Federally-Based Contracts
Request for Quotation

For: G3077 – Technical and Professional Services for Pharmacy Benefits Manager (PBM)

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
<th>Time</th>
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</thead>
<tbody>
<tr>
<td>Questions Regarding Request for Quote Due Date</td>
<td>October 12, 2018</td>
<td>2:00 PM</td>
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<tr>
<td>Request for Quote Submission Due Date</td>
<td>November 14, 2018</td>
<td>2:00 PM</td>
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Dates are subject to change. All times contained in the Request for Quote refer to Eastern Time. All changes will be reflected in Bid Amendments to the Request for Quote posted on Using Agency website.

Request For Quotation Issued By:
State of New Jersey
Department of the Treasury
Division of Pension and Benefits

Date: 9/28/18
# Table of Contents

1.0 INFORMATION FOR BIDDERS ........................................................................................................... 4  
  1.1 PURPOSE AND INTENT ......................................................................................................................... 4  
  1.2 BACKGROUND ........................................................................................................................................ 5  
  1.3 QUESTION AND ANSWER PERIOD ................................................................................................. 6  
  1.3.1 SUBMISSION OF QUOTES ............................................................................................................. 6  
  1.4 ADDITIONAL INFORMATION ............................................................................................................... 6  
  1.4.1 BIDDER RESPONSIBILITY ............................................................................................................... 6  
  1.4.2 COST LIABILITY ............................................................................................................................... 6  
  1.4.3 CONTENTS OF QUOTE .................................................................................................................... 6  
  1.4.4 ELECTRONIC SIGNATURES ............................................................................................................. 7  

2.0 DEFINITIONS ..................................................................................................................................... 8  
  2.1 CROSSWALK ......................................................................................................................................... 8  
  2.2 GENERAL DEFINITIONS ..................................................................................................................... 8  
  2.3 CONTRACT-SPECIFIC DEFINITIONS/ACRONYMS ............................................................................. 10  

3.0 SCOPE OF WORK ............................................................................................................................... 12  
  3.1 REVERSE AUCTION TOOL ............................................................................................................... 12  
  3.1.1 MINIMUM REQUIREMENTS ........................................................................................................... 12  
  3.2 REVERSE AUCTION PROCESS AND COST EVALUATION OF PBM VENDORS (BIDDERS) ........ 13  
  3.2.1 ONLINE REVERSE AUCTION TOOL ............................................................................................ 13  
  3.2.2 PRICING METHODOLOGY ........................................................................................................... 13  
  3.2.3 SYSTEM TESTING AND READINESS ............................................................................................ 14  
  3.2.4 REPORTING AND FINAL ANALYSIS ............................................................................................ 14  
  3.2.5 SUPPORT IN EVALUATION OF PBM VENDOR (BIDDER) QUALIFICATIONS ............................ 14  
  3.3 AUTOMATED CLAIMS ADJUDICATION PLATFORM ......................................................................... 14  
  3.3.1 MINIMUM REQUIREMENTS ........................................................................................................... 14  
  3.3.2 PBM INVOICE REVIEW ............................................................................................................... 15  
  3.4 CLIENT SUPPORT AND TRAINING .................................................................................................... 15  
  3.5 ACCOUNT MANAGEMENT ................................................................................................................... 15  
  3.6 IMPLEMENTATION AND DELIVERABLES ......................................................................................... 16  
  3.6.1 REQUIREMENTS AND DELIVERABLES ........................................................................................ 16  

4.0 QUOTE PREPARATION AND SUBMISSION .................................................................................... 18  
  4.1 GENERAL ........................................................................................................................................... 18  
  4.1.1 FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED WITH QUOTE ..................... 18  
  4.1.2 FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED BEFORE CONTRACT AWARD AND THAT SHOULD BE SUBMITTED WITH THE QUOTE ........................................................................... 21  
  4.1.3 FINANCIAL CAPABILITY OF THE BIDDER .................................................................................... 22  
  4.1.4 STATE-SUPPLIED PRICE SHEET .................................................................................................. 23  
  4.1.5 TECHNICAL QUOTE SUBMISSION .............................................................................................. 24  

5.0 SPECIAL CONTRACTUAL TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT ............ 30  
  5.1 PRECEDENCE OF SPECIAL CONTRACTUAL TERMS AND CONDITIONS ..................................... 30  
  5.2 CONTRACT TERM AND EXTENSION OPTION ................................................................................... 30  
  5.3 CONTRACT TRANSITION .................................................................................................................... 30  
  5.4 CHANGE ORDER .................................................................................................................................. 30  
  5.5 CONTRACTOR RESPONSIBILITIES ...................................................................................................... 30  
  5.6 SUBSTITUTION OR ADDITION OF SUBCONTRACTOR(S) ................................................................. 31  
  5.7 OWNERSHIP OF MATERIAL .............................................................................................................. 31  
  5.8 SECURITY AND CONFIDENTIALITY .................................................................................................... 32  
  5.8.1 DATA CONFIDENTIALITY ................................................................................................................. 32  
  5.8.2 CONFIDENTIALITY .......................................................................................................................... 32  
  5.8.3 DATA SECURITY STANDARDS ....................................................................................................... 33  
  5.8.4 TAX RETURN DATA SECURITY .................................................................................................... 35  
  5.8.5 SECURITY PLAN AND STANDARDS .............................................................................................. 37  
  5.9 NEWS RELEASES ............................................................................................................................... 39
5.10 ADVERTISING ........................................................................................................................................39
5.11 LICENSES AND PERMITS ..................................................................................................................39
5.12 CLAIMS AND REMEDIES ..................................................................................................................40
  5.12.1 CLAIMS .........................................................................................................................................40
  5.12.2 REMEDIES ...................................................................................................................................40
  5.12.3 REMEDIES FOR FAILURE TO COMPLY WITH MATERIAL CONTRACT REQUIREMENTS .......40
5.13 LIQUIDATED DAMAGES ......................................................................................................................40
  5.13.1 NOTIFICATION OF LIQUIDATED DAMAGES .................................................................................41
  5.13.2 CONDITIONS FOR TERMINATION OF LIQUIDATED DAMAGES .................................................42
  5.13.3 SEVERABILITY OF INDIVIDUAL LIQUIDATED DAMAGES .........................................................42
  5.13.4 WAIVER OF LIQUIDATED DAMAGES/LIQUIDATED DAMAGES NOT EXCLUSIVE REMEDY ....42
  5.13.5 PAYMENT OF LIQUIDATED DAMAGES ........................................................................................42
5.14 MODIFICATIONS AND CHANGES TO THE STATE OF NJ STANDARD TERMS AND CONDITIONS (SSTC) ....43
  5.14.1 INDEMNIFICATION ........................................................................................................................43
  5.14.2 INSURANCE - PROFESSIONAL LIABILITY INSURANCE ..............................................................44
  5.14.3 PERFORMANCE GUARANTEE OF CONTRACTOR ........................................................................45
5.15 CONTRACT ACTIVITY REPORT ...........................................................................................................47
5.16 ELECTRONIC PAYMENTS ....................................................................................................................48
5.17 PROGRAM EFFICIENCY ASSESSMENT FOR STATE USING AGENCIES .............................................48

6.0 QUOTE EVALUATION ..........................................................................................................................49
  6.1 DIRECTOR'S RIGHT OF FINAL QUOTE ACCEPTANCE ......................................................................49
  6.2 STATE'S RIGHT TO INSPECT BIDDER FACILITIES .........................................................................49
  6.3 STATE'S RIGHT TO REQUEST FURTHER INFORMATION ................................................................49
  6.4 EVALUATION ...................................................................................................................................49
  6.4.1 BIDDER'S PRICE SCHEDULE ........................................................................................................49
  6.4.2 QUOTE DISCREPANCIES ..............................................................................................................49
  6.5 NEGOTIATION ...................................................................................................................................49
  6.6 POOR PERFORMANCE .......................................................................................................................50

7.0 CONTRACT AWARD ............................................................................................................................51
  7.1 DOCUMENTS REQUIRED BEFORE CONTRACT AWARD ................................................................51
        (FORMERLY EXECUTIVE ORDER NO. 134), EXECUTIVE ORDER NO. 117 (2008) AND N.J.A.C. 17:12-5 ET SEQ. ....51
    7.1.2 SOURCE DISCLOSURE REQUIREMENTS .......................................................................................51
    7.1.3 AFFIRMATIVE ACTION ................................................................................................................51
    7.1.4 BUSINESS REGISTRATION .........................................................................................................52
  7.2 FINAL CONTRACT AWARD ..................................................................................................................52
  7.3 INSURANCE CERTIFICATES ................................................................................................................52

8.0 CONTRACT ADMINISTRATION ................................................................................................................53
  8.1 STATE CONTRACT MANAGER ..........................................................................................................53
    8.1.1 STATE CONTRACT MANAGER RESPONSIBILITIES ....................................................................53
    8.1.2 COORDINATION WITH THE STATE CONTRACT MANAGER ..................................................53

9.0 STATE OF NEW JERSEY STANDARD TERMS AND CONDITIONS ................................................................54
1.0 INFORMATION FOR BIDDERS

NOTICE: The Bidder is advised to thoroughly read all sections and follow all instructions contained in this Request for Quote (RFQ) before preparing and submitting its Quote.

The Contract will be awarded in the State of New Jersey’s eProcurement system, NJSTART (www.njstart.gov). The awarded Contractor is advised to read through all Quick Reference Guides (QRGs) located on the NJSTART Vendor Support Page (http://www.state.nj.us/treasury/purchase/njstart/vendor.shtml) for information.

Please be advised that in accordance with P.L. 2018, c. 9, also known as the Diane B. Allen Equal Pay Act, which was signed into law by Governor Phil Murphy on April 24, 2018, a contractor performing “qualifying services” or “public work” to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. For more information and report templates see https://nj.gov/labor/equalpay/equalpay.html.

1.1 PURPOSE AND INTENT

This RFQ is issued by the Department of the Treasury, Division of Pension and Benefits (DPB). The purpose of this RFQ is to solicit Quotes for technical and professional services in procuring a Pharmacy Benefits Manager (PBM) and performing a PBM Invoice Review.

A. Technical and Professional Services (PBM Procurement)

These services include technical assistance in the evaluation of PBM Vendor (Bidder) Quotes as well as online automated reverse auction services through the Bidder’s technology platform. The technology platform shall have the capability to project the State Health Benefits Program/School Employees’ Health Benefits Program (SHBP/SEHBP) costs based on the PBM Vendor’s (Bidder’s) proposed pricing terms. Such projections should utilize code-based classification of drugs from nationally accepted data sources as further described in RFQ Section 3.

B. PBM Invoice Review

These services include providing an Automated Claims Adjudication Platform that allows for a line-by-line review of PBM Invoices. The Automated Claims Adjudication Platform shall have the capability to accurately review PBM Invoices and file a report with the State within the timeframes as described in RFQ Section 3.

The intent of this RFQ is to award a Blanket P.O. (Contract) to that responsible Bidder whose Quote, conforming to this RFQ is most advantageous to the State, price and other factors considered. The State may award any and all price lines. The State, however, reserves the right to separately procure individual requirements that are the subject of the Contract during the Contract term, when deemed by the Director of the Division of Purchase and Property (Director) to be in the State’s best interest.

There will be one (1) award for both components of this RFQ, A and B above.

The State of NJ Standard Terms and Conditions (SSTC) accompanying this RFQ will apply to all Contracts made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in this RFQ and should be read in conjunction with them unless the RFQ specifically indicates otherwise.
1.2 BACKGROUND

This is a reprocurement of the Technical Assistance and Reverse Auction Services for Selection of a Pharmacy Benefits Manager under T3077, presently due to expire on December 31, 2018. Bidders interested in the current Blanket P.O. specifications and pricing information may review the current Blanket P.O. T3077 at www.njstart.gov by following these steps:

Go to: www.njstart.gov
Select “Contract & Bid Search”
Select “Contracts/Blankets”
Under “Contract/Blanket Description” type in T3077, Click “Find It”
The current Blanket P.O. will appear under “Results.”

Bidders are cautioned that this new RFQ addresses current requirements including those related to PBM invoice review.

SHBP was created by the NJ State Health Benefits Program Act (the Act), N.J.S.A. 52:14-17.25 et seq., in 1961 to provide health insurance coverage to State employees. The State Health Benefits Commission (SHBC) is the body charged with establishing health benefits programs for State employees and promulgating regulations, as necessary, to administer the Act. The SHBC is comprised of the State Treasurer (Chairman), the Commissioner of the Department of Banking and Insurance, the Chairperson of the Civil Service Commission, and two State employees' representatives chosen by the Public Employees’ Committee of the AFL-CIO.

SEHBP was established in 2007 by the School Employees’ Health Benefits Program Act: N.J.S.A. 52:14-17.46 et seq. to provide medical and prescription drug coverage to qualified local education public employees, retirees, and eligible dependents. The School Employees’ Health Benefits Commission (SEHBC) is comprised of nine members: the State Treasurer, the Commissioner of the Department of Banking and Insurance, a member appointed who is a New Jersey resident, a member representing the New Jersey School Boards' Association, three members representing the New Jersey Education Association, a member representing the New Jersey State AFL-CIO, and a member appointed to be the chairperson.

The DPB, specifically the Health Benefits Bureau and the Bureau of Policy and Planning, are responsible for the daily administrative activities of the SHBP/SEHBP.

The SHBP and SEHBP cover State employees, as well as employees of local government and education employers who have elected to purchase coverage through the local government and education employer group of the SHBP/SEHBP. The state group, local government group and local education group are separately rated. Presently, the SHBP/SEHBP PBM covers approximately 700,000 lives (including active, retired, COBRA individuals, and their dependents).

This Contract is issued in accordance with Chapter 67, Public Law 2016, which may be viewed at https://www.nj.gov/treasury/pensions/documents/laws/chapter67-2016.pdf

The Contractor awarded this Contract will be responsible for assisting, among other things, with the reprocurement of the services provided under the Employee Benefits: Pharmacy Benefit Management term Blanket P.O. The current PBM Blanket P.O. T2679 may be viewed at www.njstart.gov by following these steps:

Go to: www.njstart.gov
Select “Contract & Bid Search”
Select “Contracts/Blankets”
Under “Contract/Blanket Description” type in T2679, Click “Find It”
The current Blanket P.O. will appear under “Results.”

Requirements for the PBM reprocurement will differ from those under the current PBM Blanket P.O.

1.3 QUESTION AND ANSWER PERIOD

The Using Agency will electronically accept questions and inquiries from all potential Bidders.

