



Request for Proposal 13-X-22139

For: Management Consulting: Contracted Management Auditing Firms, BPU

Event	Date	Time
Bidder's Electronic Question Due Date (Refer to RFP Section 1.3.1 for more information.)	May 2, 2012	5:00 PM
Mandatory/Optional Pre-Proposal Conference (Refer to RFP Section 1.3.5 for more information.)	NA	NA
Mandatory/Optional Site Visit (Refer to RFP Section 1.3.4 for more information.)	NA	NA
Proposal Submission Due Date (Refer to RFP Section 1.3.2 for more information.)	June 15, 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
Small Business Set-Aside	☐ Not Applicable	☒ I
	☐ Entire Contract	☒ II
	☒ Partial Contract	☒ III
	☐ Subcontracting Only	

RFP Issued By

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

Using Agency

State of New Jersey
Board of Public Utilities
Division of Audits
Trenton, NJ 08625

Date: April 19, 2012

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1.0 INFORMATION FOR BIDDERS

1.1 PURPOSE AND INTENT

This Request for Proposal (RFP) is issued by the Purchase Bureau, Division of Purchase and Property, Department of the Treasury (Division) on behalf of the Board of Public Utilities (BPU). The purpose of this RFP is to solicit bid proposals for management auditing firms to provide various types of audits, including, but not limited to, management, affiliate transaction, compliance, operational or performance, information systems/technology, and internal control of State utilities.

The intent of this RFP is to award contracts to six (6) responsible bidders for various types of auditing including management auditing related to the performance of the utilities, whose bid proposals, conforming to this RFP, are most advantageous to the State, price and other factors considered. However, the State reserves the right to award contracts in excess of the six (6) if it determines that it is the best interest of the State to do so. Two (2) of the contracts awarded are set-aside for small businesses (SBE) registered with the State. If the State cannot make an award to the SBEs, other non SBE bidders will be eligible for contract award. These bidders, if awarded a contract, will subsequently be eligible for engagement under this contract in accordance with the engagement process described in section 1.2.1.

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.

1.2 BACKGROUND

The independent auditing process is fundamental in overseeing the integrity of the utilities, and ensures that the utilities have effective internal controls and procedures in place to provide for effective and efficient operations. Upon completion of the audit, the results of the audit will be filed with the BPU and may become public after a final decision is rendered by the BPU. If the BPU finds that any of the operating procedures or internal workings of the respective utility are inefficient, improvident, unreasonable, negligent or an abuse of discretion, the BPU may order the adoption of new or altered practices to provide for efficient and adequate services. All expenses of the audit will be borne by the respective utilities and will be recognized as proper business expenses, unless otherwise determined by the Board.

This RFP includes a case study. Bidders are required to provide a proposal as to how they would attempt to perform the audit of a gas utility under the jurisdiction of the BPU.

Although the case study is of a gas utility, bidders should indicate their experience in performing management or special audits of gas, electric, water, and telephone utilities in accordance with section 4.4.3.1. Bidders are required to indicate their ability to perform audits of any or all of these utilities.

The State does not guarantee the amount of work or the number of audits given to any contractor retained under this procurement.

For additional information bidders should refer to Executive Order 122 at the following website:
<http://www.state.nj.us/infobank/circular/eom122.htm>.

This is a reprocurement of the **Management Consulting: Contracted Management Auditing Firms, BPU** term contract, that expired on **February 28, 2012**. Bidders interested in the current contract specifications and pricing information may review the current contract (Enter T #2482) at <http://www.state.nj.us/treasury/purchase/pricelists.shtml>.

1.2.1 ENGAGEMENT PROCESS

The scope of work and request for competitive price quotes for each audit shall be developed on an individual audit basis by BPU. The request shall be sent from the BPU to the contractor(s) and will specify the nature, scope and goals of the audit and respective utility to be audited.

Contractors awarded a contract resulting from this RFP will be engaged in accordance with BPU's needs and requirements in accordance with the following process:

If a contractor is not able to participate in a specific audit due to a conflict of interest or scheduling problem, it shall decline the request for a competitive quote in writing to the State Contract Manager.

For each request, each contractor that does not have a conflict of interest or scheduling problem shall respond within the established time period with the following:

- A detailed proposal to perform the scope of work reflecting the requirements of the engagement for competitive price quotes in accordance with the audit specific requirements of section 3.0 of this contract;
- A contract (Project) schedule that shall identify the associated deliverable items to be submitted as evidence of completion of each task and/or sub-task;
- All inclusive hourly rates in addition to person-hour and/or labor category mix: including a comprehensive chart showing the person-hours proposed to meet the requirements of the request for competitive quotes. The chart shall be designed to reflect the tasks, sub-tasks, or other work elements required by the request for competitive quote. The chart shall set forth, for each task, sub-task or other work element, the total number of person-hours, by labor category, proposed to complete the contract. The hourly rates used for each labor category shall be the all-inclusive hourly rates specified in the contract; and
- A firm fixed price for the engagement based on the contract's all inclusive hourly rates and chart detailed above. The contractor is permitted to reduce its originally proposed hourly rate for the purpose of submitting a bid in response to a specific audit and is not required to maintain that lower rate for subsequent audits. However, under no circumstance is the bidder permitted to raise its originally proposed hourly rates.

The State Contract Manager will review the responses and award the engagement to the contractor that offers the best value, price and other factors, to the BPU.

BPU will compensate the contractor 80% of the agreed upon amount of the project, based on the price proposal submitted for the project, and retain the balance, or 20%, as retainage. BPU will release the final 20% when the project has been satisfactorily performed as determined by the State Contract Manager and the final report has been filed with the Board.

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 this 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 Purchase 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
PURCHASE 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 Purchase Bureau.

Procedural inquiries concerning this RFP may be directed to 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.

1.3.6 PRE-PROPOSAL DOCUMENT REVIEW

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 proposal 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 bid 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 OPENING

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 proposal 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 opening and at the place specified.

If, after proposal 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 bid 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 opening date and be sent to the following address:

Department of the Treasury
Purchase Bureau
PO Box 230
33 West State Street – 9th 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 opening. Written evidence for a specific procurement that is not provided to the Director within five (5) working days of the public proposal opening 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.

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

Affiliate - Any company that is a parent, subsidiary or under common control with another company.

“At Arms Length” - A transaction between two related or affiliated parties that is conducted as if they were unrelated, so that there is no question of a conflict of interest. Or sometimes, a transaction between two otherwise unrelated or affiliated parties.

Basic Gas Supply Service (BGSS) - The BPU regulated gas supply service that is purchased by the Gas Distribution Companies to provide gas supply to its customers.

Basic Generation Service (BGS)- The BPU regulated electric supply service that is purchased by the Electric Distribution Companies to provide electric power to its customers

Board of Public Utilities (BPU) - The BPU is the New Jersey Board of Public Utilities, the entity using the contract for this audit.

Competitive Service - Any service offered by an electric public utility or gas public utility that the BPU determines to be competitive pursuant to N.J.S.A. 48:3-56 (electric) or N.J.S.A. 48:3-58 (gas)

or that is not regulated by the BPU.

Cross-subsidization - The use of resources from one part of a company to operate another part of a company.

Customer - The person identified in the account records of a utility as the person responsible for payment of the utility bill. A customer may or may not be an end user, as defined herein.

Day - Calendar days unless specified otherwise.

Design Day - A 24-hour period of demand used as a basis for planning capacity requirements.

EDC - Electric Distribution Company.

End User - A person who receives, uses, or consumes electricity, gas, telephone, water or wastewater service. An end user may or may not be a customer, as defined herein.

Electric Distribution System - That portion of an electric system which delivers electric energy from transformation points on the transmission system to points of connection at the customers' premises.

Federal Energy Regulatory Commission (FERC) - The federal agency within the Department of Energy that regulates transmission, price, terms and conditions of power sold in interstate commerce.

GDC - Gas Distribution Company.

Going Concern - A company that will continue to operate indefinitely, and will not go out of business and liquidate its assets. For this to occur, the company must be able to generate and/or raise enough resources to stay operational.

Hedging - Offset of a position with the intent of managing risk; the process of protecting the value of an investment from the risk of loss in case the price fluctuates. Hedging is accomplished by protecting one transaction with another. A "long" position in an underlying instrument can be hedged or protected with an offsetting "short" position in a related underlying instrument.

Large Volume Sales Customer (LVS) - The top 25% of commercial accounts of any gas utility.

Manufactured Gas Plant (MGP) - A site where fuel, prior to natural gas, was manufactured and stored. Waste and contamination from MGPs still pose an environmental and public health concern.

Mark-outs - The marking, staking or locating of underground facilities prior to excavation for work pursuant to N.J.S.A. 48:2-73 et seq.

Marketer - An entity engaged in bringing together sellers and buyers, usually on a spot-market basis, assisting in negotiations and arranging transportation and delivery terms.

Open Season - The process of bidding on the acquisition of supply through an open bid process that generally does not entail an obligation to accept any particular bid.

