
REQUEST FOR PROPOSALS

for

LEGAL SERVICES

Contract No.: GP-0287-R01

Issue Date: March 16, 2023

Mandatory Electronic Notice of Intent to Participate Due Date:
March 30, 2023 by 2:00 PM Eastern Time

Proposal Due Date:
April 19, 2023 by 2:00 PM Eastern Time



NEW JERSEY
SCHOOLS DEVELOPMENT AUTHORITY

REQUEST FOR PROPOSALS FOR LEGAL SERVICES

1.0 INTRODUCTION

Through this Request for Proposals (“RFP”), the New Jersey Schools Development Authority (“NJSDA”, “SDA”, or “Authority”) seeks to engage a number of Firms (“Firm” or “Firms”), to provide legal services to the NJSDA in six (6) legal specialty areas. The NJSDA anticipates engaging and utilizing Firms in the specialty areas of:

- (1) Environmental Law;
- (2) Government Contracting, Bid Protests and Procurement;
- (3) Employment Law;
- (4) Professional Errors and Omissions and Cost Recovery;
- (5) Construction Litigation; and
- (6) Real Estate Law.

Three (3) Firms will be engaged in the following specialty area, to assist the NJSDA’s Division of Chief Counsel and to provide legal advice, consultative services, and, when required, formal representation of the NJSDA in matters involving such specialty areas:

- Professional Errors and Omissions and Cost Recovery

Five (5) Firms will be engaged in each of the following five (5) specialty areas, to assist the NJSDA’s Division of Chief Counsel and to provide legal advice, consultative services, and, when required, formal representation of the NJSDA in matters involving such specialty areas:

- Environmental Law;
- Government Contracting, Bid Protests and Procurement;
- Employment Law;
- Construction Litigation; and
- Real Estate Law.

An interested Firm may submit a Technical Proposal to be considered for engagement in any or all of these specialty areas. Specific work assignments to Firms that are engaged through this procurement will be made on a “Task Order” basis as determined by the NJSDA.

The firms identified for award through the evaluation and scoring procedures described in this RFP will be issued a Notice of Intent to Award, which will identify required documentation that must be supplied before award. Once the required documentation is supplied, the proposed awardee firms will be required to execute a Letter of Retention and Notice to Proceed, indicating that the firms agree to provide legal services in accordance with the terms of the RFP and the Legal Services Management Guidelines attached thereto, and further indicating that the firms are eligible to receive Task Order assignments.

Once a determination is made by the NJSDA that it requires the services of outside counsel for a particular matter, a Task Order assignment will be made based upon the legal specialty area implicated by the prospective representation. The ***Scope of Services***, Attachment A to this RFP provides a broad description of the scope of representation encompassed by each specialty area. Upon each firm's execution of the Letter of Retention and Notice to Proceed, the NJSDA's Procurement Department will assign a rotational order for each legal specialty area utilizing a randomizing program. Task Order assignments in each specialty area will be made based upon the rotational list thus generated, following a top to bottom pattern. If there is a conflict of interest, the Firm is otherwise unavailable to accept the assignment or there is a failure to reach approval and acceptance on a proposed budget, the next Firm in the rotational list will receive the Task Order assignment. If a firm declines an assignment due to a conflict of interest, it will not lose the right to receive the next assignment in rotation. If a firm declines an assignment for reasons other than a conflict of interest, or if SDA cannot reach agreement or acceptance on a firm's cost proposal for an assignment, the firm will forfeit its turn in the rotation.

In the sole discretion of the NJSDA, exceptions to making assignments in rotational order may be made in the best interests of the NJSDA in such circumstances including those involving tight time constraints for performance of the assignment, size and complexity of the assignment, capacity and capability to perform the assignment, jurisdiction and/or venue of legal proceedings, and volume of other pending Task Order assignments. ***The Legal Services Management Guidelines***, Attachment D to this RFP, further details the budget submission and approval process.