A. Questions should be directly tied to the RFQ and asked in consecutive order, from beginning to end, following the organization of the RFQ; and

B. Each question should begin by referencing the RFQ page number and section number to which it relates.

A Bidder shall submit questions only to the Using Agency in writing at policyandplanning@treas.nj.gov. The Using Agency will not accept any question in person or by telephone concerning this RFQ.

The cut-off date for electronic questions and inquiries relating to this RFQ is indicated on the RFQ cover sheet. In the event that questions are posed by Bidders, answers to such questions will be issued by Addendum. Any Addendum to this RFQ will become part of this RFQ and part of any Contract awarded as a result of this RFQ. Addenda to this RFQ, if any, will be posted to the Using Agency’s website.

1.3.1 SUBMISSION OF QUOTES

In order to be considered for award, the Quote must be received by the Using Agency at the designated time and place.

QUOTES NOT RECEIVED PRIOR TO THE QUOTE OPENING DEADLINE SHALL BE REJECTED. THE DATE AND TIME OF THE QUOTE OPENING IS INDICATED ON THE RFQ COVER SHEET.

IF THE QUOTE OPENING DEADLINE HAS BEEN REVISED, THE NEW QUOTE OPENING DEADLINE SHALL BE SHOWN ON THE POSTED ADDENDUM.

1.4 ADDITIONAL INFORMATION

1.4.1 BIDDER RESPONSIBILITY

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

1.4.2 COST LIABILITY

The State assumes no responsibility and bears no liability for costs incurred by a Bidder in the preparation and submittal of a Quote in response to this RFQ.

1.4.3 CONTENTS OF QUOTE

Quotes can be released to the public pursuant to N.J.A.C. 17:12-1.2(b) and (c), or under the New Jersey Open Public Records Act (OPRA), N.J.S.A. 47:1A-1.1 et seq., or the common law right to know.
After the opening of sealed Quotes, including Quotes submitted electronically, all information submitted by a Bidder in response to a RFQ is considered public information notwithstanding any disclaimers to the contrary submitted by a Bidder. Proprietary and confidential information may be exempt from public disclosure by OPRA and/or the common law. When the RFQ contains a negotiation component, the Quote will not be subject to public disclosure until a notice of intent to award a Contract is announced.

As part of its Quote, 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 Quote of any such designation should be clearly stated in a cover letter.

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

A Bidder shall not designate any price lists and/or catalogs submitted as exempt from public disclosure as the same must be accessible to State Using Agencies and Cooperative Purchasing Program participants (if the RFQ has been extended to these participants) and thus must be made public to allow all eligible purchasing entities access to the pricing information.

1.4.4 ELECTRONIC SIGNATURES

Bidders submitting Quotes electronically may sign the forms required with the Quote, or required before Contract award, by electronically by typing the name of the authorized signatory in the “Signature” block as an alternative to downloading, physically signing the form, scanning the form, and uploading the form.
2.0 DEFINITIONS

2.1 CROSSWALK

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

When this Contract is awarded in the State of New Jersey’s eProcurement system, NJSTART, the NJSTART terminology listed below will be used

<table>
<thead>
<tr>
<th>NJSTART Term</th>
<th>Equivalent Existing New Jersey Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bid/Bid Solicitation</td>
<td>RFQ/Solicitation</td>
</tr>
<tr>
<td>Bid Amendment</td>
<td>Addendum</td>
</tr>
<tr>
<td>Change Order</td>
<td>Contract Amendment</td>
</tr>
<tr>
<td>Master Blanket Purchase Order (Blanket P.O.)</td>
<td>Contract</td>
</tr>
<tr>
<td>Offer and Acceptance Page</td>
<td>Signatory Page</td>
</tr>
<tr>
<td>Vendor</td>
<td>Bidder/Contractor</td>
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2.2 GENERAL DEFINITIONS

All-Inclusive Hourly Rate – An hourly rate comprised of all direct and indirect costs including, but not limited to: labor costs, 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.

Addendum – Written clarification or revision to this RFQ issued by the Using Agency. Bid Amendments, if any, will be issued prior to Quote opening due date.

Bidder – An entity offering a Quote in response to the Using Agency’s RFQ.

Business Day - Any weekday, excluding Saturdays, Sundays, State 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.

Change Order – An amendment, alteration or modification of the terms of a Contract between the State and the Contractor(s). A Change Order is not effective until it is signed and approved in writing by the Director or Deputy Director, Division of Purchase and Property.

Contract – The Contract consists of the State of NJ Standard Terms and Conditions (SSTC), the RFQ, the responsive Quote submitted by a responsible Bidder as accepted by the State, the notice of award, any subsequent written document memorializing the agreement, any modifications to any of these documents approved by the State and any attachments, Bid Amendment or other supporting documents, or post-award documents including Change Orders agreed to by the State and the Contractor, in writing.

Contractor – The Bidder awarded a Contract resulting from this RFQ.

Days After Receipt of Order (ARO) - The number of calendar days ‘After Receipt of Order’ in which the Using Agency will receive the ordered materials and/or services.
Director – Director, Division of Purchase and Property, Department of the Treasury, who by statutory authority is the Chief Contracting Officer for the State of New Jersey.

Discount - The standard price reduction applied by the Bidder / Contractor to all items.

Division – The Division of Purchase and Property.

Evaluation Committee – A committee established or Using Agency staff member assigned by the Director to review and evaluate Quotes submitted in response to this RFQ and recommend a Contract award to the Director.

Firm Fixed Price – A price that is all-inclusive of direct cost and indirect costs, including, but not limited to, direct labor costs, overhead, fee or profit, clerical support, equipment, materials, supplies, managerial (administrative) support, all documents, reports, forms, travel, reproduction and any other costs.

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

Must – Denotes that which is a mandatory requirement.

No Bid – The Bidder is not submitting a price Quote for an item on a price line.

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

Project – The undertakings or services that are the subject of this RFQ.

QRGs – Quick Reference Guides.

Quote – Bidder’s timely response to the RFQ including, but not limited to, technical Quote, price Quote, and any licenses, forms, certifications, or other documentation required by the RFQ.

Request For Quotes (RFQ) – This series of documents, which establish the bidding and contract requirements and solicits Quotes to meet the needs of the Using Agencies as identified herein, and includes the RFQ, State of NJ Standard Terms and Conditions (SSTC), price schedule, attachments, and Bid Amendments.

Shall – Denotes that which is a mandatory requirement.

Should – Denotes that which is permissible or 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 121.201, 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).

State – The State of New Jersey.
State Contract Manager (SCM) – The individual, as set forth in Section 8.0, responsible for the approval of all deliverables, i.e., tasks, sub-tasks or other work elements in the Scope of Work. The SCM cannot direct or approve a Change Order.

State-Supplied Price Sheet – the bidding document created by the State and attached to this RFQ on which the Bidder submits it Quote pricing as is referenced and described in RFQ Section 4.1.4.

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

Subcontractor – An entity having an arrangement with a Contractor, whereby the Contractor uses the products and/or services of that entity to fulfill some of its obligations under its State Contract, while retaining full responsibility for the performance of all the Contractor’s obligations under the Contract, including payment to the Subcontractor. The Subcontractor has no legal relationship with the State, only with the Contractor.

Task – A discrete unit of work to be performed.

Unit Cost – All-inclusive, firm fixed price charged by the Bidder for a single unit identified on a price line.

2.3 CONTRACT-SPECIFIC DEFINITIONS/ACRONYMS

Acceptance - The written confirmation by the Using Agency that Contractor has completed a Deliverable according to the specified requirements.

Automated Claims Adjudication Platform - An automated review platform that allows for a line-by-line reconciliation of pharmacy claim data on PBM Invoices.

Blind, Blinded, Blinding - Concealing the identity of bidding vendors and any of their proprietary information relative to auction entries.

Commercial Off the Shelf Software (COTS) - Software provided by Contractor that is intended for general use.

Custom Software - Software and work product developed by Contractor at the request of the Using Agency to meet the specific requirements of the Using Agency and is intended for its use.

Deliverable - The goods, products, and Services that Contractor is required to deliver to the Using Agency under the Contract.

Hardware - Computer equipment and any Software provided with the Hardware that is necessary for the Hardware to operate.

Price Quote - The portion of the PBM Vendor’s {Bidder’s} Quote that contains pricing information, including, without limitation, Rebates, Discounts, and Administrative Fees.

PBM Bid Solicitation - The series of documents, which establish the bidding and Blanket P.O. requirements and solicit Quotes to meet the needs of the Division of Pension and Benefits for the future procurement of a Pharmacy Benefits Manager.

PBM Invoice - The invoice from the State’s Pharmacy Benefit Manager (PBM), received every two (2) weeks, which includes a detailed claims data file.

PBM Invoice Review - An automated process to allow for online comparison of PBM Invoices.
PBM Vendor (Bidder) - The entity submitting a Quote in response to the PBM Bid Solicitation.

Pharmacy Benefits Manager (PBM) - The pharmacy benefits management Blanket P.O. holder for the State of New Jersey.

Prime Rate - The United States Prime Lending Rate as listed in the Eastern print edition of the Wall Street Journal.

Quantity Management - Limitations on the maximum amount of any medication a member may receive over a period of time.

Reverse Auction - An automated bidding process conducted online that starts with an opening price and allows Vendors (Bidders) to counter offer a lower price, for as many rounds of bidding as determined by the State.

Reverse Auction End Date - The date by which all PBM Vendors (Bidders) must submit a final Price Quote through the Reverse Auction Tool. The final Round of Bidding concludes on the Reverse Auction End Date.

Reverse Auction Period - The timeframe during which the Reverse Auction Tool is available to PBM Vendors (Bidders). The Reverse Auction Period starts on the Reverse Auction Start Date and ends on the Reverse Auction End Date.

Reverse Auction Start Date - The date on which the Reverse Auction Tool first becomes available for PBM Vendors (Bidders) to submit the Price Quotes. The initial round of bidding begins on the Reverse Auction Start Date.

Reverse Auction Tool - The online automated platform hosted on the Contractor’s secure web portal through which PBM Vendors (Bidders) submit Price Quotes.

Round of Bidding - A specified timeframe within the Reverse Auction Period during which PBM Vendors (Bidders) have the opportunity to submit Price Quotes.

Sandbox System - A test or demonstration system where the State can experience and analyze the functionality and navigation of the Contractor’s proposed Reverse Auction Tool.

School Employees’ Health Benefits Program (SEHBP) - State administered program that provides medical and prescription drug coverage to qualified local education public employees, retirees, and eligible dependents.

Software - Means, without limitation, computer programs, source codes, routines, or subroutines supplied by Contractor, including operating software, programming aids, application programs, application programming interfaces and software products, and includes COTS and Custom Software, unless the context indicates otherwise.

Services - Shall be deemed to include, without limitation (i) Information Technology (“IT”) professional services; (ii) Software and Hardware-related services, including without limitation, installation, configuration, and training and (iii) Software and Hardware maintenance and support and/or Software and Hardware technical support services.

State Health Benefits Program (SHBP) - State administered program that provides health insurance coverage to State employees.

System Development Life Cycle (SDLC) - The process for planning, creating, testing, and deploying an information system.
3.0 SCOPE OF WORK

A. The scope of work includes providing a Software-as-a-Service (SaaS) Reverse Auction Tool and additional consulting services to assist the State in the evaluation of qualifications of responsive PBM Vendors {Bidders} during the procurement of a PBM including the following:

1. The Reverse Auction Tool shall be cloud based, managed by the Contractor on the Contractor's infrastructure, and capable of accurately executing complex pricing algorithms. The Contractor must develop the pricing algorithms using State-supplied claims history and code-based classification of drugs from nationally-accepted prescription drug data sources. After the conclusion of the Reverse Auction round, the Reverse Auction Tool must tabulate and score submitted auction pricing during the competitive bidding period; and

2. The Contractor must also provide consulting services as a subject matter expert on PBM and assist in the evaluation of the technical aspects of submitted Quotes from PBM Vendor {Bidders} (Please refer to Section 3.5 for additional information).

The State envisions approximately five (5) PBM Vendors {Bidders} will submit PBM Quotes and participate in the Reverse Auction during competitive bidding for the PBM Blanket P.O.

B. Following successful selection of PBM Vendor {Contractor} using the Reverse Auction Tool, the Contractor must also provide claims adjudication services including the following:

A. The Contractor shall provide the State with real-time, electronic, line-by-line, claim-by-claim review of invoiced PBM pharmacy claims using an Automated Claims Adjudication Platform that allows for online comparison of PBM Invoices along with auditing other aspects of the services provided by the PBM; and

B. The Automated Claims Adjudication Platform shall accept 100% of the claims data and invoiced price data directly from the PBM (or DPB). The Automated Claims Adjudication Platform shall also provide reconciliation of the data with 48 hours of receipt, prior to the payment of the PBM Invoice.

Upon expiration of the Contract, the State will own the claims data, but not the software.

3.1 REVERSE AUCTION TOOL

3.1.1 MINIMUM REQUIREMENTS

A. The Contractor shall have at least three (3) years of experience in conducting Reverse Auctions;

B. The Contractor shall be able to meet the State's timeframes and deadlines for the duration of this project.

The State envisions the following timeline for the Reverse Auction solution:

- **Weeks 1-8**: Requirements gathering, claims data analysis, Reverse Auction site design with requisite price entries to support PBM Vendor {Bidder} Round(s) of Bidding, Reverse Auction Tool testing and implementation, and training for State and PBM Vendor {Bidders}; and
• **Weeks 9-11** Reverse Auction execution, analysis and reporting;

C. The Contractor shall conduct, at a minimum, weekly status meetings/conference calls with the State Contract Manager (SCM) on the progress of the Reverse Auction Tool;

D. The Contractor shall follow all State procurement rules and processes. This includes, but is not limited to, allowing any and all responsive PBM Vendors (Bidders) that wish to bid on the State’s prescription drug coverage to access the Reverse Auction Tool;

E. The State shall have the final determination in selecting a PBM. The Contractor shall not in any way enter into a separate agreement, arrangement, or Blanket P.O. with a PBM Vendor (Bidder) in relation to this RFQ or PBM Bid Solicitation; and

F. The Contractor and its affiliated or subsidiary companies may not in any way submit a bid for the PBM services requested by the State in the PBM Bid Solicitation.