Person - An individual, firm, joint venture, partnership, co-partnership, corporation, association, State, county, municipality, public agency or authority, bi-state or interstate agency or authority, public utility, regulated entity, cable television company, cooperation association, or joint stock

association, trust, limited liability company, governmental entity, or other legal entity, and includes any trustee, receiver, assignee, or personal representative thereof.

Pipeline - All parts through which gas is transported, including pipes and valves.

Pipeline Capacity - The maximum quantity of gas movable through a pipeline.

Remediation Cost - All investigation, testing, land acquisition, remediation and/or litigation costs and expenses, or other liabilities, excluding personal injury claims, specifically relating to former Manufactured Gas Plant (MGP) facility sites, disposal sites, or sites to which material may have migrated, as a result of the earlier operation or decommissioning of MGP sites.

Regulated Entity - A person or entity that is subject to the jurisdiction of the BPU, or that provides a product or service subject to the jurisdiction of the BPU. This term includes a public utility, as defined in N.J.S.A. 48:2-13.

Regulated Service - A service subject to regulation by the BPU.

Residential Customer - A customer who receives utility service for use in a residence.

The Electric Discount and Energy Competition Act (EDECA) - A 1999 law enacted to give New Jersey energy customers the opportunity to access competitive markets for electric power generation and gas supply service.

Spot Market - A market, typically with a large numbers of buyers and sellers, where gas is traded for immediate delivery.

Staff – Employees of the BPU

Stakeholders - Those with ties to a utility's prosperity, performance, and overall well-being, e.g., its stockholders, creditors, employees, customers, contractors and suppliers, and all those who reside, do business, or serve the general public in the service territory in which the utility is the provider of gas, electric, water or telephone service.

Third Party Supplier (TPS) - An entity determined to be eligible by the BPU and holding a BPU issued license to provide competitive energy supply to customers in accordance with applicable legal authorities.

Utility - The regulated entity that is subject of the audit.

Virtual Storage - The payment of a reservation fee for the right to purchase or sell gas at daily market prices.

3.0 SCOPE OF WORK

The BPU will provide the contractor with a written scope of work and type of audit being requested.

3.1 SPECIFIC REQUIREMENTS

The contractor shall review the previous audit of the affiliated transactions of the respective utility as it relates to the current operations of the respective utility and comment on the continued viability of the recommendations of that audit.

The contractor shall audit, that is, examine the financial control and integrity, corporate accountability, the adequacy of the separation of functions within the utility operations, and/or all transactions between the BPU and any organization the BPU has a business relationship with.

The contractor shall assess whether internal controls established by management are functioning and effective.

The contractor shall make comments and recommendations for the improvement of design and operation of the internal control system through the issuance of management letters if appropriate.

3.2 WORKING SPACE

The BPU will arrange and provide office space for the contractor's auditors and/or investigators at the respective utility.

3.3 PROJECT SCHEDULE

It is the intent of this RFP that all work be completed within the timeframe set forth in the Project Schedule as specified and accepted at the time of engagement in [Section 1.2.1](#) of this RFP.

3.4 PROJECT CONTROL

The contractor shall report directly to the State Contract Manager. All written and oral communications shall be through the State Contract Manager. If a situation is urgent, meaning a situation which would impede the completion of the audit, the contractor shall notify the State Contract Manager immediately. The contractor may be requested to discuss the audit's progress with the State Contract Manager as necessary.

3.5 ENTRANCE CONFERENCE

Upon the award of the engagement, the contractor shall schedule and attend a meeting within **15 business days** with the State Contract Manager to discuss all pertinent items relative to the audit.

3.6 PHASE ONE – FOCUSED AUDIT OF AFFILIATE TRANSACTIONS

Phase One shall examine the utility's activities in light of the requirements of Electric Discount and Energy Competition Act (EDECA), particularly the impact of retail and wholesale transactions with its affiliates. Specific transactions to be examined by the contractor include the utility's procurement activities with its affiliates as well as other financial hedging and business transactions. Further, the contractor shall review and assess affiliate supply and capacity cost allocation methodologies to determine accounting and allocation procedures for separating the costs of inter-company transactions. The contractor's analysis shall determine if current

accounting and allocation procedures are equitable, fair, and do not favor certain affiliates over the utility and its ratepayers. This phase will encompass all of the requirements of the (EDECA) statute (N.J.S.A. 48:3-49, N.J.S.A.3-55, N.J.S.A. 3-56, N.J.S.A. 3-58 and the Board's Administrative Code (N.J. A.C. 14:4-3 and 14:4-4A et seq. Additionally, the contractor's examination shall assess the supply policies, capacity or demand policies, and assignment strategies of the utility and its affiliates. The contractor shall complete Phase One in accordance with the Project Schedule ([section 1.2.1](#)) and shall produce a final report containing quantifiable findings, conclusions, and supporting recommendations. The work plan shall include but not be limited to the following:

3.6.1 REVIEW OF PROCUREMENT ACTIVITIES

The contractor shall perform a complete review of the utility's procurement activities.

The contractor shall review and determine if the pricing of the utility goods and services to and from its affiliates is non-discriminatory and does not exceed market rates.

The contractor shall identify and evaluate the utility's performance over the past four (4) years with regard to the following designated matters:

- a) Define, document and support all of the utility's procurement activities and evaluate the utility's effectiveness in procuring optimal supply prices for the utility's customers;
- b) Identify the utility's strategy for supply procurement;
- c) Measure the utility's supply reliability and identify any problems that caused financial harm to ratepayers;
- d) Identify the utility's spot market and supply commodity purchasing, and provide recommendations for an optimal mix between price and reliability for each;
- e) Determine the recommended supply and storage for the utility; and
- f) Determine if the utility's purchases are and have been allocated across customer classes according to industry practices.

3.6.2 AFFILIATE RELATIONSHIPS

The contractor shall examine and determine if the holding company structure, affiliates and their diversified activities have had or may have any detrimental effects on the utility.

The contractor shall review and evaluate the utility's interactions with its affiliates over the past four (4) years. The contractor shall:

- a) Review the utility's files covering all contracts and transactions with its affiliates;
- b) Evaluate the independence of the supply department in purchasing supplies on behalf of the utility;
- c) Assess the utility's performance in acting in the best interest of the utility and its ratepayers; and
- d) Evaluate the utility's relationship with its affiliates and the ability of its affiliate's internal controls and structure to allow it to make purchases on behalf of the utility that are in the best interest of the utility and its ratepayers.

The contractor shall examine and determine if the utility has an internal system to provide assurance that its goals and objectives are accomplished at the lowest possible cost and maximum benefit to its ratepayers. The internal controls should give a true and accurate account of the transactions of the utility and its affiliates and should show that the transactions have been carried out according to standards consistent with regulatory and legal requirements.

The contractor shall examine and determine if the utility has internal controls that protect against irregular, illegal, and/or improper transactions, including accounting and financial activities that could result in trading irregularities, market price manipulation, false price information or unfair capacity and supply cost allocations from any of its affiliates to the utility, or which could be in violation of State and Federal laws.

In addition, the contractor shall review the following communication areas and shall:

- a) Evaluate the internal controls and flow of information between the utility and its affiliates with regard to supply purchases; and
- b) Evaluate all correspondence between directors and officers in the area of supply procurement activities to determine if discussions were conducted:
 - At arms-length;
 - In a way that ensured compliance with affiliate relationships and fair competition standards; and
 - In the best interest of the utility's ratepayers.

3.6.3 MARKET CONDITIONS

The contractor shall evaluate the utility's market environment over the past four (4) years by addressing the following areas:

- a) Examine and document the level of customer activity in transferring supply to third party suppliers (TPS) as well as the competitiveness of the TPS market in the utility's service territory;
- b) The contractor shall provide suggestions on how to improve TPS market competitiveness in the utility territory;
- c) Review the utility's strategy and philosophy of hedging basic supply service to reduce overall usage and evaluate its effects on pricing, refunds, and other relevant areas; and
- d) Evaluate the impact of commodity and capacity release and assignment transactions made by the utility and/or its affiliates on the competition within the utility's service territory and determine whether the transactions were executed in the best interest of the utility's ratepayers.

3.6.4 AFFILIATE COST ALLOCATION METHODOLOGIES

The contractor shall review and describe the cost allocation methods among the utility and its affiliates, and determine whether the cost allocation methods are the result of arms-length negotiations and whether costs are allocated on a direct assignment basis insofar as possible. The contractor shall explain the allocations and rationale for the allocation methods, and make recommendations for adjustments if appropriate.

The contractor shall:

- a) Identify the accounting and allocation procedures for separating the costs of inter-company transactions of the utility from affiliates;
- b) Determine the accuracy of allocations when allocating joint/common costs between the utility and its affiliates;
- c) Any discrepancies shall be corrected by providing direct cost allocations when possible and explanations where the costs cannot be directly allocated.
- d) Review the time sheet reporting practices of shared employees between the utility/affiliate responsibilities to determine allocations;
- e) Determine if the duties of employees who bill time for the utility and/or its affiliates permit for cross-subsidization;

- f) Review and assess pricing policies between affiliate interests, e.g. the market price as compared to the purchased price by the utility;
- g) Evaluate competitive and noncompetitive bidding procedures;
- h) Identify all of the utility's lease arrangements with its affiliates, determine if the terms of the arrangements are consistent with lease arrangements in competing local markets, have recommended cost allocations and are set at arms' length; and
- i) Review affiliate charges and cost allocation methodologies among the utility and its affiliates for adherence to applicable legal, regulatory and contractual requirements.

