

REQUEST FOR PROPOSALS

for

INTERNAL AUDIT CONSULTING SERVICES

for the

SCHOOL CONSTRUCTION PROGRAM

Contract No.: GP-0272-R01

Issue Date: May 15, 2020

Mandatory Electronic Notice of Intent to Participate Due Date:

June 1, 2020 by 2:00 PM Eastern Time

{See Section 1.0, within, for details}

Proposal Due Date:

June 17, 2020 by 11:00 AM Eastern Time

{See Section 5.0, within, for delivery address}



N.J. SCHOOLS DEVELOPMENT AUTHORITY

32 East Front Street, PO Box 991, Trenton, NJ 08625

**REQUEST FOR PROPOSALS
FOR
INTERNAL AUDIT CONSULTING SERVICES**

1.0 INTRODUCTION

The New Jersey Schools Development Authority (“NJSDA” or “Authority”) is seeking to engage a firm (“Consultant”) to provide Internal Audit Consulting Services. The Consultant will assist the NJSDA’s Division of Internal Audit with respect to, but not limited to, the assessment and auditing of NJSDA operations, business processes, financial and information systems, construction projects, and other services. Internal Audit Consulting Services will be assigned on an as-directed and as-needed basis by Task Order. Task Orders will define the specific services and deliverables expected from the Consultant. The Consultant will be required to submit a proposed budget for each Task Order assignment. The budget will be subject to NJSDA’s approval and acceptance prior to commencement of services under the Task Order assignment.

This Request for Proposals (“RFP”) defines the steps needed for participation in the procurement, and is issued pursuant to the Authority’s regulations governing the procurement of professional services consultants, N.J.A.C. 19:38C-1 et seq., in particular, the regulations governing procurement of consultants pursuant to term agreements, N.J.A.C. 19:38C-7.1 and -7.2.

The NJSDA intends to select the Consultant and enter into an “Internal Audit Consulting Services Agreement” (the “Agreement”) in accordance with the process described in this solicitation. The maximum amount of compensation payable to the Consultant pursuant to the “Agreement” shall not exceed \$1,500,000. The Term of the Agreement shall extend for a period of three (3) years or until all obligations of the Consultant to deliver services pursuant to any existing Task Order have been performed to the satisfaction of the Authority, whichever is later.

There is no standard NJSDA pre-qualification requirement applicable to this engagement. To be successful, a firm must demonstrate the experience and qualifications discussed below.

This RFP consists of the following:

1. Request for Proposals
2. Attachment A: Internal Audit Consulting Services Agreement
3. Attachment B: Understanding of the Required Services Form
4. Attachment C: Approach to Providing the Scope of Services Form
5. Attachment D: Audit Experience Case Study Form
6. Attachment E: Key Team Member List
7. Attachment F: Key Team Member Resume Form
8. Attachment G: Moral Integrity Questionnaire
9. Attachment H: Disclosure of Investment Activities in Iran Form
10. Attachment I: Source Disclosure Certification Form
11. Attachment J: Ownership Disclosure Form

12. Attachment K: Certification of Non-Debarment Form
13. Attachment L: NJSDA Fee Proposal Form

The Internal Audit Consulting Services Agreement (Attachment A to this RFP) includes a Scope of Services as Appendix B.

These documents must be read in their entirety since they detail the methodology for responding to this solicitation, as well as describing the potential scope of services and responsibilities of the Consultant for Task Orders assigned under this engagement. A firm wishing to submit a response to this RFP must review and be thoroughly familiar with all terms and conditions of these documents. General information about the School Construction Program can be found at the NJSDA's website: www.njsda.gov.

Notice of Intent to Participate: The NJSDA will not hold a traditional pre-proposal conference for this procurement. Any firm wishing to submit a proposal **must** sign in electronically by sending a mandatory e-mail Notice of Intent to Participate to Dave Kutch at dkutch@njsda.gov **no later than 2:00 PM Eastern Time on June 1, 2020.**

Questions from Interested Firms: Firms may submit written questions regarding this procurement to the NJSDA by sending them by e-mail to Dave Kutch at dkutch@njsda.gov **no later than 2:00 PM Eastern Time on June 1, 2020.** The questions and NJSDA answers will be provided via an addendum to the RFP to each firm that submitted a timely e-mail Notice of Intent to Participate.

Notice Regarding Communications: Refer all questions to NJSDA Procurement Staff. Any bidder attempting to contact government officials (elected or appointed), including NJSDA Board members, NJSDA Staff (except for Procurement), Selection Committee members, NJSDA Consultants, and School District officials for information relating to this project or in an effort to influence the selection process may be immediately disqualified.

Submission of Proposals: Responses to this RFP must be received by the NJSDA **no later than 11:00 AM Eastern Time on June 17, 2020.** Faxed or e-mailed submissions will not be accepted.

Upon award, the NJSDA will forward the Internal Audit Consulting Services Agreement to the successful firm for immediate execution, **without modification.**

2.0 PROCUREMENT OVERVIEW

2.1 General

This solicitation is issued pursuant to the Authority's regulations at N.J.A.C. 19:38C-1 et seq. seeking to engage a Consultant to provide Internal Audit Consulting Services. This solicitation seeks responses from firms in the form of a simultaneous submission of:

- A Technical Proposal, which provides information regarding the firm's past experience and qualifications, for evaluation by a Selection Committee charged with evaluation and scoring

of the submittals with reference to the criteria identified in this solicitation; and

- A sealed Fee Proposal, which will remain sealed until completion of the evaluation and scoring, and which states the firm's fee for the services required for the project.

Firms will be evaluated and scored by a Selection Committee on the basis of their written Technical Proposal submissions. The firms will be ranked on the basis of such scores, and a shortlist of the three (3) most highly-ranked firms will be determined. The shortlisted firms will participate in interviews with the Selection Committee and will be separately scored on the basis of the interview.

NOTE 1: Bidders are not permitted to bring handouts or other written materials to the interviews to provide to the Selection Committee members. To the extent that bidders bring such materials to the interviews, the NJSDA will not accept or retain those materials, and those materials will not be provided to the Selection Committee members.

NOTE 2: At this time, it is anticipated that the interviews will be conducted via video conferencing. The video conferencing details will be communicated to the shortlisted firms, as determined by the Selection Committee.

The scores for the written submission and the interview will be combined into a "Final Combined Score."

Once the Final Combined Scores for all firms has been determined, the sealed Fee Proposals will be opened. Using the Fee Proposals as a guide, NJSDA staff will negotiate a fair and reasonable fee with the firm receiving the highest Final Combined Score.

2.2 Basis of Award

The Authority will award a contract to the firm whose proposal conforms with the terms and conditions of this solicitation and whose qualifications, technical proposal and fee are determined to be the most advantageous to the Authority in accordance with the terms of this RFP.

The Authority is under no obligation to accept the lowest Fee Proposal, as evaluation and scoring of responses shall be in accordance with the terms of the RFP and regulations at N.J.A.C. 19:38C-1 et seq.

The NJSDA has no obligation to make an award and reserves the right to waive any non-material defects, reject any or all responses for any reason in accordance with law, and/or terminate the selection process at any time.

2.3 Components of Response

Firms responding to this RFP shall thoroughly familiarize themselves with the RFP to ensure responsiveness in their submission. A conforming response consists of the following components:

- Technical Proposal (**one (1) unbound original and one (1) cover-to-cover copy in PDF format on USB Flash Drive**):
 - Understanding of the Required Services Form
 - Approach to Providing the Scope of Services Form
 - Audit Experience Case Study Form
 - Key Team Member List
 - Key Team Member Resume Form
 - Moral Integrity Questionnaire
 - Disclosure of Investment Activities in Iran Form
 - Source Disclosure Certification Form
 - Ownership Disclosure Form
 - Certification of Non-Debarment Form
- Fee Proposal (**one (1) unbound original**):
 - NJSDA Fee Proposal Form

All of the above items must be included in the submission, with responses utilizing the forms provided by the Authority.

2.4 Evaluation and Scoring Process

Each submission in response to the RFP will be reviewed to determine responsiveness. Non-responsive submissions will be rejected without evaluation. Responsive submissions will be evaluated by a Selection Committee established for the purpose of evaluating responses to the RFP. The Selection Committee will consist of no fewer than three (3) NJSDA Staff members. The evaluation will be based upon the information provided by a firm in response to this RFP, and any necessary verification thereof.

The members of the Selection Committee will evaluate each responsive Technical Proposal, and may confer with each other regarding the content of the submissions before scoring, but each Selection Committee member will independently score each Technical Proposal in accordance with the following Evaluation Criteria:

- Understanding of the Required Services, including Access to the Firm’s Online Guidance and Audit Programs
- Approach to Providing the Scope of Services, including the Firm’s Technique for Auditing and Reporting of Active Construction Projects
- Experience in Construction and Operational Audits, including Case Studies of Assignments
- Resumes & Experience of Key Team Members

Each Selection Committee Member will evaluate each Technical Proposal, assigning a raw score for each criterion on a scale of 0 to 10 as follows:

- Outstanding (9–10): depth and quality of response offers significant advantages.
- Superior (7-8): exceeds RFP requirements with no deficiencies.
- Sufficient (5-6): meets RFP requirements with no significant deficiencies.

- Minimal (3-4): meets RFP requirements but contains some significant deficiencies.
- Marginal (1-2): comprehends intent of RFP but contains many significant deficiencies.
- Unsatisfactory (0): requirements not addressed and lack of detail precludes adequate evaluation.

Weighting factors will then be applied to each of the Selection Committee Member’s raw scores for each criterion to arrive at a total weighted criterion score as follows:

RFP Evaluation Criteria	Weighting Factor (Applied to Raw Score)	Maximum Available Points for Criteria
Understanding of the Required Services, including Access to the Firm’s Online Guidance and Audit Programs	2.0	20
Approach to Providing the Scope of Services, including the Firm’s Technique for Auditing and Reporting of Active Construction Project	2.0	20
Experience in Construction and Operational Audits, including Case Studies of Assignments	3.0	30
Resumes & Experience of Key Team Members	3.0	30
Total Possible Technical Proposal Points		100

For each firm’s Technical Proposal, the individual criterion scores awarded by a particular Selection Committee member will be added together to calculate a score for that Technical Proposal. The maximum score for a Technical Proposal Score is 100.

All of the scores awarded by the Selection Committee members to a particular firm’s Technical Proposal will be added together and averaged to arrive at a Final Technical Proposal Score for each firm. The firms will be ranked based on their Final Technical Proposal Scores, and a shortlist of the three (3) highest-ranked firms will be determined. The shortlisted firms will be notified to participate in interviews with the Selection Committee. If fewer than three (3) firms submit valid, responsive Technical Proposals, then all such firms will be invited to participate in interviews with the Selection Committee.

