

REQUEST FOR PROPOSALS
FOR
NEW JERSEY BOARD OF PUBLIC UTILITIES (BPU)
BASIC GENERATING SERVICES (BGS) AUCTION
CONSULTING AND MONITORING

Issued by
The State of New Jersey
Board of Public Utilities

Date issued: April 21, 2017
Responses due by: May 15, 2017 at 2:00 p.m. Eastern Time

State of New Jersey- Board of Public Utilities
Division of Energy
44 South Clinton Avenue, P.O. Box 350
Trenton, NJ 08625-0350

1.1 PURPOSE AND INTENT

This Request for Proposal (RFP) is issued by the State of New Jersey, Board of Public Utilities (BPU). The purpose of this RFP is to engage a contractor to assist the BPU and the Auction Manager to monitor and oversee the Basic Generating Service (BGS) descending clock auction (BGS Auction), in accordance with N.J.S.A. 48:2-1 et seq. and to provide oversight of the electric supply RFP procurement process of Rockland Electric Company (RECO).

All work to be performed under the contract resulting from this RFP is contingent upon issuance of a final Board Order authorizing an auction process for annual BGS procurements. Board orders authorizing an auction are issued once a year after the previous year's auction. The Board may not authorize an auction or may cancel an auction at any time.

The required services are detailed in RFP Section 3.0 (Scope of Work).

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

The State of NJ Standard Terms and Conditions (Attachment 1) will apply to all contracts or purchase agreements made with the State of New Jersey. These terms and conditions shall apply regardless of reference to the Division of Purchase and Property as the contracting authority. These terms are in addition to the terms and conditions set forth in this RFP and should be read in conjunction with them unless the RFP specifically indicates otherwise.

1.2 BACKGROUND

Pursuant to the Electric Discount and Energy Competition Act of 1999, (Act), and specifically in accordance with N.J.S.A. 48:3-57(a) and (d), the local electric distribution companies (EDCs or Utilities) are obligated to provide basic generation service (BGS) until the BPU determines otherwise. BGS refers to the EDCs' obligation to obtain and provide the supply of electricity for customers who do not switch to an alternative retail supplier. EDCs are responsible for the delivery of electricity to all customers, whether they receive supply from an alternative supplier or from the EDC. The Act requires that power procured for BGS by an EDC be purchased at prices consistent with market conditions. Charges assessed to customers for BGS are regulated by the BPU and are based on the reasonable and prudent cost to the EDC of providing the service, including the cost of power purchased at prices consistent with market conditions by the EDC in the competitive wholesale marketplace, and related transmission, capacity, ancillary and administrative costs as determined by the BPU.

1.2.1 BGS AUCTION AND HISTORY

Each year the BPU initiates a proceeding that directs EDCs, and invites interested parties, to file proposals to determine how to procure BGS function. To implement the review process, a procedural schedule is developed to address the proposals, including an opportunity for

parties to issue discovery, and submit written and oral comments. Based on the record developed in this proceeding, the BPU makes a decision as to which type of procurement process will be used for BGS. Since 2002, the BGS procurement process that has been approved by the BPU is a descending clock auction process run by the EDCs through National Economic Research Associates (NERA) and overseen by the BPU.

Starting in 2003, the needs of residential and smaller commercial customers, who are on a fixed-price service, have been met through a statewide auction called the BGS-FP Auction¹, while the needs of larger commercial and industrial customers, who receive a mandatory hourly-priced service, have been met through a second and concurrent statewide auction called the BGS-CIEP Auction.

1.2.2 NATIONAL ECONOMIC RESEARCH ASSOCIATES (NERA) ROLE IN THE NEW JERSEY AUCTION FOR BASIC GENERATION SERVICES

NERA is the Auction Management firm that presently administers the auction process on behalf of the EDCs. In this statewide auction, the EDCs procure the necessary energy, capacity, network transmission and ancillary services to serve BGS demand. Qualified bidders then compete for the opportunity to aggregate the supply of these products from wholesale sources and to provide price-risk management services.

The Auction Manager provides services including, but not limited to, the following:

- a) Assisting EDCs in designing the product to be procured and the auction;
- b) Assisting EDCs throughout the regulatory process;
- c) Testimony on the benefits of the auction at legislative hearings;
- d) Assistance in every phase of the day-to-day activities leading up to the auction, including qualifying the bidders, answering bidders' inquiries, and leading bidder-training sessions;
- e) Managing the auction, making the round-by-round decisions during the auction process; and
- f) Producing the final report that the BPU uses to evaluate auction results.

1.2.3 ROCKLAND ELECTRIC COMPANY (RECO) PROCUREMENT HISTORY

RECO's territory includes customers within the Pennsylvania/New Jersey/Maryland Regional Transmission Organization (PJM), but also includes a small number of customers outside the area serviced by PJM (RECO's Central and Western Divisions). RECO must also procure electric supply for this non-PJM load in New Jersey which has not been done through the current BGS Auction process. RECO has been using an RFP procurement process to obtain this supply, most recently approved by Board Order dated April 15, 2015 in BPU Docket No. ER140403370. Below is a description of what was approved in the April 15, 2015 Order.

¹ Beginning in June 2015, the BGS-FP was renamed BGS- Residential Small Commercial Pricing (RSCP).

To address the capacity needs of its Central and Western Divisions, RECO proposed to purchase capacity from the New York Independent System Operator (NYISO) monthly capacity market and blend its forecast of those prices into the BGS-RSCP price (“Capacity Transaction”). This is the same proposal approved by the Board in its November 22, 2013 Order, Docket No. ER13050378.

To address the energy needs of its Central and Western Divisions, RECO proposed a competitive bid process to secure the full service requirements of its Central and Western Divisions commencing June 1, 2015. Specifically, RECO proposed to enter into a bi-lateral agreement or agreements to hedge the costs of energy purchased from NYISO. The bi-lateral agreement(s) would be either a financial hedge, where no energy or commodity is provided by the counter party, or a physical hedge in which the counter party will provide the energy commodity (“Energy Transaction”). In the case of the energy financial hedge agreement, RECO would still be required to purchase the physical electric supply needed to meet its full service obligations of its Central and Western Divisions.