The Firm must be prepared to provide required services within fifteen (15) business days of the transmittal of the Letter of Retention and Notice to Proceed from NJSDA. The Firm must be willing to provide its services at a blended hourly rate of \$240 per hour for attorney services and an hourly rate of \$110 per hour for paralegal services and to comply with the NJSDA Legal Services Management Guidelines as described in this RFP. For services to be rendered under Task Order assignments made in the legal specialty area of "Professional Errors and Omissions and Cost Recovery", depending upon the nature of the assignment, the NJSDA may propose an alternative compensation mechanism to standard hourly billing. For such Task Order assignments, the Firm must be willing to consider alternative compensation mechanisms including contingency fees, hybrid hourly billing and contingency fee arrangements, fixed fees and value or success based fees.

The term of the engagement of the Firm will be two (2) years. Each Firm will be expected to accept Task Order assignments for a period of two (2) years from the Letter of Retention and Notice to Proceed. If any Task Order assignment is not completed before two (2) years from the Letter of Retention and Notice to Proceed, the term of the Firm's engagement will be extended until completion of all Task Order assignments. The above-quoted hourly rates, or alternative fee arrangements, will be charged through the duration of the Task Order assignment regardless of whether the assignment's duration extends beyond the two (2) year anniversary of the Notice to Proceed. Notwithstanding the issuance of a Letter of Retention and Notice to Proceed to a Firm, the NJSDA will have no obligation to make Task Order assignments to the Firm or to make Task Order assignments with any particular frequency.

There are no guarantees that any Task Order assignments will be made to an engaged Firm. Task Orders are assigned as needed, and the NJSDA's needs may vary during the two (2) year term. Total Compensation to any Firm, regardless of whether it is engaged in one or more of the specialty areas, will not exceed \$1,800,000 for the two (2) year term. Total Compensation, for the purposes of the preceding sentence, includes: any compensation that a Firm receives pursuant to the hourly

rates established in the preceding paragraph, any compensation that a Firm receives pursuant to an alternative fee arrangement as described in the preceding paragraph, any costs or expenses for which a Firm is reimbursed pursuant to the terms of this contract, or any other costs/fees paid to a Firm arising under the terms of this contract,

This REQUEST FOR PROPOSALS PACKAGE consists of the following items¹:

1. Request for Proposals
2. Attachment A: Scope of Services
3. Attachment B: Identification of Legal Specialties Form
4. Attachment C: Legal Services Fee Statement
5. Attachment D: Legal Services Management Guidelines
6. Attachment E: Ownership Disclosure Form
7. Attachment F: Moral Integrity Questionnaire
8. Attachment G: Source Disclosure Certification Form
9. Attachment H: Disclosure of Investment Activities in Iran Form
10. Attachment I: Certification of Non-Involvement in Prohibited Activities in Russia or Belarus

These documents must be read in their entirety to assure that interested Firms understand the nature of the engagement, the obligations of both the engaged Firms and the NJSDA and the requirements for a responsive proposal. General information about the School Construction Program can be found at NJSDA's web site, 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 provide timely notice of their intent to participate in the procurement by sending an e-mail message indicating such intent to Dave Kutch at dkutch@njsda.gov **no later than 2:00 PM Eastern Time on March 30, 2023**. This notice is required in order to submit a proposal but does not bind a prospective proposer in any way. Failure to timely submit the notice of intent will result in NJSDA rejecting any proposal later submitted.

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 March 30, 2023**. The questions and NJSDA answers will be provided via an addendum to the RFP to each Firm that submitted a timely e-mail message to Dave Kutch at dkutch@njsda.gov indicating their intent to participate in the procurement.

Addenda: In the event that SDA determines to supplement or make modifications to the RFP documents, or if questions are timely submitted by an interested firm and require a response, then SDA will issue an addendum/addenda identifying such additional or modified information, and supplying responses to questions timely submitted by interested firms. Notice of any such addendum shall be advertised on the SDA website no later than seven days, Saturdays, Sundays and holidays excepted, prior to the bid due date. Notice shall also be provided to any firm that has submitted a Notice of Intent to Participate, by means of delivery of the addendum by electronic mail with delivery receipt notice sent back to SDA, in accordance with the advertisement and notice provisions for addenda pursuant to N.J.S.A. 52:18A-243h. Interested Firms shall be required to

¹ Attachments A through I are included as separate PDF attachments to this RFP.

provide to SDA signed acknowledgments of receipt of all addenda issued, and interested firms shall further be required to indicate on the Price Proposal that all addenda issued by SDA have been received and acknowledged.