The Selection Committee will interview each of the shortlisted firms and evaluate each firm on Interview Criteria that are the same as those used in the evaluation of the Technical Proposals, as follows:

- Understanding of the Required Services, including Access to the Firm’s Online Guidance and Audit Programs
- Approach to Providing the Scope of Services, including the Firm’s Technique for Auditing and Reporting of Active Construction Projects
- Experience in Construction and Operational Audits, including Case Studies of Assignments

- Resumes & Experience of Key Team Members

Each Selection Committee Member will evaluate each firm’s participation in the interview and assign a raw score for each criterion on a scale of 0 to 10 as follows:

- Outstanding (9–10): depth and quality of response offers significant advantages.
- Superior (7-8): exceeds RFP requirements with no deficiencies.
- Sufficient (5-6): meets RFP requirements with no significant deficiencies.
- Minimal (3-4): meets RFP requirements but contains some significant deficiencies.
- Marginal (1-2): comprehends intent of RFP but contains many significant deficiencies.
- Unsatisfactory (0): requirements not addressed and lack of detail precludes adequate evaluation.

Weighting factors will then be applied to each of the Selection Committee Member’s raw scores for each criterion to arrive at a total weighted criterion score as follows:

Interview Evaluation Criteria	Weighting Factor (Applied to Raw Score)	Maximum Available Points for Criteria
Understanding of the Required Services, including Access to the Firm’s Online Guidance and Audit Programs	2.0	20
Approach to Providing the Scope of Services, including the Firm’s Technique for Auditing and Reporting of Active Construction Project	2.0	20
Experience in Construction and Operational Audits, including Case Studies of Assignments	3.0	30
Resumes & Experience of Key Team Members	3.0	30
Total Possible Interview Points		100

The weighted Interview Criterion scores awarded by a particular Selection Committee member will be added together to calculate an Interview Score for that firm. The maximum Interview Score is 100.

All of the Interview Scores awarded to a particular firm by the Selection Committee members will be added together and averaged to arrive at a Final Interview Score for each firm. The Final Interview Score for each firm will be added to the Final Technical Proposal Score for such firm, and the two scores will be averaged to arrive at a Final Combined Score for each firm. The maximum Final Combined Score is 100.

2.5 Fee Negotiation

After all Final Combined Scores have been tabulated, the NJSDA will open the sealed Fee

Proposals. Using the Fee Proposals as a guide, NJSDA staff will negotiate fair and reasonable loaded hourly rates with the firm receiving the highest Final Combined Score. Should the Authority be unable to negotiate a satisfactory contract with the firm receiving the highest Final Combined Score, the NJSDA will terminate negotiations with that firm and will then undertake negotiations with the firm receiving the second highest Final Combined Score. Failing accord, the NJSDA will terminate negotiations with that firm and will then negotiate with the firm receiving the third highest Final Combined Score. In the event that the NJSDA is unable to reach a satisfactory contract with any of the three highest-ranked firms, the NJSDA, at its option, may reject all Proposals.

NJSDA staff shall then make a recommendation of award to the most technically qualified firm at loaded hourly rates determined to be fair and reasonable. If the recommendation of award is approved, a notice of award will be transmitted to that firm and other proposing firms will thereupon receive written notice of the award.

3.0 INSTRUCTIONS FOR SUBMITTING A TECHNICAL PROPOSAL

A firm must become thoroughly familiar with this RFP to ensure responsiveness in its Technical Proposal submission. **Do not include any fee information in the Technical Proposal.** A conforming Technical Proposal must consist of the following components:

3.1 Understanding of the Required Services, including Access to the Firm's Online Guidance and Audit Programs (20 Points)

Utilizing the *Understanding of the Required Services Form* (Attachment B to this RFP), present a brief understanding of the NJSDA's needs based upon the information provided in the Scope of Services set forth as Appendix B to the Agreement (Attachment A to the RFP). Include the name, address and phone number of the firm, the name and phone number of the firm's contact person, and the name of the person who prepared the Technical Proposal. Include any other information relevant to the firm's qualifications, together with details of any online guidance and audit programs that would be made available to the NJSDA as part of the Agreement.

3.2 Approach to Providing the Scope of Services, including the Firm's Technique for Auditing and Reporting of Active Construction Project (20 Points)

Utilizing the *Approach to Providing the Scope of Services Form* (Attachment C to this RFP), the proposing firm must describe its approach to providing the required Scope of Services, with specific emphasis on its approach to auditing multiple active construction projects and the reporting thereof. This should include addressing the staffing needs involved, identifying and discussing its approach to managing work performed by the firm and any subcontracted firms, and the firm's proposed quality control approach and procedures. The firm must also describe its role and the roles of any proposed subcontracted firms in providing the required services. This description must include an estimate of each firm's percentage of participation in providing the services. In addition, the firm must describe its proposed approach to data management and the transfer of work papers to the NJSDA in support of the audit work performed and any associated findings.

3.3 Experience in Construction and Operational Audits, including Case Studies of Assignments (30 Points)

Utilizing the *Audit Experience Case Study Form* (Attachment D to this RFP), describe the experience of the proposing firm, inclusive of the experience of any proposed subcontracted firms, related to both Construction and Operational Audits, including no more than two (2) case studies for Construction Audits and no more than two (2) case studies for Operational Audits. The case studies should address examples of the proposing firm's past provision (within the last five (5) years) 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, the scope of services provided, and results of said engagement. **Case studies may be based on contracts with public or private sector clients.** 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.

3.4 Resumes & Experience of Key Team Members (30 Points)

- Key Team Member List. Utilizing the *Key Team Member List* (Attachment E to this RFP), a proposing firm must set forth a list of proposed Key Team Members. For the purposes of this engagement, a "Key Team Member" is a partner or principal of the firm, manager, senior auditor, staff auditor, or the like who will be involved for all or some portion of the Internal Audit Consulting Services to be rendered. A separate sheet should **not** be completed for each proposed subcontracted firm. The proposing firm must identify the following Key Team Members in its Technical Proposal:
 - **Partner/Principal:** Manages the relationship with the NJSDA. A firm may propose only **one** Partner/Principal.
 - **Manager:** Manages the day-to-day interactions with the NJSDA, including understanding task orders, managing resources, providing guidance to the Senior and Staff Auditors, and maintaining high level oversight of work performed related to task orders. In addition, provides guidance to the NJSDA Internal Audit function when requested. A firm may propose only **one** Manager.
 - **Senior Auditor:** Provides oversight of the audit, works with key point of contact for the auditee, performs testing, leads meetings, supervises Staff Auditors, and prepares the Detailed Audit Report and the Executive Summary for review by the NJSDA. A firm may propose **up to five (5)** Senior Auditors.
 - **Staff Auditor:** Reports to Senior Auditor, performs testing procedures, assists Senior Auditor with documenting detailed findings, and works with the auditees. A firm may propose **up to five (5)** Staff Auditors.
- Resumes of Key Team Members. Utilizing the *Key Team Member Resume Form*

(Attachment F to this RFP), a proposing firm should provide a summary of each of the Key Team Member's experience, which must include, but is not limited to: a description of at least three (3) audits for which the Key Team Member in question fulfilled a role similar to that proposed for this engagement. The cited audits must be completed within the last five (5) years. The selected Consultant will be required to perform the Services using the Key Team Members identified in its Technical Proposal. Should an identified Key Team Member be unavailable to perform services at the time of assignment of a Task Order or thereafter, the Consultant may seek approval from the Authority to substitute other individuals with qualifications and experience equal or superior to the unavailable Key Team Member. Any such substitutions must be approved by the Authority in writing.

3.5 Moral Integrity Questionnaire (0 Points – Required Submittal)

At the same time as a Technical Proposal is submitted, the proposing firm must submit to NJSDA a *Moral Integrity Questionnaire* ("Questionnaire(s)") for submission to the New Jersey State Police, included as Attachment G to this RFP. NJSDA will hold all submitted Questionnaires, until after all firms have been ranked, unless special circumstances warrant otherwise. Thereafter, NJSDA staff will forward the Questionnaire of the selected firm to the New Jersey State Police for review.

Moral Integrity approval is a prerequisite for contract award.

3.6 Disclosure of Investment Activities in Iran Form (0 Points – Required Submittal)

At the same time as a Technical Proposal is submitted, the proposing firm must submit to NJSDA a *Disclosure of Investment Activities in Iran Form* (Attachment H to this RFP) pursuant to Public Law 2012. C. 23 (codified at N.J.S.A. 52:32-55 et. seq.) (the "Act"). Pursuant to the Act, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract with the New Jersey Schools Development Authority must complete a Certification which states that the person or entity, or one of the persons or entity's parents, subsidiaries, or affiliates, is not identified on a list created and maintained by the New Jersey Department of the Treasury as a person or entity engaging in investment activities in Iran. The completed *Disclosure of Investment Activities in Iran Form* must be submitted and included with the completed Technical Proposal.

Failure to submit such Certification will result in the disqualification of the bid and rejection of the Technical Proposal.

3.7 Outsourced Services Special Provisions (0 Points – Required Submittal)

Pursuant to N.J.S.A. 52:34-13.2, all services under the Agreement shall be performed within the United States unless the contracting officer of the NJSDA certifies in writing a finding that the service required by the NJSDA cannot be provided within the United States and the Certification is approved by the Executive Director of the NJSDA.

Source Disclosure Requirements - In compliance with the above mandate, the NJSDA has adopted source disclosure requirements, obligating all bidders seeking a contract with the NJSDA to disclose:

- (a) The location by country where services under the contract will be performed;
- (b) The location by country where any subcontracted services will be performed; and
- (c) The reasons why any of the services cannot be provided within the United States.

Accordingly, the proposing firm must submit a *Source Disclosure Certification Form* (Attachment I to this RFP) filled out with the sourcing information required for itself and any proposed subcontracted firm.

Failure to submit sourcing information shall preclude award of a contract to the proposing firm.

Shift to Outsourced Services During Contract Term Shall Be a Breach of Contract - A consultant or subcontracted firm that had, upon contract award, declared that services would be performed in the United States, shall be deemed in breach of the Agreement if such consultant or subcontracted firm proceeds to shift the performance of services outside of the United States, at any time during the term of the contract, and the Agreement shall therefore be subject to termination for cause under the terms of the Agreement, unless the NJSDA 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.

