



# Request for Proposal # 2023-RFP-171

## FOR: Board Governance Software Provider

Event	Date	Time
<b>Bidder's Electronic Question Due Date</b> (Refer to <a href="#">Section 1.3.1</a> of this RFP for more information.)	May 18, 2023	2:00 PM ET
<b>Pre-Proposal Conference</b> (Refer to <a href="#">Section 1.3.2</a> of this RFP for more information.)	N/A	N/A
<b>Site Visit</b> (Refer to <a href="#">Section 1.3.3</a> of this RFP for more information.)	N/A	N/A
<b>Proposal Submission Date</b> (Refer to <a href="#">Section 1.3.6</a> of this RFP for more information.)	June 6, 2023	2:00 PM ET

Dates are subject to change. All changes will be reflected in Addenda to the RFP posted on the New Jersey Economic Development Authority's website.

Designation	Status	Category
<b>Small Business Set-Aside</b>	Not Applicable <input checked="" type="checkbox"/>	Not Applicable <input checked="" type="checkbox"/>
	Entire Contract <input type="checkbox"/>	I <input type="checkbox"/>
	Partial Contract <input type="checkbox"/>	II <input type="checkbox"/>
	Subcontracting Only <input type="checkbox"/>	III <input type="checkbox"/>
<b>Disabled Veteran-Owned Business Set-Aside</b>	Not Applicable <input checked="" type="checkbox"/>	<input type="checkbox"/>
	Entire Contract <input type="checkbox"/>	<input type="checkbox"/>
	Partial Contract <input type="checkbox"/>	<input type="checkbox"/>
	Subcontracting Only <input type="checkbox"/>	<input type="checkbox"/>

**RFP Issued By:**

New Jersey Economic Development Authority  
 Procurement  
 36 West State Street, PO Box 990  
 Trenton, NJ 08625-0990  
 Main Reception Desk–Telephone: 609-858-6700

**Date:** 5/5/2023

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## **1.0 INFORMATION FOR PROPOSERS**

This Request for Proposals (RFP) is issued by the New Jersey Economic Development Authority (“Authority”, “EDA”) to solicit Proposals for Board Governance and Software Provider Services in the form of a web-based portal.

### **1.1 PURPOSE AND INTENT**

NJEDA is seeking a Board Governance Software Provider that has the capability to simplify and streamline crafting board meeting materials in one easy-to-use, secure, web-based platform for NJEDA Board members and staff. NJEDA intends to use the platform to create a master Board Book that combines several documents (word, PDF, excel) that can be exported into one (1) master PDF and viewed online in the software provider’s secure web-based browser.

The purpose of this RFP is to solicit Proposals for a Board Governance Software Provider. The Provider must have demonstrated experience in providing board governance management services in the form of a web-based portal. The board governance software shall provide a secure, web-based platform to be used to easily and quickly create board and committee books for review by members and staff and for evaluation and discussion at meetings, for storing and sharing materials with board members and staff, and to serve as a dynamic repository of board related materials (memos organized by year, month, and sub-organized by subject area) that can be used to access, export and review for reference and decision-making purposes.

The intent of this RFP is to award (1) one, (3) three-year contract, with (2) two, (1) one-year extension options, if deemed necessary by the Authority and dependent upon funding, to the responsible Proposer whose Proposal, conforming to this RFP is most advantageous to the Authority, price and other factors considered.

The Authority reserves the right to award in total or in part and reject any and all Proposals when it is determined to be in the best interest of the Authority, price and other factors considered.

The Authority’s Contract for Professional Services, please refer to Exhibit A, 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.

**PROPOSER’S NOTICE:** Pursuant to N.J.A.C. 17:27 et seq., prior to the award of a Contract, businesses must submit an active copy of a New Jersey Certificate of Employee Information Report or a copy of a Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program. This is satisfied by submitting the information referenced in this RFP Section 4.2.5.5. For additional information, please reference: [https://www.nj.gov/treasury/contract\\_compliance/index.shtml](https://www.nj.gov/treasury/contract_compliance/index.shtml).

### **1.2 BACKGROUND**

The New Jersey Economic Development Authority serves as the State’s principal agency for driving economic growth. The Authority is committed to making New Jersey a national model for inclusive and sustainable economic development by focusing on key strategies to help build strong and dynamic communities, create good jobs for New Jersey residents and provide pathways to a stronger and fairer economy. Through partnerships with a diverse range of stakeholders, the Authority creates and implements initiatives to enhance the economic vitality and quality of life in the State and strengthen New Jersey’s long-term economic competitiveness.

Since its inception in 1974, the Authority has provided billions of dollars in assistance to numerous projects within the State. These projects have created almost a half million jobs. In 2021, the Authority provided over \$528 million dollars in assistance to nearly 2,000 projects/companies and created more than 2,500 new full-time jobs. In addition, in 2021, NJEDA provided more than \$437 million dollars in Covid-19 business support to nearly 50,000 companies across the State of New Jersey.

### 1.3 KEY EVENTS

#### 1.3.1 ELECTRONIC QUESTION AND ANSWER PERIOD

The Authority will electronically accept written questions and inquiries from all potential Proposers via the web at [EDAProcurementQA@njeda.com](mailto:EDAProcurementQA@njeda.com) by the date and time shown on Page 1 of this RFP. Phone calls and/or faxes shall not be accepted.

The subject line of the e-mail should state:

{QUESTIONS-2023-RFP-171 – Board Governance Software Provider}

- A. Questions should be directly tied to the RFP and asked in consecutive order, from beginning to end, following the organization of the RFP and should begin by referencing the RFP page number and section number to which it relates;
- B. A Proposer must not contact the Authority's requesting department or any other staff/board member directly, in person, by telephone or by e-mail concerning this RFP **prior to the final award**. Any contact made outside of emailing inquiries via [EDAProcurementQA@njeda.com](mailto:EDAProcurementQA@njeda.com) will result in disqualification of the Proposer's Proposal;
- C. All Questions received and Answers given in response to this RFP will be answered in the form of an Addendum. Addenda, if any, will be posted on the Authority's website, <https://www.njeda.com/bidding/> as a separate file attachment, or incorporated into a revised, posted RFP, after the posted cut-off date for electronic questions and inquiries indicated on the RFP cover sheet; and
- D. Any Amendment to this RFP will become part of this solicitation and part of any Contract awarded as a result of this RFP.

#### 1.3.1.1 EXCEPTIONS TO THE AUTHORITY'S CONTRACT FOR PROFESSIONAL SERVICES

Questions regarding the Authority's Contract for Professional Services, please refer to Exhibit A, and exceptions or modifications to its mandatory requirements **must be requested by the Proposer during this Electronic Question and Answer Period** and should contain the Proposer's suggested changes and the reason(s) for the suggested changes. The Authority shall be under no obligation to grant or accept any requested changes (i.e., exceptions taken) to the specimen form of the Contract and will post all answers in the Addendum. Exceptions and/or modifications to the terms of the RFP and/or Contract submitted with the Proposal, subsequent to the expiration of the Question and Answer Period, will result in the rejection of the Proposer's Proposal.

#### 1.3.2 PRE-PROPOSAL CONFERENCE

Not Applicable.

#### 1.3.3 SITE VISIT

Not Applicable.

### **1.3.4 PROJECTED MILESTONE DATES**

The following dates are provided to Interested Proposers for planning purposes only. These are estimated timeline dates and do not represent a firm date commitment by which the Authority will take action:

Pre-Proposal Conference:	Not applicable.
Q&A Period Ends:	Thursday, May 18, 2023 @ 2:00 PM ET
If required, Addendum:	On or about Thursday, May 25, 2023 @ 2:00 PM ET
Proposals Due:	Tuesday, June 6, 2023 @ 2:00 PM ET
Estimated Recommendation for Award:	On or about July 14, 2023
Estimated Contract Execution:	On or about September 7, 2023

### **1.3.5 TIMELY SUBMISSION OF PROPOSALS**

In order to be considered for award, the Proposal must be received by the Authority at the appropriate location by the required time. Proposals not received prior to the Proposal opening deadline, as indicated on the RFP cover sheet, shall be rejected. If the Proposal opening deadline has been revised, the new RFP opening deadline will be shown on a posted RFP Amendment.

### **1.3.6 SUBMISSION OF PROPOSAL – ELECTRONIC OR HARD COPY**

In order to be evaluated and considered for award, the Proposal must be received by the Authority at the appropriate location and by the required time indicated on the cover sheet, either electronically or hard copy.

#### **1.3.6.1 ELECTRONIC PROPOSAL SUBMISSION (STRONGLY PREFERRED)**

Proposers should submit a complete, ELECTRONIC Proposal, in “read only” PDF file format using Adobe Acrobat Reader software that must be viewable by Authority evaluators. Proposers should ensure the submitted file(s) do not contain password-protection.

The subject line of the RFP submission and any attachments are all to be clearly labeled.

EACH electronically uploaded file (Proposal, Attachment Submittals, etc.) submission, should follow the following format:

“(Proposer’s Company Name) - Bid Submission-2023-RFP-171 Board Governance Software Provider, and the (file/document title)”

All RFP electronic Proposal documents must be uploaded to the Authority’s ShareFile system via:

<https://njeda.sharefile.com/r-r4157b55704984e749be52e30b194b6d5>

**It is highly recommended that the Proposer initiate the upload of the Proposal a minimum of four (4) hours prior to the Proposal submission due date/time on the front cover to allow some time to identify and troubleshoot any issues that may arise when using the Sharefile application. Technical inquiries may be directed to [EDAProcurementQA@njeda.com](mailto:EDAProcurementQA@njeda.com).**

**NOTE: Any bids received after the date and time specified shall not be considered.** All Proposal submissions, once opened, become the property of the Authority and cannot be returned to the Proposer. If a Proposer uploads multiple documents, the NJEDA will only consider the last version of the document uploaded, provided it is uploaded by the stated deadline.

### **1.3.6.2 ELECTRONIC SIGNATURE**

Pursuant to written policy, the Authority allows documents to be signed electronically and hereby agrees to be bound by such electronic signatures. Proposers submitting Proposals electronically, as signatory to the documents, may sign the forms listed in Section 4.2.3 (Required Compliance Documentation) of this solicitation, electronically, and agree to be bound by the electronic signatures. The Authority will accept the following types of electronic signatures: (1) Within Microsoft Word, an individual can go to the "Insert" ribbon at the top of the screen, then within the "Text" section go to the "Signature Line" and enter the information, which creates a security procedure/record attributable to the person signing when transmitted via e-mail or other electronic transfer or; (2) Within Adobe Acrobat DC, go to the "Fill & Sign" "Stamps-Dynamics" or "Certificates" within the "Tools" ribbon and enter the information, which creates a security procedure/record attributable to the person signing when transmitted via e-mail or other electronic transfer; or (3) Digital signatures from Adobe Acrobat DC or produced via similar signature authenticating program (i.e., DocuSign or similar software), which creates a security procedure/record attributable to the person signing.

By submitting an electronic signature, the Proposer is agreeing to be bound by the electronic signature.

Scanned physical signatures will also be accepted, provided that the forms are otherwise properly completed.

This practice applies only to Proposals submitted electronically and the forms listed above. Both electronic signatures and scanned physical signatures will also be accepted, provided that the forms are otherwise properly completed.

### **1.3.6.3 HARD COPY PROPOSAL SUBMISSION**

If submitting a hard copy Proposal, a sealed Proposal must be delivered by the required date and time indicated on the cover sheet, in order to be considered for award to the following:

Sabrina Andreanidis  
Procurement Officer  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
36 WEST STATE STREET  
PO BOX 990  
TRENTON NEW JERSEY 08625-0990

The exterior of all Proposal packages is to be clearly labeled with the Proposal title, bid opening date and time, and the Proposer's Name and Address:

**2023-RFP-171 Board Governance Software Provider  
June 6, 2023 @ 2:00 PM ET**

Submit one (1) ink signed, original hard copy Proposal with all the required documentation and signatures in ink, and one (1) copy marked "COPY".

Proposers submitting Proposals in hard copy format must provide forms with original, physical signatures; otherwise the Proposal may be deemed non-responsive.



Proposals submitted by facsimile will not be considered.

**ANY PROPOSAL NOT RECEIVED ON TIME AT THE LOCATION INDICATED, WILL BE AUTOMATICALLY REJECTED. THE AUTHORITY WILL NOT BE RESPONSIBLE FOR LATE POSTAL OR DELIVERY SERVICE. THE POSTMARK DATE WILL NOT BE CONSIDERED IN HONORING THE BID DATE RECEIPT AND TIME.**

The Authority shall not be responsible for any delivery/postal service's failure to deliver in a timely manner. A Proposer using U.S. Postal Service regular or express mail services should allow additional time to ensure timely receipt of Proposals since the U.S. Postal Service does not deliver directly to the Authority.

Directions to the Authority's Trenton location can be found at the following web address: <https://www.njeda.com/about/> at the bottom of the screen under the "Locations" section of the website.

