

Purchase Order

PO Printed Date:
07/25/2022

Division of Purchase and Property
Division of Purchase & Property
33 West State St 8th Floor
Trenton, NJ 08625
US
Email:
Id: 1

V Vendor Number: [REDACTED]
E
N ECC Technologies, Inc.
D Tracy Roberts
O 2136 Five Mile Line Rd.
R Penfield, NY 14526
US
Email: accountspayable@ecctec.com
Phone: (585)377-1850
FAX: (585)381-5654
Id: [REDACTED]
Alternate Id: [REDACTED]

PO Date: 07/25/2022

Buyer: [REDACTED]

Phone #: [REDACTED]

FOB:

Terms: Net 30

Purchase Order Number
23-WAIVE-17796 : 5

ALL PACKING SLIPS, INVOICES AND
CORRESPONDENCE
MUST REFERENCE THIS NUMBER.

S
H 822012 - BPU - Telecommunications
I TELCO - Telecommunications
P 44 S Clinton Avenue
PO Box 350
T Trenton, NJ 08625
O US

I
N 822012 - BPU - Telecommunications
V 44 S Clinton Avenue
O PO Box 350
I Trenton, NJ 08625
C US
E

Department	Bid Number	Requisition Number	Delivery Date
822012 - BPU - Telecommunications		23OCTVT287970	0 Days ARO

Item	Class Item	Bid Item #	Req Line Item #	Quantity	Unit	Unit Price	Total						
1	(918 - 06) ECC will assist with the Broadband Access Study Commission in evaluating access to broadband services within NJ.		23OCTVT287970- 1	1.0	Net - Net	\$2,759,225.00	\$2,759,225.00						
	<table><tr><td>FY</td><td>Account Code</td><td>Dollar Amount</td></tr><tr><td>23</td><td>21-100-2004- -010-VVVV-3610- -AD21</td><td>\$2,759,225.00</td></tr></table>	FY	Account Code	Dollar Amount	23	21-100-2004- -010-VVVV-3610- -AD21	\$2,759,225.00						
FY	Account Code	Dollar Amount											
23	21-100-2004- -010-VVVV-3610- -AD21	\$2,759,225.00											
Subtotal							\$2,759,225.00						
Tax							\$0.00						
Freight							\$0.00						
Discount							\$0.00 -----						
Total							\$2,759,225.00						

DIRECTOR OF PURCHASER/BUYER

FINANCE APPROVED	DATE	ENCUMBERED



Board of Public Utilities Request for Quotation

**For: Consulting Services related to the Broadband
Access Study Commission**

Event	Date	Time
Questions Regarding Request for Quotation Due Date	February 10, 2022	5:00 PM
Request for Quotation Submission Due Date	March 3, 2022	2:00 PM

Dates are subject to change. All times contained in the Request for Quotation refer to Eastern Time. All changes will be reflected through email notification to potential Bidders.

Request For Quotation Issued By:

State of New Jersey
Board of Public Utilities
P.O. Box 350
Trenton, New Jersey 08625-0350

Date: February 1, 2022

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1.0 INFORMATION FOR BIDDERS

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

1.1 PURPOSE AND INTENT

This Request for Quotation (RFQ) is issued by the New Jersey Board of Public Utilities (Board or BPU). The purpose of this Bid Solicitation is to solicit a proposal to establish a Master Blanket Purchase Order (Blanket P.O.s) with a Vendor {Contractor} to assist the Broadband Access Study Commission (Commission) in evaluating access to broadband services within the State of New Jersey (New Jersey or State), including but not limited to, physical access, deployment, and affordability of broadband service and the feasibility of establishing Community Broadband Networks in this State pursuant to the goals of P.L. 2021, c. 161 enacted on July 7, 2021¹.

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

The State of New Jersey Standard Terms and Conditions (SSTC) and Waivered Contracts Supplement accompanying this RFQ will apply to all contracts made with the State. These terms are in addition to the terms and conditions set forth in this RFQ and should be read in conjunction with them, unless the RFQ specifically indicates otherwise. The SSTC and Waivered Contracts Supplement attached, are also available at this website:

<http://www.state.nj.us/treasury/purchase/forms/StandardTermsandConditions.pdf>.

Bidders intending to subcontract and have work performed outside the United States should carefully read N.J.S.A. 52:34-13.2. Bidders intending to subcontract and/or have work performed within New Jersey should carefully read and agree to comply with the requirements of Governor Phil Murphy's Executive Order 271 (EO 271) with respect to vaccination protocols against COVID-19.

1.2 BACKGROUND

This Bid Solicitation is the result of the July 2021 Legislation establishing the Commission to evaluate the impediments of access to broadband service throughout New Jersey. The Vendor {Contractor} will research and analyze broadband networks; provide a report on options for providing broadband, such as information on the advantages and costs attendant to leasing or purchasing broadband infrastructure, including unused fiber optic cable; and develop a plan for establishing Community Broadband Networks.

All resulting reports from the consulting work will be used to develop a strategic plan to fund and deploy a state of the art broadband network to all New Jersey residents within an established timeframe. The goal of the plan is to provide all New Jersey residents in suburban, urban, and rural areas of the State a scalable and symmetrical broadband network for access to a full range of internet services, such as virtual meeting platforms (e.g., Zoom and Microsoft Teams) for home learning or work-from-home, as well as internet based entertainment services (e.g., Netflix and Prime Video).

1.3 QUESTION AND ANSWER PERIOD

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

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

¹ L. 2021, c.161, <https://www.nileg.state.nj.us/2020/Bills/PL21/161..PDF> ("July 2021 Legislation")

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

Any Bidder questions should be submitted via email to only the Board designee [REDACTED] The Board will not accept any question in person or by telephone concerning this RFQ.

The cut-off date for electronic questions and inquiries relating to this RFQ is indicated on the RFQ cover sheet. In the event that questions are posed by Bidders, answers to such questions will be issued by addendum. Any addendum to this RFQ will become part of this RFQ and part of any Contract awarded as a result of this RFQ. Addenda to this RFQ, if any, will be provided to each potential Bidder via email.

1.3.1 EXCEPTIONS TO THE SSTC AND WAIVER SUPPLEMENT TO SSTC

Questions regarding the SSTC and the Waivered Contract Supplement to the SSTC and exceptions to mandatory requirements must be posed during this question and answer period, and shall contain the Bidder's suggested changes and the reason for the suggested changes.

1.3.2 SUBMISSION OF QUOTATIONS

In order to be considered for award, the Quotation must be received by the Board by the designated time via electronic submission (email).

The Bidder must submit the following Quotation copies:

One (1) complete and exact ELECTRONIC copy of the original Quotation in PDF file format to be viewable and "read only" by State evaluators using Adobe Acrobat Reader software.

One (1) complete and exact ELECTRONIC copy of the original Quotation in an editable and "writable" file format for redaction.

One (1) complete and exact ELECTRONIC copy of the pricing in PDF format separate from the Quotation.

Bidders must submit the Quotation copies via email to [REDACTED]

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

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

1.4 ADDITIONAL INFORMATION

1.4.1 BIDDER RESPONSIBILITY

The Bidder assumes sole responsibility for the submission of a fully completed Quotation in response to this RFQ. Once quotations are opened, no special consideration will be given due to a Bidder's lack of knowledge of all the requirements of this RFQ.

1.4.2 COST LIABILITY

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

1.4.3 CONTENTS OF QUOTATION

Quotations can be released to the public pursuant to N.J.A.C. 17:12-1.2(b) and (c), the New Jersey Open Public Records Act (OPRA), N.J.S.A. 47:1A-1.1 et seq., or the common law right to know.

After the opening of sealed Quotations, including Quotations submitted electronically, all information submitted by a Bidder in response to a RFQ is considered public information notwithstanding any disclaimers to the contrary submitted by a Bidder. Proprietary and confidential information may be exempt from public disclosure by OPRA and/or the common law. When the RFQ contains a negotiation component, the Quotation will not be subject to public disclosure until a notice of intent to award a Contract is announced.

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

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

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

2.0 DEFINITIONS

2.1 GENERAL DEFINITIONS

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

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

Bidder – An entity offering a Quotation in response to the Using Agency's RFQ.

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

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

Change Order – An amendment, alteration or modification of the terms of a Contract between the State and the Contractor(s). A change order is not effective until it is signed and approved by the Board.

Contract – The Contract consists of the State of New Jersey Standard Terms and Conditions (SSTC), the Waivered Contract Supplement to the State of New Jersey Standard Terms and Conditions, the RFQ, the responsive Quotation submitted by a responsible Bidder as accepted by the State, the notice of award, any subsequent written document

memorializing the agreement, any modifications to any of these documents approved by the State and any attachments, bid amendment, or other supporting documents or post-award documents, including change orders agreed to by the State and the Contractor in writing.

Contract Effective Date – Date of award of waiver Contract to successful Bidder.

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

Days After Receipt of Order (ARO) – The number of calendar days “After Receipt of Order” in which the Using Agency will receive the ordered materials and/or services.

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

Evaluation Committee – A committee established by the State Contract Manager to review and evaluate quotations submitted in response to this RFQ and recommend a Contract award to the Board.

Joint Venture – A business undertaking by two (2) or more entities to share risk and responsibility for a specific project.

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

IP – Intellectual Property.

Master Blanket Purchase Order (Blanket P.O.) – The Blanket P.O. consists of the State of NJ Standard Terms and Conditions (SSTC), the Bid Solicitation, the responsive Quote submitted by a responsible Vendor {Bidder} as accepted by the State, the notice of award, any Best and Final Offer, any subsequent written document memorializing the agreement, any modifications to any of these documents approved by the State and any attachments, Bid Amendment or other supporting documents, or post-award documents including Change Orders agreed to by the State and the Vendor {Contractor}, in writing.

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

Must – Denotes that which is a mandatory requirement.

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

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

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

QRGs – Quick Reference Guides.

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

Request for Quotations (RFQ) – This series of documents, which establish the bidding and Contract requirements, solicit quotations to meet the needs of the Using Agencies as identified herein, and include the RFQ, State of New Jersey Standard Terms and Conditions (SSTC), price schedule, attachments, and bid amendments.

Shall – Denotes that which is a mandatory requirement.

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

Small Business – Pursuant to N.J.A.C. 17:13-1.2, “small business” means a business that meets the requirements and definitions of “small business” and has applied for and been approved by the New Jersey Division of Revenue and

Enterprise Services, Small Business Registration and M/WBE Certification Services Unit as (i) independently owned and operated; (ii) incorporated or registered in and having its principal place of business in the State of New Jersey; (iii) having 100 or fewer full-time employees; and having gross revenues falling in one (1) of the three (3) following categories: For goods and services - (A) 0 to \$500,000 (Category I); (B) \$500,001 to \$5,000,000 (Category II); and (C) \$5,000,001 to \$12,000,000, or the applicable federal revenue standards established at 13 CFR 121.201, whichever is higher (Category III); For construction services - (A) 0 to \$3,000,000 (Category IV); (B) gross revenues that do not exceed 50 percent of the applicable annual revenue standards established at 13 CFR 121.201 (Category V); and (C) gross revenues that do not exceed the applicable annual revenue standards established at CFR 121.201, (Category VI).

State – The State of New Jersey.

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

State-Supplied Price Sheet – The bidding document created by the State and attached to this bid solicitation on which the Bidder submits its Quotation pricing as is referenced and described in Section 4.1.3 of the RFQ.

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

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

Task – A discrete unit of work to be performed.

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

2.2 CONTRACT-SPECIFIC DEFINITIONS/ACRONYMS

Board – The Commissioners of the New Jersey Board of Public Utilities, acting in their official capacity and in accordance with all necessary regulatory and statutory requirements.

Board Order – A formal action voted on by a majority of the Board.

BPU – The New Jersey Board of Public Utilities

Broadband Network - A state-of-the-art network capable of delivering download and upload speeds of no less than the standards as defined by the Federal Communications Commission. The actual speeds must be adjusted upwards to allow for improved technologies and usage requirements as determined by the commission.

Broadband Service- Any telecommunications service using a broadband network for the purpose of offering high speed, switched, broadband wireline telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, or video telecommunications through the Internet and using any technology.

Broadband Access Study Commission or Commission – Members of the Broadband Access Study Commission as constituted by legislation.

Community Broadband Network - A local shared network consisting of a series of interlinked computers that allow persons with devices connected to a wired network within the area served to gain entry to the wider Internet through high speed Internet service connections at designated access points.

COVID-19 – an infectious disease caused by the SARS-CoV-2 virus.

Engagement Process – BPU's method of requesting the Vendors {Contractors} competitive price quotations for each individual engagement as described in the Bid Solicitation Section 3.1. Including, but not limited to, technical response for the engagement, price for the engagement, and any other documentation required by the engagement.

Feasibility Study- A cost benefit analysis of proposed options and solutions which meet the objectives of this Bid Solicitation and the Commission.

Report – The findings, conclusions, and recommendations of the Vendor {Contractor} under the scope of work of this Bid Solicitation.

Staff – The New Jersey Board of Public Utilities Staff.

3.0 SCOPE OF WORK

The Contractor shall be responsible for the performance of requirements set forth within this section of the RFQ.

Upon Contract award, the Contractors may be required to sign a non-disclosure agreement pertaining to the confidential information it reviews.

3.1 SCOPE OF WORK REQUIREMENTS

3.1.1 THE VENDOR {CONTRACTOR} SHALL PERFORM THE FOLLOWING:

- A. Evaluate the impediments of access to broadband service for all residents of New Jersey, including but not limited to, physical access, deployment, and affordability of broadband service;
- B. Evaluate the feasibility of creating an accurate scalable interactive broadband mapping tool, which will allow residents and policymakers to assess broadband options that are available at street level addresses including type of facilities available (e.g., fiber optic, wireless (4G,5G), copper DSL, guaranteed upload and download speeds, provider information and any other relevant information);
- C. Evaluate based upon a cost/benefit analysis whether leasing or purchasing established broadband infrastructure, such as, but not limited to, unused fiber optic cable and unused broadcast television signal space, is more advantageous in achieving the goals pursuant to this act;
- D. Consider whether establishing a community broadband municipal or county agency or a non-profit corporation is more appropriate to administer a broadband network;
- E. Evaluate the different methods, including legislation and contracts with private companies, that other municipalities or counties in this country have used to implement community broadband networks;
- F. Determine the most cost effective method in which to establish community broadband networks, with a cost estimate for the local government and a rate estimate for paying customers; and
- G. Explore all possible federal, State, and private funding sources for the establishment of community broadband networks in this State.