3.8 Ownership Disclosure Form (0 Points – Required Submittal)

At the same time as a Technical Proposal is submitted, the firm must submit an *Ownership Disclosure Form*, pursuant to N.J.S.A. 52:25-24.2, using the form created by the Department of the Treasury, Division of Purchase and Property, which form is supplied by NJSDA as Attachment J to this RFP and is available as an interactive form on the Treasury website at:

<https://www.state.nj.us/treasury/purchase/forms/OwnershipDisclosure.pdf>

If the proposing firm is a corporation, the *Ownership Disclosure Form* requires the proposing firm to set forth the names and addresses of all stockholders in the corporation who own 10 percent or more of any class of its stock. If the proposing firm is a type of partnership, the *Ownership Disclosure Form* requires the names and addresses of all individual partners in the partnership who own a 10 percent or greater interest therein. If the proposing firm is a limited liability company, the *Ownership Disclosure Form* requires the names and addresses of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. If one or more such stockholder or partner or member in the firm is itself a corporation, partnership or limited liability company, then the stockholders holding 10 percent or more of that corporation's stock, or the individual partners owning 10 percent or greater interest in that partnership, or the members owning 10 percent or greater interest in that limited liability company, as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every non-corporate stockholder, and individual partner, and member, who exceed the 10 percent ownership criteria threshold established by N.J.S.A. 52:25-24.2, have been listed. To comply with this section, a

proposing firm with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. The *Ownership Disclosure Form* must be submitted and included with the completed Technical Proposal.

Failure to submit such Ownership Disclosure Form will result in the disqualification of the bid and rejection of the Technical Proposal.

3.9 Certification of Non-Debarment Form (0 Points – Required Submittal)

At the same time as a Technical Proposal is submitted, the proposing firm must submit a *Certification of Non-Debarment Form*, pursuant to N.J.S.A. 52:32-44.1, using the form provided by NJSDA (Attachment K to this RFP).

Failure to submit such Certification will result in the disqualification of the bid and rejection of the Technical Proposal.

4.0 INSTRUCTIONS FOR SUBMITTING A FEE PROPOSAL

The proposing firm must complete and return the *NJSDA Fee Proposal Form* (Attachment L to this RFP). The Fee Proposal must list the proposing firm's entire proposed staff (by position) providing Internal Audit Consulting Services, whether such staff is comprised of the proposing firm's employees or those of a subcontracted firm.

As prescribed in Section 5.0 of this RFP, the Fee Proposal (one original only) must be submitted at the same time and location as the firm's Technical Proposal, but the Fee Proposal must be enclosed in a sealed envelope separate from the Technical Proposal.

5.0 SUBMISSION REQUIREMENTS AND DELIVERY INFORMATION

The proposing firm must submit one (1) unbound original and one (1) cover-to-cover copy in PDF format on USB Flash Drive of its Technical Proposal, accompanied by one (1) unbound original, signed, sealed Fee Proposal no later than **11:00 AM Eastern Time on June 17, 2020**. Submissions will **only** be accepted by overnight or hand delivery at the following address:

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
32 East Front Street
Trenton, New Jersey 08625-0991
Attention: Dave Kutch, Sr. Procurement Analyst
Subject: Internal Audit Consulting Services - GP-0272-R01

The hard copy original and electronic version of the Technical Proposal must contain identical information. Providing inconsistent information in the two versions of the Technical Proposal may result in a determination that the submission is non-responsive.

Submissions received after the date and time listed above will not be considered.

Faxed or e-mailed submissions will not be accepted.

Any firm wishing to submit a Proposal must submit a timely e-mail Notice of Intent to Participate, as prescribed in Section 1.0, above.

6.0 PRE-AWARD REQUIREMENTS (INFORMATIONAL ONLY – DO NOT INCLUDE WITH RFP SUBMISSION)

After determination of the successful firm, the NJSDA will require the following additional information prior to the award of the contract:

6.1 Proof of Business Registration Certification

Pursuant to N.J.S.A. 52:32-44, the NJSDA (“Contracting Agency”) is prohibited from entering into a contract with an entity unless the bidder/proposer/contractor, and each subcontractor that is required by law to be named in a bid/proposal/contract has a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services within the Department of the Treasury.

Prior to contract award or authorization, the contractor shall provide the Contracting Agency with its proof of business registration.

Subcontractors named in a bid or other proposal shall provide proof of business registration to the bidder, who in turn, shall provide it to the Contracting Agency prior to the time a contract, purchase order, or other contracting document is awarded or authorized.

During the course of contract performance:

- (1) the contractor shall not enter into a contract with a subcontractor unless the subcontractor first provides the contractor with a valid proof of business registration.
- (2) the contractor shall maintain and submit to the Contracting Agency a list of subcontractors and their addresses that may be updated from time to time.
- (3) the contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the use tax due pursuant to the Sales and Use Tax Act, (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Taxation at 609-292-6400. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

Before final payment is made under the contract, the contractor shall submit to the Contracting Agency a complete and accurate list of all subcontractors used and their addresses.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration as required, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000, for each proof of business registration not properly provided under a contract with a contracting agency.

Firms may obtain New Jersey Business Registration assistance by going on-line to <http://www.state.nj.us/treasury/revenue/gettingregistered.shtml> or by calling the New Jersey Department of the Treasury at 609-292-9292.

6.2 Political Contributions

P.L. 2005, c. 51 which amended and supplemented N.J.S.A. 19:44A-20.1 et seq., and superseded Executive Order 134 (2004), addresses the effect of political contributions on State contracting. Accordingly, a selected firm will be required to respond in a timely fashion to certification and disclosure requirements that will be stated in the Notice of Award issued by the NJSDA. Additionally, a selected firm will be required to comply with Executive Order No. 117, which is designed to enhance New Jersey's efforts to protect the integrity of government contractual decisions and increase the public's confidence in government. The Executive Order builds on the provisions of P.L. 2005, c. 51 ("Chapter 51"), which limits contributions to certain political candidates and committees by for-profit business entities that are, or seek to become, State government vendors.

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

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

6.3 Political Contributions Disclosure

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

6.4 Anti-Discrimination Requirements

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

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

***The original of the submitted document shall be provided to the New Jersey Department of the Treasury.** Please see following link for details:

http://www.state.nj.us/treasury/contract_compliance/forms.shtml

6.5 Insurance and Indemnification

A successful firm shall be required to provide evidence of the insurance coverages required in Section 5.1 of the Agreement, Attachment A to this RFP, at the time of execution of the Agreement.

6.6 Other Information As Required

The NJSDA may request additional information from the selected firm as required under the Agreement, or pursuant to applicable policies, procedures or law.

ATTACHMENT A

INTERNAL AUDIT CONSULTING SERVICES AGREEMENT

{Please see attached}

AGREEMENT

between the

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

and the

CONSULTANT

for

INTERNAL AUDIT SERVICES

CONTRACT NO.: GP-0272-R01

THIS AGREEMENT is made and entered into this ___ day of _____, 2020, (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 required by Task Orders issuing under this Agreement for the Contract identified as:

Contract Number: GP-0272-R01

Contract Name: Internal Audit 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 any Task Orders issued hereunder, 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

Reviewed and Approved as to Form Only

This _____ day of _____, 2020:

By:
Title:

Notary Public of _____

My commission expires: _____, 20____.

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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 to be performed by the Consultant at the Authority’s request which are in addition to those Basic Services that the Consultant is required to perform under a Task Order pursuant to this Agreement.
- 1.2 **“Agreement”** means this Internal Audit Services Agreement (and all Appendices) between the Authority and the Consultant for the provision of Internal Audit Services for Task Orders to be assigned, as such Agreement may be amended from time to time in accordance with the provisions hereof.
- 1.3 **“Amendment”** means a written modification to this Agreement, executed by the Parties.
- 1.4 **“Authority”, “New Jersey Schools Development Authority” or “NJSDA”** means the public body corporate and politic established in, but not of, the Department of Treasury pursuant to P.L. 2007, c. 137, for the purpose of implementing provisions of the Educational Facilities Financing and Construction Act, N.J.S.A. 18A:17G-1 et seq. The Authority is the Party that has engaged the Consultant pursuant to this Agreement.
- 1.5 **“Basic Services”** means those Services set forth in the Task Order Description and Scope of Services for a specific Task Order to be completed by the Consultant, including, but not limited to, the Deliverables to be produced. The Basic Services of a Task Order may be amended, from time to time, in accordance with the applicable provisions of this Agreement, and any applicable approval or authorization requirements of the NJSDA’s Operating Authority.
- 1.6 **“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, 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.
- 1.7 **“Consultant”** means the firm engaged by the Authority to perform Internal Audit Services pursuant to Task Orders assigned under this Agreement.
- 1.8 **“Consultant Client Manager”** means that person designated by the Consultant to serve as its representative during the Term.
- 1.9 **“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 Task Orders and associated documents, any Amendments and addenda thereto, and all exhibits and schedules attached to such documents.
- 1.10 **“Day” or “Days”** means a calendar day or days.
- 1.11 **“Deliverables”** means, among other things, writings, reports, analyses, workpapers, approvals,

recommendations, or other documents, services or things identified in and required to be delivered by the Consultant as specified in the Appendix B Task Order Description and Scope of Services for an assigned Task Order under this Agreement.

- 1.12 **“Effective Date”** means the date on which this Agreement became effective, and for purposes of this Agreement, as that date is so identified and set forth on page 1.
- 1.13 **“Fee Proposal”** means the Fee Proposal submitted by the Consultant in response to the RFP.
- 1.14 **“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.
- 1.15 **“Key Team Member”** means any officer, principal, partner or employee identified in the Consultant’s Technical Proposal as having a responsible role in the successful provision of the Services.
- 1.16 **“Notice to Proceed”** means a notice from the Authority to the Consultant, directing the Consultant to commence performing its responsibilities pursuant to a Task Order issued pursuant to this Agreement.
- 1.17 **“Operating Authority”** means the NJSDA Levels of Operating Authority policy which specifies the various levels of managerial authorization that must be applied to a given transaction or action in order to properly validate Authority actions, depending on the nature and value of the contemplated transaction or action.
- 1.18 **“Party”** means a party to this Agreement. **“Parties”** means the Authority and the Consultant.
- 1.19 **“Program Manager”** means the NJSDA’s Internal Audit Director.
- 1.20 **“Request for Proposals”** or **“RFP”** means the request issued by the Authority for proposals for the provision of Internal Audit Services.
- 1.21 **“Schedule”** means the time-frames governing the completion of Services specified in any applicable Task Orders issued pursuant to this Agreement.
- 1.22 **“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.
- 1.23 **“School Facilities Project”** means the acquisition, demolition, design, construction, improvement, repair, alteration, modernization, renovation, reconstruction or maintenance of all or any part of a School Facility or of any other personal property necessary for or ancillary to any School Facility.
- 1.24 **“School Facility”** means and includes any structure, building or facility used wholly or in part for academic purposes.
- 1.25 **“Scope of Services”** means the description of services and required Deliverables to be provided by the Consultant pursuant to a Task Order assigned under this Agreement.
- 1.26 **“Services”** or **“Internal Audit Services”** means the services required to be performed by the

Consultant pursuant to the assigned Task Orders under this Agreement, as set forth in the Appendix B Task Order Description and Scope of Services for each such Task Order.