Any Proposal received after the date and time specified shall not be considered, whether submitted electronically or in hard copy.

#### **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 AUTHORITY'S WEB SITE. TO ACCESS ADDENDA, THE PROPOSER MUST LOCATE THIS PROPOSAL NUMBER AT <https://www.njeda.com/bidding/> - "Business Support Administrative Goods and Services - Bidding Opportunities".

There are no designated dates for release of Addenda. Therefore all interested Proposers should check the Authority's "Bidding Opportunities" website on a daily basis from time of RFP issuance through the Proposal submission opening.

**It is the sole responsibility of the Proposer to be knowledgeable of all Addenda related to this procurement.**

##### **1.4.2 PROPOSER RESPONSIBILITY**

The Proposer 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 Proposer's failure to be knowledgeable as to all requirements of this RFP solicitation.

##### **1.4.3 COST LIABILITY**

The Authority assumes no responsibility and bears no liability for costs incurred by a Proposer in the preparation and submittal of a Proposal in response to this RFP solicitation.

##### **1.4.4 CONTENTS OF PROPOSAL – OPEN PUBLIC RECORDS ACT**

The Authority, as an instrumentality of the State of New Jersey, is subject to the New Jersey Open Public Records Act (N.J.S.A. 47:1A-1.1 et seq.), as amended and including all applicable regulations and policies and applicable case law, including the common law right to know. Subsequent to the Proposal submission opening, all information submitted by Proposer in response

to a solicitation is considered public information, notwithstanding any disclaimers to the contrary submitted by a Bidder. When the RFP contains a negotiation component, the Proposal will not be subject to public disclosure until a conditional Notice of Award is issued.

As part of its Proposal, a Bidder may designate any data or materials it asserts are exempt from public disclosure under OPRA and/or the common law, explaining the basis for such assertion. The location in the Proposal of any such designation should be clearly stated in a cover letter.

A Bidder shall not designate any price lists and/or catalogs submitted as exempt from public disclosure.

Any proprietary and/or confidential information in the Bidder's Proposal will be redacted by the Authority. 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 Proposer has a good faith legal and/or factual basis for such assertion. The Authority reserves the right to make the determination as to what is proprietary or confidential, and will advise the Proposer accordingly. **The Authority will not honor any attempt by a Proposer to designate its entire Proposal as proprietary, confidential and/or to claim copyright protection for its entire Proposal.** Copyright law does not prohibit access to a record which is otherwise available under OPRA. In the event of any challenge to the Proposer's assertion of confidentiality with which the Authority does not concur, the Proposer shall be solely responsible for defending its designation, but in doing so, all costs and expenses associated therewith shall be the responsibility of the Bidder. The Authority assumes no such responsibility or liability.

#### **1.4.5 PROPOSAL SUBMISSION ANNOUNCEMENT**

On the date and time Proposals are due under the RFP, only the names and addresses of the Proposer(s) submitting Proposals will be publicly announced and the contents of the Proposals shall remain proprietary and/or confidential, pursuant to Negotiation and Best and Final Offer (BAFO) Section 6.8, until the Conditional/Notice of Intent to Award is issued.

NOTE: All Proposal submissions, once publicly opened, become the property of the Authority and cannot be returned to the Proposer.

#### **1.4.6 PROPOSAL ERRORS – BEFORE & AFTER BID OPENING**

A Proposer(s) may withdraw its Proposal as described below:

A Proposer(s) may request that its Proposal be withdrawn prior to the Proposal submission opening. Such request must be made, in writing, via e-mail to the Procurement Department at email: [EDAProcurementQA@njeda.com](mailto:EDAProcurementQA@njeda.com), with a reference to company name, RFP number, RFP Title, a Proposal identifier if one was applied, Proposal submission date, and method of Proposal submission (i.e., electronic version or hard copy delivery). The written withdrawal request must be signed and submitted by a duly authorized representative of the Proposing entity to be valid.

In the event the Proposer withdraws its Proposal in person, a business card and proper identification must be presented. Proposals so withdrawn will be returned to the Proposer unopened.

If the withdrawal request is granted, the Proposer(s) may submit a revised Proposal as long as the Proposal is received prior to the announced date and time for Proposal submission and at the place specified.

If, after the Proposal submission opening but before Contract award, a Proposer(s) discovers an error in its Proposal, the Proposer(s) may make a written request to the Procurement Department for authorization to withdraw its Proposal from consideration for award. Evidence of the Proposer'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 Proposer's exercise of reasonable care; and that the Authority will not be significantly prejudiced by granting the withdrawal of the Proposal. After the Proposal submission opening, while pursuant to the provisions of this section, the Proposer may request to withdraw the Proposal and the Authority may, in its sole discretion allow the Proposer to withdraw it, the Authority also may take notice of repeated or unusual requests to withdraw by a Proposer(s) and take those prior requests to withdraw into consideration when evaluating the Proposer(s) future bids or Proposals.

If during a Proposal evaluation process an obvious pricing error made by a potential Contract awardee is found, the Authority shall issue written notice to the Proposer(s). The Proposer(s) will have five (5) days after receipt of the notice to confirm its pricing. If the Proposer 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 Proposer's intention is not readily discernible from other parts of the Proposal, the Procurement Department may seek clarification from the Proposer(s) to ascertain the true intent of the Proposal.

#### **1.4.7 JOINT VENTURE**

The Authority will **NOT** consider Proposals submitted by joint ventures, in the performance of the Work for this RFP.

Proposers shall note that any and all reference to "joint venture(s)", "joint venture partner(s)"/"joint venture partnership(s)" in any documents included as a part of the RFP specifications, exhibits or attachments shall be read as though the words are stricken and removed.

#### **1.4.8 SUBCONTRACTORS/SUBCONSULTANTS**

For purposes of this RFP, the Authority will consider Proposals submitted which may employ the use of Subcontractors and/or subconsultants to satisfy the requirements and deliverables required of the resulting Contract.

See Proposer's Checklist – Subcontractor Utilization Form, complete and submit, if applicable.

The Contractor shall be fully responsible to the Authority for the acts and omissions of its Subcontractors and/or subconsultants, and of persons either directly or indirectly employed by them, as the Contractor is responsible for the acts and omissions of persons directly employed by the Contractor.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contracts Documents in so far as applicable to the Work of Subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Authority may exercise over the Contractor under any provision of the Contract Documents.

Proposers should note that the Contractor retains the sole and absolute responsibility for the management and supervision of all Subcontractors to a high quality of service. Such Subcontractors must possess a valid "Business Registration Certificate", as further detailed in "Section 4.2.5.3 Compliance – Business Registration Certificate" of this RFP. Additionally, the Contractor assumes sole and absolute responsibility for all payments and monies due to its Subcontractors.

Nothing contained in this RFP and subsequent Contract shall create any contractual relation between any Subcontractor and the Authority.

#### **1.4.9 CONFLICT OF INTEREST**

Proposer must indicate and detail any Conflict of Interest that exists with either their personnel or any Subcontracting personnel being utilized for these services. Such conflicts include a direct, familial, or personal monetary interest or any previous or existing personal/professional relationships with the Authority and any personnel assigned to work on the Authority's account, regarding these requisite services.

If such a Conflict of Interest exists with any vendor personnel or any Subcontracting personnel being utilized for these services, the Proposer must disclose such potential conflicts in the Proposal. Should a conflict(s) be found to exist, whether real or perceived, the Authority, in its sole discretion, shall determine whether it is a conflict(s) and the individual(s) involved are to be immediately removed.

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

The Authority's staff reserves the right to reject any and all Proposals, if deemed to be in the best interest of the Authority, to schedule interviews with no Proposers, all Proposers, or only the most highly qualified Proposers, as determined by the Authority; or to request clarifications of any portion of the Proposal received. Further, the Authority's staff reserves the right, at its sole discretion, to waive minor elements of non-compliance of any entity's Proposal, regarding the requirements outlined in this RFP. Prior to Proposal opening, the Authority retains the discretion to modify, expand, or delete any portion of this RFP. The Authority further retains the discretion to terminate this RFP process at any time.

## **2.0 DEFINITIONS**

### **2.1 GENERAL DEFINITIONS**

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

**Addendum** – Written clarification or revision to this RFP issued by the Authority.

**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** – An alteration or modification of the terms of a Contract between the Authority and the Contractor(s). An amendment is not effective until approved in writing by the Authority.

**Authority** – The New Jersey Economic Development Authority.

**Best and Final Offer or BAFO** – Pricing submitted by a Proposer upon invitation by the Authority after Proposal opening, with or without prior discussion or negotiation.

**Bid or Proposal** – Proposer's timely response to the RFP including, but not limited to, the technical Proposal, fully completed Fee Schedule, and any licenses, forms, certifications, or other documentation required by the RFP.

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

**Board of Directors** – Responsible for the management of all New Jersey Economic Development Authority operations.

**Business Day** – Any weekday, excluding Saturdays, Sundays, Authority legal holidays, and State-mandated closings unless otherwise indicated.

**Calendar Day** – Any day, including Saturdays, Sundays, State legal holidays, and State-mandated closings unless otherwise indicated.

**Contract** – The Contract for Professional Services – Exhibit A, this RFP, any addendum to this RFP, and the Bidder's Proposal submitted in response to this RFP, as accepted by the Authority.

**Contractor** – The Bidder/Proposer awarded a Contract resulting from this RFP.

**Chief Executive Officer (CEO)** – The Individual, or his/her designee, who has authority as the Chief Contracting Officer for the New Jersey Economic Development Authority.

**Designated Contract Manager** – Individual responsible for the overall management and administration of the Contract and Contractor relationship.

**Director** – The Director of Procurement, New Jersey Economic Development Authority.

**Disabled Veterans' Business** – means a business which has its principal place of business in the State, is independently owned and operated and at least 51% of which is owned and controlled by persons who are disabled veterans or a business which has its principal place of business in this State and has been officially verified by the United States Department of Veterans Affairs as a

service disabled veteran-owned business for the purposes of department contracts pursuant to federal law. N.J.S.A. 52:32-31.2.

**Disabled Veterans' Business Set-Aside Contract** – means a Contract for goods, equipment, construction or services which is designated as a Contract with respect to which bids are invited and accepted only from disabled veterans' businesses, or a portion of a Contract when that portion has been so designated. N.J.S.A. 52:32-31.2.

**Evaluation Committee** – A committee established, or Authority staff member assigned by the requesting department, to review and evaluate Proposals submitted in response to this RFP and to recommend a Contract award to the CEO and/or the Board of Directors.

**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 Authority unless there is a change in the Scope of Work.

**Procurement** – The Department of the New Jersey Economic Development Authority responsible for the tasks and activities associated with procurement.

**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.

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

**No Charge** – The Proposer will supply an item on a price line free of charge.

**Proposer** - An individual or business entity submitting a Proposal in response to this RFP.

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

**Request for Proposal (RFP)** – This series of documents, which establish the bidding and Contract requirements and solicits Proposals to meet the needs of the Authority, as identified herein, and includes the Request for Proposal, Sample Contract, fee/price schedule, attachments and addenda.

**Retainage** – The amount withheld from the Contractor's payment that is retained and subsequently released upon satisfactory completion of performance milestones by the Contractor.

**Revision** – A response to a BAFO request or a requested clarification of the Proposal.

**Shall** – Denotes that which is a mandatory requirement. Failure to meet a mandatory material requirement will result in the rejection of a Proposal as 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 and Enterprise Services, Small Business Registration and M/WBE Certification Services 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 (1) of the three (3) following categories: For goods and services – (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 1221.201, whichever is higher (Category III); For construction services: (A) 0 to \$3,000,000 (Category IV); (B) gross revenues that do not exceed 50 percent of the applicable annual revenue standards established at 13 CFR 121.201 (Category V); and (C) gross revenues that do not exceed the applicable annual revenue standards established at CFR 121.201 (Category VI).

**Small Business Set-Aside Contract** – means (1) a Contract for goods, equipment, construction or services which is designated as a Contract with respect to which bids are invited and accepted only from small businesses, or (2) a portion of a Contract when that portion has been so designated. N.J.S.A. 52:32-19.

**State** – The State of New Jersey.

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

**Subcontractor/Subconsultant** – An entity having an arrangement with an Authority Contractor, where by the Authority Contractor uses the products and/or services of that entity to fulfill some of its obligations under its Authority Contract, while retaining full responsibility for the performance of all of its (the Contractor's) obligations under the Contract, including payment to the Subcontractor/Subconsultant. The Subcontractor/Subconsultant has no legal relationship with the Authority, only with the Contractor.

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

**TOR (Task Order Request)** – A Task Order is issued for the performance of tasks/services. In TOR-based solicitations, a TOR is a description of the individual task/service for which proposals and quotes will be solicited.

**Transaction** - The payment or remuneration to the Contractor for services rendered or products provided to the Authority 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.