3.7 PHASE TWO –MANAGEMENT EFFECTIVENESS AND EFFICIENCY

In Phase Two, the contractor shall perform a comprehensive audit of the utility's major organizational areas other than those identified in Phase One, including, but not limited to: functional processes, procedures and internal workings and the effect of the utility's association with its affiliates. This audit shall include: an examination of executive management and corporate governance; organizational structure; human resources; strategic planning; finance; cash management; accounting and property records; distribution and operation management; customer services; external relations participation in and accounting of clean energy programs; support services; remediation costs; and contractor performance.

In Phase Two, the contractor shall examine the utility's financial controls and integrity, organizational structure, corporate accountability, and standards of conduct. Additionally, the contractor's evaluation shall determine the adequacy of the separations of functions within the utility operations for its competitive services and all transactions with other affiliates. The purpose of the evaluation is to determine if the utility customers are supporting the activities of its affiliates and its parent, and if the utility has been exposed to risk as a result of being associated with its affiliates.

At minimum, the contractor's evaluation shall address the following areas:

3.7.1 EXECUTIVE MANAGEMENT AND CORPORATE GOVERNANCE

The contractor shall evaluate the corporate structure and determine whether the Board of Directors and senior management are able to anticipate and respond to strategic issues on an ongoing basis by ensuring that the ratepayers are insulated as much as possible from financial harm. The contractor shall determine whether the Board of Directors has the experience and knowledge to fulfill the corporate goals and objectives and ensure that no director has any conflicts of interest, self-interest, or unreasonable influence while sitting on the Board. To make this determination the contractor shall:

- a) Evaluate the selection process for the Board of Directors;
- b) Examine the separation of functions and duties of the chairman and chief executive officer titles;
- c) Review the utility's executive compensation, including a comparison with other New Jersey utilities;
- d) Assess the independence of the utility's senior management relative to its own performance and the best interests of its rate payers;
- e) Assess the independence of the utility's auditors, i.e. that they do not have conflicts of interest;
- f) Evaluate the appropriateness of committee structures;
- g) Determine if the utility is in compliance with the Securities and Exchange Commission requirements and the Sarbanes-Oxley Act;

- h) Examine the relationships between affiliates, determining if the utility is in compliance with affiliate relation and Federal Energy Regulatory Commission (FERC) rules; and
- i) Evaluate lawsuits that have been brought before the utility's Board of Directors or officers in order to determine if they relate to executive management or corporate governance issues and their potential impact on the utility.

3.7.2 ORGANIZATIONAL STRUCTURE

The contractor shall evaluate the policies and procedures that define the need, necessity, legal entitlement and the nature of the relationship among affiliates. To make this evaluation the contractor shall:

- a) Assess the resources allocated to the utility-regulated activities versus the non-regulated activities of the utility and its affiliates;
- b) Identify and evaluate the utility and its affiliates' policies and procedures for effectiveness and adherence to legal, regulatory and contractual requirements;
- c) Review and assess affiliated interest contracts to determine if they are executed strictly "at arms' length" and industry appropriate in light of current market conditions, without cross-subsidization;
- d) Determine the relationship of supply sales by its affiliates to the utility and the relative dependence by the utility on these sales to continue as a "going concern," without cross-subsidization; and
- e) Review and assess internal controls to determine their effectiveness and independence.

3.7.3 HUMAN RESOURCE

The contractor shall review the utility's human resources policies and procedures in the following areas to determine the effectiveness of their workforces:

- a) Review and assess the utility's salary, wage and compensation and benefits package practices;
- b) Assess the effectiveness of the utility's development, training and evaluation techniques;
- c) Review and assess the current labor relations status and methodology;
- d) Assess the productivity and utilization level of the utility's workforces;
- e) Assess the human resources departments capability to access personnel information and perform their assigned duties; and
- f) Assess the affirmative action and equal employment opportunity (AA/EEO) policies, procedures, and functions.

3.7.4 STRATEGIC PLANNING

The contractor shall evaluate the utility's strategic planning methodology. The contractor shall:

- a) Review and assess how well the organization's purpose and mission is defined;
- b) Define the specific short and long term goals and objectives of each affiliate;
- c) Additionally, suggest improvements in the utility's strategic planning needed to adapt to the current market environment and, if it is discovered that affiliate goals are in conflict with the utility's goals, provide recommendations for improvement;
- d) Evaluate and recommend, as necessary, the development and implementation of the utility's business strategy for:

- Customer impact;
 - Responsiveness to market conditions;
 - Clarity and employee training;
 - Commitment and resources for implementation;
 - Financial risk;
 - Smart growth; and
 - Environmental issues.
- e) Determine if the focus of the utility's management and expertise is on the utility or is being diverted elsewhere; and
 - f) Determine if there are any negative effects of diversification on the utility and recommend how they can be ameliorated.

3.7.5 FINANCE

3.7.5.1 GENERAL OVERVIEW

The contractor shall perform a general overview and review of the utility's finances including:

- a) Performing a complete review of the direct and indirect effects of the financing of the utility and all affiliates;
- b) Reviewing and assessing the financial performance of the utility and all affiliates; and including the effects of affiliate interrelationships on individual company's performance.
- c) Assessing the effect of the affiliate activities on the utility's credit worthiness.

3.7.5.2 FINANCING

In relation to the utility's financing, the contractor shall:

- a) Review the debt management policies for the utility and all affiliates, identifying any real or perceived encumbrance of utility assets for non-utility purposes as well as the extent of any negative effects from business diversification;
- b) Evaluate the investment decisions of the utility and its affiliates with respect to the degree to which tax considerations may have outweighed other investment criteria (e.g., safety) in making decisions. Additionally, the contractor shall assess the effect of the affiliate's financing on the utility;
- c) Evaluate the methods that the utility and its affiliates have used to determine and allocate consolidated income taxes over the past 5 years. Additionally, the contractor shall evaluate any other tax treatments allowed by the IRS and report on their advantages and disadvantages; and
- d) Assess the degree to which the historical and projected tax benefits from diversified activities have been and are projected to be realized as a result of the taxable income of the utility and provide the identities of the chief beneficiaries.

3.7.6 CASH MANAGEMENT

In relation to the utility's cash management, the contractor shall:

- a) Evaluate the cash forecasting and diversification of investments between all subsidiary corporations to determine:
 - The details of the utility and its affiliate's cash management methodologies.
 - If the utility's cash is held separately from the cash of its affiliates.
 - Identify the extent to which funds generated from the Utility's depreciation are used for non-utility purposes and make recommendations for improvement.

- b) Determine the effect of the affiliates' use of the utility's generated income on the utility's financing ability, company value, dividend policy, retained earnings, cash flow, and other financial performance measurements;
- c) Assess the quantified or potential impact of write-offs by the utility and its affiliates on the utility;
- d) Determine the effects of diversifying activities on the utility's cost of capital; and
- e) Review and assess the cost of capital to the utility relative to the cost of capital to utilities with comparable risk but without non-utility affiliates. Additionally, the contractor shall provide recommendations to insulate the utility's capital costs from non-utility operations.

3.7.7 ACCOUNTING AND PROPERTY RECORDS

In relation to the utility's accounting and property records, the contractor shall:

- a) Evaluate the accounting system, specifically, processing, recording, authorization and accountability of the accounts payable function among all levels of affiliate management;
- b) Review the processes for receiving and securing accounts receivable;
- c) Review the independence, processing and accountability of the payroll function, including the time and resources spent by employees on payroll;
- d) Determine and detail:
 - The reasonableness of the utility's and affiliates' executive compensation packages.
 - The basis and reasonableness for the allocation of executive compensation costs to the utility.
- e) Evaluate the budget reporting, tracking, revision and analysis at all levels; and
- f) Evaluate work order procedures, corporate accounting manual and property records at all levels.

3.7.8 DISTRIBUTION AND OPERATIONS MANAGEMENT

The contractor shall measure the utility's reliability and identify the extent of any problems that have caused financial harm to ratepayers. In addition, the contractor shall review system operation and maintenance and system planning.

3.7.9 CUSTOMER SERVICE

The contractor shall evaluate the following customer service areas to determine if the utility is serving the best interest of its ratepayers:

- a) the accuracy and efficiency of the utility's meter reading procedures; and
- b) the effectiveness of the utility in servicing its customers, including the areas of billing, credit and collection, complaints and inquiries, revenue protection and marketing.

3.7.10 EXTERNAL RELATIONS

The contractor shall assess and make recommendations regarding the effect of the utility's management of the external relations function – the methods by which the utility relates to its various stakeholders (i.e. customers, regulators, media and investors) in the fulfillment of corporate goals and objectives.

