations imposed by funding sources (auditing requirements, payroll affidavits, etc.), such as may be identified at the time of execution of this Agreement.
- 2.1.9 The Actuary shall provide to the SDA proof of valid business registration with the Division of Revenue of the New Jersey Department of the Treasury, pursuant to N.J.S.A. 52:32-44b, as set forth in Appendix E hereto-
- 2.1.10 Pursuant to N.J.S.A. 52:32-44g, the Actuary shall collect and submit 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, N.J.S.A. 54:32B-1 et seq., on all their sales of tangible personal property delivered into this State.
- 2.1.11 Actuary shall, on a continuing basis, disclose and report to the SDA any "contributions," as that term is defined in P.L. 2005, c. 51 (formerly Executive Order No. 134 (2004)), made during the Term by it or any "Business Entity," as that term is defined in P.L. 2005, c. 51, associated with the Actuary, on the "Disclosure of Political Contribution" form provided by the SDA, at the time such contribution is made.
- 2.1.12 Actuary 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 Actuary'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).
- 2.1.13 The Actuary shall have a continuing duty to comply with the provisions of N.J.S.A. 52:34-13.2, as amended by P.L. 2005, c. 92 (formerly Executive Order No. 129 (2004)), as applicable. If, during the Term, the Actuary proceeds to shift the performance of the Services outside of the United States, the Actuary shall be deemed in breach of the Agreement, which shall be subject to termination for cause, unless the Senior Director of the SDA Division of Procurement and 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 SDA or the State.

## 2.2 Final Release

The Actuary's acceptance of final payment shall constitute a final release from and waiver of all the Actuary's Claims except for: (i) those Claims the Actuary expressly reserves at the time of

application for final payment; (ii) those Claims arising after final payment as a result of actions brought against the Actuary by third parties; and (iii) those Claims arising after final payment due to an alleged breach by the SDA of any Agreement provision that survives after the Term.

### **3.0 COMPENSATION**

#### **3.1 General Provisions**

- 3.1.1 The Actuary shall be compensated in accordance with the Agreement in accordance with the proposal dated \_\_\_\_\_, attached hereto as Appendix C.
- 3.1.2 The Actuary shall be paid after invoices are submitted and approved.
- 3.1.3 Acceptance or approval of, or payment for, any of the Services performed by the Actuary under the Contractual Documents shall not constitute a release or waiver of any Claim the SDA has or may have for latent defects, errors, breaches, or negligence.
- 3.1.4 All payments for Services under the Contractual Documents will be made only to the Actuary.
- 3.1.5 Unless otherwise set forth in writing by the SDA, prices quoted shall be firm and not subject to increase during the Term.
- 3.1.6 The SDA assumes no responsibility or liability for costs the Actuary incurred prior to the Effective Date, and thereafter only as explicitly set forth in the Contractual Documents.

#### **3.2 Invoices**

- 3.2.1 Detailed invoices for Services shall be submitted monthly, and shall be accompanied by such supporting documentation, as to reimbursements and other items, as may be required by the SDA.
- 3.2.2 Invoices submitted to the Program Manager must identify this Agreement's contract number.
- 3.2.3 Invoices submitted to the Program Manager shall be processed and paid only after the Program Manager reviews and determines that the Services for which payment is sought have been completed at the times and in the manner specified in the Contractual Documents. The SDA shall not pay invoices if the Program Manager determines that the Services for which payment is sought are incomplete or unsatisfactory.

#### **3.3 Withholding Payment for Unsatisfactory Services or Non-delivery of Deliverables**

- 3.3.1 If the Program Manager determines that any Services are incomplete or unsatisfactory, or if the Program Manager determines that Deliverables have not been delivered at the times and

in the manner and form specified in the Contractual Documents, the SDA will either: (i) retain for payment the relevant invoice (or portion thereof) until such time as the Actuary has made the necessary corrections/deliveries, or (ii) return the relevant invoice to the Actuary, who shall resubmit the invoice once all of the Services have been completed or corrected or the Deliverables have been delivered. The withholding of payments does in no way effect SDA's rights to pursue termination under Section 6.

3.3.2 The withholding of any sums pursuant to this Section 3.3 shall not be construed as, or constitute in any manner, a waiver by the SDA of the Actuary's obligation to furnish the items required under the Contractual Documents. In the event the Actuary fails to furnish these items, the SDA shall have those rights and remedies provided by law and pursuant to the Contractual Documents in addition to, and not in lieu of, the sums withheld in accordance with this Section 3.3.

#### **4.0 TERM**

Unless terminated sooner under Section 6 of this Agreement, the Term of this Agreement shall extend from the Effective Date for three (3) months or to such extended time when all obligations of the Actuary to deliver Services pursuant to this Agreement have been performed to the satisfaction of the SDA, unless at the sole option of the Authority, it is extended for the 2011 report and 2012 report, in which case the Term shall extend from the Effective Date through such additional period or until all obligations of the Consultant to deliver Services pursuant to this Agreement have been performed to the satisfaction of the Authority, whichever occurs later.

#### **5.0 GENERAL COVENANTS**

##### **5.1 Insurance**

5.1.1 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.

5.1.2 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:

- 5.1.2.1 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 \$1,000,000 per claim and \$1,000,000 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.
- 5.1.2.2 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 EDA, the Authority, the State of New Jersey 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.
- 5.1.2.3 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.
- 5.1.2.4 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. The EDA, the Authority, the State of New Jersey and their respective directors, officers, members, employees and agents shall be included as an insured under the Business Automobile, using ISO Designated Insured endorsement CA 20 48 (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 designated insureds prior to the initiation of such work.

- 5.1.3 Certificates of Insurance. Attached to this Agreement as Appendix E 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.
- 5.1.4 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.
- 5.1.5 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.

- 5.1.6 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.
- 5.1.7 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.
- 5.1.8 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).

## **5.2 Ownership of Documents**

- 5.2.1 In consideration of the SDA's execution of this Agreement and for other good and valuable consideration, all Deliverables shall be the sole property of the SDA.
- 5.2.2 The Actuary's promotional and professional (or other) materials shall not include SDA information of any kind, except with the written consent of the SDA.

