



# Request for Proposal 13-X-22769

## For: Gases: Medical, Specialty and Industrial – Statewide

| Event                                                                                                                   | Date           | Time    |
|-------------------------------------------------------------------------------------------------------------------------|----------------|---------|
| <b>Bidder's Electronic Question Due Date</b><br>(Refer to <a href="#">RFP Section 1.3.1</a> for more information.)      | 10/02/2012     | 5:00 PM |
| <b>Mandatory/Optional Pre-Proposal Conference</b><br>(Refer to <a href="#">RFP Section 1.3.5</a> for more information.) | Not applicable |         |
| <b>Mandatory/Optional Site Visit</b><br>(Refer to <a href="#">RFP Section 1.3.4</a> for more information.)              | Not applicable |         |
| <b>Proposal Submission Date</b><br>(Refer to <a href="#">RFP Section 1.3.2</a> for more information.)                   | 11/02/2012     | 2:00 PM |

Dates are subject to change. All changes will be reflected in Addenda to the RFP posted on the Division of Purchase and Property website.

|                                     | Status                                                       | Category                     |
|-------------------------------------|--------------------------------------------------------------|------------------------------|
| <b>Small Business<br/>Set-Aside</b> | <input checked="" type="checkbox"/> Not Applicable           |                              |
|                                     | <input type="checkbox"/> Entire Contract                     | <input type="checkbox"/> I   |
|                                     | <input type="checkbox"/> Partial Contract                    | <input type="checkbox"/> II  |
|                                     | <input type="checkbox"/> <a href="#">Subcontracting Only</a> | <input type="checkbox"/> III |

RFP Issued By

State of New Jersey  
Department of the Treasury  
Division of Purchase and Property  
Trenton, New Jersey 08625-0230

Using Agencies

State of New Jersey  
Cooperative Purchasing Members

Date: September 13, 2012

## Table of Contents

|                                                                                           |           |
|-------------------------------------------------------------------------------------------|-----------|
| <b>1.0 INFORMATION FOR BIDDERS</b>                                                        | <b>4</b>  |
| 1.1 PURPOSE AND INTENT                                                                    | 4         |
| 1.2 BACKGROUND                                                                            | 4         |
| 1.3 KEY EVENTS                                                                            | 5         |
| 1.3.1 ELECTRONIC QUESTION AND ANSWER PERIOD                                               | 5         |
| 1.3.2 SUBMISSION OF PROPOSAL                                                              | 5         |
| 1.3.3 ELECTRONIC BIDDING (EBID)                                                           | 6         |
| 1.3.4 MANDATORY/OPTIONAL SITE VISIT                                                       | 6         |
| 1.3.5 MANDATORY/OPTIONAL PRE-PROPOSAL CONFERENCE                                          | 6         |
| 1.4 ADDITIONAL INFORMATION                                                                | 6         |
| 1.4.1 ADDENDA: REVISIONS TO THIS RFP                                                      | 6         |
| 1.4.2 BIDDER RESPONSIBILITY                                                               | 6         |
| 1.4.3 COST LIABILITY                                                                      | 7         |
| 1.4.4 CONTENTS OF PROPOSAL                                                                | 7         |
| 1.4.5 PROPOSAL SUBMISSION                                                                 | 7         |
| 1.4.6 PRICE ALTERATION IN HARD COPY PROPOSALS                                             | 7         |
| 1.4.7 BID/PROPOSAL ERRORS                                                                 | 7         |
| 1.4.8 JOINT VENTURE                                                                       | 8         |
| 1.4.9 RECIPROCITY FOR JURISDICTIONAL BIDDER PREFERENCE                                    | 9         |
| 1.4.10 PROPOSAL ACCEPTANCES AND REJECTIONS                                                | 9         |
| 1.5 PRICE LIST AND/OR CATALOG PRICING                                                     | 9         |
| <b>2.0 DEFINITIONS</b>                                                                    | <b>10</b> |
| 2.1 GENERAL DEFINITIONS                                                                   | 10        |
| 2.2 CONTRACT-SPECIFIC DEFINITIONS                                                         | 11        |
| <b>3.0 SCOPE OF WORK</b>                                                                  | <b>13</b> |
| 3.1 GENERAL INFORMATION                                                                   | 13        |
| 3.2 CYLINDER LABELING AND IDENTIFICATION                                                  | 13        |
| 3.3 CYLINDER REQUIREMENTS                                                                 | 14        |
| 3.4 MEDICAL GASES                                                                         | 14        |
| 3.5 SPECIALTY GASES                                                                       | 15        |
| 3.6 INDUSTRIAL GASES                                                                      | 15        |
| 3.7 CONCENTRATION AND PURITY                                                              | 15        |
| 3.8 CERTIFICATE OF ANALYSIS                                                               | 15        |
| 3.9 CONTRACTOR REQUIREMENTS                                                               | 16        |
| 3.10 DELIVERY REQUIREMENTS                                                                | 16        |
| 3.11 SUBSTITUTIONS                                                                        | 17        |
| 3.12 QUALITY CONTROL                                                                      | 18        |
| 3.13 CYLINDER EXCHANGE/RETURN                                                             | 18        |
| 3.14 CYLINDER RENTAL                                                                      | 19        |
| 3.15 PRICE LIST UPDATE                                                                    | 19        |
| <b>4.0 PROPOSAL PREPARATION AND SUBMISSION</b>                                            | <b>20</b> |
| 4.1 GENERAL                                                                               | 20        |
| 4.2 PROPOSAL DELIVERY AND IDENTIFICATION                                                  | 20        |
| 4.3 EBID VS. NON-EBID SUBMISSION INSTRUCTION                                              | 20        |
| 4.3.1 EBID SUBMISSION OF PROPOSAL                                                         | 20        |
| 4.3.2 NON-EBID SUBMISSION                                                                 | 21        |
| 4.4 PROPOSAL CONTENT                                                                      | 21        |
| 4.4.1 FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED WITH PROPOSAL                      | 21        |
| 4.4.2 FORMS REQUIRED BEFORE CONTRACT AWARD AND THAT SHOULD BE SUBMITTED WITH THE PROPOSAL | 23        |
| 4.4.3 SUBMITTALS                                                                          | 24        |
| 4.4.4 FINANCIAL CAPABILITY OF THE BIDDER                                                  | 24        |

|                                                                                                                                                                             |           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| 4.4.5 PRICE SCHEDULE/SHEET .....                                                                                                                                            | 25        |
| 4.4.6 COOPERATIVE PURCHASING .....                                                                                                                                          | 26        |
| 4.4.7 METHOD OF BIDDING .....                                                                                                                                               | 26        |
| <b>5.0 SPECIAL CONTRACTUAL TERMS AND CONDITIONS .....</b>                                                                                                                   | <b>27</b> |
| 5.1 PRECEDENCE OF SPECIAL CONTRACTUAL TERMS AND CONDITIONS .....                                                                                                            | 27        |
| 5.2 CONTRACT TERM AND EXTENSION OPTION .....                                                                                                                                | 27        |
| 5.3 CONTRACT TRANSITION .....                                                                                                                                               | 27        |
| 5.4 CONTRACT AMENDMENT .....                                                                                                                                                | 27        |
| 5.5 CONTRACTOR RESPONSIBILITIES .....                                                                                                                                       | 27        |
| 5.6 CLAIMS AND REMEDIES .....                                                                                                                                               | 28        |
| 5.6.1 CLAIMS .....                                                                                                                                                          | 28        |
| 5.6.2 REMEDIES .....                                                                                                                                                        | 28        |
| 5.6.3 REMEDIES FOR FAILURE TO COMPLY WITH MATERIAL CONTRACT REQUIREMENTS .....                                                                                              | 28        |
| 5.7 ITEMS ORDERED AND DELIVERED .....                                                                                                                                       | 28        |
| 5.8 MANUFACTURING/PACKAGING REQUIREMENTS .....                                                                                                                              | 28        |
| 5.9 ELECTRONIC PAYMENTS .....                                                                                                                                               | 29        |
| 5.10 CONTRACT ACTIVITY REPORT .....                                                                                                                                         | 29        |
| 5.11 PROGRAM EFFICIENCY ASSESSMENT .....                                                                                                                                    | 29        |
| 5.12 SUBSTITUTION OR ADDITION OF SUBCONTRACTOR(S) .....                                                                                                                     | 30        |
| 5.13 DISCLOSURE OF PRODUCT COMPOSITION .....                                                                                                                                | 30        |
| <b>6.0 PROPOSAL EVALUATION .....</b>                                                                                                                                        | <b>31</b> |
| 6.1 RIGHT TO WAIVE .....                                                                                                                                                    | 31        |
| 6.2 DIRECTOR'S RIGHT OF FINAL PROPOSAL ACCEPTANCE .....                                                                                                                     | 31        |
| 6.3 STATE'S RIGHT TO INSPECT BIDDER'S FACILITIES .....                                                                                                                      | 31        |
| 6.4 STATE'S RIGHT TO REQUEST FURTHER INFORMATION .....                                                                                                                      | 31        |
| 6.5 PROPOSAL EVALUATION COMMITTEE .....                                                                                                                                     | 31        |
| 6.6 ORAL PRESENTATION AND/OR CLARIFICATION OF PROPOSAL .....                                                                                                                | 32        |
| 6.7 EVALUATION CRITERIA .....                                                                                                                                               | 32        |
| 6.7.1 BIDDER'S PRICE SCHEDULE .....                                                                                                                                         | 32        |
| 6.7.2 PROPOSAL DISCREPANCIES .....                                                                                                                                          | 32        |
| 6.7.3 EVALUATION OF THE PROPOSALS .....                                                                                                                                     | 33        |
| 6.8 NEGOTIATION AND BEST AND FINAL OFFER (BAFO) .....                                                                                                                       | 33        |
| 6.9 COMPLAINTS .....                                                                                                                                                        | 34        |
| <b>7.0 CONTRACT AWARD .....</b>                                                                                                                                             | <b>35</b> |
| 7.1 DOCUMENTS REQUIRED BEFORE CONTRACT AWARD .....                                                                                                                          | 35        |
| 7.1.1 REQUIREMENTS OF PUBLIC LAW 2005, CHAPTER 51, N.J.S.A. 19:44A-20.13 - N.J.S.A. 19:44A-20.25<br>(FORMERLY EXECUTIVE ORDER 134) AND EXECUTIVE ORDER NO. 117 (2008) ..... | 35        |
| 7.1.3 AFFIRMATIVE ACTION .....                                                                                                                                              | 35        |
| 7.1.4 BUSINESS REGISTRATION .....                                                                                                                                           | 35        |
| 7.2 FINAL CONTRACT AWARD .....                                                                                                                                              | 36        |
| 7.3 INSURANCE CERTIFICATES .....                                                                                                                                            | 36        |
| 7.4 PERFORMANCE SECURITY .....                                                                                                                                              | 36        |
| <b>8.0 CONTRACT ADMINISTRATION .....</b>                                                                                                                                    | <b>37</b> |
| 8.1 CONTRACT MANAGER .....                                                                                                                                                  | 37        |
| 8.1.1 STATE CONTRACT MANAGER RESPONSIBILITIES .....                                                                                                                         | 37        |
| 8.1.2 COORDINATION WITH THE STATE CONTRACT MANAGER .....                                                                                                                    | 37        |