3.7.11 CLEAN ENERGY PROGRAMS

The New Jersey Clean Energy Program was established as part of EDECA. The board has instituted a number of initiatives to reduce peak demand, conserve finite resources and promote new technologies. The contractor shall review the utility's participation in various programs and

assess the utility's participation in such programs and assess the utility's accounting controls relative to such programs.

3.7.12 SUPPORT SERVICES

The contractor shall examine the following utility support services and determine their effectiveness in providing a favorable environment for the utility's operations and service:

- a) Insurance and Claims;
- b) Legal;
- c) Facilities Management;
- d) Materials Management;
- e) Transportation;
- f) Real Estate and Land Management;
- g) Computer Systems and Services;
- h) Records Management; and
- i) Security of Infrastructure.

3.7.13 REMEDIATION COSTS

The contractor shall evaluate the following remediation cost attributes, if applicable to the respective utility:

- a) The internal controls and flow of information to ensure that all supply remediation costs are properly recorded;
- b) The propriety of the recorded costs and the amount of any outstanding balance;
- c) The reasonableness of the expenses and efficiency of the engineering and financial methods used to calculate the expenses from the ratepayer's point of view;
- d) Investigate if the utility acted in its own self-interest, shared expenses with the ratepayers, and was effective in controlling costs;
- e) The effectiveness of the utility to negotiate effectively with Department of Environmental Protection (DEP) despite pass-through charges; and
- f) The reasonableness of the use of outside contractors and the methods of selecting outside contractors for environmental remediation work.

3.7.14 CONTRACTOR PERFORMANCE

In relation to the utility's overall performance and that of its outside contractors, the contractor shall:

- a) Evaluate the utility's method of reviewing the effectiveness of its contracted services to comply with its obligation to locate and temporarily mark its underground facilities in accordance with the requirements of its NJ One Call Law;
- b) Identify the type and frequency of random field audits that are performed;
- c) Evaluate the procedure for reviewing the accuracy and detail of mark-outs;
- d) Identify the frequency and scope of audits that are performed at contractor facilities; and
- e) Identify the utility's process for determining when there is a need to modify procedures when deficiencies are discovered.

3.8 INTERMITTENT CONFERENCES

The contractor shall attend meetings to discuss all pertinent items as requested by the State Contract Manager.

3.9 MONTHLY PROGRESS REPORT

The contractor shall submit a monthly written report to the State Contract Manager for any month in which work was performed. The report shall consist of a general narrative providing adequate and detailed information regarding the status of the audit with an explanation of any discrepancies between the approved work plan and actual progress.

3.10 DRAFT FINAL AUDIT REPORT

A draft of the final audit report including a summary of the audit process and all recommendations shall be submitted to the State Contract Manager in accordance with the project schedule. After appropriate review and authorization by the State Contract Manager, the contractor shall release the draft report to the utility and/or any other party as determined by the State Contract Manager for its review. The utility's critique of the draft report shall be confined to factual discrepancies and communicated to the State Contract Manager.

3.11 EXIT CONFERENCE

Upon completion of the audit engagement and prior to submission of the final audit report, the contractor shall meet with BPU staff to discuss audit findings.

3.12 FINAL AUDIT REPORT

The State Contract Manager shall authorize the preparation of the final audit report. The utility and/or any other party as determined by the Contract Manager will be permitted to comment upon the contractor's findings and recommendations after the BPU or the State Contract Manager releases the final report. These comments shall be in the form of a separate correspondence and shall not be incorporated into the contractor's final audit report. If necessary, the contractor shall provide at least 15 bound copies, one unbound master photocopy and one electronic copy on CD-ROM of the final audit report to the State Contract Manager all marked "Confidential" to protect proprietary information and/or data, such as intellectual property, trade secrets, business plans and personal information. If "Confidential" reports are provided, the contractor shall also provide the same number of redacted copies to the BPU, a redacted reproducible copy and a redacted electronic copy on CD ROM to the State Contract Manager within ten (10) business days of draft approval. The final audit report shall be released only upon authorization from the BPU. In addition, the contractor shall provide at least fifteen (15) bound copies, one (1) reproducible copy and one (1) electronic copy on CD-ROM of the final audit report all marked "Confidential" to the utility. The CD must be in Adobe Acrobat PDF file format and have the properties that enable the file(s) to be viewed, printed, searched and electronically reproduced.

3.13 WORK PAPERS

Work papers developed during the engagement shall be the property of the contractor. The contractor shall, at any given time during the course of the audit and at the conclusion thereof, make the work papers developed during the engagement available to the State Contract Manager for inspection or review. These work papers shall include:

- a) The facts gathered and documents obtained;
- b) Computations and analyses performed; and
- c) Other pertinent data relating to the audit.

Audit work papers must be indexed in a logical manner and show evidence that each work paper or group of papers has been subjected to appropriate supervisory review. Work papers must show the name of the auditor who prepared the paper and must be clearly titled and dated.

Audit work papers must be retained for a period of not less than five (5) years from date of receipt of the contractor's final payment and shall be made available to the State Contract Manager when requested.

The contractor shall provide photocopies and/or digital copies of these papers upon request of the State Contract Manager.

3.14 LITIGATION SUPPORT

Litigation support is not included in the bid price. The contractor shall provide expert testimony regarding any litigation resulting from audit work done as part of this contract when necessary. Expert testimony support shall be provided at the hourly rates and by the labor titles listed on the contractor's budget list for litigation support.

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 is 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/13X22139.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 OPENING 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 (please see Section 4.3.2 for number of complete and exact copies). 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 to reflect the name of the specific form it is submitting. The bidder should name the Technical Proposal and the Pricing as follows:

Technical Proposal – Technical Proposal – Volume 1
Pricing – Pricing Volume 2

If exhibits or attachments are submitted as part of your proposal, the exhibits/attachments should be clearly labeled to accurately describe the form being submitted.

4.3.2 NON-EBID SUBMISSION

The bidder must submit the following bid proposal copies:

1. **One (1) complete ORIGINAL bid proposal**, clearly marked as the "ORIGINAL" bid proposal;
2. **Six (6) complete and exact copies**, clearly marked "COPY";
3. **One (1) unbound, complete and exact copy** of the original, clearly marked "COPY"; and
4. One (1) **complete and exact ELECTRONIC copy** of the original proposal in PDF file format on disc (CD or DVD) to be viewable and "**read only**" by State evaluators using Adobe Acrobat Reader software.

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

The proposal should be submitted in two volumes with the content of each volume as indicated below.

Volume 1

Section 1 - Forms (Sections 4.4.1 and 4.4.2)

Section 2 - Technical Proposal (Section 4.4.3) – **NOTE: This section of the bidder's submission is limited to 25 pages or fewer, with no smaller than a 12 point font.**

Section 3 - Organizational Support and Experience (Section 4.4.4)

Volume 2

Section 4 – Price Schedule (Section 4.4.5)

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 proposal opening.
- 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

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

Pursuant to the provisions of N.J.S.A. 52:32-17 and N.J.A.C. 17:13, this contract, or a portion thereof, has been designated as a set-aside contract for small business. As

such, as indicated on page one of this document, eligibility to bid is limited to bidders that meet statutory and regulatory requirements and have had their eligibility determined by the New Jersey Division of Revenue, Small Business Enterprise Unit.

As defined at N.J.A.C. 17:13-1.2, "Small Business" means a business that is incorporated or registered in and has its principal place of business in the State of New Jersey, is independently owned and operated, and has no more than 100 full-time employees. The program places small business into the following categories: (i) those with gross revenues not exceeding \$500,000; (ii) those with gross revenues not exceeding \$5 million; and (iii) those with gross revenues that do not exceed \$12 million, or the applicable federal revenue standards established at 13 CFR 121.201, whichever is higher. While companies registered as having revenues below \$500,000 can bid on any contract, those earning more than the \$500,000 and \$5 million amounts will not be permitted to bid on contracts designated for revenue classifications below their respective levels.

Inasmuch as this is a full or partial set-aside contract, the bidder should provide, as part of its response to this solicitation, proof of its current registration as a qualifying small business with the New Jersey Division of Revenue, Small Business Enterprise Unit. Application and registration requirements are presented on the web at <http://www.nj.gov/njbusiness/contracting/> or by contacting that agency during business hours as indicated below.

