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***REQUESTS FOR PROPOSAL***  
***for***  
**IT GENERAL CONTROLS SERVICES**

**Contract No.: PW0801**

**for the**

**School Construction Program**

**Issued: Tuesday, May 6, 2008**

**Mandatory Electronic Notice of Intent to Participate:**  
**Tuesday, May 13, 2008 by 5 PM**

**Due Date: Friday, May 23, 2008 by 12:00 PM**

**Interviews (If Necessary): Thursday, June 5, 2008**

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**REQUEST FOR PROPOSALS  
FOR  
IT GENERAL CONTROLS SERVICES  
  
PROPOSAL PACKAGE**

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**INTRODUCTION**

Through this Request for Proposal (“RFP”), the New Jersey Schools Development Authority (“NJSDA”), seeks to engage a firm (“Consultant”) to provide consulting and technical writing services necessary to document NSJDA Information Technology General Controls, Processes and Procedures.

This REQUEST FOR PROPOSALS PACKAGE consists of the following items:

1. Request for Proposals
2. Attachment A: Consultant Agreement
3. Attachment B: Technical Proposal Forms
4. Attachment C: Fee Proposal Form
5. Attachment D: BFO Questionnaire
6. Attachment E: P.L. 2005, c. 92 (formerly Executive Order No. 129) Forms

These documents must be read in their entirety as they define the scope of services and responsibilities of the Consultant and the NJSDA. General information about the School Construction Program can be found at the NJSDA web site, [www.njsda.gov](http://www.njsda.gov)

**Notice of Intent to Participate. All firms wishing to submit a proposal must sign in electronically by sending a mandatory e-mail Notice of Intent to Participate to Susan Brown at [sbrown@njsda.gov](mailto:sbrown@njsda.gov) , no later than 5:00 pm on Tuesday, May 13, 2008.**

**Firms may submit questions to the NJSDA by sending them by e-mail to Susan Brown at [sbrown@njsda.gov](mailto:sbrown@njsda.gov), no later than 5:00 pm Eastern Time on Tuesday, May 13, 2008. The questions and NJSDA answers will be provided electronically to each firm that submitted a timely e-mail Notice of Intent to Participate.**

**PROPOSALS ARE DUE ON FRIDAY, MAY 23, 2008  
NO LATER THAN 12:00 PM EASTERN TIME AT THE  
NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY  
{See Section 2.0, within, for delivery addresses}**

Upon award, the NJSDA shall forward the Agreement for IT General Controls Services (the “Agreement”) to the selected firm for immediate execution, **without modification.**

## 1.0 INSTRUCTIONS FOR SUBMITTING A TECHNICAL PROPOSAL

A firm must become thoroughly familiar with this RFP to ensure responsiveness in its Technical Proposal. The Technical Proposal must consist of the following:

- 1.1 Cover letter
- 1.2 Firm Experience - Case Studies
- 1.3 Key Team Member List (NJSDA Form 201)
- 1.4 Resumes of Key Team Members (NJSDA Form 202)
- 1.5 Approach to Providing the Required Scope of Services
- 1.6 Business Registration
- 1.7 P.L. 2005, c. 92 Special Provisions

All of the above items must be addressed in each Technical Proposal submitted and must follow the order of all questions as posed, and must not exceed forty (40) one-sided 8.5" X 11" pages. Organizational charts, staffing structure, and schedules may be on larger paper. The following items will not count toward the page limits: resumes, required forms, and section dividers. Each Technical Proposal shall be ranked pursuant to the application of the evaluation criteria listed in this RFP to the material in the Proposal and such verification thereof as may be necessary.

In addition, at the same time as a Technical Proposal is submitted, firms **must** also submit to the NJSDA one (1) original (and no copies) of a completed questionnaire for submission to the Division of Criminal Justice, Bureau of Fiscal Oversight ("BFO") (hereinafter the "**BFO Questionnaire**"), in the form set forth as Attachment D to this RFP. The NJSDA shall hold all BFO Questionnaires submitted, unopened, until all firms are ranked, unless special circumstances warrant otherwise. At such time, staff will forward the BFO Questionnaire of the top-ranked firm to the BFO for review. BFO Questionnaires of firms not deemed "top-ranked" will be returned unopened