- 1.27 **“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.
- 1.28 **“State”** means the State of New Jersey.
- 1.29 **“Subconsultant”** means the consultant to whom another consultant subcontracts part of the services for which the latter is responsible.
- 1.30 **“Task Order”** means an order or authorization for the performance of a defined scope of Services that is assigned or awarded to a Consultant engaged by the Authority pursuant to this Agreement.
- 1.31 **“Technical Proposal”** means the proposal submitted by the Consultant in response to the RFP.
- 1.32 **“Term”** means the term of this Agreement as set forth in Section 4 hereof.

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 Upon assignment of a Task Order under this Agreement, the Consultant shall become fully familiar with all relevant Task Order documentation. If the Consultant determines that it requires any additional information to perform its Services, the Consultant will notify the Authority promptly in writing.
- 2.1.3 The Contractual Documents establish the obligations of the Consultant.
- 2.1.4 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.
- 2.1.5 Absent the Authority's written consent, Consultant shall utilize the Key Team Members identified in its Technical Proposal in performing Services under this Agreement. The Program Manager has the right to reject any such Key Team Member if, in its reasonable opinion, such Key Member is failing to properly perform or, in the reasonable opinion of the Program Manager, lacks the necessary background and experience. All substitutions proposed by Consultant must be approved by the Program Manager in writing in advance of the performance of any Services by the person identified as a proposed substitute for a Key Team Member, and such approval shall not be unreasonably withheld. Consultant shall provide written notice to the Program Manager and the Vice President-Corporate Governance and Legal Affairs in the event Consultant proposes to replace, add or remove any Key Team Member. Any replacement Key Team Member must have equal or superior qualifications to the Key Team Member Consultant proposes to replace. Consultant shall submit to the Program Manager, for approval, the name and qualifications of all proposed Key Team Member substitutions. Any approval by the Program Manager of any Key Team Member shall not be construed as an admission by the Authority of such Key Member's competence and Consultant shall not argue to the contrary in connection with any dispute between the Parties. There will be no increase in fee or compensation to Consultant as a result of any Key Team Member substitution.
- 2.1.6 The Program Manager may, at his/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 Program Manager.
- 2.1.7 The Consultant understands and agrees that any change to this Agreement must be made in writing in the form of an Amendment.
- 2.1.8 Any Services performed by the Consultant that are beyond the scope of an assigned Task Order, and that are not described in an agreed-upon Amendment, shall be undertaken 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.

- 2.1.9 The Consultant shall make no changes to the Scope of Services for a particular Task Order 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.
- 2.1.10 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.
- 2.1.11 Services shall be performed within the applicable Schedule for each assigned Task Order.
- 2.1.12 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 Authority's Vice President-Corporate Governance and Legal Affairs and the Program Manager.
- 2.1.13 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.
- 2.1.14 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. The Authority shall not be liable for any costs, damages or delays incurred by the Consultant resulting from the Program Manager's disapproval of a Subcontractor or Vendor, nor shall the Consultant be entitled to any reimbursement or time extensions in connection with such disapproval. The Consultant shall make no substitution of any Subcontractor or Vendor previously approved by the Program Manager without written notification to the Program Manager and the receipt of the Program Manager's written approval for such substitution.
- 2.1.15 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.

- 2.1.16 The Consultant shall, in accordance with generally accepted accounting principles and practices, maintain overhead, cost and accounting records, as well as all other records the Consultant may customarily maintain in its business, as well as maintain electronic records for products and/or services delivered under the Contractual Documents for a period of six (6) Fiscal Years from the date of final payment or the end of the Fiscal Year in which this Agreement expires, whichever occurs later. After this period, the Consultant shall not dispose of these records until first offering them (at no cost) to the Authority in writing; the Authority shall have thirty (30) Days within which to accept them.
- 2.1.17 All such records relating to products and/or services delivered under the Contractual Documents shall be made available upon request by the NJSDA. With reasonable notice, the Consultant shall provide all authorized representatives of the State, including representatives of the Office of the State Comptroller, with full access/audit to all of its financial records that pertain to services performed and determination of amounts payable under the Contractual Documents. This includes access to appropriate individuals with knowledge of financial records and full access to all records pertaining to services performed and the determination of amounts payable under the Contractual Documents, permitting such representatives to examine, audit, and copy such records at the site at which they are located. Such access/audit shall include both announced and unannounced inspections, as well as, on-site audits.
- 2.1.18 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.
- 2.1.19 The Consultant shall designate a Key Team Member at the Consultant's firm, satisfactory to the Program Manager, to act as the Consultant Client Manager. The Consultant Client Manager shall be responsible to receive Notices on behalf of the Consultant, and to act for, and bind the Consultant in all matters relating to the Contractual Documents. 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.
- 2.1.20 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.

- 2.1.21 Business Registration. The Consultant and any Subconsultant identified in the Technical Proposal as performing Services under this Agreement shall have provided to the Authority proof of valid business registration with the Division of Revenue of the New Jersey Department of the Treasury, pursuant to N.J.S.A. 52:32-44b, as set forth in Appendix F hereto. The Consultant shall provide written notice to any firm that may become its Subconsultant that it shall not enter into any subcontract with a Subconsultant that has not provided it with proof of such business registration, a copy of which the Consultant shall forward to the Authority, in accordance with N.J.S.A. 52:32-44c. The Consultant shall maintain and submit to the Authority a list of Subconsultants and their addresses, which list must be updated as necessary during the Term. A complete and final version of such list must be submitted to the Authority annually, and before final payment for Services shall be made for each Task Order assigned under this Agreement.
- 2.1.22 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.
- 2.1.23 Political Contributions. Consultant shall, on a continuing basis, disclose and report to the Authority any “contributions,” as that term is defined in N.J.S.A. 19:44A-20.16., made during the Term by it or any “Business Entity,” as that term is defined in N.J.S.A. 19:44A-20.17, associated with the Consultant, on the “Disclosure of Political Contribution” form provided by the Authority, at the time such contribution is made.
- 2.1.24 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-20.27, 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.
- 2.1.25 Outsourcing Provisions. In accordance with N.J.S.A. 52:34-13.2, the Consultant shall have a continuing duty to comply with the provisions of N.J.S.A. 52:34-13.2, as applicable. If, during the Term, the Consultant or a Subcontractor or Vendor, 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 Director of the Authority’s Division of Procurement 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 Payment and Final Release

- 2.2.1 Final Payment. Final Payment for each assigned Task Order shall be made by the Authority to the Consultant only when:
- a) This Agreement has been fully performed by the Consultant with respect to the Task Order;
 - b) The Consultant has produced and provided all Deliverables required under the Task Order;
 - c) The final Invoice and final accounting has been submitted by the Consultant and has been reviewed and approved by the Authority;
 - d) The Consultant has produced all records requested by the Authority as provided in Section 2.1.17; and
 - e) The Authority has accepted the Consultant's Services for the Task Order assigned under this Agreement.
- 2.2.2 If all requirements for Final Payment have been fulfilled by the Consultant, the Authority shall make Final Payment on the Task Order in accordance with the New Jersey Prompt Payment Act, N.J.S.A. 2A:30A-2.
- 2.2.3 Final Release. The Consultant's acceptance of final payment shall constitute a final release from and waiver of all the Consultant's Claims relating to the Task Order 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 Compensation Based on Hourly Rates. The Consultant's Compensation for Basic Services under a Task Order shall be based on the Loaded Hourly Rates as set forth in Appendix C to the Agreement. Such rates shall be valid for the duration of the engagement. The Consultant's Compensation for Basic Services may be based on 1) a lump sum based on the hourly rates specified in Appendix C; 2) hourly rates for services performed pursuant to a specific Task Order; or 3) a combination of a proportion of an agreed lump-sum fee for certain specific activities, with other specific activities compensated based on an hourly basis.

3.2 Components of Hourly Rates. Hourly Rates set forth in Appendix C to this Agreement include salaries and wages paid to personnel in each billing class, plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit. Such rates shall be valid for the duration of the engagement.

3.3 General

- 3.3.1 The Consultant shall only be paid after invoices are submitted and approved.

- 3.3.2 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.
- 3.3.3 All payments for Services under the Contractual Documents will be made only to the Consultant, and Consultant assumes sole responsibility for payments due to any Subconsultant.
- 3.3.4 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

3.4 Budget and Negotiation of Compensation

- 3.4.1 Lump Sum Budget. Within five (5) business days of receiving a Task Order assignment, the Consultant shall submit a detailed Lump Sum Budget for the Task Order, on forms provided by the NJSDA. The proposed Lump Sum Budget shall be based on the Loaded Hourly Rates established in Appendix C of this Agreement and any reimbursable costs, and shall reflect the scope and schedule of the services required by the Task Order assignment.
- 3.4.2 Upon receipt of the Consultant's Lump Sum Budget the Authority shall review the Consultant's proposed Lump Sum Budget for the Task Order. The fees and costs contained in the proposed Lump Sum Budget may be negotiated, to reach an agreed-upon Lump Sum Compensation for the Task Order.
- 3.4.3 Alternatively, where appropriate to the nature of the Services at issue, a Task Order or certain elements or scopes of work within the Task Order can be compensated on a time and materials basis, based on the Loaded Hourly Rates established in Appendix C under this Agreement, rather than a negotiated fixed Lump Sum.

3.5 Invoices

- 3.5.1 The Consultant shall submit separate invoicing for each assigned Task Order, identifying the Task Order by contract number and Task Order number.
- 3.5.2 Invoices for Services shall be submitted monthly or at other agreed-upon intervals, on an invoice form provided by the NJSDA. Invoices may request payment based on the percentage of completion of a Task Order scope of work that is to be compensated by a lump-sum amount, or may request payment based on hourly rates and/or other applicable charges if a Task Order scope of work has been negotiated to be compensated on an hourly basis. All invoices shall be accompanied by such supporting documentation as is required by the NJSDA. Electronic invoices with associated backup are acceptable.
- 3.5.3 Additional Services approved by the Authority shall be billed upon completion and shall be accompanied by such supporting documentation as may be required by the Authority, including: billing period; name and job title; a description of the agreed upon Additional Services; labor hours billed (in increments of 1/4 hours) for the Additional Services; the hourly billing rate; and the extended amount and total amount of services billed during the

billing period. Electronic invoices with associated backup are acceptable.