NEW JERSEY DEPARTMENT OF THE TREASURY
DIVISION OF REVENUE
SMALL BUSINESS ENTERPRISE UNIT
33 WEST STATE STREET – FIFTH FLOOR
PO BOX 026, TRENTON, NJ 08625-0026
TELEPHONE: 609-292-2146
FAX #: 609-292-8764

**** IF THE BIDDER IS AN INCUMBENT CONTRACTOR AND/OR HAS PREVIOUSLY REGISTERED OR BEEN CERTIFIED UNDER THE FORMER SBE/MBE/WBE PROGRAM, THE BIDDER SHOULD ENSURE IT IS REGISTERED ON THE DAY OF PROPOSAL RECEIPT AND OPENING WITH THE DIVISION OF REVENUE, SMALL BUSINESS ENTERPRISE UNIT TO BE ELIGIBLE FOR AWARD.**

IN ORDER TO EXPEDITE THE SMALL BUSINESS REGISTRATION PROCESS FOR THIS PROCUREMENT, THE BIDDER MAY FAX A COPY OF RFP PAGE ONE (1) REFLECTING THE PROPOSAL SUBMISSION DUE DATE ALONG WITH THE COMPLETED SMALL BUSINESS REGISTRATION FORM TO THE NEW JERSEY DIVISION OF REVENUE, SMALL BUSINESS ENTERPRISE UNIT TO THE FAX NUMBER ABOVE.

4.4.1.5.1 SMALL BUSINESS SET-ASIDE CONTRACTS

This is a Partial Set-Aside Contract for Small Businesses. The bidder must be registered as a qualifying small business with the Division of Revenue, Small Business

Enterprise Unit by the date the proposal is received and opened. Evidence that the bidder has registered as a small business should be submitted with the proposal.

4.4.1.5.2 SMALL BUSINESS SUBCONTRACTING SET-ASIDE CONTRACTS

This is a contract with set-aside subcontracting goals for New Jersey Small Business Enterprises. If the bidder intends to subcontract, it must submit a Subcontractor Utilization Plan. If the bidder intends to subcontract, the bidder should take the following actions to achieve the set-aside subcontracting goal requirements:

1. Attempt to locate eligible small businesses in Categories I, II, and III appropriate to the RFP;
2. Request a listing of small businesses by Category from the New Jersey of Revenue, Small Business Enterprise Unit;
3. Record efforts to locate eligible businesses, including the names of businesses contacted and the means and results of such contacts;
4. Provide all potential subcontractors with detailed information regarding the specifications;
5. Attempt, whenever possible, to negotiate prices with potential subcontractors submitting higher than acceptable price quotes;
6. Obtain, in writing, the consent of any proposed subcontractor to use its name in response to the RFP; and,
7. Maintain adequate records documenting efforts to achieve the set-aside subcontracting goals.

Proposals should also contain a copy of the New Jersey of Revenue, Small Business Enterprise Unit's proof of registration as a small business for any business proposed as a subcontractor; and documentation of the bidder's good faith effort to meet the targets of the set-aside subcontracting requirement in sufficient detail to permit the Bid Review Unit of the Division to effectively assess the bidder's efforts to comply if the bidder has failed to attain the statutory goals.

If the bidder chooses to use subcontractors and fails to meet the small business subcontracting targets set forth above, the bidder must submit documentation demonstrating its good faith effort to meet the targets with its proposal or within seven (7) business days upon request.

NOTE A BIDDER'S FAILURE TO SATISFY THE SMALL BUSINESS SUBCONTRACTING TARGETS OR PROVIDE SUFFICIENT DOCUMENTATION OF ITS GOOD FAITH EFFORTS TO MEET THE TARGETS WITH THE PROPOSAL OR WITHIN SEVEN (7) DAYS UPON REQUEST SHALL PRECLUDE AWARD OF A CONTRACT TO THE BIDDER.

If awarded the contract, the bidder shall notify each subcontractor listed in the Plan, in writing.

Each bidder awarded a contract for a procurement which contains the set-aside subcontracting goal requirement shall fully cooperate in any studies or surveys which may be conducted by the State to determine the extent of the bidder's compliance with N.J.A.C. 17:13-1.1 et seq., and this RFP.

4.4.1.6 BID SECURITY

The amount of bid security is noted on the RFP Signatory Page accompanying this RFP. Such security must be submitted with the bidder's proposal. In the event the bidder has an annual bid bond on file with the Division, the bidder should so note in the appropriate box on RFP Signatory Page accompanying this RFP. If submitting an ebid, the bid security must be received by the Purchase Bureau of the Division of Purchase and Property at the date and time as indicated on the RFP cover sheet.

THE LOCATION IS AS FOLLOWS:

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

Failure to submit the bid security in the required timeframe will result in bid rejection.

Acceptable forms of bid security are as follows:

- A properly executed individual or annual bid bond issued by an insurance or security company authorized to do business in the State of New Jersey, a certified or cashier's check drawn to the order of the Treasurer, State of New Jersey, or an irrevocable letter of credit drawn naming the Treasurer, State of New Jersey as beneficiary issued by a federally insured financial institution.

The State will hold all bid security during the evaluation process. As soon as is practicable after the completion of the evaluation, the State will:

- (a) Issue an award notice for those offers accepted by the State;
- (b) Return all bond securities to those who have not been issued an award notice.

All bid security from contractors who have been issued an award notice shall be held until the successful execution of all required contractual documents and bonds (performance bond, insurance, etc). If the contractor fails to execute the required contractual documents and bonds within thirty (30) calendar days after receipt of award notice, the contractor may be found in default and the contract terminated by the State. In case of default, the State reserves all rights inclusive of, but not limited to, the right to purchase material and/or to complete the required work in accordance with the New Jersey Administrative Code and to recover any actual excess costs from the contractor. Collection against the bid security shall be one of the measures available toward the recovery of any excess costs.

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 and Attachment 1 – Price Schedule.

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 proposal 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.

4.4.2.2 SERVICES SOURCE DISCLOSURE CERTIFICATION FORM

Pursuant to N.J.S.A. 52:34-13.2, prior to an award of contract, the bidder is required to submit a completed source disclosure form. The bidder's inclusion of the completed Services Source Disclosure Form with the proposal is requested and advised. Refer to RFP Section 7.1.2 for additional information concerning this requirement.

4.4.3 TECHNICAL PROPOSAL

In this section, the bidder shall describe its approach and plans for accomplishing the work outlined in the Scope of Work section, i.e., Section 3.0. The bidder must set forth its understanding of the requirements of this RFP and its ability to successfully

complete the contract. This section of the proposal should minimally contain the information identified below.

4.4.3.1 MANAGEMENT OVERVIEW

a. Narrative

The bidder shall set forth its overall technical approach and plans to meet the requirements of the RFP in a narrative format. This narrative shall confirm that the bidder understands the objectives that the contract is intended to meet, the nature of the required work and the level of effort necessary to successfully complete the contract. This narrative should demonstrate to the State that the bidder's general approach and plans to undertake and complete the contract are appropriate to the tasks and subtasks involved.

Mere reiterations of RFP tasks and subtasks are strongly discouraged, as they do not provide insight into the bidder's ability to complete the contract. The bidder's response to this section should be designed to demonstrate to the State that the bidder's detailed plans and approach proposed to complete the Scope of Work are realistic, attainable and appropriate and that the bidder's bid proposal will lead to successful contract completion.

b. Case Study of Audit of Affiliate Transactions and Management Audit of New Jersey Natural Gas Company (NJNG).

As part of its proposal, the bidder shall provide a response to a case study of an Audit of Affiliate Transactions and a Comprehensive Management Audit of New Jersey Natural Gas Company (NJNG) based on the information offered in this RFP and any other information that the bidder may discover on its own through publically available information.

New Jersey Resources (NYSE: NJR) – NJR is a publicly held energy service holding company that provides retail and wholesale energy services to customers in New Jersey and in states from the Gulf Coast to New England, including the Mid-Continent region and Canada. NJR is a New Jersey corporation formed in 1981 pursuant to a corporate reorganization. For the year ended September 30, 2010, New Jersey Resources' had total operating revenues of \$2.6 billion (rounded) and net income of \$117 million (rounded). NJR's subsidiaries include:

- ❖ New Jersey Natural Gas (NJNG) – NJNG is a local natural gas distribution company that provides regulated energy service to residential and commercial customers in central and northern New Jersey. NJNG serves approximately 490,000 residential and commercial customers in New Jersey's Monmouth, Ocean, Middlesex, Burlington and Morris counties. Its service territory encompasses 1,516 square miles, covering 105 municipalities with an estimated population of 1.4 million people. NJNG also participates in the off-system sales and capacity release markets. NJNG is regulated by the New Jersey Board of Public Utilities. Its annual customer growth rate of approximately 1.3 percent is expected to continue with projected additions of 12,000 to 14,000 new customers over the next two years.

- ❖ NJR Energy Services (NJRES) – NJRES maintains and transacts around a portfolio of physical assets consisting of natural gas storage and transportation contracts and also provides wholesale energy management services to other energy companies.
- ❖ NJR Energy Holdings Corporation (NJREH) -- NJREH invests in energy-related ventures through its subsidiaries NJNR Pipeline Company and NJR Steckman Ridge Storage Company.
- ❖ NJR Energy Investments (NJREI) – NJREI consolidates the Company's unregulated energy-related investments and includes the subsidiaries of NJR Clean Energy Ventures (NJRCEV) which invests in clean energy projects, NJR Investment which makes and holds certain energy-related investments primarily through equity investments of public companies, and NJR Energy Corporation (NJR Energy) which invests in energy-related ventures.
- ❖ NJR Retail Holdings (Retail Holdings) – Retail Holdings consolidates the Company's unregulated retail operations and includes the subsidiaries of NJR Home Services (NJRHS) which provides heating, ventilation and cooling service repair and contract services to approximately 149,400 customers and invests in clean energy projects, Commercial Realty and Resources (CR&R) holds and develops commercial real estate, and NJR Plumbing Services (NJRPS) which provides plumbing repair and installation services.
- ❖ NJR Service (NJR Service) – NJR Service provides shared administrative services, including corporate communications, financial and planning, internal audit, legal, human resources and information technology for NJR and all subsidiaries.