**Proposal Package Mailing Instructions.** The firm must submit one (1) unbound original and three (3) bound copies of a Technical Proposal and one (1) original of the corresponding Fee Proposal (in a separate envelope, which is sealed and then placed in the same package with the Technical Proposal), and one (1) original, completed BFO Questionnaire (in a sealed envelope separate from the package containing the Technical and Fee Proposal) no later than **12:00 P.M, Friday, May 23, 2008**, to:

***If submitting by hand or overnight delivery:***

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY  
Procurement & Contract Services  
1 West State Street – 3rd Floor  
Trenton, New Jersey 08625-0991**

**Attention: Susan Brown, Senior Procurement Analyst  
Subject: IT General Controls Services Proposal – PW0801**

***If submitting by U.S. Mail:***

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY**  
**Procurement & Contract Services**  
**P.O. Box 991**  
**Trenton, New Jersey 08625-0991**

**Attention: Susan Brown, Senior Procurement Analyst**  
**Subject: IT General Controls Services Proposal – PW0801**

**Submissions received after the above date and time will not be considered. Faxed or e-mailed Technical Proposals shall not be accepted.**

**Any firm wishing to submit a Proposal must submit a timely electronic Notice of Intent to Participate, as provided in the Introduction, above.** A more detailed description of the items required in the Technical Proposal follows.

1.1 Cover Letter

Present a brief **understanding of the NJSDA's needs**, as described in the Scope of Services set forth in Appendix B of the Agreement (Attachment A to this RFP). Include in the cover letter a summary description of the **firm's size and available resources**, and any other information relevant to the firm's qualifications, not set forth elsewhere. **Firms must not include any fee information whatever in the Cover Letter or elsewhere in the Technical Proposal.**

1.2 Firm Experience - Case Studies

Firm experience shall be assessed through a brief summary of the firm's general relevant experience, including experience with Information Technology General Controls documentation, through **(a) a brief summary of technical knowledge and experience, and (b) two specific required case studies.** The case studies must address examples of the proposing firm's past provision of services of the type and scale outlined in the Scope of Services. Thus, the case studies must concisely set forth the basic background information (e.g., dates and location), the scope of services provided, and results of said engagement. **Case studies may be based on contracts with public or private sector clients.** A sampling of materials specifically and directly utilized in the project must accompany each case study, **provided such material is non-confidential and may appropriately be subject to later release as a government record.** The case studies must describe the effectiveness of the project, and the methodology used to measure such effectiveness. The firm must identify the name and address of the contracting entity and the name, title and telephone number of a contact person associated with the contracting entity who is familiar with and able to comment on the firm's performance on each project. The experience summary must be 500 words or less; the narrative for each case study 1,000 words or less.

1.3 Key Team Member List (NJSDA Form 201)

A Key Team Member List (NJSDA Form 201) must be completed, providing the information requested on the form, continued onto additional sheets, if required. A separate sheet should **not** be

completed for each subconsultant. The percentage of time each Key Team Member will spend on this engagement must be indicated. Form 201 is included in Attachment B to this RFP.

#### 1.4 Resumes of Key Team Members (NJSDA Form 202)

A resume of each Key Team Member (NJSDA Form 202) must be included in the Technical Proposal. The selected firm must use all Key Team Members as indicated in its Technical 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 experience, language fluency, and any applicable certifications and/or affiliations. Form 202 is included in Attachment B to this RFP.

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

Firms must explain in detail their specific approach, including relevant internal processes, to providing **each** of the Services specifically required in the Scope of Services at all NJSDA locations across the state.

#### 1.6 Business Registration

Pursuant to N.J.S.A. 52:32-44, as amended by P.L. 2004, c. 57, each proposing firm must provide proof of valid business registration with the Division of Revenue of the New Jersey Department of the Treasury (the “Division of Revenue”), in its Technical 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 contract. **Business registrations of proposed subconsultants, however, are NOT required to be included in a firm’s Technical Proposal.**

Firms may obtain New Jersey Business Registration assistance by going on-line to [www.state.nj.us/treasury/revenue/gettingregistered.htm](http://www.state.nj.us/treasury/revenue/gettingregistered.htm), or by calling the New Jersey Department of Treasury at (609) 292-1730. Please be advised, however, that business registrations are mailed generally within seven to ten days, so firms should plan accordingly.