Notice Regarding Communications: Refer all questions regarding this procurement to Dave Kutch at dkutch@njsda.gov. Interested Firms and their representatives are prohibited from attempting to contact government officials (elected or appointed), including NJSDA Board members, NJSDA Staff (other than the Procurement representative indicated above or other members of SDA Procurement staff), Selection Committee members, NJSDA Consultants, or School District officials for information relating to this project or in an effort to influence the selection process for this procurement. An interested Firm that engages in such prohibited communications may be immediately disqualified.

Submission of Proposals: Responses to this RFP must be received by the NJSDA **no later than 2:00 PM Eastern Time on April 19, 2023**. Faxed or e-mailed submissions will not be accepted.

Following review and scoring of the Technical Proposals by a Selection Committee, interviews with all Firms will be conducted. As the interviews will include hypothetical questions based on NJSDA's past or current legal needs in the relevant specialty areas, Firms are encouraged to ensure the interview participation of Key Team Members with subject matter expertise in each of the specialty areas in which the Firm is competing for an award.

Following the scoring of Firms based on the interviews, and the calculation of a Final Combined Score for each Firm (comprised of the written proposal score plus the interview score for each specialty area identified) NJSDA will issue awards for each specialty area to the Firms with the highest Final Combined Scores, as follows:

For the Professional Errors and Omissions and Cost Recovery specialty area, the three (3) Firms with the highest Final Combined Scores will receive notices of award.

For the five specialty areas of Environmental Law; Government Contracting, Bid Protests and Procurement; Employment Law; Construction Litigation; and Real Estate Law, the five (5) Firms in each specialty area with the highest Final Combined Scores will receive notices of award.

Upon award, the NJSDA will enter into a Letter of Retention and Notice to Proceed evidencing an agreement with each Firm which incorporates by reference the provisions, documentation and requirements set forth in this RFP. The Letter of Retention and Notice to Proceed, as amended by any Task Orders issued by the NJSDA, along with the provisions of this RFP, will constitute the entire Agreement between the parties.

2.0 BACKGROUND

2.1 Scope of Services

The Firm will be required to assemble a multi-disciplined team to assist the NJSDA's Division of Chief Counsel by providing legal advice, consultative services, and, when required, formal representation of the NJSDA on a task order basis, in the specialty areas of:

- (1) Environmental Law;

- (2) Government Contracting, Bid Protests and Procurement;
- (3) Employment Law;
- (4) Professional Errors and Omissions and Cost Recovery;
- (5) Construction Litigation; and
- (6) Real Estate Law.

A Firm may submit a Technical Proposal to be considered in any or all of the specialty areas. Services are expected to be provided from the Firm's normal business location. The NJSDA will not provide office space or equipment. Attachment A to this RFP provides a *Scope of Services* with respect to each of the specialty areas.

2.2 No NJSDA Prequalification

There is no standard NJSDA prequalification requirement applicable to this engagement. Firms must demonstrate experience and qualifications as more fully described in Section 3.0 below.

2.3 Conflicts of Interest

In this procurement and throughout the course of engagement hereunder, selected Firms must comply with the New Jersey Rules of Professional Conduct ("RPC"), including without limitation RPC 1.7 and 1.8. Potential conflicts are to be evaluated on a case-by-case basis in accordance with the RPC and other applicable law. A Firm may have a conflict with respect to a particular Task Order assignment and may be required to decline the assignment. Firms should be aware that when a concurrent conflict of interest exists, RPC 1.7 expressly disallows public entities like the NJSDA from consenting to representation. RPC 1.8 also prohibits a public entity from consenting to a representation otherwise prohibited therein.