4.4.3.2 CONTRACT MANAGEMENT

The bidder should describe its specific plans to manage, control and supervise the contract to ensure satisfactory contract completion according to the required schedule. The plan should include the bidder's approach to communicate with the State Contract Manager including, but not limited to, status meetings, status reports, etc.

4.4.3.3 CONTRACT SCHEDULE

The bidder should include a contract schedule. If key dates are a part of this RFP, the bidder's schedule should incorporate such key dates and should identify the completion date for each task and sub-task required by the Scope of Work. Such schedule should also identify the associated deliverable item(s) to be submitted as evidence of completion of each task and/or subtask.

The bidder should identify the contract scheduling and control methodology to be used and should provide the rationale for choosing such methodology. The use of Gantt, PERT or other charts is at the option of the bidder.

4.4.3.4 MOBILIZATION AND IMPLEMENTATION PLAN

Not applicable to this procurement.

4.4.3.5 POTENTIAL PROBLEMS

The bidder should set forth a summary of any and all problems that the bidder anticipates during the term of the contract. For each problem identified, the bidder should provide its proposed solution.

4.4.4 ORGANIZATIONAL SUPPORT AND EXPERIENCE

The bidder should include information relating to its organization, personnel, and experience, including, but not limited to, references, together with contact names and telephone numbers, evidencing the bidder's qualifications, and capabilities to perform the services required by this RFP. This section of the proposal must minimally contain the information identified below.

4.4.4.1 LOCATION

The bidder should include the address of the bidder's office where responsibility for managing the contract will take place. The bidder should include the telephone number and name of the individual to contact.

4.4.4.2 ORGANIZATION CHARTS

- a. **Contract-Specific Chart.** The bidder should include a contract organization chart, with names showing management, supervisory and other key personnel (including subcontractor management, supervisory or other key personnel) to be assigned to the contract. The chart should include the labor category and title of each such individual.
- b. **Chart for Entire Firm.** The bidder should include an organization chart showing the bidder's entire organizational structure. This chart should show the relationship of the individuals assigned to the contract to the bidder's overall organizational structure.

4.4.4.3 RESUMES

Detailed resumes should be submitted for all management, supervisory and key personnel to be assigned to the contract. Resumes should emphasize relevant qualifications and experience of these individuals in successfully completing contracts of a similar size and scope to those required by this RFP. Resumes should include the following:

- The individual's previous experience in completing each similar contract;
- Beginning and ending dates for each similar contract;
- A description of the contract demonstrating how the individual's work on the completed contract relates to the individual's ability to contribute to successfully providing the services required by this RFP; and
- With respect to each similar contract, the name and address of each reference together with a person to contact for a reference check and a telephone number.

The bidder should provide detailed resumes for each 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 designated to perform. When a bidder submits resumes pursuant to this paragraph, the bidder shall redact the social security numbers, home addresses, personal telephone numbers and any other personally identifying information other than the individual's name from the resume.

4.4.4.4 BACKUP STAFF

The bidder should include a list of backup staff that may be called upon to assist or replace primary individuals assigned. Backup staff must be clearly identified as backup staff.

In the event the bidder must hire management, supervisory and/or key personnel if awarded the contract, the bidder should include, as part of its recruitment plan, a plan to secure backup staff in the event personnel initially recruited need assistance or need to be replaced during the contract term.

4.4.4.5 EXPERIENCE WITH CONTRACTS OF SIMILAR SIZE AND SCOPE

The bidder should provide a comprehensive listing of contracts of similar size and scope that it has successfully completed, as evidence of the bidder's ability to successfully complete the services required by this RFP. Emphasis should be placed on contracts that are similar in size and scope to the work required by this RFP. A description of all such contracts should be included and should show how such contracts relate to the ability of the firm to complete the services required by this RFP. For each such contract, the bidder should provide two names and telephone numbers of individuals for the other contract party. Beginning and ending dates should also be given for each contract.

The bidder should provide documented experience to demonstrate that each subcontractor has successfully performed work on contracts of a similar size and scope to the work that the subcontractor is designated to perform in the bidder's proposal. The bidder must provide a detailed description of services to be provided by each subcontractor.

4.4.4.6 FINANCIAL CAPABILITY OF THE BIDDER

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.

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

Not applicable to this procurement.

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 **four (4) 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 **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 SUBSTITUTION OF STAFF

The contractor shall forward a request to substitute staff to the State Contract Manager for consideration and approval. No substitute personnel are authorized to begin work until the contractor has received written approval to proceed from the State Contract Manager.

If it becomes necessary for the contractor to substitute any management, supervisory or key personnel, the contractor shall identify the substitute personnel and the work to be performed. The contractor must provide detailed justification documenting the necessity for the substitution. Resumes must be submitted evidencing that the individual(s) proposed as substitute(s) have qualifications and experience equal to or better than the individual(s) originally proposed or currently assigned.

5.7 SUBSTITUTION OR ADDITION OF SUBCONTRACTORS(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.

5.8 OWNERSHIP OF MATERIAL

All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the contract, including, but not limited to, all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the services required under this contract shall be and remain the property of the State of New Jersey and shall be delivered to the State of New Jersey upon thirty (30) days notice by the State. With respect to software computer programs and/or source codes developed for the State, the work shall be considered "work for hire", i.e., the State, not the contractor or subcontractor, shall have full and complete ownership of all software computer programs and/or source codes developed. To the extent that any of such materials may not, by operation of the law, be a work made for hire in accordance with the terms of this Contract, contractor or subcontractor hereby assigns to the State all right, title and interest in and to any such material, and the State shall have the right to obtain and hold in its own name and copyrights, registrations and any other proprietary rights that may be available.

Should the bidder anticipate bringing pre-existing intellectual property into the project, the intellectual property must be identified in the proposal. Otherwise, the language in the first paragraph of this section prevails. If the bidder identifies such intellectual property ("Background IP") in its proposal, then the Background IP owned by the bidder on the date of the contract, as well as any modifications or adaptations thereto, remain the property of the bidder. Upon contract award, the bidder or contractor shall grant the State a non-exclusive, perpetual royalty free license to use any of the bidder/contractor's Background IP delivered to the State for the purposes contemplated by the contract.

5.9 SECURITY AND CONFIDENTIALITY

5.9.1 DATA CONFIDENTIALITY

All financial, statistical, personnel, customer and/or technical data supplied by the State to the contractor are confidential. The contractor must secure all data from manipulation, sabotage, theft or breach of confidentiality. The contractor is prohibited from releasing any financial, statistical, personnel, customer and/or technical data supplied by the State that is deemed confidential. Any use, sale, or offering of this data in any form by the contractor, or any individual or entity in the contractor's charge or employ, will be considered a violation of this contract and may result in contract termination and the contractor's suspension or debarment from State contracting. In addition, such conduct may be reported to the State Attorney General for possible criminal prosecution.

The contractor shall assume total financial liability incurred by the contractor associated with any breach of confidentiality.

The contractor and all project staff including its subcontractor(s) must complete and sign confidentiality and non-disclosure agreements provided by the State and require all staff to view yearly security awareness and confidentiality training modules provided by the contractor. It shall be the contractor's responsibility to ensure that any new staff sign the confidentiality agreement and complete the security awareness and confidentiality training modules within one month of the employees' start date.

Security clearance/background check for all contractors and project staff must be obtained and provided to the State (to protect the State of New Jersey from losses resulting from contractor employee theft, fraud or dishonesty) upon request. Refer to the National Institute of Standards and Technology (NIST) Special Publication (SP) 300-12, An Introduction to Computer Security: The NIST Handbook, Section 10.1.3, Filling the Position – Screening and Selecting.

5.9.2 SECURITY STANDARDS

1. Network Security: The contractor shall maintain the contractor's network security that – at a minimum – includes: network firewall provisioning, intrusion detection and prevention, vulnerability assessments and regular independent third party penetration testing. The contractor shall maintain network security that conforms to one of the following:
 - A. Current standards set forth and maintained by the National Institute of Standards and Technology (NIST), including those at: <http://web.nvd.nist.gov/view/ncp/repository>
or
 - B. Any recognized comparable security standard that the contractor then applies to its own infrastructure and is approved by the NJ Office of Information Technology (NJOIT). Industry standards such as ISO 27002, PCI Data Security Standard and ISF Standard of Good Practice, align with security best practices from SANS and CISecurity.
- The contractor shall be subject to the same security and infrastructure review processes that are required by NJOIT and its partner Departments and Agencies. The contractor shall submit relevant documentation and participate in the System Architecture Review (SAR) process.
- For “outsourced hosting services”, the contractor must demonstrate the ability to not only secure the physical application infrastructure utilizing the above mentioned security requirements, but also control and secure physical access to the application hosting facilities, the racks supporting network infrastructure and processing server equipment, web, application and database servers.
- If the contractor is not supplying “dedicated” hardware resources to host State of New Jersey applications and data, the contractor must demonstrate its strategy to maintain application and/or stack isolation using commercially available security devices to maintain security zones, routing isolation and access control to infrastructure devices and access/security logging (AAA) within its infrastructure.