**Unit Cost or Unit Price** – All inclusive, firm fixed price charged by the Proposer for a single unit identified on a price line.

**Vendor** - An individual or business entity submitting a Proposal in response to this RFP.

**Will** – Denotes that which is permissible or recommended, not mandatory.

### **3.0 SCOPE OF WORK – REQUIREMENTS OF THE CONTRACTOR**

The primary objective is for the Contractor to provide board governance software that is user-friendly and intuitive and is used by a robust client base of similar users (e.g. public and corporate boards).

The software must be easy to use from the back-end, administrator(s) assembling board materials via the through the software, and on the front-end (board members and staff accessing the board materials via the software).

The software must be secure requiring a username and password to access, with the availability of multi-factor authentication, as well as having mobile app availability and wide compatibility with multiple web browsers (e.g., Microsoft Edge, Google Chrome, iOS and Android devices). When navigating through the portal, users should be able to easily toggle through historical board books (by month, year), committee books, and by committee name in a historical fashion.

Additionally, when accessing a board and/or committee book, the user should be able to easily access memos in PDF by subject heading (bookmark) and see sub-bookmarks for attachments, etc. all features that are expected in a user-friendly software platform designed to make accessing materials organized and intuitive.

Access to high-quality, responsive customer service is of high importance. Vendor must be available for questions as needed within normal business hours, Monday - Friday, 08:00 AM – 05:00 PM, EST. Vendor should be available to answer questions and provide training for system administrators (EDA Staff) and users (EDA Board members and staff) on an as needed, on-call basis during the same hours as mentioned above. Questions will be more frequent upon intital roll-out and will diminish as users become acclimated to the software. The vendor is responsible for all aspect of training plan, including being the direct Point of Contact for user questions, scheduling trainings directly with users, and any and all follow-up as needed.

#### **3.1 DELIVERABLES**

Provide access to a Board Governance Software Portal that can accommodate as many users as needed. The Board Governance Software portal must be an online, software program, accessed from a browser, offline, remotely, and from any device, requires secure log-in access, stores NJEDA board related materials securely, is able to store historical board materials in various categories, such as by board materials and by sub-committee materials, and provides functionality to create and edit board books in the software and make the materials accessible in the software and able to be exported via PDF to share with board members and staff.

At a minimum, and on an annual basis, the Contractor shall provide the following services:

##### **3.1.1 SOFTWARE**

- A. User friendly and easy to use (i.e., intuitive) with most commonly used functions easily accessible.
- B. Secure web-based platform that serves as a document and resource repository for the NJEDA. Software can store board materials organized by month and year for monthly board meetings and for the six (6) regularly occurring separate sub-committees' meetings. NJEDA will seek to maintain historic board and committee materials in the software in addition to future board and committee meeting materials.



- C. Compatible with Adobe Acrobat and Microsoft Office Suite for document editing and creation of Board packets. This includes PDF exporting, bookmark editing, book protection.
- D. Compatible with OneDrive and SharePoint to manage/upload documents
- E. Compatible with Microsoft Teams and Microsoft Outlook for calendar syncing
- F. Capable of servicing as many users as needed on the platform (estimated range from 75-150 users).
- G. Ability to assign groups to collaborate and share information.
- H. Provides online access for Administrators to be able to:
  - a. Create, manage and modify board materials into shareable board and committee books.
  - b. Designate and assign user roles in the platform.
  - c. Create and manage user accounts.
  - d. Receive ongoing vendor support services.
- I. Capability to send email alert notifications about when board materials go live in the platform to select to whom will receive the updates – eg committee members and/or the entire board and staff.
- J. Ability for users to navigate books by board or relevant committee, and within each to further navigate by month, year, and then finally by subject heading within each book.
- K. Option: Capability to create Board meeting minutes
- L. Option: Ability for board members and staff to make notes in the board and committee materials to allow the use of the software to be a real-time dynamic experience.
- M. OPTIONAL/PREFERRED: Search functionality that is easy to navigate to find information, specific terms, etc. is preferred but not required.

#### **3.1.1.1 ACCESSIBILITY COMPLIANCE**

The software must abide by the State's website standards and guidelines which include the mandatory accessibility information for Section 508 compliance for any web-based systems. The standards can be located at the following link: [http://nj.gov/it/ps/07-12-NJOIT\\_web\\_accessibility\\_policy.pdf](http://nj.gov/it/ps/07-12-NJOIT_web_accessibility_policy.pdf).

#### **3.1.2 DOCUMENT MANAGEMENT**

- A. On-line software portal to be used to build/create, manage & make easy modification of electronic board books:
- B. Can upload documents to build electronic board books with ease.
- C. Able to update instantly across multiple devices and platforms for a seamless experience in real time.
- D. Ability for users to navigate books and make notes in the board and committee materials to allow the use of the software to be a real-time dynamic experience.
- E. Capable of simplifying and streamlining storage of documents to easily access reference materials.
- F. Ability to upload, collate, modify, view, print, approve, publish and share documents.
- G. Ability to store, share and upload documents in bulk for document storage and for creating board and committee books.
- H. Easily accessible for all users.
- I. Ability to migrate large number of historical materials for document management/ storage

#### **3.1.3 SECURITY**

- A. Software system keeps documents stored securely and protects user information.
- B. System must use encryption process that is designed to limit unauthorized access to documents.
- C. System must use encryption process to protect stored documents and communication.

- D. Each user to be assigned a unique user ID and password which will be required to access the platform.
- E. System to allow administrator(s) ability to create guest accounts to extend rights and access privileges to non-members as needed.
- F. It is highly preferred the system utilize multi-factor user authentication.

### **3.1.3.1 SECURITY PLAN**

Provide Security and Confidentiality, including a Security Plan, as set forth in RFP Section 4.2.1.II.C and RFP Section 5.9 et seq., at a minimum; and, if applicable, the Solution may be required to abide with additional policies and standards contained in the New Jersey Statewide Information Security Manual, available at:

[https://www.nj.gov/it/docs/ps/NJ\\_Statewide\\_Information\\_Security\\_Manual.pdf](https://www.nj.gov/it/docs/ps/NJ_Statewide_Information_Security_Manual.pdf).

### **3.1.4 TRAINING AND SUPPORT**

- A. Robust Customer service support and troubleshooting, to include at minimum, access to customer support troubleshooting and personal training during normal business hours Monday to Friday 8:00 AM. to 5:00 PM EST.
- B. Training to include, but not be limited to:
  - 1. **For Board Members and staff**
    - i. Instruction on log-in procedure;
    - ii. How to access current Board and Committee Materials,
    - iii. how to access historic and archived materials,
    - iv. how to print, if desired, and how to export to PDF,
    - v. and – if available - how to search materials (if feature exists).
  - 2. **For Administrators:**
    - i. creating and building a file/database;
    - ii. how to upload documents;
    - iii. how to edit documents;
    - iv. how to create cover agendas;
    - v. how to create and manage multiple distribution lists,
    - vi. among other topics.
  - 3. **For all:**
    - i. New user training for all users and administration;
    - ii. One-on-one web-based training sessions with users, as needed; and
    - iii. Ongoing training for users, as needed.
    - iv. Provide online user guides for quick, easy reference help.
- C. Allow for minimum downtime for scheduled, routine maintenance; with advance notice communicated to users.
- D. Describe additional board management and software features included as part of the membership.
- E. The Contractor must provide a Designated Account Representative to provide user support and guidance. If provided, the Proposer should include in its response to RFP Section 4.2.1.III, a description of the key role and the responsibility of the Designated Account Representative.

### **3.1.4.1 DEMONSTRATION OF CAPABILITIES**

The Proposer should include in its response to RFP Section 4.2.1.II.B, a link to a video demonstration/tutorial OR a PDF document to view a tutorial on how to use the software, demonstrating capability and use by users.

## **3.2 INITIAL MEETING**

The Contractor shall attend via conference call an initial organizational meeting with the Authority's designated staff. The Contractor and the Authority's Designated Contract Manager, or his/her designee, will mutually work together, agree upon and approve in writing the process and timelines for completing the work before the Contractor begins to implement the work.

The initial organizational meeting will be held (virtually) within five (5) business days of executing the Contract for Professional Services. The purpose of the meeting is to allow the Contractor and any of its staff assigned to perform work against the resulting contract, the opportunity to meet with the Authority's designated staff members, as may be deemed appropriate, to gain a clearer understanding of the performance expectations and to review the Authority's requisite timelines.

The Authority's Designated Contract Manager, or his/her designee, will guide the meeting and address any issues.

The Contractor shall commence work within one week of executing a contract with the Authority. The Authority will make every effort to schedule the meeting at a mutually convenient time; however, the Authority will make the sole determination regarding the date and time to ensure maximum participation by the Authority's staff.

### **3.3 TRANSITION MEETING**

The Contract resulting from this RFP may require a period of Transition until the Contract becomes completely operational. In this event, it will be incumbent upon the successful awardee to ensure maximum participation by its staff when asked to mutually schedule one or more Transition meeting(s) with Authority's staff and/or the incumbent Contractor to launch the software solution according to the Timeline described in RFP Section 3.2 Initial Meeting.

## **4.0 PROPOSAL PREPARATION AND SUBMISSION – REQUIREMENTS OF THE PROPOSER**

Failure to submit information as indicated below may result in the Proposal being deemed non-responsive.

### **4.1 GENERAL**

Proposals that conflict with those terms and conditions contained in this RFP or the Authority's Contract for Professional Services, Exhibit A, as may be amended by addenda, or that diminish the Authority's rights under any Contract resulting from the RFP will result in the entire Proposal being rejected. The Authority is not responsible for identifying conflicting terms and conditions before issuing a Contract award. In the event that prior to the notice of intent to award, the Authority notifies the Proposer of any such term or condition and the conflict it poses, the Authority may require the Proposer to either withdraw the conflicting term or withdraw its Proposal.

After award of Contract:

- A. if a conflict arises between a supplemental term or condition included in the Proposal and a term or condition of the RFP, the term or condition of the Authority's Contract for Professional Services, Exhibit A and/or the Authority's RFP will prevail; and
- B. if the result of the application of a supplemental term or condition included in the Proposal would diminish the Authority's rights, the supplemental term or condition will be considered null and void.

The Proposer 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.

#### **4.1.1 NON-COLLUSION**

By submitting a Proposal and signing the Signatory Page, the Proposer 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, Proposer or potential Proposer;
- 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 entity or person who

is a Proposer or potential Proposer, and they will not be disclosed before the Proposal submission;

- C. No attempt has been made or will be made to induce any entity 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 entity is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any entity or person to submit a complementary or other noncompetitive Proposal; and
- E. The Proposer, 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.

**The forms discussed herein for Business Support Administrative Services Bidding Opportunities and required for submission of a Proposal in response to this RFP are available on the Authority's website at <https://www.njeda.com/bidding/> see RFP Proposer Checklist – 2023-RFP-171 Board Governance Software Provider, unless noted otherwise.**

#### **4.2 PROPOSAL CONTENT AND SUBMISSION ORDER**

Submit a Proposal in three (3) volumes (i.e., upload separate electronic volumes; or, if submitting in hard-copy, submit in separate folders or binders). One (1) volume must contain the **mandatory** compliance documentation. One volume must contain only the **mandatory** Fee Schedule. The additional volume(s) must contain, at a minimum, the **mandatory** portions of the Technical Proposal. If the Proposal is extra large in size, submitting multiple additional volumes for the Technical Proposal is permissible.

**If a Proposer's Proposal does not conform to the requirements and fails to provide all mandatory submissions by the date and time of bid opening, the Proposer's Proposal will be rejected as being non-responsive for non-compliance of mandatory requirements.**

##### **Technical Proposal Volume**

Technical Proposal. Please reference Section 4.2.1 in this RFP. Do not include pricing in this Volume.

##### **Pricing Volume**

Fee Schedule. Please reference Section 4.2.2 in this RFP.

##### **Compliance Volume**

Please reference all Subsections in Section 4.2.3 in this RFP and also reference the Proposer's Checklist attachment accompanying this RFP for items that are **mandatory submissions** and those that are required **prior to** Contract Award.

##### **4.2.1 TECHNICAL PROPOSAL (MANDATORY SUBMISSION WITH PROPOSAL)**

The Proposer must set forth its understanding of the requirements of this RFP and its ability to successfully complete the Contract. In the Proposal submission, it is mandatory the Proposer shall

describe its approach and plans for accomplishing the work outlined in the Scope of Work, Section 3.0.

The Technical Proposal should, at a minimum, contain the information below and preferably be submitted in the following order:

- I. Cover Letter (Optional);
- II. Management Overview and Technical Approach to Achieve the Scope of Work;
- III. Organization Chart, if applicable and not a sole proprietor;
- IV. Key Team Member List, if applicable and not a sole proprietor;
- V. Resumes of Key Team Members;
- VI. References of Key Team Members; and
- VII. Description and Documentation of Proposer's Prior Experience and Qualifications.