## **5.3 Copyrights and Patents**

- 5.3.1 If the Actuary employs any design, device, material, or process covered by letters of patent or copyright, it shall provide for such use by suitable legal agreement with the patent holder. The Actuary shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the Deliverables.
- 5.3.2 The Actuary shall defend, indemnify and save harmless the SDA and the State from any and all Claims for infringement by reason of the use of any patented design, device, material or process, or any trademark, copyright, trade secret or any other material protected in any manner from use or disclosure, and shall indemnify the SDA and the State for any costs, expenses and damages that it may incur by reason of an infringement at any time during the

prosecution, or after the acceptance, of the Services. The use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in performing Services.

#### **5.4 Confidentiality**

- 5.4.1 All data contained in documents supplied by the SDA or by any other party under an SDA contract or otherwise involved in the School Construction Program and data gathered by the Actuary in fulfillment of the Contractual Documents and any analyses thereof (whether in fulfillment of the Contractual Documents or not), are to be considered strictly confidential and shall be solely for use in connection with the School Construction Program, except to the extent the SDA may identify any such as government documents within the meaning of N.J.S.A. 47:1A-1 et seq.
- 5.4.2 The Actuary shall be required to use utmost care to protect the confidentiality of data, and requiring personnel assigned to provide Services to sign a confidentiality agreement in a form provided by the SDA. Any release of confidential material in any form by the Actuary, its employees, or assignees will be considered a violation of the Contractual Documents. Penalties for violation of this paragraph include, but are not limited to, termination of this Agreement and/or legal action, without the SDA being liable for damages, costs and/or attorney fees. The Actuary shall be liable for any and all damages arising from its breach of this confidentiality provision.

#### **5.5 Contractual Relationship**

- 5.5.1 The Actuary's status shall be that of an independent Actuary, not an employee of the SDA. The Actuary agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the SDA by reason hereof. The Actuary shall not, by reason hereof, make any Claim, demand or application to any SDA officer or employee for any right or privilege afforded to an SDA officer or employee, including, but not limited to, workers' compensation, unemployment or other insurance benefits, social security coverage, or retirement membership or credit.
- 5.5.2 Nothing contained in this Agreement or the Contractual Documents shall create a contractual relationship with a third party or create a cause of action in favor of a third party against either Party. No individual, firm, SDA, or any combination thereof, which supplies materials, labor, services or equipment to the Actuary for the performance of Services shall become thereby a third party beneficiary of the Contractual Documents.

#### **5.6 Assignment**

- 5.6.1 The Actuary shall not assign or transfer its obligations, privileges or rights under the Contractual Documents without the prior written consent of the SDA. Any assignment or transfer of the Actuary's rights under the Contractual Documents without the prior written consent of the SDA shall not relieve the Actuary of any duty, obligation or liability assumed by it under the Contractual Documents.
- 5.6.2 Notwithstanding anything to the contrary, under no circumstance shall the Actuary assign its

right to receive money under the Contractual Documents for any purpose or to any person whatsoever without the prior written approval of the SDA or order of court.

- 5.6.3 The SDA may elect, in its sole discretion, to assign this Agreement to any other State agency, authority or other State instrumentality, or any local or municipal instrumentality, at any time during the Term of this Agreement, and in such case, the Actuary agrees to continue to perform all of its obligations as set forth in this Agreement. The Actuary shall make no Claim against the SDA in the event of such assignment and shall execute such certificates, documents and instruments as may be reasonably requested by the SDA to effect such assignment.

## **5.7 Mergers, Acquisitions, and Dissolutions**

- 5.7.1 If, subsequent to the execution of this Agreement, the Actuary proposes to merge with or be acquired by another firm or in the event of a proposed dissolution by the Actuary, the Actuary shall immediately notify the SDA and shall submit documentation to the SDA describing the proposed transaction.
- 5.7.2 The SDA, in its sole discretion, may approve the continuation of this Agreement following the proposed transaction or terminate this Agreement for cause. The SDA will notify the Actuary of its decision within thirty (30) Days of receipt by the SDA of documentation from the Actuary describing the proposed transaction.
- 5.7.3 If the SDA approves a merger or acquisition, the Actuary shall submit to the SDA: (i) corporate resolutions prepared by the Actuary and the new entity ratifying acceptance of the Contractual Documents; (ii) information necessary to ensure that the new entity satisfies the SDA'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 Contractual Documents by the new entity; and (vi) any other information the SDA may require.
- 5.7.4 In the event of the dissolution of the Actuary, the Actuary shall submit to the SDA: (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 SDA, partnership or joint venture, respectively; (ii) information necessary to ensure that the new entity satisfies the SDA'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 Contractual Documents by the new parties; and (v) any other information the SDA may require.

## **5.8 Mandatory Compliance With Law**

- 5.8.1 The Actuary must comply during the Term with any and all Federal, State and local laws in effect or hereinafter promulgated that apply to performance by the Actuary under the Contractual Documents.
- 5.8.2 If the SDA determines that the Actuary has violated or failed to comply with applicable Federal, State or local laws with respect to its performance under the Contractual

Documents, the SDA may withhold payments for such performance and take such action that it deems appropriate until the Actuary has complied with such laws or has remedied such violation or non-compliance to the satisfaction of the SDA.

## **5.9 Affirmative Action and Non-discrimination**

- 5.9.1 The Actuary 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 SDA pursuant to Section 48 of the Educational Facilities Financing and Construction Act, P.L. 2000, c. 72, and any rules and regulations associated therewith.
- 5.9.2 The Actuary 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. During the performance of this Agreement, the Actuary agrees as follows:
- 5.9.2.1 The Actuary will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affection or sexual orientation or sex. Except with respect to affection or sexual orientation, the Actuary 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, affection or sexual orientation 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 Actuary 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;
- 5.9.2.2 The Actuary will in all solicitations or advertisements for employees placed by or on behalf of the Actuary, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affection or sexual orientation or sex;
- 5.9.2.3 The Actuary will send to each labor union or representative of workers with which they have 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 Actuary's commitments under this act [N.J.S.A. 10:5-1 et seq.] and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5.9.3 The Actuary shall abide by the provisions of the Americans With Disabilities Act, 42 U.S.C. § 12101 et seq., with respect to its employment practices.

5.9.4 The Actuary 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.

## **5.10 Anti-collusion**

5.10.1 The Actuary, by executing this Agreement, does hereby warrant and represent that this Agreement has not been solicited, secured or prepared, directly or indirectly, in a manner contrary to the laws of the State; and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the Services by any conduct, including the paying or giving of any fee, commission, compensation, gift, gratuity, or consideration of any kind, direct or indirect, to any employee, officer, or board member of the SDA.