## **1.0 INFORMATION FOR BIDDERS**

### **1.1 PURPOSE AND INTENT**

This Request for Proposal (RFP) is issued by the Procurement Bureau, Division of Purchase and Property, Department of the Treasury on behalf of the State of New Jersey. The purpose of this RFP is to solicit proposals from qualified bidders for the provision of medical, specialty and industrial gases.

The intent of this RFP is to award contracts to those responsible bidders whose proposals, conforming to this RFP are most advantageous to the State, price and other factors considered. The State, however, reserves the right to separately procure individual requirements that are the subject of the contract during the contract term, when deemed by the Director to be in the State's best interest.

It is the intent of the State to award multiple contracts to the lowest cost responsive, responsible bidders that are able to meet and fulfill the requirements of this RFP. If it is deemed to be in the best interest of the State, award may be made to a single vendor based on price and other factors.

The State of NJ Standard Terms and Conditions will apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in this RFP and should be read in conjunction with them unless the RFP specifically indicates otherwise.

The State intends to extend the contracts awarded to the Division's cooperative purchasing partners. These partners include quasi-state agencies, counties, municipalities, school districts, volunteer fire departments, first aid squads, independent institutions of higher learning, County colleges and State colleges. In order for the State contract to be extended to cooperative purchasing partners, the bidder must agree to the extension by executing the Cooperative Purchase Form attached to this RFP. Also refer to Section 4.4.6 of this RFP. Although the State, with the assent of the vendor(s), is making the use of any contract resulting from this RFP available to non-State Agencies, the State makes no representation as to the acceptability of any State RFP terms and conditions under the Local Public Contracts Law or any other enabling statute or regulation.

### **1.2 BACKGROUND**

This is a reprocurement of the **Gases, Medical, Specialty and Industrial** term contract, presently due to expire on November 30, 2012. Bidders interested in the current contract specifications and pricing information may review the current contract T-0081 at <http://www.state.nj.us/treasury/purchase/pricelists.shtml>.

## **1.3 KEY EVENTS**

### **1.3.1 ELECTRONIC QUESTION AND ANSWER PERIOD**

The Division will electronically accept questions and inquiries from all potential bidders via the web at <http://ebid.nj.gov/QA.aspx>.

Questions should be directly tied to the RFP and asked in consecutive order, from beginning to end, following the organization of the RFP. Each question should begin by referencing the RFP page number and section number to which it relates.

Bidders must not contact the Using Agency directly, in person, by telephone or by e-mail, concerning this RFP.

The cut-off date for electronic questions and inquiries relating to this RFP is indicated on the cover sheet. Addenda to this RFP, if any, will be posted on the Division's website after the cut-off date. (See RFP Section 1.4.1 for further information.)

### **1.3.2 SUBMISSION OF PROPOSAL**

In order to be considered for award, the proposal must be received by the Procurement Bureau of the Division of Purchase and Property at the appropriate location by the required time. **ANY PROPOSAL NOT RECEIVED ON TIME AT THE LOCATION INDICATED BELOW WILL BE REJECTED. THE DATE AND TIME ARE INDICATED ON THE COVER SHEET. THE LOCATION IS AS FOLLOWS:**

PROPOSAL RECEIVING ROOM – 9TH FLOOR  
PROCUREMENT BUREAU  
DIVISION OF PURCHASE AND PROPERTY  
DEPARTMENT OF THE TREASURY  
33 WEST STATE STREET, P.O. BOX 230  
TRENTON, NJ 08625-0230

Directions to the Division are available on the web at <http://www.state.nj.us/treasury/purchase/directions.shtml>.

Note: Bidders using U.S. Postal Service regular or express mail services should allow additional time since the U.S. Postal Service does not deliver directly to the Procurement Bureau.

Procedural inquiries concerning this RFP may be directed to [RFP.procedures@treas.state.nj.us](mailto:RFP.procedures@treas.state.nj.us). This e-mail address also may be used to submit requests to review proposal documents. The State will not respond to substantive questions related to the RFP or any other contract via this e-mail address.

To submit an RFP or contract related question, go to the Current Bidding Opportunities webpage or to <http://eBid.nj.gov/QA.aspx>.

### **1.3.3 ELECTRONIC BIDDING (EBID)**

The Division is pleased to announce its electronic procurement modernization process. This RFP provides to the bidder the opportunity to electronically submit its proposal. A new electronic bidding – “eBid” – application is being made available to vendors to promote an easier, more efficient method to submit proposals.

#### **On-line Electronic Bid Training Sessions:**

Online electronic bid training for the eBid process is available on the web at <https://wwwnet1.state.nj.us/treasury/dpp/ebid/>. The bidder is strongly encouraged to utilize the on-line training session before attempting to submit an eBid. It will be the bidder’s responsibility to ensure that the eBid has been properly submitted.

### **1.3.4 MANDATORY/OPTIONAL SITE VISIT**

Not applicable to this procurement.

### **1.3.5 MANDATORY/OPTIONAL PRE-PROPOSAL CONFERENCE**

Not applicable to this procurement.

## **1.4 ADDITIONAL INFORMATION**

### **1.4.1 ADDENDA: REVISIONS TO THIS RFP**

In the event that it becomes necessary to clarify or revise this RFP, such clarification or revision will be by addendum. Any addendum to this RFP will become part of this RFP and part of any contract awarded as a result of this RFP.

ALL RFP ADDENDA WILL BE ISSUED ON THE DIVISION OF PURCHASE AND PROPERTY WEB SITE. TO ACCESS ADDENDA, THE BIDDER MUST SELECT THE PROPOSAL NUMBER ON THE WEB PAGE AT <http://www.state.nj.us/treasury/purchase/bid/summary/bid.shtml>.

There are no designated dates for release of addenda. Therefore interested bidders should check the Division’s “Bidding Opportunities” website on a daily basis from time of RFP issuance through the proposal submission opening.

It is the sole responsibility of the bidder to be knowledgeable of all addenda related to this procurement.

### **1.4.2 BIDDER RESPONSIBILITY**

The bidder assumes sole responsibility for the complete effort required in submitting a proposal in response to this RFP. No special consideration will be given after proposals are opened because of a bidder’s failure to be knowledgeable as to all of the requirements of this RFP.

### **1.4.3 COST LIABILITY**

The State assumes no responsibility and bears no liability for costs incurred by a bidder in the preparation and submittal of a proposal in response to this RFP.

### **1.4.4 CONTENTS OF PROPOSAL**

Your proposal can be released to the public during the protest period established pursuant to N.J.A.C. 17:12-3.3, or under the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., (OPRA) or the common law right to know. As provided in N.J.A.C. 17:12-1.2(b):

Subsequent to the proposal submission opening, all information submitted by bidders in response to a bid solicitation is considered public information, notwithstanding any disclaimers to the contrary submitted by a bidder, except as may be exempted from public disclosure by OPRA and the common law.

Any proprietary and/or confidential information in your proposal will be redacted by the State. A bidder may designate specific information as not subject to disclosure pursuant to the exceptions to OPRA found at N.J.S.A. 47:1A-1.1, when the bidder has a good faith legal and or factual basis for such assertion. The State reserves the right to make the determination as to what is proprietary or confidential, and will advise the bidder accordingly. The location in the proposal of any such designation should be clearly stated in a cover letter. **The State will not honor any attempt by a bidder to designate its entire proposal as proprietary, confidential and/or to claim copyright protection for its entire proposal.** In the event of any challenge to the bidder's assertion of confidentiality with which the State does not concur, the bidder shall be solely responsible for defending its designation.

By signing the cover sheet of this RFP, the bidder waives any claims of copyright protection set forth within the manufacturer's price list and/or catalogs. The price lists and/or catalogs must be accessible to State using agencies and cooperative purchasing partners and thus have to be made public to allow all eligible purchasing entities access to the pricing information.

### **1.4.5 PROPOSAL SUBMISSION**

On the date and time proposals are due under the RFP, all information concerning the proposals submitted may be publicly announced and those proposals, except for information appropriately designated as proprietary and/or confidential, shall be available for inspection and copying. In those cases where negotiation is contemplated, only the names and addresses of the bidders submitting proposals will be announced and the contents of the proposals shall remain proprietary and/or confidential until the Notice of Intent to Award is issued by the Director.

### **1.4.6 PRICE ALTERATION IN HARD COPY PROPOSALS**

Proposal prices must be typed or written in ink. Any price change (including "white-outs") must be initialed. Failure to initial price changes shall preclude a contract award from being made to the bidder.

### **1.4.7 BID/PROPOSAL ERRORS**

In accordance with N.J.A.C. 17:12-2.11, "Bid Errors," a bidder may withdraw its proposal as described below.