RECO proposed to seek bids on physical and financial transactions for NYISO ZONE G energy for the periods specified below. For the Energy Transactions, RECO proposed to procure agreements to cover the period of June 1, 2015 to May 31, 2018 and will seek pricing for the following four periods:

1. Year 1: June 1, 2015 through May 31, 2016;
2. Year 2: June 1, 2016 through May 31, 2017;
3. Year 3: June 1, 2017 through May 31, 2018; and
4. Blended price: June 1, 2015 through May 31 2018.

This is a procurement of the **Management Consulting: Oversight of BPU Basic Generation Service (BGS) Auction Process** term contract, presently due to expire on **July 31, 2017**.

Bidders interested in the current contract specifications and pricing information may review the current contract (Enter T2470) at: www.state.nj.us/treasury/purchase/pricelists.shtml.

1.3 SUBMISSION OF PROPOSAL INFORMATION

1.3.1 PRE-PROPOSAL DOCUMENT REVIEW

The following are publicly available documents that bidders need to review in order to prepare and submit accurate and comprehensive bid proposals:

- Board Orders on previous BGS auctions can be found at: www.nj.gov/bpu under “Division of Energy/Basic Generation Service”; and
- Information on the last BGS Auction including additional background, rules, application material, typical data, manuals, frequently asked questions etc. can be found by using the search function accessible at www.bgs-auction.com.

1.3.2 SUBMISSION OF PROPOSAL

In order to be considered to be the approved Contractor, a Bidder's Proposal must be received by the BPU at the appropriate location by the required time indicated on the cover page of the RFP.

Any Proposal not received on time via e-mail, as indicated below, will be rejected. Submit via e-mail to jonathan.wallace@bpu.nj.gov with the subject line: Attention BGS Auction Consulting and Monitoring.

All Respondents must limit their Proposals to twenty-five (25) single-sided pages or less, at no smaller than 12-point font.

Subsequent to Proposal submission, all information submitted by Respondents in response to the Proposal solicitation is considered public information, except as may be exempted from public disclosure by the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and the common law.

1.4 QUESTION AND ANSWER

The BPU will accept questions electronically, pertaining to this RFP, until **2:00 p.m. ET on Monday, May 1, 2017**, from all potential Bidders. Questions should be directed via e-mail to: jonathan.wallace@bpu.nj.gov with the subject line: BGS Auction Consulting and Monitoring.

- a) Questions should be directly tied to the RFP and asked in consecutive order, from beginning to end, following the organization of the RFP;
- b) Each question should begin by referencing the RFP page number and section number to which it relates;
- c) Communications with other representatives of the State regarding this RFP are prohibited during the submission and selection processes. Failure to comply with these communications restrictions may result in rejection of a Bidder's Proposal;
- d) The State will not be responsible for any expenses in the preparation and/ or presentation of the Proposals, oral interviews, or for the disclosure of any information or material received in connection with this RFP; and
- e) The State reserves the right to reject any and all Proposals received in response to this RFP, when determined to be in the State's best interest, and to waive minor noncompliance in a Proposal. The State further reserves the right to make such investigations as it deems necessary as to the qualifications of any and all Respondents submitting Proposals in response to this RFP. In the event that all Proposals are rejected, the State reserves the right to re-solicit Proposals.

1.5 NJSTART

Bidders interested in doing business with the State must register in NJSTART, New Jersey's eProcurement system. Registration is easy and takes only a few minutes. Visit www.njstart.gov and click on "Register" to start the process.

Respondents to this RFP are strongly encouraged to visit the NJSTART Vendor Support Page, which contains Quick Reference Guides (QRGs), supporting videos, a glossary of NJSTART terms, and helpdesk contact information. The NJSTART Vendor Support Page is located at: <http://www.nj.gov/treasury/purchase/njstart/vendor.shtml>.

1.6 ADDENDA: REVISIONS TO THIS RFP

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

2.0. GENERAL DEFINITIONS

Addendum – Written clarification or revision to this RFP issued by the New Jersey Department of Education (NJDOE).

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

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

Contract – This RFP, any addendum to this RFP, and the Bidder's Proposal submitted in response to this RFP, as accepted by the State and approved by the Board of Public Utilities.

Contract Effective Date – The date the Contract resulting from this RFP becomes effective with issuance of a Purchase Order to the Contractor.

Contractor – The Bidder awarded a contract resulting from this RFP.

Director – Director, Division of Energy, Board of Public Utilities.

Division – The Division of Energy, Board of Public Utilities.

Evaluation Committee – A Committee established by the Director assigned to review and

evaluate Proposals submitted in response to this RFP and to recommend a contract award to the Board of Public Utilities.

May – Denotes that which is permissible, not mandatory.

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

Request for Proposal (RFP) – The document which establishes the response and contract requirements and solicits Proposals to meet the purchase needs of the State as identified herein.

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

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

Should – Denotes that which is recommended, not mandatory.

State Contract Manager – State employee responsible for the approval of all deliverables and the main point of contact for the Contractor.

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

State – State of New Jersey.

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

Task – A discrete unit of work to be performed.

2.1 CONTRACT-SPECIFIC DEFINITIONS/ACRONYMS

Auction Manager - The consulting firm (NERA) that administers the auction process on behalf of the EDCs.

Basic Generation Service (BGS) - The electric supply for those retail customers who are not served by a third party supplier.

BGS-CIEP (Commercial and Industrial Pricing) - Auction conducted to secure suppliers for the BGS CIEP load of a given EDC for a one year supply period, commencing on June 1, of the auction year and ending on the following May 31.

BGS-RSCP (Residential Small Commercial Pricing) – Auction conducted to obtain suppliers for the

BGS-RSCP load of a given EDC. The supply period may be for multiple years (currently three years). The supply period extends from June 1 of the auction year.