- 3.5.4 Invoices shall be submitted to the Authority's Program Manager and must identify this Agreement's contract number and Task Order number.
- 3.5.5 Invoices submitted to the Authority's Program Manager shall be processed and paid only after the Authority 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 and/or Vice President-Corporate Governance and Legal Affairs reasonably determine that the Services for which payment is sought are incomplete or unsatisfactory.
- 3.5.6 Each invoice signed by the Consultant and submitted to the Authority's 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.
- 3.5.7 The Consultant is required to provide with its invoices, on forms specified by the Authority, information on a monthly and cumulative basis regarding the share of total contract dollars that Consultant has paid to subconsultants, and identifying such subconsultants as any of the following, if applicable: small businesses, minority-owned businesses, women-owned businesses, veteran-owned businesses, and disabled veteran-owned businesses. This information shall be provided in the form and manner required by the Authority.
- 3.5.8 All invoices shall be accompanied by appropriate backup to ensure billing accurately represents work incurred.

3.6 Withholding Payment for Unsatisfactory Services or Non-delivery of Deliverables

- 3.6.1 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.
- 3.6.2 The withholding of any sums pursuant to this Section 3.6 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 3.6.

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 three (3) years or until all obligations of the Consultant to deliver Services pursuant to Task Orders issued under 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 or Services under this Agreement, the Consultant 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, the following insurance coverages/policies insuring the Consultant, its employees 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- VIII” (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, Workers’ Compensation, Business Automobile, and Network Security/Cyber/Privacy Breach Insurance, 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 Services, and shall comply with all laws, ordinances, rules and regulations of Federal, State, county and municipal authorities in the performance of said Services. 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 \$3,000,000 per claim and \$3,000,000 in the aggregate for all operations conducted. The Consultant warrants they will notify the Authority in writing of any reduction in the aggregate coverage within thirty (30) days. The Consultant warrants that coverage shall not be circumscribed by any endorsements excluding coverage arising out of services performed pursuant to this Agreement.

5.1.2.2 Commercial General Liability Insurance. The Consultant shall maintain Commercial General Liability Insurance (CGL), and, if necessary, Commercial Umbrella Insurance with a limit of not less than \$5,000,000 for each occurrence, \$5,000,000 aggregate limit for products/completed operations and \$5,000,000 general aggregate limit. CGL insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include liability arising out of, occasioned by or resulting from premises, operations, independent contractors, products, completed operations, personal injury and advertising injury, and liability assumed under an insured contract in connection with Services performed

under this Agreement. The EDA, the Authority, the State of New Jersey and their respective directors, officers, members, employees and agents shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 (or a substitute form providing equivalent coverage), and under the Commercial Umbrella, if any. In addition, the Consultant may also be required to name other parties as additional insureds prior to the initiation of Services. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Authority.

5.1.2.3 Worker's Compensation Insurance. The Consultant shall, at its own cost and expense, maintain Workers' Compensation and Employers' Liability insurance prescribed by the laws of the State of New Jersey and any other jurisdiction required to protect employees of the Consultant while engaged in the performance of the Services under this Agreement. Workers' Compensation coverage shall be statutory and the Employers' liability limits (including Umbrella coverage) shall not be less than \$500,000 per accident for bodily injury by accident and \$500,000 for each employee for bodily injury by disease and \$500,000 policy limit for bodily injury by disease.

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

5.1.2.5 Network Security/Cyber/Privacy Breach Insurance. The Consultant shall maintain Network Security/Cyber/Privacy Breach Insurance with coverage retroactive to the Effective Date pursuant to the Agreement in an amount not less than \$3,000,000 per claim and \$3,000,000 in the aggregate. This insurance, at minimum, shall cover the following risks: Liability arising from theft, dissemination, and/or use of confidential information (including, but not limited to, information protected under HIPAA, bank account information, any and all use of personal or confidential information and any related forensic costs, crisis management costs, investigation costs); Network security liability arising from the unauthorized access, use of, or tampering with computer systems, including hacker attacks or inability of an authorized third party to gain access to services, including denial of service, unless caused by a mechanical or electrical failure; Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a vendor's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon; Any government investigations resulting from the alleged or actual disclosure of personal or confidential information or network security liability event; and nonphysical business interruption. In addition, *coverage may be purchased on a stand-alone basis or as an endorsement to another coverage.*

5.1.3 Certificates of Insurance. Attached to this Agreement as Appendix E shall be valid insurance certificates, executed by a duly authorized representative of each insurer, in form and substance satisfactory to the Authority, evidencing compliance with the insurance

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

- 5.1.4 Liability in Excess of Coverage. By executing this Agreement, the Consultant expressly agrees that any insurance protection required herein or by the Consultant's Documents shall in no way limit the Consultant's obligations under this Agreement or the Consultant's Documents and shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it preclude the Authority from taking such other actions as are available to it under other provisions of this Agreement or the Consultant's Documents or otherwise in law or equity. By requiring insurance herein, the Authority does not represent that coverage and limits will necessarily be adequate to protect the Consultant, and such coverage and limits shall not be deemed as a limitation on the Consultant's liability under this Agreement.
- 5.1.5 Right to Remedy. If the Consultant fails to obtain and/or maintain the insurance as required in this Section, fails to renew any of its insurance policies as necessary, or in the event any policy is canceled, terminated or modified so that the insurance does not meet the requirements of this Agreement, the Authority may: (i) purchase insurance at the Consultant's sole expense; (ii) refuse to make payment of any further amounts due under this Agreement; (iii) refuse to make payments due or coming due under other agreements between the Consultant and the Authority; (iv) suspend performance by the Consultant under this Agreement; or (v) terminate this Agreement. Any funds retained pursuant to this Section may be used, at the Authority's discretion, to renew or purchase the Consultant's insurance for the periods and amounts as set forth in this Agreement. In the event the Authority purchases said insurance the Authority may, at its discretion, reduce the Consultant's Compensation under this Agreement by the amount paid for such insurance plus reasonable attorney's fees.
- 5.1.6 Additional Insurance. The Consultant shall also provide such additional types of insurance in such amounts as the Authority shall reasonably require. In the event that any such additional insurance is required, the Consultant shall deliver certified copies of each policy to the Authority within ten (10) days of the Authority's written request for such insurance.
- 5.1.7 Waiver of Subrogation. The Consultant waives all rights of subrogation and recovery against the Authority, agents or employees of the Authority to the extent these damages are covered by the CGL, Business Automobile Liability or Commercial Umbrella Liability Insurance obtained by the Consultant. If the policies of insurance purchased by the Consultant as required above do not expressly allow the insured to waive rights of subrogation prior to loss, the Consultant shall cause them to be endorsed with a waiver of subrogation as required herein.
- 5.1.8 Any deductible or self-insured retention (SIR) applicable to the aforementioned insurance shall be declared to and approved by the Authority and written using ISO endorsement CG

03 00 (or a substitute providing equivalent terms and conditions). The Consultant shall not be permitted to have a SIR larger than \$100,000 unless it obtains the express, written consent of the Authority to the larger SIR. FAILURE TO COMPLY WITH SECTION 5.1.8 IS A MATERIAL BREACH OF CONTRACT.

- 5.1.9 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 Audit workpapers will remain the property of the Consultant with the provision that, upon request of the Authority, copies thereof shall be made available to the Authority in a timely manner and at no additional cost.
- 5.2.2 Except for audit workpapers subject to Section 5.2.1 above, in consideration of the Authority’s execution of this Agreement and for other good and valuable consideration, all Deliverables, unless otherwise provided, shall be the sole property of the Authority.
- 5.2.3 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 disclosable government records 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 these confidentiality terms and conditions to be included in 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.

5.7 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, including, but not limited to: (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.
- 5.7.2 In the event of a proposed dissolution of the Consultant, in order for the Authority to review a proposed dissolution for approval and continuation of the Services under this Agreement, 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 proposed to continue the Services 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.
- 5.7.3 After review of the relevant documentation regarding the proposed transaction, the Authority, in its sole discretion, may approve the continuation of this Agreement following the proposed transaction, or may 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.

5.8 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 General. The Consultant and its Subcontractors and Vendors shall abide by the affirmative action program established by the Authority pursuant to Section 6 and 36 of the legislation creating the New Jersey Schools Development Authority, P.L. 2007, c. 137 (N.J.S.A. 52:18A-240 and 18A:7G-26), and any rules associated therewith, as may be amended from time to time, including, but not limited to, N.J.A.C. 17:27-1.1 to -12.5 and N.J.A.C. 19:39-1.1 to -4.1.
- 5.9.2 Documentation. Consultant shall submit to the Authority, after notification of award but prior to execution of this Agreement, one of the following three documents: (i) documentation (e.g., a Letter of Approval) sufficient to show that the Consultant is operating under an existing Federally-approved or sanctioned affirmative action program; (ii) a Certificate of Employee Information Report approval issued in accordance with N.J.A.C. 17:27-4; or (iii) an Employee Information Report (Form AA-302) in accordance with N.J.A.C. 17:27-4. Consultant shall not enter into a subcontract unless the subcontractor has submitted to said Consultant one of the three documents required in this paragraph above, unless such subcontractor has four or fewer employees.
- 5.9.3 Required Language And Application to Consultant and Subconsultants. Consultant shall abide by, and shall include language in all subcontracts with Subcontractors requiring that all Subcontractors abide by the requirements of this Section 5.9, as well as the Mandatory Antidiscrimination and Equal Opportunity Provisions contained in Appendix D to this Agreement.
- 5.9.4 Antidiscrimination Obligations. 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, including N.J.A.C. 17:27-1.1 et seq., as well as the Antidiscrimination provisions of N.J.S.A. 10:2-1, which are attached to this Agreement as part of Appendix D.
- 5.9.5 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.

5.10 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 corporation 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 State Ethics Commission.
- 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-13g. Any relationship subject to this provision shall be reported in writing forthwith to the State Ethics Commission, which may grant a waiver of this restriction upon application of the officer or employee and upon a finding that the present or proposed relationship presents neither an actual conflict of interest, nor the potential for, or appearance of, such a conflict of interest.
- 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 or Code(s) of Ethics that the State Ethics Commission and the NJSDA have promulgated or may promulgate.

5.11.8 For the purposes of this Section, an “Authority officer or employee” shall include special Authority officers or employees, as defined by N.J.S.A. 52:13D-13b and 13e.

5.12 Indemnification

5.12.1 To the fullest extent permitted by law, the 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 claim, demand, liability, lawsuit, judgment, action or other proceeding including, but not limited to, all costs, fees and expenses, including, without limitation, attorney’s fees and expenses, court costs, expert witness fees and expenses, any resulting settlement, judgement, award or other assessment of liability, interest and other expenses arising or resulting from 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, regardless of whether caused in part by the negligent act or omission of a party indemnified hereunder, provided it is not caused by the sole negligence of a party indemnified hereunder;

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 or other acts or omissions 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, regardless of whether caused in part by the negligent act or omission of a party indemnified hereunder, provided it is not caused by the sole negligence of a party indemnified hereunder;

5.12.1.3 violation or non-compliance with federal, State, local and municipal laws, regulations, and ordinances, 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, regardless of whether caused in part by the negligent act or omission of a party indemnified hereunder, provided it is not caused by the sole negligence of a party indemnified hereunder; and

5.12.1.4 the use of any copyrighted or uncopied 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's 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. Such notification shall be called a "Termination for Convenience."