### 3.2 REVERSE AUCTION PROCESS AND COST EVALUATION OF PBM VENDORS (BIDDERS)

#### 3.2.1 ONLINE REVERSE AUCTION TOOL

A. The Contractor shall provide a private, safe, and secure Reverse Auction Tool that allows the State and the PBM Vendors (Bidders) to view pricing results in real-time or after each Round of Bidding. Contractor shall provide assistance to the DPB within this Scope of Work as needed;

B. The Reverse Auction Tool shall, if possible, utilize a re-pricing of claims to determine the projected cost of Price Quotes received from PBM Vendors (Bidders) by utilizing code-based classification of drugs from nationally-accepted prescription drug data sources such as MediSpan or First DataBank;

C. The Contractor shall sign a Non-Disclosure Agreement prior to receipt of any State data. Said agreement shall be submitted within five (5) Business Days after award of the Contract. Claims utilization data will be provided to the Contractor within five (5) Business Days after receipt of the Non-Disclosure Agreement;

D. The Contractor must protect the integrity and confidentiality of the online Price Quotes, including Blinding the identity of the PBM Vendors (Bidders) and protecting the proprietary details of the online Price Quotes from being accessible to other PBM Vendors (Bidders);

E. The Reverse Auction Tool shall, if possible, be updated regularly to show PBM Vendors (Bidders) (on a Blinded basis) the projected value of the PBM Blanket P.O.; and

F. The Contractor shall ensure that the Reverse Auction Tool provides full required functionality for at least 90.0% of the time during the Reverse Auction Period.

#### 3.2.2 PRICING METHODOLOGY

The Contractor must evaluate, analyze, and quantify the Price Quotes submitted during the Reverse Auction, and prepare a quantitative summary of the responses. The Contractor shall project the costs and savings of the Price Quote over the term of the Blanket P.O. for each Price Quote submitted. The cost and savings projections must be provided to the SHBP and SEHBP at the end of each Round of Bidding.
3.2.3 SYSTEM TESTING AND READINESS

A. The Contractor shall provide the State with a report prior to the Reverse Auction Start Date certifying the successful completion of system testing. This report shall be provided not less than five (5) business days prior to the Reverse Auction Start Date; and

B. The Contractor shall permit PBM Vendors {Bidders} to log in to the Reverse Auction Tool at least five (5) business days prior to the Reverse Auction Start Date. The Contractor shall provide a written report prior to the Reverse Auction Start Date to the DPB on the status of each PBM Vendor’s {Bidder’s} ability to successfully access the Reverse Auction Tool.

3.2.4 REPORTING AND FINAL ANALYSIS

A. The Contractor shall provide the State with daily reporting throughout the duration of the Reverse Auction Period, detailing any site activity including changes in the PBM Vendor {Bidder} pricing, newly registered users, and technical issues (if any) and its resolution status; and

B. The Contractor shall provide a comprehensive report to the State after the Reverse Auction End Date. This report shall include, at a minimum, a list of final Price Quotes received and projected costs for the term of the PBM Blanket P.O. for each PBM Vendor {Bidder}. This report shall be submitted within five (5) business days after the Reverse Auction End Date.

3.2.5 SUPPORT IN EVALUATION OF PBM VENDOR {BIDDER} QUALIFICATIONS

A. The Contractor shall be able to support the State with the evaluation of the PBM Vendors’ {Bidders’} qualifications. This shall include, without limitation, an evaluation of each PBM Vendor’s {Bidder’s}:

1. Clinical programs;
2. Operations;
3. Account management;
4. Customer Service/Member Services;
5. Benefit Management and Plan Design;
6. Claim Management Services;
7. Reporting;
8. Formulary Management;
9. Business Model;
10. Pharmacy Network;
11. Formulary and Formulary Disruption; and
12. Blanket P.O. terms;

B. The Contractor shall participate on the State’s Evaluation Committee as a technical advisor to evaluate the PBM Vendors’ {Bidders’} qualifications; and

C. The Contractor shall provide weekly status reports to the SCM that describe and detail the Contractor’s staff resources used in support of the State’s evaluation of the PBM Vendors’ {Bidders’} qualifications.

3.3 AUTOMATED CLAIMS ADJUDICATION PLATFORM

3.3.1 MINIMUM REQUIREMENTS

A. The Contractor shall have at least three (3) years of experience in conducting PBM Invoice Reviews;
B. The Contractor shall be able to meet the State’s timeframes and deadlines for the duration of this project;

C. The State receives a PBM Invoice following the close of a bi-weekly (every two weeks) period;

D. The Contractor shall provide PBM invoice Review results to the State no later than 48 hours following the receipt of the bi-weekly claims data and PBM Invoice; and

E. The Contractor has the continuing obligation to update disclosures made to the State regarding interest and relationships detailed in response to Bid Solicitation Section 4.1.5.4.

3.3.2 PBM INVOICE REVIEW

A. PBM Invoice Review Requirements:

1. The Contractor shall offer a proprietary Automated Claims Adjudication Platform and shall accept the PBM Invoices directly from the PBM (or the DPB) on a bi-weekly basis;

2. The Contractor, using the above mentioned auto-adjudication software, must analyze 100% of the pharmacy claims incurred during the time period of the PBM Invoice Review to confirm pricing accuracy as compared to the pricing requirements set forth in the Employee Benefits: Pharmacy Benefit Management term Blanket P.O.;

3. The Contractor shall ensure that all Quantity Management programs have been applied properly to the PBM Invoice; and

4. The Contractor shall provide assistance to the State with regards to any pricing disputes identified as a result of the PBM Invoice Review; and

B. Reporting:

The Contractor shall provide the State with a bi-weekly PBM Invoice Review summary report, clearly identifying any pricing discrepancies from the most recent PBM Invoice. The report must include specific dollar amounts associated with the disputed claims. This report shall be provided not more than 48 hours following receipt of the bi-weekly PBM Invoice.

3.4 CLIENT SUPPORT AND TRAINING

A. The Contractor shall resolve and accommodate all technical problems and changes requested by the State within one (1) business day unless otherwise approved by the SCM;

B. The Contractor shall provide training for five (5) State users before the Reverse Auction Start Date and approximately five (5) PBM Vendors (Bidders); and

C. The Contractor shall be available as needed throughout the length of the Contract. The Contractor shall be available during normal business hours, 8:00AM to 5:00PM EST.

3.5 ACCOUNT MANAGEMENT

A. The Contractor shall have a team available to complete this project within the short timeframes required. The team should include, at a minimum, an Account Manager, a Project Manager, a Systems/Technical Expert, and a Pricing Analyst, as set forth below:
1. **The Account Manager** is the point of contact with the State and is responsible for the day-to-day support of the Reverse Auction project and PBM Invoice Review, and facilitating customer support and technical assistance to State users and PBM Vendors {Bidders};

2. **The Project Manager** is responsible for the planning, organization, resource management and maintaining the project schedule to ensure the successful implementation, execution, monitoring and completion of the Reverse Auction for the PBM competitive bidding process and PBM Invoice Reviews. The Project Manager must evaluate and report regularly to the SCM on overall project performance, team organization, project schedule, budget, risks and issues;

3. **The Systems Technical Expert** is responsible for the design, testing, implementation, availability, troubleshooting and problem resolution associated with the Reverse Auction Tool and Automated Claims Adjudication Platform; and

4. **The Pricing Analyst** is responsible for the compilation, analysis, scoring and reporting for the Reverse Auction Tool and results from submitted Price Quotes from PBM Vendor {Bidders};

B. The Contractor shall be available as needed throughout the Reverse Auction Period to provide technical support to the PBM Vendors {Bidders}. The Contractor shall be available between the hours of 8:00AM and 7:00PM EST via email and/or telephone;

C. The Contractor shall be available to the State for post-auction support, including assistance with dispute resolution or questions from the PBM Vendors {Bidders} as needed. The Contractor must be able to defend, in detail and in a public forum or document, its methodology and process in the event of a PBM Vendor {Bidder} appeal or protest.

### 3.6 IMPLEMENTATION AND DELIVERABLES

The Contractor shall meet with the State no later than three (3) business days after the Contract award date, in the DPB office in Trenton, to kick off the project. The Contractor shall be prepared to discuss a proposed detailed Contract schedule for the project as well as walk the State through a demonstration of its Reverse Auction Tool and Automated Claims Adjudication Platform.

### 3.6.1 REQUIREMENTS AND DELIVERABLES

A. A Contract schedule provided to the SCM five (5) business days after Contract award;
B. A Project Plan delivered to the SCM ten (10) business days after Contract award which includes the following items:
   1. A Design and Development Plan: the Contractor shall describe its plans and the methodology by which it will design and develop the required system functionality including the System Development Life Cycle (SDLC);
   2. A System Test Plan: Contractor shall describe its plans to complete system and user acceptance testing including its methodology for fixing bugs and defects and retesting;
   3. An Implementation Plan: the Contractor shall describe its plans for system roll-out including System Pilot Testing and full deployment; and
   4. Operations and Maintenance Plans;
C. Training Plan for the five (5) State users and PBM Vendors {Bidders} provided to the SCM ten (10) business days before the beginning of training State users;
D. Security Plan as described in Bid Solicitation Section 5.8.5.1 provided to the SCM ten (10) business days after Contract award;
E. Disaster Recovery Plan as described in Bid Solicitation Section 5.8.5.2 provided to the SCM ten (10) business days after Contract award;
F. Contingency Plan as described in Bid Solicitation Section 5.8.5.3 provided to the SCM ten (10) business days after Contract award;
G. Backup Plan as described in Bid Solicitation Section 5.8.5.4 provided to the SCM ten (10) business days after Contract award;
H. Completed Reverse Auction Tool design, testing and implementation;
I. Enrollment and completed Training of PBM Vendors {Bidders};
J. Auction(s) Execution;
K. Analysis and Compilation of Auction Results;
L. Project Close-out including the transfer of all Auction Data to the State and Administration Completion Reporting;
M. Completed Automated Claims Adjudication Platform design, testing and implementation;
N. Analysis and Compilation of PBM Invoice Review results; and
O. Project Close-out including the transfer of all PBM Invoice Review data to the State and Administration Completion Reporting.
4.0 QUOTE PREPARATION AND SUBMISSION

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

4.1 GENERAL

A Bidder may submit additional terms as part of its Quote and Quotes including Bidder proposed terms and conditions may be accepted, but Bidder proposed terms or conditions that conflict with those contained in the RFQ as defined in Section 2.0, or that diminish the State’s rights under any Contract resulting from the RFQ, may render a Quote non-responsive. It is incumbent upon the Bidder to identify and remove its conflicting proposed terms and conditions prior to Quote submission.

After award of the Contract, if a conflict arises between a Bidder’s additional terms included in the Quote and a term or condition of the RFQ, the term or condition of the RFQ will prevail.

| The forms discussed herein and required for submission of a Quote in response to this RFQ are available on the Division’s website | http://www.state.nj.us/treasury/purchase/forms.shtml unless noted otherwise. |

4.1.1 FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED WITH QUOTE

Bidders are under a continuing obligation to report updates to the information contained in its required forms.

4.1.1.1 OFFER AND ACCEPTANCE PAGE

The Bidder shall complete and submit the Offer and Acceptance Page accompanying this RFQ prior to the initiation of negotiation. The Bidder should submit the Offer and Acceptance Page with the Quote.

If the Offer and Acceptance Page is not submitted with the Quote or is incomplete, the Using Agency will require the Bidder to submit the Offer and Acceptance Page. If the Bidder fails to comply with the requirement within seven (7) business days of the demand, the Using Agency may deem the Quote non-responsive.

The Offer and Acceptance Page must be signed by an authorized representative of the Bidder. If the Bidder is a limited partnership, the Offer and Acceptance Page must be signed by a general partner.

4.1.1.1.1 MACBRIEDE PRINCIPLES CERTIFICATION

The Bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it is in compliance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom’s Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of its compliance with those principles. See Section 2.5 of the SSTC and N.J.S.A. 52:34-12.2 for additional information about the MacBride principles.

By signing the RFQ Offer and Acceptance Page, the Bidder is automatically certifying that either:

A. The Bidder has no operations in Northern Ireland; or
B. The Bidder has business operations in Northern Ireland and is committed to compliance with the MacBride principles.

A Bidder electing not to certify to the MacBride Principles must nonetheless sign the RFQ Offer and Acceptance Page AND must include, as part of its Quote, a statement indicating its refusal to comply with the provisions of this Act.

4.1.1.2 NON-COLLUSION

By submitting a Quote and signing the RFQ Offer and Acceptance Page, the Bidder certifies as follows:

A. The price(s) and amount of its Quote have been arrived at independently and without consultation, communication or agreement with any other Contractor / Bidder or any other party;

B. Neither the price(s) nor the amount of its Quote, and neither the approximate price(s) nor approximate amount of this Quote, have been disclosed to any other firm or person who is a Bidder or potential Bidder, and they will not be disclosed before the Quote submission;

C. No attempt has been made or will be made to induce any firm or person to refrain from bidding on this Contract, or to submit a Quote higher than this Quote, or to submit any intentionally high or noncompetitive Quote or other form of complementary Quote;

D. The Quote of the firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Quote; and

E. The Bidder, its affiliates, subsidiaries, officers, directors, and employees are not, to the Bidder’s knowledge, currently under investigation by any governmental agency for alleged conspiracy or collusion with respect to bidding on any public Contract and have not in the last five (5) years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public Contract.

4.1.1.3 NEW JERSEY BUSINESS ETHICS GUIDE CERTIFICATION

The Treasurer has established a business ethics guide to be followed by Bidders / Contractors in its dealings with the State. The guide provides further information about compliance with Section 2.7 of the SSTC. The guide can be found at: http://www.state.nj.us/treasury/purchase/ethics_guide.shtml

By signing the RFQ Offer and Acceptance Page, the Bidder is automatically certifying that it has complied with all applicable laws and regulations governing the provision of State goods and services, including the Conflicts of Interest Law, N.J.S.A. 52:13D-12 to 28.

4.1.2 STANDARD FORMS REQUIRED WITH THE QUOTE

Bidder’s failure to complete, sign and submit the forms in Section 4.1.1.2 shall be cause to reject its Quote as non-responsive.
4.1.1.2.1 OWNERSHIP DISCLOSURE FORM

Pursuant to N.J.S.A. 52:25-24.2, in the event the Bidder is a corporation, partnership or limited liability company, the Bidder must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote. A Bidder’s failure to submit the completed and signed form with its Quote will result in the rejection of the Quote as non-responsive and preclude the award of a Contract to said Bidder unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote.

In the alternative, to comply with this section, a Bidder with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

The Ownership Disclosure Form located on the Division’s website.