The Proposer should include the level of detail it determines necessary to assist the evaluation committee in its review of the Proposer's Proposal.

### **I. Cover Letter (Optional)**

All Proposers should submit a cover letter, which includes the full company name and address of the entity performing the services described in this RFP, and the name, e-mail address and telephone number for the individual who will be the primary contact person for the responding Proposer for this engagement. Also indicate the state of incorporation, whether the Proposer is operating as an individual proprietorship, partnership, or corporation, including the identification of any and all Subcontractors/Sub-consultants.

### **II. Management Overview and Technical Approach to Achieve the Scope of Work**

- A. The Proposer shall set forth its overall technical approach and plans to meet the requirements of the RFP in a narrative format, in order to convince the Authority that the Proposer understands the objectives that the engagement is intended to meet, the nature of the required work and the level of effort necessary to successfully complete the engagement. This narrative should convince the Authority that the Proposer's general approach and plans to undertake and complete the engagement are appropriate to the tasks and subtasks involved;
- B. The Proposer shall provide a discussion/rationale for why the Proposer's approach(s) for Board Governance Management and Software provision will best meet the needs of the authority; and
- C. The Proposer shall also set forth a detailed work plan that will accomplish the requirements of the Scope of Work, indicating how each task in Section 3.0 will be accomplished, including an outline of a proposed meeting schedule with Authority staff and timeline for key milestones and ability to complete the Scope of Work within the maximum timeline.

### **III. Organization Chart, if applicable (not required for a sole proprietor)**

If key team members are proposed, provide an organization chart that includes the individual(s) and job title(s) for this engagement. For the purposes of this engagement, a key team member is identified as having a responsible role in the successful completion of the services requested pursuant to this RFP.

If the Proposer will utilize Subject Matter Experts (SMEs), who are technically and/or professionally qualified for this engagement, the Proposer should list these additional professional resources in its Proposal, and include the individual(s) and job title(s) for this engagement on the Organization Chart.

Note: If the Proposal submission includes a key team member that is a Subcontractor(s) and/or Subconsultant(s), the Organization Chart must clearly indicate that they are a Subcontractor(s) and/or Subconsultant(s), and submit a completed Subcontractor/ Subconsultant Utilization form (See Proposer's Checklist).

#### **IV. Key Team Member List, if applicable (not required for a sole proprietor)**

If key team members are being proposed, list each individual, who will be utilized for this Contract by name and job title.

**Note:** If the Proposal submission includes a key team member that is a Subcontractor(s) and/or Subconsultant(s), the Organization Chart must clearly indicate that they are a Subcontractor(s) and/or Subconsultant(s), and submit a completed Subcontractor/ Subconsultant Utilization form (See Proposer's Checklist).

#### **V. Resumes/Bios of Key Team Members**

If key team members are being proposed, a resume/bio for each individual should be included. If resumes are included, please reference the evaluation criteria section in this RFP, Section 6.7.1 for the Resume requirements.

#### **VI. References**

If key team members are being proposed, and resumes are submitted, an individual's resume should include at least three (3) client references applicable to the Scope of Work, including contact names, job title, telephone numbers and e-mail addresses. If resumes are included, please reference the evaluation criteria section in this RFP, Section 6.7.1 for the Reference requirements.

#### **VII. Description and Documentation of Proposer's Prior Experience and Qualifications**

- A. The Proposer shall clearly state its skills and experience in a manner that demonstrates its capability to complete the Scope of Work, Section 3.0;
- B. Provide a narrative description {or resume, if it is expected the Proposer is a sole proprietor}, detailing the Proposer's experience as a software provider or experience working with governance software. Information in the narrative description {or resume} should be supported by evidence or information that can be independently verified by the Authority;
- C. Provide information from projects the organization has previously worked on, and in what role/capacity. For each project that is listed, indicate the scope, the location of the project(s), and the beginning and end dates of the project(s). If applicable, highlight projects in which members of the proposed project team have worked together;
- D. If applicable, submit any information/examples of services provided that are similar in size or scope, or show demonstrated experience working with board governance software in New Jersey or other states;
- E. Provide a listing of three client references, which includes contact names, titles and telephone numbers for which the organization has provided services. The beginning and ending dates of the provided services must be included.

If the Proposer is submitting a Proposal that includes a Subcontractor(s), detail the Subcontractor's specific role for this project, how they will interface with the Proposer's staff and complete a Subcontractor/Subconsultant Utilization Form. See Proposer's Checklist.

#### **4.2.1.1 POTENTIAL PROBLEMS**

The Proposer must set forth a summary of any and all problems that the Proposer anticipates during the term of the Contract. For each problem identified, the Proposer should provide its proposed approach.

#### **4.2.2 FEE SCHEDULE (MANDATORY SUBMISSION WITH PROPOSAL)**

The Proposer must submit its pricing using the format set forth on the Fee Schedule accompanying this RFP. Proposers are NOT permitted to alter or change the provided Fee Schedule format/category designations. Any additional or supplemented versions of the Authority-supplied Fee Schedule will not be accepted and will result in the Proposer's Proposal deemed non-responsive.

If the Proposer will supply an item on a price line free of charge, the Proposer must indicate "No Charge" on the Authority-supplied Fee Schedule accompanying this RFP solicitation. The use of any other identifier may result in the Proposer's Proposal being deemed non-responsive.

#### **4.2.2.1 DELIVERY TIME AND COSTS**

- A. Unless otherwise noted elsewhere in the RFP, all prices for items in Proposals shall be submitted Freight on Board (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 Authority; and
- B. F.O.B. Destination does not cover "spotting" but does include delivery inside the Authority unless otherwise specified. No additional charges will be allowed for any additional transportation costs resulting from partial shipments made at the Contractor's convenience when a single shipment is ordered.

#### **4.2.2.2 COLLECT ON DELIVERY (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.

#### **4.2.2.3 PRICE ADJUSTMENT**

Pricing shall remain firm throughout the term of the Contract and any extensions, thereto.

#### **4.2.3 REQUIRED COMPLIANCE DOCUMENTATION**

Unless otherwise specified, forms must contain an original, physical signature, or an electronic signature pursuant to Section 1.3.6.2 of this RFP solicitation.

SEE BELOW and PROPOSER's CHECKLIST for Compliance Documentation required to be submitted WITH the Proposal **(MANDATORY FORM WITH PROPOSAL)**. ALL other Compliance Documentation, not deemed "Mandatory Form With Proposal", are required prior to Contract award; however, it is preferred and encouraged that Proposers submit ALL Compliance Documentation with the Proposal, if possible. A Proposer who fails to submit requested information within seven (7) business days of a written request by the Authority will be deemed non-responsive and will preclude the award of a Contract to said Proposer.



#### **4.2.4 FORMS, REGISTRATIONS, AND CERTIFICATIONS THAT MUST BE FULLY COMPLETED AND REQUIRED SUBMITTED WITH THE PROPOSAL**

##### **4.2.4.1 SIGNATORY PAGE (MANDATORY FORM WITH PROPOSAL)**

The Proposer shall complete and submit the Signatory Page accompanying this RFP. The Signatory Page **must include the signature** of an authorized representative of the Proposer. If the Proposer is a limited partnership, a Signatory Page must be signed by each general partner. Failure to comply will result in rejection of the Proposal as non-responsive and preclude the award of a Contract to said Proposer.

Note: A Proposer's written signature on the Signatory Page will NOT serve as a certifying signature on any other Mandatory Compliance forms required. Each mandatory compliance document must be individually signed.

##### **4.2.4.2 OWNERSHIP DISCLOSURE FORM (MANDATORY FORM WITH PROPOSAL)**

Pursuant to N.J.S.A. 52:25-24.2, in the event the Proposer is a corporation, partnership or limited liability company, the Proposer must complete an Ownership Disclosure Form. A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Proposal. A Proposer's failure to submit the completed form with its Proposal will result in the rejection of the Proposal as non-responsive and preclude the award of a Contract to said Proposer. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed and submitted with the Proposal.

NOTE: If the Proposer is a partnership or a limited liability corporation, an Ownership Disclosure form must be completed by each general partner. Failure to comply may result in rejection of the Proposal.

#### **4.2.5 FORMS, REGISTRATIONS, AND CERTIFICATIONS THAT MUST BE FULLY COMPLETED AND REQUIRED PRIOR TO CONTRACT AWARD**

##### **4.2.5.1 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM**

Pursuant to N.J.S.A. 52:32-58, the Proposer must utilize the Disclosure of Investment Activities in Iran form to certify that neither the Proposer, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Proposer, nor one of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Proposer is unable to so certify, the Proposer shall provide a detailed and precise description of such activities as directed on the form. A Proposer's failure to submit the completed and signed form before Contract award will be deemed non-responsive and preclude the award of a Contract to said Proposer.

NOTE: If the Proposer is a partnership or a limited liability corporation partnership, each Disclosure of Investment Activities in Iran form must be signed by a general partner. Failure to comply may preclude the award of a Contract.

##### **4.2.5.2 DISCLOSURE OF INVESTIGATIONS AND OTHER ACTIONS INVOLVING BIDDER FORM**

The Proposer must submit the Disclosure of Investigations and Other Actions Involving Bidder Form, prior to the award of a Contract, to 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 Proposer's inclusion of the Disclosure of Investigations and Other Actions Involving Bidder form with the Proposal is requested and advised. If a Bidder does not submit the form with the Proposal, the Bidder must comply within seven (7) business days of a request by the Authority or the Authority may deem the Proposal non-responsive.

#### **4.2.5.3 BUSINESS REGISTRATION CERTIFICATION (BRC)**

In accordance with N.J.S.A. 52:32-44(b), a Proposer and its named Subcontractors must have a valid Business Registration Certificate ("BRC") issued by the Department of Treasury, Division of Revenue and Enterprise Services, prior to the award of a Contract. To facilitate the Proposal evaluation and Contract award process, it is requested and advised the Proposer should submit a copy of its valid BRC and those of any named Subcontractors with its Proposal.

A Proposer otherwise identified by the Authority 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 Authority. A Bidder who fails to comply with this requirement by the deadline specified by the Authority will be deemed ineligible for Contract award. Under any circumstance, the Authority 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. <http://www.state.nj.us/treasury/revenue/busreqcert.shtml>.

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

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration as required pursuant to section 1 of P.L. 2001, c.134 (N.J.S.A. 52:32-44 et al.) or subsection e. or f. of section 92 of P.L. 1977, c. 110 (N.J.S.A. 5:12-92), or that provides false information of business registration under the requirements of either those sections, shall be liable for a penalty of \$25 for each day off violation, not to exceed \$50,000 for each business registration copy not properly provided under a Contract with a contracting agency or under a casino service industry enterprise Contract.

#### **4.2.5.4 SOURCE DISCLOSURE CERTIFICATION**

Pursuant to N.J.S.A. 52:34-13.2, all of the Authority's Contracts shall be performed within the United States. Pursuant to the statutory requirements, prior to an award of a Contract primarily for services, the intended Contractor of an Authority Contract must disclose the location by country where services, including subcontracted services, will be performed. Prior to the award of Contract, the Proposer must complete and submit the Source Disclosure Form accompanying this RFP. The Proposer's inclusion of the completed Source Disclosure form with the Proposal is requested and advised. If a Proposer does not submit the form with the Proposal, the Proposer must comply within seven (7) business days of a request by the Authority or the Authority may deem the Proposal non-responsive.

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

The Source Disclosure Form is located on the Authority's website at <https://www.njeda.com/bidding/>.

#### **4.2.5.4.1 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, unless such shift in performance was previously approved by the Authority.

#### **4.2.5.5 AFFIRMATIVE ACTION EMPLOYEE INFORMATION/EMPLOYEE INFORMATION REPORT**

Prior to the award of a Contract, the intended awardee must submit an active copy of a New Jersey Certificate of Employee Information Report or a copy of a 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 should reference the AA-302 Frequently Asked Questions document for additional information and must submit payment to either renew an expired or missing New Jersey Certificate of Employee Information Report or complete an initial Affirmative Action Employee Information Report (AA-302) submission.

A link to the instructions for requesting and paying for a duplicate or renewal Certificate is located at the website below.

Instructions for online submission and payment of an initial Certificate are also located at the website under Online Submission/Payment of EEO/AA Employee Information Report via the [Central Forms Repository & Payment Collection System - Login \(nj.gov\)](#).

All of this information is available at the New Jersey Department of Treasury's website Public Contracts Equal Employment Opportunity (EEO) Compliance Monitoring: [https://www.nj.gov/treasury/contract\\_compliance/index.shtml](https://www.nj.gov/treasury/contract_compliance/index.shtml).

Or alternatively, intended awardees have an option for mailed submission and payment by check, following the filing instructions at: [https://www.nj.gov/treasury/contract\\_compliance/index.shtml](https://www.nj.gov/treasury/contract_compliance/index.shtml).