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. A conforming Technical Proposal consists of the following components:

- Required Technical Proposal Forms/Components:
 - Firm Capabilities and Experience (including the Identification of Legal Specialties Form);
 - Team Structure and Key Team Member Experience and Qualifications;
 - Approach to Providing the Scope of Services/Control of Schedule;
 - Legal Services Fee Statement; and
 - Ownership Disclosure Form.

Additionally, Firms are requested to provide the following documents with the Technical Proposal.

- Requested Technical Proposal Forms:
 - Moral Integrity Questionnaire;
 - Source Disclosure Certification Form;
 - Disclosure of Investment Activities in Iran Form; and
 - Certification of Non-Involvement of Prohibited Activities in Russia or Belarus.

A Firm's failure to submit the Moral Integrity Questionnaire, Source Disclosure Certification Form, Disclosure of Investment Activities in Iran Form, or the Certification of Non-Involvement in Prohibited Activities in Russia or Belarus form with its Technical Proposal will not result in disqualification of the Firm from further participation in the procurement; however, these forms shall be submitted before the time of contract award.

3.1 Firm Capabilities and Experience (20 Points - Required Submittal)

Utilizing the ***Identification of Legal Specialties Form*** (Attachment B hereto), the Firm shall identify those legal specialty areas for which the Firm seeks to be considered.

The Firm shall also submit a narrative demonstrating the capabilities and experience of the Firm that render it well-suited to provide the ***Scope of Services*** set forth in Attachment A in those legal specialty areas identified by the Firm. Without dictating or limiting the content of its narrative, your Firm may wish to highlight, among other things, the Firm's history, philosophy, mission statement, commitment to diversity, location(s), professional and support staff, areas of practice, technological capabilities, legal successes, awards, peer recognition, publications, professional presentations, certifications, client base, client satisfaction, community involvement, pro bono activities and experience in dealing with governmental entities. The Firm's narrative should make a connection between the Firm's described attributes and its ability to meet the NJSDA's legal services needs for the legal specialty area(s) on which the Firm is making its submission. While inclusion of illustrative examples of your Firm's attributes is encouraged, the narrative should not include extensive case studies or attachments.

3.2 Team Structure and Key Team Members Experience and Qualifications (65 Points - Required Submittal)

Present a narrative detailing the structure of the Key Team or Teams which will represent the NJSDA in each or any of the specialty areas listed in the Scope of Services, as well as the Key Team Member or Members who will be responsible for this engagement. The narrative should also describe the contemplated role and level of responsibility of each Key Team Member. For the purpose of this engagement, a "Key Team Member" is a principal, partner or officer of the Firm, senior associate, mid-level associate or associate, represented in the Technical Proposal as having a responsible role in the successful completion of the required Services.

The Firm should provide resumes for each of the Key Team Members. Case studies should be submitted to illustrate the individual experience of each of the Key Team Members. A **maximum of five (5) case studies** similar in scope to this engagement should be listed for each Key Team Member dating back no more than ten (10) years. The case studies should concisely set forth the basic background information (e.g., client, nature of claim or litigation, etc.), the specific contributions/responsibilities of the Key Team Member, and results of the engagement. Case studies may be based on the representation of either public or private sector clients.

3.3 Approach to Providing the Scope of Services/Control of Schedule (15 Points - Required Submittal)

Explain in detail the Firm's approach to providing the Services required in the ***Scope of Services*** set forth in Attachment A to this RFP and to complying with the ***Legal Services Management Guidelines*** set forth in Attachment D to this RFP.

Turnaround time required for the Firm's services may in certain cases be extremely short. The Firm should describe its ability to meet tight deadlines and manage resources and schedule.

3.4 Legal Services Fee Statement (0 Points - Required Submittal)

The Firm must submit a completed ***Legal Services Fee Statement*** (Attachment C hereto), indicating that the Firm will provide legal services at a blended hourly rate in the amount of \$240 per hour for attorney services and an hourly rate of \$110 per hour for paralegal services. During the term of engagement (as described in the Introduction to this RFP), the Firm will follow the ***Legal Services Management Guidelines*** set forth in Attachment D to this RFP.