4.1.1.2.2 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM

Pursuant to N.J.S.A. 52:32-58, the Bidder must utilize this Disclosure of Investment Activities in Iran form to certify that neither the Bidder, nor one (1) 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 Bidder, nor one (1) 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 Bidder is unable to so certify, the Bidder shall provide a detailed and precise description of such activities as directed on the form. A Bidder’s failure to submit the completed and signed form with its Quote will result in the rejection of the Quote as non-responsive and preclude the award of a Contract to said Bidder.

The Disclosure of Investment Activities in Iran form located on the Division’s website.

4.1.1.3 SUBCONTRACTOR UTILIZATION PLAN

Bidders intending to use a Subcontractor shall submit a Subcontractor Utilization Plan form and should indicate whether any proposed Subcontractor is a Small Business.

As defined at N.J.A.C. 17:13-1.2, "Small Business" means a business that is incorporated or registered in and has its principal place of business in the State of New Jersey, is independently owned and operated, and has no more than 100 full-time employees. The program places small business into the following categories:

For goods and services - (i) those with gross revenues not exceeding $500,000; (ii) those with gross revenues not exceeding $5,000,000; and (iii) those with gross revenues that do not exceed $12,000,000 or the applicable federal revenue standards established at 13 CFR 121.201, whichever is higher. While companies registered as having revenues below $500,000 can bid on any Contract, those earning more than the $500,000 and $5,000,000 amounts will not be permitted to bid on Contracts designated for revenue classifications below its respective levels.
For construction services: (iv) those with gross revenues not exceeding $3,000,000; (v) those with gross revenues that do not exceed 50 percent of the applicable annual revenue standards established at 13 CFR 121.201; and (vi) those with gross revenues that do not exceed the applicable annual revenue standards established at CFR 121.201. While companies registered as having revenues below $3,000,000 can bid on any Contract, those earning more than the revenue standards established at CFR 121.201 will not be permitted to bid on Contracts designated for revenue classifications below their respective levels.

The Subcontractor Utilization Plan form is located on the Division’s website.

For a Quote that does NOT include the use of any Subcontractors, by signing the RFQ Offer and Acceptance Page, the Bidder is automatically certifying that in the event the award is granted to the Bidder, and the Bidder later determines at any time during the term of the Contract to engage Subcontractors to provide certain goods and/or services, pursuant to Section 5.8 of the SSTC, the Bidder shall submit a Subcontractor Utilization Plan form for approval to the Division in advance of any such engagement of Subcontractors.

4.1.2 FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED BEFORE CONTRACT AWARD AND THAT SHOULD BE SUBMITTED WITH THE QUOTE

Unless otherwise specified, forms must contain an original, physical signature, or an electronic signature.

4.1.2.1 BUSINESS REGISTRATION

In accordance with N.J.S.A. 52:32-44(b), a Bidder and its named Subcontractors must have a valid Business Registration Certificate (“BRC”) issued by the Department of the Treasury, Division of Revenue and Enterprise Services prior to the award of a Contract. To facilitate the Quote evaluation and Contract award process, the Bidder should submit a copy of its valid BRC and those of any named Subcontractors with its Quote. See Section 2.1 of the SSTC.

Any Bidder, inclusive of any named Subcontractors, not having a valid business registration at the time of the Quote opening, or whose BRC was revoked prior to the submission of the Quote, should proceed immediately to register its business or seek reinstatement of a revoked BRC.

The Bidder is cautioned that it may require a significant amount of time to secure the reinstatement of a revoked BRC. The process can require actions by both the Division of Revenue and Enterprise Services and the Division of Taxation. For this reason, a Bidder’s early attention to this requirement is highly recommended. The Bidder and its named Subcontractors may register with the Division of Revenue and Enterprise Services, obtain a copy of an existing BRC or obtain information necessary to seek re-instatement of a revoked BRC online at http://www.state.nj.us/treasury/revenue/busregcert.shtml.

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

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

4.1.2.2 DISCLOSURE OF INVESTIGATIONS AND OTHER ACTIONS INVOLVING BIDDER FORM

The Bidder should submit the Disclosure of Investigations and Other Actions Involving Bidder Form, with its Quote, 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. If a Bidder does not submit the form with the Quote, the Bidder must comply within seven (7) business days of the State’s request or the State may deem the Quote non-responsive.

The Disclosure of Investigations and Other Actions Involving Bidder Form located on the Division’s website.

4.1.2.3 SOURCE DISCLOSURE

Pursuant to N.J.S.A. 52:34-13.2, prior to an award of Contract, the Bidder is required to submit a completed Source Disclosure Form. The Bidder’s inclusion of the completed Source Disclosure Form with the Quote is requested and advised. See RFQ Section 7.1.2 for additional information concerning this requirement.

The Source Disclosure Form is located on the Division’s website.

4.1.3 FINANCIAL CAPABILITY OF THE BIDDER

The Bidder should provide sufficient financial information to enable the State to assess the financial strength and creditworthiness of the Bidder and its ability to undertake and successfully complete the Contract. In order to provide the State with the ability to evaluate the Bidder’s financial capacity and capability to undertake and successfully complete the Contract, the Bidder should submit the following:

A. For publically traded companies the Bidder should provide copies or the electronic location of the annual reports filed for the two most recent years; or

B. For privately held companies the Bidder should provide the certified financial statement (audited or reviewed) in accordance with applicable standards by an independent Certified Public Accountant which include a balance sheet, income statement, and statement of cash flow, and all applicable notes for the most recent calendar year or the Bidder’s most recent fiscal year.

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

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

The State reserves the right to make the determination to accept the assertion and shall so advise the Bidder.
4.1.4  STATE-SUPPLIED PRICE SHEET

The Bidder must submit its pricing using the State-Supplied Price Sheet accompanying this RFQ.

4.1.4.1  STATE-SUPPLIED PRICE SHEET INSTRUCTIONS

In the State-Supplied Price Sheet, the Bidder must provide all-inclusive, firm fixed pricing for supporting the State with the Reverse Auction and Claims Adjudication processes as outlined in the Scope of Work.

In Part 1 of the Price Sheet, the Bidder must enter its all-inclusive, firm fixed fee for each of the items listed on lines 1 through 15 in the corresponding cell under the column labeled “Firm Fixed Price.”

In Part 2 of the Price Sheet, the Bidder must provide its all-inclusive hourly rates for individuals to support the State with technical and professional services related to submitted PBM Quotes. The Bidder must enter:

1. The Proposed Title for the corresponding Job Functions on lines 16 through 20 under the column labeled “Proposed Title”; and
2. The all-inclusive hourly rates for the corresponding Job Functions on lines 16 through 20 under the column labeled “Firm Fixed Hourly Rate.”

In Part 3 of the Price Sheet, the Bidder must enter its all-inclusive fee per script on line 21 for claim analysis for PBM Invoice Review.

The Bidder must complete all 21 lines of the price sheet. Failure to submit all information required will result in the Quote being deemed non-responsive.

4.1.4.2  DELIVERY TIME AND COSTS

Unless otherwise noted elsewhere in the RFQ, all delivery times are 30 calendar days after receipt of order (ARO) and prices for items in Quotes shall be submitted Freight On Board (F.O.B.) Destination (30 calendar days ARO/F.O.B.). Quotes submitted other than 30 calendar days ARO/F.O.B. may be deemed non-responsive. The Contractor shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to the State’s Using Agency or designated purchaser. 30 calendar days ARO/F.O.B. does not cover "spotting" but does include delivery on the receiving platform of the Using Agency at any destination in the State of New Jersey unless otherwise specified.

No additional charges will be allowed for any additional transportation costs resulting from partial shipments made at the Contractor’s convenience when a single shipment is ordered.

The weights and measures of the State’s Using Agency receiving the shipment shall govern.

4.1.4.3  COLLECT ON DELIVERY (C.O.D.) TERMS

C.O.D. terms are not acceptable as part of a Quote and shall be deemed non-responsive.

4.1.4.4  CASH DISCOUNTS

The Bidder is encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts, but discounts will not be considered in determining the price rankings of Quotes.
Should the Bidder choose to offer cash discounts the following shall apply:

A. Discount periods shall be calculated starting from the next business day after the Using Agency has accepted the goods or services, received a properly signed and executed invoice and, when required, a properly executed performance security, whichever is latest; and

B. The date on the check issued by the State in payment of that invoice shall be deemed the date of the State's response to that invoice.

4.1.5 TECHNICAL QUOTE SUBMISSION

4.1.5.1 TECHNICAL QUOTE

In this section, the Vendor shall describe its approach and plans for accomplishing the work outlined in the Scope of Work section, i.e., Section 3.0. The Vendor must set forth its understanding of the requirements of this Bid Solicitation and its approach to successfully complete the Contract. The Vendor should include the level of detail it determines necessary to assist the evaluation committee in its review of the Bidder's Quote.

At a minimum, the Bidder shall describe how its proposed solution will meet the RFQ's requirements as listed in the table below. The Bidder must document any assumptions, risks, or issues related to satisfying these requirements and should set forth a summary of any and all problems that the Bidder anticipates during the term of the Contract. For each problem identified, the Bidder should provide its proposed solution.

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<th>RFQ Section</th>
<th>3.0 Scope of Work</th>
<th>3.1 Reverse Auction Tool</th>
<th>3.1.1 Minimum Requirements</th>
<th>3.2 Reverse Auction Process and Cost Evaluation of PBM Vendors {Bidders}</th>
<th>3.2.1 Online Reverse Auction Tool</th>
<th>3.2.2 Pricing Methodology</th>
<th>3.2.3 Technical Assistance</th>
<th>3.2.4 Reporting and Final Analysis</th>
<th>3.2.5 Support in Evaluation of PBM Vendor {Bidder} Qualifications</th>
<th>3.3 Automated Claims Adjudication Platform</th>
<th>3.3.1 Minimum Requirements</th>
<th>3.3.2 PBM Invoice Review</th>
<th>3.4 Client Support and Training</th>
<th>3.5 Account Management</th>
<th>3.6 Implementation</th>
<th>3.6.1 Requirements and Deliverables</th>
</tr>
</thead>
</table>

4.1.5.2 MANAGEMENT OVERVIEW

The Bidder shall set forth its overall technical approach and plans to meet the requirements of the Bid Solicitation in a narrative format. This narrative should demonstrate to the State that the Bidder understands the objectives that the Contract is intended to meet, the nature of the required work, and the level of effort necessary to successfully complete the Contract. This narrative should demonstrate to the State that the Bidder's general approach and plans to undertake and complete the Contract are appropriate to the tasks and subtasks involved.
Mere reiterations of Bid Solicitation tasks and subtasks are strongly discouraged, as they do not provide insight into the Bidder’s approach to complete the Contract. The Bidder’s response to this section should be designed to demonstrate to the State that the Bidder’s detailed plans and approach proposed to complete the Scope of Work are realistic, attainable and appropriate and that the Bidder’s Quote will lead to successful Contract completion.

4.1.5.3 CONTRACT MANAGEMENT

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

4.1.5.3.1 CONTRACT SCHEDULE AND PLANS

A. CONTRACT SCHEDULE

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

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

B. MOBILIZATION PLAN

It is essential that the State have quick use of the functionality this Contract is to provide. Therefore, each Bidder shall include as part of its Quote a mobilization plan, beginning with the date of notification of Contract award and lasting no longer than eight (8) weeks.

Such mobilization plan should include the following elements:

1. A detailed timetable for the mobilization period of eight (8) weeks. This timetable should be designed to demonstrate how the Bidder will have the personnel and equipment it needs to begin work on the Contract up and operational from the date of notification of award;

2. The Bidder’s plan for the deployment and use of management, supervisory or other key personnel during the mobilization period. The plan should show all management, supervisory and key personnel that will be assigned to manage, supervise and monitor the Bidder’s mobilization of the Contract within the period of eight (8) weeks;

3. **NOTE:** The Bidder should clearly identify management, supervisory or other key staff that will be assigned only during the mobilization;

4. The Bidder’s plan for recruitment of staff required to provide all services required by the Bid Solicitation on the Contract start date at the end of the mobilization period covering eight (8) weeks; and

5. The Bidder’s plan for the purchase and distribution of equipment, inventory, supplies, materials, etc. that will be required to begin work on the Contract on the required start date.
C. TECHNOLOGY PROJECT PLAN

The Bidder shall provide its draft plan to accomplish all work required by this Contract. The Project Plan shall include:

1. The Design and Development Plan: The Bidder should describe the methodology by which it will design and develop the required system functionality including the Software Development Lifecycle;

2. The System Test Plan: The Bidder should describe its plans to complete system and user acceptance testing including its methodology for fixing bugs and defects and retesting;

3. The Implementation Plan: The Bidder should describe its plans for system roll-out including System Pilot Testing and full deployment; and

4. Operations and Maintenance Plans: The Bidder should describe its plans to support the operational system including application updates, new releases, bug and defect repairs, emergency maintenance/repairs of hardware and software and routine maintenance.

The plan should demonstrate to the Evaluation Committee that the Bidder understands the scope of work required for a successful implementation of the system, its operations and maintenance and support.

D. PLANS REQUIRED BY RFQ SECTION 5.8.5 SECURITY PLAN AND STANDARDS

The Bidder shall provide a draft of the plans required by Section 5.8.5. The plans shall include:

A. Security Plan as described in Section 5.8.5.1;

B. Disaster Recovery Plan as described in Section 5.8.5.2;

C. Contingency Plan as described in Section 5.8.5.3; and

D. Backup Plan as described in Section 5.8.5.4.

The plans should demonstrate to the Evaluation Committee that the Bidder understands the scope of work required for a successful implementation of the system, its operations and maintenance and support.

4.1.5.4 DISCLOSURE OF INTERESTS AND RELATIONSHIPS

To ensure the integrity of the PBM Bid Solicitation, the Bidder shall disclose ownership interests and relationships to enable the State to ascertain whether any conflict of interest exists. At a minimum, the Bidder shall disclose:

A. any interest Bidder holds in any firm, association, partnership, corporation or other business organization, including any subsidiary, parent, or related company thereof, that may reasonably be expected to be a bidder in response to the PBM Bid Solicitation. For purposes of this section, "interest" means any ownership or control of any profits, assets, or operations of a business organization. Include both the name of the business organization and the nature of the interest (number of shares held, percentage of partnership, etc.);

B. any professional relationship Bidder's principal officers or directors have with any person, firm, association, partnership, corporation or other business organization, including any subsidiary, parent, or related company thereof, that may reasonably be
expected to be a bidder in response to the PBM Bid Solicitation. Include both the name of the business organization and the nature of the professional relationship;

C. any personal relationship that Bidder’s principal officers or directors have with any principal officer or director of any firm, association, partnership, corporation or other business organization, including any subsidiary, parent, or related company thereof, that may reasonably be expected to be a bidder in response to the PBM Bid Solicitation. Include the name of each principal officer or director, the name of the business organization and the nature of the personal relationship.

