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**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY**

***REQUEST FOR PROPOSALS***

***for***

**CLAIMS ASSISTANCE SERVICES**

***for***

**SCHOOL FACILITIES PROJECTS**

**Contract No.: GP-0182-R01**

**Issued: November 29, 2011**

**Mandatory Electronic Notice of Intent to Participate:  
Monday, December 12, 2011 by 5 PM**

**Due Date: Wednesday, January 4, 2012 by 5 PM**

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PREPARED BY  
THE NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY  
ONE WEST STATE STREET  
PO BOX 991  
TRENTON, NEW JERSEY 08625-0991

**REQUEST FOR PROPOSALS  
FOR  
CLAIMS ASSISTANCE SERVICES**

**INTRODUCTION**

Through this Request for Proposals (“RFP”), the New Jersey Schools Development Authority (“NJSDA” or “Authority”), seeks to engage three (3) firms (hereinafter the “Consultant” or “Consultants”) to provide claims assistance services. Each Consultant will be expected to assist the NJSDA’s Division of Chief Counsel and its Construction Claims Unit in reviewing and determining the validity and value of submitted or anticipated claims by construction contractors, design professionals, project management firms (“PMFs”), construction management firms (“CMs”) and other entities with whom the NJSDA has contracted relating to and arising from change order or amendment requests. The Consultant may also be asked to provide assistance to the NJSDA’s Division of Chief Counsel and its Construction Claims Unit in analyzing, calculating, reviewing and supporting the validity and value of affirmative claims asserted by the NJSDA. The NJSDA anticipates utilizing the Consultant to assist in the assessment of complicated and large dollar value claims, including those that require the devotion of extensive time and/or special expertise to evaluate.

Specific work assignments to the Consultant will be made on a “task-order” basis as determined by the NJSDA. Task order assignments will be made on a rotating basis and multiple claims may be included as part of a single task order assignment. Assignments will be made subject to Consultant availability and a conflict of interest check. The Consultant will be required to submit a proposed budget for each task order assignment. The proposed budget shall be subject to NJSDA’s approval and acceptance prior to commencement of services under the task order assignment. If, after negotiations, agreement is not reached on the budget for the task order assignment, the NJSDA, in its discretion, may assign the task order to the next Consultant in the rotation.

The Consultant must be willing to provide its services at a blended hourly rate of \$185 for Senior Claims Consultants and a blended hourly rate of \$100 for Claims Support Personnel. Definitions of “Senior Claims Consultant” and “Claims Support Personnel” may be found in Section 2.0 of this RFP.

The Consultant must be prepared to provide required services within thirty (30) calendar days of the transmittal of a Notice to Proceed from the NJSDA. The term of the engagement will be two (2) years. The NJSDA shall have the option to extend the term for one (1) additional year, exercisable by the NJSDA in its sole discretion. The Consultant will be expected to accept task order assignments for a period of two (2) years from the Notice to Proceed, and for a period of three (3) years from the Notice to Proceed if the one (1) year option is exercised. If any task order assignment is not completed before such period from the Notice to Proceed, the term of the Consultant’s engagement shall be extended until completion of all task order assignments. The blended hourly rates described above will be charged through the duration of the task order assignment regardless of when the task order assignment is completed. Notwithstanding the issuance of a Notice to Proceed to the Consultant, the NJSDA shall have no obligation to make task order assignments to the Consultant or to make task order assignments with any particular frequency.

Compensation for the engagement shall not exceed \$1.0 million in the aggregate for the initial two (2) year term, and shall not exceed \$1.5 million if the option to extend for one (1) year is exercised.

This REQUEST FOR PROPOSALS PACKAGE consists of the following items:

1. Request for Proposals
2. Attachment A: Agreement for Claims Assistance Services
3. Attachment B: Claims Assistance Fee Statement Form
4. Attachment C: Claims Assistance Services Billing Guidelines
5. Attachment D: 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 NJSDA. A firm wishing to submit a Proposal for Claims Assistance Services must review and be thoroughly familiar with all terms and conditions of these documents.

**The NJSDA will not hold a traditional pre-proposal conference for this procurement. All firms interested in submitting a proposal must sign in electronically by sending a mandatory e-mail Notice of Intent to Participate to Jim McElhenny at [JMElhenny@njsda.gov](mailto:JMElhenny@njsda.gov) no later than 5:00 pm on Monday, December 12, 2011.**

**Interested firms may submit questions to the NJSDA by sending them by email to Jim McElhenny at [JMElhenny@njsda.gov](mailto:JMElhenny@njsda.gov) no later than 5:00 pm on Monday, December 12, 2011. The questions and answers will be provided electronically to each firm that submitted a timely e-mail Notice of Intent to Participate.**

**Proposals must be received by Wednesday, January 4, 2012  
No Later Than 5:00 pm at  
New Jersey Schools Development Authority  
1 West State Street  
(Wells Fargo Bank Building)  
P. O. Box 991  
Trenton, New Jersey 08625-0991**

**Interviews** with all firms that have submitted timely Notices of Intent to Participate and timely and responsive Proposals will then be scheduled and held at the NJSDA Main Office, 1 West State Street, Trenton, NJ 08625. At a minimum, all Key Team Members listed in a firm's Proposal must attend the interview.

Interested firms will be evaluated and scored at the Proposal and Interview stages. Eligible firms with the three (3) highest total scores will receive awards.

Upon award, the NJSDA shall forward the Agreement for Claims Assistance Services (the "Agreement") to the selected firms for immediate execution, **without modification**.

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

**Any firm wishing to submit a Proposal must submit a timely electronic Notice of Intent to Participate, as provided in the Introduction, above.**

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:

- 1.1 Cover letter
- 1.2 Firm Experience - Case Studies
- 1.3 List of Key Team Members
- 1.4 Resumes of Key Team Members
- 1.5 Approach to Providing the Required Scope of Services
- 1.6 Control of Schedule
- 1.7 Business Registration

**Proposal Package Mailing Instructions.** The firm must submit one (1) original and four (4) copies of the Proposal no later than **5:00 pm, Wednesday, January 4, 2012**, 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: James McElhenny, Senior Procurement Analyst  
Subject: Claims Assistance Services Proposal – GP-0182-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: James McElhenny, Senior Procurement Analyst  
Subject: Claims Assistance Services Proposal – GP-0182-R01**

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

In addition, **at the same time as a Proposal is submitted**, the interested firm **must** also submit to NJSDA one (1) original (and no copies) of a completed **Moral Integrity Questionnaire** for submission to the New Jersey State Police, in the form set forth as Attachment D to this RFP. The NJSDA will hold all Questionnaires submitted until all firms are ranked, unless special circumstances warrant otherwise. At such time, staff will forward the completed Questionnaires of the three (3) top-ranked firms to the State Police for review. **Moral Integrity approval is a prerequisite for contract award.**

1.1 Cover Letter

The Cover Letter should include a description of the interested firm's understanding of the NJSDA's needs for claims assistance services, as described in the Scope of Services set forth in Appendix B of the Agreement, and of the firm's ability to meet these needs. Include in the cover letter any other information relevant to the firm's qualifications not set forth elsewhere.

1.2 Firm Experience - Case Studies

The Proposal should contain a brief summary of the firm's general relevant experience, including experience with Primavera Enterprise for Construction project management software and Expedition

document control software. The Proposal must contain **at least three (3) specific case studies relating to construction projects with values in excess of \$5,000,000**. The case studies should address examples of the proposing firm's past provision of services of the type and scale outlined in the Scope of Services. The case studies must concisely set forth basic background information (e.g., dates and location), the scope of services provided, the firm's approach to providing the services and the results achieved. **Case studies may be based on contracts with public or private sector clients.** A sampling of material utilized and generated should accompany each case study, **provided such material is not confidential and may be released as a "public document."** Each case study 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 proposing firm's performance.