For Task Order assignments in the legal specialty area of Professional Errors and Omissions and Cost Recovery, depending on the matter assigned and in the discretion of the NJSDA, a selected Firm may be compensated based on the blended hourly rates set forth in this RFP and Attachment C, through a negotiated contingent fee arrangement with the NJSDA based on an actual recovery of funds, by a combination of hourly rates and contingent fee, or other alternatives to hourly fees appropriate under the circumstances of the specific Task Order assignment.

3.5 Ownership Disclosure Form (0 Points – Required Submittal)

The responding Firm **must** submit a completed ***Ownership Disclosure Form***, (Attachment E hereto) pursuant to N.J.S.A. 52:25-24.2, using the form created by the Department of Treasury - Division of Purchase and Property, which form is supplied by NJSDA and is available as an interactive form on the Treasury site at:

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

If the responding Firm is a corporation, the ***Ownership Disclosure Form*** requires the responding Firm to set forth the names and addresses of all stockholders in the corporation, partnership, or limited liability company who own 10 percent or more of any class of its stock. If the responding 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, or 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 responding 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, exceeding 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 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. The completed ***Ownership Disclosure Form*** must be submitted and included with the completed Technical Proposal.

Failure to submit such Ownership Disclosure Form with the proposal will result in the disqualification of the bid and rejection of the responding Firm's Technical Proposal.

3.6 Moral Integrity Questionnaire (0 Points – Requested Submittal)

As part of the response submission to the RFP, the Firm is requested to submit a completed ***Moral Integrity Questionnaire*** (“Questionnaire”), (Attachment F hereto), for submission to the New Jersey State Police. The NJSDA will hold all submitted Questionnaires until all Firms are ranked, unless special circumstances warrant otherwise. Thereafter, NJSDA staff will forward the Questionnaires of the top-ranked Firms to the New Jersey State Police for review.

This form is requested as a convenience at the time of submission of RFP responses, in order to increase the likelihood that the responding Firm selected as awardee as a result of the RFP evaluation and scoring process will be able to comply with NJSDA requirements. A responding Firm's failure to submit the ***Moral Integrity Questionnaire*** with its Technical Proposal will not result in disqualification of the Firm from further participation in the procurement; however, this form **shall** be submitted before the time of contract award.

Pursuant to N.J.A.C. 19:38C-2.2, Moral Integrity approval is a prerequisite to engagement of the Firm.

3.7 Outsourced Services Special Provisions (0 Points – Requested 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, as part of the response submission to the RFP, the Firm is requested to submit a ***Source Disclosure Certification Form*** (Attachment G hereto), filled out with the sourcing information required for itself and any proposed subcontracted Firm. This form is requested as a convenience at the time of submission of RFP responses, in order to increase the likelihood that the responding Firm selected as awardee as a result of the RFP evaluation and scoring process will be able to comply with the statutory requirements. A responding Firm's failure to submit the ***Source Disclosure Certification Form*** with its Technical Proposal will not result in

disqualification of the Firm from further participation in the procurement; however, this form **shall** be submitted before the time of contract award.

Shift to Outsourced Services During Contract Term Shall Be a Breach of Contract - A Firm 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 Firm 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 Disclosure of Investment Activities in Iran Form (0 Points - Requested Submittal)

As part of the response submission to the RFP, the responding Firm is requested to submit a ***Disclosure of Investment Activities in Iran Form*** (Attachment H hereto), pursuant to N.J.S.A. 52:32-55 et seq., on the form provided by the NJSDA. This form is requested as a convenience at the time of submission of RFP responses, in order to increase the likelihood that the responding Firm selected as awardee as a result of the RFP evaluation and scoring process will be able to comply with the statutory requirements. A responding Firm's failure to submit the ***Disclosure of Investment Activities in Iran Form*** with its Technical Proposal will not result in disqualification of the Firm from further participation in the procurement; however, this form **shall** be submitted before the time of contract award.