- The contractor shall provide a detailed system design document showing a Network Plan, Disaster Contingency Plan and Security Plan. Logical and physical diagrams are required.
2. Application Security: The contractor at a minimum shall run application vulnerability assessment scans during development and system testing. Vulnerabilities shall be remediated prior to production release.
 1. All systems and applications shall be subject to Vulnerability Assessment scans on a regular basis.
 3. Data Security: The contractor at a minimum shall protect and maintain the security of data in accordance with generally accepted industry practices and to the standards and practices required by NJOIT.
 - Any Personally Identifiable Information must be protected. All data must be classified in accordance with the State's Asset Classification and Control policy, 08-04-NJOIT (www.nj.gov/it/ps). Additionally, data must be disposed of in accordance with the State's Information Disposal and Media Sanitation policy, 09-10-NJOIT (www.nj.gov/it/ps).
 - Data usage, storage, and protection is subject to any applicable regulatory requirements, including those for HIPAA (Health Insurance Portability and Accountability Act), and PII (Personally Identifiable Information), Tax Information Security Guidelines for Federal, State, and Local Agencies (IRS Publication 1075) and the New Jersey State tax confidentiality statute, as amended, N.J.S.A. 54:50-8, Payment Card Industry (PCI) Data Security Standard, State of New Jersey Identity Theft Prevention Act, June 2005, State of New Jersey Drivers' Privacy Protection Act of 1994, Pub.L.103-322
 4. Data Transmission: The contractor shall only transmit or exchange State of New Jersey data with other parties when expressly requested in writing and permitted by and in accordance with requirements of the State of New Jersey. The contractor shall only transmit or exchange data with the State of New Jersey or other parties through secure means supported by current technologies. The contractor shall encrypt all data defined as personally identifiable or confidential by the State of New Jersey or applicable law, regulation or standard during any transmission or exchange of that data.
 5. Data Storage: All data provided by the State of New Jersey or gathered by the contractor on behalf of the State of New Jersey must be stored, processed, and maintained solely in accordance with a project plan and system topology approved by the State Contract Manager. No State data shall be processed on or transferred to any device or storage medium including portable media, smart devices and/or USB devices, unless that device or storage medium has been approved in advance in writing by the State Project Manager.
 6. Data Scope: All provisions applicable to data include data in any form of transmission or storage, including but not limited to: database files, text files, backup files, log files, XML files, and printed copies of the data.

7. Data Re-Use: All State provided data shall be used expressly and solely for the purposes enumerated in the contract. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of the contractor. No State data of any kind shall be transmitted, exchanged or otherwise passed to other contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by the State Contract Manager.
8. Data Breach: Unauthorized Release Notification: The contractor shall comply with all applicable State and Federal laws that require the notification of individuals in the event of unauthorized release of personally-identifiable information or other event requiring notification. In the event of a breach of any of the contractor's security obligations or other event requiring notification under applicable law ("Notification Event"), the contractor shall assume responsibility for informing the State Contract Manager and all such individuals in accordance with applicable law and to indemnify, hold harmless and defend the State of New Jersey, its officials, and employees from and against any claims, damages, or other harm related to such Notification Event.
9. End of Contract Data Handling: Upon termination of this Contract the contractor shall erase, destroy, and render unreadable all contractor copies of State data according to the standards enumerated in accordance with the State's Information Disposal and Media Sanitation policy, 09-10-NJOIT (www.nj.gov/it/ps) and certify in writing that these actions have been complete within thirty (30) days of the termination of this Contract or within seven (7) days of the request of an agent of the State whichever shall come first.
10. Security Audit: The contractor must allow State assigned staff full access to all operations for security inspections and audits which may include reviews of all issues addressed in description of the security approach and willingness to enter into good faith discussions to implement any changes.

5.9.3 SECURITY PLAN

The contractor must provide a security plan. The document shall describe the administrative, physical, technical and systems controls to be used by the system and/or services. The contractor's security plan must, at a minimum, provide security measures for the following areas:

- Facilities Physical Security
- System Security
- System Data Security
- Administrative and Personnel Security

The security plan shall provide for review of the contractor's operations and control system. The contractor shall have the capability to detect and report attempted unauthorized entries into the facility and system. All security requirements for the contractor apply to development, testing, production and backup systems.

The contractor shall provide a summary overview of the security document and describe how it has been incorporated into a larger security program for automated data processing. In the plan, the contractor shall highlight security features of the system.

In addition, the security plan shall identify and define:

- Regulations and security requirements – how the contractor will address security requirements such as PCI, HIPAA, FISMA and etc.
- System, Administrative and Personnel Security - the security responsibilities of and supervision required for information owned and / or operated by the contractor. Security responsibilities include responsibilities for administration of the infrastructure, implementing or maintaining security and the protection of the confidentiality, integrity, and availability of information systems or processes.
- Workforce Security - the control process for hiring and terminating of contractor's employees, and method used for granting and denying access to the contractor's network, systems and applications. Identify and define audit controls when employment of the employee terminates.
- Role based security access – the products and methods for role based security and access to the contractor's infrastructure and access to the State's infrastructure.
- Password Management – the appropriate password management controls to meet defined regulation or security requirements.
- Logging / Auditing controls – the contractor's audit control methods and requirements.
- Incident Management – the methods for detecting, reporting and responding to an incident, vulnerabilities and threats.
- Vulnerability / Security Assessment – the products and methods used for scanning contractor's infrastructure for vulnerabilities and remediation of the vulnerabilities. Identify and define methods used for initiating and completing security assessments.
- Anti-virus / malware controls – the products and methods for anti-virus and malware controls that meet industry standards. It shall include policy statements that require periodic anti-viral software checks of the system to preclude infections and set forth its commitment to periodically upgrade its capability to maintain maximum effectiveness against new strains of software viruses.
- Firewall – the products and methods for firewall control process and intrusion detection methodology.
- Database – the products and methods for safeguarding the database(s).
- Server and infrastructure – the products and methods for "hardening" of the hardware' operating systems.
- Transmission - the products and methods on how its system addresses security measures regarding communication transmission, access and message validation.
- Data Integrity – the products and methods on the integrity of all stored data and the electronic images, and the security of all files from unauthorized access. The contractor must be able to provide reports on an as-needed basis on the access or change for any file within the system.

5.10 NEWS RELEASES

The contractor is not permitted to issue news releases pertaining to any aspect of the services being provided under this contract without the prior written consent of the Director.

5.11 ADVERTISING

The contractor shall not use the State's name, logos, images, or any data or results arising from this contract as a part of any commercial advertising without first obtaining the prior written consent of the Director.

5.12 LICENSES AND PERMITS

The contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this contract. The contractor shall supply the State Contract Manager with evidence of all such licenses, permits and authorizations. This evidence shall be submitted subsequent to the contract award. All costs associated with any such licenses, permits and authorizations must be considered by the bidder in its proposal.

5.13 CLAIMS AND REMEDIES

5.13.1 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.

5.13.2 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.

5.13.3 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.

5.14 LATE DELIVERY

The contractor must immediately advise the State Contract Manager of any circumstance or event that could result in late completion of any task or subtask called for to be completed on a date certain.

5.15 RETAINAGE

See Section 1.2.1, Engagement Process, for details related to the retainage amount for the individual engagements.

5.16 ADDITIONAL WORK AND/OR SPECIAL PRODUCTS

The contractor shall not begin performing any additional work or special projects without first obtaining written approval from both the State Contract Manager and the Director.

In the event of additional work and/or special projects, the contractor must present a written proposal to perform the additional work to the State Contract Manager. The proposal should provide justification for the necessity of the additional work. The relationship between the additional work and the base contract work must be clearly established by the contractor in its proposal.

The contractor's written proposal must provide a detailed description of the work to be performed broken down by task and subtask. The proposal should also contain details on the level of effort, including hours, labor categories, etc., necessary to complete the additional work.

The written proposal must detail the cost necessary to complete the additional work in a manner consistent with the contract. The written price schedule must be based upon the hourly rates, unit costs or other cost elements submitted by the contractor in the contractor's original proposal submitted in response to this RFP. Whenever possible, the price schedule should be a firm, fixed price to perform the required work. The firm fixed price should specifically reference and be tied directly to costs submitted by the contractor in its original proposal. A payment schedule, tied to successful completion of tasks and subtasks, must be included.