### 1.3 List of Key Team Members

The Proposal should contain a List of all Key Team Members the firm proposes to perform claims assistance services. The List should include the name, job title and employer (whether employed by the firm or by a subconsultant) of each Key Team Member. For the purpose of this engagement, a "Key Team Member" shall be a Senior Claims Consultant, as that term is defined in Section 2.0 of this RFP.

### 1.4 Resumes of Key Team Members

The resume of each Key Team Member must be included in the Proposal. The selected firm must use all Key Team Members as indicated in its Proposal, and failure to do so may result in termination. For each Key Team Member, the resumes should include, but not be limited to: relevant education and experience, publications, and certifications and/or affiliations.

### 1.5 Approach to Providing the Required Scope of Services

Firms must explain in detail their specific approach to providing **each** of the Services specifically required in the Scope of Services.

### 1.6 Control of Schedule

**The turnaround time required for the Consultant's services may in certain cases be extremely short, so a proposing firm should indicate its ability to meet tight deadlines here.** The Division of Chief Counsel and Construction Claims Unit will establish deadlines for completion of claims reviews in each Task Order. Describe any scheduling tools that will be used, and explain any techniques the firm plans to use to meet schedules.

### 1.7 Business Registration

Pursuant to N.J.S.A. 52:32-44(6), as amended by P.L. 2004, c. 57, each proposing firm must provide proof of valid business registration with the Division of Revenue of the New Jersey Department of the Treasury (the "Division of Revenue"), in its Proposal.

Any subcontracted firm must provide a firm selected as a 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 Agreement. **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.shtml](http://www.state.nj.us/treasury/revenue/gettingregistered.shtml), or by calling the New Jersey Department of Treasury at (609) 292-9292. Please be advised, however, that business registrations are mailed generally within seven to ten days, so firms should plan accordingly.

## **2.0 INSTRUCTIONS FOR SUBMITTING A CLAIMS ASSISTANCE FEE STATEMENT**

Proposing firms must complete and return a Claims Assistance Fee Statement in the form set forth in Attachment B to this RFP, indicating that the proposing firm will provide services at a blended rate of \$185 per hour for Senior Claims Consultants and \$100 per hour for Claims Support Personnel.

Senior Claims Consultants are principals, senior consultants and consultants responsible for the management and/or analysis of assigned Task Orders for claims assistance services. Such services include analysis of constructability, quality of workmanship, delay, loss of productivity, differing site conditions, acceleration, escalation, constructive and directed changes, defective documentation, interference, force majeure and other claims issues. Senior Claims Consultants are responsible for management of Claims Support Personnel, coordination of claims analysis strategies, final preparation and presentation of written claims assessments, and claims advice and support in connection with claims negotiations, mediation and/or litigation support.

Claims Support Personnel primarily function to support the activities of the Senior Claims Consultants. Claims Support Personnel are responsible for gathering and initial review of information and documentation, development of detailed schedules (e.g. "as-built" and "as-planned" schedules) and summary schedules and generation of schedule "fragnets" for digital input and analysis. They are also utilized in the development of comprehensive "issue files" relating to discrete impacts and/or elements of a claim. Claims Support Personnel may review and summarize reports and information and may assist in the preparation of graphics for inclusion in written claims analyses. They may also prepare drawing take-offs and develop estimates, conduct site investigations and interview personnel with knowledge of facts relevant to the claim.

Hourly blended rates for Senior Claims Consultants and Claims Support Personnel are loaded rates, meaning billing rates that are all-inclusive and must reflect direct labor costs, including fringe benefits, overhead and profit. Administrative and clerical services are part of overhead included in the blended rates.

**Faxed or e-mailed Claims Assistance Fee Statements 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. The Selection Committee shall consist of no less than three (3) NJSDA staff members. The Selection Committee members will independently score each Proposal based upon the information provided by the interested firms in response to this RFP. Evaluations will be based on the following Evaluation Criteria:

EVALUATION CRITERIA	MAXIMUM POINTS
Understanding of the Purposes of this Engagement	5
Firm Experience – Case Studies	30
Experience of Key Team Members	25
Approach to Providing the Required Scope of Services	30
Approach to Control of Schedule	10
<b>TOTAL:</b>	<b>100</b>

The scores of the Selection Committee members will be aggregated to obtain a Proposal Score for each proposing firm. All firms submitting responsive Proposals will be interviewed. At interview, the Selection Committee will evaluate each firm based upon the same evaluation criteria set forth above. The Selection Committee members will independently score each firm based upon its interview. The scores of the Selection Committee members will be aggregated to obtain an Interview Score.

The Proposal Score and the Interview Score assigned each firm will be added together to obtain the firm's Final Combined Score. Those firms with the three (3) highest Final Combined Scores will be awarded the engagement. In the event of a tie in Final Combined Scores for the third firm to be selected, all firms with the tie Final Combined Scores will be awarded the engagement.

### 4.0 PRE-AWARD REQUIREMENTS

After determination of the highest ranked firm, the NJSDA shall request the following information prior to the award of the Agreement:

(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.

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

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

**(b) Political Contributions Disclosure.**

Firms are advised of their responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission ("ELEC"), pursuant to N.J.S.A. 19:44A-20.18 and 20.19 (P.L. 2005, c. 271, section 3), in the event they receive contracts in excess of \$50,000 from a public entity in a calendar year. It is a Firm's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at [www.elec.state.nj.us](http://www.elec.state.nj.us).

**(c) Outsourced Services Special Provisions.** Under P.L. 2005, c. 92 (formerly Executive Order No. 129 (2004)), the NJSDA shall not award a contract to a bidder that submits a bid proposal to perform services, or to subcontract with a firm to perform services, outside the United States, unless certain conditions is met. If, during the term of the contract, the 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.

**(d) 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. 17:27-1.1 *et seq.* **Accordingly, in a notice of award, a firm shall be required to submit to the NJSCC, with its executed Agreement, one of the following three documents:**

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

**(e) Insurance and Indemnification.**

A successful Firm shall be required to provide evidence of the insurance coverages required in Section 5.1 of the Agreement, Attachment A to this RFP, at the time of execution of the Agreement. **This is a pre-award requirement. Do not submit with Technical Proposal.**

ATTACHMENT A

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**AGREEMENT**

*Between the*

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY**

*And the*

**CONSULTANT**

*For*

**CLAIMS ASSISTANCE SERVICES**

*For the*

**SCHOOL CONSTRUCTION PROGRAM**

**CONTRACT NO.: GP-0182-R01**

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THIS AGREEMENT is made and entered into this \_\_\_ day of \_\_\_\_\_, 2012, (the “Effective Date”) between the New Jersey Schools Development Authority (the “Authority”) and \_\_\_\_\_, (“Consultant”), with a principal office location at \_\_\_\_\_.

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

Contract Number: GP-0182-R01

Contract Name: Claims Assistance Services

in strict and entire conformity with the Terms and Conditions of this Agreement and all Appendices and Attachments hereto and all other documents comprising this Agreement, all of which are hereby made part of this Agreement as fully and with the same effect as if the same had been set forth at length in the body of this Agreement.

Provided that Consultant strictly and completely 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 shall not exceed \$1.0 million in the aggregate for the initial two (2) year term of the Agreement and shall not exceed \$1.5 million if the option to extend the term for one (1) year is exercised.