#### 1.7 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 one of the following conditions is met:

- (a) The bidder or its subcontractor provide a unique service, and no comparable, domestically-provided service can adequately duplicate the unique features of the service provided by the bidder and/or its subcontractor; or

- (b) A significant and substantial economic cost factor exists such that a failure to use the bidder's and/or subcontractor's services would result in economic hardship to the NJSDA; or
- (c) The Treasurer determines that a failure to use the bidder's and/or subcontractor's services would be inconsistent with the public interest.

#### 1.7.1 Source Disclosure Requirements

All bidders seeking a contract with the NJSDA shall be required to disclose:

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

Accordingly, the bidder should submit **with its bid proposal** the Source Disclosure Certification form (see Attachment E to this RFP), filled out with the sourcing information required for itself and any proposed subcontractor. If the information is not submitted with the bid proposal, it shall be submitted within five (5) business days of the NJSDA's request for the information. **Failure to submit sourcing information when requested by the NJSDA shall preclude award of a contract to the proposing firm.**

#### 1.7.2 Shift to Outsourced Services During Contract Term Shall Be a Breach of Contract

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, which shall be subject to termination for cause under the terms of the Agreement, unless the Senior Director of the NJSDA Division of Procurement and Contract Services shall have first determined in writing that extraordinary circumstances require a shift of services or that a failure to shift the services would result in economic hardship to the NJSDA or the State.

## 2.0 INSTRUCTIONS FOR SUBMITTING A FEE PROPOSAL

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

The firm must submit its Fee Proposal (NJSDA Form 301) based on **loaded hourly rates** that will apply to the one year term, including the potential one year extension, to providing the services required in the Scope of Services, as well to providing such services as may be required, pursuant to an amendment, in addition to those contained in the Scope of Services at the time of execution of the Agreement.

**The original Fee Proposal must be submitted to the NJSDA in a separately sealed envelope at the same time and location as the firm's Technical Proposal, as prescribed in Section 1.0 above.**

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

**3.0 SELECTION PROCEDURES**

Each proposal will be reviewed to determine responsiveness. Non-responsive Proposals will be rejected without evaluation. Responsive Technical Proposals will be evaluated by a Selection Committee (“Committee”) established for this purpose. The evaluation will be based upon the information provided by the firms in response to this RFP, and any necessary verification thereof. The Technical Proposals will be evaluated in accordance with the following evaluation criteria:

<b>EVALUATION CRITERIA</b>	<b>MAXIMUM POINTS</b>
Firm’s Understanding	
(a) Understanding of the NJSDA’s needs	5
(b) Firm Size & Resources	5
Firm Experience – General Relevant Experience	20
(a) Case Study #1	10
(b) Case Study #2	10
Experience of Key Team Members	25
Approach to Providing the Required Scope of Services	25
<b>TOTAL:</b>	<b>100</b>

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

**ATTACHMENT A**

**IT GENERAL CONTROLS SERVICES AGREEMENT**



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**AGREEMENT**

*Between the*

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY**

*And the*

**CONSULTANT**

*For*

**IT GENERAL CONTROLS SERVICES**

*For the*

**SCHOOL CONSTRUCTION PROGRAM**

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THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2008, (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 Project identified as

Project Name: IT General Controls 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 is addressed in Appendix C of this Agreement.

**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 as to form for NJSDA:

**ANNE MILGRAM  
Attorney General of the State of New Jersey**

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.
- 1.3 **“Amendment”** means an amendment to this Agreement executed by the Parties.
- 1.4 **“Change Order”** means an amendment or change to material terms and conditions of a contract with the Authority. **Not Used.**
- 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. **Not Used.**
- 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. **Not Used.**
- 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 1.
- 1.15 **“Fee Proposal”** means the Fee Proposal 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 principal, partner or officer of the firm, or a project executive, project manager, senior principal, studio head, or job captain identified in the Consultant’s Technical Proposal as having a responsible role in the successful provision of the Services, and who generally spends or is expected to spend 20 percent or more of his/her time providing such Services.
- 1.18 **“NJSDA”** or **“New Jersey Schools Development Authority”** means the entity formed pursuant to N.J.S.A. 34:1B-159 as a subsidiary of the Authority for the purpose of implementing provisions of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72. The AUTHORITY is the Party that has engaged the Consultant pursuant to this Agreement.
- 1.19 **“Notice to Proceed”** means a notice from the Authority to the Consultant, directing the Consultant to commence performing its responsibilities pursuant to this Agreement.
- 1.20 **“Party”** means a party to this Agreement. The Parties are the Authority and the Consultant.
- 1.21 **“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.
- 1.22 **“Program Manager”** means the Authority staff member(s) designated to manage the Consultant’s performance of Services.
- 1.23 **“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. **Not Used.**
- 1.24 **“Request for Proposals”** or **“RFP”** means the request issued by the Authority for proposals for the provision of the Services.
- 1.25 **“Schedule”** means the time-frames governing the completion of Services.
- 1.26 **“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.