Proposers please reference the Employee Information Report Affirmative Action/EEO Certification listed in the RFP Proposer's Checklist, which is to be completed and submitted prior to Contract award.

#### **4.2.5.6 SMALL BUSINESS SET ASIDE**

In accordance with the requirements of N.J.A.C. 17:13 and N.J.A.C. 17:14, as amended, the Authority participates in goal-based Small Business contracting to develop a Set-Aside business plan for Small Business Enterprises (SBEs). The Authority encourages the participation of SBE firms certified with the New Jersey Department of the Treasury, Division of Revenue and Enterprise Services for the services subject to this RFP.

Businesses must apply to be certified with the Division of Revenue and Enterprise Services Business Certification Program and evidence of application or certification is to be submitted with the Proposal by the Proposal Submission Due Date.

Information regarding SBE certification can be obtained by contacting the Division of Revenue and Enterprise Services at (609) 292-2146 or at their offices at 33 West State Street, PO Box 820, Trenton, NJ 08625-0820 or on-line, via the State's Business website at:

<https://www.njportal.com/DOR/SBERegistry/>.

Proposers please reference the Contractor Set-Aside/Demographic Information form listed in the RFP Proposer's Checklist, which is to be completed and submitted prior to Contract award.

#### **4.2.5.7 DISABLED VETERANS' BUSINESS SET-ASIDE**

Pursuant to the Set-Aside provisions of N.J.S.A. 52:32-31.1 et seq. and the Authority's goal-based contracting initiatives, the Authority encourages the participation of Disabled Veterans' Businesses certified with the New Jersey Department of the Treasury, Division of Revenue and Enterprise Services for the services subject to this RFP. Businesses must apply to be certified as a Disabled Veterans' Business with the New Jersey Department of the Treasury, Division of Revenue and Enterprise Services Business Certification Program and evidence of application or certification is to be submitted with the Proposal by the Proposal Submission Due Date.

Information regarding Disabled Veterans' Business certification can be obtained by contacting the Division of Revenue and Enterprise Services at (609) 292-2146 or at their offices at 33 West State Street, PO Box 820, Trenton, NJ 08625-0820 or on-line, via the State's Business website at:

<https://www.njportal.com/DOR/SBERegistry/>.

Proposers please reference the Contractor Set-Aside/Demographic Information form listed in the RFP Proposer's Checklist, which is to be completed and submitted prior to Contract award.

#### **4.2.5.8 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 NO. 134) AND EXECUTIVE ORDER NO. 117 (2008).**

Information regarding certification of a Minority Business Enterprise (MBE), Veteran-Owned Business (VOB), and LGBTQ+ Business can be obtained by contacting the Division of Revenue and Enterprise Services at (609) 292-2146 or at their offices at 33 West State Street, PO Box 820, Trenton, NJ 08625-0820 or on-line, via the State's Business website at:

<https://www.njportal.com/DOR/SBERegistry/>.

#### **4.2.5.9 POLITICAL CONTRIBUTION DISCLOSURE**

The Contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, 3 as amended) if in a calendar year the Contractor receives one (1) or more Contracts valued at \$50,000.00 or more. It is the Contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888) 313-3532 or on the internet at <https://www.elec.state.nj.us/>.

#### **4.2.5.10 PUBLIC LAW 2018, CHAPTER 9 – DIANE B. ALLEN EQUAL PAY ACT**

Effective July 1, 2018, Bidders and Contractors are advised that pursuant to the Diane B. Allen Equal Pay Act, (P.L. 2018, ch. 9), any employer entering into a Contract with the State of New Jersey or an instrumentality of the State (such as the Authority) providing "qualifying services" or "public works" within the meaning of that Act is required to file the report required therein, with the New Jersey Department of Labor and Workforce Development upon commencement of the Contract. Information about the Act and the reporting requirement is available at: <https://nj.gov/labor/equalpay/equalpay.html>. Construction projects that are subject to the Prevailing Wage Act are affected by this statute (falling within the definition of "public work"). Additionally, any

Contract that the Authority enters into for “services” imposes reporting requirements by awarded Bidders and Contractors (falling within the definition of “qualifying services”). Information on the reporting requirement for such “qualifying services” is also available at: <https://nj.gov/labor/equalpay/equalpay.html>. **Goods/Products Contracts are not impacted by the statute.**

#### **4.2.5.11 NEW JERSEY STATE W-9**

Prior to an award of a Contract, the Contractor shall provide the Authority with a properly completed New Jersey State W-9 form available at <https://www.njeda.com/bidding>.

#### **4.2.5.12 INSURANCE CERTIFICATE(S)**

Prior to the award of a Contract, the Contractor shall provide the Authority with current certificate(s) of insurance for all coverages required by the terms of this Contract, naming the Authority (NJEDA) as an Additional Insured and specify the insurance certificate is identified with the unique Contract awarded as a result of this RFP. Refer to Section 7 of the Authority's Standard Contract, Exhibit A, accompanying this RFP.

#### **4.2.5.13 SUBCONTRACTOR UTILIZATION PLAN**

All Proposers intending to use a Subcontractor(s) must complete a Subcontractor Utilization Form, submitted with the Proposal, available at: <https://www.njeda.com/bidding/>.

If the Contract is a small business subcontracting set-aside, the Proposer certifies that in engaging Subcontractors and/or Subconsultants, it shall make a good faith effort to achieve the subcontracting set-aside goals, and shall attach to the Subcontractor Utilization Plan documentation of such efforts.

For a Proposal that does NOT include the use of Subcontractors and/or Subconsultants, by signing the Signatory Page, the Proposer is automatically certifying that in the event the award is granted to the Proposer's firm and the Contractor later determines at any time during the term of the Contract to engage Subcontractors and/or Subconsultants to provide certain goods and/or services, the Contractor shall submit a Subcontractor Utilization Form for approval by the Authority in advance of any such engagement of Subcontractors and/or Subconsultants.

Please see the Proposer Checklist for additional information, which includes the Subcontractor Utilization Form.

#### **4.2.5.14 CERTIFICATION OF NON-INVOLVEMENT IN PROHIBITED ACTIVITIES IN RUSSIA OR BELARUS PURSUANT TO N.J.S.A. 52:32-60.1**

All Proposers intending to use a Subcontractor(s) must complete a Subcontractor Utilization Form, which is to be submitted with the Proposal.

If the Contract is a small business subcontracting set-aside, the Proposer certifies that in engaging Subcontractors and/or Subconsultants, it shall make a good faith effort to achieve the subcontracting set-aside goals, and shall attach to the Subcontractor Utilization Form documentation of such efforts.

For a Proposal that does NOT include the use of Subcontractors and/or Subconsultants, by signing the Signatory Page, the Proposer is automatically certifying that in the event the award is granted to the Proposer's firm and the Contractor later determines at any time during the term of the Contract to engage Subcontractors and/or Subconsultants to provide certain goods and/or services, the

Contractor shall submit a Subcontractor Utilization Form for approval by the Authority in advance of any such engagement of Subcontractors and/or Subconsultants.

Proposers please reference the Proposer's Checklist for additional information about the Subcontractor Utilization Form.

## **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 Proposer's Proposal, any best and final offer and the Authority's Contract for Professional Services-Exhibit A.

Unless specifically stated within this RFP, any Special Contractual Terms and Conditions of the RFP take precedence over the Authority's Standard Contract – Exhibit A, accompanying this RFP.

In the event of a conflict between the provisions of this RFP, including the Authority's Standard Contract – Exhibit A, 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, or the Authority's Contract for Professional Services – Exhibit A and the Proposer's Proposal, the RFP and/or the addendum and the Authority's Contract for Professional Services – Exhibit A shall govern.

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

The term of the Contract shall be for one (1) three (3) year with the possibility of two (2), one (1) year extension options, which is at the sole discretion of the Authority and dependent upon funding, at the same terms, conditions, and pricing in effect during the Contract term or rates more favorable to the Authority. An annual percentage price escalator may be in effect for the extension options if indicated by the Proposer in their Fee Schedule submitted for this solicitation.

### **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, the Authority reserves the right, in its sole discretion, to extend the Agreement on a month-to-month basis beyond the expiration or termination, until a replacement Contractor is engaged to provide the requisite services. 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 this Agreement, including any extensions exercised.

### **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 with the Designated Contract Manager's recommendation and written approval from the Procurement Department.

### **5.5 CONTRACTOR RESPONSIBILITIES**



The Contractor shall have sole responsibility for the complete effort specified in the Contract. If the RFP permits subcontracting, 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 Authority may have arising out of the Contractor's performance of this Contract.

#### **5.6 SUBSTITUTION OF STAFF**

The Contractor shall forward all requests to substitute staff to the Authority for consideration and approval. The request may be as simple as naming an alternate/back-up individual for each position / individual identified in the Proposer's organization chart which is designated to perform work against the resulting Contract. No substitute personnel are authorized to begin work until the Contractor has received written approval to proceed from the Authority's Designated 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. No substitute personnel are authorized to begin work until the Contractor has received verbal/written approval to proceed from the Authority's Designated Contract Manager.

The Authority reserves the right, in its sole discretion, to recommend and make changes to the Contractor's overall approach to address these advisory needs, if deemed necessary. For instance, the Authority's Designated Contract Manager may determine that the Contractor's staff employee assigned to perform the requisite services may not be meeting the acceptable levels of performance and a replacement staff employee is needed to better meet the needs of the Authority.

#### **5.7 SUBSTITUTION OR ADDITION OF SUBCONTRACTOR(S)/SUBCONSULTANT(S)**

The Contractor shall forward a written request to substitute or add a Subcontractor/Subconsultant or to substitute its own staff for a Subcontractor/Subconsultant to the Authority's Designated Contract Manager for consideration. If the Designated Contract Manager approves the request, the Designated Contract Manager will forward the request to the Procurement Department for final approval. No substituted or additional Subcontractor(s)/Subconsultant(s) are authorized to begin work until the Contractor has received written approval from the Procurement Department.

If it becomes necessary for the Contractor to substitute a Subcontractor/Subconsultant, add a Subcontractor/Subconsultant, or substitute its own staff for a Subcontractor/Subconsultant, the Contractor will identify the proposed new Subcontractor/Subconsultant 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/Subconsultant's management, supervisory, and other key personnel that demonstrate knowledge, ability and experience relevant to that part of the work which the Subcontractor/Subconsultant 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 Authority and shall be delivered to the Authority upon thirty (30) Days' notice by the Authority. With respect to software computer programs and/or source codes developed for the Authority, except those modifications or adaptations made to the Proposer's or Contractor's Background IP as defined below, the work shall be considered "work for hire", i.e., the Authority, 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 Authority all right, title and interest in and to any such material, and the Authority 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 Proposer anticipate bringing pre-existing intellectual property into a work-for-hire, the intellectual property must be identified in the Proposal. Otherwise, the language in the first paragraph of this section prevails. If the Proposer identifies such intellectual property ("Background IP") in its Proposal, then the Background IP owned by the Proposer on the date of the Contract, as well as any modifications or adaptations thereto, remain the property of the Proposer. Upon Contract award, the Proposer or Contractor shall grant the Authority a nonexclusive, perpetual royalty free license to use any of the Proposer's/Contractor's Background IP delivered to the Authority for the purposes contemplated by the Contract.

### **5.8.1 ACCESSIBILITY COMPLIANCE**

The software must abide by the State's website standards and guidelines which include the mandatory accessibility information for Section 508 compliance for any web-based systems. The standards can be located at the following link:

[http://nj.gov/it/ps/07-12-NJOIT\\_web\\_accessibility\\_policy.pdf](http://nj.gov/it/ps/07-12-NJOIT_web_accessibility_policy.pdf).

It is highly preferred the system utilize multi-factor user authentication.

## **5.9 SECURITY AND CONFIDENTIALITY**

### **5.9.1 DATA CONFIDENTIALITY**

All financial, statistical, personnel, customer and/or technical data supplied by the Authority to the Contractor are confidential (Authority Confidential Information). 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 Authority 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 Authority 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.

When requested, the Contractor and all project staff including its Subcontractor(s) must complete and sign confidentiality and non-disclosure agreements provided by the Authority. The Contractor may be required to view yearly security awareness and confidentiality training modules, or other training methods provided by the Authority. Where required, 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.

The Authority reserves the right to obtain, or require the Contractor to obtain, at the Contractor's expense, criminal history background checks from the New Jersey State Police for all Contractor and project staff (to protect the Authority from losses resulting from Contractor employee theft, fraud or dishonesty). If the Authority exercises this right, the results of the background check(s) must be made available to the Authority for consideration before the employee is assigned to work on the Authority's project. Prospective employees with positive criminal backgrounds for cyber-crimes will not be approved to work on Authority Projects. Refer to the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-12, An Introduction to Computer Security: The NIST Handbook, Section 10.1.3, Filling the Position – Screening and Selecting.