6.1.2 Any such termination shall be effected by delivery of a "Notice of Termination for Convenience" 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 or otherwise fails to comply with applicable laws, ordinances, rules, regulations or orders of any public body having jurisdiction; (ii) refuses or fails to provide sufficient qualified staff to perform the Services; (iii) fails to make payments to Subconsultants, Subcontractors and/or Vendors for materials or labor in accordance with the respective agreements between the Consultant and such Subconsultants, Subcontractors and Vendors (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 material misrepresentation or conceals any material fact; (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; (x) fails to timely provide any Services required under the Contractual Documents; or (xi) 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) (misrepresentation) and (ix) (insolvency), 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. Such termination shall be called a "Termination for Cause".

- 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, at its own expense, 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. If the Authority is required to file a legal action against Consultant in order to recover monies owed by Consultant on account of its Termination for Cause, Consultant shall be liable to the Authority for all legal fees so incurred, as well as all other litigation costs incurred. Further, Consultant shall be liable to the Authority for interest on all monies due and owing from Consultant to the Authority under this Section or any other Section of this Agreement.
- 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, if warranted, provide a compensation adjustment in an amount deemed proper by the Authority and Consultant after review of the Consultant's submissions relating to the increased costs actually incurred by the Consultant as a direct result of the suspension. No such Amendment will change other Contractual Documents terms.

6.3.3 When the Authority has determined that a suspension is the fault of the Consultant, the Authority may, at its sole option, suspend all payments to the Consultant. Payment may be reinstated by the Authority upon completion of the Services in accordance with the other provisions of this Agreement and the other Contractual Documents provided, however, that there shall be no upward adjustment in direct or indirect costs or in any other costs. Alternatively, the Authority may terminate this Agreement pursuant to Section 6.2, above, or carry out the Services as provided for in Section 6.4, below.

6.4 Authority's Right to Carry Out the Services

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

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

6.5 Unacceptable Services; Duty to Cure Errors and Omissions

6.5.1 The Authority shall give the Consultant written notice as soon as practicable after it becomes aware of an error or omission by the Consultant. If the Authority determines that any Service delivered is unacceptable, in quality, timeliness, or any other condition, due to error, omission or failure to comply with requirements of the Contractual Documents, the Consultant shall correct and revise the unacceptable Services under the Authority's direction at no cost to the Authority. The corrected and revised Services shall be resubmitted to the Authority for approval..

6.5.2 The Consultant shall be liable to Authority for all damages to Authority caused by

Consultant errors or omissions. The Consultant shall reimburse Authority for all costs incurred by Authority as a result of such errors and omissions, including interest and other expenses.

7.0 CLAIMS

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

7.1 **General.** All Claims asserted by the Consultant against the Authority shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

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

7.3 **False Claims Liability.** The Consultant shall be held liable and subject to all penalties and damages under the False Claims Act, N.J.S.A. 2A:32C-1 et seq. for any false or fraudulent Claim submitted to the Authority.

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

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

Completion of Step One of the Claims Review procedure is a mandatory prerequisite to the initiation of Step Two of the procedure.

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

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

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

7.6.2 **Authority Review and Decision.** At the option of the Authority, a meeting may be

scheduled with the Consultant and the Authority to discuss the Claim. The Authority shall render its decision regarding the Claim in writing within ninety (90) Days of the receipt of the required forms and all supporting documentation or within ninety (90) Days of any meeting with the Consultant and the Authority, whichever is later. This time limit may be extended by mutual agreement of the Parties, or may be extended in the Authority's sole discretion, based on the complexity, size or nature (i.e. delay claim) of the claim. The Consultant, within fifteen (15) Days of the receipt of the decision by the Authority, shall accept or reject the Authority's decision in writing. If the claimant neither accepts nor rejects in writing the Authority's decision within this fifteen (15) day period, the Authority will consider the Step One process administratively closed, and the claim will be eligible for Step Two Non-binding Mediation if a request for mediation is made by the Consultant in the time and manner indicated in Section 7.7 ("Step Two Non-Binding Mediation").

7.7 Step Two: Non-Binding Mediation. If the Consultant rejects in writing the decision of the Authority, there is no further automatic administrative review of the Claim. Within fifteen (15) Days after issuance of the Authority's decision, the Consultant may request in writing that any or all outstanding Claims, which include any or all Claims that have been processed through Step One of the Claim resolution process, and that were neither withdrawn nor considered withdrawn from the process be submitted to Step Two, proceed to non-binding mediation. Such request shall be sent to the Authority. No Claim will proceed automatically to Step Two and the Consultant must make a specific written request that the Claim be elevated to Step Two for review. The cost of non-binding mediation shall be shared equally by the Consultant and the Authority. The mediator shall be selected by the Authority, with the concurrence of the Consultant. The rules for the mediation shall be agreed to by the Authority, the Consultant and the mediator prior to the start of the mediation. If the Parties fail to agree on the rules for the non-binding mediation, the mediation will not proceed and Step Two review will be deemed completed.

8.0 REPRESENTATIONS

The Consultant hereby represents as follows:

- 8.1** The Consultant is financially solvent, able to pay its debts as they become due and possessed of sufficient working capital to complete the services required and perform its obligations under this Agreement.
- 8.2** The Consultant is able to furnish the workplace, tools, materials, supplies, equipment and labor necessary to complete the Services and perform all of its obligations under the Contractual Documents, and has sufficient experience and competence to do so.
- 8.3** The Consultant is authorized to do business in the State of New Jersey and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Consultant and the Services it will be performing.
- 8.4** The Consultant's execution of and performance under this Agreement are within its duly authorized powers.
- 8.5** The Consultant certifies that it has satisfied itself, from its own investigation, of the conditions to be met, and that it fully understands its obligations and agrees that it will not make any Claim for,

or have right to, cancellation or relief from the Contractual Documents without penalty, because of any 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 N.J.S.A. 52:32-44, as set forth in Appendix F, 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 for the performance of the Services under this Agreement. 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 its representatives and agents, including other branches of State government, 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.

- 9.1.7 Audit by Office of State Comptroller. Pursuant to N.J.S.A. 52:15C-14d, Consultant shall maintain all documentation related to products, transactions or services under this contract for a period of at least five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

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 to the Consultant Client Manager and/or as directed in Appendix A (Special Conditions). Electronic transmission of information may be required, as may be set forth in the Scope of Services.

- 10.2 Incorporation by Reference.** This Agreement incorporates by reference, as if set forth herein, all of the Contractual Documents in their entirety, including but not limited to this Agreement and its appendices; the Request for Proposals and the responses thereto; and any Amendments and any addenda.

- 10.3 Order of Precedence** This Agreement, and its Appendices and related documents are intended to be interpreted in harmony so as to avoid conflict. In the event of a conflict, discrepancy or inconsistency between or among the documents constituting this Agreement and its Appendices and related documents, interpretation will be based on the following descending order of priority:

- 10.3.1 Appendix A (Special Conditions)
- 10.3.2 Appendix B (Task Order Description and Scope of Services)
- 10.3.3 Agreement (excluding Appendices)
- 10.3.4 Appendix C

Notwithstanding the above order of precedence in documents, in the event there is any conflict or discrepancy between the terms contained in this Agreement or any Appendix or other document incorporated by referenced into this Agreement on the one hand, and any other terms of this Agreement or any other Appendix or document incorporated into this Agreement on the other hand, the Consultant will be required to provide the higher quality level of service or meet the higher standard as articulated in the more stringent provision of the Agreement or other document, as determined by the Authority

- 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 Forum and Venue.** The parties may only bring a legal action to resolve a dispute or Claim arising from this Agreement in a state court in the State of New Jersey.
- 10.8 Time of the Essence.** Time is of the essence for Task Orders assigned under this Agreement.
- 10.9 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.
- 10.10 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.
- 10.11 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.
- 10.12 Provisions Required By Law Deemed Inserted.** Each and every provision of law required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein, and, if through mistake, or otherwise, any such provision is not inserted, or is not correctly inserted, then, upon the application of either Party, the Agreement shall forthwith be physically amended to make such insertion or correction.
- 10.13 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.
- 10.14 Office of the State Comptroller.** The Office of the State Comptroller, the New Jersey State Police, or any other state inspecting or oversight agencies may, at their discretion, investigate, examine

and inspect the activities of the Consultant and all other parties involved with the Services. The Office of the State Comptroller, the New Jersey State Police, or any other state inspecting or oversight agencies 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 inspecting or oversight agencies may require. In addition to the foregoing, the Office of the State Comptroller, the New Jersey State Police, or any other state inspecting or oversight agencies may investigate, examine, inspect, or audit in any manner and at such times as such agencies deem necessary. The Consultant shall include in any and all contracts with Subconsultants a provision requiring such Subconsultants to permit the Office of the State Comptroller, the New Jersey State Police, or any other state inspecting or oversight agencies, in the discretion of such inspecting or oversight agencies, to investigate, examine, inspect or audit in any manner and at such times as such inspecting or oversight agencies deem necessary. The Consultant shall maintain all documentation related to products, transactions or services under contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

10.15 Limitation of Liability. Whether as a result of breach of Contract, tort (including negligence), or otherwise, the Authority will not be liable to the Consultant for any special, consequential, incidental, or penal damages, including, but not limited to, loss of profit or revenues, loss of rental value for Consultant-owned equipment, damages to associated equipment, cost of capital, punitive damages or interest of any nature.

10.16 Captions & Titles. Captions and titles of the different Sections of this Agreement are solely for the purpose of aiding and assisting in the location of different material in this Agreement and are not to be considered under any circumstances as parts, provisions or interpretations of this Agreement.

10.17 Words of Obligation or Duty. Whenever in this Agreement any words of obligation or duty regarding any party are used, they shall have the same force and effect as if stated in the form of an express covenant.

10.18 Parties are not Joint Venturers or Partners. Nothing contained in this Agreement shall be construed to mean that Consultant and the Authority are joint venturers or partners.

10.19 Notice of State Vendor Set-Off For State Tax

10.19.1 Pursuant to N.J.S.A. 54:49-19, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods and services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to setoff under this act.