A bidder may request that its proposal be withdrawn prior to the proposal submission opening. Such request must be made, in writing, to the Supervisor of the Bid Review Unit. If the request is granted, the bidder may submit a revised proposal as long as the proposal is received prior to the announced date and time for proposal submission and at the place specified.

If, after the proposal submission opening but before contract award, a bidder discovers an error in its proposal, the bidder may make a written request to the Supervisor of the Bid Review Unit for authorization to withdraw its proposal from consideration for award. Evidence of the bidder's good faith in making this request shall be used in making the determination. The factors that will be considered are that the mistake is so significant that to enforce the contract resulting from the proposal would be unconscionable; that the mistake relates to a material feature of the contract; that the mistake occurred notwithstanding the bidder's exercise of reasonable care; and that the State will not be significantly prejudiced by granting the withdrawal of the proposal. After the proposal submission opening, while pursuant to the provisions of this section, you may request to withdraw your proposal and the Director may, in her discretion allow you to withdraw it, the Division also may take notice of repeated or unusual requests to withdraw by a bidder and take those prior requests to withdraw into consideration when evaluating the bidder's future bids or proposals.

All proposal withdrawal requests must include the proposal identification number and the final proposal submission date and be sent to the following address:

Department of the Treasury  
Procurement Bureau  
PO Box 230  
33 West State Street – 9<sup>th</sup> Floor  
Trenton, New Jersey 08625-0230  
Attention: Supervisor, Bid Review Unit

If during a proposal evaluation process, an obvious pricing error made by a potential contract awardee is found, the Director shall issue written notice to the bidder. The bidder will have five (5) days after receipt of the notice to confirm its pricing. If the vendor fails to respond, its proposal shall be considered withdrawn, and no further consideration shall be given it.

If it is discovered that there is an arithmetic disparity between the unit price and the total extended price, the unit price shall prevail. If there is any other ambiguity in the pricing other than a disparity between the unit price and extended price and the bidder's intention is not readily discernible from other parts of the proposal, the Director may seek clarification from the bidder to ascertain the true intent of the proposal.

#### **1.4.8 JOINT VENTURE**

If a joint venture is submitting a proposal, the agreement between the parties relating to such joint venture should be submitted with the joint venture's proposal. Authorized signatories from each party comprising the joint venture must sign the proposal. A separate Ownership Disclosure Form, Disclosure of Investigations and Actions Involving Bidder form, and Affirmative Action Employee Information Report must be supplied for each party to a joint venture. NOTE: Each party comprising the joint venture must also possess a valid Business Registration Certificate ("BRC") issued by the Department of Treasury, Division of Revenue prior to the award of a contract. Refer to Section 4.4.2.1 of this RFP.

#### **1.4.9 RECIPROCITY FOR JURISDICTIONAL BIDDER PREFERENCE**

In accordance with N.J.S.A. 52:32-1.4 and N.J.A.C. 17:12-2.13, the State of New Jersey will invoke reciprocal action against an out-of-State bidder whose state or locality maintains a preference practice for its bidders. For states having preference laws, regulations, or practices, New Jersey will use the annual surveys compiled by the Council of State Governments, National Association of State Purchasing Officials, or the National Institute of Governmental Purchasing to invoke reciprocal actions. The State may obtain additional information as it deems appropriate to supplement the stated survey information.

The bidder may submit information related to preference practices enacted for a local entity outside the State of New Jersey. This information may be submitted in writing as part of the proposal response, including name of the locality having the preference practice, as well as identification of the county and state, and should include a copy of the appropriate documentation, i.e., resolution, regulation, law, notice to bidder, etc. It is the responsibility of the bidder to provide documentation with the proposal or submit it to the Director, Division of Purchase and Property within five (5) working days of the public proposal submission date. Written evidence for a specific procurement that is not provided to the Director within five (5) working days of the public proposal submission date will not be considered in the evaluation of that procurement, but will be retained and considered in the evaluation of subsequent procurements.

#### **1.4.10 PROPOSAL ACCEPTANCES AND REJECTIONS**

The Director's right to waive minor elements of non-compliance with bid specifications and N.J.A.C. 17:12-2.2 which defines causes for automatic bid rejection, apply to all proposals. In addition, pursuant to N.J.S.A. 52:34-12(a) and N.J.S.A. 52:18A-19 the Director retains the right to reject all bids if it is in the public interest.

#### **1.5 PRICE LIST AND/OR CATALOG PRICING**

The bidder's signature guarantees that prices set forth within the manufacturer's preprinted price lists and/or catalogs will govern for the period of the contract. By signature, the bidder also acknowledges that any reference to conditions or provisions affecting the bid pricing as entered for the RFP price lines, including, but not limited to, minimum orders, order threshold charges, service charges, price escalation clauses, FOB shipping point limitations, and shipping charges, contained in the preprinted price lists, catalogs, and/or literature, is not a condition or provision of its proposal and will not be part of any State contract awarded as a result of this RFP.

## **2.0 DEFINITIONS**

### **2.1 GENERAL DEFINITIONS**

The following definitions will be part of any contract awarded or order placed as result of this RFP.

**Addendum** – Written clarification or revision to this RFP issued by the Division of Purchase and Property.

**All-Inclusive Hourly Rate** – An hourly rate comprised of all direct and indirect costs including, but not limited to: overhead, fee or profit, clerical support, travel expenses, per diem, safety equipment, materials, supplies, managerial support and all documents, forms, and reproductions thereof. This rate also includes portal-to-portal expenses as well as per diem expenses such as food.

**Amendment** – A change in the scope of work to be performed by the contractor. An amendment is not effective until it is signed by the Director, Division of Purchase and Property.

**Bidder** – An individual or business entity submitting a proposal in response to this RFP.

**Contract** – This RFP, any addendum to this RFP, and the bidder's proposal submitted in response to this RFP, as accepted by the State.

**Contractor** – The bidder awarded a contract resulting from this RFP.

**Director** – Director, Division of Purchase and Property, Department of the Treasury. By statutory authority, the Director is the chief contracting officer for the State of New Jersey.

**Division** – The Division of Purchase and Property

**Evaluation Committee** – A committee established by the Director to review and evaluate proposals submitted in response to this RFP and to recommend a contract award to the Director.

**Firm Fixed Price** – A price that is all-inclusive of direct cost and indirect costs, including, but not limited to, direct labor costs, overhead, fee or profit, clerical support, equipment, materials, supplies, managerial (administrative) support, all documents, reports, forms, travel, reproduction and any other costs. No additional fees or costs shall be paid by the State unless there is a change in the scope of work.

**Joint Venture** – A business undertaking by two or more entities to share risk and responsibility for a specific project.

**May** – Denotes that which is permissible, not mandatory.

**Project** – The undertaking or services that are the subject of this RFP.

**Request for Proposal (RFP)** – This document which establishes the bidding and contract requirements and solicits proposals to meet the purchase needs of the using Agencies as identified herein.

**Shall or Must** – Denotes that which is a mandatory requirement. Failure to meet a mandatory requirement will result in the rejection of a proposal as materially non-responsive.

**Should** – Denotes that which is recommended, not mandatory.

**Small business** – Pursuant to N.J.A.C. 17:13-1.2, “small business” means a business that meets the requirements and definitions of “small business” and has applied for and been approved by the New Jersey Division of Revenue, Small Business Unit as (i) independently owned and operated, (ii) incorporated or registered in and has its principal place of business in the State of New Jersey; (iii) has 100 or fewer full-time employees; and has gross revenues falling in one of the three following categories: (A) 0 to \$500,000 (Category I); (B) \$500,001 to \$5,000,000 (Category II); and (C) \$5,000,001 to \$12,000,000, or the applicable federal revenue standards established at 13 CFR 121.201, whichever is higher (Category III).

**State** – State of New Jersey.

**State Contract Manager** – The individual responsible for the approval of all deliverables, i.e., tasks, sub-tasks or other work elements in the Scope of Work, as set forth in Sections 8.1, 8.1.1 and 8.1.2.

**Subtasks** – Detailed activities that comprise the actual performance of a task.

**Subcontractor** – An entity having an arrangement with a State contractor, where by the State contractor uses the products and/or services of that entity to fulfill some of its obligations under its State contract, while retaining full responsibility for the performance of all of its [the contractor's] obligations under the contract, including payment to the subcontractor. The subcontractor has no legal relationship with the State, only with the contractor.

**Task** – A discrete unit of work to be performed.

**Transaction** - The payment or remuneration to the contractor for services rendered or products provided to the State pursuant to the terms of the contract, including but not limited to the following: purchase orders, invoices, hourly rates, firm fixed price, commission payments, progress payments and contingency payments.

**Using Agency[ies]** – The entity[ies] for which the Division has issued this RFP and will enter into a contract.

## **2.2 CONTRACT-SPECIFIC DEFINITIONS**

**ASTM** – American Society for Testing and Materials

**CFR** – Code of Federal Regulation

**CGA** – Compressed Gas Association

**FDA** – Food and Drug Administration

**ICC** – Interstate Commerce Commission

**JCAHO** – Joint Commission on Accreditation of Healthcare Organization

**NFPA** – National Fire Protection Association

**NJDEP** – New Jersey Department of Environmental Protection

**NJMVC** – New Jersey Motor Vehicle Commission

**NIOSH** – National Institute for Occupational Safety and Health

**NEMA** – National Electrical Manufacturers Association

**OSHA** – Occupational Safety and Health Administration

**PPM** – Parts Per Million

**PPB** – Parts per Billion

**UL** – Underwriters Laboratories

**USDOT** – United States Department of Transportation

**USP** – United States Pharmacopoeia

### **3.0 SCOPE OF WORK**

#### **3.1 GENERAL INFORMATION**

**3.1.1** The contractor shall supply the following compressed gases in the specified cylinder sizes listed below in section 3.1.2: **Attachment (1)** of this RFP identifies all gases that shall be supplied as well as specifications and additional requirements.