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

**CONSULTANT**

**NEW JERSEY SCHOOLS  
DEVELOPMENT AUTHORITY**

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

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

Sworn and subscribed to before me  
This \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Name of Affiant

Notary Public of

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

Reviewed and Approved

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

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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 **“Additional Services”** means services other than the Services set forth in the Scope of Services on the Effective Date.
- 1.2 **“Agreement”** means this agreement (and all Appendices) between the Authority and the Consultant for the provision of Services as such agreement may be amended from time to time in accordance with the provisions hereof.
- 1.2 **“Amendment”** means an amendment to this Agreement executed by the Parties.
- 1.3 **“Authority”, “New Jersey Schools Development Authority”, or “NJSDA”** means the public body corporate and politic established in, but not of, the Department of Treasury pursuant to P.L. 2007, c. 137, for the purpose of implementing provisions of the Educational Facilities Financing and Construction Act, N.J.S.A. 18A:17G-1 et seq. The Authority is the Party that has engaged the Consultant pursuant to the Agreement.
- 1.4 **“Change Order”** means an amendment or change to material terms and conditions of a contract with the Authority.
- 1.5 **“Claim”** means a contract claim, demand or assertion by one of the Parties to this Agreement, seeking, as a matter of right, adjustment or interpretation of Contractual Documents, payment of money, extension of time or other relief with respect to the terms of the Contractual Documents and shall also mean other disputes and matters in question between the Parties arising out of or relating to the Contractual Documents. This definition shall not apply to the term “Claim” as used in the Scope of Services.
- 1.6 **“Construction Management Firm” or “CM”** means a firm engaged by the Authority to provide construction management services, oversight, direction, coordination and reporting in connection with one or more School Facilities Projects.
- 1.7 **“Consultant”** means the firm engaged by the Authority for the Services required by this Agreement.
- 1.8 **“Consultant Client Manager”** means that person designated by the Consultant to serve as its representative during the Term.
- 1.9 **“Contractor”** means a person or firm or engaged by the Authority to undertake construction at a School Facilities Project.
- 1.10 **“Contractual Documents”** means all documents setting forth Consultant and Authority 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.

- 1.11 **“Day”** or **“Days”** means a calendar day or days.
- 1.12 **“Deliverables”** means, among other things, Services, including, but not limited to, technical data, plans, specifications, minutes, approvals, recommendations, drawings, reports, computer discs, instruction books, documents, writings, materials, other services or any other thing the delivery of which, however accomplished, is required to be delivered by the Consultant, explicitly or implicitly, by the Contractual Documents, as they may be amended from time to time.
- 1.13 **“DOE”** means the New Jersey Department of Education.
- 1.14 **“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 i.
- 1.15 **“Fee Proposal”** means the Claims Assistance Fee Statement submitted by the Consultant in response to the RFP.
- 1.16 **“Fiscal Year”** means the fiscal year of the Authority, which commences on January 1 of each year and ends on December 31 of the same year.
- 1.17 **“Key Team Member”** means a Senior Claims Consultant, as that term is defined in Section 2 to the RFP.
- 1.18 **“Notice to Proceed”** means a notice from the Authority to the Consultant, directing the Consultant to commence performing its responsibilities pursuant to this Agreement.
- 1.19 **“Party”** means a party to this Agreement. The Parties are the Authority and the Consultant.
- 1.20 **“Professional Services Consultants”** means consultants, including the Consultant, which may provide professional services specified in a scope of services pursuant to a contract with the Authority.
- 1.21 **“Program Manager”** means the Authority staff member(s) designated to manage the Consultant’s performance of Services.
- 1.22 **“Project Management Firm”** or **“PMF”** means a firm engaged by the Authority to provide overall construction management services, oversight, direction, coordination and reporting in connection with School Facilities Projects.
- 1.23 **“Request for Proposals”** or **“RFP”** means the request issued by the Authority for proposals for the provision of the Services.
- 1.24 **“Schedule”** means the time-frames governing the completion of Services.
- 1.25 **“School Construction Program”** means the program operated by the Authority in order to finance and construct School Facilities Projects pursuant to the Educational Facilities Financing and Construction Act, P.L. 2000, c. 72, as amended.
- 1.26 **“School Facilities Project”** means the acquisition, demolition, design, construction, improvement, repair, alteration, modernization, renovation, reconstruction or maintenance of all

or any part of a School Facility or of any other personal property necessary for or ancillary to any School Facility.

- 1.27 **“School Facility”** means and includes any structure, building or facility used wholly or in part for academic purposes.
- 1.28 **“Scope of Services”** means the scope of Services required to be provided by the Consultant, as set forth in Appendix B (Scope of Services).
- 1.29 **“Services”** or **“Claims Assistance Services”** means the services required to be performed by the Consultant pursuant to the Contractual Documents, set forth in the Scope of Services, whether completed or partially completed and includes all other labor, travel, meals, equipment and materials, provided or to be provided to fulfill such obligations.
- 1.31 **“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.
- 1.32 **“State”** means the State of New Jersey.
- 1.33 **“Subconsultant”** means the consultant to whom another consultant subcontracts part of the Services for which the latter is responsible.
- 1.34 **“Task Order”** means a task order issued by the Authority requiring specified Services from the Consultant, as provided in the Scope of Services.
- 1.35 **“Technical Proposal”** means the proposal submitted by the Consultant in response to the RFP.
- 1.36 **“Term”** means the term of this Agreement as set forth in Section 4 hereof.
- 1.37 **“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 CONSULTANT**

### **2.1 General**

- 2.1.1 In order to provide the Services required, the Consultant shall be responsible for being thoroughly familiar with all Authority formation and governing documents, internal controls, and operations.
- 2.1.2 The Contractual Documents establish the obligations of the Consultant. The Services described in this Agreement establish the minimum obligations of the Consultant.
- 2.1.3 The services to be provided by the Consultant pursuant to this Agreement shall be performed by the Consultant and its employees and Subconsultants, if any.
- 2.1.4 The Consultant shall be required to utilize the Key Team Members identified in its Technical Proposal. The Consultant shall notify the Program Manager in advance of any

proposed change in its Key Team Members and shall submit to the Program Manager, for approval, the name and qualifications of proposed substitutions with equal or superior qualifications at no additional cost to the Authority. No changes in Key Team Members shall be permitted without the prior written approval of the Program Manager.

- 2.1.5 The Program Manager may, at his or her option, review from time to time the Key Team Members of the Consultant. If, in the Program Manager's opinion, changes to Key Team Members are necessary, the Consultant will be notified in writing of such need, and the Consultant shall thereupon provide substitutes acceptable to the Authority.
- 2.1.6 The Consultant understands and agrees that any change to this Agreement must be made in writing in the form of an Amendment.
- 2.1.7 Any Services performed by the Consultant, without an Amendment that differ from or are in addition to the Services prescribed by this Agreement shall be done at the Consultant'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.
- 2.1.8 The Consultant shall make no changes to the Scope of Services without the prior written consent of the Program Manager and an Amendment. When requesting consent for any such change, the Consultant must simultaneously notify the Program Manager of any need for additional compensation engendered by such changes; provide a detailed cost break-down of, and justification for, the changes sought; and detail the impact of each change upon its provision of Services. The requirements of this provision are in addition to any other requirements of the Contractual Documents regarding additional compensation.
- 2.1.9 The Consultant shall perform all Services in a good, skillful, and prompt manner. The Consultant shall perform the Services consistent with the level of skill and care ordinarily exercised by members of the Consultant's profession, currently practicing under similar circumstances.
- 2.1.10 Services shall be performed within any applicable Schedule.
- 2.1.11 The Consultant is responsible for the quality, technical accuracy, and timely completion and delivery of all Deliverables. If circumstances will result or may result in a late delivery, it shall be the responsibility and obligation of the Consultant to make the details known immediately to the Program Manager.
- 2.1.12 The Consultant shall, without additional compensation, cure any errors, omissions, or other deficiencies in the Deliverables. The approval of interim Deliverables shall not relieve the Consultant 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 Authority of any of its rights under the Contractual Documents or of any cause of action arising out of the Consultant's performance or non-performance under the Contractual Documents.
- 2.1.13 In the event the Consultant hires, employs or otherwise engages Subconsultants, the Consultant shall be considered the sole Consultant and the sole point of contact with regard to contractual matters under this Agreement. The Consultant assumes sole and

full responsibility for the complete performance contemplated by the Contractual Documents, including the performance of all Subconsultants. The Consultant must: (i) where applicable, select only Subconsultants that have been pre-qualified by the Authority, and (ii) obtain the consent of the Program Manager prior to the engagement of any such Subconsultant.