#### **5.9.1.1 CONTRACTOR'S CONFIDENTIAL INFORMATION**

- A. The obligations of the Authority under this provision are subject to the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq., the New Jersey common law right to know, and any other lawful document request or subpoena;
- B. By virtue of this contract, the parties may have access to information that is confidential to one another. The parties agree to disclose to each other only information that is required for the performance of their obligations under this contract. Contractor's Confidential Information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure and anything identified in Contractor's Proposal as Background IP ("Contractor Confidential Information"). Notwithstanding the previous sentence, the terms and pricing of this contract are subject to disclosure under OPRA, the common law right to know, and any other lawful document request or subpoena;
- C. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party;
- D. The Authority agrees to hold Contractor's Confidential Information in confidence, using at least the same degree of care used to protect its own Confidential Information;
- E. In the event that the Authority receives a request for Contractor Confidential Information related to this contract pursuant to a court order, subpoena, or other operation of law, the Authority agrees, if permitted by law, to provide Contractor with as much notice, in writing, as is reasonably practicable and the Authority's intended response to such order of law. Contractor shall take any action it deems appropriate to protect its documents and/or information;
- F. In addition, in the event Contractor receives a request for Authority Confidential Information pursuant to a court order, subpoena, or other operation of law, Contractor shall, if permitted

by law, provide the Authority with as much notice, in writing, as is reasonably practicable and Contractor's intended response to such order of law. The Authority shall take any action it deems appropriate to protect its documents and/or information; and

- G. Notwithstanding the requirements of nondisclosure described in these Sections 5.9.1 and 5.9.1.1, either party may release the other party's Confidential Information (i) if directed to do so by a court or arbitrator of competent jurisdiction, (ii) pursuant to a lawfully issued subpoena or other lawful document request, (iii) in the case of the Authority, if the Authority determines the documents or information are subject to disclosure and Contractor does not exercise its rights as described in Section 5.9.1.1(E), or if Contractor is unsuccessful in defending its rights as described in Section 5.9.1.1(E), or (iv) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the Authority does not exercise its rights described in Section 5.9.1.1(F), or if the Authority is unsuccessful in defending its rights as described in Section 5.9.1.1(F).

## **5.9.2 DATA SECURITY STANDARDS**

Data Security: The Contractor at a minimum must protect and maintain the security of data traveling its network in accordance with generally accepted industry practices.

- A. 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 at <https://www.state.nj.us/it/whatwedo/policylibrary/>. Additionally, data must be disposed of in accordance with the State's Information Disposal and Media Sanitation policy, 09-10-NJOIT at <https://www.state.nj.us/it/whatwedo/policylibrary/>; and
- B. Data usage, storage, and protection is subject to all applicable federal and state statutory and regulatory requirements, as amended from time to time, including, without limitation, those for Health Insurance Portability and Accountability Act of 1996 (HIPAA), Personally Identifiable Information (PII), Tax Information Security Guidelines for Federal, State, and Local Agencies (IRS Publication 1075), New Jersey State tax confidentiality statute, N.J.S.A. 54:50-8, New Jersey Identity Theft Prevention Act, N.J.S.A. 56:11-44 et seq., the federal Drivers' Privacy Protection Act of 1994, Pub.L.103-322, and the confidentiality requirements of N.J.S.A. 39:2-3.4. Contractor must also conform to Payment Card Industry (PCI) Data Security Standard;

Data Transmission: The Contractor must 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 must only transmit or exchange data with the State of New Jersey or other parties through secure means supported by current technologies. The Contractor must 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.

Data Storage: All data provided by the State of New Jersey or State data obtained by the Contractor in the performance of the contract must be stored, processed, and maintained solely in accordance with a project plan and system topology approved by the Designated 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 Designated Contract Manager. The Contractor must encrypt all data at rest defined as personally identifiable information by the State of New Jersey or applicable law, regulation or standard. The Contractor must not store or transfer State of New Jersey data outside of the United States.

Data Scope: All provisions applicable to State 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.

Data Re-Use: All State data must be used expressly and solely for the purposes enumerated in the Contract. Data must not be distributed, repurposed or shared across other applications, environments, or business units of the Contractor. No State data of any kind must 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 Designated Contract Manager.

Data Breach: Unauthorized Release Notification: The Contractor must 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 must assume responsibility for informing the Designated Contract Manager within 24 hours 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. All communications must be coordinated with the State of New Jersey.

End of Contract Handling: Upon termination/expiration of this contract the Contractor must first return all State data to the State in a usable format as defined in the RFP, or in an open standards machine-readable format if not. The Contractor must then erase, destroy, and render unreadable all Contractor copies of State data according to the standards enumerated in accordance with the State's most recent Information Disposal and Media Sanitation policy, currently the 09-10-NJOIT form at <https://www.state.nj.us/it/whatwedo/policylibrary/> and certify in writing that these actions have been completed within 30 days after the termination/expiration of the Contractor within seven (7) days of the request of an agent of the State whichever shall come first.

### **5.9.3 SECURITY PLAN**

The Contractor should provide a security plan that, at a minimum, conforms to the policies and standards contained in this RFP.

Security plan should address administrative, physical, and technical security controls, along with the privacy safeguards that are to be implemented as they relate to the scope of the engagement and the broader Contractor's information security program. The control areas that should be addressed include:

#### **A. INFORMATION SECURITY PROGRAM MANAGEMENT (PM)**

The Contractor establishes and maintains a framework to provide assurance that information security strategies are aligned with and support business objectives, are consistent with applicable laws and regulations through adherence to policies and internal controls, and provide assignment of responsibility in an effort to manage risk. Information security program management includes but is not limited to the following:

1. Establishment of a management structure and responsibility for information security;
2. Creation, maintenance, and communication of information security policies, standards, procedures, and guidelines to include the control areas;
3. Development and maintenance of relationships with external organizations to stay abreast of current and emerging security issues and for assistance, when applicable; and

4. Independent review of the effectiveness of the Contractor's information security program.

## B. COMPLIANCE

The Contractor develops, implements, and governs processes to ensure its compliance with all applicable statutory, regulatory, contractual, and internal policy obligations.

1. The Contractor designates an individual or individuals responsible for maintaining a control framework that captures statutory, regulatory, contractual, and policy requirements relevant to the organization's programs of work and information systems;
2. The Contractor implements processes to ensure security assessments of information systems are conducted for all significant development and/or acquisitions, prior to information systems being placed into production; and
3. The Contractor conducts periodic reviews of their information systems on a defined frequency for compliance with statutory, regulatory, and contractual requirements and documents the results of the reviews.

## C. PERSONNEL SECURITY (PS)

The Contractor implements processes to ensure all personnel have the appropriate background, skills, and training to perform their job responsibilities in a competent, professional, and secure manner. Workforce security controls include but are not limited to:

1. To the extent permitted by law, employment screening checks are conducted and successfully passed for all personnel prior to beginning work or being granted access to information assets;
2. Rules of behavior are established and procedures are implemented to ensure personnel are aware of and understand usage policies applicable to information and information systems;
3. Access reviews are conducted upon personnel transfers and promotions to ensure access levels are appropriate;
4. Contractor disables system access for terminated personnel and collects all organization owned assets prior to the individual's departure; and
5. Procedures are implemented that ensure all personnel are aware of their duty to protect information assets and their responsibility to immediately report any suspected information security incidents.

## D. SECURITY AWARENESS AND TRAINING (AW)

The Contractor provides information security awareness and training to ensure employees are aware of information security risks and threats, understand their responsibilities, and are aware of the statutory, regulatory, contractual, and policy requirements that are intended to protect information systems and information from a loss of confidentiality, integrity, availability and privacy. Security awareness and training includes but is not limited to:

1. Employees are provided with security awareness training upon hire and at least annually, thereafter;

2. Security awareness training records are maintained as part of the employee's personnel record;
3. Role-based security training is provided to individuals with respect to their duties or responsibilities (e.g. network and systems administrators require specific security training in accordance with their job functions); and
4. Individuals are provided with timely information regarding emerging threats, best practices, and new policies, laws, and regulations related to information security.

#### E. PRIVACY (PM)

The Contractor establishes appropriate processes and safeguards necessary to protect Personally Identifiable Information (PII) that the Contractor may collect, store, process, use, or transmit. Privacy controls and processes include but are not limited to:

1. Ensuring the collection and storing of only the minimum amount of PII necessary to carry out the business function and in accordance with applicable laws and regulation;
2. Safeguarding PII through the implementation administrative, physical, and technical controls (e.g. access controls, encryption and tokenization, etc.); and
3. Securely deleting PII when no longer necessary for business or legal purposes.

#### F. SECURITY CATEGORIZATION (SC)

The Contractor implements processes that classify information and categorize information systems throughout their lifecycles according to their sensitivity and criticality, along with the risks and impact should there be a loss of confidentiality, integrity, availability, or privacy. Information classification and system categorization includes labeling and handling requirements. Security categorization controls include but are not limited to the following:

1. Implementing a data protection policy;
2. Classifying data and information systems in accordance with their sensitivity and criticality;
3. Masking sensitive data that is displayed or printed; and
4. Implementing handling and labeling procedures.

#### G. MEDIA PROTECTION (MP)

The Contractor establishes controls to ensure data and information, in all forms and mediums, are protected throughout their lifecycles based on their sensitivity, value, and criticality, and the impact that a loss of confidentiality, integrity, availability, and privacy would have on the Contractor, business partners, or individuals. Media protections include but are not limited to:

1. Media storage/access/transportation;
2. Maintenance of sensitive data inventories;
3. Application of cryptographic protections;

4. Restricting the use of portable storage devices;
5. Establishing records retention requirements in accordance with business objectives and statutory and regulatory obligations; and
6. Media disposal/sanitization.

#### H. CRYPTOGRAPHIC PROTECTIONS (CR)

The Contractor employs cryptographic safeguards to protect sensitive information in transmission, in use, and at rest, from a loss of confidentiality, unauthorized access, or disclosure. Cryptographic protections include but are not limited to:

1. Using industry standard encryption algorithms;
2. Establishing requirements for encryption of data in transit;
3. Establishing requirements for encryption of data at rest; and
4. Implementing cryptographic key management processes and controls.

#### I. ACCESS MANAGEMENT (AC)

The Contractor establishes security requirements and ensures appropriate mechanisms are provided for the control, administration, and tracking of access to, and the use of, the Contractor's information systems. Access management includes but are not limited to:

1. Ensuring the principle of least privilege is applied for specific duties and information systems (including specific functions, ports, protocols, and services), so processes operate at privilege levels no higher than necessary to accomplish required organizational missions and/or functions;
2. Implementing account management processes for registration, updates, changes and de-provisioning of system access;
3. Applying the principles of least privilege when provisioning access to organizational assets;
4. Provisioning access according to an individual's role and business requirements for such access;
5. Implementing the concept of segregation of duties by disseminating tasks and associated privileges for specific sensitive duties among multiple people; and
6. Conducting periodic reviews of access authorizations and controls.

#### J. IDENTITY AND AUTHENTICATION (IA)

The Contractor establishes procedures and implements identification, authorization, and authentication controls to ensure only authorized individuals, systems, and processes can access the Contractor's information and information systems. Identity and authentication provides a level of assurance that individuals who log into a system are who they say they are. Identity and authentication controls include but are not limited to:

1. Establishing and managing unique identifiers (e.g. User-IDs) and secure authenticators (e.g. passwords, biometrics, personal identification numbers, etc.) to support nonrepudiation of activities by users or processes; and
2. Implementing Multi-Factor Authentication (MFA) requirements for access to sensitive and critical systems, and for remote access to the Contractor's systems.

#### K. REMOTE ACCESS (RA)

The Contractor strictly controls remote access to the Contractor's internal networks, systems, applications, and services. Appropriate authorizations and technical security controls are implemented prior to remote access being established. Remote access controls include but are not limited to:

1. Establishing centralized management of the Contractor's remote access infrastructure;
2. Implementing technical security controls (e.g. encryption, multi-factor authentication, IP whitelisting, geo-fencing); and
3. Training users in regard to information security risks and best practices related remote access use.

#### L. SECURITY ENGINEERING AND ARCHITECTURE (SE)

The Contractor employs security engineering and architecture principles for all information technology assets, such that they incorporate industry recognized leading security practices and address applicable statutory and regulatory obligations. Applying security engineering and architecture principles includes but is not limited to the following:

1. Implementing configuration standards that are consistent with industry-accepted system hardening standards and address known security vulnerabilities for all system components; and
2. Establishing a defense in-depth security posture that includes layered technical, administrative, and physical controls;
3. Incorporating security requirements into the systems throughout their life cycles;
4. Delineating physical and logical security boundaries;
5. Tailoring security controls to meet organizational and operational needs;
6. Performing threat modeling to identify use cases, threat agents, attack vectors, and attack patterns as well as compensating controls and design patterns needed to mitigate risk;
7. Implementing controls and procedures to ensure critical systems fail-secure and fail-safe in known states; and
8. Ensuring information system clock synchronization.