- 1) Medical Gases - Category 1
- 2) Specialty Gases – Audit Gases – Category 2
- 3) Specialty Gases – High Purity, General Purpose and Miscellaneous – Category 3
- 4) Industrial Gases – Category 4

**3.1.2** All gas cylinders shall be available in the following sizes and shall be manufactured in accordance with the Interstate Commerce Commission and United States Department of Transportation:

- Small
- Medium
- Large

**3.1.3** The contractor shall supply bulk gas for cylinders which are currently owned by various State facilities at the same price submitted for bulk gas for cylinder rentals.

**3.1.4** The contractor shall supply rental cylinders to the using agency.

**3.1.5** The contractor should supply regulators and any additional gas handling equipment that may be required for use with cylinders.

**3.1.6** All products must meet regulatory guidelines and any amendments therein, as promulgated under, but not limited to: FDA 21 CFR, NEOSH, OSHA Respiratory Standards 29, CFR 1910.134, UL, NEMA, NFPA, DOT, EPA, ASTM, CGA and JCAHO.

#### **3.2 CYLINDER LABELING AND IDENTIFICATION**

**3.2.1** A label meeting the requirements of the United States Department of Transportation shall be affixed to each cylinder. Each cylinder label must legibly list contents, grade, size, the content of each cylinder, including but not be limited to each component, concentration and size designation of each cylinder.

**3.2.2** All labels shall have a date indicating the content's expiration date and/or the date the gas would be expected to have deteriorated to the point that the contents contained therein are outside the required standards set forth in the RFP. The expiration date must be at a minimum twelve (12) months from the date of delivery to the using agency.

**3.2.3** Medical cylinders must be labeled in accordance with the USP requirements. Labels must display accepted technical terminology, batch and control numbers, etc.

**3.2.4** A medical cylinder that is delivered defective or cosmetically unsuitable for use within a healthcare facility shall be rejected by the using agency and immediately replaced by the contractor at no additional cost to the State.

**3.2.5** Labels must be designed of a quality that they will not fall off during the period of delivery time and the time they are within the State's custody.

**3.2.6** All rental cylinders shall be affixed with a label identifying contractors' name/logo and address to insure the correct cylinders are returned to the appropriate contractor.

**3.2.7** A cylinder delivered without a proper identifying label shall be rejected by the using agency.

### **3.3 CYLINDER REQUIREMENTS**

**3.3.1** All cylinders shall have a valve protection cap properly installed when shipped and delivered. The caps must remain in place during transportation and unloading, and secured in place until the cylinder has the regulator attached.

**3.3.2** Cylinder valves are to be of high quality assuring not only proper gas releasing, but also that pressure pop-off devices do not release under normal operation conditions and that valves fit tightly when attached to regulators.

**3.3.3** All cylinders shall be manufactured in accordance with ICC, USDOT and the CGA. All cylinders shall be complete with all fittings, valves and caps, in good working order and free of dirt, debris and rust.

**3.3.4** A cylinder that leaks, is bulged, has defective valves or safety devices, bears evidence of physical abuse, fire or heat damage, or detrimental rusting or corrosion, must not be used unless it is properly repaired and requalified as prescribed in the regulations set forth by the USDOT.

**3.3.5** All cylinders shall contain a positive type safety disc to meet the requirements of the USDOT.

**3.3.6** All cylinders shall be delivered with a full/empty identification tag. All cylinders delivered not completely full shall be rejected by the using agency. All cylinders that have been rejected by the using agency shall be replaced by the contractor within the time frame set forth by the using agency at no additional charge to the State.

**3.3.7** All cylinders used to deliver gases must be compatible/non-reactive with the gases enclosed. The contractor shall warrant that no gases will be delivered in any cylinder made from materials that will react or in any way degrade the content of gases within the cylinders. Should a contractor deliver any cylinders made from substances that react with or degrade the content of gas, the entire order shall be replaced by the contractor at no additional charge to the State.

### **3.4 MEDICAL GASES**

**3.4.1.1** All medical gases referenced in **Attachment "1"** of this RFP shall be medical grade gases and must be manufactured at a registered Food and Drug Administration facility. All medical gases must meet USP, NFPA and CGA regulations.

**3.4.1.2** All medical gases shall be tested in accordance with FDA requirements

**3.4.1.3** The purity of medical gases must equal or exceed USP specifications.

**3.4.1.4** All medical gas cylinders shall be properly purged of gases and impurities prior to filling.

**3.4.1.5** All medical gas cylinders shall be color-coded in accordance with Compressed Gas Association standards stated in Pamphlet C-9, Standard Color Marking of Compressed Gases

Cylinder Intended for Medical Use in the United States. A label shall be affixed to each cylinder stating the type of gas and the degree of purity of the gas or gases contained in the cylinder.

### **3.5 SPECIALTY GASES**

Specialty gases as referenced in **Attachment “1”** of this RFP shall be defined as audit gases, high purity gases, general purpose gases and miscellaneous gases. Audit gases are mainly used by the NJDEP and the NJMVC.

**3.4.2.1** All audit gas specifications and requirements must meet 40 CFR Part 86.114 and California BAR97 for content, purity and blend tolerance, precision and accuracy.

**3.4.2.2** Audit Gases must meet an analytical accuracy of 1% (one-percent) and a blend tolerance of 2% (two-percent).

**3.4.2.3** For the purpose of this RFP specialty gases have been separated into two (2) categories. Category (2) two defines audit gases and category (3) three defines high purity, general purpose and miscellaneous gases.

### **3.6 INDUSTRIAL GASES**

The purity of industrial gases referenced in **Attachment “1”** of this RFP shall meet the CGA specifications. The gases shall be industrial grade, unless otherwise noted.

### **3.7 CONCENTRATION AND PURITY**

**3.7.1** For the NJDEP and the NJMVC referenced in **Attachment “1”** of this RFP, minimum specifications and requirements shall meet 40 CFR part 86.114 & California Bar97 for content, purity, blend tolerance, precision and accuracy. Gases must meet an analytical accuracy of 1% (one percent) and a blend tolerance of 2% (two percent). Gas verification and cross-check tests and analysis shall be conducted to verify the contents, precision and accuracy. In the event of a dispute over the results of a test conducted by the using agency, the findings of the State shall prevail. The contractor shall replace the gases and/or cylinder at no additional charge to the State.

**3.7.2** Each subsequent shipment of gas shall meet the precision and accuracy and blend tolerance listed herein, unless specifically changed in writing by the using agency.

**3.7.3** Traceability – all of the audit gases shall be traceable to the National Institute of Standards and Technology +/-1% (one percent) gases shall have a 2% (two percent) blend tolerance.

**3.7.4** Contractors supplying BAR97 audit gases shall, upon request by the using agency, supply proof it is a certified BAR97 certified blender/supplier within five (5) days of request.

### **3.8 CERTIFICATE OF ANALYSIS**

**3.8.1** For all high purity, ultra high purity, specialty gases as well as gas mixtures referenced in **Attachment “1”** of this RFP, the contractor shall provide, at no additional cost to the State, a Certificate of Analysis and/or batch analysis for each delivery made under the contract resulting from award of this RFP. Any delivery without a Certificate of Analysis may be deemed unacceptable and non-compliant and therefore rejected and returned to the contractor at the contractor's expense by the using agency.

**3.8.2** Testing of gas shall be conducted in such a manner as to produce a complete detailed listing of all components of the cylinder. It shall not be a simple testing of expected contaminants from which a level of purity is determined by subtraction.

**3.8.3** The contractor shall provide proof of testing methodology for approval within five (5) days of request by the using agency.

### **3.9 CONTRACTOR REQUIREMENTS**

**3.9.1** Upon request by the using agency, the contractor shall provide training on the proper usage of cylinders at no additional cost to the State.

**3.9.2** The contractor must provide a customer service representative to the using agencies during normal business hours to assist with ordering, answering questions and resolving any problems that may arise such as malfunctioning cylinders, selection of equipment, etc.

**3.9.3** The contractor shall be responsible to unload the products and allow the using agency to inspect for damage, fitness, proper labeling, verify accurate item delivered and to verify the cylinder is completely filled with the proper gas. As long as all defects are readily apparent and all labels are true and correct, then title to products and risk of loss or damage to products or cylinders shall pass to the State upon delivery. In the event a defect is not readily apparent, but discovered later, then title and risk of loss of damage shall be considered to remain with the contractor.

**3.9.4** The contractor shall complete any portion of an unfulfilled order within three (3) days unless the using agency agrees to an extension.

**3.9.5** The contractor shall, upon request by the using agency, develop a method of tagging each cylinder for all facilities which have multiple laboratories, in order to insure that cylinders are delivered to the correct laboratory.

**3.9.6** There may be occasions where emergency deliveries will be required, to that extent; the contractor shall provide emergency delivery seven (7) days per week, twenty-four hours per day at no additional cost to the State.

**3.9.7** The contractor shall be responsible for filling State-owned cylinders at the same cost as the rental cylinders.

**3.9.8** The contractor shall be responsible for all material, maintenance and upkeep on rental cylinders at no additional cost to the State.

**3.9.9** The contractor shall maintain a sufficient supply of price lists and/or catalogs identical to the ones submitted with bid proposal. These price lists and/or catalogs shall be made available upon request to all State and local agencies at no additional charge.

**3.9.10** The State also encourages ordering through the contractors eCommerce website if one is available.

### **3.10 DELIVERY REQUIREMENTS**

**3.10.1** It shall be the responsibility of the contractor to be aware of the delivery days and receiving hours for all State agencies and facilities

**3.10.2** The State shall not be responsible for any additional charges should the contractor fail to observe specific delivery days and receiving hours.

**3.10.3** Based on the unique operations of the New Jersey Department of Corrections, attached to this RFP and labeled **Attachment (2)**, is a complete list of all correctional facilities listing delivery days, receiving hours, driver requirements, contact name and contact phone number.

**3.10.4** Due to unforeseen incidents that may occur at any of the correctional facilities, it shall be the responsibility of the contractor to contact the designated representative listed for the specific facility (**Attachment 2**) prior to making all deliveries.

**3.10.5** The contractor shall deliver all gases and/or equipment within twenty-four (24) hours of receipt of purchase order. In the event the contractor is unable to comply with this time frame, the contractor shall contact the using agency immediately and obtain written approval to extend the delivery time.