3.1.2 The Vendor {Contractor} shall assist the Commission and Staff in the evaluation of broadband throughout the State. The Vendor {Contractor} shall provide, at a minimum, the following services in support of this goal:

- A. A Report providing an assessment and recommendation of existing Broadband access throughout New Jersey;
- B. A Report assessing the prudence of establishing a community broadband municipal or county agency or non-profit corporation to administer a Community Broadband Network;
- C. A Report estimating the costs associated with implementing the Community Broadband Network by municipality throughout the State that includes a cost estimate for the local government and a rate estimate for customers receiving the service;
- D. A comprehensive overview of options, including, but not limited to, Community Broadband, Broadband infrastructure deployment options, and an evaluation of potential Broadband improvements throughout the State ; and
- E. An overall evaluation of possible federal, state, and private funding sources for the establishment of Community Broadband within the State and a prospectus on the allocation of potential funding.

3.1.3 The Vendor {Contractor} shall assist in leading the Commission as a technical expert, as directed by Staff. Topics for consideration shall include the feasibility of establishing Community Broadband Networks throughout the State , evaluate the costs of leasing facilities, purchasing broadband infrastructure, and related topics.

3.1.4 The Vendor {Contractor} shall assist Staff in the preparation of a Report for Broadband Service deployment. The Report shall include, but not be limited to, recommendations on the development of the following:

- A. Feasibility and costs associated with the Broadband Service plans provided and methodologies for implementation of the plans;
- B. The approach for carrying out each proposed plan, including a timeline for achievement of each individual plan;
- C. Detailed analysis of each plan; and
- D. Summary of areas where similar or like plans have been implemented.

3.1.5 The Vendor {Contractor} shall work in conjunction with the Commission at the direction of Staff.

3.1.6 The SCM will oversee activities, work product, reports and findings produced by the Vendor {Contractor} throughout the duration of the contract. The SCM will be responsible for ensuring that the reports are robust, comprehensive, and provide a cogent evaluation of broadband options for Commission consideration.

3.2 **VENDOR REQUIREMENTS**

3.2.1 **PROJECT LAUNCH MEETING**

Within seven (7) days of the engagement effective date, the Vendor {Contractor} shall schedule a launch meeting with the SCM, which can be held on a virtual platform.

The purpose of this meeting will be to review all requirements contained in the Scope of Work.

The Vendor {Contractor} shall ensure that its program managers and other key staff, as deemed by the SCM, attend this meeting.

Via e-mail to the SCM, the Vendor {Contractor} shall submit a summary report and/or minutes of the meeting within five (5) business days of the meeting.

3.2.2 PROGRAM PLAN DEVELOPMENT AND DELIVERY

Within seven (7) days of the effective date of the Blanket P.O., the Vendor {Contractor} shall present a plan to the SCM demonstrating how the Vendor {Contractor} shall successfully complete the conditions and obligations of the engagement Scope of Work.

This plan shall include, at a minimum, the following elements:

- A. How the Vendor {Contractor} will engage and assist in leading Staff and the Commission, including the following:
 - 1) An overall timeline of meetings and deliverables, including regarding the activities below; and
 - 2) Ongoing management and oversight of the project;
- B. Reporting timelines for the production of interim reports to Staff and the Commission.

Upon the SCM's approval of the plan, the Vendor {Contractor} shall immediately begin implementation.

3.2.3 ADDITIONAL OBLIGATIONS

Upon direction of the Board or, through the SCM, the Vendor {Contractor} shall perform such tasks as may reasonably be expected to assist in the completion of the core elements presented above, and/or which are designed to ensure that the process set forth in this document is successfully achieved.

3.2.4 PROJECT SCHEDULE

Vendor {Contractor} shall complete the engagement work within the timeframe set forth in the Project Schedule as specified and accepted in the program plan.

3.2.5 PROJECT CONTROL

The Vendor {Contractor} shall report directly to the SCM. All written and oral communications shall be through the SCM. If a situation arises which would impede the completion of the engagement, the Vendor {Contractor} shall notify the SCM immediately. The Vendor {Contractor} may be requested to discuss the engagement's progress with the SCM, as necessary.

3.2.6 INTERMITTENT CONFERENCES

The Vendor {Contractor} shall attend meetings to discuss all pertinent items as requested by the SCM.

3.2.7 MONTHLY PROGRESS REPORT

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

3.2.8 DRAFT FINAL REPORT

A draft of the final report, including a summary of the evaluation process and all recommendations, shall be submitted to the SCM in accordance with the project schedule. After appropriate review and authorization by the SCM, the Vendor {Contractor} shall release the draft report to the Commission and/or any other party as determined by the SCM for its review. The Commission's critique of the draft report shall be confined to factual discrepancies and communicated to the SCM.

3.2.9 **EXIT CONFERENCE**

Upon completion of the engagement and prior to submission of the final report, the Vendor {Contractor} shall meet with Staff to discuss its findings.

3.2.10 **FINAL REPORT**

The SCM shall authorize the preparation of the final report. Any party as determined by the SCM will be permitted to comment upon the Vendor's {Contractor's} findings and recommendations after the BPU or the SCM releases the final report. These comments shall be in the form of a separate correspondence and shall not be incorporated into the Vendor's {Contractor's} final report. If necessary, the Vendor {Contractor} shall provide at least 30 bound copies containing double-sided pages, one unbound master photocopy, and one electronic copy on CD-ROM of the final report to the SCM all marked "Confidential" to protect proprietary information and/or data, such as intellectual property, trade secrets, business plans and personal information. If "Confidential" reports are provided, the Vendor {Contractor} shall also provide the same number of redacted copies to the BPU, a redacted reproducible copy, and a redacted electronic copy on CD ROM to the SCM within ten (10) business days of draft approval. The final report shall be released only upon authorization from the BPU. In addition, the Vendor {Contractor} shall provide at least 30 bound copies containing double-sided pages, one (1) reproducible copy and one (1) electronic copy on CD-ROM of the final report all marked "Confidential" to the Commission. The CD must be in Adobe Acrobat PDF file format and have the properties that enable the file(s) to be viewed, printed, searched and electronically reproduced.

3.2.11 **WORK PAPERS**

Work papers developed during the engagement shall be the property of the Vendor {Contractor}. The Vendor {Contractor} shall, at any given time during the course of the contract and at the conclusion thereof, make the work papers developed available to the SCM and any other designated parties or inspection or review. These work papers shall include, but not be limited to:

- A. Facts gathered and documents obtained;
- B. Computations and analyses performed; and
- C. Other pertinent data relating to the evaluation.

Work papers must be indexed in a clear and logical manner and show evidence that each work paper or group of papers has been subjected to appropriate supervisory review. Work papers must show the name of the individual who prepared the paper and must be clearly titled and dated. Work papers must be retained for a period of not less than seven (7) years from date of receipt of the Vendor's {Contractor's} final payment and shall be made available to the SCM when requested. The Vendor {Contractor} shall provide photocopies and/or digital copies of these papers upon request of the SCM.

3.2.12 **LITIGATION SUPPORT**

The Vendor {Contractor} shall provide expert testimony regarding any litigation resulting from work done as part of this Blanket P.O. when necessary. Expert testimony support shall be provided at the hourly rates submitted on the State-Supplied Price Sheet. Litigation support pricing shall not be included in the individual engagement Quotations.

4.0 QUOTATION PREPARATION AND SUBMISSION

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

4.1 GENERAL

A Bidder may submit additional terms as part of its Quote. Quotes including Bidder proposed terms and conditions may be accepted, but Bidder proposed terms or conditions that conflict with those contained in the Bid Solicitation, as defined in Section 2.0 of this Bid Solicitation, or that diminish the State's rights under any Blanket P.O. resulting from the Bid Solicitation, may render a Quote non-responsive. It is incumbent upon the Vendor {Bidder} to identify and remove its conflicting proposed terms and conditions prior to Quote submission. Where additional terms are submitted they may be accepted, rejected, or negotiated, in whole or in part, at the State's sole discretion where the terms do not conflict with material terms of the Bid Solicitation or do not diminish the State's rights under the Blanket P.O. resulting from the Bid Solicitation.

In the event that a Bidder intends to propose terms and conditions that conflict with the Bid Solicitation, those Vendor {Bidder} proposed terms and conditions shall only be considered if submitted and agreed to pursuant to the electronic question and answer procedure set forth in Section 1.3.1 of this Bid Solicitation. Bidders shall not submit exceptions in the Quote or on the "Terms and Conditions" Tab through **NJSTART**.

After award of the Blanket P.O., if a conflict arises between a Bidder's additional terms included in the Quote and a term or condition of the Bid Solicitation, the term or condition of the Bid Solicitation will prevail.

Use of URLs in a Quote should be kept to a minimum and shall not be used to satisfy any material term of a Bid Solicitation. If a preprinted or other document included as part of the Quote contains a URL, a printed copy of the URL page shall be provided and will be considered as part of the Quote.

The Bidder is advised to thoroughly read and follow all instructions contained in this RFQ in preparing and submitting its Quotation.

The forms discussed herein and required for submission of a Quotation in response to this RFQ are available on the [Department of the Treasury, Division of Purchase & Property website](http://www.state.nj.us/treasury/purchase/forms.shtml) <http://www.state.nj.us/treasury/purchase/forms.shtml> unless noted otherwise.

4.1.1 FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED BEFORE CONTRACT AWARD AND THAT SHOULD BE SUBMITTED WITH THE QUOTATION

Please refer to Sections 7.1.1 through 7.1.13 of the RFQ.

4.2 NON-COLLUSION

By submitting a Quotation, the Bidder certifies as follows:

- A. The price(s) and amount of its Quotation have been arrived at independently and without consultation, communication or agreement with any other Contractor / Bidder or any other party;
- B. Neither the price(s) nor the amount of its Quotation, and neither the approximate price(s) nor approximate amount of this Quotation, have been disclosed to any other firm or person who is a Bidder or potential Bidder, and they will not be disclosed before the Quotation submission;
- C. No attempt has been made or will be made to induce any firm or person to refrain from bidding on this Contract, or to submit a Quotation higher than this Quotation, or to submit any intentionally high or noncompetitive Quotation or other form of complementary Quotation;

- D. The Quotation of the firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Quotation; and
- E. The Bidder, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last five (5) years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public Contract.

4.3 NEW JERSEY BUSINESS ETHICS GUIDE CERTIFICATION

The Treasurer has established a business ethics guide to be followed by Bidders / Contractors in its dealings with the State. The guide provides further information about compliance with Section 2.7 of the SSTC. The guide can be found at:

http://www.state.nj.us/treasury/purchase/ethics_guide.shtml

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

4.4 FINANCIAL CAPABILITY OF THE BIDDER

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

- A. For publicly traded companies the Bidder should provide copies or the electronic location of the annual reports filed for the two (2) most recent years; or
- B. For privately held companies the Bidder should provide the certified financial statement (audited or reviewed) in accordance with applicable standards by an independent Certified Public Accountant which include a balance sheet, income statement, and statement of cash flow, and all applicable notes for the most recent calendar year or the Bidder's most recent fiscal year.

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

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

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

4.5 STATE-SUPPLIED PRICE SHEET

The Bidder must submit its pricing using the State-Supplied Price Sheet, Section 9.0 of this RFQ.

4.5.1.1 STATE-SUPPLIED PRICE SHEET INSTRUCTIONS

The Bidder must submit its pricing using the format set forth in the State-Supplied Price Sheet, Section 9.0 of this RFQ. Failure to submit all information required will result in the Quotation being considered non-responsive. Each Bidder is required to hold its prices firm through issuance of Contract.

Bidders shall also present a budget supporting each Firm Fixed Price in which the Bidder lists labor titles, corresponding All-Inclusive Hourly Rates, and the number of hours allocated by labor title for each Task.

4.6 DELIVERY TIME AND COSTS

Not applicable to this procurement.

4.7 COLLECT ON DELIVERY ("C.O.D.") TERMS

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

4.8 CASH DISCOUNTS

Not applicable to this procurement.

4.9 TECHNICAL APPROACH SCOPE OF WORK

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

Mere reiterations of RFQ tasks and subtasks are strongly discouraged, as they do not provide insight into the Bidder's ability to complete the Contract. The Bidder's response to this section should be designed to demonstrate to the Board that the Bidder's approach and plans proposed to complete the Scope of Work are realistic, attainable and appropriate and that the Bidder's Quotation will lead to successful Contract completion.

4.9.1 MOBILIZATION AND IMPLEMENTATION PLAN

Not applicable to this procurement.

4.9.2 POTENTIAL PROBLEMS

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

4.9.3 ORGANIZATIONAL SUPPORT AND EXPERIENCE

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

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

4.9.4 LOCATION

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

4.9.5 ORGANIZATION CHARTS

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

4.9.6 RESUMES

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

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

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

4.9.7 DIVERSITY PLAN

The Bidder should include a Diversity Plan that sets forth whether and to the extent it can demonstrate that it or its subcontractor have considered the following items in N.J.A.C. 17:27-7.4:

(a) In addition to the contractor or subcontractor's compliance with the requirements set forth in the mandatory language at N.J.A.C. 17:27-3.8, the Department shall consider the following factors in its determination of whether a contractor or subcontractor has acted in good faith.