Board - The five (5) Commissioners of the BPU.

BPU - The New Jersey Board of Public Utilities.

Descending Clock Auction - An Internet-based bidding process whereby prices tick down throughout the auction, starting high and being reduced gradually until the supply bid for each product is just sufficient to fill the demand.

Electric Distribution Companies (EDCs) - Public Service Electric & Gas (PSE&G), Jersey Central Power & Light (JCP&L), Atlantic City Electric (ACE) and Rockland Electric Company (RECO). EDCs are also commonly known as Utilities.

Fixed for Floating – Advantageous arrangement between two parties (counterparties), in which one party pays a fixed rate, while the other pays a floating rate. See Swap Transactions.

Floating Price – Price designed for customers who wish to purchase at market rates and fully participate when prices decline, but who can also tolerate prices when the market rises.

Indicative Bids – A number of tranches that the contractor is willing to serve statewide at the maximum starting price and a number of tranches that the contractor is willing to serve at the minimum starting price. These indicative offers are considered in determining starting prices for the auction.

Mock Auction – Simulated auction conducted by the Auction Manager to test equipment and allow potential bidders to become familiar with the auction bidding software.

National Economic Research Associates (NERA) - The Auction Manager consulting firm that administers the auction process on behalf of the EDCs.

Staff – Personnel of the New Jersey Board of Public Utilities.

Swap Transactions – Financial trade involving the exchange of two different pricing structures between users of a commodity. For example, Consumer A (who normally purchases a fixed priced commodity) and Consumer B (a buyer of a variably-priced commodity) would (through a broker) agree to pay for each other's purchases. Consumer A thus assumes the risk of a variably-priced commodity while potentially seeing a lower annual bill, while Consumer B gets price assurance while risking a potentially higher annual bill. Swaps can be conducted directly by two counterparties, or through a third party such as a bank or brokerage house.

Tranche - Fixed percentage share of the BGS-RSCP Load of an EDC or a fixed percentage share of the BGS-CIEP Load of that EDC for the period beginning June 1 of the auction year.

3.0 SCOPE OF WORK

3.1 PROJECT LAUNCH MEETING

Within 10 business days of the contract effective date, the Contractor shall meet with the State Contract Manager to review the Contractor's Technical Proposal submitted as part of the bid proposal.

3.2 COMMUNICATIONS, MEETINGS, AND REPORTS

3.2.1 WEEKLY COMMUNICATION

The Contractor shall update the State Contract Manager on the progress of its work through weekly communications, which may be held by phone, e-mail, or any other method as directed by the State Contract Manager.

The Contractor shall summarize the results of each weekly communication session with an e-mail to the State Contract Manager within two (2) business days of the weekly communication.

3.2.2 AD HOC MEETINGS

The contractor shall attend meetings on an ad hoc basis upon direction of the State Contract Manager. Such meetings include, but are not limited to briefings to the five (5) Commissioners of the Board and informal meetings or formal presentations to the State Contract Manager and Staff. It is anticipated that the Contractor will not need to attend, in person, more than ten (10) meetings annually.

The Contractor shall submit all status reports, presentations, deliverables and other materials needed for any ad hoc meeting to the State Contract Manager for review at least three (3) business days prior to all ad hoc meetings. The contractor shall prepare minutes of Ad Hoc Meetings and shall provide those minutes to ad hoc meeting attendees within five (5) business days of the meeting.

3.2.3 MONTHLY PROGRESS REPORTS

The Contractor shall submit a monthly written report to the State Contract Manager for each month in which work was performed. The report shall consist of a general narrative providing adequate and detailed information regarding the status of the project with an explanation of all discrepancies between the approved Work Plan and actual progress. The report shall be submitted to the State Contract Manager within five (5) business days from the end of the month.

3.2.4 ANNUAL FINAL REPORT

Within two (2) months of the date the Board has reviewed the final auction results, the Contractor shall submit an unbound draft of the annual report to the State Contract Manager State Contract Manger for review.

The Contractor shall ensure that its draft annual report includes elements including, but not limited to, the following:

- a) A summary of the auction process and all recommendations in accordance with the contract schedule as approved by the State Contract Manager;
- b) Narrative detailing the administration of the auction for compliance with auction rules and agreed upon procedures;
- c) Certification of the auction process and results to ascertain whether the auction was competitive and transparent and is consistent with market conditions; and
- d) All recommendations on how to improve future BGS procurements.

Based on Staff review of the draft report, the Contractor shall prepare its Annual Final Report upon direction by the State Contract Manager.

The Contractor shall provide two (2) bound copies of the Annual Final Report all marked "Confidential". To protect proprietary information and/or data, such as intellectual property, trade secrets, business plans and personal information, the Contractor shall also provide 5 bound copies of BPU-approved redacted copies along with a redacted reproducible to the State Contract Manager within ten (10) business days of draft approval. The Annual Final Report shall be released only upon acceptance of the report by the Board.

3.3 MOCK AUCTIONS

The Contractor shall participate in annual mock auctions generally held in January in Newark, New Jersey. The first of the mock auctions tests BGS Auction equipment and procedures while the second allows potential BGS Auction bidders the opportunity to familiarize themselves with the BGS Auction software and procedures.

The Contractor shall provide comments and advice on the administration of the BGS Auction operations during the mock auctions that include backup bidding procedures, information dissemination and BGS Auction mechanics. The comments and advice on the mock BGS Auctions shall be provided to the State Contract Manager via the weekly conference calls or via e-mail. The Contractor shall provide a written review within five (5) business days if requested by the State Contract Manager.

3.4 BGS AUCTIONS

The Contractor shall work with the State Contract Manager to oversee the development and execution of the BGS procurement process. The first BGS procurement for this contract is expected to be held in February of 2018 in Newark, New Jersey, contingent upon the EDCs recommend continued use of the BGS Auction process and Board approval.