- 1.27 **“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. **Not Used.**
- 1.28 **“School Facility”** means and includes any structure, building or facility used wholly or in part for academic purposes. **Not Used.**
- 1.29 **“Scope of Services”** means the scope of services required to be provided by the Consultant, as set forth in Appendix B (Scope of Services).
- 1.30 **“Services or “IT General Controls”** 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” or “BFO”** means the Division of Criminal Justice, Bureau of Fiscal Oversight, a unit created within the 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 weekly payroll, 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 BFO (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 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 dispose of these records after first offering them (at no cost) to the Authority in writing; the Authority shall have thirty (30) Days within which to accept them.
- 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. Any Services provided by the Consultant pursuant to this paragraph shall be deemed Additional Services and shall be compensated as such in accordance with terms negotiated at the time of an appropriate Amendment.
- 2.1.17 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 E 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. Consultant shall, on a continuing basis, disclose and report to the Authority any “contributions,” as that term is defined in P.L. 2005, c. 51 (formerly Executive Order No. 134 (2004)), made during the Term by it or any “Business Entity,” as that term is defined in P.L. 2005, c. 51, associated with the Consultant, on the “Disclosure of Political Contribution” form provided by the Authority, at the time such contribution is made.
- 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-20.13 (P.L. 2005, c. 271, section 3), in the event it receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the 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 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, 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 Hourly Rates. The Consultant shall be compensated over the Term of the contract in accordance with the hourly rates set forth in Appendix C (Compensation – Fee Proposal), provided that such compensation shall not exceed \$150,000 over the period of the initial one (1) year of the Term, and shall not exceed \$150,000 during an additional one (1) year of the Term, as such may be extended in accordance with Section 4 of this Agreement.

3.1.2 The Consultant shall be paid after invoices are submitted and approved. Consultant shall be entitled to reimbursement of properly documented postage and copying costs incurred pursuant to a Task Order.

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, 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 Program Manager must identify this Agreement's contract number.
- 3.2.3 Invoices submitted to the Program Manager shall be processed and paid only after the Program Manager reviews and determines that the Services for which payment is sought have been completed at the times and in the manner specified in the Contractual Documents. The Authority shall not pay invoices if the Program Manager 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 Program Manager 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. The backup documentation shall include a summary of direct and other direct costs assigned to the task order. The invoice shall be accompanied by a brief cover letter summarizing the work performed, the work expected to be completed during the next billing period, and shall identify significant changes to the scope that may require future authorizations. This cover letter shall also identify subcontractor expenses incurred, and shall include a financial summary table identifying total project cost, project cost spent to date by invoice billing period, remaining project budget and project percent complete.

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

- 3.3.1 If the Program Manager determines that any Services are incomplete or unsatisfactory, or if the Program Manager determines that Deliverables have not been delivered at the times and in the manner and form specified in the Contractual Documents, the 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 a period of one (1) year 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, unless at the sole option of the Authority, it is extended for one (1) additional year, in which case the Term shall extend from the Effective Date through

such additional period or until all obligations of the Consultant to deliver Services pursuant to this Agreement have been performed to the satisfaction of the Authority, whichever occurs later.

## **5.0 GENERAL COVENANTS**

### **5.1 Insurance**

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

5.1.2 The Consultant shall maintain, and/or cause their subconsultants to maintain, at their own cost and expense, the following insurance coverages/policies insuring the Consultant, its employees, subconsultants and agents. The Consultant shall obtain this insurance from insurance companies that are authorized to transact the business of insurance in the State of New Jersey and that are "A-" (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 \$1,000,000 for each occurrence, \$1,000,000 aggregate limit for products/completed operations and \$1,000,000 general aggregate limit. CGL insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include liability

arising out of, occasioned by or resulting from premises, operations, independent contractors, products, completed operations, personal injury and advertising injury, and liability assumed under an insured contract in connection with Services performed under this Agreement. The EDA, the Authority, the State of New Jersey and their respective directors, officers, members, employees and agents shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 (or a substitute form providing equivalent coverage), and under the Commercial Umbrella, if any. In addition, the Consultant may also be required to name other parties as additional insureds prior to the initiation of Services. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Authority.