**3.10.6** Bulk gas deliveries shall be made from metered trucks in accordance with all federal, state and local laws and regulations.

**3.10.7** The contractor shall, upon delivery, present to the assigned receiving agent documentation (i.e. picking ticket or invoice etc.) to be signed and dated by the receiver confirming the number of cylinders, size, type of gas received and any delivery issues i.e. damage, etc.

**3.10.8** The contractor shall, at the request of the using agency deliver cylinders and / or dewars directly to respective floors and / or departments. The contractor shall be reimbursed for this service at the rate submitted on the attached price sheets.

**3.10.9** All deliveries shall be made F.O.B Destination; the State will not accept C.O.D shipments or freight charges added to invoices submitted for deliveries. This prohibition on additional charges includes fuel surcharges and any and all other additional charges a contractor submits that are not specifically allowed in this RFP.

**3.10.10** It shall be the responsibility of the contractor to secure all cylinders and/or dewars at the time of delivery. All cylinders and/or dewars must be tied with chains and shall not be left unattended.

**3.10.11** The contractor shall, upon request by the using agency, deliver cylinders only to authorized personnel. A list of authorized personnel shall be established by the using agency after contract award.

### **3.11 SUBSTITUTIONS**

**3.11.1** The contractor shall deliver only the items/products ordered and shall not substitute any item without prior written approval by the designated agency representative.

**3.11.2** Alternate items delivered without prior written approval shall be rejected and returned to the contractor at the contractor's expense.

**3.11.3** In the event the product specified can no longer be provided for reasons beyond the contractor's control (i.e. – product discontinuance); the contractor shall provide an alternate product request to the designated agency representative for review and approval.

**3.11.4** The substituted product shall meet and/or exceed all terms, conditions, and specifications applicable to the original specified product. An alternate product sample may be required by the using agency prior to acceptance.

### **3.12 QUALITY CONTROL**

**3.12.1** In the event problems are suspected, the contractor shall have available a technical representative within forty-eight (48) hours of notification.

**3.12.2** The contractor shall have a viable quality control program in place that ensures all containers and products are maintained and supplied properly. The program shall be consistent with industry standards.

**3.12.3** Quality control records shall be made available to the State upon request.

**3.12.4** Any damages due to non-compliant gases i.e., contamination from improper gas formulations, mislabeled or defective cylinders shall be the responsibility of the contractor. If supplied gases are the suspected cause of any damages to the equipment located at the using agency/facility, the State reserves the right to request an analysis by an independent laboratory. Should the analysis reveal the gas was non-compliant; the contractor shall be responsible for the cost of the analysis, in addition to any other damages that may occur.

### **3.13 CYLINDER EXCHANGE/RETURN**

**3.13.1** Empty cylinders shall be picked up by the contractor within two (2) weeks of written notification by the using agency. Acceptable written notification shall be in the form of facsimile, email or eCommerce web address if provided.

**3.13.2** The contractor shall submit to the designated agency representative a copy of the manifest or invoice listing the number of cylinders scheduled to be picked up. This manifest or invoice shall be signed and dated by the authorized State employee confirming the amount of cylinders picked up by the contractor.

**3.13.3** The State shall not be responsible for any additional rental fees if the contractor fails to pick up all empty cylinders within two (2) weeks of notification.

**3.13.4** The contractor shall, upon request by the using agency, pick-up empty cylinders only from authorized personnel. A list of authorized personnel shall be established by the using agency after contract award.

**3.13.5** The State will pay the contractor for the loss of or damage to, any cylinder resulting from a lack of ordinary care while in the custody of the State; however, this shall not include damage due to normal use, such as handling and transportation of the containers. The price the State will pay the contractor for such loss or damage will be based on the current catalog/price list of the cylinder at the time the cylinder is damaged. The contractor shall submit current manufacturers price/list catalog price for the cylinder to be replaced, with the actual cost to the contractor for the cylinder. The request letter must give a full description and price, stating line number of price list/catalog and the page number of that line, in addition to a statement from the using agency admitting responsibility for the damage. After reviewing, the using agency will determine if the submission is reasonable and complete approval will be granted only after all requirements are submitted by the contractor. A damaged cylinder report for each agency will be delivered each month to the State Contract Manager or designated agency representative stating the exact item damaged cylinder size, contents and any other pertinent information relating to the damaged

cylinder. At no time shall the State pay for damage claims submitted for damage occurring more than sixty (60) days prior to submission.

### **3.14 CYLINDER RENTAL**

**3.14.1** The State would prefer that all cylinders be loaned to the using agencies without additional charge, however; a price line has been developed for a monthly rental rate and a yearly rental rate.

**3.14.2** Material, maintenance and upkeep on rental cylinders shall be the responsibility of the contractor at no additional charge to the State.

**3.14.3** Rental cylinders shall fall into one of the following size categories: small, medium and large. The contractor shall also maintain a sufficient supply of extra small cylinders.

### **3.15 PRICE LIST UPDATE**

The contractor must hold firm the prices set forth within the manufacturer's preprinted price lists and/ or catalogs submitted with the bid proposal for the first two (2) year period of the contract term. The contractor may submit an updated price list and/or catalog at the beginning of the third (3<sup>rd</sup>) year of the contract term and with each yearly extension thereafter.

## **4.0 PROPOSAL PREPARATION AND SUBMISSION**

### **4.1 GENERAL**

The bidder is advised to thoroughly read and follow all instructions contained in this RFP, including the instructions on the RFP's signatory page, in preparing and submitting its proposal.

Use of URLs in a proposal should be kept to a minimum and may not be used to satisfy any material term of an RFP. If a preprinted or other document included as part of the proposal contains a URL, a printed (or if a bid is submitted electronically, electronic) copy of the URL page shall be provided and will be considered as part of the proposal. Additional URLs on the copy of the URL page shall not be considered as part of the proposal unless a copy of those URL pages are also provided.

**The forms discussed herein and required for submission of a proposal in response to this RFP are available on the web at <http://www.state.nj.us/treasury/purchase/bid/summary/13x22769.shtml> unless noted otherwise.**

### **4.2 PROPOSAL DELIVERY AND IDENTIFICATION**

In order to be considered, a proposal must arrive at the Division in accordance with the instructions on the RFP signatory page accompanying this RFP. Bidders are cautioned to allow adequate delivery time to ensure timely delivery of proposals. **State regulation mandates that late proposals are ineligible for consideration. THE EXTERIOR OF ALL PROPOSAL PACKAGES ARE TO BE LABELED WITH THE PROPOSAL IDENTIFICATION NUMBER AND THE FINAL PROPOSAL SUBMISSION DATE OR RISK NOT BEING RECEIVED IN TIME.**

### **4.3 EBID VS. NON-EBID SUBMISSION INSTRUCTION**

#### **4.3.1 EBID SUBMISSION OF PROPOSAL**

**If the bidder is submitting an eBid proposal, hard copy submission is still required.** Instructions detailing how to enroll in and submit an eBid are available on the web at <https://wwwnet1.state.nj.us/treasury/dpp/ebid/>. If the bidder submits both an eBid and a hard copy of the bidder's proposal, the eBid proposal will prevail in the event of a discrepancy between the electronic and paper versions.

When submitting an eBid, do not use any symbols (i.e., #, @, \$, &, \*) in the filename. In addition, the bidder should name each converted PDF electronic file and folder as follows:

- Price list catalog
- Emergency contact information

### **4.3.2 NON-EBID SUBMISSION**

The bidder must submit the following proposal copies:

**One (1) complete ORIGINAL proposal**, clearly marked as the "ORIGINAL" proposal.

**Two (2) complete and exact copies**, clearly marked "COPY".

**One (1) unbound, complete and exact copy** of the original, clearly marked "COPY"

**One (1) complete and exact ELECTRONIC copy** of the original proposal in an editable and "writable" PDF file format on disc (CD or DVD) for redaction.

Copies are necessary in the evaluation of the proposal and for record retention purposes. A bidder failing to provide the requested number of copies will be charged the cost incurred by the State in producing the requested number of copies. The bidder should make and retain a copy of its proposal.

### **4.4 PROPOSAL CONTENT**

#### **4.4.1 FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED WITH PROPOSAL**

##### **4.4.1.1 SIGNATORY PAGE**

The bidder shall complete, including signature of an authorized representative of the bidder, and submit the Signatory Page accompanying this RFP. If the bidder is a limited partnership, the Signatory Page must be signed by a general partner. If the bidder is a joint venture, the Signatory Page must be signed by a principal of each party to the joint venture. Failure to comply will result in rejection of the proposal.

##### **4.4.1.1.1 MACBRIDE PRINCIPLES CERTIFICATION**

The bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it is in compliance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles. Please refer to Section 2.5 of the State of NJ Standard Terms and Conditions and N.J.S.A. 52:34-12.2 for additional information about the McBride principles.

By signing the RFP Signatory Page, or by entering its PIN if submitting an eBid proposal, the bidder/offeror is automatically certifying that either:

- a. The bidder has no operations in Northern Ireland; or
- b. The bidder has business operations in Northern Ireland and is committed to compliance with the MacBride principles.

A bidder/offeror electing not to certify to the MacBride Principles must nonetheless sign the RFP Signatory Page AND must include, as part of its proposal, a statement indicating its refusal to comply with the provisions of this Act.

#### **4.4.1.1.2 NO SUBCONTRACTOR CERTIFICATION**

For a proposal that does NOT include the use of any subcontractors, by signing the RFP Signatory Page, or by entering a PIN if submitting an e-Bid proposal, the bidder is *automatically* certifying that:

1. In the event the award is granted to bidder's firm and the bidder later determines at any time during the term of the Contract to engage subcontractors to provide certain goods and/or services, pursuant to Section 5.8 of the State of NJ Standard Terms and Conditions, the bidder will submit a Subcontractor Utilization Plan form for approval to the Division of Purchase and Property in advance of any such engagement of subcontractors.
2. If the contract is a small business subcontracting set-aside, the bidder certifies that in engaging subcontractors, it will make a good faith effort to achieve the subcontracting set-aside goals, and will attach to the Subcontractor Utilization Plan documentation of such efforts in accordance with N.J.A.C. 17:13-4 et seq.