For any interest, professional relationship, or personal relationship identified in response to the items enumerated above, Bidder shall identify proposed methods or solutions for handling the interest or relationship in the event the State determines the interest, professional relationship, or personal relationship presents a conflict of interest.

Disclosures made pursuant to this section will not necessarily preclude a Bidder from being awarded this Contract. However, the State reserves the right to determine, on a case by case basis, whether a conflict of interest exists such that award of the Contract to Bidder would not be in the State’s best interest.

The State may request further information from Bidder regarding any disclosures made in response to this RFQ Section 4.1.5.4.

Except to the extent a Bidder discloses interests, professional relationships, and/or personal relationships in response to the items enumerated above, by signing the RFQ Offer and Acceptance Page, Bidder is automatically affirming that none exist as of the time of the Quote submission.

4.1.5.5 ORGANIZATIONAL SUPPORT AND EXPERIENCE

The Bidder should include information relating to its organization, personnel, and experience, including, but not limited to, references, together with contact names and telephone numbers, evidencing the Vendor’s (Bidder’s) qualifications, and capabilities to perform the services required by this Bid Solicitation.

The Bidder should include the level of detail it determines necessary to assist the evaluation committee in its review of Vendor’s (Bidder’s) Quote.

A LOCATION

The Bidder should include the address of the Bidder’s office where responsibility for managing the Contract will take place. The Bidder should include the telephone number and name of the individual to contact.

B ORGANIZATION CHARTS

1. Contract Specific Chart. The Bidder should include a Contract organization chart, with names showing management, supervisory and other key personnel (including Subcontractor management, supervisory, or other key personnel) to be assigned to the Contract. The chart should include the labor category and title of each such individual; and

2. Chart for Entire Firm. The Bidder should include an organization chart showing the Vendor’s (Bidder’s) entire organizational structure. This chart should show the relationship of the individuals assigned to the Contract to the Bidder’s overall organizational structure.
C RESUMES

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

1. The individual's previous experience in completing each similar Contract;

2. Beginning and ending dates for each similar Contract;

3. A description of the Contract demonstrating how the individual's work on the completed Contract relates to the individual's ability to contribute to successfully providing the services required by this Bid Solicitation; and

4. With respect to each similar Contract, the name and address of each reference together with a person to contact for a reference check and a telephone number.

The Bidder should provide detailed resumes for each Subcontractor's management, supervisory, and other key personnel that demonstrate knowledge, ability, and experience relevant to that part of the work which the Subcontractor is designated to perform. When a Bidder submits resumes pursuant to this paragraph, the Bidder shall redact the social security numbers, home addresses, personal telephone numbers, and any other personally identifying information other than the individual's name from the resume.

D BACKUP STAFF

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

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

E EXPERIENCE WITH CONTRACTS OF SIMILAR SIZE AND SCOPE

The Bidder should provide a comprehensive listing of contracts of similar size and scope that it has successfully completed, as evidence of the Vendor's {Bidder's} ability to successfully complete services similar to those required by this Bid Solicitation. Emphasis should be placed on contracts that are similar in size and scope to the work required by this Bid Solicitation. A description of all such contracts should be included and should show how such contracts relate to the ability of the firm to complete the services required by this Bid Solicitation. For each such contract listed, the Bidder should provide two (2) names and telephone numbers of individuals for contracting party. Beginning and ending dates should also be given for each contract.

The Bidder must provide details of any negative actions taken by other contracting entities against them in the course of performing these projects including, but not limited to, receipt of letters of potential default, default, cure notices, termination of services for cause, or other similar notifications/processes. Additionally, the Bidder should provide details, including any negative audits, reports, or findings by any governmental agency for which the Bidder is/was the Contractor on any contracts of similar scope. In the event a Bidder neglects to include this information in its Quote, the Vendor's {Bidder's} omission of necessary disclosure information may be cause for rejection of the Vendor's {Bidder's} Quote by the State.
The Bidder should provide documented experience to demonstrate that each Subcontractor has successfully performed work on contracts of a similar size and scope to the work that the Subcontractor is designated to perform in the Vendor's {Bidder's} Quote. The Bidder must provide a detailed description of services to be provided by each Subcontractor.
5.0 SPECIAL CONTRACTUAL TERMS AND CONDITIONS APPLICABLE TO THE
     Contract

5.1 PRECEDENCE OF SPECIAL CONTRACTUAL TERMS AND CONDITIONS

This Contract awarded, and the entire agreement between the parties, as a result of this RFQ shall consist of this RFQ, SSTC, Bid Amendment to this RFQ, the Contractor’s Quote, any Best and Final Offer, and the Using Agency’s Notice of Award.

In the event of a conflict in the terms and conditions among the documents comprising this Contract, the order of precedence, for purposes of interpretation thereof, listed from highest ranking to lowest ranking, shall be:

A. Executed Offer and Acceptance Page;
B. RFQ Section 5, as may be amended by Bid Amendment;
C. The State of NJ Standard Terms and Conditions (SSTC) accompanying this RFQ;
D. All remaining sections of the RFQ, as may be amended by Bid Amendment; and
E. The Contractor’s Quote as accepted by the State.

5.2 CONTRACT TERM AND EXTENSION OPTION

The base term of this Contract shall be for a period to run co-terminus with the Blanket P.O. awarded to the PBM Vendor (Contractor). If delays in the procurement process result in a change to the anticipated Contract Effective Date, the Contractor agrees to accept a Contract for the full term of this Contract.

This Contract may be extended for a period to run co-terminus with no single extension exceeding one (1) year, by the mutual written consent of the Contractor and the Director at the same terms, conditions, and pricing at the rates in effect in the last year of this Contract or rates more favorable to the State.

In the event of a termination or expiration of the underlying Federal Supply Schedule, the independent State contract based thereon survives for its own established term.

5.3 CONTRACT TRANSITION

In the event that a new Contract has not been awarded prior to this Contract expiration date, including any extensions exercised, and the State exercises this Contract transition, the Contractor shall continue this Contract under the same terms, conditions, and pricing 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 Contract, including any extensions exercised.

5.4 CHANGE ORDER

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

5.5 CONTRACTOR RESPONSIBILITIES

The Contractor shall have sole responsibility for the complete effort specified in this Contract. Payment will be made only to the Contractor. The Contractor shall have sole responsibility for all payments due any Subcontractor.

The Contractor is responsible for the professional quality, technical accuracy and timely completion and submission of all deliverables, services or commodities required to be provided
under this Contract. The Contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its deliverables and other services. The approval of deliverables furnished under this Contract shall not in any way relieve the Contractor of responsibility for the technical adequacy of its work. The review, approval, acceptance or payment for any of the services shall not be construed as a waiver of any rights that the State may have arising out of the Contractor’s performance of this Contract.

5.6 SUBSTITUTION OR ADDITION OF SUBCONTRACTOR(S)

This Subsection serves to supplement but not to supersede Sections 5.8 and 5.9 of the SSTC accompanying this RFQ.

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

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

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

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

5.7 OWNERSHIP OF MATERIAL

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

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

Auditing firm working papers remain the property of the auditing firm in accordance with standards issued by the American Institute of Certified Public Accountants (AICPA). While considered confidential information, the State recognizes that the firm may be requested to make certain working papers available to regulatory agencies, pursuant to authority given by law or regulation. In such instances, access to the working papers may be provided to these agencies based upon AICPA standards and under supervision of the firm.

5.8 SECURITY AND CONFIDENTIALITY

5.8.1 DATA CONFIDENTIALITY

All financial, statistical, personnel, customer and/or technical data supplied by the State to the Contractor are confidential (State 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 State that is deemed confidential. Any use, sale, or offering of this data in any form by the Contractor, or any individual or entity in the Contractor’s charge or employ, will be considered a violation of this Contract and may result in Contract termination and the Contractor’s suspension or debarment from State contracting. In addition, such conduct may be reported to the State Attorney General for possible criminal prosecution.

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

When requested, the Contractor and all project staff including its Subcontractor(s) must complete and sign confidentiality and non-disclosure agreements provided by the State. The Contractor may be required to view yearly security awareness and confidentiality training modules provided by the State. 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 (1) month of the employees’ start date.

The State reserves the right to obtain, or require the Contractor to obtain, criminal history background checks from the New Jersey State Police for all Contractor and project staff (to protect the State of New Jersey from losses resulting from Contractor employee theft, fraud or dishonesty). If the State exercises this right, the results of the background check(s) must be made available to the State for consideration before the employee is assigned to work on the State’s project. Prospective employees with positive criminal backgrounds for cyber-crimes will not be approved to work on State 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.

5.8.2 CONFIDENTIALITY

A. The obligations of the State 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 Quote 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. The State’s Confidential Information shall consist of all information or data contained in documents supplied by the State, any information or data gathered by the Contractor in fulfillment of the contract and any analysis thereof (whether in fulfillment of the contract or not).

D. 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;

E. The State agrees to hold Contractor’s Confidential Information in confidence, using at least the same degree of care used to protect its own Confidential Information;

F. In the event that the State receives a request for Contractor Confidential Information related to this Contract pursuant to a court order, subpoena, or other operation of law, the State agrees, if permitted by law, to provide Contractor with as much notice, in writing, as is reasonably practicable and the State’s intended response to such order of law. Contractor shall take any action it deems appropriate to protect its documents and/or information;

G. In addition, in the event Contractor receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, Contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Contractor’s intended response to such order of law. The State shall take any action it deems appropriate to protect its documents and/or information; and

H. Notwithstanding the requirements of nondisclosure described in this Section 5.8, either party may release the other party’s Confidential Information:

(i) if directed to do so by a court or arbitrator of competent jurisdiction; or
(ii) pursuant to a lawfully issued subpoena or other lawful document request:
   (a) in the case of the State, if the State 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
   (b) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the State does not exercise its rights described in Section 5.9.1.1(F), or if the State is unsuccessful in defending its rights as described in Section 5.9.1.1(F).

5.8.3 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 (http://www.nj.gov/it/ps). Additionally, data must be disposed of in accordance with the
State's Information Disposal and Media Sanitation policy, 09-10-NJOIT (http://www.nj.gov/it/ps); and


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 State Contract Manager. No State data shall be processed on or transferred to any device or storage medium including portable media, smart devices and/or USB devices, unless that device or storage medium has been approved in advance in writing by the State 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 Vendors (Contractors) or interested parties except on a case-by-case basis as specifically agreed to in writing by the State 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 State 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 Data 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 Contract, 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
acordance with the State’s most recent Information Disposal and Media Sanitation policy, currently 09-10-NJOIT (www.nj.gov/it/ps) and certify in writing that these actions have been completed within 30 days after the termination/expiration of the Contract or within seven (7) days of the request of an agent of the State whichever shall come first.

5.8.4 TAX RETURN DATA SECURITY

A. PERFORMANCE

1. In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

2. All work will be done under the supervision of the Contractor or the Contractor’s employees;

3. Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract Disclosure to anyone other than an officer or employee of the Contractor will be prohibited;

4. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material;

5. The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility, and the Contractor will retain no output at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures;

6. Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used;

7. All computer systems receiving, processing, storing, or transmitting federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to federal tax information.

8. No work involving federal tax information furnished under this Contract will be subcontracted without prior written approval of the IRS;

9. The Contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office; and

10. The agency will have the right to void this Contract if the Contractor fails to provide the safeguards described above.
B. CRIMINAL/CIVIL SANCTIONS:

1. Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as $5,000 or imprisonment for as long as five (5) years', or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than $1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1;

2. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as $1,000 or imprisonment for as long as one (1) year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for federal employees] in an amount equal to the sum of the greater of $1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431;

3. Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Vendors {Contractors} by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000; and

4. Granting a Contractor access to FTI must be preceded by certifying that each individual understands the agency’s security policy and procedures for safeguarding IRS information. Vendors {Contractors} must maintain its authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency’s files for review. As part of the certification and at least annually afterwards, Vendors {Contractors} should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, IRC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information and Exhibit 5, IRC Sec. 7213 Unauthorized Disclosure of Information). The training provided before the initial
certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Contractor should sign, either with ink or electronic signature, a confidentiality statement certifying its understanding of the security requirements.

C. INSPECTION:

The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

5.8.5 SECURITY PLAN AND STANDARDS

The Contractor must provide a detailed system design document showing Security Plan, Disaster Recovery Plan, Contingency Plan, and Backup Plan. Logical and physical diagrams are required.

5.8.5.1 SECURITY PLAN

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

A. Facilities Physical Security;
B. System Security;
C. System Data Security; and

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

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

In addition, the security plan shall identify and define:

A. Regulations and security requirements – how the Contractor will address security requirements such as PCI, HIPAA, FISMA and etc;
B. System, Administrative and Personnel Security - the security responsibilities of and supervision required for information owned and / or operated by the Contractor. Security responsibilities include responsibilities for administration of the infrastructure, implementing or maintaining security and the protection of the confidentiality, integrity, and availability of information systems or processes;
C. Workforce Security - the control process for hiring and terminating of Contractor’s employees, and method used for granting and denying access to the Contractor’s
network, systems and applications. Identify and define audit controls when employment of the employee terminates;

D. Role based security access – the products and methods for role based security and access to the Contractor’s infrastructure and access to the State’s infrastructure;

E. Password Management – the appropriate password management controls to meet defined regulation or security requirements;

F. Logging / Auditing controls – the Contractor’s audit control methods and requirements;

G. Incident Management – the methods for detecting, reporting and responding to an incident, vulnerabilities and threats;

H. Vulnerability / Security Assessment – the products and methods used for scanning Contractor’s infrastructure for vulnerabilities and remediation of the vulnerabilities. Identify and define methods used for initiating and completing security assessments;

I. Anti-virus / malware controls – the products and methods for anti-virus and malware controls that meet industry standards. It shall include policy statements that require periodic anti-viral software checks of the system to preclude infections and set forth its commitment to periodically upgrade its capability to maintain maximum effectiveness against new strains of software viruses;

J. Firewall – the products and methods for firewall control process and intrusion detection methodology;

K. Database – the products and methods for safeguarding the database(s);

L. Server and infrastructure – the products and methods for "hardening" of the hardware operating systems;

M. Transmission - the products and methods on how its system addresses security measures regarding communication transmission, access and message validation; and

N. Data Integrity – the products and methods on the integrity of all stored data and the electronic images, and the security of all files from unauthorized access. The Contractor must be able to provide reports on an as-needed basis on the access or change for any file within the system.