1. Whether the contractor or subcontractor has adopted an Equal Employment Opportunity (EEO) Policy;
2. Whether the contractor or subcontractor has posted an EEO Policy on the job site bulletin board;
3. Whether the contractor or subcontractor has disseminated the EEO Policy to its workers through various means including company meetings, preconstruction job meetings, written notices, etc.;
4. Whether the contractor or subcontractor has posted Federal or State issued EEO posters on the job site bulletin board;
5. Whether the contractor or subcontractor has identified an EEO Officer and established job duties in writing for such position;
6. Whether the contractor or subcontractor has developed a basic complaint procedure;
7. Whether the contractor or subcontractor has knowledge of and has considered the general availability of minorities and women having requisite skills in the immediate labor area;

8. Whether the contractor or subcontractor has knowledge of and has considered the percentage of minorities and women in the total workforce in the immediate labor area;
9. Whether, when the opportunity has presented itself, the contractor or subcontractor has considered promoting minority and women employees within its organization;
10. Whether the contractor or subcontractor attempted to hire minorities and women based upon the anticipated expansion, contraction and turnover of its workforce;
11. Whether the contractor or subcontractor has the ability to consider undertaking training as a means of making all job classifications available to minorities and women and whether it has done so;
12. Whether the contractor or subcontractor has utilized the available recruitment resources to attract minorities and women with requisite skills, including but not limited to public and private training institutions, job placement services, referral agencies, newspapers, trade papers, faith-based organizations, and community-based organizations;
13. Whether the contractor or subcontractor has requested qualified minorities and women from a labor union with whom it has an exclusive hiring or referral arrangement;
14. Whether the contractor or subcontractor has actively recruited beyond the traditional sources to attract minority and women applicants; and
15. Whether the contractor or subcontractor has reviewed all personnel actions to ensure actions are taken in compliance with the company's EEO policy.

4.9.8 BACKUP STAFF

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

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

4.9.9 EXPERIENCE WITH CONTRACTS OF SIMILAR SIZE AND SCOPE

The Bidder should provide a comprehensive listing of contracts of similar size and scope with specific inclusion of its work in the broadband service industry that it has successfully completed (including that of proposed Subcontractors), as evidence of the Bidder's ability to successfully complete services similar to those required by this RFQ. Emphasis should be placed on contracts that are similar in size and scope to the work required by this RFQ. A description of all such contracts should be included and should show how such contracts relate to the ability of the firm to complete the services required by this RFQ. For each such contract, the Bidder should provide two (2) names and telephone numbers of individuals for the other contract party. Beginning and ending dates should also be given for each contract.

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

5.0 SPECIAL CONTRACTUAL TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT

5.1 PRECEDENCE OF SPECIAL CONTRACTUAL TERMS AND CONDITIONS

The Contract awarded, and the entire agreement between the parties, as a result of this RFQ shall consist of this RFQ, SSTC, the Waivered Contracts Supplement to the SSTC (attached), Bid Amendment(s) to this RFQ, the Contractor's Quotation, any Best and Final Offer, and the Using Agency's Notice of Award.

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

- A. RFQ Section 5, as may be amended by bid amendment;
- B. The State of New Jersey Standard Terms and Conditions (SSTC) and Waiver Contract Supplement accompanying this RFQ;
- C. All remaining sections of the RFQ, as may be amended by Bid Amendment; and
- D. The Contractor's Quotation as accepted by the State.

5.2 CONTRACT TERM AND EXTENSION OPTION

The base term of this Contract shall be for a period of **1 (one) year**. The Contract may be extended up to **one (1) year**, by the mutual written consent of the Contractor and the Board at the same terms, conditions, and pricing at the rates in effect in the last year of the Contract or rates more favorable to the State in the event that the term for the Committee is extended and as directed by the Governor of this State.

5.3 CONTRACT TRANSITION

Not applicable to this procurement.

5.4 CHANGE ORDER

Any changes or modifications to the terms of this Contract shall be valid only when they have been reduced to writing and signed by the Contractor and the Board or SCM Staff, as appropriate.

5.5 CONTRACTOR RESPONSIBILITIES

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

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

5.6 SUBSTITUTION OF STAFF

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.

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

5.7 SUBSTITUTION OR ADDITION OF SUBCONTRACTOR(S)

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

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

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 Quotation.

5.8 OWNERSHIP OF MATERIAL

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

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

5.9 CONFIDENTIALITY

5.9.1 DATA CONFIDENTIALITY

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

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

When requested, Contractor and all project staff including its subcontractor(s) must complete and sign confidentiality and non-disclosure agreements provided by the State. Contractor may be required to view yearly security awareness and confidentiality training modules provided by the State. Where required, it shall be Contractor's responsibility to ensure that any new staff sign the confidentiality agreement and complete the security awareness and confidentiality training modules within one (1) month of the employees' start date.

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

A. The obligations of the State under this provision are subject to the New Jersey Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., the New Jersey common law right to know, and any other lawful document request or subpoena;

B. By virtue of this contract, the parties may have access to information that is confidential to one another. The parties agree to disclose to each other only information that is required for the performance of their obligations under this contract. Contractor's confidential information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure and anything identified in Contractor's Quotation as Background IP. Notwithstanding the previous sentence, the terms and pricing of this contract are subject to disclosure under OPRA, the common law right to know, and any other lawful document request or subpoena;

C. The State's confidential information shall consist of all information or data contained in documents supplied by the State, any information or data gathered by the Contractor in fulfillment of the contract, and any analysis thereof (whether in fulfillment of the contract or not).

D. A party's confidential information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party;

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

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

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

H. Notwithstanding the requirements of nondisclosure described in these Sections, either party may release the other party's confidential information:

- (i) if directed to do so by a court or arbitrator of competent jurisdiction; or
- (ii) pursuant to a lawfully issued subpoena or other lawful document request:
 - (a) in the case of the State, if the State determines that the documents or information are subject to disclosure and Contractor does not exercise its rights as described in Section 5.9(F), or if Contractor is unsuccessful in defending its rights as described in Section 5.9(F); or
 - (b) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the State does not exercise its rights described in Section 5.9(G), or if the State is unsuccessful in defending its rights as described in Section 5.9(G).

5.9.2 DATA SECURITY STANDARDS

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

a. Any personally identifiable information must be protected. All data must be classified in accordance with the State's Asset Classification and Control policy, 08-04-NJOIT (www.nj.gov/it/ps). Additionally, data must be disposed of in accordance with the State's Information Disposal and Media Sanitation policy, 09-10-NJOIT (www.nj.gov/it/ps).

b. Data usage, storage, and protection is subject to all applicable federal and state statutory and regulatory requirements, as amended from time to time, including, without limitation, those for Health Insurance Portability and Accountability Act of 1996 (HIPAA), Personally Identifiable Information (PII), Tax Information Security Guidelines for Federal, State, and Local Agencies (IRS Publication 1075), New Jersey State tax confidentiality statute, N.J.S.A. 54:50-8, New Jersey Identity Theft Prevention Act, N.J.S.A. 56:11-44 et seq., the federal Drivers' Privacy Protection Act of 1994, P.L. 103-322, and the confidentiality requirements of N.J.S.A. 39:2-3.4. Contractor must also conform to Payment Card Industry (PCI) Data Security Standard.

c. Data Transmission: Contractor must only transmit or exchange State of New Jersey data with other parties when expressly requested in writing and permitted by and in accordance with requirements of the State of New Jersey. Contractor must only transmit or exchange data with the State of New Jersey or other parties through secure means supported by current technologies. Contractor must encrypt all data defined as personally identifiable or confidential by the State of New Jersey or applicable law, regulation or standard during any transmission or exchange of that data.

d. Data Storage: All data provided by the State or State data obtained by Contractor in the performance of the contract must be stored, processed, and maintained solely in accordance with a project plan and system topology approved by the SCM. No State data shall be processed on or transferred to any device or storage medium including portable media, smart devices, and/or USB devices unless that device or storage medium has been approved in advance in writing by the SCM. Contractor must encrypt all data at rest defined as personally identifiable information by the State or applicable law, regulation or standard. Contractor must not store or transfer State data outside of the United States.

e. Data Scope: All provisions applicable to State data include data in any form of transmission or storage, including, but not limited to: database files, text files, backup files, log files, XML files, and printed copies of the data.

f. Data Re-Use: All State data must be used expressly and solely for the purposes enumerated in the contract. Data must not be distributed, repurposed, or shared across other applications, environments, or business units of Contractor. No State data of any kind must be transmitted, exchanged, or otherwise passed to other contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by the SCM.

g. Data Breach: Unauthorized Release Notification: Contractor must comply with all applicable state and federal laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. In the event of a breach of any of Contractor's security obligations or other event requiring notification under applicable law (Notification Event), Contractor must assume responsibility for informing the SCM within twenty-four (24) hours and all such individuals in accordance with applicable law and to indemnify, hold harmless, and

defend the State, its officials, and employees from and against any claims, damages, or other harm related to such Notification Event. All communications must be coordinated with the State.

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

5.9.3 SECURITY PLAN

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

- a. Facilities' physical security
- b. System security
- c. System data security
- d. Administrative and personnel security

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

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

In addition, the security plan shall identify and define:

- a. Regulations and security requirements – how Contractor will address security requirements such as PCI, HIPAA, FISMA, etc.
- b. System, administrative, and personnel security - the security responsibilities of and supervision required for information owned and/or operated by Contractor. Security responsibilities include responsibilities for administration of the infrastructure, implementing or maintaining security, and protecting the confidentiality, integrity, and availability of information systems or processes.
- c. Workforce security - the control process for hiring and terminating of Contractor's employees and method used for granting and denying access to Contractor's network, systems, and applications. Identify and define audit controls when employment of the employee terminates.
- d. Role based security access – the products and methods for role based security and access to the contractor's infrastructure and access to the State's infrastructure.
- e. Password management – the appropriate password management controls to meet defined regulation or security requirements.
- f. Logging / auditing controls – Contractor's audit control methods and requirements.
- g. Incident management – the methods for detecting, reporting, and responding to an incident, vulnerabilities, and threats.
- h. Vulnerability / security assessment – the products and methods used for scanning Contractor's infrastructure for vulnerabilities and remediation of the vulnerabilities. Identify and define methods used for initiating and completing security assessments.
- i. Anti-virus / malware controls – the products and methods for anti-virus and malware controls that meet industry standards. It shall include policy statements that require periodic anti-viral software checks of the system to preclude infections and set forth its commitment to periodically upgrade its capability to maintain maximum effectiveness against new strains of software viruses.
- j. Firewall – the products and methods for firewall control process and intrusion detection methodology.

- k. Database – the products and methods for safeguarding the database(s).
- l. Server and infrastructure – the products and methods for "hardening" of the hardware' operating systems.
- m. Transmission - the products and methods on how its system addresses security measures regarding communication transmission, access and message validation.
- n. Data integrity – the products and methods on the integrity of all stored data and the electronic images, and the security of all files from unauthorized access. Contractor must be able to provide reports on an as-needed basis on the access or change for any file within the system.

5.10 NEWS RELEASES

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

5.11 ADVERTISING

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

5.12 LICENSES AND PERMITS

The Contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this Contract. The Contractor shall comply with all New Jersey Department of Labor requirements. Notwithstanding the requirements of the RFQ, the Contractor shall supply the SCM with evidence of all such licenses, permits and authorizations. This evidence shall be submitted subsequent to this Contract award. All costs associated with any such licenses, permits, and authorizations must be considered by the Bidder in its Quotation.

5.13 CLAIMS AND REMEDIES

5.13.1 CLAIMS

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

5.13.2 REMEDIES

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

5.13.3 REMEDIES FOR FAILURE TO COMPLY WITH MATERIAL CONTRACT REQUIREMENTS

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

5.13.4 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 SCM and the Board.

In the event of additional work and/or special projects, the Contractor must present a written Quotation to perform the additional work to the SCM. The Quotation 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 Quotation.

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

The written Quotation must detail the cost necessary to complete the additional work in a manner consistent with this 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 Quotation submitted in response to this Bid Solicitation. 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 Quotation. A payment schedule, tied to successful completion of tasks and subtasks, must be included.

Upon receipt and approval of the Contractor's written Quotation, the SCM shall forward same to the Board for written approval. Complete documentation from the Using Agency, confirming the need for the additional work, must be submitted. Documentation forwarded by the SCM to the Board 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 Office of Information Technology.

In the event the Contractor proceeds with additional work and/or special projects without the Board's written approval, it shall be at the Contractor's sole risk. The Board shall be under no obligation to pay for work performed without Board written approval.

5.14 MODIFICATIONS AND CHANGES TO THE SSTC AND WAIVERED CONTRACTS SUPPLEMENT TO SSTC

5.14.1 INDEMNIFICATION

Section 4.1 of the SSTC is supplemented with the following:

4.1.1 LIMITATION OF LIABILITY

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

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

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

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

5.14.2 INSURANCE – PROFESSIONAL LIABILITY INSURANCE

Section C of the Waivered Contracts Supplement to the SSTC is modified with the following reduction of Professional Liability Insurance:

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

d. Professional Liability Insurance: The Contractor shall carry Errors and Omissions, Professional Liability Insurance and/or Professional Liability Malpractice Insurance sufficient to protect the Contractor from any liability arising out of the professional obligations performed pursuant to the requirements of the Contract. The insurance shall be in the amount of not less than **\$2,000,000** 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.

5.15 CONTRACT ACTIVITY REPORT

Not applicable to this procurement.

5.16 ELECTRONIC PAYMENTS

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

6.0 QUOTATION EVALUATION

6.1 BOARD'S RIGHT OF FINAL QUOTATION ACCEPTANCE

The Board reserves the right to reject any or all Quotations, 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 in accordance with N.J.S.A. 52:34-12. Tie Quotations will be awarded by the Board in accordance with N.J.A.C. 17:12-2.10.

6.2 STATE'S RIGHT TO INSPECT BIDDER FACILITIES

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

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

6.3 STATE'S RIGHT TO REQUEST FURTHER INFORMATION

After the Quotations are reviewed, one, some, or all of the Bidders may be asked to amplify certain aspects of its Quotation. The SCM reserves the right to request all information which may assist him or her and the Evaluation Committee in making a recommendation for Contract award, including factors necessary to evaluate the Bidder's financial capabilities to perform the Contract.