5.10.2 The penalty for breach or violation of this Section 5.10 may, at the sole option of the SDA, result in: (i) the termination of this Agreement without the SDA being liable for damages, costs and/or attorney fees; and/or (ii) a deduction from the payments to be made by the SDA pursuant to this Agreement.

## **5.11 Conflict of Interest**

5.11.1 The Actuary 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 Authority or SDA officer or employee with which the Actuary 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 Authority or SDA officer or employee; or (iii) any partnership, firm or SDA with which such Authority or SDA 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.

5.11.2 The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any Authority or SDA officer or employee from the Actuary shall be reported in writing forthwith by the Actuary to the State Attorney General and the Executive Commission on Ethical Standards.

5.11.3 The Actuary 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 Actuary to, any Authority or SDA officer or employee having any duties in connection with the purchase, acquisition or sale of any property or services by or to the SDA; and shall not undertake any such relationship with, or sell any such interest to, any person, firm or entity with which such Authority or SDA officer or employee is employed or associated, or in which such Authority or SDA 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 Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the Authority 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.

- 5.11.4 The Actuary shall not cause or influence or attempt to cause or influence, any Authority or SDA 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 Actuary or any other person.
- 5.11.5 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 SDA. It is the policy of the SDA to treat the offer of any gift or gratuity by the Actuary, its officers or employees, to any person employed by the SDA as grounds for debarment or suspension from submitting proposals and providing work or materials to the SDA.
- 5.11.6 The provisions cited in this Section 5.11 shall not be construed to prohibit an Authority or SDA officer or employee from receiving gifts from or contracting with the Actuary under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines that the Executive Commission on Ethical Standards may promulgate under the provisions contained herein.
- 5.11.7 For the purposes of this Section 5.11, an "Authority officer or employee" shall include special Authority officers or employees as defined by N.J.S.A. 52:13D-13b and -13e.

## **5.12 Indemnification**

- 5.12.1 To the fullest extent permitted by law, the Actuary shall indemnify, protect, defend and save harmless the State of New Jersey, the SDA, as well as their respective agents, servants, officers, directors and employees, from and against any loss, damage, injury, cost or expense; and from and against any Claim, demand, liability, lawsuit, judgment, action or other proceeding arising, to arise from, in connection with, or as a result of any of the following:
- 5.12.1.1 the negligent acts or omissions of the Actuary, its agents, servants, officers, employees, or any other person acting at the Actuary's request, subject to its direction, or on its behalf;
- 5.12.1.2 the loss of life or property, or injury or damage to the person, body or property of any person or persons whatsoever, that arises or results directly or indirectly from the negligent performance of the Services or delivery of Deliverables by the Actuary, its agents, servants, officers, employees, or any other person acting at the Actuary's request, subject to its direction, or on its behalf;
- 5.12.1.3 any gross negligence, default, or breach, of the Actuary, its agents, servants, officers, employees, or any other person acting at the Actuary's request, subject to its direction, or on its behalf;
- 5.12.1.4 violation or non-compliance with federal, State, local and municipal laws and regulations, ordinances, building codes (including without limitation the Americans with Disabilities Act and OSHA Environmental Protection Act) arising from the performance or non-performance of, or arising out of conditions created or caused to be created by, the Actuary, its agents, servants, officers, employees, or any other person acting at the Actuary's request, subject to its direction, or on its behalf; and

5.12.2 The Actuary's indemnification obligation is not limited by, but is in addition to, the Actuary's insurance obligations contained in this Agreement.

5.12.3 This Section 5.12 shall survive the termination of the Contractual Documents.

## **6.0 TERMINATION AND SUSPENSION**

Nothing contained in this entire Section 6.0 shall limit the SDA's right to recover any and all costs and damages resulting from Actuary failure to perform the Services in a satisfactory manner.

### **6.1 Termination for Convenience of the SDA**

6.1.1 Performance by the Actuary of its obligations under the Contractual Documents may be terminated by the SDA in accordance with this Section 6.1 in whole or in part, whenever the SDA, in its sole discretion, determines that such termination is in its best interest.

6.1.2 Any such termination shall be effected by delivery of a "Notice of Termination" specifying the extent to which the Services under the Contractual Documents are terminated and the date upon which such termination becomes effective.

6.1.3 If so terminated, the Actuary shall be entitled only to that proportion of the compensation that the Services actually and satisfactorily performed by the Actuary bear to the total Services to be rendered under the Contractual Documents, less payments previously made.

6.1.4 The SDA may negotiate with the Actuary to establish an amount of compensation for the Actuary's costs incurred in the close-out of the Contractual Documents.

6.1.5 Upon termination for convenience, the Actuary shall furnish to the SDA, free of charge, such close-out reports, documents, and materials as the SDA may reasonably require.

### **6.2 Termination for Cause**

6.2.1 Without prejudice to any other remedy, the SDA may terminate this Agreement if the Actuary: (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 maintain or produce any records required by the Contractual Documents to be so maintained or produced; (iv) fails to cooperate with the SDA where such cooperation is deemed necessary by the SDA for the implementation of the Contractual Documents; (v) fails to obtain and properly maintain the level of insurance coverage outlined in Section 5.1; (vi) assigns or transfers its obligations, privileges or rights under the Contractual Documents without the prior written consent of the SDA; (vii) makes any misrepresentation or conceals any material fact; or (viii) 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 SDA's judgment, may effectively impair the ability of the Actuary to perform its obligations under the Contractual Documents; or (ix) violates or breaches the Contractual Documents or any provision or material term

thereof. For all such causes of termination except those contained in subsections (vii) and (viii), the Actuary may avoid termination if, within seven (7) Days of Notice of Termination, it commences correction of such default, neglect or violation, with diligence and promptness, fully curing same within the time prescribed by the SDA within the Notice of Termination; failure to do so shall result in termination of this Agreement.