#### **4.4.1.1.3 NON-COLLUSION**

By submitting a proposal, the bidder certifies as follows:

- a. The price(s) and amount of its proposal have been arrived at independently and without consultation, communication or agreement with any other contractor, bidder or potential bidder.
- b. Neither the price(s) nor the amount of its proposal, and neither the approximate price(s) nor approximate amount of this proposal, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before the proposal submission.
- c. No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- d. The proposal of the firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- e. The bidder, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four (4) years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

#### **4.4.1.1.4 NEW JERSEY BUSINESS ETHICS GUIDE CERTIFICATION**

The Treasurer has established a business ethics guide to be followed by State contractors in their dealings with the State. The guide provides further information about compliance with Section 2.8 of the State of New Jersey Standard Terms and Conditions. The guide can be found at:

[http://www.state.nj.us/treasury/purchase/ethics\\_guide.shtml](http://www.state.nj.us/treasury/purchase/ethics_guide.shtml)

By signing the RFP signatory page, or by entering a pin if submitting an e-bid proposal, the bidder is automatically certifying that it has read the guide, understands its provisions and is in compliance with its provisions.

#### **4.4.1.2 OWNERSHIP DISCLOSURE FORM**

Pursuant to N.J.S.A. 52:24.2, in the event the bidder is a corporation, partnership or sole proprietorship, the bidder must complete the attached Ownership Disclosure Form. A current completed Ownership Disclosure Form must be received prior to or accompany the proposal. Failure to submit the form will preclude the award of a contract.

#### **4.4.1.3 DISCLOSURE OF INVESTIGATIONS AND ACTIONS INVOLVING BIDDER**

The bidder shall provide a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five (5) years including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. The bidder shall use the Disclosure of Investigations and Actions Involving Bidder form for this purpose.

#### **4.4.1.4 SUBCONTRACTOR UTILIZATION PLAN**

All bidders intending to use a subcontractor must submit a completed Subcontractor Utilization Plan. Please see the State of New Jersey, Division of Purchase and Property's Subcontractor Forms which includes the Subcontractor Utilization Plan form.

#### **4.4.1.5 SMALL BUSINESS REGISTRATION FOR SET-ASIDE CONTRACTS**

Not applicable to this procurement

#### **4.4.1.6 BID SECURITY**

Not applicable to this procurement

#### **4.4.1.7 PRICING**

The bidder must submit its pricing on the State supplied Price Sheet/Schedule and supply any additional pricing information as directed in RFP Section 4.4.5.

#### **4.4.2 FORMS REQUIRED BEFORE CONTRACT AWARD AND THAT SHOULD BE SUBMITTED WITH THE PROPOSAL**

##### **4.4.2.1 BUSINESS REGISTRATION**

In accordance with N.J.S.A. 52:32-44(b), a bidder and its named subcontractors must have a valid Business Registration Certificate ("BRC") issued by the Department of Treasury, Division of Revenue prior to the award of a contract. To facilitate the proposal evaluation and contract award process, the bidder should submit a copy of its valid BRC and those of any named subcontractors with its proposal. Refer to Section 2.1 of the State of NJ Standard Terms and Conditions.

Any bidder, inclusive of any named subcontractors, who does not have a valid business registration at the time of the proposal submission opening or whose BRC was revoked prior to the submission of the proposal should proceed immediately to register its business or seek re-instatement of a revoked BRC. Bidders are cautioned that it may require a significant amount of time to secure the re-instatement of a revoked BRC. The process can require actions by both the Division of Revenue and the Division of Taxation. For this reason, a bidder's early attention to

this requirement is highly recommended. The bidder and its named subcontractors may register with the Division of Revenue, obtain a copy of an existing BRC or obtain information necessary to seek re-instatement of a revoked BRC online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

A bidder otherwise identified by the Division as a responsive and responsible bidder, inclusive of any named subcontractors, but that was not business registered at the time of submission of its proposal must be so registered and in possession of a valid BRC by a deadline to be specified in writing by the Division. A bidder who fails to comply with this requirement by the deadline specified by the Division will be deemed ineligible for contract award. Under any circumstance, the Division will rely upon information available from computerized systems maintained by the State as a basis to verify independently compliance with the requirement for business registration.

A bidder receiving a contract award as a result of this procurement and any subcontractors named by that bidder will be required to maintain a valid business registration with the Division of Revenue for the duration of the executed contract, inclusive of any contract extensions.

#### **4.4.3 SUBMITTALS**

The bidder must submit with its bid proposal the following:

- A preprinted hard copy of the price list/catalog
- Emergency delivery contact information i.e. phone number and contact name

The bidder should also provide an eCommerce website if one is available.

**In addition to the above requirements, the bidder must submit its price list(s) in the form of a CD in PDF or text format. However, the preprinted hard copy paper price list must be included with the bid proposal.**

##### **4.4.3.1 BIDDER EXPERIENCE**

The bidder should complete ALL the information requested on the Bidder Data Sheet Form attached to this RFP so that the State is able to make a sound business judgment regarding the bidder's experience and capability to perform the contract to the State's satisfaction.

The State may require a bidder to provide additional information or documentation within five (5) days of request by the State.

##### **4.4.3.2 DISCLOSURE OF PRODUCT COMPOSITION**

Not applicable to this procurement.

##### **4.4.3.3 SAMPLES/SAMPLE TESTING**

Not applicable to this procurement

#### **4.4.4. FINANCIAL CAPABILITY OF THE BIDDER**

Upon request, in order to provide the State with the ability to judge the bidder's financial capacity and capabilities to undertake and successfully complete the contract, the bidder should submit certified financial statements which include a balance sheet, income statement and statement of cash flow, and all applicable notes for the most recent calendar year or the bidder's most recent fiscal year. If certified financial statements are not available, the bidder should provide either a

reviewed or compiled statement from an independent accountant setting forth the same information required for the certified financial statements, together with a certification from the Chief Executive Officer and the Chief Financial Officer, that the financial statements and other information included in the statements fairly present in all material respects the financial condition, results of operations and cash flows of the bidder as of, and for, the periods presented in the statements. In addition, the bidder should submit a bank reference.

If the information is not supplied with the proposal, the State may still require the bidder to submit it. If the bidder fails to comply with the request within seven (7) business days, the State may deem the proposal non-responsive.

A bidder may designate specific financial information as not subject to disclosure when the bidder has a good faith legal/factual basis for such assertion. A bidder may submit specific financial documents in a separate, sealed package clearly marked "Confidential-Financial Information" along with the proposal.

The State reserves the right to make the determination to accept the assertion and shall so advise the bidder.

#### **4.4.5 PRICE SCHEDULE/SHEET**

The bidder must submit its pricing using the format set forth in the State-supplied price sheet/schedule(s) accompanying this RFP. Failure to submit all information required will result in the proposal being considered non-responsive. Each bidder is required to hold its prices firm through issuance of contract.

The price sheets supplied accompanying this RFP are in the format of Microsoft Excel.

##### **4.4.5.1 DELIVERY COSTS**

Unless otherwise noted elsewhere in the RFP, all prices for items in proposals shall be submitted F.O.B. Destination. Proposals submitted other than F.O.B. Destination may not be considered. Regardless of the method of quoting shipments, the contractor shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to the State's using agency or designated purchaser.

F.O.B. Destination does not cover "spotting" but does include delivery on the receiving platform of the ordering agency at any destination in the State of New Jersey unless otherwise specified. No additional charges will be allowed for any additional transportation costs resulting from partial shipments made at contractor's convenience when a single shipment is ordered. The weights and measures of the State's using agency receiving the shipment shall govern.

##### **4.4.5.2 C.O.D. TERMS**

C.O.D. terms are not acceptable as part of a proposal and will be cause for rejection of a proposal.

##### **4.4.5.3 CASH DISCOUNTS**

Bidders are encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts, but discounts will not be considered in determining the lowest proposal.

- a. Discount periods shall be calculated starting from the next business day after the using agency has accepted the goods or services, received a properly signed and executed invoice and, when required, a properly executed performance security, whichever is latest.
- b. The date on the check issued by the State in payment of that invoice shall be deemed the date of the State's response to that invoice.

#### **4.4.6 COOPERATIVE PURCHASING**

The bidder should complete the Cooperative Purchasing Form indicating willingness or unwillingness to extend State contract pricing and terms to Cooperative Purchasing partners.

#### **4.4.7 METHOD OF BIDDING**

This is an all or none award. Bidders must bid all price lines in order to be considered for award. Failure to bid all price lines will deem the bid non-responsive and will therefore be rejected. All pricing must be submitted on the attached Microsoft Excel price list.

**4.4.7.1** Bidders shall bid all price lines in order to be considered for award.

**4.4.7.3** Bidders shall submit pricing for each cylinder size listed and must complete the cubic foot designation for each cylinder size as requested on each price sheet.

**4.4.7.4** Bidders shall submit a percent discount off price list for each bulk gas delivery.

**4.4.7.5** Bidders shall submit a percent discount off price list for each cylinder of miscellaneous gas this price line shall be used for any gas that is not specifically listed.

**4.4.7.6** Bidders shall submit a percent discount off price list for all gas handling equipment, i.e. regulators, etc.

**4.4.7.8** Bidders shall submit a monthly rental rate and a yearly rental rate for all cylinder rentals.

**4.4.7.9** Bidders not charging a monthly rental rate or a yearly rental rate must fill that price line in with "n/c" for no charge.

**4.4.7.10** Bidders shall submit a flat rate for the delivery of cylinders/dewars to respective floors and / or departments. Bidders not charging for this optional service must fill those price lines in with "n/c" for no charge.

**4.4.7.11** Bidders must complete all information requested in the last column of the excel price sheets, i.e. bidder name, price list / catalog information and moisture grade etc..