- 2.1.14 It is expressly understood by the Consultant that approval by the Program Manager for the subcontracting of any Services under the Contractual Documents shall in no way relieve the Consultant from performing its obligations under the Contractual Documents. The Consultant shall at all times give due attention to the fulfillment of its obligations under the Contractual Documents and shall keep the Services under its control. Consent by the Program Manager to any subcontracting of any part of the Services shall not be construed to be an approval of said subcontract or of any of its terms, but shall operate only as an approval of the engagement by the Consultant of the Subconsultant. The Consultant shall be responsible for all Services performed by its Subconsultants, which Services shall conform to the provisions of the Contractual Documents and the requirements of applicable law.
- 2.1.15 For all Services rendered, the Consultant shall, in accordance with generally accepted accounting principles and practices, maintain overhead, cost and accounting records, as well as all other records the Consultant may customarily maintain in its business. Such records shall be maintained and made available for inspection by the Authority and the NJ State Police (or their agents) as to all aspects of the Services provided under the Contractual Documents, whether the Services are performed by the Consultant, its Subconsultant or any other firm. The Consultant shall retain all electronic records for a period of at least six (6) Fiscal Years following final payment by the Authority or the end of the Fiscal Year in which this Agreement expires, whichever occurs later. After this period, the Consultant may not dispose of these records until the Consultant has first offered them (at no cost) to the Authority in writing and unless the Consultant has obtained the express written consent of the Authority.
- 2.1.16 The Consultant agrees that it shall assist and cooperate with the Authority 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 Authority and the Consultant 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.
- 2.1.17 The Consultant shall designate a Key Team Member at the Consultant's firm, satisfactory to the Program Manager, as the Consultant Client Manager. So long as the Consultant Client Manager's performance is acceptable, he or she shall remain in charge of the firm's Services, shall represent the Consultant, and be available for general consultation throughout the Term.
- 2.1.18 The Consultant, 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.

- 2.1.19 Business Registration. The Consultant and any Subconsultant provided to the Authority 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 F hereto. The Consultant shall provide written notice to any firm that may become its Subconsultant that it shall not enter into any subcontract with a Subconsultant that has not provided it with proof of such business registration, a copy of which the Consultant shall forward to the Authority, in accordance with N.J.S.A. 52:32-44c. The Consultant shall maintain and submit to the Authority a list of Subconsultants and their addresses, which list must be updated as necessary during the Term. A complete and final version of such list must be submitted to the Authority before final payment for Services shall be made.
- 2.1.20 Payment of Use Taxes. Pursuant to N.J.S.A. 52:32-44g, the Consultant and any Subconsultant of the Consultant, and any affiliate of the Consultant 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. The Consultant shall provide in each contract with a Subconsultant that each such Subconsultant 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. For purposes of this section, “affiliate” shall mean any entity that: (i) directly, indirectly, or constructively controls another entity, (ii) is directly, indirectly, or constructively controlled by another entity, or (iii) is subject to the control of a common entity if it owns, directly or individually, more than 50% of the ownership interest in that entity.
- 2.1.21 Political Contributions. Consistent with the requirements of P.L. 2005, c. 51, N.J.S.A. 19:44A-20.1 et seq., as amended (“Chapter 51”)(formerly Executive Order No. 134 (2004), the Consultant shall, on a continuing basis, have the obligation to disclose and report to the Authority any “contributions” made during the Term of the Agreement by the Consultant or any “Business Entity” associated with the Consultant on the “Disclosure of Political Contribution” form provided by the Authority, at the time such contribution is made. As part of this obligation, the selected firm shall be required to comply with Executive Order No. 117, which was issued to enhance New Jersey’s efforts to protect the integrity of government contractual decisions and increase the public’s confidence in government. Executive Order No. 117 builds on the provisions of Chapter 51, which limits contributions to certain political candidates and committees by for-profit business entities that are, or seek to become, State government contractors.
- 2.1.22 Political Contributions Disclosure. Consultant 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-20.18 and 20.19 (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 Consultant’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).
- 2.1.23 Outsourcing Provisions. In accordance with P.L. 2005, c. 92 (formerly Executive Order No. 129 (2004)), the Consultant shall have a continuing duty to comply with the provisions of P.L. 2005, c. 92, as applicable. If, during the Term, the Consultant or a

Subconsultant, 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, which shall be subject to termination for cause, unless the Senior Director of the Authority's Division of Procurement & Contract Services shall determine in writing that extraordinary circumstances require a shift of services or that a failure to shift the services would result in economic hardship to the Authority or the State.

## **2.2 Final Release**

The Consultant's acceptance of final payment shall constitute a final release from and waiver of all the Consultant's Claims except for: (i) those Claims the Consultant 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 Consultant by third parties; and (iii) those Claims arising after final payment due to an alleged breach by the Authority of any Agreement provision that survives after the Term.

## **3.0 COMPENSATION**

### **3.1 General Provisions**

- 3.1.1 Loaded Hourly Rates. The Consultant shall be compensated over the Term of the Agreement in accordance with the blended hourly rates set forth in Appendix C (Claims Assistance Fee Statement). The blended hourly rates are loaded rates, meaning that they are billing rates that are all-inclusive and must reflect direct labor costs, including fringe benefits, overhead and profit. Administrative and clerical services are part of overhead included in the blended rates.
- 3.1.2 Costs and Expenses. The Consultant shall not be entitled to reimbursement for any costs or expenses incurred except as set forth in the Claims Assistance Billing Guidelines set forth in Attachment C to the RFP.
- 3.1.3 The Consultant 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 Consultant under the Contractual Documents shall not constitute a release or waiver of any Claim the Authority 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 Consultant, and Consultant assumes sole responsibility for payments due any Subconsultant.
- 3.1.5 Unless otherwise set forth in writing by the Authority, prices quoted shall be firm and not subject to increase during the Term.
- 3.1.6 The Authority assumes no responsibility or liability for costs the Consultant 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 on an Authority invoice form, and shall be accompanied by such supporting documentation, as to reimbursements and other items, as may be required by the Authority. Electronic invoices with associated backup are acceptable.
- 3.2.2 Invoices submitted to the Authority must identify this Agreement's contract number.
- 3.2.3 Invoices submitted to the Authority shall be processed and paid only after the Authority 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 Authority shall not pay invoices if the Authority determines that the Services for which payment is sought are incomplete or unsatisfactory.
- 3.2.4 Each invoice signed by the Consultant and submitted to the Authority shall be a representation by the Consultant that all payments due to its Subconsultants have been made and that all relevant laws and regulations have been complied with.
- 3.2.5 All invoices shall be accompanied by appropriate backup to ensure billing accurately represents work incurred.

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

- 3.3.1 If the Authority 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 Authority will either: (i) retain for payment the relevant invoice (or portion thereof) until such time as the Consultant has made the necessary corrections/deliveries, or (ii) return the relevant invoice to the Consultant, who shall resubmit the invoice once all of the Services have been completed or corrected or the Deliverables have been delivered.
- 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 Authority of the Consultant's obligation to furnish the items required under the Contractual Documents. In the event the Consultant fails to furnish these items, the Authority 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 an initial period of two (2) years, and for an additional period of one (1) year if the Authority exercises its option to extend the Term, 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,

Project School Districts 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 \$500,000 per accident for bodily injury by accident and \$500,000 for each employee for bodily injury by disease and \$500,000 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.
- 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 Authority's execution of this Agreement and for other good and valuable consideration, all Deliverables, including, but not limited to plans, methods, drawings, specifications, flow charts, reports, all data, diagrams, samples, tests, surveys,

models, material, computer discs, evidence, documentation, and all copyrightable materials, gathered, originated or prepared by the Consultant and its Subconsultants during and in connection with the performance of Services; and all copyrights resulting from Deliverables, and in all renewals and extensions of the copyrights that may be secured now or be hereafter in force and effect are instruments of the Consultant's Services performed under the Contractual Documents and, unless otherwise provided, shall be the sole property of the Authority.

- 5.2.2 The Consultant's promotional and professional (or other) materials shall not include Authority confidential or proprietary information, except with the written consent of the Authority.