- 6.2.2 Upon termination by the SDA pursuant to this Section 6.2, the SDA may, without prejudice to any other rights or remedies of the SDA, complete Services by whatever methods the SDA may deem appropriate.
- 6.2.3 In the event this Agreement is terminated for cause pursuant to this Section 6.2, the SDA reserves the right not to make any further payments to the Actuary and may require the Actuary to repay all or a portion of the monies already paid; and the Actuary shall be obligated to take any steps necessary to enable the SDA to complete the Services itself, or for the SDA to engage another Actuary to complete the Services at the Actuary's own expense for the portion that exceeds the amount that would have been paid to the Actuary for completing the Services.
- 6.2.4 No action by the SDA pursuant to this Section 6.2 shall operate to waive or release any Claim the SDA may have against the Actuary under the Contractual Documents.

### **6.3 Suspension for Convenience of the SDA**

- 6.3.1 The SDA shall have the right to defer the beginning, or to suspend the whole or any part, of the Services whenever, in the sole discretion of the SDA, it is necessary or expedient for the SDA to do so. The SDA shall by notice to the Actuary suspend performance of the Services and upon receipt of such notice, unless otherwise directed in writing by the SDA; the Actuary shall immediately discontinue all Services, except as may be deemed necessary by the Program Manager.
- 6.3.2 In the event of a suspension by the SDA pursuant to this Section 6.3, compensation shall be determined as follows:
  - 6.3.2.1 If the SDA determines that the Services have been suspended for a period cumulatively totaling less than ninety (90) Days, there shall be no additional compensation paid to the Actuary.
  - 6.3.2.2 If the SDA determines that the Services have been suspended for a period cumulatively totaling ninety (90) Days or more, and if the SDA determines that the suspension has resulted from no fault of the Actuary, the Parties shall amend this Agreement to cover the remaining Services to be performed. Such Amendment shall provide a compensation adjustment in an amount deemed proper by the SDA and Actuary after review of the Actuary's submissions relating to the increased costs actually incurred by the Actuary as a direct result of the suspension. No such Amendment will change other Contractual Documents terms.
- 6.3.3 When the SDA has determined that a suspension is the fault of the Actuary, the SDA may, at its sole option, suspend all payments to the Actuary. Payment may be reinstated by the SDA upon completion of the Services in accordance with the other provisions of this Agreement

and the other Contractual Documents provided, however, that there shall be no upward adjustment in direct or indirect costs or in any other costs. Alternatively, the SDA may terminate this Agreement pursuant to Section 6.2, above, or carry out the Services as provided for in Section 6.4, below.

#### **6.4 SDA's Right to Carry Out the Services**

- 6.4.1 If the Actuary fails to perform any obligation imposed under the Contractual Documents, and fails within seven (7) Days after receipt of written notice to commence and continue correction of such failure with diligence and promptness, the SDA may take steps to remedy such failure without prejudice to any other remedy the SDA may have. In such case, an appropriate written notice shall be issued deducting from the payments then or thereafter due the Actuary the cost of correcting such failure, including compensation for other Professional Services Actuary additional services made necessary by such failure. If the payments then or thereafter due the Actuary are not sufficient to cover such amount, the Actuary shall pay the difference to the SDA upon demand.
- 6.4.2 Any action by the SDA under this Section 6.4 shall be without prejudice to the SDA's rights under the Contractual Documents and shall not operate to release the Actuary from any of its obligations under the Contractual Documents.

#### **6.5 Unacceptable Services; Duty to Cure Errors and Omissions**

- 6.5.1 The SDA shall give the Actuary written notice as soon as practicable after it becomes aware of an error or omission by the Actuary. If the SDA determines that any Service delivered is unacceptable, in quality, timeliness, or any other condition, due to error, omission or failure to comply with requirements of the Contractual Documents, the Actuary shall correct and revise the unacceptable Services under the SDA's direction at no cost to the SDA. The corrected and revised Services shall be resubmitted to the SDA for approval.
- 6.5.2 The Actuary shall be liable to SDA for all damages to SDA caused by Actuary errors or omissions. The Actuary shall reimburse SDA for all costs incurred by SDA as a result of such errors and omissions, including interest and other expenses.

#### **7.0 CLAIMS**

All Claims by the Consultant against the Authority shall be governed by the following provisions.

- 7.1 General.** All Claims asserted by the Consultant against the Authority shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. and the New Jersey False Claims Act, N.J.S.A. 2A:32 et seq.
- 7.2 Notice of Claim.** The Consultant shall file notice of its Claim on a form provided by the Authority, which form shall be completed in its entirety and signed by the Consultant. Incomplete forms will be rejected and have no effect. Submission of completed notice forms shall constitute compliance with the notice provisions of the New Jersey Contractual Liability Act if such notices are provided within the time limits established by N.J.S.A. 59:13-5.

**7.3**      **Review of Claims.** The administrative process for review of Claims is sequential in nature and mandatory. The Authority's Claims procedure is composed of the following steps:

- Step One:      Review by the Authority
- Step Two:      Non-binding Mediation

Completion of the two (2) steps of Claims review is a mandatory prerequisite to the initiation of litigation by either Party.

**7.4**      **Compliance with Claim Review Procedure.** Each Claim will begin its review at Step One. A Claim will not proceed to the next step unless the Consultant submits a written objection to the prior step and requests that its Claim proceed to the next step. If at any step in the process a Claim is resolved, the Consultant must sign a full and final release as to any and all matters arising from the Claim.

**7.5**      **Step One: The Authority's Review.**

7.5.1      The Consultant must provide to the CM and the Authority the required forms as required by this Section to comply with the New Jersey Contractual Liability Act in order to begin the Authority's administrative process for the review of Claims. The Consultant shall also submit to the Authority all documentation supporting the Consultant's Claim. The documentation provided to the Authority will serve as the basis for evaluation of the Consultant's position regarding the Claim throughout Step One of the administrative process. The Consultant shall submit additional information upon request of the Authority. No formal action will be taken by the Authority unless and until the Authority receives complete Claim documentation from the Consultant.

7.5.2      **Authority Review and Decision.** At the option of the Authority, a meeting may be scheduled with the Consultant, the Authority and the CM to discuss the Claim. The Authority shall render its decision regarding the Claim in writing within sixty (60) Days of the receipt of the complete supporting documentation or within sixty (60) Days of any meeting with the Consultant, the Authority and the CM, whichever is later. This time limit may be extended by mutual agreement of the Parties. The Consultant, within fifteen (15) Days of the receipt of the decision by the Authority, shall accept or reject the Authority's decision in writing. If the Consultant neither accepts nor rejects in writing the Authority's decision within fifteen (15) Days, the Claim will be considered withdrawn from the administrative process and there will be no further administrative remedy available to the Consultant for the subject Claim.