## **5.0 SPECIAL CONTRACTUAL TERMS AND CONDITIONS**

### **5.1 PRECEDENCE OF SPECIAL CONTRACTUAL TERMS AND CONDITIONS**

The contract awarded as a result of this RFP shall consist of this RFP, addenda to this RFP, the contractor's proposal, any best and final offer and the Division's Notice of Award.

Unless specifically stated within this RFP, the Special Contractual Terms and Conditions of the RFP take precedence over the State of NJ Standard Terms and Conditions accompanying this RFP.

In the event of a conflict between the provisions of this RFP, including the Special Contractual Terms and Conditions and the State of NJ Standard Terms and Conditions, and any addendum to this RFP, the addendum shall govern.

In the event of a conflict between the provisions of this RFP, including any addendum to this RFP, and the bidder's proposal, the RFP and/or the addendum shall govern.

### **5.2 CONTRACT TERM AND EXTENSION OPTION**

The term of the contract shall be for a period of **three (3) years**. The anticipated "Contract Effective Date" is provided on the signatory page accompanying this RFP. If delays in the procurement process result in a change to the anticipated Contract Effective Date, the bidder agrees to accept a contract for the full term of the contract.

The contract may be extended for all or part of two (2) one-year periods, by the mutual written consent of the contractor and the Director at the same terms, conditions, and pricing at the rates in effect in the last year of the contract or rates more favorable to the State.

### **5.3 CONTRACT TRANSITION**

In the event that a new contract has not been awarded prior to the contract expiration date, as may be extended herein, it shall be incumbent upon the contractor to continue the contract under the same terms and conditions until a new contract can be completely operational. At no time shall this transition period extend more than **one-hundred-eighty (180)** days beyond the expiration date of the contract.

### **5.4 CONTRACT AMENDMENT**

Any changes or modifications to the terms of the contract shall be valid only when they have been reduced to writing and signed by the contractor and the Director.

### **5.5 CONTRACTOR RESPONSIBILITIES**

The contractor shall have sole responsibility for the complete effort specified in the contract. Payment will be made only to the contractor. The contractor shall have sole responsibility for all payments due any subcontractor.

The contractor is responsible for the professional quality, technical accuracy and timely completion and submission of all deliverables, services or commodities required to be provided under the contract. The contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its deliverables and other services. The approval of deliverables furnished under this contract shall not in any way relieve the contractor of responsibility for the technical adequacy of its work. The review, approval, acceptance or

payment for any of the services shall not be construed as a waiver of any rights that the State may have arising out of the contractor's performance of this contract.

## **5.6 CLAIMS AND REMEDIES**

### **5.6.1 CLAIMS**

All claims asserted against the State by the contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

### **5.6.2 REMEDIES**

Nothing in the contract shall be construed to be a waiver by the State of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in a writing executed by the Director.

### **5.6.3 REMEDIES FOR FAILURE TO COMPLY WITH MATERIAL CONTRACT REQUIREMENTS**

In the event that the contractor fails to comply with any material contract requirements, the Director may take steps to terminate the contract in accordance with the State of NJ Standard Terms and Conditions, authorize the delivery of contract items by any available means, with the difference between the price paid and the defaulting contractor's price either being deducted from any monies due the defaulting contractor or being an obligation owed the State by the defaulting contractor as provided for in the State administrative code, or take any other action or seek any other remedies available at law or in equity.

## **5.7 ITEMS ORDERED AND DELIVERED**

The contract involves items which are necessary for the continuation of ongoing critical State services. Any delay in delivery of these items would disrupt State services and would force the State to immediately seek alternative sources of supply on an emergency basis. Timely delivery is critical to meeting the State's ongoing needs. Refer to Section 6.3.a of the State of NJ Standard Terms and Conditions for additional information.

## **5.8 MANUFACTURING/PACKAGING REQUIREMENTS**

All products must conform in every respect to the standards and regulations established by Federal and New Jersey State laws.

FDA 21 CFR, NEOSH, OSHA Respiratory Standards 29, CFR 1910.134, UL, NEMA NFPA, DOT, EPA, ASTM, CGA and JCAHO

All medical gases shall be medical grade gases and must be manufactured at a registered Food and Drug Administration (FDA) facility. All medical gases must meet United States Pharmacopeia (USP), National Fire Protection Association (NFPA) and Compressed Gas Association (CGA) regulations

All products shall be manufactured and packaged under modern sanitary conditions in accordance with federal and state law and standard industry practice.

All products are to be packaged in sizes as specified in this RFP and shall be packaged in such a manner as to ensure delivery in first class condition and properly marked for identification. All shipments must be comprised of original cartons associated with the commercial industry

represented by the actual product contained within each carton. Deliveries containing re-used, re-labeled, re-worked or alternate cartons are subject to rejection by the Using Agency at the contractor's expense.

## **5.9 ELECTRONIC PAYMENTS**

With the award of this contract, the successful vendor(s) will be required to receive their payment(s) electronically. In order to receive your payments via automatic deposit from the State of New Jersey, complete and return the "Credit Authorization Agreement for Automatic Deposits (ACH Credits)" Form with an **original voided check or bank letter**. The form must include ABA number (routing or transit number), bank account number and if the bank account is a checking or savings account. The form and instructions are located on the Office of Management & Budget's website at: <http://www.state.nj.us/treasury/omb/forms/index.shtml>. The completed form along with the required voided check or bank letter should be mailed or faxed to: Department of the Treasury, Office of Management and Budget, PO Box 221, 6TH Floor – Room 674, Trenton, N.J. 08625-0221; fax: (609)-984-5210. To assist in identifying payments, the State offers vendors access to the Vendor Payment Inquiry web application (VPI) which offers check stub information online. Contact the State of New Jersey at [AAIUNIT@treas.state.nj.us](mailto:AAIUNIT@treas.state.nj.us) to request access to this application.

## **5.10 CONTRACT ACTIVITY REPORT**

Contractor(s) must provide, on a calendar quarter basis, to the assigned Division representative, a record of all purchases made under the contract resulting from this RFP. This reporting requirement includes sales to State using agencies, political sub-divisions thereof and, if permitted under the terms of the contract, sales to counties, municipalities, school districts, volunteer fire departments, first aid squads and rescue squads, independent institutions of higher education, state and county colleges and quasi-state agencies. Quasi-state agencies include any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member.

This information must be provided in a tabular format such that an analysis can be made to determine the following:

- Contractor's total sales volume to each purchaser under the contract, subtotaled by product, including, if applicable, catalog number and description, price list with appropriate page reference and/or contract discount applied.
- Total dollars paid to subcontractors.

Submission of purchase orders, confirmations, and/or invoices do not fulfill this contract requirement for information. Failure to report this mandated information may be a factor in future award decisions.

Contractors must submit the required information in Microsoft Excel format.

## **5.11 PROGRAM EFFICIENCY ASSESSMENT**

The State Using Agencies shall be charged an assessment equal to one-quarter of one percent (0.25%) of the value of all transactions under this contract. This assessment is authorized by N.J.S.A 52:27B-56 and N.J.A.C 17:12-1.5, to maintain the State's procurement system at a level to meet industry standards of efficiency.

## **5.12 SUBSTITUTION OR ADDITION OF SUBCONTRACTOR(S)**

This Subsection serves to supplement but not to supersede Sections 5.8 and 5.9 of the State of NJ Standard Terms and Conditions accompanying this RFP.

The contractor shall forward a written request to substitute or add a subcontractor or to substitute its own staff for a subcontractor to the State Contract Manager for consideration. If the State Contract Manager approves the request, the State Contract Manager will forward the request to the Director for final approval. No substituted or additional subcontractors are authorized to begin work until the contractor has received written approval from the Director.

If it becomes necessary for the contractor to substitute a subcontractor, add a subcontractor or substitute its own staff for a subcontractor, the contractor will identify the proposed new subcontractor or staff member(s) and the work to be performed. The contractor must provide detailed justification documenting the necessity for the substitution or addition.

The contractor must provide detailed resumes of its proposed replacement staff or of the proposed subcontractor's management, supervisory and other key personnel that demonstrate knowledge, ability and experience relevant to that part of the work which the subcontractor is to undertake.

The qualifications and experience of the replacement(s) must equal or exceed those of similar personnel proposed by the contractor in its proposal.

## **5.13 DISCLOSURE OF PRODUCT COMPOSITION**

If requested by the State during the term of the contract, the contractor must furnish MSDS or manufacturer's equivalent information sheets on the products and/or chemicals used in performing the services specified in the contract to the Using Agency. These sheets must list complete chemical ingredients including the percentage composition of each ingredient in the mixture down to 0.1%, and the chemical abstract services numbers for those substances listing any potentially hazardous products, which may produce gas during or following application.

## **6.0 PROPOSAL EVALUATION**

### **6.1 RIGHT TO WAIVE**

The Director reserves the right to waive minor irregularities. The Director also reserves the right to waive a mandatory requirement provided that:

- (1) the requirement is not mandated by law;
- (2) all of the otherwise responsive proposals failed to meet the mandatory requirement; and
- (3) in the sole discretion of the Director, the failure to comply with the mandatory requirement does not materially affect the procurement or the State's interests associated with the procurement.

### **6.2 DIRECTOR'S RIGHT OF FINAL PROPOSAL ACCEPTANCE**

The Director reserves the right to reject any or all proposals, or to award in whole or in part if deemed to be in the best interest of the State to do so. The Director shall have authority to award orders or contracts to the vendor or vendors best meeting all specifications and conditions in accordance with N.J.S.A. 52:34-12. Tie proposals will be awarded by the Director in accordance with N.J.A.C.17:12-2.10.

### **6.3 STATE'S RIGHT TO INSPECT BIDDER'S FACILITIES**

The State reserves the right to inspect the bidder's establishment before making an award, for the purposes of ascertaining whether the bidder has the necessary facilities for performing the contract.

The State may also consult with clients of the bidder during the evaluation of bids. Such consultation is intended to assist the State in making a contract award which is most advantageous to the State.

### **6.4 STATE'S RIGHT TO REQUEST FURTHER INFORMATION**

The Director reserves the right to request all information which may assist him or her in making a contract award, including factors necessary to evaluate the bidder's financial capabilities to perform the contract. Further, the Director reserves the right to request a bidder to explain, in detail, how the proposal price was determined.