5.8.5.2 DISASTER RECOVERY PLAN

The Contractor is required to submit a Disaster Recovery Plan, identifying locations and systems to ensure that it can continue to satisfy RFQ requirements within 24 hours, in the event its primary location is rendered unusable. The plan must detail how the Contractor will ensure that the primary location and/or systems destroyed in such a disaster would be made available to meet the 24 hour time frame. The plan must be tested, reviewed and updated annually.

5.8.5.3 CONTINGENCY PLAN

The Contractor is required to have a contingency plan identifying key personnel, organization units and alternate sites with telecommunications and computers. The plan must be tested, reviewed and updated annually.
Reference:

5.8.5.4 BACKUP PLAN

The Contractor must submit a Backup Plan. The Backup Plan must detail how the Contractor will ensure that data is backed up on a regular basis. If data contains PII, PCI, HIPAA and FISMA – backups must be encrypted. Backups shall be verified on a regular basis to ensure that files are retrievable. Extra backups should be kept off-site in a secure location in the event of property damage at the main site. Backups must be sanitized or destroyed before discarding.

For outsourced hosting services, the Contractor must demonstrate the ability to not only secure the physical application infrastructure utilizing the above mentioned security requirements, but also control and secure physical access to the application hosting facilities, the racks supporting network infrastructure and processing server equipment, web, application and database servers. The Contractor shall ensure that backed-up data is not commingled with other customer data.

If the Contractor is not supplying dedicated hardware resources to host State of New Jersey applications and data, the Vendor {Contractor} must demonstrate its strategy to maintain application and/or stack isolation using commercially available security devices to maintain security zones, routing isolation and access control to infrastructure devices and access/security logging (AAA) within its infrastructure.

5.9 NEWS RELEASES

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

5.10 ADVERTISING

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

5.11 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 comply with all New Jersey Department of Labor requirements. Notwithstanding the requirements of the RFQ, the Contractor shall supply the State Contract Manager with evidence of all such licenses, permits and authorizations. This evidence shall be submitted subsequent to this Contract award. All costs associated with any such licenses, permits, and authorizations must be considered by the Bidder in its Quote.
5.12 CLAIMS AND REMEDIES

5.12.1 CLAIMS

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

5.12.2 REMEDIES

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

5.12.3 REMEDIES FOR FAILURE TO COMPLY WITH MATERIAL CONTRACT REQUIREMENTS

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

5.13 LIQUIDATED DAMAGES

The Division of Purchase and Property and the Contractor (“the Parties”) agree that it would be extremely difficult to determine actual damages which the State of New Jersey will sustain as the result of the Contractor’s failure to meet the performance requirements. Any breach by the Contractor will result in delays and/or increased costs associated with the PBM Blanket P.O. Therefore, the Parties agree that the liquidated damages specified below are reasonable estimates of the damages the State of New Jersey may sustain from the Contractor’s performance deficiencies set forth within this section and are not to be construed as penalties.

The State has the sole discretion to determine whether liquidated damages should be assessed.

Assessment of liquidated damages shall be in addition to, and not in lieu of, such other remedies as may be available to the State of New Jersey. Except and to the extent expressly provided herein, the Division shall be entitled to recover liquidated damages under each section applicable to any given incident.

The Contractor shall provide quarterly reports to validate compliance with the Performance Requirements. Reports shall be provided to the State without a written request.

The Contractor shall agree that the Performance Requirements will be measured and reconciled on a quarterly basis within 45 calendar days of the close of the quarter.

The Contractor agrees that Liquidated Damages shall be paid within 90 calendar days of the close of the measurement period without requiring any written request from the State.
<table>
<thead>
<tr>
<th>LIQUIDATED DAMAGES CATEGORY</th>
<th>PERFORMANCE REQUIREMENT</th>
<th>LIQUIDATED DAMAGES</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Implementation Guarantee – Automated Claims Adjudication Platform Date Timeliness</strong></td>
<td>If the Contractor fails to have the Automated Claims Adjudication Platform up and running by the Contract start date, it shall pay Liquidated Damages as stated herein.</td>
<td>1% of Total “Part 1” fees per day*</td>
</tr>
<tr>
<td><strong>Automated Claims Adjudication Platform – Adjudication Accuracy</strong></td>
<td>The Automated Claims Adjudication Platform shall review and adjudicate data from PBM Invoice with 99% accuracy.</td>
<td>Interest assessed at Prime Rate on the amount of the discrepancy over the course of the time period of the bi-weekly claim file.</td>
</tr>
<tr>
<td><strong>PBM Invoice Review – Report Timeframes</strong></td>
<td>The Contractor shall provide a completed invoice report within 48 hours of receipt of the PBM Invoice.</td>
<td>1% of Total “Part 1” fees per day*</td>
</tr>
<tr>
<td><strong>Implementation Guarantee – PBM Bidder Access Timeliness</strong></td>
<td>If the Contractor fails to provide access for verified bidders to the Reverse Auction Tool at least 5 days prior to the Reverse Auction Start Date, it shall pay Liquidated Damages as stated herein.</td>
<td>1% of Total “Part 1” fees per day*</td>
</tr>
<tr>
<td><strong>Implementation Guarantee – Reverse Auction Tool Activation Date Timeliness</strong></td>
<td>If the Contractor fails to have the Reverse Auction Tool up and running by the Reverse Auction Start Date, it shall pay Liquidated Damages as stated herein.</td>
<td>5% of Total “Part 1” fees per day*</td>
</tr>
<tr>
<td><strong>Reverse Auction Platform – Tool Availability</strong></td>
<td>The Reverse Auction Tool shall provide full required functionality for at least 90.0% of the time during the Reverse Auction Period.</td>
<td>5% of Total “Part 1” fees per day*</td>
</tr>
</tbody>
</table>

For outage periods of less than one (1) day, the Liquidated Damage shall be prorated to the nearest hour.

**“Part 1” fees refer to price lines and associated Bidder prices on Part 1 of the State-supplied Price Sheet.**

### 5.13.1 NOTIFICATION OF LIQUIDATED DAMAGES

Upon determination that liquidated damages are to be assessed, the Director or the State Contract Manager will notify the Contractor of the assessment in writing. The availability of any period of cure will depend on the situation and will be in the sole discretion of the Director. The Director may, in the Director’s sole discretion, elect to notify the Contractor that liquidated damages may be assessed so as to provide a warning, prior to assessing them in accordance with this section,
but if the Director does not provide such a warning the Director is not precluded from assessing liquidated damages in accordance with this Contract. Notwithstanding any provision of any Bid Solicitation to the contrary, should there be any conflict between this section and any provision of a Bid Solicitation, this section shall supersede such Bid Solicitation provision to the contrary.

5.13.2 CONDITIONS FOR TERMINATION OF LIQUIDATED DAMAGES

The continued assessment of liquidated damages may be terminated at the sole discretion of the Director, only if all of the following conditions are met:

A. The Contractor corrects the condition(s) for which liquidated damages were imposed;

B. The Contractor notifies the State Contract Manager in writing that the condition(s) has (have) been corrected; and

C. The Director reviews and approves in writing the recommendation of State Contract Manager.

5.13.3 SEVERABILITY OF INDIVIDUAL LIQUIDATED DAMAGES

If any portion of the liquidated damages provisions is determined to be unenforceable by a New Jersey court in one (1) or more applications, that portion remains in effect in all applications not determined to be invalid and is severable from the invalid applications. If any portion of the liquidated damages provisions is determined to be unenforceable, the other provision(s) shall remain in full force and effect.

5.13.4 WAIVER OF LIQUIDATED DAMAGES/LIQUIDATED DAMAGES NOT EXCLUSIVE REMEDY

The continued assessment of liquidated damages may be waived in writing at the sole discretion of the Director. The waiver of any liquidated damages due to the State, shall constitute a waiver only as to such assessment of liquidated damages and not a waiver of any future liquidated damage assessments. Failure to assess liquidated damages or to demand payment of liquidated damages within any period of time shall not constitute a waiver of such claim by the State.

5.13.5 PAYMENT OF LIQUIDATED DAMAGES

Once assessed pursuant to Section 5.13, liquidated damages will be deducted from any funds owed to the Contractor by the State, and in the event the amount due the Contractor is not sufficient to satisfy the amount of the liquidated damages, the Contractor shall pay the balance to the State of New Jersey within 30 calendar days of written notification of the assessment. If the amount due is not paid in full, the balance will be deducted from subsequent payments to the Contractor.
5.14 MODIFICATIONS AND CHANGES TO THE STATE OF NJ STANDARD TERMS AND CONDITIONS (SSTC)

5.14.1 INDEMNIFICATION

Section 4.1 of the SSTC is deleted and replaced with the following:

The Contractor’s liability to the State and its employees in third party suits shall be as follows:

A. The Contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State and its officers, agents, servants and employees, from and against any and all third party claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith:
   i. For or on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or products supplied under this Contract or the order; and
   ii. For or on account of the use of any patent, copyright, trademark, trade secret or other proprietary right of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance (“Intellectual Property Rights”) furnished or used in the performance of this Contract; and
   iii. The Contractor’s indemnification and liability under subsection (a) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions.

B. In the event of a claim or suit involving third-party Intellectual Property Rights, the Contractor, at its option, may: (1) procure for the State the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties. The State will (1) promptly notify Contractor in writing of the claim or suit; (2) Contractor shall have control of the defense and settlement of any claim that is subject to Section 4.1(a); provided; however, that the State must approve any settlement of the alleged claim, which approval shall not be unreasonably withheld. The State may observe the proceedings relating to the alleged claim and confer with the Contractor at its expense. Furthermore, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of New Jersey or any Authorized Purchaser, nor purport to act as legal representative of the State of New Jersey or any Authorized Purchaser, without having provided notice to the Director of the Division of Law in the Department of Law and Public Safety and to the Director of DPP. The State of New Jersey may, at its election and expense, assume its own defense and settlement;

C. Notwithstanding the foregoing, Contractor has no obligation or liability for any claim or suit concerning third-party Intellectual Property Rights arising from: (1) the State’s unauthorized combination, operation, or use of a product supplied under this Contract with any product, device, or Software not supplied by Contractor; (2) the State’s unauthorized alteration or modification of any product supplied under this Contract; (3) the Contractor’s compliance with the State’s designs, specifications, requests, or instructions, provided that if the State provides Contractor with such designs, specifications, requests, or instructions, Contractor reviews same and advises that such designs, specifications, requests or instructions present potential issues of patent or copyright infringement and the State nonetheless directs the Contractor to proceed with one (1) or more designs, specifications, requests or instructions that present potential issues of patent or copyright infringement; or (4) the State’s failure to promptly implement a required update or modification to the product provided by Contractor;
D. Contractor will be relieved of its responsibilities under Subsection 4.1(a)(i) and (ii) for any claims made by an unaffiliated third party that arise solely from the actions or omissions of the State, its officers, employees or agents. Subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.) and the appropriation and availability of funds, the State will be responsible for any cost or damage arising out of actions or inactions of the State, its employees or agents under Subsection 4.1(a)(i) and (ii) which results in an unaffiliated third party claim. This is Contractor’s exclusive remedy for these claims;

E. This section states the entire obligation of Contractor and its suppliers, and the exclusive remedy of the State, in respect of any infringement or alleged infringement of any Intellectual Property Rights. This indemnity obligation and remedy are given to the State solely for its benefit and in lieu of, and Contractor disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any product; and

F. The State of New Jersey will not indemnify, defend, pay or reimburse for claims or take similar actions on behalf of the Contractor.

4.1.1 LIMITATION OF LIABILITY

The Contractor’s liability to the State for actual, direct damages resulting from the Contractor’s performance or non-performance, or in any manner related to this Contract, for any and all claims, shall be limited in the aggregate to 200% of the total value of this Contract, except that such limitation of liability shall not apply to the following:

a. The Contractor’s obligation to indemnify the State of New Jersey and its employees from and against any claim, demand, loss, damage, or expense relating to bodily injury or the death of any person or damage to real property or tangible personal property, incurred from the work or materials supplied by the Contractor under this Contract caused by negligence or willful misconduct of the Contractor;

b. The Contractor’s breach of its obligations of confidentiality; and

c. The Contractor’s liability with respect to copyright indemnification.

The Contractor’s indemnification obligation is not limited by but is in addition to the insurance obligations contained in Section 4.2 of the SSTC.

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

5.14.2 INSURANCE - PROFESSIONAL LIABILITY INSURANCE

Section 4.2 of the SSTC regarding insurance is modified with the addition of the following section regarding Professional Liability Insurance.