6.4 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 RFQ. The evaluation criteria categories may be used to develop more detailed evaluation criteria to be used in the evaluation process.

6.4.1 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 RFQ; and
- c. Ability of firm to complete the Scope of Work based on its Technical Quotation: The Bidder's demonstration in the Quotation that the Bidder understands the requirements of the Scope of Work and presents an approach that would permit successful performance of the technical requirements of the Contract.

6.4.2 BIDDER'S PRICE SCHEDULE

For evaluation purposes, Bidders will be ranked according to the total Quotation price located on the Price Sheet for this RFQ (Section 9.0).

6.4.3 QUOTATION DISCREPANCIES

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

6.5 NEGOTIATION AND BEST AND FINAL OFFER (BAFO)

In accordance with N.J.S.A. 52:34-12(f) and N.J.A.C. 17:12-2.7, after evaluating Quotations, the SCM may establish a competitive range and enter into negotiations with one Bidder or multiple Bidders within this competitive range. The primary purpose of negotiations is to maximize the State's ability to obtain the best value based on the mandatory requirements, evaluation criteria, and cost. Multiple rounds of negotiations may be conducted with one Bidder or multiple Bidders. Negotiations will be structured to safeguard information and ensure that all Bidders are treated fairly.

Similarly, the SCM may invite one Bidder or multiple Bidders to submit a 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 Quotation 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). More than one round of negotiation and/or BAFO may be conducted in order to attain the best value for the State.

After evaluation of Quotations and as applicable, negotiation(s), the Evaluation Committee will recommend to the Board the responsible Bidder whose Quotation, conforming to the RFQ, is most advantageous to the State, price, and other factors considered. The Board may accept, reject or modify the recommendation of the Evaluation Committee. The Board may initiate additional negotiation procedures with the selected Bidder(s).

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

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

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

6.6 POOR PERFORMANCE

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

7.0 CONTRACT AWARD

7.1 DOCUMENTS REQUIRED BEFORE CONTRACT AWARD THAT SHOULD BE SUBMITTED WITH QUOTATION

Bidders are under a continuing obligation to report updates to the information contained in its required forms. Unless otherwise specified, signatures may be submitted electronically. Bidders should retain any documents bearing original signatures to be presented if requested by the Board.

7.1.1 STATE OF NEW JERSEY STANDARD TERMS AND CONDITIONS

A Bidder should include a signed and dated copy of the SSTC within its response to this RFQ.

7.1.2 WAIVERED CONTRACTS SUPPLEMENT TO THE SSTC

A Bidder should include a signed and dated copy of the Waivered Contracts Supplement to the SSTC within its response to this RFQ.

7.1.3 SUBCONTRACTOR UTILIZATION PLAN

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

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

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

For construction services: (iv) those with gross revenues not exceeding \$3,000,000; (v) those with gross revenues that do not exceed 50 percent of the applicable annual revenue standards established at 13 CFR 121.201; and (vi) those with gross revenues that do not exceed the applicable annual revenue standards established at CFR 121.201. While companies registered as having revenues below \$3,000,000 can bid on any Contract, those earning more than the revenue standards established at CFR 121.201 will not be permitted to bid on Contracts designated for revenue classifications below their respective levels.

The Subcontractor Utilization Plan form is located on the Department of the Treasury, Division of Purchase & Property website <http://www.state.nj.us/treasury/purchase/forms.shtml>.

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

THE USE OF SUBCONTRACTORS WORKING WITHIN NEW JERSEY DOES NOT OBVIATE COMPLIANCE WITH EO 271 RELATIVE TO COVID-19 VACCINATION PROTOCOLS.

7.1.4 OWNERSHIP DISCLOSURE FORM

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

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

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

The Ownership Disclosure Form is located on the Department of the Treasury, Division of Purchase & Property website <http://www.state.nj.us/treasury/purchase/forms.shtml>.

7.1.5 DISCLOSURE OF INVESTIGATIONS AND OTHER ACTIONS INVOLVING BIDDER FORM

The Bidder should submit the Disclosure of Investigations and Other Actions Involving Bidder Form, with its Quotation, to provide a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five (5) years, including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current

status, and, if applicable, disposition. If a Bidder does not submit the form with the Quotation, the Bidder must comply within seven (7) business days of the State's request or the State may deem the Quotation non-responsive.

The Disclosure of Investigations and Other Actions Involving Bidder Form is located on the Department of the Treasury, Division of Purchase & Property website <http://www.state.nj.us/treasury/purchase/forms.shtml>.

7.1.6 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM

Pursuant to N.J.S.A. 52:32-58, the Bidder must utilize this Disclosure of Investment Activities in Iran form to certify that neither the Bidder, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Bidder, nor one of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Bidder is unable to so certify, the Bidder shall provide a detailed and precise description of such activities as directed on the form. The completed and signed form must be submitted prior to the award. Failure to timely submit the completed and signed form will result in rejection of the proposal, recession of any notice of intent to award, and/or forfeiture of the award.

The Disclosure of Investment Activities in Iran form is located on the Department of the Treasury, Division of Purchase & Property website <http://www.state.nj.us/treasury/purchase/forms.shtml>.

7.1.7 MACBRIDE PRINCIPLES CERTIFICATION FORM

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

By submitting a completed MacBride Principles Form, the Bidder is certifying that either:

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

A Bidder electing not to certify to the MacBride Principles must include, as part of its Quotation, a statement indicating its refusal to comply with the provisions of this Act.

7.1.8 PUBLIC LAW 2005, CHAPTER 271

The Bidder Certification and Political Contribution Disclosure Form must be completed, signed, and submitted to the SCM at least ten (10) days prior to entering into the Contract. The disclosure requirements under this section are separate and different from the disclosure requirements under Public Law 2005, Chapter 51 (formerly Executive Order 134). Although no Bidder will be precluded from entering into the Contract based on any information submitted on this form, a Bidder's failure to fully, accurately, and truthfully complete this form and submit it to the SCM may result in the imposition of fines by the New Jersey Election Law Enforcement Commission.

The Certification and Political Contribution Disclosure Form is located on the Department of the Treasury, Division of Purchase & Property website <https://www.state.nj.us/treasury/purchase/forms/CertandDisc2706.pdf>.

7.1.9 EO 271 CERTIFICATION FORM

Pursuant to Governor Murphy's EO 271, the Bidder must certify, if applicable, that it has a policy in place, for work performed within the State of New Jersey: (1) that requires all covered workers to provide adequate proof, in accordance with EO 271, to the covered contractor that the covered worker has been fully vaccinated; or (2) that requires that unvaccinated covered workers submit to COVID-19 screening testing at minimum one to two times weekly until such time as the covered worker is fully vaccinated; and (3) that the covered contractor has a policy for tracking COVID-19 screening test results as required by EO 271 and must report the results to local public health departments. The requirements of EO 271 apply to all covered contractors and subcontractors, at any tier. If a Contractor is a covered contractor under EO 271, at the time of submission of an invoice, the Contractor shall certify that it has complied with the requirements of EO 271 during the period of time covered by the invoice. See EO 271 for additional information as to the requirements of the policy.

Where EO 271 compliance certification is required, the Certification for Executive Order No. 271 - COVID-19 Vaccine Form is located on the Department of the Treasury, Division of Purchase & Property website <http://www.state.nj.us/treasury/purchase/forms.shtml>.

7.1.10 SOURCE DISCLOSURE REQUIREMENTS

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

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

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

The Source Disclosure Form is located on the [Department of the Treasury's Division of Purchase & Property website http://www.state.nj.us/treasury/purchase/forms.shtml](http://www.state.nj.us/treasury/purchase/forms.shtml).

7.1.10.1 BREACH OF CONTRACT

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

7.1.11 PROOF OF CERTIFICATION OF REQUIREMENTS OF PUBLIC LAW 2005, CHAPTER 51, N.J.S.A. 19:44A-20.13 - N.J.S.A. 19:44A-20.25 (FORMERLY EXECUTIVE ORDER NO. 134), EXECUTIVE ORDER NO. 117 (2008) AND N.J.A.C. 17:12-5 ET SEQ.

- A. The State shall not enter into a Contract to procure services or any material, supplies or equipment, or to acquire, sell, or lease any land or building from any Business Entity, where the value of the transaction exceeds

\$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions, to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor, to any State, county, municipal political party committee, or to any legislative leadership committee during certain specified time periods;

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

The Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form is located on the [Division's website](#).

7.1.12 PROOF OF BUSINESS REGISTRATION

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

7.1.13 PROOF OF AFFIRMATIVE ACTION COMPLIANCE

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

7.2 FINAL CONTRACT AWARD

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

7.3 INSURANCE CERTIFICATES

The Contractor shall provide the State with current certificates of insurance for all coverages required by the terms of this Contract, naming the State as an Additional Insured. See Section 4.2 of the SSTC accompanying this RFQ and Section 5.14.2 of this RFQ.

8.0 CONTRACT ADMINISTRATION

8.1 STATE CONTRACT MANAGER

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

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

8.1.1 STATE CONTRACT MANAGER RESPONSIBILITIES

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

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

8.1.2 COORDINATION WITH THE STATE CONTRACT MANAGER

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

9.0 PRICE SHEET

Please see and fill in the excel spreadsheet titled "Broadband RFQ Price Sheet".

STATE-SUPPLIED PRICE SHEET
RFQ Consulting Services related to the Broadband Access Study Commission

The Vendor {Bidder} must provide pricing for all price lines on this State-Supplied Price Sheet

Part A		
Vendor's (Bidder's) Name :		
	All-Inclusive Hourly Labor Rates	
1	Partner/Principal Director	\$0.00
2	Program Manager	\$0.00
3	Project Manager	\$0.00
4	Subject Matter Expert	\$0.00
5	Supervisory/Senior Consultant	\$0.00
6	Consultant	\$0.00
7	Associate/Staff	\$0.00

Part B					
	Description	Unit	Estimated Quantity	Unit Price Year 1	Sub Total
8	Scope of Work Section 3.1.1	Task	1		0
9	Scope of Work Section 3.1.2	Task	1		0
10	Scope of Work Section 3.1.3	Hours*	400**		0
11	Scope of Work Section 3.1.4	Task	1		0
12	Scope of Work Section 3.1.5	Hours*	400**		0
13	Final Report Section 3.2.10	Task	1		0
14	Litigation Support Section 3.2.12	n/a	n/a		n/a
					Total Quotation Price
					0

Instructions: *Bidders should provide a detailed breakdown of Part B's Unit Pricing using Part A's All-Inclusive Hourly Labor Rates to justify the Total Quotation Price. Bi

****Bidders should provide a mixed hourly rate for the anticipated personnel that will be working on these sections. There is no guaranteed quantity.**

dders will be evaluated and ranked based upon the Total Quotation Price of Part B

**Addendum 1 - Request for Quotation
Consulting Services related to the Broadband
Access Study Commission
February 17, 2022**

Answers to Bidder Questions

Please note that questions from potential Bidders may have been edited to ensure greater clarity and to eliminate duplicates.

1.1 Purpose and Intent

Q1: Upon reviewing the RFQ, it appears that the primary message of the scope and deliverables is geared at developing municipal options for Broadband. Is this the intent of the State of New Jersey or, is the State also interested in options to promote Broadband Investment by incumbents and competitive providers?

A1: No, the primary purpose of the RFQ is not solely focused on municipal broadband options or to promote investment by incumbents and competitive providers. The primary purpose of the RFQ is to assist the Broadband Access Study Commission (BASC) in evaluating access to broadband service within the State of New Jersey (State), including but not limited to, physical access, deployment, and affordability of broadband service and the feasibility of establishing community broadband networks in this State pursuant to the goals of P.L. 2021, c. 161 enacted on July 7, 2021.

See P.L. 2021, c. 161.

1.2 Background

Q2. Will Board of Public Utilities have new/added oversight of these services within the state, or would that authority be limited as subordinate to the FCC's authority?

A2. The BASC will develop a recommendation to the Legislature and the Governor in its final report based upon its findings to support the goals of P.L. 2021 c. 161.

3.0 Scope of Work, The Vendor {Contractor} Shall Perform The Following

Q3. Does the BPU have any data / information that could be made available to the advisor? If yes, could we obtain a list of such data / information?

A3. The purpose of the study is to award a contract to a vendor who can independently gather non-biased data and information to establish where accessibility and affordability pose impediments to broadband adoption and develop an interactive mapping tool which can be used to identify those areas. The Board does not currently possess granular data to achieve this goal. However, it may

be possible to partner with existing providers under a confidentiality agreement to obtain some infrastructure deployment data.

Q4. 3.1.1.A - What is Board of Public Utilities' degree of importance for citizen feedback (statistical and anecdotal)? Does BPU have existing feedback from citizens which would be made available to awarded Contractor?

A4. Community involvement is essential to achieving the goals of P.L. 2021 c. 161. Stakeholders input should include local elected officials, residents, businesses and existing and potential end users.

Q5. 3.1.1.B - Will the Board of Public Utilities provide legal or regulatory support needed to get this information from the current providers? Or will Consultant be responsible?

A5. The Board will ensure that all reasonable efforts are made to obtain available data and information from providers. It will not provide legal support.

Q6. 3.1.1.B - Who has the responsibility of defining 'providers'? Board of Public Utilities or Bidder?

A6. The BASC will define "providers".

Q7. 3.1.1.C - In the development of cost estimates, is the focus on initialization of new capabilities or long-term operational viability?

A7. The intent of 3.1.1.C is to develop a cost/benefit analysis to consider the economic viability of building out broadband infrastructure verses leasing existing infrastructure.

Q8. 3.1.1.C - With supply chain issues creating inflationary pressures on materials and labor, does BPU or State have a standard inflation index for use by Bidders?

A8. No.