### **5.3 Copyrights and Patents**

- 5.3.1 If the Consultant 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 Consultant 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 Consultant shall defend, indemnify and save harmless the Authority 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 Authority 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.

### **5.4 Confidentiality**

- 5.4.1 All data contained in documents supplied by the Authority or by any other party under an Authority contract or otherwise involved in the School Construction Program and data gathered by the Consultant 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 Authority may identify any such as government documents within the meaning of N.J.S.A. 47:1A-1 et seq.

- 5.4.2 The Consultant shall be required to use utmost care to protect the confidentiality of data by, among other things, requiring in Authority of these confidentiality terms and conditions into its contract(s) with Subconsultants, if any, and requiring personnel assigned to provide Services to sign a confidentiality agreement in a form provided by the Authority. Any release of confidential material in any form by the Consultant, its employees, Subconsultants 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 Authority being liable for damages, costs and/or attorney fees. The Consultant shall be liable for any and all damages arising from its breach of this confidentiality provision.

### **5.5 Contractual Relationship**

- 5.5.1 Nothing in the Contractual Documents shall be construed as creating a contractual relationship between any Subconsultant of the Consultant and the Authority.
- 5.5.2 The Consultant's status shall be that of an independent contractor, not an employee of the Authority. The Consultant 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 Authority by reason hereof. The Consultant shall not, by reason hereof, make any Claim, demand or application to any Authority officer or employee for any right or privilege afforded to an Authority officer or employee, including, but not limited to, workers' compensation, unemployment or other insurance benefits, social security coverage, or retirement membership or credit.
- 5.5.3 The Consultant and any Subconsultants engaged by the Consultant under this Agreement are bound by the terms and conditions of the Contractual Documents.
- 5.5.4 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, Authority, or any combination thereof, which supplies materials, labor, services or equipment to the Consultant for the performance of Services shall become thereby a third party beneficiary of the Contractual Documents.
- 5.5.5 The Parties hereby bind themselves, their partners, successors, assigns and legal representatives each to the other Party and the other Contractual Documents.

## **5.6 Assignment**

- 5.6.1 The Consultant shall not assign or transfer its obligations, privileges or rights under the Contractual Documents without the prior written consent of the Authority. Any assignment or transfer of the Consultant's rights under the Contractual Documents without the prior written consent of the Authority shall not relieve the Consultant 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 Consultant 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 Authority or order of court.
- 5.6.3 The Authority 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 Consultant agrees to continue to perform all of its obligations as set forth in this Agreement. The Consultant shall make no Claim against the Authority in the event of such assignment and shall execute such certificates, documents and instruments as may be reasonably requested by the Authority to effect such assignment.

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

- 5.7.1 If, subsequent to the execution of this Agreement, the Consultant proposes to merge with or be acquired by another firm or in the event of a proposed dissolution by the

Consultant, the Consultant shall immediately notify the Authority and shall submit documentation to the Authority describing the proposed transaction.

- 5.7.2 The Authority, in its sole discretion, may approve the continuation of this Agreement following the proposed transaction or terminate this Agreement for cause. The Authority will notify the Consultant of its decision within thirty (30) Days of receipt by the Authority of documentation from the Consultant describing the proposed transaction.
- 5.7.3 If the Authority approves a merger or acquisition, the Consultant shall submit to the Authority: (i) corporate resolutions prepared by the Consultant and the new entity ratifying acceptance of the Contractual Documents; (ii) information necessary to ensure that the new entity satisfies the Authority'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 Authority may require.
- 5.7.4 If the Authority approves a dissolution, the Consultant shall submit to the Authority: (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 Authority, partnership or joint venture, respectively; (ii) information necessary to ensure that the new entity satisfies the Authority'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 Authority may require.

## **5.8 Mandatory Compliance With Law**

- 5.8.1 The Consultant 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 Consultant under the Contractual Documents.
- 5.8.2 Each and every provision required by law to be inserted in the Contractual Documents shall be deemed to have been inserted therein. If any such provision has been omitted or has not been correctly inserted, the Contractual Documents shall be amended, upon application of either Party, to provide for such insertion or correction.
- 5.8.3 If the Authority determines that the Consultant has violated or failed to comply with applicable Federal, State or local laws with respect to its performance under the Contractual Documents, the Authority may withhold payments for such performance and take such action that it deems appropriate until the Consultant has complied with such laws or has remedied such violation or non-compliance to the satisfaction of the Authority.
- 5.8.4 The Consultant's compliance with the legal requirements of this Section 5.8 and any other applicable laws, regulations or codes is mandatory and cannot be waived by the Authority.

## 5.9 Affirmative Action and Non-discrimination

- 5.9.1 The Consultant and its Subconsultants 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 Authority 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 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 thereunder. During the performance of this Agreement, the Consultant and its Subconsultants agree as follows:
- 5.9.2.1 The Consultant and its Subconsultants, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- 5.9.2.2 The Consultant and its Subconsultants, where applicable, will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
- 5.9.2.3 The Consultant and its Subconsultants, where applicable, 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 Consultant's (and its Subconsultants') 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 Consultant 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 Consultant shall comply with the *MacBride* principles of nondiscrimination in employment, or have no business operations in Northern Ireland, under N.J.S.A. 52:34-12.2.

## **5.10 Anti-collusion**

5.10.1 The Consultant, 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 Authority.

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

## **5.11 Conflict of Interest**

5.11.1 The Consultant 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 officer or employee with which the Consultant 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 officer or employee; or (iii) any partnership, firm or Authority with which such Authority 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 officer or employee from the Consultant shall be reported in writing forthwith by the Consultant to the State Attorney General and the Executive Commission on Ethical Standards.

5.11.3 The Consultant 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 Consultant to, any Authority officer or employee having any duties in connection with the purchase, acquisition or sale of any property or services by or to the Authority; and shall not undertake any such relationship with, or sell any such interest to, any person, firm or entity with which such Authority officer or employee is employed or associated, or in which such Authority 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 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 Consultant shall not influence, attempt to influence, or cause to be influenced any Authority officer or employee in such officer's or employee's official capacity in any manner that might tend to impair the objectivity or independence of judgment of said officer or employee.
- 5.11.5 The Consultant shall not cause or influence or attempt to cause or influence, any Authority 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 Consultant or any other person.
- 5.11.6 Under N.J.S.A. 52:34-19, it is a misdemeanor to offer, pay or give any fee, commission, compensation, gift or gratuity to any person employed by the Authority. It is the policy of the Authority to treat the offer of any gift or gratuity by the Consultant, its officers or employees, to any person employed by the Authority as grounds for debarment or suspension from submitting proposals and providing work or materials to the Authority.
- 5.11.7 The provisions cited in this Section 5.11 shall not be construed to prohibit an Authority officer or employee from receiving gifts from or contracting with the Consultant 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.

## **5.12 Indemnification**

- 5.12.1 To the fullest extent permitted by law, the Consultant shall indemnify, protect, defend and save harmless the State of New Jersey, the Authority, 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 Consultant, its agents, servants, officers, employees, Subconsultants or any other person acting at the Consultant'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 Consultant, its agents, servants, officers, employees, Subconsultants or any other person acting at the Consultant's request, subject to its direction, or on its behalf;
- 5.12.1.3 any gross negligence, default, or breach, of the Consultant, its agents, servants, officers, employees, Subconsultants or any other person acting at the Consultant'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 Consultant, its agents, servants, officers,

employees, Subconsultants or any other person acting at the Consultant's request, subject to its direction, or on its behalf; and

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

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

5.12.3 The Consultant agrees that any approval by the Authority of the Services performed, and/or reports, plans or specifications provided by the Consultant shall not operate to limit the obligations of the Consultant under the Contractual Documents; and that the Authority assumes no obligations to indemnify or save harmless the Consultant, its agents, servants, employees, or Subconsultants against all Claims that may arise out of its performance or nonperformance under the Contractual Documents; and that the provisions of this indemnification clause shall in no way limit the Consultant's obligations under the Contractual Documents, nor shall they be construed to relieve the Consultant from any liability, nor preclude the Authority from taking any other actions available to it under any other provisions of the Contractual Documents or otherwise at law or equity.