5.1.2.3 Worker's Compensation Insurance. The Consultant shall, at its own cost and expense, maintain Workers' Compensation and Employers' Liability insurance prescribed by the laws of the State of New Jersey and any other jurisdiction required to protect employees of the Consultant while engaged in the performance of the Services under this Agreement. Workers' Compensation coverage shall be statutory and the Employers' liability limits (including Umbrella coverage) shall not be less than \$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. The EDA, the Authority, the State of New Jersey and their respective directors, officers, members, employees and agents shall be included as an insured under the Business Automobile, using ISO Designated Insured endorsement CA 20 48 (or a substitute form providing equivalent coverage), and under the Commercial Umbrella, if any. In addition, the Consultant may also be required to name other parties as designated insureds prior to the initiation of such work.

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

all amendatory endorsements, within ten (10) Days of the Authority's written request for such policies.

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

5.1.5 Right to Remedy. If the Consultant fails to obtain and/or maintain the insurance as required in this Section, fails to renew any of its insurance policies as necessary, or in the event any policy is canceled, terminated or modified so that the insurance does not meet the requirements of this Agreement, the Authority may: (i) purchase insurance at the Bridging Architect'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 Bridging Architect 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 Bridging Architect'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 or sex. Except with respect to affectional or sexual orientation, the Consultant and its Subconsultants 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 or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant and its Subconsultants agree 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 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 made by the Consultant against the Authority shall be governed by the following.

7.1 All Claims asserted against Authority by Consultant 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.

7.2 In the event that there is a dispute regarding any provision of the Contractual Documents, the matter may be submitted to the Claims Adjustment Committee.

7.3 The Consultant shall file notice of the 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 of 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 given within the time limits established by N.J.S.A. 59:13-5.

7.4 The Claims Adjustment Committee shall review any dispute submitted to it and make a determination. The Consultant shall act in accordance with the determination made by the Claims Adjustment Committee but may, at its option, reserve the right to assert a Claim pursuant to the New Jersey Contractual Liability Act.

## **8.0 REPRESENTATIONS**

SCHOOL CONSTRUCTION PROGRAM  
IT GENERAL CONTROLS RFP  
{0425 2008 IT RFP.doc}

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 BFO 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 InAuthority 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 BFO (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 BFO (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 BFO (or its agents) may require. In addition to the foregoing, the BFO (or its agents) may investigate, examine, inspect, or audit in any manner and at such times as the BFO deems necessary. The Consultant shall include in any and all contracts with Subconsultants a provision requiring such

Subconsultants to permit the BFO (or its agents), in its discretion, to investigate, examine, inspect or audit in any manner and at such times as the BFO (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: Anthony Gilfillan
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Consultant:

## APPENDIX B

### SCOPE OF SERVICES

Provide consulting and technical writing services necessary to document NJSDA Information Technology General Controls, Processes and Procedures.

NJSDA has developed a significant amount of IT documentation and requires a consultant capable of compiling, consolidating existing documentation and forms into a consistent IT Process and Procedures format. It is expected that the consultant identify documentation GAPS and make recommendations to fill identified GAPS or to improve upon existing documented processes or procedures by incorporating IT General Controls best practices.

The scope of the engagement will include (but not limited to) reviewing, compiling and creating documentation and forms in the following Information Technology General Controls areas. IT General Control's document deliverables must be provided in both electronic as well as paper binder format.

A Task Order will be issued by SDA for each portion of the work to be accomplished by the consultant. The entire ITGC Documentation must be completed December 31, 2008. All task orders will be issued by SDA prior to December 31, 2008.

The SDA IT Department is organized into three specific groups Help Desk Services, Systems & Network Management and Application Development which are all supported by IT Project management department.

#### **IT General Controls - Area's of Focus:**

##### **General IT Services**

Both Change Management as well as Disaster Recovery impacts all SDA IT departments. While SDA has a defined Change Management process it must be fleshed out, GPA's identified and documented. The SDA DR plan and hot site have been documented a testing process must be documented to insure continued repeatability.

**Change Management Process** – SDA utilizes consistent CM procedures when affecting system enhancements or other modifications. SDA requires that said processes be completely documented with care to insure GAPS in best practices are minimized. Change Management spans through all the IT Department Groups and must be able to accommodate changes made across the SDA entire Enterprise Architecture.