**7.6**      **Step Two: Non-Binding Mediation.** If the Consultant rejects in writing the decision of the Authority, there is no further automatic administrative review of the Claim. Within fifteen (15) Days after issuance of the Authority's decision, the Consultant may request in writing that any or all outstanding Claims, which include any or all Claims that have been processed through Step One of the Claim resolution process, and that were neither withdrawn nor considered withdrawn from the process be submitted to Step Two, proceed to non-binding mediation. Such request shall be sent to the Authority. No Claim will proceed automatically to Step Two and the Consultant must make a specific written request that the Claim be elevated to Step Two for review. The cost of non-binding mediation shall be shared equally by the Consultant and the Authority. The mediator shall be selected by the Authority, with

the concurrence of the Consultant. The rules for the mediation shall be agreed to by the Authority, the Consultant and the mediator prior to the start of the mediation. If the Parties fail to agree on the rules for the non-binding mediation, the mediation will not proceed and Step Two review will be deemed completed.

## **8.0 REPRESENTATIONS**

The Consultant hereby represents as follows:

- 8.1** The Consultant is financially solvent, able to pay its debts as they become due and possessed of sufficient working capital to complete the services required and perform its obligations under this Agreement.
- 8.2** The Consultant is able to furnish the workplace, tools, materials, supplies, equipment and labor necessary to complete the Services and perform all of its obligations under the Contractual Documents, and has sufficient experience and competence to do so.
- 8.3** The Consultant is authorized to do business in the State of New Jersey and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Consultant and the Services it will be performing.
- 8.4** The Consultant's execution of and performance under this Agreement are within its duly authorized powers.
- 8.5** The Consultant certifies that it has satisfied itself, from its own investigation, of the conditions to be met, and that it fully understands its obligations and agrees that it will not make any Claim for, or have right to, cancellation or relief from the Contractual Documents without penalty because of its misunderstanding or lack of information.
- 8.6** The Consultant certifies that all representations made by it in any of the Contractual Documents are true, subject to penalty of law. The Consultant understands and agrees that its knowing or intentional violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact may be cause for termination of this Agreement. The Consultant understands and agrees that the Consultant's violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact shall serve as a legal bar to the Consultant's enforcement of its rights under the Contractual Documents, including any and all Claims at law or equity.
- 8.7** The Consultant and any firm it has subcontracted has provided to the Authority proof of valid business registration with the Division of Revenue of the New Jersey Department of the Treasury, pursuant to L. 2001, c. 134, as set forth in Appendix E, and the Consultant shall not enter into any subcontract with a firm that has not provided it and the Authority with proof of such valid business registration.

## **9.0 SDA'S RIGHTS AND RESPONSIBILITIES**

### **9.1 SDA's Rights**

- 9.1.1 The SDA shall have the right to perform Services and to award contracts in connection with same that are not part of the Actuary's responsibilities under this Agreement.
- 9.1.2 The SDA shall have the right, in its sole discretion, to accept or reject personnel provided by the Actuary. The Actuary shall make a timely and prompt resubmission to provide other personnel to replace any that are rejected by the SDA, both at the initial submittal or upon any subsequent rejection or substitution of personnel.
- 9.1.3 The SDA shall have the right to establish and maintain a Actuary Performance Evaluation Policy and Procedure. The Actuary's performance under this Agreement shall be evaluated by the SDA and shall be a factor used in the technical scoring of the Actuary with respect to any future submission by the Actuary in response to a Request for Proposals by the SDA. This evaluation shall consider, among other things, the Actuary's ability to provide all required Services.
- 9.1.4 The SDA's approval, acceptance, use of or payment for all or any part of Actuary's Services hereunder shall in no way alter the Actuary's obligations hereunder.
- 9.1.5 The SDA and the State Police reserve the right to audit the records of the Actuary in connection with all matters related to the Contractual Documents. If, as a result of such audit, the Actuary is discovered for any reason to owe any money or refund to the SDA, the SDA may reduce the Actuary's invoice amount to an amount considered commensurate with the actual services provided.
- 9.1.6 The SDA and their agents have the right to request, and the Actuary agrees to furnish free of charge, all information and copies of all records, documents or books relating to the provision of Service, which the SDA or their agents may request. The Actuary shall allow representatives of the SDA and their agent(s) to visit the office(s) of the Actuary periodically, upon reasonable notice, in order to review any information, records, documents or books related to the Contractual Documents or to otherwise monitor any Services being performed.

## **9.2 SDA's Responsibilities**

The SDA shall, on a timely basis, provide the Actuary with such information in its possession and/or control as may reasonably be necessary for the performance of the Services within the agreed upon time frame.

## **10.0 MISCELLANEOUS**

- 10.1 All notices or other communications required under this Agreement shall be in writing and sent by certified mail, return receipt requested, postage prepaid or by FedEx or similar guaranteed overnight courier and shall be deemed to have been given on the Day after depositing in the mail or with such overnight courier. Notices shall be addressed as directed in Appendix A (Special Conditions). Electronic transmission of information may be required, as may be set forth in the Scope of Services.
- 10.2 This Agreement incorporates by reference, as if set forth herein, all of the Contractual Documents in their entirety, including but not limited to this Agreement and its appendices; the Request for

Proposals and the responses thereto; and any Amendments and any addenda.