5.12.4 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 Authority's right to recover any and all costs and damages resulting from Consultant failure to perform the Services in a satisfactory manner.

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

6.1.1 Performance by the Consultant of its obligations under the Contractual Documents may be terminated by the Authority in accordance with this Section 6.1 in whole or in part, whenever the Authority, 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 Consultant shall be entitled only to that proportion of the compensation that the Services actually and satisfactorily performed by the Consultant bear to the total Services to be rendered under the Contractual Documents, less payments previously made.

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

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

## **6.2 Termination for Cause**

- 6.2.1 Without prejudice to any other remedy, the Authority may terminate this Agreement if the Consultant: (i) disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction; (ii) refuses or fails to supply enough properly skilled workers or proper materials; (iii) fails to make payments to Subconsultants for materials or labor in accordance with the respective agreements between the Consultant and the Subconsultants; (iv) fails to maintain or produce any records required by the Contractual Documents to be so maintained or produced; (v) fails to cooperate with the Authority where such cooperation is deemed necessary by the Authority for the implementation of the Contractual Documents; (vi) fails to obtain and properly maintain the level of insurance coverages outlined in Section 5.1; (vii) assigns or transfers its obligations, privileges or rights under the Contractual Documents without the prior written consent of the Authority; (viii) makes any misrepresentation or conceals any material fact; or (ix) commences or has commenced against it any action under the United States Bankruptcy Code or any state or federal insolvency law, the commencement of which, in the Authority's judgment, may effectively impair the ability of the Consultant to perform its obligations under the Contractual Documents; or (x) violates or breaches the Contractual Documents or any provision or material term thereof. For all such causes of termination except those contained in subsections (viii) and (ix), the Consultant 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 Authority within the Notice of Termination; failure to do so shall result in termination of this Agreement.
- 6.2.2 Upon termination by the Authority pursuant to this Section 6.2, the Authority may, without prejudice to any other rights or remedies of the Authority, complete Services by whatever methods the Authority may deem appropriate.
- 6.2.3 In the event this Agreement is terminated for cause pursuant to this Section 6.2, the Authority reserves the right not to make any further payments to the Consultant and may require the Consultant to repay all or a portion of the monies already paid; and the Consultant shall be obligated to take any steps necessary to enable the Authority to complete the Services itself, or for the Authority to engage another Consultant to complete the Services at the Consultant's own expense for the portion that exceeds the amount that would have been paid to the Consultant for completing the Services.
- 6.2.4 No action by the Authority pursuant to this Section 6.2 shall operate to waive or release any Claim the Authority may have against the Consultant under the Contractual Documents.

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

- 6.3.1 The Authority 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 Authority, it is necessary or expedient for the Authority to do so. The Authority shall by notice to the Consultant

suspend performance of the Services and upon receipt of such notice, unless otherwise directed in writing by the Authority; the Consultant 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 Authority pursuant to this Section 6.3, compensation shall be determined as follows:

6.3.2.1 If the Authority 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 Consultant.

6.3.2.2 If the Authority determines that the Services have been suspended for a period cumulatively totaling ninety (90) Days or more, and if the Authority determines that the suspension has resulted from no fault of the Consultant, 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 Authority and Consultant after review of the Consultant's submissions relating to the increased costs actually incurred by the Consultant as a direct result of the suspension. No such Amendment will change other Contractual Documents terms.

6.3.3 When the Authority has determined that a suspension is the fault of the Consultant, the Authority may, at its sole option, suspend all payments to the Consultant. Payment may be reinstated by the Authority 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 Authority 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 Authority's Right to Carry Out the Services**

6.4.1 If the Consultant 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 Authority may take steps to remedy such failure without prejudice to any other remedy the Authority may have. In such case, an appropriate written notice shall be issued deducting from the payments then or thereafter due the Consultant the cost of correcting such failure, including compensation for other Professional Services Consultant additional services made necessary by such failure. If the payments then or thereafter due the Consultant are not sufficient to cover such amount, the Consultant shall pay the difference to the Authority upon demand.

6.4.2 Any action by the Authority under this Section 6.4 shall be without prejudice to the Authority's rights under the Contractual Documents and shall not operate to release the Consultant from any of its obligations under the Contractual Documents.

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

6.5.1 The Authority shall give the Consultant written notice as soon as practicable after it becomes aware of an error or omission by the Consultant. If the Authority 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 Consultant shall correct and revise the unacceptable Services under the Authority's direction at no cost to the Authority. The corrected and revised Services shall be resubmitted to the Authority for approval.

- 6.5.2 The Consultant shall be liable to Authority for all damages to Authority caused by Consultant errors or omissions. The Consultant shall reimburse Authority for all costs incurred by Authority 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 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 between the Consultant and the Authority to discuss the Claim. The Authority shall attempt to 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 between the Consultant and the Authority whichever is later. This time limit may be extended by the Authority if additional time is required for the Authority to complete its review of the Claim or 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 AUTHORITY'S RIGHTS AND RESPONSIBILITIES**

### **9.1 Authority's Rights**

- 9.1.1 The Authority shall have the right to perform Services and to award contracts in connection with same that are not part of the Consultant's responsibilities under this Agreement.
- 9.1.2 The Authority shall have the right, in its sole discretion, to accept or reject personnel provided by the Consultant. The Consultant shall make a timely and prompt resubmittal to provide other personnel to replace any that are rejected by the Authority, both at the initial submittal or upon any subsequent rejection or substitution of personnel.
- 9.1.3 The Authority shall have the right to establish and maintain a Consultant Performance Evaluation Policy and Procedure. The Consultant's performance under this Agreement shall be evaluated by the Authority and shall be a factor used in the technical scoring of the Consultant with respect to any future submission by the Consultant in response to a Request for Proposals by the Authority. This evaluation shall consider, among other things, the Consultant's ability to provide all required Services.
- 9.1.4 The Authority's approval, acceptance, use of or payment for all or any part of Consultant's Services hereunder shall in no way alter the Consultant's obligations hereunder.

- 9.1.5 The Authority and the NJ STATE POLICE reserve the right to audit the records of the Consultant and its Subconsultants in connection with all matters related to the Contractual Documents. If, as a result of such audit, the Consultant is discovered for any reason to owe any money or refund to the Authority, the Authority may reduce the Consultant's invoice amount to an amount considered commensurate with the actual services provided.
- 9.1.6 The Authority and their agents have the right to request, and the Consultant agrees to furnish free of charge, all information and copies of all records, documents or books relating to the provision of Service, which the Authority, or their agents may request. The Consultant shall allow representatives of the Authority and their agent(s) to visit the office(s) of the Consultant 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 Authority's Responsibilities**

The Authority shall, on a timely basis, provide the Consultant 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 Notices. 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 Incorporation by Reference. 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 Conflict in Terms. 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 No Waiver of Warranties or Legal/Equitable Remedies. Nothing in the Contractual Documents shall be construed to be a waiver by the Authority 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 Authority.