Q9. 3.1.1.D - If the goal is universal service within NJ, what is the stated objective to encourage development / expansion by incumbents?

A9. The potential vendor is expected to propose options for consideration by the BASC and may become part of the final report to the Legislature and Governor.

Q10. 3.1.1.G - Does the Board of Public Utilities envision the use of direct grants in conjunction with, or as overlaps of existing grant awarded areas?

A10. The BASC will seek to maximize any existing or potential grants or funding sources.

Q11. 3.2.2 - Section states in part "The Vendor shall present [program plan] to the SCM". Is presentation of program plan intended to be a meeting, or distribution of plan in electronic format to Staff and Commission members? If formal meeting, can meeting be in virtual form similar to Project Launch Meeting in section 3.2.1?

A11. The Vendor is to present the program plan to the SCM. Meetings are intended to be virtual; however that may be subject to change.

Q12. 3.2.3 - Can the BPU confirm whether or not any field survey / visit(s) is required for the performance of the planned activities / scope of work for this project?

A12. It is expected that the winning bidder may have to inspect infrastructure to determine the presence of broadband and/or to conduct stakeholder meetings.

Q13. 3.2.4 - It is understood vendor is to propose a project schedule for the Board of Public Utilities (BPU) to accept. Does BPU have a goal date for substantial completion of consulting services included in this RFQ?

A13. Once the BASC meets, a report to the Legislature and Governor is due no later than one year from the first meeting.

Q14. 3.2.4 - What is the timeline the BPU is targeting to complete the planned activities / scope of work for this project?

A14. See A13.

Q15. 3.2.4 - What is the timeline for completion of the work?

A15. See A13

Q16. 3.2.5 - Who will the project team will be reporting to and coordinating with for day-to-day activities for this project? Are there additional points of contact the contractor will be interfacing with other than the day-to-day contact?

A16. The Contractor will be reporting to the State Contract Manager assigned by BPU. The Contractor will be notified of who that is post contract award.

Q17. 3.2.6 - May 'intermittent conferences' be held on a virtual platform?

A17. Yes.

Q18. 3.2.9 - What is BPU's preference for format of 'Exit Conference'? In-person, or via virtual platform?

A18. That will be determined by the BASC on their preferred format.

4.5 State-Supplied Price Sheet

Q19. Can the BPU please provide an estimated budget for this project?

A19. Not to exceed \$3.5 million.

Q20. What is the budget for the project?

A20. See A19.

4.9.8. Backup Staff

Q21. Does the BPU have any restrictions regarding use of offshore resources for administrative and research activities in support of this project?

A21. Please review the New Jersey Standard Terms and Conditions, Section 3.7.

5.5 Contractor Responsibilities

Q22. Are travel expenses associated with this project such as mileage, lodging, meals, and/or airfare reimbursable?

A22. Travel expenses are not reimbursable.

5.8 Ownership of Material

- Q23. Would the State consider the revisions below to Section 5.8 Ownership of Material in the RFQ?
~~Upon full and final payment to Contractor under the Contract, A. all tangible items specified as work product or deliverables data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of this Contract ("Deliverables) and any copyright interest in the Deliverables, 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 30 days' notice by the State; provided that the Bidder/Contractor shall not have any liability to State as a result of State's use of any unfinished, incomplete, or draft work products and materials that are furnished to the State, provided that the Contractor has notified State of the incomplete status of such material.~~
- A23. The State will not revise this Section.
- Q24. Would the State consider the revisions below to Section 5.8 Ownership of Material in the RFQ?
With respect to software computer programs and/or source codes developed for the State, except those modifications or adaptations made to Bidder's/Contractor's Background Intellectual Property as defined below, the work shall be considered "work for hire", i.e., the State, not the Contractor or Subcontractor, shall have full and complete ownership of all software computer programs and/or source codes developed. To the extent that any of such materials may not, by operation of the law, be a work made for hire in accordance with the terms of this Contract, Contractor or Subcontractor hereby assigns to the State all right, title and interest in and to any such material, and the State shall have the right to obtain and hold in its own name and copyrights, registrations and any other proprietary rights that may be available. Bidder/Contractor acknowledges that it shall obtain no ownership right in Confidential Information of State. In addition, State acknowledges and agrees that Bidder/Contractor shall have the right to retain for its files copies of each of the Deliverables and all information necessary to comply with its contractual obligations and applicable professional standards. ~~Should the Bidder anticipate bringing pre-existing intellectual property into the project, the intellectual property must be identified in the Quotation. Otherwise, the language in the first paragraph of this section prevails.~~ If and to the extent that the any Bidder property is contained in any of the Deliverables identifies such intellectual property ("Background IP") in its Quotation, then the Background IP owned by the Bidder on the date of this Contract, as well as any modifications or adaptations thereto, remain the property of the Bidder and Contractor hereby grants State, Upon Contract award, the Bidder/Contractor shall grant the State a non-transferrable, nonexclusive, perpetual royalty free license to use any of the Bidder's/Contractor's Background IP delivered to the State if and to the extent any Background IP is contained in any Deliverable for the purposes contemplated by this Contract.
- A24. The State will not revise this Section.

5.9 Confidentiality

- Q25. Would the State consider the revisions below to Section 5.9 Confidentiality in the RFQ?
All financial, statistical, personnel, customer, and/or technical data supplied by the State to Contractor are confidential (State Confidential Information). Contractor must secure all data from manipulation, sabotage, theft, or breach of confidentiality. Contractor is prohibited from releasing any financial, statistical, personnel, customer, and/or technical data supplied by the State that is deemed confidential **other than as required by law, legal process or applicable professional standards and to partners, principals, employees, subcontractors and vendors**. Any use, sale, or offering of this data in any form by the Contractor, or any individual or entity in Contractor's charge or employ, **other than as permitted herein** will be considered a violation of this contract and may result in contract termination and Contractor's suspension or debarment from State contracting. In addition, such conduct may be reported to the State Attorney General for possible criminal prosecution. Contractor shall assume total financial liability **subject to the limitation of liability** incurred by Contractor associated with any breach of confidentiality.
- A25. The State will not revise this Section.
- Q26. Would the State consider the revisions below to Section 5.9 Confidentiality in the RFQ?
H. Notwithstanding the requirements of nondisclosure described in these Sections, either party may release the other party's confidential information:(i) if directed to do so **by law, legal process or applicable professional standards, including** a court or arbitrator of competent jurisdiction; or
- A26. The State will not revise this Section.

5.9.2 Data Security Standards

- Q27. As it relates to the Data Security Standards, will the State consider providing government furnished equipment?
- A27. The State will not provide government furnished equipment.
- Q28. As it relates to section 5.9.2 Data Security Standards in the RFQ, would the State consider the revision below as it appears these policies are no longer active on the link provided? Any personally identifiable information must be protected. All data must be classified in accordance with the State's Asset Classification and Control policy, 08-04-NJOIT (www.nj.gov/it/ps). **Additionally, data must be disposed of in accordance with the State's Information Disposal and Media Sanitation policy, 09-10-NJOIT (www.nj.gov/it/ps).**
- A28. The State will not revise this Section.

Q29. As it relates to section 5.9.2 Data Security Standards in the RFQ, would the State consider the revision below? d. Data Storage: All data provided by the State or State data obtained by Contractor in accordance ~~with commercially reasonable security standards. with a project plan and system topology approved by the SCM.~~

A29. The State will not revise this Section.

Q30. As it relates to section 5.9.2 Data Security Standards in the RFQ, would the State consider the revision below to extend the notification time?
g. Data Breach: Unauthorized Release Notification: Contractor must comply with all applicable state and federal laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. In the event of ~~a breach of any of Contractor's security obligations or other an~~ event requiring notification under applicable law (Notification Event), Contractor must assume responsibility for informing the SCM within ~~twenty-four~~, forty-eight (~~24~~,48) hours and all such individuals in accordance with applicable law and to indemnify, hold harmless, and defend the State, its officials, and employees from and against any claims, damages, or other harm related to such Notification Event. All communications must be coordinated with the State.

A30. The State will not revise this Section.

Q31. As it relates to section 5.9.2 Data Security Standards in the RFQ, would the State consider the revision below?
h. End of Contract Data Handling: Upon termination/expiration of this contract, Contractor must first return all State data to the State in a usable format as defined in the contract or in an open standards machine-readable format if not. Contractor must then ~~dispose~~, erase, destroy, ~~and or~~ render unreadable all Contractor copies of State data according to ~~the~~ commercially reasonable standards ~~enumerated in accordance with the State's most recent Information Disposal and Media Sanitation policy, currently 09-10 NJOIT (www.nj.gov/it/ps), and, upon request, confirm certify~~ in writing that these actions have been completed ~~within thirty (30) days after the termination/expiration of the contract or within~~ seven (7) days of the request of an agent of the State, ~~whichever shall come first~~. Notwithstanding the foregoing, Contractor may retain a copy of information received, developed, or otherwise relating to this contract in order to comply with its contractual obligations and applicable professional standards.

A31. The State will not revise this Section.

5.9.3 Security Plan

Q32. Section states 'Contractor must provide a security plan'. Is security plan to be included with RFP response, or is security plan to be provided post award?

A32. The Security Plan is to be provided by the Contractor post award.

Q33. Please confirm that the security plan section is only applicable if vendor is hosting an IT system.

A33. The Security Plan is applicable to the Contractor receiving the contract award.

7.1.12 Proof of Business Registration

Q34. Is Bidder required to have Business Registration Certificate (BRC) for the State of New Jersey at time of quotation submission? Or may Bidder obtain BRC prior to contract award after selection as intended contract awardee?

A34. The Business Registration Certificate is required before contract award.

Modifications and Changes to the SSTC and Waivered Contracts Supplement to SSTC

Q35. As it relates to RFQ section 5.14.1 Indemnification and 4.1.1 Limitation of Liability, would the State consider narrowing indemnification clause to third party claims arising from death, bodily injury, damage to tangible property and intellectual property infringement?

A35. The State will not revise this Section.

Q36. As it relates to 5.14.2 Insurance - Professional Liability Insurance in the RFQ, would the State consider the following modification for clarity? D. Professional Liability Insurance: When it is common to the contractor's profession to do so, 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 ~~per claim 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.

A36. The State will not revise this Section.

7.0 Contract Award

Q37. Does working on this project for the BPU preclude a firm from working on future phases of this project or other projects?

A37. This will be determined on a case-by-case basis.

7.3 Insurance Certificates

Q38. As it relates to 7.3 Insurance Certificates in the RFQ, would the State consider the following modification for clarity? The Contractor shall provide the State with current certificates of insurance for all coverages required by the terms of this Contract, naming the State as an Additional Insured ~~(except for the Professional Liability policy and Automobile policy)~~. See Section 4.2 of the SSTC accompanying this RFQ and Section 5.14.2 of this RFQ.

A38. The State will not revise this Section.

STATE OF NEW JERSEY STANDARD TERMS AND CONDITIONS

2.13 Compliance – Laws

Q39. As it relates to SSTC section 2.13 Compliance - Laws, can you confirm what rules and regulations are applicable for this RFQ?

A39. Bidders are to confer with their legal counsel.

5.7 Termination of Contract

Q40. As it relates to SSTC section 5.7 Termination of Contract, would the State allow a cure period sufficient to address the default by deleting the following? ~~C. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond; and~~

A40. The State will not revise this Section.

5.23 Confidentiality

Q41. As it relates to SSTC section 5.23 Confidentiality, would the State consider the below revision?
C. The State's Confidential Information shall consist of all information or data contained in documents supplied by the State, ~~any information or data gathered by the Contractor in fulfillment of the Contract and any analysis thereof (whether in fulfillment of the Contract or not);~~

A41. The State will not revise this Section.

Q42. As it relates to SSTC section 5.23 Confidentiality, would the State consider the below revision?
G. In addition, in the event Contractor receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law **or as required under applicable professional standards**, Contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Contractor's intended response to such order of law. The State shall take any action it deems appropriate to protect its documents and/or information; and

A42. The State will not revise this Section.

Q43. As it relates to SSTC section 5.23 Confidentiality, would the State consider the below revision?
H. Notwithstanding the requirements of nondisclosure described in this Section, either party may release the other party's Confidential Information:(i) if directed to do so by a court or arbitrator of competent jurisdiction; or(ii) pursuant to **law or** a lawfully issued subpoena or other lawful document request:(a) in the case of the State, if the State determines the documents or information are subject to disclosure and Contractor does not exercise its rights as described in Section 5.23(F), or if Contractor is unsuccessful in defending its rights as described in Section 5.23(F); or(b) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the State does not exercise its rights described in Section 5.23(G), or if the State is unsuccessful in defending its rights as described in Section 5.23(G).**(iii) in the case of Contractor, if disclosure is required under applicable professional standards.**

A43. The State will not revise this Section.

7.0 Terms Relating To All Contracts Funded, In Whole or in Part, By Federal Funds

Q44. Terms relating to all contracts funded, in whole or in part, by federal funds, pg. 12
As it relates to SSTC Section 7.0, can you confirm if this contract will be federally funded?

A44. Yes, the contract is funded by the Coronavirus Capital Projects Fund.

Response to Board of Public Utilities Request for Quotation

Consulting Services for the Broadband Access Study Commission

March 3 2022



ECC Technologies, Inc.
2136 Five Mile Line Road
Penfield, NY 14526

March 3, 2022

[REDACTED]
State of New Jersey
Board of Public Utilities
P.O. Box 350
Trenton, NJ 08625-0350

Submitted via Email to: damian.fantini@bpu.nj.gov

[REDACTED],

ECC Technologies is pleased to provide the following proposal to the New Jersey Board of Public Utilities (BPU) in support of the statewide broadband initiative. For more than 25 years, ECC has demonstrated its capability to provide these services in multiple locations including a statewide program in New York (currently scheduled to be completed in May of 2022).

ECC's proposed services include, to the extent possible, a detailed GIS based field inventory of Broadband infrastructure installed within the State. It is clearly understood that data provided by both the FCC and service providers contain many inconsistencies.