Pursuant to N.J.S.A. 52:32-55, et seq., any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract with the NJSDA must certify prior to the time a contract is awarded or at the time a contract is renewed that neither the person nor entity, nor any of its 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.

3.9 Certification of Non-Involvement in Prohibited Activities in Russia or Belarus (0 Points – Requested Submittal)

As part of the response submission to the RFP, the responding Firm is requested to submit a ***Certification of Non-Involvement in Prohibited Activities in Russia or Belarus*** form, Attachment I hereto), pursuant to N.J.S.A. 52:32-60.1 et. seq., using the form provided by the NJSDA. This form is requested as a convenience at the time of submission of RFP responses, in order to increase the likelihood that the responding Firm selected as awardee as a result of the RFP evaluation and scoring process will be able to comply with the statutory requirements. A responding Firm's failure to submit the ***Certification of Non-Involvement in Prohibited Activities in Russia or Belarus*** form with its Technical Proposal will not result in disqualification of the Firm from further participation in the procurement; however, this form **shall** be submitted before the time of contract award.

Any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract with the NJSDA must complete a Certification which states that the person or entity is not identified on the Department of the Treasury's list of Vendors engaged in prohibited activities in Russia or Belarus and is not engaged in prohibited activities in Russia or Belarus pursuant to N.J.S.A. 52:32-60.1 et. seq., except as permitted by federal law.

4.0 SUBMISSION REQUIREMENTS AND DELIVERY INFORMATION

The Firm must submit one (1) unbound original and one (1) cover-to-cover copy in PDF format on USB Flash Drive of the submission in response to this RFP **no later than 2:00 PM Eastern Time on April 19, 2023**. Submissions will only be accepted when delivered to NJSDA's physical offices by hand delivery or trackable courier services such as Federal Express, UPS or similar, at the following address:

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
32 East Front Street
Trenton, New Jersey 08625-0991
Attention: Dave Kutch, Procurement Specialist
Subject: Legal Services - GP-0287-R01

The hard copy original and electronic version of the submission must contain identical information. Providing inconsistent information concerning a matter of material significance in the two versions of the submission shall result in a determination that the submission is non-responsive.

Submission of proposals through USPS postal services is not permitted, as delivery will be made to a post office box and timely receipt cannot be validated.

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 response to this RFP must submit a timely e-mail Notice of Intent to Participate, as prescribed in Section 1.0, above.

5.0 SELECTION PROCEDURES

Each Technical Proposal will be reviewed to determine responsiveness. If the Firm has requested to be considered for more than one legal specialty area, the Firm will be evaluated separately with respect to each specialty. Non-responsive Technical Proposals will be rejected without evaluation. Responsive Technical Proposals will be evaluated by a Selection Committee ("Committee") established for this purpose. The Selection Committee will consist of no fewer than three (3) NJSDA staff members. Evaluations of the Technical Proposals will be made based upon the information provided by the Firm in response to this RFP.

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 responsive Technical Proposal for each legal specialty area the Firm seeks to be considered in accordance with the following evaluation criteria:

- Firm Capabilities and Experience
- Team Structure and Key Team Member Experience and Qualifications
- Approach to Providing the Scope of Services/Control of Schedule

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:

| Technical Proposal Evaluation Criteria | Weighting Factor (Applied to Raw Score) | Maximum Weighted Points |
|---|---|-------------------------|
| Firm Capabilities and Experience | 2.0 | 20 |
| Team Structure and Key Team Member Experience and Qualifications | 6.5 | 65 |
| Approach to Providing the Scope of Services / Control of Schedule | 1.5 | 15 |
| Total Possible Technical Proposal Points: | | 100 |

Each Firm should insure its Technical Proposal fully addresses each of the evaluation criteria. Failure to do so will impact a Firm's Technical Proposal Score. A Firm will receive a Technical Proposal Score based on the above-described evaluation criteria in each legal specialty area in which it has requested to be considered.