- 10.5 Procedural Requirements. The Consultant shall comply with all written procedural instructions that may be issued from time to time by the Authority.
- 10.6 Governing Law. 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 Time of the Essence. All time limits as stated in the Contractual Documents are of the essence.
- 10.8 Entire Agreement and Amendments. This Agreement and the other Contractual Documents represent the entire and integrated agreement between the Consultant and the Authority 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 Consultant and the Authority. Should the Consultant at any time find existing conditions that would make modification in requirements desirable, it shall promptly report such matters to the Authority for consideration.
- 10.9 Severability. 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 Waiver of Breach. 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 Authority to a delay in Consultant'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 Authority's enforcement of any remedy in the event of a breach by the Consultant of any term or condition of the Contractual Documents or any delay in the Authority's exercise of any right under the Contractual Documents shall not be construed as a waiver.
- 10.11 Execution in Counterparts. 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 Unit of Fiscal Integrity. The NJ State Police (or its agents) may, at its discretion, investigate, examine and inspect the activities of the Consultant and all other parties involved with the Services. The NJ State Police (or its agents) may require the Consultant 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 NJ State Police (or its agents) may require. In addition to the foregoing, the NJ State Police (or its agents) may investigate, examine, inspect, or audit in any manner and at such times as the NJ State Police deems necessary. The Consultant shall include in any and all contracts with Subconsultants a provision requiring such Subconsultants to permit the NJ State Police (or its agents), in its discretion, to investigate, examine, inspect or audit in any manner and at such times as the NJ State Police (or its agents) deems necessary.
- 10.13 Entry Clearance. The Consultant and its personnel and Subconsultants shall be subject to such entry clearance at School Facilities Projects and other locations as may be required, if any, in order to fulfill obligations under the Contractual Documents.

**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: Albert D. Barnes

Consultant: [firm's contact information for notices here]

## **APPENDIX B**

### **SCOPE OF SERVICES**

#### **A. GENERAL ISSUES**

This Appendix B sets forth the Services required of the Consultant. Capitalized terms in this Appendix B shall have the meanings set forth in Section 1 of the Agreement, or such meaning as provisions or context clearly indicate in this Appendix B.

**A.1 Overview of NJSDA Operations.** The NJSDA is charged with the design and construction of School Facilities Projects throughout New Jersey, and has engaged construction contractors, design professionals, project management firms (“PMFs”), construction management firms (“CMs”) and others in order to fulfill its responsibilities. The NJSDA has established an internal Construction Claims Unit with oversight by NJSDA’s Division of Chief Counsel to address claims made by Design Consultants, Contractors, PMFs, CMs and other parties against NJSDA.

**A.2 Consultant’s General Role.** Within thirty (30) Days of the issuance of the Notice to Proceed for this Agreement, the Consultant shall, on the Task Order basis set forth below, provide assistance to the Division of Chief Counsel and Construction Claims Unit in reviewing and determining the validity and value of submitted or anticipated claims by construction contractors, design professionals, PMFs, CMs and other entities. The Consultant shall also, on the Task Order basis set forth below, provide assistance to the Division of Chief Counsel and Construction Claims Unit in analyzing, calculating, reviewing and supporting the legitimacy and accuracy of claims made or asserted by the NJSDA.

**A.2.1 Claims.** For purposes of this Scope of Services, Claims shall mean those claims, submitted or anticipated to be submitted, arising from or relating to Change Order and Amendment requests. Claims may also include affirmative claims by the NJSDA against construction contractors, design professionals, PMFs, CMs and other entities.

**A.2.2 Task Orders.** The NJSDA may, in its sole judgment and discretion, issue a Task Order to the Consultant specifying the Claim(s) for which the Consultant shall be required to provide Services. The Task Order shall specify the time within which the Services are to be provided.

**A.2.2.1 Task Order Fee Proposals.** A Task Order shall require the Consultant to submit, within five (5) business days of a Task Order, a task order budget (“Task Order Budget”) consisting of detailed man-hours and reimbursable costs that the Consultant estimates are necessary in order to complete the Services required under the Task Order. Task Order Budgets shall also include a schedule with dates certain by which the Consultant will complete the services required under the Task Order. Task Order Budgets shall be based on the rates established in the Claims Assistance Fee Statement, Attachment B to the RFP, and shall reasonably and appropriately reflect the scope and schedule of the Services specifically required. Proposed fees may be negotiated. Consultant shall be entitled to reimbursement of properly documented reimbursable costs as

set forth in the Claims Assistance Services Billing Guidelines reflected in Attachment C to the RFP. In the event that a Task Order requires Services to be provided prior to final approval of the Task Order Budget, the fees and reimbursable costs ultimately accepted by the NJSDA in the approved Task Order Budget shall apply to such Services.

**A.2.2.2 Conflict of Interest Disclosure and Certification.** The Consultant shall submit a duly completed Conflict of Interest Disclosure and Certification, on a form to be provided by the NJSDA, with each Task Order Budget. In the event that an affiliation or interest exists with respect to the subject matter of the Task Order, and presents an actual or apparent conflict that cannot effectively be cured within the sole determination of the NJSDA, the NJSDA may rescind the Task Order, at no cost to the NJSDA.

## **B. CONSULTANT'S SPECIFIC RESPONSIBILITIES**

The Consultant shall provide the Services set forth below.

**B.1 Claims Assistance Services.** Upon receipt of a Task Order and approval of the Task Order Budget, the Consultant shall assist the Division of Chief Counsel and the Construction Claims Unit in the review of the Claim(s) specified in the Task Order.

**B.1.1 Scope of Review.** The Consultant's review shall include, but not be limited to, all relevant contract documents, including, but not limited to, bid or proposal documents, addenda, questions and answers issued in the procurement process, plans and drawings, specifications, project manuals, schedules, meeting minutes, submittals, inspection records, financial and payroll records, purchase orders, subcontractor invoices, correspondence and emails, relevant documentation submitted by the claimant, and any Change Order, Amendment or Claim analyses performed by NJSDA or by a Contractor, Design Consultant, PMF, CM, or other party. The review may also include field/site inspections as required.

**B.1.2 Team.** The Consultant shall provide the Services by and through a multi-disciplined team, which may consist of such architects, engineers, schedulers, cost estimators, auditors, accountants, claims analysts and other specialists as may be necessary to handle the Claim(s) specified in the Task Order.

**B.1.3 Claim Reports.** As a result of the review, within the time specified in the Task Order, the Consultant shall provide a detailed written Claim Report with a recommendation based on its determination whether the Claim is legitimate and justified. In addition, such determination shall include the Consultant's written analysis of whether the cost is reasonable and appropriate, based on applicable compensation and labor rates, material and equipment costs, and any other factors relevant to performance under the contract. If the Consultant finds the cost is not reasonable and appropriate, it shall provide a recommended cost, together with all relevant supporting documentation.

**B.2 Specific Claims Assistance Services.** The Consultant shall perform any or all of the following types of Services, as may be necessary for the appropriate handling of the Claim(s) specified in a Task Order:

- (a) Verification of labor rates and the ratios between and among all worker classifications;
- (b) Analysis of general conditions, overhead and profit allocations;
- (c) Delay to schedule analysis;
- (d) Financial impact due to inefficiency claims;
- (e) Analysis of extended field costs, delayed mobilization costs, and similar resulting costs;
- (f) Financial and/or schedule impact due to environmental issues (e.g., unsuitable soils, contamination);
- (g) Identification of any errors or omissions, and analysis of their impact on cost and schedule;
- (h) Assisting in the proper interpretation/application of NJ Uniform Construction Code, Environmental laws, and other applicable codes;
- (i) CPM schedule variance: baseline versus modified;
- (j) Analysis of differing site/field conditions;
- (k) Effects of acceleration on job costs;
- (l) Analysis of labor escalation costs;
- (m) Assessment of liquidated damages;
- (n) Field/site inspections, on an as needed basis;
- (o) Forensic accounting, on an as needed basis;
- (p) Other related tasks as assigned by NJSDA.

**B.3 Litigation Support.** When required pursuant to a Task Order or amended Task Order, the Consultant shall assist the NJSDA in preparing for and pursuing Claims litigation, including all forms of mediation and/or arbitration that the NJSDA may enter into. Such assistance may, in the sole judgment and discretion of the NJSDA, include document analysis, merit/entitlement analysis, exhibit preparation, expert witness testimony, and related services.

**B.4 General Reports.** In addition to Claim Reports, the Consultant shall also provide to the NJSDA such other reports relating to Claims Assistance Services, including Litigation Support, as may be required in a Task Order for such report.