The physical level inventory by ECC will be mapped to the street level enabling the State to identify precisely where infrastructure investments are required. Additionally, ECC proposes an interactive survey to gain detailed knowledge relative to residential and non-residential users. The ECC Broadband Availability and Adoption Tool (BAAT) adds significant value to the field inventory.

The BAAT program targets specific questions to users speaking to availability, costs, adoption, and other key information needed to fully assess the Broadband environment in New Jersey. This information is address specific and is to be overlaid with the physical inventory and provider data.

ECC has included, as an optional deliverable, the creation of a web based interactive broadband mapping and information tool. This site can be outward facing to the public, while sensitive information can be restricted solely to the use of the BPU.

ECC has considerable experience working across governments ranging from federal, state, county, and villages with more than 100 municipal engagements to our credit. Furthermore, each municipal Broadband program initiated by ECC is still successfully operating today up to 20 years later. ECC is happy to provide details on any and all prior projects as requested. We look forward to the opportunity to work with your team on this exciting project.

Sincerely,

ECC Technologies, Inc.



Joseph Starks
President

Response to Board of Public Utilities Request for Quotation

Consulting Services for the Broadband Access Study Commission

March 3 2022

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Response to Board of Public Utilities Request of Quotation

Consulting Services for the Broadband Access Study Commission

March 3 2022

Section 1 Introduction

This document is provided by ECC Technologies, Inc. (ECC) in response to a Request for Quotation (RFQ) issued by the New Jersey Board of Public Utilities (BPU). The BPU is seeking to contract with a vendor to provide director support to the Broadband Access Study Commission (Commission). The goals, as stated in the RFQ, include the evaluation of access to broadband services with the state.

To ensure compliance with the requirements of the RFQ, ECC will provide responses to each section of the RFP. Responses which are substantive in nature, relating to the project, ECC's capabilities, and proposed work, are incorporated within the main section of this proposal.

Responses in which ECC is in concurrence with RFQ requirements, are incorporated in Appendix A to this document. ECC believes this presentation aligns with the State's expressed desire for a more substantive and narrative based proposal.

ECC is proposing to provide relevant, credible, and current information and recommendations to the Board of Public Utilities to support the State's broadband goals. The ECC team has reviewed the RFQ in depth to develop this proposal.

As part of the review process, members of the ECC team have conducted secondary research to review current and past legislation in New Jersey, a review of local articles across the State which are focused on broadband, an analysis of grant activity in the State and more. This additional research has aided in understanding the challenges which face New Jersey and provide the basis for defining our work on behalf of the State.

In more than 25 years of serving public entities including counties, regional authorities, and state governments, ECC's singular focus has always been a direct bias on behalf of its client. Our responsibility in our work is to the State of New Jersey and its citizens. We will use our experience and expertise to deliver a resource which benefits the State today and provides guidance for the months and years to come.

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Section 2. Mapping

At the heart of project components are the development of maps. These representations of the State, its counties and its incorporated areas, represent the baseline for broadband assessment.

Whether in reporting, in an online environment, or in simple discussions, mapped data conveys a significant level of information in a manner like no other.

In this section, ECC will provide some examples of maps, and include summary overviews of each one. These are maps extracted from actual projects. Obviously, provider names are redacted and the shapes of the areas are altered. The maps, as shown, lack detail in order to place them in a printed format in the proposal.

While ECC will include maps in its final report(s), the State will also receive a full GIS database for its use in the development of highly detailed maps for use by Staff.

In its projects, ECC develops a significant count of maps to meet client needs. Only a few of these maps are included in this section as reference points for discussion with the State.

Example 1. Telephone Company Territories, Facilities and Fiber.

The first example shown on the following page represents the result of secondary research combined with outside plant work identifying the boundaries of the Incumbent Local Exchange Carriers (ILECs). This map includes fiber optic routes owned by the incumbent carriers, as well as the location of Central Offices (COs) serving the study area.

This is an excerpt from an actual project. However, for convenience and clarity of presentation, the fiber routes, as inventoried and reproduced on the map, are indicated as belonging to a single provider. In actuality, there are multiple owners of the fiber as indicated.

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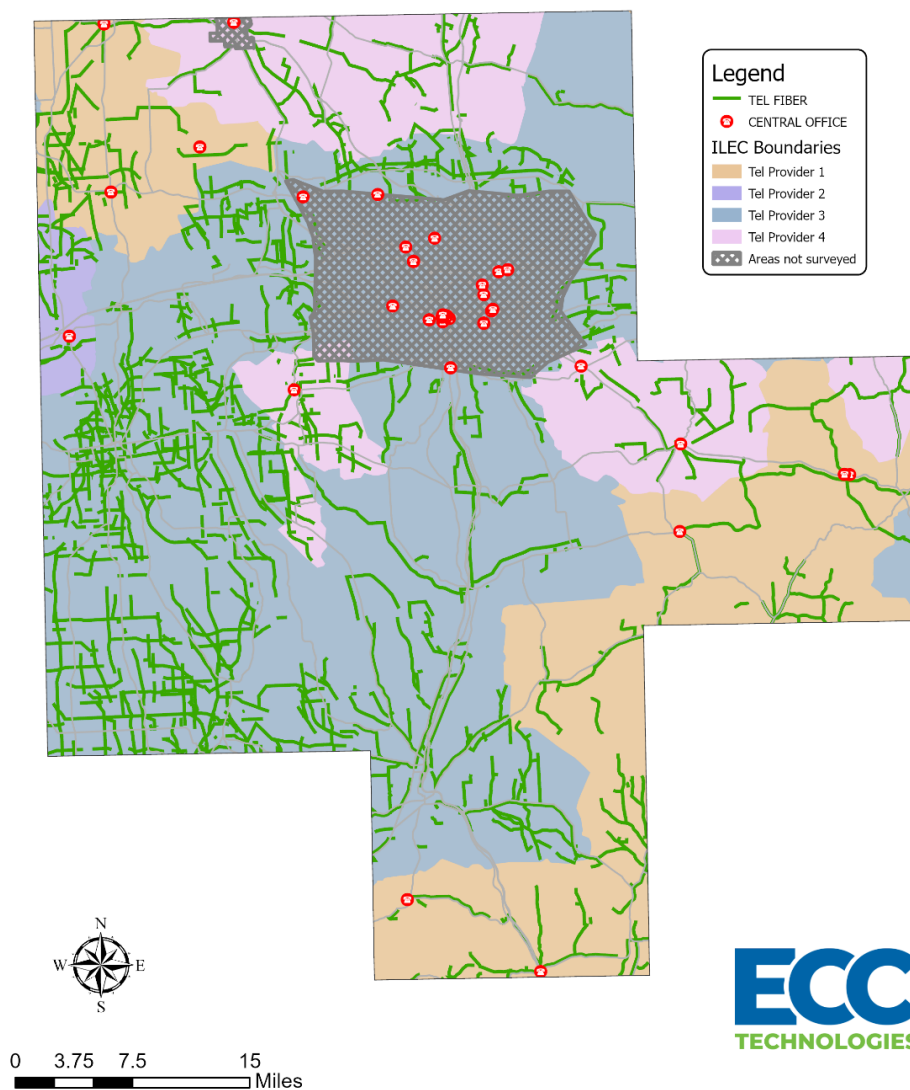


FIGURE 1 EXAMPLE MAP – INCUMBENT TELCOS

Example 2. CATV Service Territories, Coaxial & Fiber Optic Cable

The map shown below indicates the cable provider service territories. The map further indicates the location of both coaxial and fiber network assets. In this example, the fiber owners are not individually identified nor are field equipment locations.

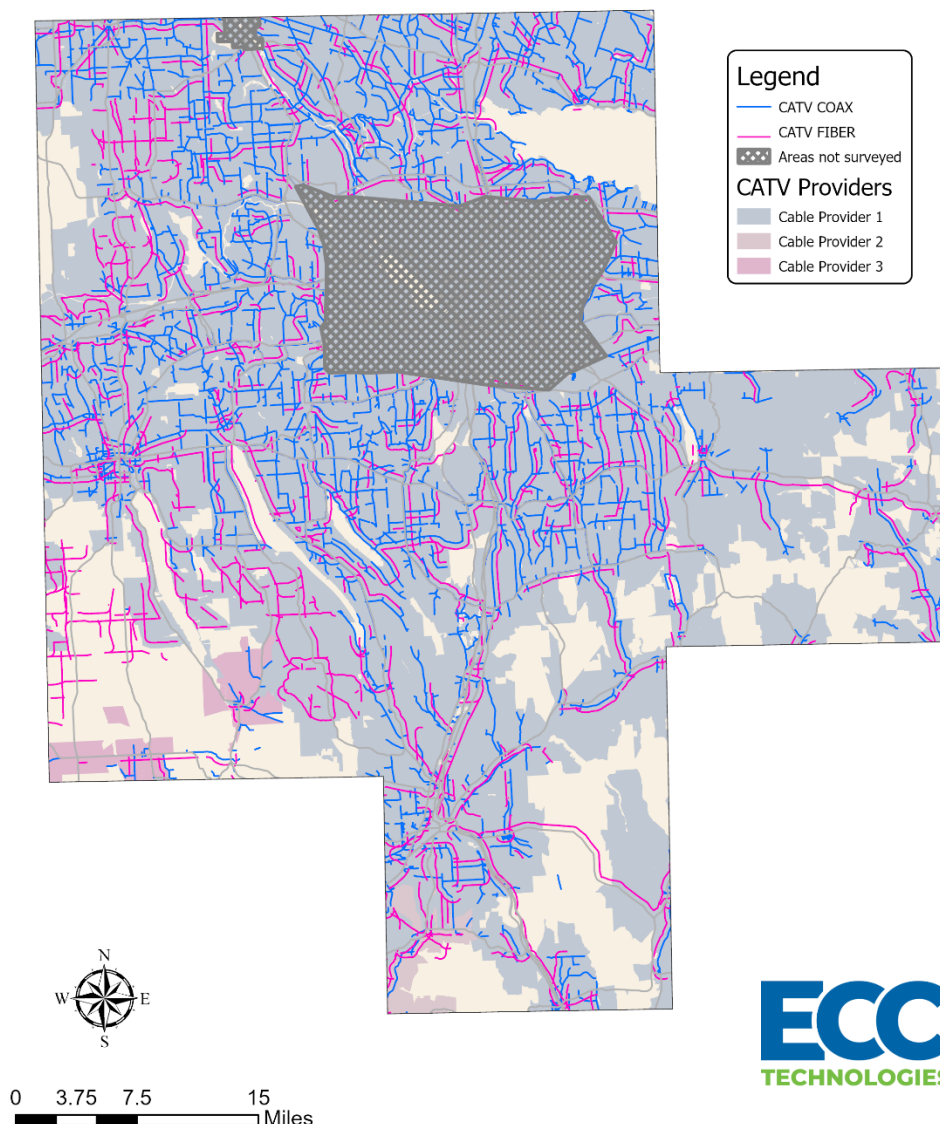


FIGURE 2 EXAMPLE MAP - CATV TERRITORIES AND NETWORK

Example 3. Areas with No Infrastructure

The map in the next figure indicates roads driven within the study area where no Broadband infrastructure was observed. These example maps are not as detailed as the final GIS maps to be provided to the State at the conclusion of the study. However the map does indicate information about roads and address locations which lack access to Broadband infrastructure.

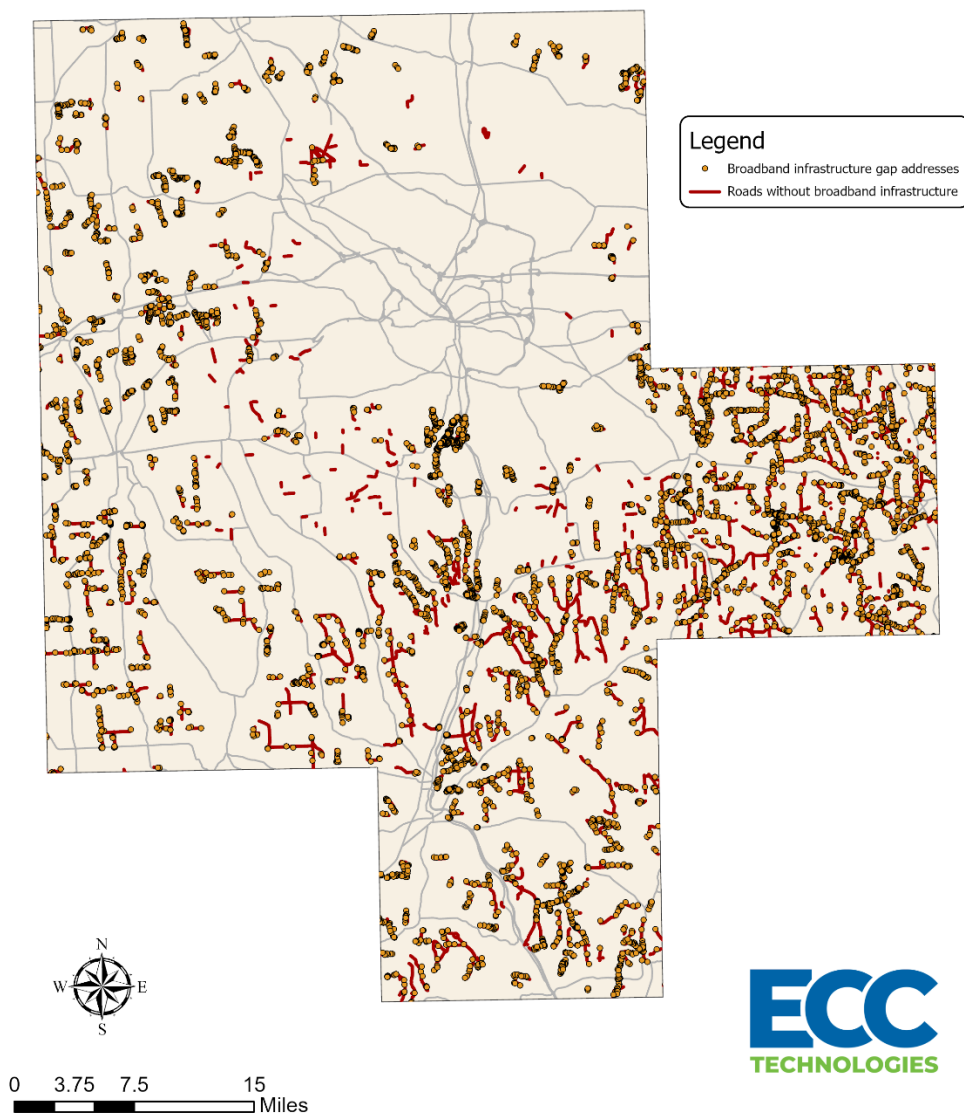


FIGURE 3 EXAMPLE MAP - UNSERVED LOCATIONS

Example 4. All Fiber Assets

In this sample map, all inventoried Broadband infrastructure is detailed. This type of map would typically include assets owned by the incumbent providers, by middle mile providers, municipal networks, competitive local exchange providers, FTTX companies and more.