The Contractor shall perform functions for the BGS Auction process including, but not limited to, the following:

- a) Providing laptop computers and related software necessary to perform the scope of all requirements of the BGS Auction processes;

- b) Annual reviewing of all BGS Auction filings including provision of written comments on respective filings upon direction by the State Contract Manager;
- c) Reviewing all written comments submitted by any individual or entity on any BGS Auction filing including provision of written analysis on respective comments to filings upon direction by the State Contract Manager;
- d) Monitoring and providing advice on the Board's Legislative Type Hearing, where any individual or entity may comment on any BGS Auction filings;
- e) Reviewing and subsequently discussing all proposed improvements of each previous year's auction process, e.g., modifications to auction rules and procedures with the State Contract Manager and the Auction Manager;
- f) Reviewing and providing advice on the dissemination of information to potential BGS Auction bidders through the web site, answers to questions, announcements, etc.;
- g) Reviewing and providing advice on procedures to ensure potential BGS Auction bidders have equal and fair access to information;
- h) Monitoring the timeliness and accuracy of information provided to potential BGS Auction bidders through a log;
- i) Reviewing and providing advice on the timeline for administration of the BGS Auction, including the activities initiated by the Auction Manager to prepare potential BGS Auction bidders for the BGS Auction;
- j) Monitoring whether the BGS Auction process has followed the announced timeline as closely as possible;
- k) Reviewing and providing advice on BGS Auction protocols, including those for maintaining the confidentiality of BGS Auction information and for communicating with the media;
- l) Overseeing and advising the State Contract Manager on the application/certification process for potential BGS Auction bidders in its entirety. This includes reviewing and commenting on application forms, providing advice on procedures for qualifying potential BGS Auction bidders, monitoring the qualification process and providing advice on all potential association issues regarding conflicts of interest;
- m) Reviewing and providing advice on the procedures for auction administration, including backup bidding methods;
- n) Attending and participating in potential BGS Auction bidder information sessions² upon direction of the State Contract Manager. This includes reviewing and providing advice on manuals available to potential BGS Auction bidders for participation in the BGS Auction and in BGS Auction information sessions;
- o) Advising the State Contract Manager on the review of indicative bids, the setting of starting price, auction volume, and all other information developed by the Auction Manager regarding the BGS Auction;
- p) Reviewing all alternative proposals or proposed modifications to the BGS Auction process upon direction of the State Contract Manager and providing written reviews upon direction by the State Contract Manager;
- q) Preparing information on pre-BGS Auction market conditions that can impact the final BGS Auction prices, including, but not limited to: fuel prices, transmission costs, transmission congestion costs, renewable portfolio standards compliance, energy markets and capacity markets, as well as a range of anticipated BGS Auction closing prices. At the request of Staff, this information will be provided prior to the Auctions being conducted.

² There have historically been four bidder information sessions, three have been held in Philadelphia, PA and one in Washington, D.C.

- r) Providing on-site monitoring during a BGS Auction of the bidding process to ensure compliance with BGS Auction protocols, and to discover and disclose any signs of gaming or irregular bidding activity; and
- s) Prior to Board action on the BGS Auction results, providing the State Contract Manager with a summary (in a checklist-type format provided by the State Contract Manager) of the BGS Auction process and outcome including the Contractor's written opinion on the final results of the BGS Auction bidding process. A sample checklist is provided as Appendix 1. In addition, provide a final range of auction closing pricing based on market conditions at the time the Auctions were conducted (using the same information and format conducted in item g in this section.)

The contractor shall enter into any confidentiality agreements with the Auction Manager or its subcontractors that are necessary to fulfill its requirements to the Board. (See sample Appendix 2).

3.5 OVERSIGHT OF THE ROCKLAND ELECTRIC COMPANY (RECO) RFP

For the RECO procurement of non-PJM load, if RECO proposes continued use of its RFP process, the Contractor shall oversee the opening of the RECO bids and provide subsequent review of and recommendation to the Board on the results of the RECO process.

Upon direction by the State Contract Manager, the contractor shall provide oversight of the bidding process for the RECO RFP.

Prior to Board action on the RECO RFP, the Contractor shall provide the State Contract Manager with a summary (in a checklist-type format provided by the State Contract Manager) of the RECO RFP process and outcome and provide a written opinion and analysis on the final results of the bid process. A sample document is provided as Appendix 3.

The Contractor shall:

- a) Obtain sufficient information from the EDCs to enable the Contractor to assist Staff in the evaluation of the bids;
- b) Ensure that the RECO RFP process, in its entirety, is carried out in a fair manner, as follows:
 - 1) process takes place according to schedule;
 - 2) no security breaches during the process;
 - 3) all bidders are provided with equal access to all available information to bid;
 - 4) No evidence of collusion or improper coordination among bidders;
 - 5) no evidence of confusion or misunderstanding on the part of the bidders; and
- c) Determine if factors exogenous to the RECO RFP process could materially affect the RECO RFP process.

3.6 LITIGATION SUPPORT

Upon direction by the State Contract Manager, the contractor shall provide expert testimony regarding all litigation resulting from work performed by the Contractor as part of the contract resulting from this RFP.

Expert testimony support shall be provided at the hourly rate as bid on the Contractor's Price Schedule.

4.0 PROPOSAL CONTENT

Note: Proposals in response to this RFP must respond to each of the following requirements in the order indicated:

The Proposal should include:

- a) Bidder's Forms, as specified in RFP Section 1.4 NJSTART;
- b) Technical Proposal, in response to RFP Scope of Work and its subsections. This section of the bidder's submission should be limited to twenty-five (25) pages and typed in no smaller than a twelve (12) point font;
- c) Organizational Support and Experience, which includes information relating to the Bidder's qualifications and capabilities to perform the services required by this RFP; and
- d) Price Schedule, as specified in RFP Section 7.0.