**Disaster Recovery Testing Process** – SDA utilizes a hot site disaster recovery model. A complete plan has been developed and site has been created, SDA must completely document the testing process of systems contained in the DR site.

## **Systems & Network Management Services**

While a great deal of documentation exists for Systems and Network Management, the information must to be compiled and integrated into the overall ITGC documentation.

**Systems & Network Management Process** – SDA utilizes a combination of MS Active Directory and Novell NDS eDirectory to access the network and core systems. Network user management process and procedures must be effectively documented.

**Security Management Process** – SDA utilizes a combination of Active Directory and Group policy as well as other security controls to manage its infrastructure and systems. The network is also monitored and controlled utilizing several tools which require effective process and configuration documentation.

**Backup Management and Testing Process** – SDA utilizes a series of backup recovery models based upon system recovery requires. SDA would like to effectively document the process for each system as well as our existing testing process.

## **Application Development Services**

While a great deal of documentation exists for specific applications which have been developed, the information must to be compiled and integrated into the overall ITGC documentation. The application development life cycle utilized by SDA must be documented as noted below.

**Application Development Process** – SDA most frequently utilizes both the Waterfall and RAD Models for application development. The overall process for development is initiated by the stakeholder via Technology Request, followed by development of project definitions, stakeholder approval, application development, testing, user acceptance and approval to implement.

**IT Project Management Process** - SDA utilizes an IT Project Management approach for all Application Development related projects.

## **Help Desk Services**

While a great deal of documentation exists for all Help Desk processes, the information must to be compiled and integrated into the overall ITGC documentation.

**Help Desk Support Process** – SDA provides staff as well as other key parties the ability to call or email SDA help desk for technical support for technology and computer based applications issues. The Help Desk is also responsible for desktop, laptop and mobile device management. The staff utilizes a variety of systems and tools to provide support services including a help desk tracking database.

**APPENDIX C**

**COMPENSATION – FEE PROPOSAL**

*{See the Attached Sheets}*



- 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\_\_\_\_\_.



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. SBE APPROVAL**
- 4. EO129 CERTIFICATION**

**ATTACHMENT B**

**KEY TEAM MEMBER LIST AND RESUME FORMS**

**NJSDA FORM 201**

**KEY TEAM MEMBER LIST**

<b>FIRM NAME</b>	<b>KEY TEAM MEMBER <u>NAME &amp; TITLE</u></b>	<b><u>% OF TIME ON JOB</u></b>

# NJSDA FORM 202

## KEY TEAM MEMBERS' RESUMES

*{This form should be photocopied as necessary}*

KEY TEAM MEMBER NAME: \_\_\_\_\_

<b>PROJECT NAME; PROJECT # (if NJSDA); CLIENT NAME; PRIME FIRM NAME</b>	<b>CLIENT CONTACT; PERSON NAME &amp; PHONE #</b>	<b><u>DESCRIPTION OF PROJECT (including its size and scope); DESCRIPTION OF KEY TEAM MEMBER'S ROLE</u></b>	<b>MONTHS INVOLVED IN PROJECT</b>
1.			
2.			
3.			
4.			
5.			

**ATTACHMENT C**

**NJSDA FORM 301**

**FEE PROPOSAL**

**IT General Controls Consulting Services**

This NJSDA Form 301 is submitted by \_\_\_\_\_  
(Name of Proposing Firm)

<b>Price per hour Consulting Services</b>	<b>Rate</b>
<b>Project Management</b>	
<b>IT Consultant</b>	
<b>Technical Writer</b>	
<b>Other</b>	
<b>Other</b>	
<b>Other</b>	

I am duly authorized to sign this Fee Proposal, which includes NJSDA Form 301 on behalf of the named firm.

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

\_\_\_\_\_  
(Print Name & Title)

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

\* NOTE: The Loaded Hourly Rate for staff is the rate at which the Authority shall pay for Services rendered as set forth in invoices, and must, therefore, include all costs the Consultant intends to recoup through compensation under the Agreement, including, but not necessarily limited to, the following: employee base salary and vacation, holiday, other leave pay, social security contributions, unemployment taxes, workers' compensation, travel expenses, and any other fringe benefits, payroll burden, and per diem, as well as an appropriately proportionate amount of company overhead and profit.