#### M. CONFIGURATION MANAGEMENT (CM)

The Contractor ensures that baseline configuration settings are established and maintained in order to protect the confidentiality, integrity, and availability of all information technology assets. Secure configuration management includes but is not limited to:

1. Hardening systems through baseline configurations; and
2. Configuring systems in accordance with the principle of least privilege to ensure processes operate at privilege levels no higher than necessary to accomplish required functions.

#### N. ENDPOINT SECURITY (ES)

The Contractor ensures that endpoint devices are properly configured, and measures are implemented to protect information and information systems from a loss of confidentiality, integrity, and availability. Endpoint security includes but is not limited to:

1. Maintaining an accurate and updated inventory of endpoint devices;
2. Applying security categorizations and implementing commensurate safeguard on endpoints;
3. Maintaining currency with operating system and software updates and patches;
4. Establishing physical and logical access controls;
5. Applying data protection measures (e.g. cryptographic protections);
6. Implementing anti-malware software, host-based firewalls, and port and device controls;
7. Implementing host intrusion detection and prevention systems (HIDS/HIPS) where applicable;
8. Restricting access and/or use of ports and I/O devices; and
9. Ensuring audit logging is implemented and logs are reviewed on a continuous basis.

#### O. INTERNET OF THINGS SECURITY (IT)

The Contractor implements controls and processes to ensure risks are accounted for and managed in the use of Internet of Things (IoT) devices including, but not limited to, physical devices, vehicles, appliances and other items embedded with electronics, software, sensors, actuators, and network connectivity which enables these devices to connect and exchange data. IoT security includes but is not limited to the following:

1. Developing policies and standards specific to IoT assets;
2. Ensuring the secure configuration of IoT assets;
3. Conducting risk assessments prior to implementation and throughout the lifecycles of IoT assets;
4. Segmenting IoT networks from the rest of the Contractor's networks; and
5. Ensuring least privilege and strong authentication controls are implemented.



## P. MOBILE DEVICE SECURITY (MD)

The Contractor establishes administrative, technical, and physical security controls required to effectively manage the risks introduced by mobile devices used for organizational business purposes. Mobile device security includes but is not limited to the following:

1. Establishing requirements for authorization to use mobile devices for organizational business purposes;
2. Establishing Bring Your Own Device (BYOD) processes and restrictions;
3. Establishing physical and logical access controls;
4. Implementing network access restrictions for mobile devices;
5. Implementing mobile device management solutions to provide centralized management of mobile devices and to ensure technical security controls (e.g. encryption, authentication, remote-wipe, etc.) are implemented and updated as necessary;
6. Establishing approved application stores from which applications can be acquired;
7. Establishing lists approved applications that can be used; and
8. Training of mobile device users regarding security and safety.

## Q. NETWORK SECURITY (NS)

The Contractor implements defense-in-depth and least privilege strategies for securing the information technology networks that they operate. To ensure information technology resources are available to authorized network clients and protected from unauthorized access, the Contractor must:

1. Include protection mechanisms for network communications and infrastructure (e.g. layered defenses, denial of service protection, encryption for data in transit, etc.);
2. Include protection mechanisms for network boundaries (e.g. limit network access points, implement firewalls, use Internet proxies, restrict split tunneling, etc.);
3. Control the flow of information (e.g. deny traffic by default/allow by exception, implement Access Control Lists, etc.); and
4. Control access to the Contractor's information systems (e.g. network segmentation, network intrusion detection and prevention systems, wireless restrictions, etc.).

## R. CLOUD SECURITY (CL)

The Contractor establishes security requirements that govern the use of private, public, and hybrid cloud environments to ensure risks associated with a potential loss of confidentiality, integrity, availability, and privacy are managed. This includes but is not limited to ensuring the following:

1. Security is accounted for in the acquisition and development of cloud services;

2. The design, configuration, and implementation of cloud-based applications, infrastructure and system-system interfaces are conducted in accordance with mutually agreed-upon service, security, and capacity-level expectations;
3. Security roles and responsibilities for the Contractor and the cloud provider are delineated and documented; and
4. Controls necessary to protect sensitive data in public cloud environments are implemented.

#### S. MAINTENANCE (MA)

The Contractor implements processes and controls to ensure that information assets are properly maintained, thereby minimizing the risks from emerging information security threats and/or the potential loss of confidentiality, integrity, or availability due to system failures. Maintenance security includes but is not limited to the following:

1. Conducting scheduled and timely maintenance;
2. Ensuring individuals conducting maintenance operations are qualified and trustworthy; and
3. Vetting, escorting and monitoring third-parties conducting maintenance operations on information technology assets.

#### T. THREAT MANAGEMENT (TM)

The Contractor establishes a formalized mechanism to collect and disseminate actionable threat intelligence, thereby providing component units and individuals with the information necessary to effectively manage risk associated with new and emerging threats to the organization's information technology assets and operations.

#### U. VULNERABILITY AND PATCH MANAGEMENT (VU)

The Contractor implements proactive vulnerability identification, remediation, and patch management practices to minimize the risk of a loss of confidentiality, integrity, and availability of information system, networks, components, and applications. Vulnerability and patch management practices include but are not limited to the following:

1. Prioritizing vulnerability scanning and remediation activities based on the criticality and security categorization of systems and information, and the risks associated with a loss of confidentiality, integrity, availability, and/or privacy;
2. Maintaining software and operating systems at the latest vendor-supported patch levels;
3. Conducting penetration testing and red team exercises; and
4. Employing qualified third-parties to conduct independent vulnerability scanning, penetration testing, and red-team exercises.

#### V. CONTINUOUS MONITORING (CM)

The Contractor implements continuous monitoring practices to establish and maintain situational awareness regarding potential threats to the confidentiality, integrity, availability, privacy and safety of information and information systems through timely collection and

review of security-related event logs. Continuous monitoring practices include but are not limited to the following:

1. Centralizing the collection and monitoring of event logs;
2. Ensuring the content of audit records includes all relevant security event information;
3. Protecting of audit records from tampering; and
4. Detecting, investigating, and responding to incidents discovered through monitoring.

#### W. SYSTEM DEVELOPMENT AND ACQUISITION (SA)

The Contractor establishes security requirements necessary to ensure that systems and application software programs developed by the Contractor or third-parties (e.g. Vendors, Contractors, etc.) perform as intended to maintain information confidentiality, integrity, and availability, and the privacy and safety of individuals. System development and acquisition security practices include but are not limited to the following:

1. Secure coding;
2. Separation of development, testing, and operational environments;
3. Information input restrictions;
4. Input data validation;
5. Error handling;
6. Security testing throughout development;
7. Restrictions for access to program source code; and
8. Security training of software developers and system implementers.

#### X. PROJECT AND RESOURCE MANAGEMENT (PM)

The Contractor ensures that controls necessary to appropriately manage risks are accounted for and implemented throughout the System Development Life Cycle (SDLC). Project and resource management security practices include but are not limited to:

1. Defining and implementing security requirements;
2. Allocating resources required to protect systems and information; and
3. Ensuring security requirements are accounted for throughout the SDLC.

#### Y. CAPACITY AND PERFORMANCE MANAGEMENT (CA)

The Contractor implements processes and controls necessary to protect against avoidable impacts to operations by proactively managing the capacity and performance of its critical technologies and supporting infrastructure. Capacity and performance management practices include but are not limited to the following:

1. Ensuring the availability, quality, and adequate capacity of compute, storage, memory and network resources are planned, prepared, and measured to deliver the required system performance and future capacity requirements; and
2. Implementing resource priority controls to prevent or limit Denial of Service (DoS) effectiveness.

## Z. THIRD PARTY MANAGEMENT (TP)

The Contractor implements processes and controls to ensure that risks associated with third-parties (e.g. Vendors, Contractors, business partners, etc.) providing information technology equipment, software, and/or services are minimized or avoided. Third party management processes and controls include but are not limited to:

1. Tailored acquisition strategies, contracting tools, and procurement methods for the purchase of systems, system components, or system service from suppliers;
2. Due diligence security reviews of suppliers and third parties with access to the Contractor's systems and sensitive information;
3. Third party interconnection security; and
4. Independent testing and security assessments of supplier technologies and supplier organizations.

## AA. PHYSICAL AND ENVIRONMENTAL SECURITY (PE)

The Contractor establishes physical and environmental protection procedures that limit access to systems, equipment, and the respective operating environments, to only authorized individuals. The Contractor ensures appropriate environmental controls in facilities containing information systems and assets, to ensure sufficient environmental conditions exist to avoid preventable hardware failures and service interruptions. Physical and environmental controls include but are not limited to the following:

1. Physical access controls (e.g. locks, security gates and guards, etc.);
2. Visitor controls;
3. Security monitoring and auditing of physical access;
4. Emergency shutoff;
5. Emergency power;
6. Emergency lighting;
7. Fire protection;
8. Temperature and humidity controls;
9. Water damage protection; and
10. Delivery and removal of information assets controls.

## BB. CONTINGENCY PLANNING (CP)

The Contractor develops, implements, tests, and maintains contingency plans to ensure continuity of operations for all information systems that deliver or support essential or critical business functions on behalf of the Contractor. Contingency planning includes but is not limited to:

1. Backup and recovery strategies;
2. Continuity of operations plans;
3. Disaster recovery plans; and
4. Crisis management plans.

#### CC. INCIDENT RESPONSE (IR)

The Contractor maintains an information security incident response capability that includes adequate preparation, detection, analysis, containment, recovery, and reporting activities. Information security incident response activities includes the following:

1. Information security incident reporting awareness;
2. Incident response planning and handling;
3. Establishment of an incident response team;
4. Cybersecurity insurance;
5. Contracts with external incident response services specialists; and
6. Contacts with law enforcement cybersecurity units.

The Contractor shall disclose to the Authority a description of their roles and responsibilities related to electronic discovery, litigation holds, discovery searches, and expert testimonies. The Contractor shall disclose its process for responding to subpoenas, service of process, and other legal requests.

#### **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 Authority.

#### **5.11 ADVERTISING**

The Contractor shall not use the Authority'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 Authority.

#### **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 Authority 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 Proposer in its Proposal.

#### **5.13 CLAIMS AND REMEDIES**

### **5.13.1 CLAIMS**

All claims asserted against the Authority 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 Authority 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 Chief Executive Officer (CEO).

### **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 Authority may take steps to terminate the Contract in accordance with the Authority's Contract For Professional Services, Exhibit A, 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 Authority by the defaulting Contractor, or take any other action or seek any other remedies available at law or in equity.

## **5.14 ADDITIONAL WORK AND/OR SPECIAL PROJECTS**

The Contractor shall not begin performing any additional work or special projects without first obtaining the Designated Contract Manager's recommendation and written approval from the Procurement Department.

In the event of additional work and/or special projects, the Contractor must present a written Proposal to perform the additional work to the Designated 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 Designated Contract Manager shall forward same to the Procurement Department for written approval. Complete documentation, confirming the need for the additional work, must be submitted. Documentation forwarded by the Designated Contract Manager to the Procurement Department must include all other required Authority approvals.

No additional work and/or special project may commence without the Procurement Department's written approval. In the event the Contractor proceeds with additional work and/or special projects without the Authority's written approval, it shall be at the Contractor's sole risk. The Authority shall

be under no obligation to pay for work performed without the Procurement Department's written approval.

#### **5.15 INDEMNIFICATION**

The indemnification provisions set forth in the Authority's Contract for Professional Services, Exhibit A, shall prevail.

#### **5.16 MAINTENANCE OF RECORDS**

The Contractor shall maintain records for products and/or services delivered against the Contract for a period of five (5) years from the date of final payment unless a longer period is required by law. Such records shall be made available to the State, including the Office of the State Comptroller, for audit and review.

#### **5.17 FORM OF COMPENSATION - INVOICING/PAYMENT**

The Contractor shall submit invoices to the Authority (unless a request is made by the Contractor to an alternate billing structure/timeframe at the Initial Meeting), per the Scope of Work/Fee Schedule, once the authorized, completed work is approved by the Authority's Designated Contract Manager.

Invoices submitted for payment will be paid by check and must include / consider all the following:

- A. Invoices should be submitted for services rendered no later than ninety (90) days from the date the service was provided / performed. The Contractor is strongly encouraged to inform its Subcontractor(s) of this policy, as they will be required to comply similarly;
- B. Payments will only be made to the Contractor. In the event "Specialized Services" are required and approved by the Authority in advance; the Contractor shall be responsible for assuring the compliance of any Subcontractor(s) with all terms and conditions of this RFP and assumes the sole and absolute responsibility for any payments due to any Subcontractor(s) under the subcontract(s), should the Authority approve in advance such services;
- C. An invoice number, the amount due, date/dates of service, the Authority's purchase order number, if applicable, and a remittance address. The payment to the Contractor will usually be in check form.
- D. A description of the project task or subtask services for the invoice timeframe;
- E. A Set-Aside Contract Report (SACR) form;
- F. If applicable, copies of timesheets for employees assigned to do the work referenced in the invoice.