**APPENDIX C**

**COMPENSATION – CLAIMS ASSISTANCE FEE STATEMENT**

*{See the Attached Sheet}*



- C. The Consultant further certifies that there have been no changes in circumstance, conditions or status of the Consultant's prequalification with the Authority since the latest prequalification application was filed by the Consultant with the Authority.
- D. The Consultant certifies that, if applicable, any change in the information provided by the Consultant in its prequalification application currently on file with the Authority will be immediately reported to the Authority.
- E. The Consultant certifies that, if applicable, it shall immediately notify the Authority and the Division of Fiscal Oversight (PO Box 063, Trenton, NJ 08625) if any director, partner, officer, employee of the Consultant or any shareholder owning 5% or more of the Consultant'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 persons offense or misdemeanor involving a business-related offense.
- F. The Consultant 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 Consultant further releases and holds harmless the Unit, the Authority, and the State of New Jersey. All statements contained in the Consultant's Technical Proposal and Fee Proposal and in this waiver and consent are true and correct, and made with full knowledge that the Authority 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 Consultant 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 Consultant 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 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 Consultant'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 Authority 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 the Attached Sheets}*

## **APPENDIX F**

### **OTHER DOCUMENTATION**

*{See the Attached Sheets}*

- 1. BUSINESS REGISTRATION**
- 2. PL 2005, CHAPTER 51 APPROVAL**
- 3. EO129 CERTIFICATION**
- 4. ADDENDA (if any)**

**ATTACHMENT B**

**CLAIMS ASSISTANCE  
FEE STATEMENT  
Contract No. GP-0182-R01**

\_\_\_\_\_ (“Firm”) will provide claims assistance Services at  
(Name of Firm)  
blended rates of \$185 per hour for Services performed by **Senior Claims Consultants** and \$100  
per hour for Services performed by **Claims Support Personnel**.

**Senior Claims Consultants** are principals, senior consultants and consultants responsible for the management and/or analysis of assigned Task Orders for claims assistance Services. Such Services include analysis of constructability, quality of workmanship, delay, loss of productivity, differing site conditions, acceleration, escalation, constructive and directed changes, defective documentation, interference, force majeure and other claims issues. Senior Claims Consultants are responsible for management of Claims Support Personnel, coordination of claims analysis strategies, final preparation and presentation of written claims assessments, and claims advice and support in connection with claims negotiations, mediation and/or litigation support.

**Claims Support Personnel** primarily function to support the activities of the Senior Claims Consultants. Claims Support Personnel are responsible for gathering and initial review of information and documentation, development of detailed schedules (e.g. “as-built” and “as-planned” schedules) and summary schedules and generation of schedule “fragnets” for digital input and analysis. They are also utilized in the development of comprehensive “issue files” relating to discrete impacts and/or elements of a claim. Claims Support Personnel may review and summarize reports and information and may assist in the preparation of graphics for inclusion in written claims analyses. They may also prepare drawing take-offs and develop estimates, conduct site investigations and interview personnel with knowledge of facts relevant to the claim.

Hourly blended rates for Senior Claims Consultants and Claims Support Personnel are loaded rates, meaning billing rates that are all-inclusive and must reflect direct labor costs, including fringe benefits, overhead and profit. Administrative and clerical services are part of overhead included in the blended rates.

I am duly authorized to sign this Fee Proposal Statement on behalf of the above mentioned Firm:

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

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

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

## ATTACHMENT C

# CLAIMS ASSISTANCE SERVICES BILLING GUIDELINES

### INVOICES

- Invoices should be submitted monthly;
- Each invoice should include a reference to the relevant NJSDA contract number, project number and Task Order assignment;
- All time entries for Services must be itemized based upon actual time spent in one-tenth (.10) hour increments;
- Separate invoices should be presented for each NJSDA Task Order assigned;
- Invoices should reflect a description of specific work performed and identify the person performing the work;
- Each time entry on an invoice must reflect the specific work performed (e.g. specific as to such matters as the documents reviewed, persons contacted or interviewed, date of schedule reviewed, issue analyzed and element of claim involved) and overly broad or generalized time entries will be rejected;
- Time on invoices should be chronologically listed (unless a different format has been specifically requested);
- Invoices should set forth both the current invoiced amount and the total billed to date amount;
- Fees and reimbursable costs should be subtotaled separately; and
- Prior unpaid balances should not be added to a later invoice.

### TRAVEL

- Travel should be approved in advance and alternatives to travel should be used when possible. Travel time will be billed at ½ the hourly rate. Reimbursable travel expenses are (1) tolls; (2) mileage; and (3) parking. Mileage will be paid at the rate in effect for NJSDA employees as of the date of the travel. Parking and tolls will be reimbursed only upon submission of original paid receipts. Meals are not reimbursable.

## **ELIGIBLE DISBURSEMENTS**

- Routine photocopying may be billed at actual cost, not to exceed 10 cents per page.
- The actual cost of reproduction of oversize documents and photographs may be reimbursed. NJSDA approval must be obtained in advance.
- The actual cost of creating oversized illustrative exhibits may be reimbursed. NJSDA approval must be obtained in advance.
- The actual cost of overnight courier, messenger or comparable services may be reimbursed. The necessity for use of such services should be discussed with NJSDA's Division of Chief Counsel and approved prior to incurring charges for such services, except in emergency situations.

## **INELIGIBLE CHARGES**

Hourly blended rates for Services are loaded rates. Reimbursement will be made only of travel and other eligible disbursements listed above or expenses specifically authorized in writing and in advance by the NJSDA. The following are ineligible charges:

- Charges for opening or closing files;
- Charges for preparation of required budget submission for anticipated legal services or for the preparation or collection of bills or invoices and/or charges for resolving invoice related issues;
- Word processing, clerical or secretarial charges;
- Storage charges for open or closed files, and for standard office supplies or equipment;
- Telephone charges, facsimile charges of any kind, postage (other than certified mail fees or overnight delivery charges) and transmission of email;
- Photocopy/printing charges for printing email transmissions received; and
- Profit or mark-up on any expenses.

## **CAUSES FOR REJECTION OF INVOICES**

- After reassignment of work required under a Task Order assignment to a new Senior Claims Consultant or new Claims Support Personnel, billing associated with the new staff member's "getting up to speed" on the assignment will be rejected.
- Significant time involved in educating/training Claims Support Personnel will be rejected.
- Time spent on bill preparation will be rejected.
- Block billing and overly generalized and vague billing entries.

**ATTACHMENT D**

**MORAL INTEGRITY QUESTIONNAIRE**

<b>NEW JERSEY SCHOOL DEVELOPMENT AUTHORITY PROCUREMENT &amp; CONTRACT SERVICES 1 WEST STATE STREET, P.O. BOX 991 TRENTON, N.J. 08625-0991</b>		
<b><u>CHECK ALL THAT APPLY:</u></b> <input type="checkbox"/> CONTRACTOR <input type="checkbox"/> PROFESSIONAL SERVICES <input type="checkbox"/> VENDOR/SUPPLIER	<b>CHECK ONE:</b> <input type="checkbox"/> INITIAL <input type="checkbox"/> RENEWAL	<b><u>FEDERAL TAX ID #</u></b> _____
<b>BUSINESS LEGAL NAME AND ADDRESS:</b>     <b>“DOING BUSINESS AS” NAME(S):</b>	<b><u>TELEPHONE #</u></b> _____	<b>DUNS # (if known)</b> _____
	<b><u>FAX #</u></b> _____	<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) _____
	<b><u>E-MAIL ADDRESS</u></b> _____	
	<b><u>WEB ADDRESS</u></b> _____	
<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>	<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)	
<b><u>CONTACT PERSON</u></b> Name: _____ Title: _____ Telephone: _____ Fax: _____ E-Mail Address: _____		
<b>NOTE:</b> 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.		
<b>FOR CORPORATIONS, LIMITED LIABILITY COMPANIES AND LIMITED PARTNERSHIPS ONLY</b>		

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 %

--	--	--	--	--	--

\*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 5 attached) of the individual submitting this OGI 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  
(title) (business concern name and Federal Tax ID Number)

authorized to 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)

SSN: \_\_\_\_\_