For each Firm's Technical Proposal, the weighted criterion scores awarded by a particular Selection Committee member will be added together to calculate a score for that Technical Proposal. The maximum 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.

After the Final Technical Proposal Scores are determined, all Firms will be interviewed by the Selection Committee.

At the interview, Firms should be prepared to respond to a series of hypothetical situations, based on NJSDA's past or current needs, for each specialty area in which the Firm is seeking an award. Therefore, **Firms are strongly encouraged to ensure the availability and participation of Key Team Members with subject matter expertise in each of the relevant specialty areas.** Failure to ensure the interview participation of those with subject matter expertise in the relevant specialty areas may negatively impact a Firm's scoring with respect to the "Firm Capabilities and Experience" and "Team Structure and Key Team Member Experience and Qualifications" categories.

While Power Point and other audio/visual presentations may be made during the interview, Firms are not permitted to provide handouts or other written materials to the Selection Committee members. To the extent that Firms 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.

At this time, it is anticipated that the interviews will be conducted via video conferencing. The video conferencing details will be communicated to the Firms at a later date.

Each Firm will be evaluated on Interview Criteria that are the same as those used in the evaluation of the Technical Proposals, as follows:

- Firm Capabilities and Experience
- Team Structure and Key Team Member Experience and Qualifications
- Approach to Providing the Scope of Services/Control of Schedule

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 Weighted Points |
|---|--|--------------------------------|
| Firm Capabilities and Experience | 2.0 | 20 |
| Team Structure and Key Team Member Experience and Qualifications | 6.5 | 65 |
| Approach to Providing the Scope of Services / Control of Schedule | 1.5 | 15 |
| Total Possible Interview Points: | | 100 |

A Firm will receive an Interview Score based on the above-described evaluation criteria in each legal specialty area in which it has requested to be considered.

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 Technical Proposal Score for each Firm will be added to the Final Interview 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. For each legal specialty area, as discussed above, the Firms with the three (3) or five (5) highest Final Combined Scores will be awarded the engagement. In the event of a tie in Final Combined Scores for the final (third or fifth) Firm to be selected, all Firms with the tie Final Combined Scores will be awarded the engagement.

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

After determination of the selected Firms, the NJSDA will request the following 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 (as the “Contracting Agency”) is prohibited from entering into a contract with an entity unless the bidder/proposer/contractor (here, the “Firm”), 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 Firm) shall provide the Contracting Agency with its proof of business registration and that of any named subcontractor(s).

Subcontractors named in a bid or other proposal shall provide proof of business registration to the Firm, 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 Firm 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 Firm 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 Firm 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.

Interested 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 Treasury at (609) 292-9292.

6.2 Political Contributions

Firms selected for award 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. Each Selected Firm must, at least ten days prior to award, submit a Certification and Disclosure of Political Contributions form and Business Entity Disclosure form as provided by the NJSDA. Failure to submit these forms in a timely fashion shall be cause for rejection of the Firm.

Throughout the Term of the contract, the Firm shall be required on a continuing basis to disclose and report to NJSDA, on forms provided by the NJSDA, 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-20.27 (P.L. 2005, c. 271, section 3, as amended), 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 and Affirmative Action 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 Intent to 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

A successful Firm shall be required to provide evidence of the insurance coverages referenced below at the time of Notice of Intent to Award.

- 6.5.1 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:

- 6.5.1.1 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 \$2,000,000 per claim and \$2,000,000 in the aggregate for all operations conducted. The Consultant warrants they will notify the Authority in writing of any reduction in the aggregate coverage within thirty (30) days. The Consultant warrants that coverage shall not be circumscribed by any endorsements excluding coverage arising out of services performed pursuant to this Agreement.
- 6.5.1.2 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.

- 6.5.1.3 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.
- 6.5.1.4 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.
- 6.5.1.5 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.*

- 6.5.2 Certificates of Insurance. The Certificates of Insurance 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.
- 6.5.3 Liability in Excess of Coverage. 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.
- 6.5.4 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.
- 6.5.5 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.

6.5.6 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.