**ATTACHMENT D**

**BFO QUESTIONNAIRE**

<b>BUREAU OF FISCAL OVERSIGHT/SDA QUESTIONNAIRE NEW JERSEY SCHOOL DEVELOPMENT AUTHORITY PROCUREMENT &amp; CONTRACT SERVICES 1 WEST STATE STREET, P.O. BOX 991 TRENTON, N.J. 08625-0991</b>		
<b>CHECK ALL THAT APPLY:</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>FEDERAL TAX ID</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>WEB ADDRESS</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: _____ _____		

NOTE: Accurate, truthful and complete information will help speed the review of your questionnaire and expedite action on your Business Concern's application to be FISC Bureau 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.

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

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

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

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

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

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

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

1. How long has the Applicant Business Concern done business under its present name?  
\_\_\_\_\_ years
2. List each other name the Applicant Business Concern has done business under in the past ten (10) years:  
D/b/a: \_\_\_\_\_ Dates Name  
Used: \_\_\_\_\_  
D/b/a: \_\_\_\_\_ Dates Name  
Used: \_\_\_\_\_  
D/b/a: \_\_\_\_\_ Dates Name  
Used: \_\_\_\_\_
3. At any time during the past five (5) years, has the Applicant Business Concern shared office space, warehouse space, yard, plant or shop facilities, staff, equipment, telecommunications or other assets with any other business concern? (If yes, disclose the name of the other business concern and provide a description of the sharing arrangement, including the location of the facilities.)  Yes  No

**DISCLOSURE OF OWNERS AND KEY PERSONS**

“Key Person” means any individual employed by the Applicant Business Concern in a supervisory capacity or empowered to make discretionary decisions with respect to bids and/or contracts within the State of New Jersey. “Key Person” also means any person who owns a beneficial interest of **10%** or more in the business concern, and the managing members of limited

liability companies and corporate directors and officers (e.g., president, vice presidents, secretary and treasurer).

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

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

Name (Last, First, Middle)	Address	Birth Date (MM/DD/YYYY)	Social Security Number*	Position	Ownership %

\*Disclosure of Social Security Number is voluntary. However, disclosure will help speed review and action on your application to be prequalified.

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

5. Been indebted to an individual or entity, other than a bank or other commercial lending institution, in the cumulative amount of \$100,000 or more? (If yes, give details, including the name of each party to the transaction, the date and the amount of indebtedness.)  
 Yes       No
6. Loaned monies generated by this business concern, in the cumulative amount of \$100,000 or more, to another business concern or individual? (If yes, give details, including the name of each party to the transaction, the date and the amount of the indebtedness.)  
 Yes       No
7. Had an injunction, order or lien entered against it in favor of any government agency including, but not limited to, judgments or liens based on taxes assessed or fines and penalties imposed by any government agency? (If yes, give details, including name of the government agency, caption, date, case number or docket number, and disposition. Be sure to note any judgments or liens that have not been fully satisfied.)  
 Yes       No
8. Been a party in any civil litigation or administrative proceeding alleging violation of any of the following: antitrust statutes; racketeering statutes; environmental laws; laws banning workplace discrimination; laws governing wages, hours or labor standards; laws governing the conduct of occupations, professions or regulated industries; or any other law indicating a lack of business integrity or honesty? (If yes, give details, including the nature of the claims and defenses, the caption, date, case number or docket number, and name of the court or agency before which the case is pending or before which it was