Upon receipt and approval of the contractor's written proposal, the State Contract Manager shall forward same to the Director for the Director's written approval. Complete documentation from the Using Agency, confirming the need for the additional work, must be submitted. Documentation forwarded by the State Contract Manager to the Director must include all other required State approvals, such as those that may be required from the State of New Jersey's Office of Management and Budget and NJOIT.

No additional work and/or special project may commence without the Director's written approval. In the event the contractor proceeds with additional work and/or special projects without the Director's written approval, it shall be at the contractor's sole risk. The State shall be under no obligation to pay for work performed without the Director's written approval.

5.17 MODIFICATIONS AND CHANGES TO THE STATE OF NJ STANDARD TERMS AND CONDITIONS

5.17.1 INDEMNIFICATION

Section 4.1 of the State of NJ Standard Terms and Conditions is deleted and replaced with the following:

4.1 Indemnification

The contractor's liability to the State for actual, direct damages resulting from the contractor's performance or non-performance, or in any manner related to the contract, for any and all claims, shall be limited in the aggregate to 100 % of the value of the contract, except that such limitation of liability shall not apply to the following:

1. The contractor's obligation to indemnify the State of New Jersey and its employees from and against any claim, demand, loss, damage or expense relating to bodily injury or the death of any person or damage to real property or tangible personal property, incurred from the work or materials supplied by the contractor under the contract caused by negligence or willful misconduct of the contractor;
2. The contractor's breach of its obligations of confidentiality; and,
3. Contractor's liability with respect to copyright indemnification.

The contractor's indemnification obligation is not limited by but is in addition to the insurance obligations contained in Section 4.2 of the State of NJ Standard Terms and Conditions.

The contractor shall not be liable for special, consequential, or incidental damages.

5.17.2 INSURANCE - PROFESSIONAL LIABILITY INSURANCE

Section 4.2 of the State of NJ Standard Terms and Conditions regarding insurance is modified with the addition of the following section regarding Professional Liability Insurance.

d. Professional Liability Insurance: The contractor shall carry Errors and Omissions, Professional Liability Insurance and/or Professional Liability Malpractice Insurance sufficient to protect the contractor from any liability arising out the professional obligations performed pursuant to the requirements of the contract. The insurance shall be in the amount of not less than \$500,000 and in such policy forms as shall be approved by the State. If the Contractor has claims-made coverage and subsequently changes carriers during the term of the contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

5.18 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.

5.19 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 to request access to this application.

5.20 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.

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 evaluation criteria categories, not necessarily listed in order of significance, will be used to evaluate proposals received in response to this RFP. The evaluation criteria categories may be used to develop more detailed evaluation criteria to be used in the evaluation process:

6.7.1 TECHNICAL EVALUATION CRITERIA

- a. Personnel: The qualifications and experience of the bidder's management, supervisory, and key personnel assigned to the contract, including the candidates recommended for each of the positions/roles required.
- b. Experience of firm: The bidder's documented experience in successfully completing contracts of a similar size and scope in relation to the work required by this RFP.
- c. Ability of firm to complete the Scope of Work based on its Technical Proposal: The overall ability of the bidder to undertake and successfully complete the technical requirements of the contract in a timely manner.

6.7.2 BIDDER'S PRICE SCHEDULE

For evaluation purposes, bidders will be ranked according to the total bid price for each proposed contract term offered located on the Price Sheets accompanying this RFP.

For evaluation purposes, each bidder's proposed offer(s) will be ranked according to the formula:

Price Proposal Points = predetermined points x (lowest submitted price proposal/bidder's submitted price proposal).

The proposal with the highest number of points will be ranked the highest.

The price proposal for each bidder used to determine the price proposal points, will be the lowest acceptable price proposal between the original price proposal and the Best and Final Offer proposal, if applicable, submitted by each bidder.

6.7.3 TOTAL PROPOSAL SCORE

Each evaluated proposal will receive a Total Proposal Score based on the following formula:

Average Technical Evaluation Score + Price Proposal Points = Total Proposal Score.

The bidder receiving the highest Total Proposal Score will be recommended for contract award.

In the event of a tie, the proposal with the highest technical score amongst the tied proposals will be recommended for contract award.

6.7.4 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.

6.7.5 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 6.8 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 proposal opening. Only the name and address of each bidder will be publicly announced at proposal 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.

7.1.2 SOURCE DISCLOSURE REQUIREMENTS

Pursuant to N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer. Also refer to Section 3.6 Service Performance Within U.S. of the State of NJ Standard Terms and Conditions.

Pursuant to the statutory requirements, the intended awardee of a contract primarily for services with the State of New Jersey must disclose the location by country where

services under the contract, including subcontracted services, will be performed. The Source Disclosure Certification form accompanies the subject RFP. FAILURE TO SUBMIT SOURCING INFORMATION WHEN REQUESTED BY THE STATE SHALL PRECLUDE AWARD OF A CONTRACT TO THE BIDDER.

If any of the services cannot be performed within the United States, the bidder shall state with specificity the reasons why the services cannot be so performed. The Director shall determine whether sufficient justification has been provided by the bidder to form the basis of his or her certification that the services cannot be performed in the United States and whether to seek the approval of the Treasurer.

7.1.2.1 BREACH OF CONTRACT

A SHIFT TO PROVISION OF SERVICES OUTSIDE THE UNITED STATES DURING THE TERM OF THE CONTRACT SHALL BE DEEMED A BREACH OF CONTRACT. If, during the term of the contract, the contractor or subcontractor, who had on contract award declared that services would be performed in the United States, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract. Such contract shall be subject to termination for cause pursuant to Section 5.7b.1 of the State of NJ Standard Terms and Conditions, unless such shift in performance was previously approved by the Director and the Treasurer.

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.

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 award[s] shall be made with reasonable promptness by written notice to that responsible bidder(s), whose proposal(s), conforming to this RFP, is(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.

ATTACHMENT 1 – PRICE SCHEDULE

Auditing Services: Contracted Management Auditing Firms Board of Public Utilities, Division of Audits and Office of Clean Energy

Bid Number 13-X-22139

Refer to [RFP Section 3.0](#) (Scope of Work) for task requirements and deliverables, [RFP Section 2.0](#) for a definition of "Firm Fixed Price" and "All-inclusive Hourly Rate" and Section 4.4.6 (Price Schedule) for additional information regarding this Price Schedule.

Bidder's Name _____

YEAR 1

Line Item	Professional Skill Classification	Contract Year 1		
		Estimated Hours (a)	All Inclusive Hourly Rate (b)	Sub-Totals (a)(b)
1.	Partner	20	\$	\$
2.	Manager	20	\$	\$
3.	Supervisor	20	\$	\$
4.	Senior	20	\$	\$
5.	Staff	20	\$	\$
Total Hours		100		
Yearly Bid Price				\$

YEAR 2

Line Item	Professional Skill Classification	Contract Year 2		
		Estimated Hours (a)	All Inclusive Hourly Rate (b)	Sub-Totals (a)(b)
6.	Partner	20	\$	\$
7.	Manager	20	\$	\$
8.	Supervisor	20	\$	\$
9.	Senior	20	\$	\$
10.	Staff	20	\$	\$
Total Hours		100		
Yearly Bid Price				\$

YEAR 3

Line Item	Professional Skill Classification	Contract Year 3		
		Estimated Hours (a)	All Inclusive Hourly Rate (b)	Sub-Totals (a)(b)
11.	Partner	20	\$	\$
12.	Manager	20	\$	\$
13.	Supervisor	20	\$	\$
14.	Senior	20	\$	\$
15.	Staff	20	\$	\$
Total Hours		100		
Yearly Bid Price				\$

YEAR 4

Line Item	Professional Skill Classification	Contract Year 4		
		Estimated Hours (a)	All Inclusive Hourly Rate (b)	Sub-Totals (a)(b)
16.	Partner	20	\$	\$
17.	Manager	20	\$	\$
18.	Supervisor	20	\$	\$
19.	Senior	20	\$	\$
20.	Staff	20	\$	\$
Total Hours		100		
Yearly Bid Price				\$

TOTALS

Contract Year 1	\$
Contract Year 2	\$
Contract Year 3	\$
Contract Year 4	\$
Total Estimated Bid Price	\$

Bidder will be evaluated on the aggregation of price Lines 1 – 20, or the bidders' Total Estimated Bid Price for Years 1 – 4.

Price Line	Work to be Performed	All Inclusive Blended Hourly Rate
21.	*Litigation Support (Section 3.15)	\$
22.	**Additional Work (Section 5.16)	\$

* The bidder shall submit an all inclusive blended hourly rate for expert testimony regarding any litigation resulting from work performed in fulfillment of the requirements of this RFP upon request by the State Contract Managers (see RFP Section 3.15).

** The contractor shall submit a blended all inclusive hourly rate for additional work that may be utilized if additional work is authorized under RFP Section 5.16.

Please note that Price Lines 21 and 22 will not be included in the overall pricing evaluation. Price Lines 21 through 22 are All Inclusive Blended Hourly Rates that are not guaranteed as part of this contract.

The bidder must provide a price for each bid item or the bid proposal may be considered non-responsive.