### **6.5 PROPOSAL EVALUATION COMMITTEE**

Proposals may be evaluated by an Evaluation Committee composed of members of affected departments and agencies together with representative(s) from the Division. Representatives from other governmental agencies may also serve on the Evaluation Committee. On occasion, the Evaluation Committee may choose to make use of the expertise of outside consultant(s) in an advisory role.

## **6.6 ORAL PRESENTATION AND/OR CLARIFICATION OF PROPOSAL**

After the submission of proposals, unless requested by the State as noted below, vendor contact with the State is still not permitted.

After the proposals are reviewed, one, some or all of the bidders may be asked to clarify certain aspects of their proposals. A request for clarification may be made in order to resolve minor ambiguities, irregularities, informalities or clerical errors. Clarifications cannot correct any deficiencies or material omissions or revise or modify a proposal, except to the extent that correction of apparent clerical mistakes results in a modification.

The bidder may be required to give an oral presentation to the State concerning its proposal.

Bidders may not attend the oral presentations of their competitors.

It is within the State's discretion whether to require the bidder to give an oral presentation or require the bidder to submit written responses to questions regarding its proposal. Action by the State in this regard should not be construed to imply acceptance or rejection of a proposal. The Division will be the sole point of contact regarding any request for an oral presentation or clarification.

## **6.7 EVALUATION CRITERIA**

The following criteria will be used to evaluate all bid proposals that meet the requirements of this RFP. The criteria are not necessarily listed in order of importance:

- a) Price per cylinder
- b) Experience of the bidder
- c) The bidder's past performance under similar contracts, including if applicable, the Division's vendor performance database.
- d) Percent discount off price/list catalog
- e) Cylinder rental charge

### **6.7.1 BIDDER'S PRICE SCHEDULE**

For evaluation purposes, bidders will be ranked on an evaluation model of several predetermined price lines on the Price Sheet/Schedule accompanying this RFP.

### **6.7.2 PROPOSAL DISCREPANCIES**

In evaluating proposals, discrepancies between words and figures will be resolved in favor of words. Discrepancies between unit prices and totals of unit prices will be resolved in favor of unit prices. Discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated total of multiplied unit prices and units of work and the actual total will be resolved in favor of the actual total. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum of the column of figures.

### **6.7.3 EVALUATION OF THE PROPOSALS**

After the Evaluation Committee completes its evaluation, it recommends to the Director for award the responsible bidder(s) whose proposal, conforming to this RFP, is most advantageous to the State, price and other factors considered. The Evaluation Committee considers and assesses price, technical criteria, and other factors during the evaluation process and makes a recommendation to the Director. The Director may accept, reject or modify the recommendation of the Evaluation Committee. Whether or not there has been a negotiation process as outlined in Section 6.7 below, the Director reserves the right to negotiate price reductions with the selected bidder.

### **6.8 NEGOTIATION AND BEST AND FINAL OFFER (BAFO)**

After evaluating proposals, the Division may enter into negotiations with one bidder or multiple bidders. The primary purpose of negotiations is to maximize the State's ability to obtain the best value based on the mandatory requirements, evaluation criteria, and cost. Multiple rounds of negotiations may be conducted with one bidder or multiple bidders. Negotiations will be structured by the Division to safeguard information and ensure that all bidders are treated fairly.

Similarly, the Division may invite one bidder or multiple bidders to submit a best and final offer (BAFO). Said invitation will establish the time and place for submission of the BAFO. Any BAFO that is not equal to or lower in price than the pricing offered in the bidder's original proposal will be rejected as non-responsive and the State will revert to consideration and evaluation of the bidder's original pricing.

If required, after review of the BAFO(s), clarification may be sought from the bidder(s). The Division may conduct more than one round of negotiation and/or BAFO in order to attain the best value for the State.

After evaluation of proposals and as applicable, negotiation(s) and/or BAFO(s), the Division will recommend, to the Director, the responsible bidder(s) whose proposal(s), conforming to the RFP, is/are most advantageous to the State, price and other factors considered. The Director may accept, reject or modify the recommendation of the Division. The Director may initiate additional negotiation or BAFO procedures with the selected bidder(s).

**Negotiations will be conducted only in those circumstances where they are deemed by the Division or Director to be in the State's best interests and to maximize the State's ability to get the best value. Therefore, the bidder is advised to submit its best technical and price proposal in response to this RFP since the State may, after evaluation, make a contract award based on the content of the initial submission, without further negotiation and/or BAFO with any bidder.**

All contacts, records of initial evaluations, any correspondence with bidders related to any request for clarification, negotiation or BAFO, any revised technical and/or price proposals, the Evaluation Committee Report and the Award Recommendation, will remain confidential until a Notice of Intent to Award a contract is issued.

**NOTE: If the Division contemplates negotiation, proposal prices will not be publicly read at the proposal submission opening. Only the name and address of each bidder will be publicly announced at the proposal submission opening.**

## **6.9 COMPLAINTS**

A bidder with a history of performance problems as demonstrated by formal complaints and/or contract cancellations for cause pursuant to Section 5.7.b of the State of NJ Standard Terms and Conditions accompanying this RFP may be bypassed for an award issued as a result of this RFP.

## **7.0 CONTRACT AWARD**

### **7.1 DOCUMENTS REQUIRED BEFORE CONTRACT AWARD**

#### **7.1.1 REQUIREMENTS OF PUBLIC LAW 2005, CHAPTER 51, N.J.S.A. 19:44A-20.13 - N.J.S.A. 19:44A-20.25 (FORMERLY EXECUTIVE ORDER 134) AND EXECUTIVE ORDER NO. 117 (2008)**

a) The State shall not enter into a contract to procure from any Business Entity services or any material, supplies or equipment, or to acquire, sell or lease any land or building, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions, to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor, to any State, county, municipal political party committee, or to any legislative leadership committee during certain specified time periods

b) Prior to awarding any contract or agreement to any Business Entity, the Business Entity proposed as the intended awardee of the contract shall submit the Certification and Disclosure form, certifying that no contributions prohibited by either Chapter 51 or Executive Order No. 117 have been made by the Business Entity and reporting all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C.527 of the Internal Revenue Code that also meets the definition of a "continuing political committee" within the means of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The required form and instructions, available for review on the Division's website at <http://www.state.nj.us/treasury/purchase/forms.shtml#eo134>, shall be provided to the intended awardee for completion and submission to the Division with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Contract, the intended awardee shall submit to the Division, in care of the Division Procurement Specialist, the Certification and Disclosure(s) within five (5) business days of the State's request. Failure to submit the required forms will preclude award of a contract under this RFP, as well as future contract opportunities.

c) Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the contract, and any extension(s) thereof, at the time any such contribution is made. The required form and instructions, available for review on the Division's website at <http://www.state.nj.us/treasury/purchase/forms.shtml#eo134>, shall be provided to the intended awardee with the Notice of Intent to Award.

#### **7.1.3 AFFIRMATIVE ACTION**

The intended awardee must submit a copy of a New Jersey Certificate of Employee Information Report, or a copy of Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program. Intended awardee(s) not in possession of either a New Jersey Certificate of Employee Information Report or a Federal Letter of Approval must complete the Affirmative Action Employee Information Report (AA-302) located on the web at [http://www.nj.gov/treasury/purchase/forms/AA\\_%20Supplement.pdf](http://www.nj.gov/treasury/purchase/forms/AA_%20Supplement.pdf).

#### **7.1.4 BUSINESS REGISTRATION**

In accordance with N.J.S.A. 52:32-44(b), a bidder and its named subcontractors must have a valid Business Registration Certificate ("BRC") issued by the Department of Treasury, Division of Revenue prior to the award of a contract. (Refer to Section 4.4.2.1 of this RFP for further information.)

## **7.2 FINAL CONTRACT AWARD**

Contract awards shall be made with reasonable promptness by written notice to those responsible bidders, whose proposals conforming to this RFP, are most advantageous to the State, price, and other factors considered. Any or all proposals may be rejected when the State Treasurer or the Director determines that it is in the public interest to do so.

## **7.3 INSURANCE CERTIFICATES**

The contractor shall provide the State with current certificates of insurance for all coverages required by the terms of this contract, naming the State as an Additional Insured. Refer to Section 4.2 of the State of NJ Standard Terms and Conditions accompanying this RFP.

## **7.4 PERFORMANCE SECURITY**

Not applicable to this procurement.

## **8.0 CONTRACT ADMINISTRATION**

### **8.1 CONTRACT MANAGER**

The State Contract Manager is the State employee responsible for the overall management and administration of the contract.

The State Contract Manager for this project will be identified at the time of execution of contract. At that time, the contractor will be provided with the State Contract Manager's name, department, division, agency, address, telephone number, fax phone number, and e-mail address.

#### **8.1.1 STATE CONTRACT MANAGER RESPONSIBILITIES**

For an agency contract where only one State office uses the contract, the State Contract Manager will be responsible for engaging the contractor, assuring that Purchase Orders are issued to the contractor, directing the contractor to perform the work of the contract, approving the deliverables and approving payment vouchers. The State Contract Manager is the person that the contractor will contact **after the contract is executed** for answers to any questions and concerns about any aspect of the contract. The State Contract Manager is responsible for coordinating the use of the Contract and resolving minor disputes between the contractor and any component part of the State Contract Manager's Department.

If the contract has multiple users, then the State Contract Manager shall be the central coordinator of the use of the contract for all Using Agencies, while other State employees engage and pay the contractor. All persons and agencies that use the contract must notify and coordinate the use of the contract with the State Contract Manager.

#### **8.1.2 COORDINATION WITH THE STATE CONTRACT MANAGER**

Any contract user that is unable to resolve disputes with a contractor shall refer those disputes to the State Contract Manager for resolution. Any questions related to performance of the work of the contract by contract users shall be directed to the State Contract Manager. The contractor may contact the State Contract Manager if the contractor cannot resolve a dispute with contract users.