D. Professional Liability Insurance: The Contractor shall carry Errors and Omissions, Professional Liability Insurance, and/or Professional Liability Malpractice Insurance sufficient to protect the Contractor from any liability arising out the professional obligations performed pursuant to the requirements of this Contract. The insurance shall be in the amount of not less than $5,000,000 and in such policy forms as shall be approved by the State. If the Contractor has claims-made coverage and subsequently changes carriers during the term of this Contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance, and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.
5.14.3 PERFORMANCE GUARANTEE OF CONTRACTOR

Section 5.11 of the SSTC is deleted and replaced with the following:

5.11 CONTRACTOR PERFORMANCE WARRANTIES

A. COTS and Customized Software
1. Contractor warrants that the COTS and Customized Software products licensed to the State shall operate in all material respects as described in the Bid Solicitation and/or Contractor technical documentation for 90 days after Acceptance. The State shall notify Contractor of any COTS or Customized Software product deficiency within 90 days after Acceptance. For a Contract requiring the delivery of COTS or Customized Software and Custom Software, a notice within one hundred eighty (180) days that describes a deficiency in functional terms without specifying whether the deficiency is with COTS, Customized Software or Custom Software shall be deemed a notice that triggers the warranty provisions in both Section 5.11(a) and 5.11(b) of the Contract;

2. Except for the portion of Contractor’s COTS or Customized Software product that intentionally contains one (1) or more of the following for the purpose of anti-virus protection, Contractor warrants that, at the time of delivery and installation of the COTS or Customized Software provided pursuant to this Contract, its product shall be free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the COTS or Customized Software, collect unlawful personally identifiable information on users, or prevent the COTS or Customized Software from performing as required under this Contract;

3. In the event of any breach of this warranty, the Contractor shall correct the product errors that caused the breach of warranty, or if Contractor cannot substantially correct such breach in a commercially reasonable manner, the State may end its usage and recover the fees paid to Contractor for the license and any unused, prepaid technical support fees paid. Under no circumstances does this warranty provision limit the Contractor’s obligation in the event of a breach of confidentiality;

4. Contractor does not warrant that COTS or Customized Software is error-free or that it will operate uninterrupted.

B. Custom Software
1. Contractor warrants that Custom Software Deliverables shall operate in all material respects as described in the applicable specification documentation for 180 days after Acceptance. The State shall notify Contractor of any Custom Software deficiency within 180 days after Acceptance of the Custom Software Deliverable. Where the Contractor is providing multiple Custom Software Deliverables over the term of the Contract, the Notice Period shall begin to run after the Acceptance of the final Custom Software Deliverable under the Contract. At that time, the State may assert defect claims relating to any and all of the Custom Software Deliverables provided under the Contract; however, the State may also assert claims earlier, in its discretion, without waiving the Notice Period;

2. For a Contract requiring the delivery of COTS or Customized Software and Custom Software, a notice within one hundred eighty (180) days that describes a deficiency in functional terms without specifying whether the deficiency is with COTS, Customized Software or Custom Software shall be deemed a notice that triggers the warranty provisions in both Section 5.11(a) and 5.11(b) of the Contract.
3. Contractor warrants that, at the time of Acceptance of the Custom Software Deliverable provided pursuant to this Contract, its product shall be free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the Custom Software, collect unlawful personally identifiable information on users, or prevent the Custom Software from performing as required under this Contract. Under no circumstances does this warranty provision limit the Contractor’s obligation in the event of a breach of confidentiality;

4. In the event of any breach of this warranty, Contractor shall correct the Custom Software errors that caused the breach of warranty, or if Contractor cannot substantially correct such breach in a commercially reasonable manner, the State may recover a portion of the fees paid to Contractor for the Custom Software with the uncorrected defect or in the event that the Custom Software is still deemed, by the State in its sole discretion, to be usable by the State even with the uncorrected defect, the State may recover a portion of the fees paid to Contractor for the Custom Software (up to the total amount of such charges for such Custom Software) to reflect any reduction in the value of the Custom Software Deliverable as a result of the uncorrected defect. Under no circumstances does this warranty provision limit the Contractor’s obligations in the event of a breach of confidentiality;

5. Contractor does not warrant that Custom Software is error-free or that it will operate uninterrupted;

C. IT Services
1. Contractor warrants that all Services will be provided in a professional manner consistent with industry standards. The State shall notify Contractor of any Services warranty deficiencies within 90 days from performance of the deficient Services;

2. In the event of any breach of this warranty, the Contractor shall re-perform the deficient Services, or if Contractor cannot substantially correct a breach in a commercially reasonable manner, the State may end the relevant Services and recover the fees paid to Contractor for the deficient Services.

D. Hardware
1. Contractor warrants that the equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice;

2. Contractor warrants that all new machines are to be guaranteed as fully operational for one (1) year from time of Acceptance by the State. For the avoidance of doubt, Acceptance with respect to Hardware in this Section 5.11(g) shall occur no later than 60 days after delivery, as evidenced by a signed delivery receipt. The Contractor shall render prompt service without charge, regardless of geographic location;

3. Contractor warrants that sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters;
5. Contractor warrants that trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice;

6. Contractor warrants that all Software included with the Hardware shall perform substantially in accordance with specifications, for one (1) year from the time of Acceptance. Contractor warrants that Software media will be free from material defects in materials and workmanship for a period of one (1) year from the date of Acceptance;

7. In the event of any breach of this warranty, Contractor shall promptly repair, replace or refund the purchase price of product rejected for failure to conform with Contractor’s product specifications; and

E. THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

5.15 CONTRACT ACTIVITY REPORT

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

This information must be provided in Microsoft Excel such that an analysis can be made to determine the following:

A. Contractor’s total sales volume, with line item detail, to each purchaser under this Contract;

B. Subtotals by product, including, if applicable, catalog number and description, price list with appropriate page reference, and/or Contract discount applied; and

C. Total dollars paid to Subcontractors, include a separate breakdown for dollars paid to New Jersey Small Business as defined in N.J.A.C. 17:13-1.2.

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

The Contractor must submit the required information in Microsoft Excel format to NJSupplierReports@treas.nj.gov.

Reports are due:

January 1st through June 30th – due by July 30th; and
July 1st through December 31st – due by January 30th.
5.16 ELECTRONIC PAYMENTS

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

5.17 PROGRAM EFFICIENCY ASSESSMENT FOR STATE USING AGENCIES

The Program Efficiency Assessment shall not be charged against the winning Contractor and therefore is not to be included in the Bidder’s pricing. The State Using Agencies shall be charged an assessment equal to one-quarter of one (1) percent (0.25%) of the value of all transactions under this Contract. This assessment is authorized by N.J.S.A. 52:27B-56 and N.J.A.C. 17:12-1.5, to maintain the State’s procurement system at a level to meet industry standards of efficiency.

For purposes of this section, “transaction” is defined as the payment or remuneration to the Contractor for services rendered or products provided to the State pursuant to the terms of this Contract, including but not limited to the following: purchase orders, invoices, hourly rates, firm fixed price, commission payments, progress payments and contingency payments.
6.0 QUOTE EVALUATION

6.1 DIRECTOR’S RIGHT OF FINAL QUOTE ACCEPTANCE

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

6.2 STATE’S RIGHT TO INSPECT BIDDER FACILITIES

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

The State may also consult with clients of the Bidder during the evaluation of Quotes. Such consultation is intended to assist the State in making a Contract award that is most advantageous to the State.

6.3 STATE’S RIGHT TO REQUEST FURTHER INFORMATION

After the submission of Quotes, unless requested by the State as noted below, Bidder contact with the State is not permitted.

After the Quotes are reviewed, one (1), some or all of the Bidders may be asked to clarify certain aspects of its Quote. 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 Quote.

6.4 EVALUATION

Quotes will be scored based upon the Bidder’s demonstration in the Quote that the Bidder understands the requirements of the Scope of Work and presents an approach that would permit successful performance of the requirements of the Contract; and

6.4.1 BIDDER’S PRICE SCHEDULE

For evaluation purposes, Bidders will be ranked from lowest to highest according to the total Quote price located on the State-Supplied Price Sheet accompanying this RFQ.

6.4.2 QUOTE DISCREPANCIES

In evaluating Quotes, 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.

6.5 NEGOTIATION

In accordance with N.J.S.A. 52:34-12(f) and N.J.A.C. 17:12-2-7, after evaluating Quotes, the Bureau may establish a competitive range and enter into negotiations with one (1) Bidder or
multiple Bidders within this competitive range. The primary purpose of negotiations is to maximize the State’s ability to obtain the best value based on the mandatory requirements, evaluation criteria, and cost. Multiple rounds of negotiations may be conducted with one (1) Bidder or multiple Bidders. Negotiations will be structured by the Bureau to safeguard information and ensure that all Bidders are treated fairly.

After evaluation of Quotes and as applicable, negotiation(s), the Bureau will recommend, to the Director, the responsible Bidder(s) whose Quote(s), conforming to the RFQ, is/are most advantageous to the State, price, and other factors considered. The Director may accept, reject or modify the recommendation of the Using Agency. The Director may initiate additional negotiation procedures with the selected Bidder(s).

Negotiations will be conducted only in those circumstances where it is deemed to be in the State’s best interests and to maximize the State’s ability to get the best value. Therefore, the Bidder is advised to submit its best technical and price Quote in response to this RFQ since the State may, after evaluation, make a Contract award based on the content of the initial submission, without further negotiation with any Bidder.

All contacts, records of initial evaluations, any correspondence with a Bidder related to any request for clarification, negotiation, any revised technical and/or price Quotes, and related documents will remain confidential until a Notice of Intent to Award a Contract is issued.

If the Bureau contemplates negotiation, Quote prices will not be publicly read at the Quote opening. Only the name and address of each Bidder will be publicly announced at the Quote opening.

**6.6 POOR PERFORMANCE**

A Bidder with a history of performance problems may be bypassed for consideration of an award issued as a result of this RFQ. The following materials may be reviewed to determine Bidder performance: Contract cancellations for cause pursuant to Section 5.7(b) of the SSTC; information contained in Vendor performance records; information obtained from audits or investigations conducted by a local, state or federal agency of the Bidder’s work experience; current licensure, registration, and/or certification status and relevant history thereof; or its status or rating with established business/financial reporting services, as applicable. Bidders should note that this list is not exhaustive.
7.0 CONTRACT AWARD

7.1 DOCUMENTS REQUIRED BEFORE CONTRACT AWARD


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

B. Prior to awarding any Contract or agreement to any Business Entity, the Business Entity proposed as the intended Contractor of the Contract shall submit the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form, certifying that no contributions prohibited by either Chapter 51 or Executive Order No. 117 have been made by the Business Entity and reporting all qualifying contributions made by the Business Entity or any person or entity whose contributions are attributable to the Business Entity. The required form and instructions, available for review on the Division’s website at http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf, shall be provided to the intended Contractor for completion and submission to the Division with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Contract, the intended Contractor shall submit to the Division, the Certification and Disclosure(s) within five (5) business days of the State’s request. The Certification and Disclosure(s) may be executed electronically by typing the name of the authorized signatory in the “Signature” block as an alternative to downloading, physically signing the form, scanning the form, and uploading the form. Failure to submit the required forms will preclude award of a Contract under this RFQ, as well as future Contract opportunities; and

C. Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the Contract, and any extension(s) thereof, at the time any such contribution is made. The required form and instructions, available for review on the Division’s website at http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf, shall be provided to the intended Contractor with the Notice of Intent to Award.

The Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form is located on the Division’s website.

7.1.2 SOURCE DISCLOSURE REQUIREMENTS

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

Pursuant to the statutory requirements, the intended Contractor of a Contract primarily for services with the State of New Jersey must disclose the location by country where services under the Contract, including subcontracted services, will be performed. The Source Disclosure Form accompanies the subject RFQ. FAILURE TO SUBMIT SOURCING INFORMATION WHEN
REQUESTED BY THE STATE SHALL PRECLUDE AWARD OF A CONTRACT TO THE INTENDED BIDDER.

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

The Source Disclosure Form is located on the Division’s website.

7.1.2.1 BREACH OF CONTRACT

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

7.1.3 AFFIRMATIVE ACTION


7.1.4 BUSINESS REGISTRATION

In accordance with N.J.S.A. 52:32-44(b), a Bidder and its named Subcontractors must have a valid Business Registration Certificate (“BRC”) issued by the Department of the Treasury, Division of Revenue and Enterprise Services prior to the award of a Contract. See Section 4.1.2.1 of this RFQ for further information.

7.2 FINAL CONTRACT AWARD

Contract award[s] will be made with reasonable promptness by written notice to that responsible Bidder(s), whose Quote(s) is(are) most advantageous to the State, price, and other factors considered. Any or all Quotes may be rejected when the State Treasurer or the Director determines that it is in the public interest to do so.

7.3 INSURANCE CERTIFICATES

The Contractor shall provide the State with current certificates of insurance for all coverages required by the terms of this Contract, naming the State as an Additional Insured. See Section 4.2 of the SSTC accompanying this RFQ.
8.0  CONTRACT ADMINISTRATION

8.1  STATE CONTRACT MANAGER

The State Contract Manager (SCM) is the State employee responsible for the overall management and administration of the Contract.

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

8.1.1  STATE CONTRACT MANAGER RESPONSIBILITIES

For an agency Contract where only one (1) State office uses the Contract, the SCM will be responsible for engaging the Contractor, assuring that Purchase Orders are issued to the Contractor, directing the Contractor to perform the work of the Contract, approving the deliverables and approving payment vouchers. The SCM is the person who the Contractor will contact after the Contract is executed for answers to any questions and concerns about any aspect of the Contract. The SCM is responsible for coordinating the use of the Contract and resolving minor disputes between the Contractor and any component part of the SCM's Department. The SCM is also responsible for notifying OIT and other appropriate parties of security and privacy violations or incidents. The SCM cannot modify the Contract, direct or approve a Change Order.

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

8.1.2  COORDINATION WITH THE STATE CONTRACT MANAGER

Any Contract user that is unable to resolve disputes with a Contractor shall refer those disputes to the SCM for resolution. Any questions related to performance of the work of the Contract by Contract users shall be directed to the SCM. The Contractor may contact the SCM if the Contractor cannot resolve a dispute with Contract users.
1. STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT

Unless the bidder/offeror is specifically instructed otherwise in the Request for Quotation (RFQ), the following terms and conditions shall apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in the RFQ and should be read in conjunction with same unless the RFQ specifically indicates otherwise.

In the event that the bidder/offeror would like to present terms and conditions that are in conflict with either these terms and conditions or those set forth in the RFQ, the bidder/offeror must present those conflicts during the Question and Answer period for the State to consider. Any conflicting terms and conditions that the State is willing to accept will be reflected in an addendum to the RFQ.

The State’s terms and conditions shall prevail over any conflicts set forth in a bidder/offeror’s Quote that were not submitted through the question and answer process and approved by the State. Nothing in these terms and conditions shall prohibit the Director of the Division of Purchase and Property (Director) from amending a contract when the Director determines it is in the best interests of the State.

1.1 CONTRACT TERMS CROSSWALK

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<tr>
<th>Term</th>
<th>Equivalent Existing New Jersey Term</th>
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<tr>
<td>Bid/Bid Solicitation</td>
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<tr>
<td>Bid Amendment</td>
<td>Addendum</td>
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<td>Change Order</td>
<td>Contract Amendment</td>
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<td>Master Blanket Purchase Order (Blanket P.O.)</td>
<td>Contract</td>
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<td>Offer and Acceptance Page</td>
<td>Signatory Page</td>
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<tr>
<td>Vendor</td>
<td>Bidder/Contractor</td>
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2. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS

The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

2.1 BUSINESS REGISTRATION

Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the quote have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other quote shall provide a copy of its business registration to the bidder who shall provide it to the State.

The contractor shall maintain and submit to the State a list of subcontractors and their addresses that may be updated from time to time with the prior written consent of the Director during the course of contract performance. The contractor shall submit to the State a complete and accurate list of all subcontractors used and their addresses before final payment is made under the contract.

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

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the Use Tax due pursuant to the “Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of
Revenue at (609) 292-1730. Form NJ-REG can be filed online at http://www.state.nj.us/treasury/revenue/busregcert.shtml.