5.0 SPECIAL CONTRACTUAL TERMS AND CONDITIONS

5.1 PRECEDENCE OF SPECIAL CONTRACTUAL TERMS AND CONDITIONS

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

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

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

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

5.2 CONTRACT TERM AND EXTENSION OPTION

The term of the contract shall be for a period up to three (3) years. The contract may be extended for three (3) additional periods of up to one (1) year each, by mutual written consent of the Contractor and the Board at the same terms, conditions, and pricing. The length of each extension shall be determined when the extension request is processed.

Should the contract be extended, the contractor shall be paid at the rates in effect in the last year of the contract.

5.3 CONTRACT AMENDMENT

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

5.4 CONTRACTOR RESPONSIBILITIES

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

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

5.5 SUBSTITUTION OF STAFF

The contractor shall forward a request to substitute staff to the State Contract Manager for consideration and approval. No substitute personnel are authorized to begin work until the contractor has received written approval to proceed from the State Contract Manager. If it becomes necessary for the contractor to substitute any management, supervisory or key personnel, the contractor shall identify the substitute personnel and the work to be performed. The contractor must provide detailed justification documenting the necessity for the substitution. Resumes must be submitted evidencing that the individual(s) proposed as substitute(s) have qualifications and experience equal to or better than the individual(s) originally proposed or currently assigned.

5.6 SUBSTITUTION OR ADDITION OF SUBCONTRACTOR(S)

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

The contractor shall forward a written request to substitute or add a subcontractor or to substitute its own staff for a subcontractor to the State Contract Manager for consideration. If the State Contract Manager approves the request, the State Contract Manager will forward the request to the Director for final approval. No substituted or additional subcontractors are authorized to begin work until the contractor has received written approval from the Director. If it becomes necessary for the contractor to substitute a subcontractor, add a subcontractor or substitute its own staff for a subcontractor, the contractor will identify the proposed new subcontractor or staff member(s) and the work to be performed. The contractor must provide detailed justification documenting the necessity for the substitution or addition.

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

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

5.7 ADDITIONAL WORK AND/OR SPECIAL PROJECTS

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

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

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

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

Upon receipt and approval of the contractor's written proposal, the State Contract Manager shall forward same to the Director for the Director's written approval. Complete documentation from the Using Agency, confirming the need for the additional work, must be submitted.

Documentation forwarded by the State Contract Manager to the Director must include all other required State approvals, such as those that may be required from the State of New Jersey's Office of Management and Budget and NJOIT.

No additional work and/or special project may commence without the Director's written approval. In the event the contractor proceeds with additional work and/or special projects without the

Director's written approval, it shall be at the contractor's sole risk. The State shall be under no obligation to pay for work performed without the Director's written approval.

5.8 OWNERSHIP OF MATERIAL

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

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

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

5.9.1 BOARD'S AUTHORITY

All references to the Director of the Division of Purchase and Property in the New Jersey Standard Terms and Conditions (Attachment 1) shall be replaced with reference to the Board,

5.9.2 INDEMNIFICATION

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

4.1 Indemnification

The contractor's liability to the State for actual, direct damages resulting from the contractor's performance or non-performance, or in any manner related to the contract, for any and all claims, shall be limited in the aggregate to **500%** of the value of the contract, except that such limitation of liability shall not apply to the following:

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

2. The contractor's breach of its obligations of confidentiality; and,

3. Contractor's liability with respect to copyright indemnification.

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

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

5.9.2 INSURANCE - PROFESSIONAL LIABILITY INSURANCE

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

d. Professional Liability Insurance: The contractor shall carry Errors and Omissions, Professional Liability Insurance and/or Professional Liability Malpractice Insurance sufficient to protect the contractor from any liability arising out the professional obligations performed pursuant to the requirements of the contract. The insurance shall be in the amount of not less than **\$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 the contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

6.0 SELECTION PROCESS

6.1 RIGHT TO WAIVE

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

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

6.2 BOARD'S RIGHT OF FINAL PROPOSAL ACCEPTANCE

The Board reserves the right to reject any or all proposals, or to award in whole or in part if deemed to be in the best interest of the State to do so. The Board shall have authority to award

orders or contracts to the vendor or vendors best meeting all specifications and conditions in accordance with N.J.S.A. 52:34-12. Tie proposals will be awarded by the Board in accordance with N.J.A.C.17:12-2.10.

6.3 STATE'S RIGHT TO REQUEST FURTHER INFORMATION

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

6.4 PROPOSAL EVALUATION COMMITTEE

Proposals may be evaluated by an Evaluation Committee composed of BPU staff. On occasion, the Evaluation Committee may choose to make use of the expertise of outside consultant(s) in an advisory role.

6.5 ORAL PRESENTATION AND/OR CLARIFICATION OF PROPOSAL

The State may require oral interviews, and reserves the right to do so, in person or by telephone. Proposals should be complete on their face. The State reserves the right to request clarifying information subsequent to submission of the Proposal Application.

6.6 EVALUATION CRITERIA

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

6.6.1 TECHNICAL EVALUATION CRITERIA

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

6.6.2 BIDDER'S PRICE SCHEDULE

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

6.6.3 PROPOSAL DISCREPANCIES

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

6.6.4 EVALUATION OF THE PROPOSALS

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

6.7 NEGOTIATION AND BEST AND FINAL OFFER (BAFO)

After evaluating proposals, the Director may enter into negotiations with one bidder or multiple bidders. The primary purpose of negotiations is to maximize the State's ability to obtain the best value based on the mandatory requirements, evaluation criteria, and cost. Multiple rounds of negotiations may be conducted with one bidder or multiple bidders. Negotiations will be structured by the Director to safeguard information and ensure that all bidders are treated fairly. Similarly, the Director may invite one bidder or multiple bidders to submit a best and final offer (BAFO). Said invitation will establish the time and place for submission of the BAFO. Any BAFO that is not equal to or lower in price than the pricing offered in the bidder's original proposal will be rejected as non-responsive and the State will revert to consideration and evaluation of the bidder's original pricing.