10.19.2 The Director of the Division of Taxation shall give notice of the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under N.J.S.A. 54:49-18. No requests for conference, protest or

subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State to the taxpayer pursuant to N.J.S.A. 52:32-35 shall be stayed.

10.20 All Services to be Performed in United States. The Consultant shall have a continuing duty to comply with Executive Order No. 129 (2004) (“EO 129”), and with P.L. 2005, c. 92, as applicable. By executing this Agreement, the Consultant agrees that all Services performed by the Consultant and/or its Subconsultants pursuant to this Agreement shall be performed within the United States. If, during the Term, the Consultant or a subcontracted firm proceeds to shift the performance of the Services outside of the United States, the Consultant shall be deemed in breach of the Agreement and shall be subject to termination for cause, unless the Authority 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.

10.21 Equal Pay Act Compliance. The Consultant shall be required to submit compensation information, in the form of a Qualifying Services Report, to the Division of Labor and Workforce Development, with copies to the NJSDA, in accordance with the Diane B. Allen Equal Pay Act, P.L. 2018, c. 9). Guidance and forms for compliance with this requirement are available at:

www.nj.gov/labor/equalpay/equalpay.html

APPENDIX A

SPECIAL CONDITIONS

A.1 Notices shall be addressed as follows:

Authority: New Jersey Schools Development Authority
32 East Front Street
P.O. Box 991
Trenton, NJ 08625-0991
Attention: Peter Green

Consultant: TBD

APPENDIX B

TASK ORDER DESCRIPTION AND SCOPE OF SERVICES

{To be Supplied at Time of Task Order Assignment}

{The Scope of Services on the following page is for bidding purposes. Individual Task Order assignments will define the required services and deliverables.}

SCOPE OF SERVICES

The Scope of Services under this Agreement may include, but is not limited to, assisting the NJSDA's Division of Internal Audit ("IA") with:

- Examining and evaluating the adequacy and effectiveness of the systems of internal controls.
- Evaluating and assessing significant new or changing services, processes, operations, and controls coincident with their development and implementation.
- Identifying opportunities for reducing costs and improving processes.
- Reviewing the reliability and integrity of financial and operating information and the means used to identify measure, classify, and report such information.
- Assessing compliance with laws, regulations, contract/grant provisions, and internal policies, plans, and procedures.
- Verifying that resources are acquired economically, used efficiently, accounted for accurately, and protected adequately.
- Reviewing operations or programs to ascertain whether results are consistent with established objectives.
- Audit of Construction Projects, both complete and active.
- Operational audits as identified by the Internal Audit Risk Assessment or at the request of the Audit Committee.
- Conducting investigations of suspected fraudulent activities in conjunction with other resources, as necessary and notifying management and the Audit Committee of the results.
- Facilitating external audits.
- Evaluating emerging audit trends and implementing best practices.

Task Orders will define the specific internal auditing services and deliverables expected from the Consultant. The Consultant shall be responsible for providing the internal auditing services and deliverables specified under all Task Orders, even if completion of such Task Order assignments will occur after the expiration of the three (3) year term. The NJSDA shall have no obligation, however, to issue any particular number of Task Orders to the Consultant or to issue Task Orders at any particular frequency.

Within five (5) business days of receiving a Task Order assignment, the Consultant shall submit a detailed Lump Sum Budget, on forms provided by the NJSDA. The Lump Sum Budget shall be based on the Loaded Hourly Rates established in Appendix C of this Agreement and any reimbursable costs, and shall reflect the scope and schedule of the services required by the Task Order assignment. The fees and costs contained in the proposed Lump Sum Budget may be negotiated.

The Consultant shall be required to provide the Services and deliverables within the scope and schedule specified in each Task Order assignment, in conformance with the Code of Ethics and the International Standards for the Professional Practice of Internal Auditing promulgated by The Institute of Internal Auditors, as well as other professional auditing standards which may be applicable to the performance of work assignments. The NJSDA shall provide the Consultant with on-site office space at the NJSDA offices, as required.

APPENDIX C

COMPENSATION – FEE PROPOSAL

{See Attached Sheets}

APPENDIX D

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE AND ANTIDISCRIMINATION PROVISIONS

FOR NJSDA GOODS and SERVICES AGREEMENTS

For all regulatory and statutory language cited below, all references to “contractor” shall be deemed to refer to the holder of the relevant Goods and Services contract.

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.A.C. 17:27-1.1 et seq.

(Implementing N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127))

EXHIBIT A

(For Goods, Professional Service and General Service Contracts)

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at www.state.nj.us/treasury/contract_compliance)

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to **N.J.A.C. 17:17-1.1 et seq.**

Antidiscrimination Provisions of N.J.S.A. 10:2-1

§ 10:2-1. Antidiscrimination provisions

Antidiscrimination provisions. Every contract for or on behalf of the State or any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, for the construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or services shall contain provisions by which the contractor agrees that:

a. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;

b. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;

c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$ 50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

d. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

No provision in this section shall be construed to prevent a board of education from designating that a contract, subcontract or other means of procurement of goods, services, equipment or construction shall be awarded to a small business enterprise, minority business enterprise or a women's business enterprise pursuant to P.L.1985, c.490 (*C.18A:18A-51 et seq.*).

APPENDIX E

INSURANCE CERTIFICATE(S)

{See Attached Sheets}

APPENDIX F

OTHER DOCUMENTATION

{See Attached Sheets}

- 1. BUSINESS REGISTRATION**
- 2. PL 2005, CHAPTER 51 APPROVAL**
- 3. EO129 CERTIFICATION**
- 4. DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN**
- 5. ADDENDA**
- 6. ADVERTISEMENT**
- 7. NOTICE OF AWARD**

ATTACHMENT B

UNDERSTANDING OF THE REQUIRED SERVICES FORM

{Please see attached}

UNDERSTANDING OF THE REQUIRED SERVICES FORM

Present a brief understanding of the NJSDA's needs based upon the information provided in the Scope of Services. Include the name, address and phone number of the firm, the name and phone number of the firm's contact person, and the name of the person who prepared the Technical Proposal. Include any other information relevant to the firm's qualifications, together with details of any online guidance and audit programs that would be made available to the NJSDA as part of the Agreement.

UNDERSTANDING OF THE REQUIRED SERVICES FORM (cont'd)

ATTACHMENT C

APPROACH TO PROVIDING THE SCOPE OF SERVICES FORM

{Please see attached}

APPROACH TO PROVIDING THE SCOPE OF SERVICES FORM

Describe the firm's approach to providing the required Scope of Services, with specific emphasis on its approach to auditing multiple active construction projects and the reporting thereof. This should include addressing the staffing needs involved, identifying and discussing its approach to managing work performed by the firm and any subcontracted firms, and the firm's proposed quality control approach and procedures. The firm must also describe its role and the roles of any proposed subcontracted firms in providing the required services. This description must include an estimate of each firm's percentage of participation in providing the services. In addition, the firm must describe its proposed approach to data management and the transfer of work papers to the NJSDA in support of the audit work performed and any associated findings.

APPROACH TO PROVIDING THE SCOPE OF SERVICES FORM (cont'd)

ATTACHMENT D

AUDIT EXPERIENCE CASE STUDY FORM

{Please see attached}

AUDIT EXPERIENCE CASE STUDY FORM

(This form may be reproduced as necessary.)

CASE STUDY # _____

PROJECT NAME:

PROJECT ADDRESS:

CONTACT NAME & TITLE FOR OWNER'S REPRESENTATIVE:

CONTACT PHONE NUMBER:

TEAM MEMBER NAME & TITLE:

TEAM MEMBER NAME & TITLE:

TEAM MEMBER NAME & TITLE:

TEAM MEMBER NAME & TITLE:

PUBLIC SECTOR :

PRIVATE SECTOR:

PROJECT COST:

START DATE:

END DATE:

Describe the experience of the proposing firm, inclusive of the experience of any proposed subcontracted firms, related to both Construction and Operational Audits, including no more than two (2) case studies for Construction Audits and no more than two (2) case studies for Operational Audits. The case studies should address examples of the proposing firm's past provision (within the last five (5) years) 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, the scope of services provided, and results of said engagement. Case studies may be based on contracts with public or private sector clients. The case studies must describe the effectiveness of the project, and the methodology used to measure such effectiveness.

Empty text area for describing the experience of the proposing firm.

AUDIT EXPERIENCE CASE STUDY FORM (cont'd)

ATTACHMENT E

KEY TEAM MEMBER LIST

{Please see attached}

KEY TEAM MEMBER LIST

KEY TEAM MEMBER POSITION	KEY TEAM MEMBER NAME	KEY TEAM MEMBER FIRM
Partner/Principal: (A firm may propose only <u>one</u> Partner/Principal)		
Manager: (A firm may propose only <u>one</u> Manager)		
Senior Auditor: (A firm may propose <u>up to five</u> Senior Auditors)		
Staff Auditor: (A firm may propose <u>up to five</u> Staff Auditors)		

ATTACHMENT F

KEY TEAM MEMBER RESUME FORM

{Please see attached}

KEY TEAM MEMBER RESUME FORM

KEY TEAM MEMBER NAME:

FIRM NAME:

PROPOSED PROJECT ROLE:

YEARS WITH FIRM:

TECHNICAL SPECIALTIES:

PROFESSIONAL HISTORY:

EDUCATION:

PROFESSIONAL REGISTRATIONS & AFFILIATIONS:

KEY TEAM MEMBER RESUME FORM (cont'd)

Key Team Member Name: _____

Provide a description at least three (3) audits for which the Key Team Member fulfilled a role similar to that proposed for this engagement. The cited audits must have been completed within the last five (5) years.

ATTACHMENT G

MORAL INTEGRITY QUESTIONNAIRE

{Please see attached}



MORAL INTEGRITY QUESTIONNAIRE
NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
PROCUREMENT DEPARTMENT
32 EAST FRONT STREET, P.O. BOX 991
TRENTON, N.J. 08625-0991

CHECK ONE: <input type="checkbox"/> OTHER <input type="checkbox"/> CONTRACTOR <input type="checkbox"/> PROFESSIONAL SERVICES	CHECK ONE: <input type="checkbox"/> INITIAL <input type="checkbox"/> RENEWAL	FEDERAL TAX ID# _____
BUSINESS LEGAL NAME AND ADDRESS: “ARE SATELLITE OFFICE(S) LOCATED IN NEW JERSEY”: If yes, please provide address(es):	TELEPHONE # _____	DUNS # (if known) _____
	FAX # _____	TYPE OF BUSINESS: <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> CORPORATION <input type="checkbox"/> L.L.C. <input type="checkbox"/> OTHER (SPECIFY) _____
	E-MAIL ADDRESS _____	
	WEB ADDRESS _____	

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: _____	NEW JERSEY DIVISION OF REVENUE & ENTERPRISE SERVICES <input type="checkbox"/> SBE REGISTRATION (Attach Copy) <input type="checkbox"/> MBE REGISTRATION (Attach Copy) <input type="checkbox"/> WBE REGISTRATION (Attach Copy) <input type="checkbox"/> VOB REGISTRATION (Attach Copy)
---	---

CONTACT PERSON

Name: _____ Title: _____

Phone Number: _____ 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 for Moral Integrity approval. 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 Moral Integrity approval if you fail to provide additional information if requested to resolve the 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, BUSINESS SERVICES.