2.2 ANTI-DISCRIMINATION
All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq, and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference. The agreement to abide by the provisions of N.J.S.A. 10:5-31 through 10:5-38 include those provisions indicated for Goods, Professional Service and General Service Contracts (Exhibit A, attached) and Constructions Contracts (Exhibit B and Executive Order 151, August 28, 2009, attached) as appropriate.

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

2.3 PREVAILING WAGE ACT
The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The bidder's signature on [this quote] is his/her guarantee that neither he/she nor any subcontractors he/she might employ to perform the work covered by [this quote] has been suspended or debarred by the Commissioner, Department of Labor and Workforce Development for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder's signature on the quote is also his/her guarantee that he/she and any subcontractors he/she might employ to perform the work covered by [this quote] shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

2.4 AMERICANS WITH DISABILITIES ACT
The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L 101-336, in accordance with 42 U.S.C. 12101, et seq.

2.5 MACBRIDE PRINCIPLES
The bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom’s Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

2.6 PAY TO PLAY PROHIBITIONS
Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L. 2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for the business entity to:

A. Make or solicit a contribution in violation of the statute;
B. Knowingly conceal or misrepresent a contribution given or received;
C. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
D. Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor or Lieutenant Governor, or to any State or county party committee;
E. Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
F. Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
G. Engage in any exchange of contributions to circumvent the intent of the Legislation; or
H. Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

2.7 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 http://www.elec.state.nj.us/.

2.8 STANDARDS PROHIBITING CONFLICTS OF INTEREST
The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

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

No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he/she is employed or associated or in which he/she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest;

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

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

The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or
contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of Executive Order No. 189.

2.9 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE
Pursuant to N.J.S.A. 54:49-19, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer’s or shareholder’s share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

2.10 COMPLIANCE - LAWS
The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.

2.11 COMPLIANCE - STATE LAWS
It is agreed and understood that any contracts and/or orders placed as a result of [this quote] shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of New Jersey.

2.12 Warranty of no solicitation on commission or contingent fee basis
The contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. If a breach or violation of this section occurs, the State shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

3. STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT

3.1 COMPLIANCE - CODES
The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.

3.2 PUBLIC WORKS CONTRACTOR REGISTRATION ACT
The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.51. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.
3.3 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS

N.J.S.A. 10:2-1 requires that during the performance of this contract, the contractor must agree as follows:

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

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

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

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

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:

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

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

C. The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other
contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers’ representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment, N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows:

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

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

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

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

3.4 BUILDING SERVICE
Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.

3.5 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT
The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the statute.

3.6 SERVICE PERFORMANCE WITHIN U.S.
Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance 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, 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, which contract shall be subject to termination for cause pursuant to Section 5.7(b) (1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.
3.7 **BUY AMERICAN**

Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the contractor shall be required to so certify.

3.8 **DIANE B. ALLEN EQUAL PAY ACT**

Pursuant to N.J.S.A. 34:11-56.14, a contractor performing “qualifying services” or “public work” to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. For more information and report templates see [https://nj.gov/labor/equalpay/equalpay.html](https://nj.gov/labor/equalpay/equalpay.html).

4. **INDEMNIFICATION AND INSURANCE**

4.1 **INDEMNIFICATION**

The contractor’s liability to the State and its employees in third party suits shall be as follows:

A. Indemnification for Third Party Claims - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract, including liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract;

B. The contractor’s indemnification and liability under subsection (a) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions; and

C. In the event of a patent and copyright claim or suit, the contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

4.2 **INSURANCE**

The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days’ written notice of cancellation or material change to the State of New Jersey at the address shown below. If the contractor’s insurer cannot provide 30 days written notice, then it will become the obligation of the contractor to provide the same. The contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancelation shall be emailed to the State at:

ccau.certificate@treas.nj.gov

The insurance to be provided by the contractor shall be as follows:
A. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be $1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as “Additional Insureds” and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage;

B. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than $1,000,000 per occurrence as a combined single limit. The State must be named as an “Additional Insured” and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State’s behalf or on State controlled property;

C. Worker’s Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:

1. $1,000,000 BODILY INJURY, EACH OCCURRENCE;
2. $1,000,000 DISEASE EACH EMPLOYEE; and
3. $1,000,000 DISEASE AGGREGATE LIMIT.

   a. This $1,000,000 amount may have been raised by the RFQ when deemed necessary by the Director; and

   b. In the case of a contract entered into pursuant to N.J.S.A. 52:32-17 et seq., (small business set asides) the minimum amount of insurance coverage in subsections a., b., and c. above may have been lowered in the RFQ for certain commodities when deemed in the best interests of the State by the Director.

5. TERMS GOVERNING ALL CONTRACTS

5.1 CONTRACTOR IS INDEPENDENT CONTRACTOR
The contractor’s status shall be that of any independent contractor and not as an employee of the State.

5.2 CONTRACT AMOUNT
The estimated amount of the contract(s), when stated on the RFQ form, shall not be construed as either the maximum or minimum amount which the State shall be obliged to order as the result of the RFQ or any contract entered into as a result of the RFQ.

5.3 CONTRACT TERM AND EXTENSION OPTION
If, in the opinion of the Director, it is in the best interest of the State to extend a contract, the contractor shall be so notified of the Director’s Intent at least 30 days prior to the expiration date of the existing contract. The contractor shall have 15 calendar days to respond to the Director’s request to extend the term and period of performance of the contract. If the contractor agrees to the extension, all terms and conditions including pricing of the original contract shall apply unless more favorable terms for the State have been negotiated.

5.4 STATE’S OPTION TO REDUCE SCOPE OF WORK
The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, the Director shall provide to the contractor
advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

A. If the contractor does not agree with the Director’s proposed adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price; and

B. If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

5.5 CHANGE IN LAW
Whenever a change in applicable law or regulation affects the scope of work, the Director shall provide written notice to the contractor of the change and the Director’s determination as to the corresponding adjusted change in the scope of work and corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

A. If the contractor does not agree with the adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the adjusted contract price. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price; and

B. If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

5.6 SUSPENSION OF WORK
The State may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor’s approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the contract price. The contractor shall provide whatever information that Director may require related to the equitable adjustment.
5.7 TERMINATION OF CONTRACT

A. For Convenience:
   Notwithstanding any provision or language in this contract to the contrary, the Director may terminate this contract at any time, in whole or in part, for the convenience of the State, upon no less than 30 days written notice to the contractor;

B. For Cause:
   1. Where a contractor fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate the contract, in whole or in part, upon ten (10) days’ notice to the contractor with an opportunity to respond; and

   2. Where in the reasonable opinion of the Director, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days’ notice to the contractor with an opportunity to respond.

C. In cases of emergency, the Director may shorten the time periods of notification and may dispense with an opportunity to respond; and

D. In the event of termination under this section, the contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

5.8 SUBCONTRACTING OR ASSIGNMENT

A. Subcontracting: The contractor may not subcontract other than as identified in the contractor’s quote without the prior written consent of the Director. Such consent, if granted in part, shall not relieve the contractor of any of his/her responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor’s: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws; and

   A. Assignment: The contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Director.

5.9 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND STATE

Nothing contained in any of the contract documents, including the RFQ and vendor’s bid or quote shall be construed as creating any contractual relationship between any subcontractor and the State.

5.10 MERGERS, ACQUISITIONS

If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than 30 days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within 30 days of the request. Failure to do so may result in termination of the contract for cause.
If, at any time during the term of the contract, the contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

5.11 PERFORMANCE GUARANTEE OF CONTRACTOR
The contractor hereby certifies that:

A. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice;

B. All equipment supplied to the State and operated by electrical current is UL listed where applicable;

C. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the State. The contractor shall render prompt service without charge, regardless of geographic location;

D. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters;

E. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice;

F. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract; and

G. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

5.12 DELIVERY REQUIREMENTS
A. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract;

B. The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract and in accordance with good commercial practice;

C. Items delivered must be strictly in accordance with the contract; and

D. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

5.13 APPLICABLE LAW AND JURISDICTION
This contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to
conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court.

5.14 CONTRACT AMENDMENT
Except as provided herein, the contract may only be amended by written agreement of the State and the contractor.

5.15 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 Comptroller, for audit and review.

5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)
The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract. In connection with this assignment, the following are the express obligations of the contractor:

A. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder;
B. It shall advise the Attorney General of New Jersey:
   1. In advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action; and
   2. Immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
C. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey; and
D. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

6. TERMS RELATING TO PRICE AND PAYMENT

6.1 PRICE FLUCTUATION DURING CONTRACT
Unless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract.

In the event of a manufacturer’s or contractor’s price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified, in writing, of any price reduction within five (5) days of the effective date. Failure to report price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1.

6.2 TAX CHARGES
The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.
6.3 PAYMENT TO VENDORS
A. The using agency(ies) is (are) authorized to order and the contractor is authorized to ship only those items covered by the contract resulting from the RFQ. If a review of orders placed by the using agency(ies) reveals that goods and/or services other than that covered by the contract have been ordered and delivered, such delivery shall be a violation of the terms of the contract and may be considered by the Director as a basis to terminate the contract and/or not award the contractor a subsequent contract. The Director may take such steps as are necessary to have the items returned by the agency, regardless of the time between the date of delivery and discovery of the violation. In such event, the contractor shall reimburse the State the full purchase price;

B. The contractor must submit invoices to the using agency with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily completed or delivered. For commodity contracts, the invoice, together with the original Bill of Lading, express receipt and other related papers must be sent to the State Contract Manager or using agency on the date of each delivery. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work section of the RFQ and must be in strict accordance with the firm, fixed prices submitted for each task or subtask on the RFQ pricing sheets. When applicable, invoices should reference the appropriate RFQ price sheet line number from the contractor’s bid quote. All invoices must be approved by the State Contract Manager or using agency before payment will be authorized;

C. In all time and materials contracts, the State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls; and

D. The contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Chief of Operations, Division of Revenue, P.O. Box 628, Trenton, NJ 08646.

6.4 OPTIONAL PAYMENT METHOD: P-CARD
The State offers contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor’s acceptance and a State agency’s use of the p-card are optional. P-card transactions do not require the submission of a contractor invoice; purchasing transactions using the p-card will usually result in payment to a contractor in three (3) days. A contractor should take note that there will be a transaction-processing fee for each p-card transaction. To participate, a contractor must be capable of accepting the MasterCard. Additional information can be obtained from banks or merchant service companies.

6.5 NEW JERSEY PROMPT PAYMENT ACT
The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within 60 days of the agency’s receipt of a properly executed State Payment Voucher or within 60 days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by State agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds $5.00 per properly executed invoice.

Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.
6.6 AVAILABILITY OF FUNDS
The State’s obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenue.

7. TERMS RELATING TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS
The provisions set forth in this Section 7 of the Standard Terms and Conditions apply to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

7.1 PROCUREMENT OF RECOVERED MATERIALS
To the extent that the scope of work or specifications in the contract requires the contractor to provide any of the following items, this Section 7.1 of the Standard Terms and Conditions modifies the terms of the scope of work or specification.

Pursuant to 2 CFR 200.322, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

A. Designated items are those set forth in 40 CFR 247 subpart B, as may be amended from time to time, including:
   1. Paper and paper products listed in 40 C.F.R. 247.10;
   2. Certain vehicular products as listed in 40 CFR 247.11;
   3. Certain construction products listed in 40 C.F.R. 247.12;
   4. Certain transportation products listed in 40 C.F.R. 247.13;
   5. Certain park and recreation products, 40 C.F.R. 247.14;
   6. Certain landscaping products listed in 40 C.F.R. 247.15;
   7. Certain non-paper office products listed in 40 C.F.R. 247.16; and

B. As defined in 40 CFR 247.3, “recovered material” means:
   1. waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process; and
   2. for purposes of purchasing paper and paper products, means waste material and byproducts that have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. In the case of paper and paper products, the term recovered materials includes:
      a. Postconsumer materials such as --
         i. Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old
magazines; mixed waste paper; tabulating cards; and used cordage; and

ii. All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and

b. Manufacturing, forest residues, and other wastes such as --

i. Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel in smaller rolls of rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

ii. Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;

iii. Fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;

iv. Wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and

v. Fibers recovered from waste water which otherwise would enter the waste stream.

C. For contracts in an amount greater than $100,000, at the beginning of each contract year, contractor shall provide the State estimates of the total percentage of recovered material utilized in the performance of its contract for each of the categories listed in subsection (A). For all contracts subject to this Section 7.1 of the Standard Terms and Conditions, at the conclusion of each contract year, the contractor shall certify to the State the minimum recovered material content actually utilized in the prior contract year.

7.2 **EQUAL EMPLOYMENT OPPORTUNITY**


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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work. Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

7.3 DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED
When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

7.4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, 40 U.S.C. 3701-3708
Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the
work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

7.5 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT
If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7.7 DEBARMEMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)
A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

7.8 BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. 1352
Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
EXHIBIT A

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)
N.J.A.C. 17:27 et seq.

GOODS, GENERAL SERVICE AND PROFESSIONAL SERVICES CONTRACTS

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

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

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

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

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

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

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

Letter of Federal Affirmative Action Plan Approval;

Certificate of Employee Information Report; or

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

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase an Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase an Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1 et seq.
CONSTRUCTION CONTRACTS

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

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

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

N.J.S.A. 10:5-39 et seq. requires contractors, subcontractors, and permitted assignees performing construction, alteration, or repair of any building or public work in excess of $250,000 to guarantee equal employment opportunity to veterans.

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

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

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal.
established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

(1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

(2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;

(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;

(5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;

(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) The contractor or subcontractor shall interview the referred minority or women worker.

(ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The
contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA-201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7.

The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Dept. of LWD, Construction EEO Monitoring Program and to the public agency compliance officer.
The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on the job and/or off the job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.
EXECUTIVE ORDER NO. 151 REQUIREMENTS

It is the policy of the Division of Purchase and Property that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the Division of Purchase and Property to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

The contractor must demonstrate to the Division of Purchase and Property’s satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the Division of Purchase and Property’s contract with the contractor. Payment may be withheld from a contractor’s contract for failure to comply with these provisions.

Evidence of a “good faith effort” includes, but is not limited to:

1. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at http://NJ.gov/JobCentralNJ;
2. The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;
3. The Contractor shall actively solicit and shall provide the Division of Purchase and Property with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and
4. The Contractor shall provide evidence of efforts described at 2 above to the Division of Purchase and Property no less frequently than once every 12 months.
5. The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27.

This language is in addition to and does not replace good faith efforts requirements for construction contracts required by N.J.A.C. 17:27-3.6, 3.7 and 3.8, also known as Exhibit B.