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

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

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

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

7.0 PRICE SCHEDULE

BASIC GENERATING SERVICES (BGS) AUCTION: CONSULTING AND MONITORING

Bidder Name: _____

Refer to RFP Section 3.0 (Scope of Work) for task requirements & RFP [Section 2.0](#) for definition of "Firm Fixed Price".

Bid Item No.	Description	All-Inclusive Price
1	Firm Fixed Price for Oversight of BPU BGS Auction Process and Annual Final Report 2018	\$
2	Firm Fixed Price for Oversight of Procurement Process for the RECO RFP. 2018	\$
3	Firm Fixed Price for Oversight of BPU BGS Auction Process and Annual Final Report 2019	\$
4	Firm Fixed Price for Oversight of Procurement Process for the RECO RFP. 2019	\$
5	Firm Fixed Price for Oversight of BPU BGS Auction Process and Annual Final Report 2020	\$
6	Firm Fixed Price for Oversight of Procurement Process for the RECO RFP. 2020	\$

The bidder should submit a budget including labor titles and hourly rates for each labor title that supports and explains the firm fixed price submitted for Bid Items 1 through 6.

Bid Item No.	Description	All-Inclusive Price
7	Litigation Support Hourly Rate	\$
8	Additional Work Hourly Rate	\$

The bidder shall submit an all-inclusive blended hourly rate for expert testimony regarding any litigation resulting from work performed in fulfillment of the requirements of this RFP upon request by the State Contract Manager ([RFP Section 3.6](#)).

The contractor shall submit an all-inclusive blended hourly rate for Additional Work that may be utilized if additional work is authorized under [Section 5.7](#).

Please note that any work under Bid Items 7 and 8 is not guaranteed as part of this contract.

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

APPENDIX 1

SAMPLE POST-AUCTION CHECKLIST FOR THE NEW JERSEY BGS-FP AUCTION

Prepared by: _____ [Company]
 [Introductory comments, if any.]
 Auction began with the opening of Round 1 _____ [x:xx am] on _____ Monday, February 6, 2006

Auction finished with the close of Round ## _____ [xxx] on _____ [xxx]

	Start of Round 1	Start of Round 2 * (after volume reduction in Round 1, if applicable)	Start of Round n * (after post-Round 1 volume reduction, if applicable)
# Bidders	_____	_____	_____
Tranche target	## tranches	## tranches	## tranches
Eligibility ratio	_____	_____	_____
PSE&G load cap	## tranches	## tranches	## tranches
JCP&L load cap	## tranches	## tranches	## tranches
ACE load cap	## tranches	## tranches	## tranches
RECO load cap	## tranches	## tranches	## tranches
Statewide load	## tranches	## tranches	## tranches

* Note: [No volume adjustment was made during the FP auction, so the pre-auction tranche target and EDC-specific load caps were unchanged for the auction. / Or alternatively, note details of volume adjustments if they occurred.]

Table 1 below shows pertinent indicators and measures for the auction.

Table 1. Sample Summary of BGS-FP Auction

	PSE&G	JCP&L	ACE	RECO	Total
BGS-FP peak load share (MW)					
Total tranches needed					
Starting tranche target in auction					
Final tranche target in auction					
Tranche size (%)					
Tranche size (approximate MW)					
Starting EDC load caps (# tranches)					
Starting statewide load cap (#tranches)					
Final EDC load caps (# tranches)					
Final statewide load cap (#tranches)					
Quantity procured (# tranches)					
Quantity procured (% BGS-FP load)					
# Winning bidders					
Maximum # of tranches procured from any one bidder					
Minimum and maximum starting prices prior to indicative bids (cents/kWh)					
Starting price at start of auction (cents/kWh) *					
Final auction price (cents/kWh) **					

* Price shown in “Total” column is an average across the EDCs weighted by each EDC’s “Starting tranche target in auction”.

** Price shown in “Total” column is an average across the EDCs weighted by each EDC’s “Final tranche target in auction”.

Table 2. Sample Overview of Findings on BGS-FP Auction

	Question	Comments
	Consultant/NERA’s recommendation as to whether the Board should certify the FP auction results?	
	Did bidders have sufficient information to prepare for the FP auction?	
	Was the information generally provided to bidders in accordance with the published timetable? Was the timetable updated appropriately as needed?	
	Were there any issues and questions left unresolved prior to the FP auction that created material uncertainty for bidders?	
	From what Consultant/NERA could observe, were there any procedural problems or errors with the FP auction, including the electronic bidding process, the back-up bidding process, and communications between bidders and the Auction Manager?	
	From what Consultant/NERA could observe, were protocols for communication between bidders and the Auction Manager adhered to?	
	From what Consultant/NERA could observe, were any hardware or software problems or errors observed, either with the FP auction system or with its associated communications systems?	
	Were there any unanticipated delays during the FP auction?	
	Did unanticipated delays appear to adversely affect bidding in the FP auction? What adverse effects did Consultant/NERA directly observe and how did they relate to the unanticipated delays?	
	Were appropriate data back-up procedures planned and carried out?	
	Were any security breaches observed with the FP auction process?	
	From what Consultant/NERA could observe, were protocols followed for communications among the EDCs, NERA, BPU staff, the Board (if necessary), and Consultant during the FP auction?	
	From what Consultant/NERA could observe, were the protocols followed for decisions regarding changes in FP auction parameters (e.g., volume, load caps, bid decrements)?	
	Were the calculations (e.g., for bid decrements or bidder eligibility) produced by the FP auction software double-checked or reproduced off-line by the Auction Manager?	
	Was there evidence of confusion or misunderstanding on the part of bidders that delayed or impaired the auction?	
	From what Consultant/NERA could observe, were the communications between the Auction Manager and bidders timely and effective?	
	Was there evidence that bidders felt unduly rushed during the process? Should the auction have been conducted more expeditiously?	