This type of map is useful on analysis of fiber assets beyond the local incumbent that can be utilized for FTTH deployments where it is lacking, it also can show where other networks exists in the area by CLEC providers.

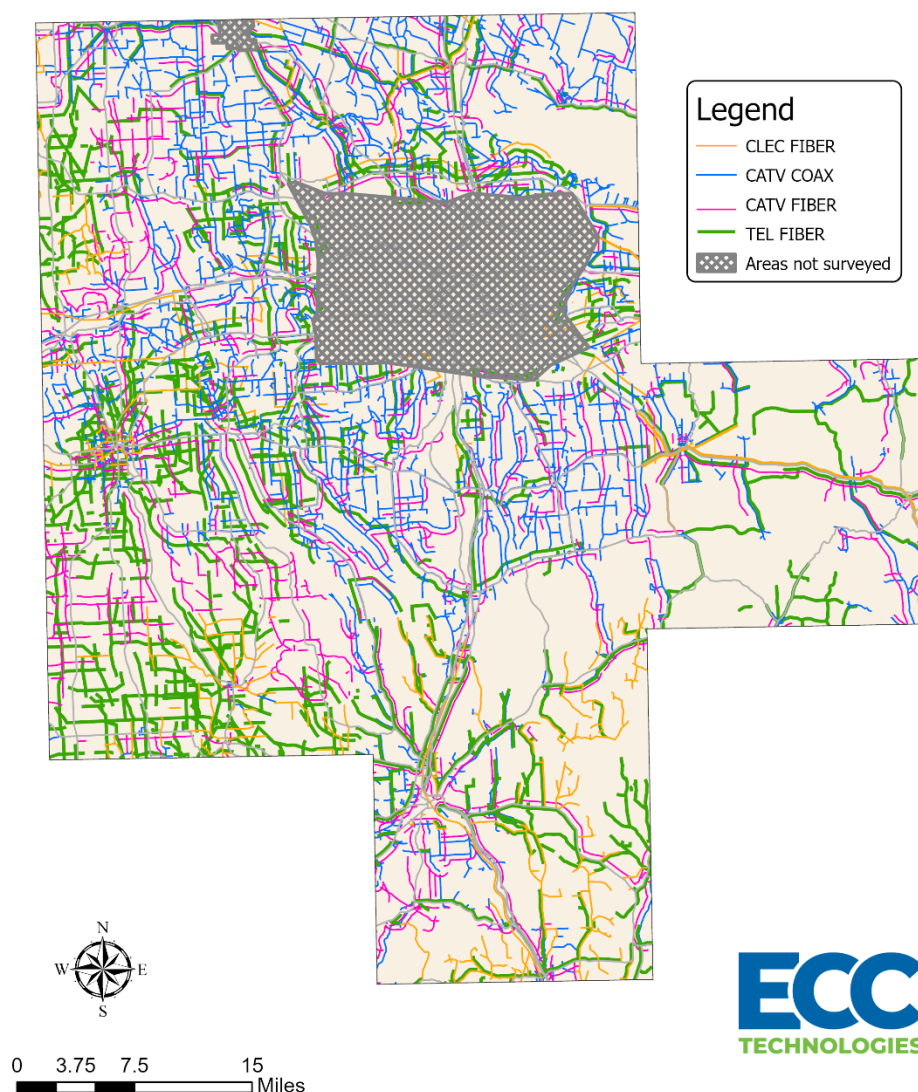


FIGURE 4 EXAMPLE MAP - INFRASTRUCTURE SUMMARY

Example 5. Broadband Availability Reported by Households

The final example map indicates an overlay of survey responses. This is a gating question which determines a path for residential respondents. All respondents with service, whether Broadband or Lowband, following one path in completing the assessment. All respondents with without service follow an alternate path in the survey.

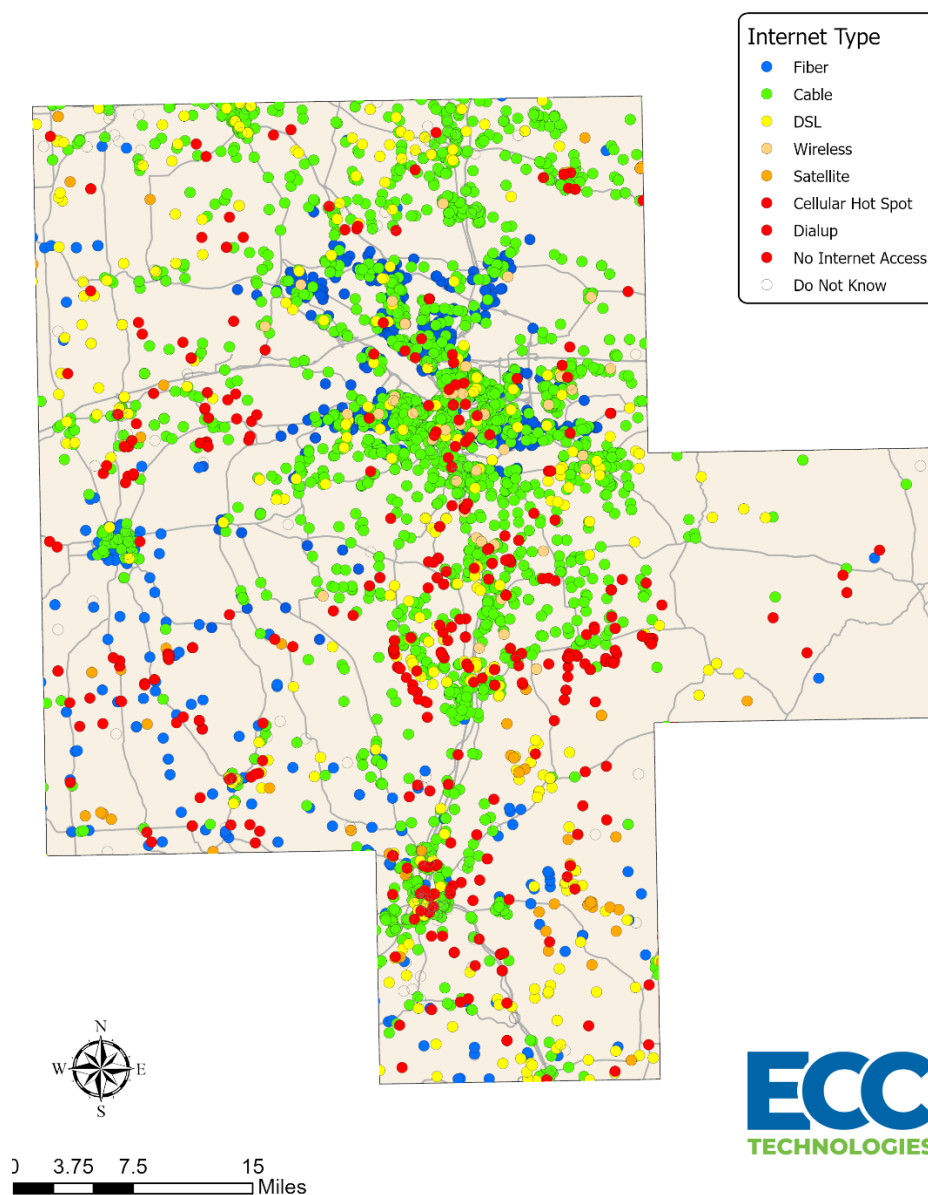


FIGURE 5 RESULTS OF BAAT GATING QUESTION

Section 3. Scope of Work Requirements (RFQ Section 3.0)

3.1 ECC Response to Performance Requirements

ECC's experience includes design, construction management, quality checks, turn-up, and operation of complex networks for counties, regional authorities, and electric cooperatives. Moreover, ECC is currently engaged at both the state and county levels in supporting projects with similar deliverables as defined by the BPU.

This unique experience positions ECC as a valued partner to support the State in achieving its planned objectives. As per the request in the RFQ, the following sections provide summary detail relative to the objectives states in Section 3.1.

3.1.1 Performance Requirements of the RFQ

3.1.1.A Impediments to Broadband Access.

ECC will develop and execute against a project plan which will provide baseline data to identify the impediments to Broadband access in New Jersey. Our work, which includes significant on-site (or Outside Plant [OSP]) work, will provide a detailed, street level view of terrestrial Broadband infrastructure in New Jersey.

Included in our approach will be on-site data acquisition, engagement with service providers to incorporate carrier data into the project, and a clearly defined outreach program designed to solicit input from households, businesses, and other institutions within the State.

In building this phase of the project, ECC will work with the State to ensure the objectives, measurements, and definitions are fully understood by all parties. The results of this work provide a foundation which supports the deliverables required from the project.

3.1.1.B Scalable Interactive Broadband Mapping Tool.

Access to data which is current and field verified is a fundamental part of ECC's approach. Data gathered from all project components can be incorporated in data sets which can be used in various ways to support State sponsored initiatives.

ECC will work with the State to incorporate the requirements of the BPU in the development of a web-based Broadband mapping tool. Much of the information within the tool will be available for use by members of the public, local governments, and other entities.

Certain components of the information, obtained from service providers under confidentiality agreements, must be restricted for use by State personnel who are working to set policy and create forward progress in the goal to expand access to Broadband.

More information is detailed in Section 4.D of this response document.

3.1.1.C Cost Benefit Analysis Relative to Infrastructure

Real world experience for ECC has included working with copper, fiber, fixed wireless, and other infrastructure types. There is no inherent bias towards a particular topology or technology held by ECC.

Consistently, ECC's discussion with clients includes funding, budgets, grants, and funding options for projects. In supporting clients, ECC always leads conversations with the topic of money. Whether evaluating the cost / benefits of a particular deployment, executing risk analysis for a client, or completing a grant applications, ECC's work invariably involves the twin components of finance and network type.

With our history in developing financial models for use by clients, ECC will utilize that experience to analysis and model infrastructure alternatives for the State and establish baseline components for use in future analysis.

Selected components of such analysis could include, but not limited to, capital expenditures, licenses, cost of goods sold, obsolescence reviews, customer premise equipment evolution and operational and maintenance expenses. The focus will allow ECC to consider topologies recommend in the RFQ, as well as other commercially and technically viable solutions, and present the same to the BPU.

3.1.1.D Evaluate County Level Broadband Utility Structures

In working with multiple counties over the past few years, spanning Florida to New York, ECC has been witness to multiple organizational structures which work to provide broadband. In many cases, law / regulation / statute defines what is possible and local decision makers determine what is feasible.

ECC has direct experience in the creation of publicly held entities which develop and operate Broadband infrastructure service for both a single and multiple counties.

The objective would be to utilize the experience of the BPU team and access additional resources to development a template from a State level perspective about what current options exist in the State. The next step would be work with the individual counties to define any additional regulations which exist on a local level which either prohibit or encourage local broadband.

As a deliverable, ECC will provide to the BPU in its reporting, a summary of its findings both within New Jersey and in other states. Further ECC will provide its recommendations for review by the BPU relative to potential opportunities to encourage county, municipal and even State based organizations in the development of options relative to publicly supported Broadband.

3.1.1.E Reference Alternatives for Community Broadband

In conjunction with ECC's response to Item 3.1.D. above, ECC will utilize its experience with its client base to develop a foundation for potential Broadband development including options with publicly funded entities, private companies, and other public-private-partnership initiatives.

ECC will evaluate, and summarize options employed in other locations, and will report key information, and provide its opinions on our analysis of each operating structure.

3.1.1.F Development of Cost Effective Models for Community Networks

As previously discussed, ECC has unique experience in the development of networks, utilizing a variety of topologies, in the real world. Our experience is not only in working with our clients but working in their environments. ECC's Outside Plant Teams, network designers and other professionals spend significant time in client locations.

Whether walking roadsides to assess utilize pole related easement, standing on rooftops to assess fixed wireless coverage, as working under a bridge to define requirements for conduit spanning a river, ECC's experience is invaluable in meeting BPU's requirements for Section 3.1.F.

Having worked with a variety of clients and client partnerships, ECC is well positioned to provide cost models for use by the State, counties, and municipalities to evaluate costs, potential returns, and required investments for a given project. These models include the capacity to manipulate key variables include revenues and costs, to simulate expected outcomes.

3.1.1.G Assess Federal, State and Private Funding Sources

Active engagement with clients including the development of grant applications, ensures ECC maintains current information regarding funding sources. Data relative to current and projected Federal and State programs is readily available to incorporate into the analysis.

ECC has consistent engagement with a number of venture and investment firms who maintain interest relative to potential Broadband investment opportunities. Further we have learned that an expansion of contacts to include State and county economic development offices, state supported investment funds, tobacco settlement agencies and more, represent additional funding options.

The experience of ECC expands to our ability to provide input directly to the BPU relating to State based broadband offices and agencies in other states.