- 10.3 In the event of a conflict in terms among the Contractual Documents, the following order shall prevail for purposes of interpretation:
- 10.3.1 Appendix A (Special Conditions)
  - 10.3.2 Appendix B (Scope of Services)
  - 10.3.3 Agreement (excluding Appendices)
  - 10.3.4 Proposals
- 10.4 Nothing in the Contractual Documents shall be construed to be a waiver by the SDA of any warranty, expressed or implied, or any remedies at law or equity, except as specifically and expressly stated in a writing executed by the SDA.
- 10.5 The Actuary shall comply with all written procedural instructions that may be issued from time to time by the SDA.
- 10.6 This Agreement and all other Contractual Documents, and any and all litigation arising therefrom or related thereto, shall be governed by the applicable laws, regulations and rules of the State of New Jersey without reference to conflict-of-laws principles.
- 10.7 All time limits as stated in the Contractual Documents are of the essence.
- 10.8 This Agreement and the other Contractual Documents represent the entire and integrated agreement between the Actuary and the SDA and supersede all prior negotiations, representations or agreements, either written or oral. This Agreement and all other Contractual Documents may be amended only by written instrument signed by both the Actuary and the SDA. Should the Actuary at any time find existing conditions that would make modification in requirements desirable, it shall promptly report such matters to the SDA for consideration.
- 10.9 In the event that any provision of any Contractual Document shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.
- 10.10 In the event that any provision of any Contractual Document should be breached by any party and thereafter waived by any party, such waiver shall be limited to the particular breach so waived by any party and shall not be deemed to waive any other breach. Any consent by the SDA to a delay in Actuary's performance of any obligation shall apply only to the particular transaction to which it relates, and it shall not apply to any other obligation or transaction. And any delay in the SDA's enforcement of any remedy in the event of a breach by the Actuary of any term or condition of the Contractual Documents or any delay in the SDA's exercise of any right under the Contractual Documents shall not be construed as a waiver.
- 10.11 This Agreement and any other Contractual Document, where applicable, may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- 10.12 The State Police (or its agents) may, at its discretion, investigate, examine and inspect the activities of the Actuary and all other parties involved with the Services. The State Police (or its agents) may

require the Actuary or any other party involved with the Services to submit duly verified reports, which shall include such information and be in such form as the State Police (or its agents) may require. In addition to the foregoing, the State Police (or its agents) may investigate, examine, inspect, or audit in any manner and at such times as the State Police deems necessary.

**APPENDIX A**

**SPECIAL CONDITIONS**

A.1 Notices shall be addressed as follows:

Authority: New Jersey Schools Development Authority  
1 West State Street  
P.O. Box 991  
Trenton, NJ 08625-0991  
Attention: Sherman Cole

Consultant:

## APPENDIX B

### SCOPE OF SERVICES

**Scope of Service:** Based on data received from the SDA, the Actuary shall provide an updated GASB 45 actuarial valuation as of January 1, 2010 for the retiree health benefits provided by the SDA through the *New Jersey State Health Benefits Program* (the “SHBP”).

**Deliverable:** The Actuary shall provide a report of the GASB 45 retiree post-employment benefit liability for the active, terminated and retired employees for the SDA within sixty (60) days of receipt of the Notice to Proceed.

**Additional Service:** If deemed necessary by SDA’s external financial statement auditors, the actuarial valuation as of January 1, 2011 and January 1, 2012, for the retiree health benefits provided by the SDA through the SHBP..

**Additional Service Deliverable:** The Actuary shall provide a report of any measurement, other than the January 1, 2010 measurement of the GASB 45 retiree post-employment benefit liability for the active, terminated and retired employees for the SDA within sixty (60) days of receipt of a Notice from the Program Manager to proceed with the additional service.

**APPENDIX C**

**COMPENSATION – FEE PROPOSAL**

*{See the Attached Sheets}*



inspection.

- C. The Actuary further certifies that there have been no changes in circumstance, conditions or status of the Actuary's prequalification with the Authority or the SDA since the latest prequalification application was filed by the Actuary with the Authority or the SDA.
- D. The Actuary certifies that, if applicable, any change in the information provided by the Actuary in its prequalification application currently on file with the Authority or the SDA will be immediately reported to the SDA.
- E. The Actuary certifies that, if applicable, it shall immediately notify the SDA and the Unit of Fiscal Integrity (PO Box 063, Trenton, NJ 08625) if any director, partner, officer, employee of the Actuary or any shareholder owning 5% or more of the Actuary's stock:
  - 1. Is the subject of investigation involving any violation of criminal law or other federal, state, or local law or regulation by any governmental agency; or
  - 2. Is arrested, indicted or named as an unindicted co-conspirator in any indictment or other accusatory instrument; or
  - 3. Is convicted of any crime under state or federal law, or of any disorderly person's offense or misdemeanor involving a business-related offense.
- F. The Actuary hereby waives any objection it might otherwise raise permitting the Unit to investigate, examine and inspect all activities related to the Agreement pursuant to Public Law 2000, Chapter 72, Section 70. The Actuary further releases and holds harmless the Unit, the Authority, the SDA, and the State of New Jersey. All statements contained in the Actuary's Technical Proposal and Fee Proposal and in this waiver and consent are true and correct, and made with full knowledge that the SDA and the State of New Jersey rely upon the truth of the statements contained in this affidavit in awarding the Agreement.

Sworn and subscribed to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Principal

\_\_\_\_\_  
Notary Public of

\_\_\_\_\_  
Print Name of Principal

My commission expires: \_\_\_\_\_, 20\_\_.



(NO DISCRIMINATION)

I SWEAR AND AFFIRM that the Actuary will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, gender or sexual orientation and has complied and will continue to comply with all State and Federal laws and Executive Orders respecting non-discrimination; AND

(PREVAILING WAGE)

If applicable, I SWEAR AND AFFIRM that the Actuary shall or has complied with the New Jersey Contractor Registration Act, Public Laws 1999, Chapter 238 and the New Jersey Prevailing Wage Act, Laws of 1963, Chapter 150, and all amendments thereto, with respect to the Program and any contracts related to school construction entered into on behalf of the Authority or the State of New Jersey, except those contracts not within the contemplation of these acts; AND

I SWEAR AND AFFIRM that all statements contained in the Actuary's Technical Proposal and Fee Proposal and this Affidavit are true and correct; and all such statements have been made with full knowledge that the SDA and the State of New Jersey rely upon the truth of the statements contained in this Affidavit in awarding the Agreement.

Sworn and subscribed to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Principal

\_\_\_\_\_  
Notary Public of

\_\_\_\_\_  
Print Name of Principal

My commission expires: \_\_\_\_\_, 20\_\_.