	Question	Comments
	Were there any complaints from bidders about the process that Consultant/NERA believed were legitimate?	
	Was the FP auction carried out in an acceptably fair and transparent manner?	
	Was there evidence of non-productive “gaming” on the part of bidders?	
	Was there any evidence of collusion or improper coordination among bidders?	
	Was there any evidence of a breakdown in competition in the FP auction?	
	Was information made public appropriately? From what Consultant/NERA could observe, was sensitive information treated appropriately?	
	Does the FP auction appear to have generated a result that is consistent with competitive bidding, market-determined prices, and efficient allocation of the BGS-FP load?	
	Were there factors exogenous to the FP auction (e.g., changes in market environment) that materially affected the FP auction in unanticipated ways?	
	Are there any concerns with the FP auction’s outcome with regard to any specific EDC(s)?	

WHEREAS, the signatories agree that this information cannot be provided in any manner to any outside party, generator, supplier or potential bidder in the New Jersey BGS Auction process, or potential advisors to such bidders, other than select representatives and consultants of the Board and Division of the Ratepayer Advocate (“Advocate”).

WHEREAS, on December 3, 2002, the Board of Public Utilities issued an Order in the prior BGS proceeding, Docket Nos. EX01110754 and EO02070384 in response to a Secretary’s letter dated November 7, 2002 wherein a list of information was found to be exempt from the requirements of the Open Public Records Act (OPRA) N.J.S.A. 47:1A-1 et seq. Identical treatment of this proprietary and confidential information also was approved by the Board in its Order dated October 23, 2003 (Docket No. EO03050394) and in its Order dated December 1, 2004 (Docket No. EO004040288). At its October 12, 2005 Agenda Meeting, the Board again granted exemption from the requirements of the OPRA to this information in Docket No. EO05040317. As such, the signatories agree the proprietary commercial and financial information to be exchanged is non-public and not included as a government record pursuant to OPRA.

WHEREAS, the signatories wish to enter into this Stipulation and Agreement of Non-Disclosure of Protected Information (the “Agreement”) to provide adequate protection with respect to any such Protected Information;

NOW, THEREFORE, the signatories hereto, intending to be legally bound hereby, DO HEREBY AGREE, as follows:

1. Any information that is provided by NERA, Optimal or one or more of the EDCs (“Producing Parties”), to any signatory in connection with the above-captioned proceeding and pursuant to the terms of this Agreement, which NERA, Optimal, or the EDCs designates to be “Protected Information” shall be specifically identified and marked as “Protected Information” when provided hereunder.

2. (a) With respect to documents identified and marked as "Protected Information," the Producing Party shall indicate which portions of such documents contain the Protected Information.

(b) Each of such documents and the information contained therein designated as "Protected Information", which are provided hereunder, shall be used by the recipient solely for purposes relating to the review and processing of the above-captioned proceeding and will be provided pursuant to the Communication Protocols and as detailed in the Auction Rules. Such information shall be maintained in secure files, separate from public information, until returned to the designated representative of the Producing Party pursuant to the terms hereof.

3. With respect to all "Protected Information", it is further agreed

that:

(a) Access to the documents designated as "Protected Information" and to the information contained therein, shall be limited to designated employees of the signatories and their consultants whose examination of the "Protected Information" is required for the conduct of this proceeding and provided to designated individuals pursuant to the Communication Protocols.

(b) Recipients of "Protected Information" shall not disclose the contents of the documents produced pursuant to this Agreement to any person(s) other than the designated employees of the signatories and specifically identified consultants retained by one or more of the signatories in connection with this proceeding. All designated recipients who are to receive copies of documents produced pursuant to this Agreement shall have previously executed a copy of the Addendum annexed as Attachment I, which executed Addendum shall be forthwith provided to the BGS Auction Manager, who will keep and disseminate the master list of individuals authorized to receive and discuss Protected Information.

(c) No other disclosure of Protected Information shall be made to any person or entity, for a period of not less than five years from the date of receipt of such designated information, except as required by an order of a court of competent jurisdiction or as may otherwise be required by law, and any such disclosures shall occur only after notification of such intended disclosure to the other signatory parties to this Agreement.

(d) The undersigned specifically represent that they will not copy, share or cause to be shared the Protected Information provided.

4. The signatories shall be entitled to seek permission to remove the "Protected Information" designation, after reasonable notice to the Producing Party and opportunity for objection based on an assertion that such information:

(a) Has been disclosed by the Producing Party to the signatories without restrictions on its use or disclosure; or

(b) Has or becomes publicly available without any restrictions on its use or disclosure.

5. Upon resolution of this proceeding, including exhaustion of appeals, the designated recipients shall return to the individual designated by their company, within 45 days, all documents or materials designated as "Protected Information," except that the counsel for each EDC, counsel for the Board Staff, Board Staff and the Advocate may maintain in their files a single copy of all Protected Information provided in connection with this proceeding, provided that all such documents that contain "Protected Information" shall remain subject to the terms of this Agreement. Upon written request from the Producing Party, counsel for a recipient of "Protected Information" shall return all copies of the Protected Information, except for the single copy previously delineated.

6. The signatories agree that one original of this Agreement shall be created for each of the signatories for the convenience of all. The signature pages of each original shall be executed by the recipient of each original and transmitted to counsel for PSE&G. The multiple signature pages shall be regarded as, and given the same effect as, a single page executed by all signatories.

[REDACTED], Chief Executive Officer
Optimal Auctions, Inc.