The Authority, in its sole discretion, reserves the right to require additional information, documentation and / or justification upon receipt of an invoice for payment and prior to approving such invoice for payment.

The Authority considers the Contractor to be the sole point of contact regarding contractual matters and the Contractor will be required to assume sole responsibility for the complete "Scope of Work / Deliverables" and any additional services, as indicated in the RFP.

## **6.0 PROPOSAL EVALUATION**

### **6.1 RIGHT TO WAIVE**

The Authority reserves the right to waive minor irregularities or omissions in a Proposal. The Authority also reserves the right to waive a requirement provided that:

- A. the requirement is not mandated by law;
- B. all of the otherwise responsive Proposals failed to meet the requirement; and
- C. in the sole discretion of the Authority, the failure to comply with the requirement does not materially affect the procurement or the Authority's interests associated with the procurement.

### **6.2 RIGHT OF FINAL PROPOSAL ACCEPTANCE**

The Authority 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 Authority to do so. The Authority shall have the power to award orders or contracts to the Proposer best meeting specifications and conditions.

### **6.3 RIGHT TO INSPECT PROPOSER'S FACILITIES**

The Authority reserves the right to inspect the Proposer establishment before making an award, for the purposes of ascertaining whether the Proposer has the necessary facilities for performing the Contract.

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

### **6.4 RIGHT TO REQUEST FURTHER INFORMATION**

The Authority reserves the right to request all information which may assist it in making a Contract award, including factors necessary to evaluate the Proposer financial capabilities to perform the Contract. Further, the Authority reserves the right to request a Proposer to explain, in detail, how the Proposal price was determined.

### **6.5 PROPOSAL EVALUATION COMMITTEE**

Proposals may be evaluated by a cross-functional Evaluation Committee composed of the Authority's staff, management, NJEDA Subject Matter Experts (SMEs) and possibly other state agencies and/or industry experts, who may assist with the evaluation but will not be voting members. Only Authority staff will evaluate, score and rank Proposals received in response to this RFP, and the criteria established herein.

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

After the submission of Proposals, unless requested by the Authority as noted below, Proposer contact with the Authority is still not permitted.

After the Proposals are reviewed, one, some or all of the Proposers 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 Proposer may be required to give an oral presentation to the Authority concerning its Proposal.

Proposer may not attend the oral presentations of their competitors.

It is within the Authority's discretion whether to require the Proposer(s) to give an oral presentation or require the Proposer(s) to submit written responses to questions regarding its Proposal. Action by the Authority in this regard should not be construed to imply acceptance or rejection of a Proposal. The Procurement department 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.

### **QUALIFICATIONS/EXPERIENCE EVALUATION CRITERIA**

- A. Personnel: The qualifications and experience of the Proposer's management, supervisory, and key personnel assigned to the Contract, including the candidates recommended for each of the positions/roles required.
1. If key personnel are identified and required in Section 3.0 of this RFP, the Proposer **must** submit a resume for each key position and the Proposer's resumes **must** include: Name of Proposed Person, Current Position/Description of Role, Previous Relevant Position(s)/Description(s) of Role(s), and three (3) business references associated with any of the named relevant positions. Business references **must** include a Contact Name, Job Title, Daytime Telephone Number and an E-mail Address. Failure to submit mandatory resumes and full references' details **will result in rejection** of the Proposer's Proposal for further consideration.
- B. Experience of entity: The Proposers documented experience in successfully completing contracts of a similar size and scope in relation to the work required by this RFP, based, in part, on the Proposer's submitted narratives and references. The experience of the entity is to set forth their specific experience with Board governance for public and corporate boards.
1. If references for contracts of similar size and scope are required in Section 3.0 of this RFP, the Proposer **must** submit business references for each relevant contract. Business references **must** include a Contract Name/Description of Contract, Contact Name, Job Title, Daytime Telephone Number and an E-mail Address. Failure to submit mandatory contract details and full references' details **will result in rejection** of the Proposer's Proposal for further consideration.
- C. Ability of the entity to complete the Scope of Work based on its Technical Proposal: The Proposers demonstration that the Proposer understands the requirements of the Scope of Work and presents an approach that would permit successful performance of the technical requirements of the Contract. Proposer's turnaround timeframes are critical and will be closely evaluated for both content and completion timeframes.

### **6.7.1 PROPOSER'S FEE SCHEDULE**

For evaluation purposes, Proposer's respricing will be ranked and weighted according to the lowest total price for all services, per the Fee Schedule accompanying this RFP.

Hourly rates, per the Fee Schedule, will be used for any additional work that might be required during the Contract time frame, not specified in the original Scope of Work.

1. Proposers shall not alter this Fee Schedule and must provide pricing for all sections. Failure to submit pricing for all sections or altering the form will result in the Proposal being rejected as nonresponsive.
2. Proposers shall not indicate fees/charges other than those included on this Fee Schedule. If the Proposer intends to assess additional fees it should address this by submitting an inquiry during the Question and Answer period for this RFP.

### **6.7.2 PROPOSAL DISCREPANCIES**

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

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

After the Evaluation Committee completes its evaluation, it recommends to the Authority an award to the responsible Proposer whose Proposal, conforming to this RFP, is most advantageous to the Authority. The process considers and assesses price, technical criteria, and other factors during the evaluation process before a recommendation is made. The Authority 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 Authority reserves the right to negotiate price reductions with the selected Proposer(s).

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

After evaluating Proposals, the Authority may enter into negotiations with one Proposer or multiple Proposers. The primary purpose of negotiations is to maximize the Authority'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 Proposer or multiple Proposers. Negotiations will be structured by the Procurement department to safeguard information and ensure that all Proposers are treated fairly.

Similarly, the Procurement department may invite one Proposer or multiple Proposers 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 Proposer's original Proposal will be rejected as non-responsive and the Authority will revert to consideration and evaluation of the Proposer's original pricing.

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

After evaluation of Proposals and as applicable, negotiation(s) and/or BAFO(s), the Procurement department will recommend the responsible Proposer whose Proposal(s), conforming to the RFP,

is/are most advantageous to the Authority, price and other factors considered. The Authority may accept, reject or modify the recommendation of the Procurement department. The Procurement department may initiate additional negotiation or BAFO procedures with the selected Proposer(s).

Negotiations will be conducted only in those circumstances where they are deemed to be in the Authority's best interests and to maximize the Authority's ability to get the best value. Therefore, the Proposer is advised to submit its best technical and price Proposal in response to this RFP since the Authority may, after evaluation, recommend a Contract award based on the content of the initial submission, without further negotiation and/or BAFO with any Proposer.

All contacts, records of initial evaluations, any correspondence with Proposer 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 the Contract is awarded and a Conditional Notice of Intent to Award a Contract is issued.

NOTE: If the Authority contemplates negotiation, Proposal prices will not be publicly read at the Proposal submission opening. Only the name and address of each Proposer will be publicly announced at the Proposal submission opening.

## **6.9 PROTEST OF RECOMMENDED AWARD**

Any Proposer may protest a vendor selection (an award) by the New Jersey Economic Development Authority. In order for a protest to be timely, it must be submitted to the Senior Vice President – Business Support within ten (10) business days of receipt of the notification that the Proposer was not selected. In order to be considered complete, a protest must: (i) identify the Proposer that is submitting the protest, (ii) identify the Contract award that is being protested, (iii) specify all grounds for the protest (including all arguments, materials and/or documents that support the protest); and, (iv) indicate whether an oral presentation is requested, and if so, the reason for the oral presentation. A Hearing Officer will be designated by the Authority's Senior Vice President – Business Support. The designated Hearing Officer will review all timely and complete Vendor protests and will have sole discretion to determine if an oral presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest.

After completing his or her review of the protest, the Hearing Officer will prepare a preliminary report, which shall be advisory in nature and not binding, and send to the Protestor. Should the Protestor dispute the findings of the preliminary "*Hearing Officer Report*", it will be afforded an "*Exceptions Period*" equal to ten (10) business days from the Authority's issuance of the preliminary "*Hearing Officer Report*" to refute the findings of the Hearing Officer. At the expiration of the exceptions period, the Hearing Officer will review any "*Exceptions to the Hearing Officer's Report*" and finalize his or her report.

The Hearing Officer will make a recommendation in his or her final "*Hearing Officer Report*" which will be sent with any "*Exceptions to the Hearing Officer's Report*" to either the Authority's Board or the Authority's Chief Executive Officer, as determined by the dollar amount of the potential award as it relates to the Authority's internal Operating Authority Approval Levels, for a final decision to award the Contract. The Authority's Board of Directors or Chief Executive Officer will review the final "*Hearing Officer Report*" and the protestor's "*Exceptions to the Hearing Officer's Report*" and shall render a final decision regarding the appropriateness of the award. The action of the Authority's Board or Chief Executive Officer to make a final decision for the award of the Contract will be a final Authority action that is appealable to the Appellate Division of the Superior Court of New Jersey.

It is the Authority's intent not to award the Contract until it has completed all of the review procedures described above. If, however, in the Authority's sole discretion, it is determined that such an award is necessary to support the uninterrupted and efficient business operations of the Authority the Contract may be awarded.

## **7.0 CONTRACT AWARD**

Contract award(s) shall be made in whole or in part, with reasonable promptness by written notice to the highest ranked responsible Proposer, whose proposal, conforming to this RFP, is most advantageous to the Authority, price, and other factors considered, as determined by the Authority, in its sole discretion. Any or all proposals may be rejected when the Authority determines that it is in the public interest to do so.

It is the policy of the New Jersey Economic Development Authority that to be considered for award, a Proposer must achieve or exceed an overall score of three ("3") indicating a rating of "Good", on a scale of 1-5 with 5 being the highest rating. The Authority shall be under no obligation to make an award to an entity which does not achieve this minimum scoring threshold.

Award of a Contract for the services outlined in this RFP will be subject to the selected entity entering into the "Contract for Professional Service", attached to this RFP as Exhibit A. Proposers are encouraged to carefully review the specimen Contract and should indicate any exceptions taken to the form of Contract during the "Questions and Answers Period."

The Proposer is cautioned that it shall not impose conditions under which it will conduct business with the New Jersey Economic Development Authority by submitting its own separate and distinct company "Standard Terms and Conditions", engagement letters, agreement(s) or forms in response to this section requirement. The Proposer shall not submit its "Standard Terms and Conditions" or submit material revisions and/or exceptions to the "Contract for Professional Services" with the proposal as it will result in the proposal being deemed non-responsive.

**IMPORTANT:** In the event the Proposer takes exception to one (1) or more points within the Contract; it shall submit its "exceptions" in the form of a question to be submitted for consideration during the "Questions and Answers Period" established for this solicitation. The Authority shall not consider any questions, exceptions or requests for changes to be made to the specimen Contract at any time during the RFP process, unless submitted during the "Questions and Answers Period".

The Authority shall be under no obligation to grant or accept any requested changes (i.e. exceptions taken) to the specimen form of the Contract (Exhibit A) during the "Questions and Answers Period."

Any proposal submitted in response to this RFP will be considered a firm Offer by the responding Proposer to perform the Scope of Work, as outlined in the RFP and specimen Contract. By submitting an Offer in response to this RFP, the responding Proposer agrees to hold its Offer open for at least one hundred twenty (120) days after the response due date. Any provision in a submitted Offer that attempts to limit or condition the time that an Offer is open for consideration by the Authority will not be binding on the Authority.

Accordingly, any proposals submitted will indicate an acceptance by proposers of the form of Specimen Contract.

Acceptance of a proposal and award of a Contract is subject to the approval of the Authority's Board.

## **8.0 CONTRACT ADMINISTRATION**

### **8.1 AUTHORITY'S DESIGNATED CONTRACT MANAGER**

The Authority's Designated Contract Manager is the employee responsible for the overall management and administration of the Contract.

The Authority's Designated 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 Authority's Designated Contract Manager's name, department, address, telephone number, fax phone number, and e-mail address.

#### **8.1.1 AUTHORITY'S DESIGNATED CONTRACT MANAGER'S RESPONSIBILITIES**

The Authority's Designated Contract Manager will be responsible for organizing the Initial Meeting, if applicable, engaging the Contractor, assuring that a Purchase Order(s) are issued to the Contractor, directing the Contractor to perform the work of the Contract, approving the deliverables and approving payment vouchers. The Authority's Designated 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 Authority's Designated Contract Manager is responsible for coordinating the use of the Contract and resolving minor disputes between the Contractor and any component part of the Authority's Designated Contract Manager's Department.

If the Contract has multiple users, then the Authority's Designated Contract Manager shall be the central coordinator of the use of the Contract for all departments, while other employees engage and pay the Contractor. All persons that use the Contract must notify and coordinate the use of the Contract with the Authority's Designated Contract Manager.