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

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

6.6 Mergers, Acquisitions, and Dissolutions

If, subsequent to the execution of the Agreement, the selected Firm proposes to merge with or be acquired by another firm, or in the event of a proposed dissolution by the Firm, the Firm shall immediately notify the NJSDA and shall submit documentation to the NJSDA describing the proposed transaction, including, but not limited to: (i) corporate resolutions prepared by the Firm and the new entity ratifying acceptance of the Contractual Documents; (ii) the names and addresses of all owners and potential owners which hold or may acquire five percent (5%) or more of the new entity's stock or interest; (iii) any new or changed Federal Employer Identification Number(s); (iv) acknowledgment of the assumption of the Contractual Documents by the new entity; and (v) any other information the NJSDA may require, including, but not limited to, a Business Registration Certificate, Disclosure of Investment Activities in Iran Form pursuant to N.J.S.A. 52:32-55 et. seq. and political disclosures pursuant to N.J.S.A. 19:44A-20.27 for the new or acquiring entity.

In the event of a proposed dissolution of the Firm, in order for the NJSDA to review a proposed dissolution for approval and continuation of the Services under this Agreement, the Firm shall submit to the NJSDA: (i) a copy of the corporate resolution, or the written statement of the partnership, general partner, receiver or custodian thereof, or the written agreement of the principal parties of a joint venture to dissolve the NJSDA, partnership or joint venture, respectively; (ii) any new or changed Federal Employer Identification Number(s); (iii) acknowledgment of the assumption of the Contractual Documents by the new parties; and (iv) any other information the NJSDA may require.

After review of the relevant documentation regarding the proposed merger, acquisition, or dissolution, the NJSDA, in its sole discretion, may approve the continuation of this Agreement following the proposed merger, acquisition, or dissolution, or may terminate this Agreement for cause. The NJSDA will notify the Firm of its decision within thirty (30) Days of receipt by the NJSDA of documentation from the Firm describing the proposed transaction.

6.7 Additional Information

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

7.0 **PROVISIONS APPLICABLE TO THE LEGAL SERVICES PROCUREMENT**

7.1 Warranty of No Solicitation on Commission or Contingent Fee Basis

By submitting a proposal, the Firm is certifying that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Firm for the purpose of securing business. If a breach or violation of this section occurs, the NJSDA shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

7.2 Standards Prohibiting Conflicts of Interest

All references to “contractor or vendor” in this section shall be deemed to refer to the Firm as a provider of services under a Professional Service contract.

The following prohibitions on contractor or vendor activities shall apply to all contracts or purchase agreements made with the NJSDA, pursuant to Executive Order No. 189 (1988).

No contractor or vendor shall 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 any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such contractor or vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, Firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any NJSDA officer or employee from any contractor or vendor shall be reported in writing forthwith by the contractor or vendor to the New Jersey Office of the Attorney General and the State Ethics Commission;

No contractor or vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such contractor or vendor to, any NJSDA officer or employee having any duties or responsibilities in connection with the purchase, acquisition or

sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he/she is employed or associated or in which he/she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships 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 NJSDA officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest;

No contractor or vendor shall influence, or attempt to influence or cause to be influenced, any NJSDA officer or employee in his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

No contractor or vendor shall cause or influence, or attempt to cause or influence, any NJSDA officer or employee to use, or attempt to use, his/her official position to secure unwarranted privileges or advantages for the contractor or vendor or any other person; and

The provisions cited above in the paragraphs shall not be construed to prohibit an N J S D A officer or employee from receiving gifts from or contracting with contractors or vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the State Ethics Commission may promulgate under paragraph 3c of Executive Order No. 189.

7.3 Audit by Office of State Comptroller

Pursuant to N.J.S.A. 52:15C-14d, the Firm 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.

7.4 Notice of State Vendor Set-Off For State Tax

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.

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.

7.5 Equal Pay Act Compliance

The Firm 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, N.J.S.A. 34:11-56.14. Guidance and forms for compliance with this requirement are available at:

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

7.6 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 Firm as a provider of services under a Professional Service 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))

(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.