By: _____
Board Consultant

Dated: _____

STAFF OF THE
BOARD OF PUBLIC UTILITIES

By: _____
[REDACTED], Director

Dated: _____

[REDACTED]
RATEPAYER ADVOCATE

By: _____
Deputy Ratepayer Advocate

Dated: _____

[REDACTED]
ATTORNEY GENERAL OF NEW JERSEY

By: _____
Deputy Attorney General

Dated: _____

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

**In the Matter of the Provision of
Basic Generation Service for the Period Starting June 1, 2006**

BPU DOCKET NO. EO05040317

**CERTIFICATION PURSUANT TO STIPULATION AND AGREEMENT OF
NON-DISCLOSURE OF PROTECTED INFORMATION**

The undersigned is (circle one) an officer, employee, consultant of _____, who has received, or is expected to receive, information provided by the New Jersey Electric Distribution Companies, or National Economic Research Associates, or Optimal Auctions, Inc. which has been identified and marked as “Protected Information.” The undersigned acknowledges receipt and hereby agrees to be bound by the terms of the Stipulation and Agreement of Non-Disclosure of Protected Information to which this document is annexed.

Dated: _____

[Insert name, position and affiliation]

APPENDIX 3

POST-AUCTION CHECKLIST FOR THE RECO Swap RFP

Prepared by:
 RECO Swap RFP bids were due by _____ on _____

They were opened and reviewed _____ on _____

Table 1 below shows pertinent indicators and measures for the RFP process.

Table 3. Sample Summary of RECO Swap RFP Process

	Energy Swap	Energy Swap	Energy Swap	UCAPSWAP
	2010/11 Tranch 1	2011/12 Tranch 2	2012/13 Tranch 3	2010/13 Tranch 4
% of SOS Load				
Approx. SOS Peak Load (MW)				
# of Bidders				
# of bids submitted				
Winning Price				

Table 4. Sample Overview of Findings on RECO Swap RFP Process

Energy		Capacity	
	Question	Comments	Comments
	Recommendation as to whether the Board should certify the RECO RFP results?		
	Did bidders have sufficient information to prepare for the RECO RFP process?		
	Was the information generally provided to bidders in accordance with the published timetable?		
	Were there any issues and questions left unresolved prior to the RECO RFP process that created material uncertainty for bidders?		
	Were protocols adhered to for communications among bidders, RECO/its Auction Manager, BPU Staff, and the BPU (if necessary) regarding the RECO RFP process?		
	Did the RECO RFP process take place according to schedule, and if not, what material impact did the deviations from the schedule have on the outcome of any of the BGS load procurement processes?		
	Were any security breaches observed with the RECO RFP process?		
	Was there evidence of confusion or misunderstanding on the part of bidders?		
	Were there any complaints from bidders about the process that Staff believed were legitimate?		
	Was the RECO RFP process carried out in a fair manner?		
	Was there any evidence of collusion or improper coordination among bidders?		
	Does the RECO RFP process appear to have generated a result that is consistent with competitive bidding, market-determined prices, and efficient allocation of the RECO NYISO tranches?		
	Were there factors exogenous to the RECO RFP process (e.g., changes in market environment) that materially affected the RECO RFP process in unanticipated ways?		
	Are there any other major concerns with the RECO RFP process?		

State of New Jersey Standard Terms and Conditions

1. **STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT-** Unless the bidder/offeror is specifically instructed otherwise in the Request for Proposals (RFP), 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 RFP and should be read in conjunction with same unless the RFP 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 RFP, 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 RFP. The State's terms and conditions shall prevail over any conflicts set forth in a bidder/offeror's proposal 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.
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 proposal have a valid Business Registration Certificate on file with the Division of Revenue.

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 their 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.
- 2.3 **PREVAILING WAGE ACT** - The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.26 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 proposal] is his guarantee that neither he nor any subcontractors he might employ to perform the work covered by [this proposal] has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder's signature on the proposal is also his guarantee that he and any subcontractors he might employ to perform the work covered by [this proposal] 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 (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;

State of New Jersey Standard Terms and Conditions

- 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 or holder of the public office of 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 (L. 2005, c. 271, §3 as amended) if in a calendar year the contractor receives one 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).

- a. 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.
- b. 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 Attorney General and the Executive Commission on Ethical Standards.
- c. 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 is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52: 130-13g. 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.
- d. 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 official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- e. 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 official position to secure unwarranted privileges or advantages for the vendor or any other person.
- f. 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 L. 1995, c. 159, 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

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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 thirty (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 proposal] 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.
- 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. 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. 10:5-33 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.

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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.
 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.

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.
 - (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.

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- 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. The contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof, and the certificates shall reflect that the insurance policies shall not be canceled for any reason except after sixty (60) days written notice to the State. Certificates of renewals shall be provided within thirty (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, PO Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancellation shall be emailed to the State at:

ccau.certificate@treas.state.nj.us

The insurance to be provided by the contractor shall be as follows:

- a. Occurrence Form Comprehensive 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 Comprehensive 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, unamended, and unendorsed Comprehensive 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 million 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:
 - \$1,000,000 BODILY INJURY, EACH OCCURRENCE
 - \$1,000,000 DISEASE EACH EMPLOYEE
 - \$1,000,000 DISEASE AGGREGATE LIMIT
- d. This \$1 million amount may have been raised by the RFP when deemed necessary by the Director.
- e. 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 RFP 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 RFP 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 RFP or any contract entered into as a result of the RFP.
- 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 thirty (30) days prior to the expiration date of the existing contract. The contractor shall have fifteen (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

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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.
- (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.
- (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 thirty (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.
 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.
- 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.

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5.8 **SUBCONTRACTING OR ASSIGNMENT** –

- a. **Subcontracting**: The contractor may not subcontract other than as identified in the contractor's proposal without the prior written consent of the Director. Such consent, if granted in part, shall not relieve the contractor of any of his 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.
- b. **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 RFP and vendor's bid or proposal 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 thirty (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 thirty (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.
- 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.
- 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.

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- 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 otherwise specified in the RFP. 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;
 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.
- 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 RFP. 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

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- 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 RFP and must be in strict accordance with the firm, fixed prices submitted for each task or subtask on the RFP pricing sheets. When applicable, invoices should reference the appropriate RFP price sheet line number from the contractor's bid proposal. 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.
 - 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 sixty (60) days of the agency's receipt of a properly executed State Payment Voucher or within sixty (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 revenues.