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

4. "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 with 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.

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 %

AT ANY TIME DURING THE PAST (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 indebtedness.)

YES NO
7. Had an injunction, order or lien entered against it in favor of any governmental 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 the 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 (i.e. Dept. of Labor); laws governing the conduct of occupations, professions or regulated industries (i.e., OSHA); 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 inspection 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 the 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 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

- Additional attachments necessary to support disclosures made in answer to any question.
- Notarized Affidavit of the Key Person (see Question #4) submitting this Moral Integrity Questionnaire on behalf of the Applicant Business Concern.

AFFIDAVIT

State of: _____

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 Moral Integrity 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 questions 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 contractor, consultant or vendor. 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. Therefore, I authorize the State of New Jersey to contact any entity or person named in this Questionnaire for purposes of determining the accuracy, truth and completeness of the information supplied by me on behalf of the Applicant Business Concern. If required, a photocopy of this affidavit shall be considered as effective and valid as the original as evidence of the permission given by the Applicant Business Concern for others to release information to the State for purposes of verifying the accuracy, truth and completeness of the information supplied by me.

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

Sworn and subscribed to before me
on this _____ day of _____ 20____

SIGNATURE:

(Notary Public: Not an officer of the firm)
(Notary stamp/seal)

SIGNATURE

Name: _____
(PRINT OR TYPE)

SSN: _____



ATTACHMENT H

DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM

{Please see attached}

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM

NJSDA Contract No: _____ Project Description: _____

Bidder Name and Address: _____

PART 1

BIDDER MUST COMPLETE PART 1 BY CHECKING ONE OF THE BOXES

FAILURE TO CHECK ONE OF THE BOXES WILL RENDER THE PROPOSAL NON-RESPONSIVE

Pursuant to Public Law 2012, c. 25 (codified at N.J.S.A. 52:32-55, et seq.) (the "Act"), any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract with the New Jersey Schools Development Authority ("NJSDA") must complete the certification below to attest, under penalty of perjury, that neither the person nor entity, nor any of its parents, subsidiaries, or affiliates, is identified on the list created and maintained by the New Jersey Department of the Treasury ("Treasury") (referred to hereinafter as the "Chapter 25 List") as a person or entity engaging in investment activities in Iran. The Chapter 25 List is located at <http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>. Bidders **must** review the Chapter 25 List prior to completing the below certification. **Failure to complete the certification and/or to submit a completed Disclosure form will render the Bidder's proposal non-responsive.** If the NJSDA finds a person or entity to be in violation of the law, it shall take action as may be appropriate and permitted by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and/or seeking debarment or suspension of the party.

CHECK THE APPROPRIATE BOX

A. <input type="checkbox"/>	I certify, pursuant to the Act, that neither the Bidder listed above nor any of its parents, subsidiaries, or affiliates is listed on the Chapter 25 List. Disregard Part 2 and complete and sign the Certification below.
B. <input type="checkbox"/>	I am unable to certify as above because the Bidder and/or one or more of its parents, subsidiaries, or affiliates is listed on the Chapter 25 List. I will provide a detailed, accurate and precise description of the activities in Part 2 and sign and complete the Certification below. Failure to provide such information will result in the proposal being rendered as nonresponsive and appropriate penalties, fines, and/or sanctions will be assessed as provided by law.

PART 2

PLEASE PROVIDE ADDITIONAL INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN

If you checked Box "B" above, provide a detailed, accurate and precise description of the activities of the Bidder, or any of its parents, subsidiaries or affiliates, engaged in the investment activities in Iran below:

ENTITY NAME: _____

RELATIONSHIP TO BIDDER: _____

DESCRIPTION OF ACTIVITIES: _____

DURATION OF ENGAGEMENT: _____

ANTICIPATED CESSATION DATE: _____

BIDDER CONTACT NAME: _____

BIDDER CONTACT PHONE NO.: _____

Attach Additional Sheets If Necessary.

CERTIFICATION

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Bidder, that the foregoing information and any attachments hereto, are true and complete. I acknowledge that the NJSDA is relying on the information contained herein, and that the Bidder is under a continuing obligation from the date of this certification through the completion of any contract(s) with the NJSDA to notify the NJSDA in writing of any changes to the information contained herein. I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I will be subject to criminal prosecution under the law, and it will constitute a material breach of my agreement(s) with the NJSDA, permitting the NJSDA to declare any contract(s) resulting from this certification void and unenforceable.

Signature: _____ Date: _____

Print Name and Title: _____

ATTACHMENT I

SOURCE DISCLOSURE CERTIFICATION FORM

{Please see attached}

SOURCE DISCLOSURE CERTIFICATION FORM

Bidder: _____

Contract No.: _____

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 (the "Authority"), in accordance with the requirements of N.J.S.A. 52:34-13.2.
3. The following is a list of every location where services will be performed by Bidder and all subcontractors. If any of the services cannot be performed within the United States, the Bidder shall state, with specificity, the reasons why the services cannot be performed in the United States.

Bidder or Subcontractor	Description of Services	Performance Location(s) by Country	Reason Services Cannot be Performed in U.S.

4. 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 Bidder to the NJSDA.
5. 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.
6. I further understand that this Certification is submitted on behalf of the Bidder in order to induce the Authority to accept a bid proposal, with knowledge that the Authority is relying upon the truth of the statements contained herein and that I am under a continuing obligation from the date of this certification through the

completion of any contracts with the NJSDA to notify the NJSDA in writing of any changes to the information contained herein.

7. I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I am subject to criminal prosecution under the law and that it will constitute a material breach of my agreement(s) with the NJSDA, permitting the NJSDA to declare any contract(s) resulting from this certification void and unenforceable.

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: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

ATTACHMENT J

OWNERSHIP DISCLOSURE FORM

{Please see attached}



**STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY**

**33 WEST STATE STREET, P.O. BOX 230
TRENTON, NEW JERSEY 08625-0230**

OWNERSHIP DISCLOSURE FORM

BID SOLICITATION #: _____ **VENDOR {BIDDER}:** _____

**ALL PARTIES ENTERING INTO A CONTRACT WITH THE STATE ARE REQUIRED TO PROVIDE THE
INFORMATION REQUESTED PURSUANT TO N.J.S.A. 52:25-24.2.**

PLEASE NOTE THAT IF THE VENDOR/BIDDER IS A NON-PROFIT ENTITY, THIS FORM IS NOT REQUIRED.

PART 1

YES NO

Are there any individuals, partners, members, stockholders, corporations, partnerships, or limited liability companies owning a 10% or greater interest in the Vendor {Bidder}?

If you answered, "YES" above, you must disclose the following: (a) the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class; (b) all individual partners in the partnership who own a 10 percent or greater interest therein; or, (c) all members in the limited liability company who own a 10 percent or greater interest therein.

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

Attach Additional Sheets If Necessary.

PART 2

YES NO

Of those entities disclosed above owning a 10% or greater interest in the Vendor {Bidder}, are there any individuals, partners, members, stockholders, corporations, partnerships, or limited liability companies owning a 10% or greater interest of those listed entities?

If you answered, "YES" above, you must disclose the following: (a) the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class; (b) all individual partners in the partnership who own a 10 percent or greater interest therein; or, (c) all members in the limited liability company who own a 10 percent or greater interest therein. Please note that this disclosure shall be continued until names and addresses of every non-corporate stockholder, and individual partner, and member, exceeding the 10 percent ownership criteria established in this act, has been identified.

Name of the entity listed above to which the disclosure below applies: _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

Attach Additional Sheets If Necessary.

PART 3

As an alternative to completing this form, a Vendor {Bidder} with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest.

ATTACHMENT K

CERTIFICATION OF NON-DEBARMENT FORM

{Please see attached}

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

CERTIFICATION OF NON-DEBARMENT FORM

NJSDA Contract No: _____

Contract Name: _____

Bidder Name: _____

Bidder Address: _____

STATEMENT OF NON-DEBARMENT OF BIDDER OR ASSOCIATED ENTITIES

Pursuant to Public Law 2019, c.406 (codified at N.J.S.A. 52:32-44.1), I, the undersigned, being duly authorized to complete this certification on behalf of the above-named Bidder, hereby certify and attest, under penalty of perjury, that:

- The Bidder is not debarred at the federal level from contracting with the federal government; and
- None of the parent entities, subsidiaries, or affiliates identified on the *Ownership Disclosure Form* submitted by the Bidder in connection with the procurement for the above-referenced NJSDA Contract Number as owning 50% or more of the Bidder are debarred at the federal level from contracting with the federal government.

Failure to complete and submit this Certification Form will render the Bidder's proposal non-responsive. If the NJSDA finds a person or entity to be in violation of the law, it shall take action as may be appropriate and permitted by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and/or seeking debarment or suspension of the party.

CERTIFICATION

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Bidder, that the foregoing information and any attachments hereto, are true and complete. I acknowledge that the NJSDA is relying on the information contained herein, and that the Bidder is under a continuing obligation from the date of this certification through the completion of any contract(s) with the NJSDA to notify the NJSDA in writing of any changes to the information contained herein. I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I will be subject to criminal prosecution under the law, and it will constitute a material breach of my agreement(s) with the NJSDA, permitting the NJSDA to declare any contract(s) resulting from this certification void and unenforceable.

Signature: _____

Print Name: _____

Title: _____

Date: _____

ATTACHMENT L

NJSDA FEE PROPOSAL FORM

{Please see attached}

NJSDA FEE PROPOSAL FORM

LOADED HOURLY RATES*

Fee Proposal submitted by (name of firm): _____

Position or Job Title	Firm	Loaded Hourly Rate*
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$

* **NOTE:** The Loaded Hourly Rate is the rate at which the Authority will pay for services rendered as set forth in invoices, and should, therefore, include all costs the Consultant intends to recoup through compensation under the Agreement, including, but not necessarily limited to, salaries and wages paid to personnel in each billing class, plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit. Such rates shall be valid for the duration of the engagement.

Addenda:

The Bidder acknowledges receipt and incorporation into this bid of the following Addenda:

Number: _____

Dated: _____

I am duly authorized to sign this Fee Proposal on behalf of the named firm:

Firm: _____

Signature: _____

Name: _____

Title: _____

Date: _____