**APPENDIX E**

**INSURANCE CERTIFICATE(S)**

*{See Attached Sheets}*

**APPENDIX F**

**OTHER DOCUMENTATION**

*{See Attached Sheets}*

- 1. BUSINESS REGISTRATION**
- 2. PL 2005, CHAPTER 51 APPROVAL**
- 3. EO129 CERTIFICATION**

**ATTACHMENT B**

**ACTUARY SERVICES FEE PROPOSAL**

<b>2010 Report Fee</b>	<b>2011 Report Fee</b>	<b>2012 Report Fee</b>
Full Report: \$	Full Report: \$ Roll-Forward Report: \$	Full Report: \$ Roll-Forward Report: \$

I am duly authorized to sign this Price Proposal on behalf of:

Name: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print)

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

**ATTACHMENT C**

**MORAL INTEGRITY QUESTIONNAIRE**

<p><b>NEW JERSEY SCHOOL DEVELOPMENT AUTHORITY          PROCUREMENT &amp; CONTRACT SERVICES          1 WEST STATE STREET, P.O. BOX 991          TRENTON, N.J. 08625-0991</b></p>		
<p><b>CHECK ALL THAT APPLY:</b>  <input type="checkbox"/> CONTRACTOR    <input type="checkbox"/> PROFESSIONAL SERVICES  <input type="checkbox"/> VENDOR/SUPPLIER</p>	<p><b>CHECK ONE:</b>  <input type="checkbox"/> INITIAL    <input type="checkbox"/>          RENEWAL</p>	<p><b>FEDERAL TAX ID #</b>          _____</p>
<p><b>BUSINESS LEGAL NAME AND ADDRESS:</b>          <b>“DOING BUSINESS AS” NAME(S):</b></p>	<p><b>TELEPHONE #</b>          _____</p>	<p><b>DUNS # (if known)</b>          _____</p>
	<p><b>FAX #</b>          _____</p>	<p><b>TYPE OF BUSINESS:</b>  <input type="checkbox"/> INDIVIDUAL  <input type="checkbox"/> PARTNERSHIP  <input type="checkbox"/> CORPORATION  <input type="checkbox"/> L.L.C.  <input type="checkbox"/> OTHER (SPECIFY)          _____</p>
	<p><b>E-MAIL ADDRESS</b>          _____</p>	
	<p><b>WEB ADDRESS</b>          _____</p>	
<p><b>If the books and accounts of the Applicant Business Concern are not at the above address, disclose the address of the location where the books and accounts are kept:</b></p>	<p><b>NEW JERSEY COMMERCE &amp; ECONOMIC GROWTH COMMISSION</b>  <input type="checkbox"/> SBE REGISTRATION (Attach copy)  <input type="checkbox"/> MBE REGISTRATION (Attach copy)  <input type="checkbox"/> WBE REGISTRATION (Attach copy)</p>	
<p><b><u>CONTACT PERSON</u></b></p> <p>Name: _____ Title: _____          _____</p> <p>Telephone: _____ Fax: _____ E-Mail Address: _____</p>		
<p>NOTE: Accurate, truthful and complete information will help speed the review of your questionnaire and expedite action on your Business Concern’s application to be BFO approved. If there is not enough space on this form to give a complete answer, attach additional sheets of paper. Please be sure that each additional sheet includes the Applicant Business Concern’s name and Federal Tax ID Number to identify the page as yours and that you clearly identify the question you are answering. This application will not be sufficient to merit prequalification if you fail to provide additional information if requested to resolve questions about any of the disclosures made in this questionnaire.</p>		

**FOR CORPORATIONS, LIMITED LIABILITY COMPANIES AND LIMITED PARTNERSHIPS ONLY**

Name of Registered Agent in New Jersey: \_\_\_\_\_

Address of Registered Office in New Jersey: \_\_\_\_\_

If the Applicant Business Concern is a corporation, provide the following:

Date Incorporated: \_\_\_\_\_ State in which incorporated: \_\_\_\_\_

NJ Corporate ID: \_\_\_\_\_

**IF NOT A N.J. CORPORATION, SUBMIT A COPY OF THE CERTIFICATE OF AUTHORITY TO PERFORM WORK IN N.J. AS ISSUED BY THE N.J. DEPARTMENT OF THE TREASURY, DIVISION OF REVENUE, COMMERCIAL RECORDING.**

1. How long has the Applicant Business Concern done business under its present name? \_\_\_\_\_ years
2. List each other name the Applicant Business Concern has done business under in the past ten (10) years:
 

D/b/a: _____	Dates Name Used: _____
_____	
D/b/a: _____	Dates Name Used: _____
_____	
D/b/a: _____	Dates Name Used: _____
_____	
3. At any time during the past five (5) years, has the Applicant Business Concern shared office space, warehouse space, yard, plant or shop facilities, staff, equipment, telecommunications or other assets with any other business concern? (If yes, disclose the name of the other business concern and provide a description of the sharing arrangement, including the location of the facilities.)  Yes  No

**DISCLOSURE OF OWNERS AND KEY PERSONS**

“Key Person” means any individual employed by the Applicant Business Concern in a supervisory capacity or empowered to make discretionary decisions with respect to bids and/or contracts within the State of New Jersey.

“Key Person” also means any person who owns a beneficial interest of **10%** or more in the business concern, and the managing members of limited liability companies and corporate directors and officers (e.g., president, vice presidents, secretary and treasurer).

For purposes of this questionnaire, “supervisory capacity or empowered to make discretionary decisions” means able to bind the Applicant Business Concern to New Jersey bids and/or contracts of \$50,000 or more and/or authorized to sign checks to make payments of \$50,000 or more in connection with New Jersey contracts.

4. Use this table to enter identifying information for each individual who is a “Key Person” of the Applicant Business Concern. **Identify any entity or business concern that owns a beneficial interest of 10% or more as well. For entities or business concerns, disregard birth date and provide federal tax identification number instead of social security number.**

Name (Last, First, Middle)	Address	Birth Date (MM/DD/YYYY)	Social Security Number*	Position	Ownership %
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\*Disclosure of Social Security Number is voluntary. However, disclosure will help speed review and action on your application to be prequalified.