heard and current status.)  Yes   
No

9. Paid a fine or otherwise paid to settle any of the allegations listed in Question 8, whether with or without an admission of responsibility? (If yes, give details, including the caption, date, case number or docket number, and name of the court or agency before which the case was brought.)  Yes  No
10. Been denied any license, permit or other similar authorization required to engage in the business concern's trade(s) or professional discipline(s), or has any such license, permit or similar authorization been suspended or revoked by any agency of federal, state or local government? (If yes, give details, including name of the licensing or permitting agency, caption, date, case number or docket number, and disposition.)  Yes  No
11. Been suspended, debarred, disqualified, denied a classification rating or prequalification or otherwise been declared not responsible to bid on or to perform work on any public contract or subcontract? (If yes, give details, including name of the contracting agency, caption, date, case number or docket number, and disposition.)  Yes  No
12. Been required by an agreement or settlement with any governmental agency (including any school board) to refrain from bidding or proposing on any public contract? (If yes, describe the agreement and give the name of the government agency, date, caption and case number or docket number, if any.)  Yes  No
13. Been required to engage a monitor or independent private sector inspector general (IPSIG) as a condition of being classified or prequalified, or as a condition of any contract award, or as a condition for being permitted to complete a contract? (If yes, describe the agreement and give the name of the government agency, date and the name of the monitor or IPSIG.)  Yes  No
14. Been indicted or otherwise charged as a defendant, or named as an unindicted co-conspirator, alleged to have committed any crime or offense other than a motor vehicle offense? (If yes, give details, including the conduct alleged, the caption, date, case number or docket number, and name of the court before which the case is pending or before which it was heard.)  Yes  No
15. Been convicted, after trial or by plea, of any crime or offense other than a motor vehicle offense? (If yes, give details, including the crime or offense, the caption, date, case number or docket number, and name of the court before which the case was heard.)  Yes  No
16. Filed with, or submitted to, a government agency, or to any employee or representative thereof, any document which contained a false statement or false information? Filing or submission could be by any means, including telefax, e-mail, and any other form of electronic communication. (If yes, explain. Your explanation should include a description of the document(s), the date and the name of the government agency.)  Yes  No
17. Paid anyone other than its own key persons or its own employees commissions or finders fees to obtain contracts or work? (If yes, give details, including a description of the transaction, the name of each party to the transaction, the date and the amount of the commission or finders fee paid.)



Yes  No

18. Given, or offered to give, money, gifts or anything of value, or any other benefit, to a labor official, public official, public employee or public servant with whom the Applicant Business Concern, or any affiliated entity disclosed in this questionnaire, conducted business? (If yes, give details, including the date(s), location(s), a description of the benefit(s) and the name(s) of the individual(s) to whom the benefits were given or offered.)  Yes  No

19. Agreed with another business concern or representative thereof to submit identical or complementary bids, prices or proposals or to otherwise not bid competitively or to withdraw or abstain from bidding or proposing? (If yes, give details, including the date(s), location(s), description(s) of the contract(s) that were the subject of the bid(s), who put the contract(s) out to bid and the name(s) of the other individual(s) with whom the Applicant Business Concern or any affiliated entity disclosed in this questionnaire agreed.)  Yes  No

**REQUIRED SUBMITTALS CHECKLIST**

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

**AFFIDAVIT**

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

SS

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

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

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

submit this FISC Bureau 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:

\_\_\_\_\_

SIGNATURE

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

SSN:

Affix Corporate  
Seal  
if Applicable

**ATTACHMENT E**

**EXECUTIVE ORDER 129 CERTIFICATION**

SOURCE DISCLOSURE CERTIFICATION FORM

Bidder: \_\_\_\_\_ Solicitation Number: \_\_\_\_\_

I hereby certify and say:

1. I have personal knowledge of the facts set forth herein and am authorized to make this Certification on behalf of the Bidder.
2. The Bidder submits this Certification as part of a bid proposal in response to the referenced solicitation issued by the New Jersey Schools Development Authority (hereinafter "NJSDA"), in accordance with the requirements of Executive Order 129, issued by Governor James E. McGreevey on September 9, 2004 (hereinafter "E.O. No. 129").
3. The following is a list of every location where services will be performed by the bidder and all subcontractors.

<u>Bidder and All Performance Subcontractor(s) Country</u>	<u>Description of Services</u>	<u>Location(s) by</u>
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Any changes to the information set forth in this Certification during the term of any contract awarded under the referenced solicitation or extension thereof will be immediately reported by the Vendor to the Senior Director of Procurement & Contract Services, NJSDA.

4. I understand that, after award of a contract to the Bidder, it is determined that the bidder has shifted services declared above to be provided within the United States to sources outside the United States, prior to a written determination by the NJSDA that extraordinary circumstances require the shift of services or that the failure to shift the services would result in economic hardship to the State of New Jersey, the Bidder shall be deemed in breach of contract, which contract will be subject to Termination for Cause pursuant to Section 6.2 of the Agreement.

I further understand that this Certification is submitted on behalf of the Bidder in order to induce the NJSDA to accept a bid proposal, with knowledge that the division is relying upon the truth of the statements contained herein.

I certify that, to the best of my knowledge and belief, the foregoing statements by me are true. I am aware that if any of the statements are willfully false, I am subject to punishment.

Bidder: \_\_\_\_\_  
(Name of Organization or Entity)

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

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