**AT ANY TIME DURING THE PAST TEN (10) YEARS, HAS THE APPLICANT BUSINESS CONCERN:**

5. Been indebted to an individual or entity, other than a bank or other commercial lending institution, in the cumulative amount of \$100,000 or more? (If yes, give details, including the name of each party to the transaction, the date and the amount of indebtedness.)  Yes  No
6. Loaned monies generated by this business concern, in the cumulative amount of \$100,000 or more, to another business concern or individual? (If yes, give details, including the name of each party to the transaction, the date and the amount of the indebtedness.)  Yes  No
7. Had an injunction, order or lien entered against it in favor of any government agency including, but not limited to, judgments or liens based on taxes assessed or fines and penalties imposed by any government agency? (If yes, give details, including name of the government agency, caption, date, case number or docket number, and disposition. Be sure to note any judgments or liens that have not been fully satisfied.)  Yes  No
8. Been a party in any civil litigation or administrative proceeding alleging violation of any of the following: antitrust statutes; racketeering statutes; environmental laws; laws banning workplace discrimination; laws governing wages, hours or labor standards; laws governing the conduct of occupations, professions or regulated industries; or any other law indicating a lack of business integrity or honesty? (If yes, give details, including the nature of the claims and defenses, the caption, date, case number or docket number, and name of the court or agency before which the case is pending or before which it was heard and current status.)  Yes  No
9. Paid a fine or otherwise paid to settle any of the allegations listed in Question 8, whether with or without an admission of responsibility? (If yes, give details, including the caption, date, case number or docket number, and name of the court or agency before which the case was brought.)  Yes  No
10. Been denied any license, permit or other similar authorization required to engage in the business concern's trade(s) or professional discipline(s), or has any such license, permit or similar authorization been suspended or revoked by any agency of federal, state or local government? (If yes, give details, including name of the licensing or permitting agency, caption, date, case number or docket number, and disposition.)  Yes  No
11. Been suspended, debarred, disqualified, denied a classification rating or prequalification or otherwise been declared not responsible to bid on or to perform work on any public contract or subcontract? (If yes, give details, including name of the contracting agency, caption, date, case number or docket number, and disposition.)  Yes  No
12. Been required by an agreement or settlement with any governmental agency (including any school board) to refrain from bidding or proposing on any public contract? (If yes, describe the agreement and give the name of the government agency, date, caption and case number or docket number, if any.)  Yes  No

13. Been required to engage a monitor or independent private sector inspector general (IPSIG) as a condition of being classified or prequalified, or as a condition of any contract award, or as a condition for being permitted to complete a contract? (If yes, describe the agreement and give the name of the government agency, date and the name of the monitor or IPSIG.)  Yes  No
14. Been indicted or otherwise charged as a defendant, or named as an unindicted co-conspirator, alleged to have committed any crime or offense other than a motor vehicle offense? (If yes, give details, including the conduct alleged, the caption, date, case number or docket number, and name of the court before which the case is pending or before which it was heard.)  Yes  No
15. Been convicted, after trial or by plea, of any crime or offense other than a motor vehicle offense? (If yes, give details, including the crime or offense, the caption, date, case number or docket number, and name of the court before which the case was heard.)  Yes  No
16. Filed with, or submitted to, a government agency, or to any employee or representative thereof, any document which contained a false statement or false information? Filing or submission could be by any means, including telefax, e-mail, and any other form of electronic communication. (If yes, explain. Your explanation should include a description of the document(s), the date and the name of the government agency.)  Yes  No
17. Paid anyone other than its own key persons or its own employees commissions or finders fees to obtain contracts or work? (If yes, give details, including a description of the transaction, the name of each party to the transaction, the date and the amount of the commission or finders fee paid.)  Yes  No
18. Given, or offered to give, money, gifts or anything of value, or any other benefit, to a labor official, public official, public employee or public servant with whom the Applicant Business Concern, or any affiliated entity disclosed in this questionnaire, conducted business? (If yes, give details, including the date(s), location(s), a description of the benefit(s) and the name(s) of the individual(s) to whom the benefits were given or offered.)  Yes  No
19. Agreed with another business concern or representative thereof to submit identical or complementary bids, prices or proposals or to otherwise not bid competitively or to withdraw or abstain from bidding or proposing? (If yes, give details, including the date(s), location(s), description(s) of the contract(s) that were the subject of the bid(s), who put the contract(s) out to bid and the name(s) of the other individual(s) with whom the Applicant Business Concern or any affiliated entity disclosed in this questionnaire agreed.)  Yes  No

**REQUIRED SUBMITTALS CHECKLIST**

- Any additional attachments necessary to support disclosures made in answer to any questions above.
- Notarized affidavit (see page 4 attached) of the individual submitting this Questionnaire on behalf of the Applicant Business Concern.

**AFFIDAVIT**

State of \_\_\_\_\_:  
SS

County of \_\_\_\_\_:

I, \_\_\_\_\_, hereby represent and state as follows:  
(full name)

That I am \_\_\_\_\_ of \_\_\_\_\_, that I am duly authorized to  
(title) (business concern name and Federal Tax ID Number)

submit this BFO Questionnaire (“Questionnaire”) on behalf of the Applicant Business Concern, and that I have read

and understood the nineteen (19) questions asked in the previous three (3) pages..

I represent and state that the information given in response to each question is full, complete and truthful. Further, I represent and state that truthfully answering this Questionnaire is an event entirely within my control.

I recognize that all the information submitted is for the express purpose of inducing the State of New Jersey to award a contract and/or allow the Applicant Business Concern to participate in school facilities projects financed through the Educational Facilities Construction and Financing Act as a prime contractor or subcontractor. I understand and agree that the Questionnaire and any attachments filed with the State of New Jersey shall become the property of the State.

I acknowledge that the State of New Jersey may, by means it deems appropriate, determine the accuracy, truth and completeness of the statements made in this Questionnaire and any attachments submitted with it and the statements made in any application or request for classification or prequalification made to the Department of Treasury, Division of Property Management and Construction and the attachments thereto. Therefore, I authorize the State of New Jersey to contact any entity or person named in this Questionnaire for purposes of determining the accuracy, truth and completeness of the information supplied by me on behalf of the Applicant Business Concern. If required, a photocopy of this affidavit shall be considered as effective and valid as the original as evidence of the permission given by the Applicant Business Concern for others to release information to the State for purposes of verifying the accuracy, truth and completeness of the information supplied by me.

I represent that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment. Further, I am aware that a false statement or omission made in connection with this application may subject me to civil and criminal penalties available at law and is sufficient cause for denial of the application, revocation of a prior approval or termination for cause of any school facilities project contract that may be awarded to the Applicant Business Concern.

Sworn and subscribed to before me

on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

SIGNATURE:

\_\_\_\_\_  
(Notary Public: Not an officer of the firm)

\_\_\_\_\_  
Name: \_\_\_\_\_  
SIGNATURE  
(PRINT OR TYPE)  
SSN: \_\_\_\_\_

Affix Corporate Seal  
if Applicable