3.1.2 Assistance for the Commission

This section of the ECC response to the RFQ will summarize the professional services which will be provided by ECC in support of the objectives of the Broadband Commission.

3.1.2.A Reporting on an Assessment and Recommendations

ECC will report to the Broadband Commission an assessment of the current state of Broadband infrastructure in the State of New Jersey.

In the report, ECC will detail the work process, data sources (primary and secondary) and metrics utilized in completing the project. Of particular value to the successful deliverable, will be the results of ECC's ongoing interaction with the BPU. Leveraging the experience and knowledge of the BPU ensures the project results will meet the twin goals of relevancy and actionable.

The deliverable will be based on data combined from multiple initiatives. Input from service providers and other credible third part sources represents the starting point for developing the components necessary to report to the state.

Information Acquisition and Validation. Validation of this information, and discovery of new infrastructure, is delivered via on-site inventory work in each County. This work, performed to the extent possible, ensures a quality check on acquired information, provides information on new Broadband infrastructure deployments, and represents the foundation of the online system requested in the RFQ.

Survey Data. A significant enhancement to this data will be the overlay of survey data from the State. ECC will deploy its Broadband Availability and Adoption Toolset to solicit both statistical and anecdotal information from residential and non-residential respondents.

A multivariate approach will allow the development of data which in tabular form, or mapped, will prove invaluable to supporting the identification of barriers to Broadband expansion in the State.

GIS Dataset. To support the reporting, ECC will provide a full GIS based dataset for use by the BPU team, This data will support both an Internet based tool for use by State residents and a secure GIS database resource for use within State agencies.

Recommendations. One size often does not fit all. In the development of the project plan to report on this area, ECC will rely on the State BPU for guidance with respect to areas of emphasis.

For example, is the State considering a Statewide authority to development and administer these networks? Alternately, is the State encouraging the development of these networks on a county by county basis, or for any incorporated entity? Is the desire to incorporate incumbent or alternate providers into these solutions, or to have a primary focus on delivering the services as a utility by a county or municipality?

ECC will be prepared to provide recommendations to the BPU with background information for review by the Board, as well as participation in discussions in review of this issue.

3.1.2.B Reporting on Developing [a] Broadband Agency

Discussed earlier in this response are references to ECC's experience in working with community broadband networks. Several examples of these are included in the References section of this response. As discussed in a previous section, issues which can directly impact the development of such networks are often tied directly to legislation, regulation, or local statute.

In our analysis and reporting on this issue, ECC will utilize our background in considering the advantages and challenges of local broadband agencies. Moving further, ECC will review projects in other states to allow for comparisons of structural, financial, and operational components, as well as discerning the impacts of Federal, state, or local legislation or regulation on such agencies.

3.1.2.C Cost Estimates for Community Broadband Network(s)

The development of correct cost models is a fundamental component of the due diligence required when considering capital projects.

ECC has demonstrated its expertise in the development of these estimates in numerous projects. As an example, there are several multi-county projects developed in New York which have been in continuous and profitable operation for more than ten years.

Joint Engagement. The ability to work with a county or municipality in a joint assessment of the environment is the starting point for this analysis. In most cases, these initial meetings lead to the development of a financial model which can be as detailed as required by the client.

Timelines. Most models developed by ECC have a run rate of ten years and offer a variety of user controlled variables. Utilization of these controls allow for ECC and the client to consider alternate scenarios including subscriber acquisition and churn rates, varied rate plans, rate of deployment, cost of funds and other components.

Revenue Components. The development of revenue estimates is a key part of establishing the potential viability of an initiative. Understanding the demographics of potential subscribers – both residential and non-residential – is aided by utilization of the BAAT data.

In turn, this allows for an appropriate assessment of take rate, churn, and determination of rate tiers in both served (competitive) and unserved areas. As previously discussed, variable controls allow for real time changes in the model allowing for multiple approaches for analysis.

These components are applicable to both financial account systems and zero based governmental accounting systems.

Financial Statements. As required, ECC can further create GAAP based financial statements including Statement of Financial Position (Balance Sheet), Income Statement, Statement of Changes in Financial Position. These statements, which are also typically created for a ten year period, also include a complete Chart of Accounts, as well as the General Ledger, subsidiary ledgers, General Journal and more.

These statements are typically a component of Federal grant applications even the applicant is a municipality or county.

This precise attention to detail in the development of business cases jointly with a county or municipality is a differentiating factor for ECC. In our reporting to the State, we will provide details on the costing components, and further provide direction allowing for the development of specific models to address individual cases.

3.1.2.D Comprehensive Overview of Options & Statewide Improvements

The State's desire to approach broadband challenges in a holistic manner is a key and valuable component of this RFQ. By not precluding any potential solutions, ECC has the opportunity to consider a broader range of options to support the State's requirements.

Obviously, even on a Statewide basis, development and deployment activities are local in nature. The value of combining the inventory and infrastructure analysis, with the results from the BAAT program allow ECC to develop a comprehensive view of the State.

Gap and Infrastructure Issues. While the important of identifying gaps in availability are the primary focus, ECC's reporting can also provide insight into potential infrastructure issues. For example, drawing lines of a map could represent the opportunity for expansion; however, the on-site analysis could show that an alternate topology represents the preferred solution due to cost and viability.

The overlay of the BAAT data may further validate a lack of available services in an area even if the census blocks is reported as being served.

ECC's report to the State will identify the issues across all counties in the State and provide a rollup of recommendations to the BPU. In many states, solutions are confined to individual census blocks or counties. Just as roads cross county lines, so do issues – and potential solutions – for Broadband.

3.1.2.E Analysis of Funding Sources to Support Community Broadband

In its report, ECC will briefly summarize historical Broadband funding programs, and provide additional detail on current programs including funds released from the NTIA, future USDA Reconnect initiatives, and follow on rounds for the FCC's RDOF program.

ECC will further draw in its experience in other states to provide data allowing the State to compare and contrast Broadband support programs. By reviewing programs such as North Carolina's GREAT Grant program, Virginia's VATI initiative and more, the BPU is able to assess alternatives utilized in other areas of funding projects.

Our report will provide updated information on funding sources, and contact information allowing the State to maintain this information on a continuing basis.

3.1.3 Technical Expertise

The ECC team, in assisting the Commission, offers a broad capability in providing technical expertise. Equally important, is the ability of the ECC team to successfully engage with individuals no matter their

background. The result is an opportunity for all members of the Commission to be comfortable with their grasp of the concepts and issues no matter their level of knowledge and exposure to broadband.

In working with various counties and municipalities, ECC has observed elected officials and managers continually displaying high degrees of knowledge relating to other infrastructure components such as roads, water, sewer, landfill, public health and more. Our responsibility to support that staff in others in reaching those same levels of understanding with respect to Broadband.

3.1.4 Report for Broadband Service Deployment

This requirement is a critical part of the overall project as it represents a potential “road map” for use by the BPU, counties and municipalities.

The development of this report will require coordination between ECC and the Staff. Coordination during the discovery phase of this part of the project will ensure the resultant reports meet the required criteria.

Via this joint collaboration, ECC will utilize its experience to bring focus to real world solutions which are applicable to the challenges within the State.

Experience. Our company has direct referenceable projects which we have developed over the past 25 years. Our work includes high level assessment and design, field validation, vendor selection, final design (including logical as well as physical network components), construction management and operationalization.

This experience translates into our ability to deliver plans which is real world based and, in turn, feasible for utilization by the State of counties.

As previously discussed, ECC devotes resources in the development of comprehensive costing documents including risk analysis components. These costing elements allow for the appropriate development of a plan.

Approach. The approach requires a combination of design capability and technical experience. A Broadband network is more than a series of cables attached to utility poles or buried in conduit. Appropriate design includes the electronic components such as splitters, hubs, certain cards as well as development of a logical schema which integrates the flow of data across the network.

With our background in the development of such networks, combined with our experience in construction management, we are able to deliver project plans with the identification of appropriate milestones/timelines.

Plan Analysis. Our review of each plan not only includes financial and project reviews but focuses on the updates to served areas. This requires engagement with Staff and/or counties to determine goals for specific locations. For example, in some counties, [near] universal service is the primary goal; in other locales the expansion of service options is desired.

By working closely with Staff to define this requirements, ECC’s analysis will not only incorporate plan elements, but will be sensitive to local requirements AND to the State’s needs.

Summary of Areas. In the development of the plans, ECC will reference locations where similar plans have been developed, implemented, and produced results.

3.1.5 Vendor will work with the Commission at the Direction of Staff.

ECC understands and concurs with this requirement. The participation of the Commission and the Staff are vital to the success of the project. Reliance on the knowledge of each entity results in project results which are more robust and have the highest possible degree of relevance to the State.

3.1.6 SCM Oversight

ECC understands and concurs with the description of the responsibility of the SCM and further believes this engagement, as with Section 3.1.5, is equally vital to project success.

3.2 Vendor Requirements

ECC has reviewed and concurs with the requirements set for in Section 3.2 of the RFQ.

We believe success of the project is connected to the opportunities for the parties to interact and communicate. While the RFQ specifies minimum levels of communication, ECC will continually work to ensure communications are continually active.

The project plan, to be agreed upon by the BPU and ECC, will confirm certain milestones, intermittent reporting, and deliverable dates. These are consistent with project plans developed by ECC for other client engagements including joint reviews of draft report(s) to ensure applicability to the State's needs.

Meetings. ECC will participate in all scheduled meetings and intermittent meetings and will work with the SCM as appropriate to ensure opportunities exist for additional interaction with Staff in support of the project. As a part of this engagement, ECC will request direction from the SCM with respect to documentation of meeting.

Final Reporting. The development of reporting is an interactive process requiring the engagement of both ECC and the client. As defined in the RFQ, this is the process required of ECC and as such is consistent with our normal operational process. The project plan, as jointly developed and agreed to, will include the appropriate time for reviews by the SCM and the Commission.

ECC acknowledges and concurs with the requirement for report delivery including physical, electronic and [potentially] redacted copies.

3.2.12 Litigation Support.

ECC acknowledges and concurs with the requirements specified in Section 3.2.12 or the RFQ including the rates to be charged.

[The remainder of this page intentionally blank.]

Section 4. Technical Approach to Scope of Work (RFQ 4.9)

This section provides narrative detail on the execution of the project.

ECC will initiate the project via active engagement with the SMC, Staff, and the Commission. This engagement between the groups as previously referenced, allows for agreement and clarification of definitions, processes, and objectives.

To deliver relevant and actionable reporting regarding Broadband gaps to the State, ECC plans a three pronged approach to build a database in support of the initiatives outlined in the RFQ:

1. Development and implementation of a physical inventory in each county within New Jersey.
2. The solicitation of network information from service providers in the State.
3. The development and deployment of the Broadband Availability and Adoption Toolset.

These three components will provide the baseline data necessary to fulfill key requirements of the RFQ. The deliverable from this work will be the provisioning of street level data for location across the State.

A. Physical Inventory

GIS Data Requests. To develop this phase of the project, ECC begins with existing data. The ECC team will request GIS information from the State and from each County. This data will be used to develop the base maps for the project.

FCC Map Data. The second step is to overlay Federal Communications Commission (FCC) data into the map database. Voluntarily reported by providers on FCC Form 477, this data is widely acknowledged as dated, and with high degrees of inaccuracy. In general, data is made public within 12 – 18 month following submission to the FCC. Many grant programs, however, continue to rely on FCC data which results in their requirement for the usage of FCC maps in applications.

Secondary Research. The third step is to utilize secondary research to access reliable third party sources for additional map information.

Development of Drive Plan. The results of these steps are the creation of maps reflecting known infrastructure in each County within the State. These combined maps will be reviewed with the State for discussion and additional input.

Upon approval, the final maps are codified into what are termed “Drive Maps.” This maps are reproduced electronically and represent the approved routes to be driven by ECC’s Outside Plant Personnel (OSP).

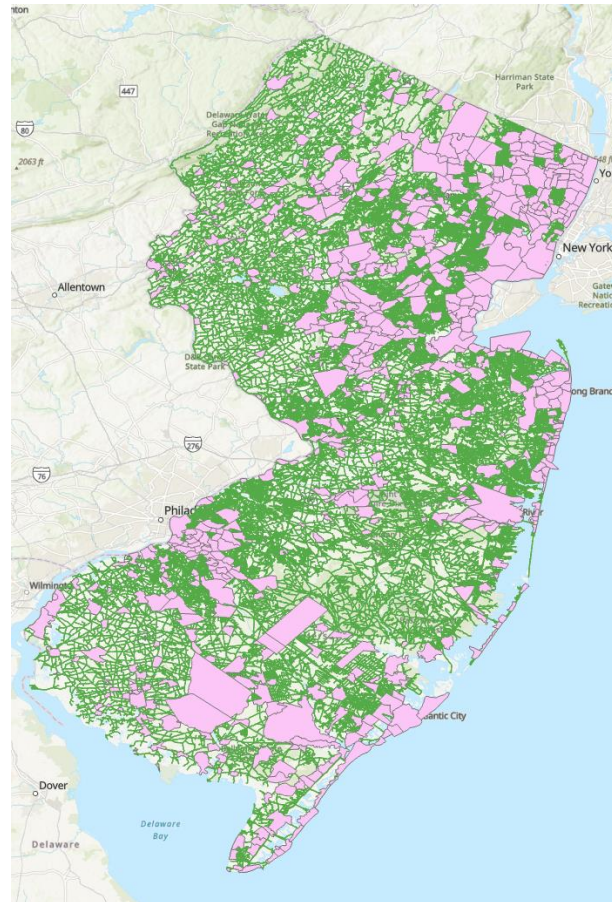


FIGURE 6 EXAMPLE OF DRIVE PLAN FOR NEW JERSEY

These experienced individuals have been trained to recognize and evaluate communications assets in the field including aerial fiber, and infrastructure which is required to support buried fiber (pedestals, hand holes et al).

Execution of the Inventory. Personnel are assigned to particular locations. In performing their work, they utilize electronic recording devices, combined with laptop access and notations in the physical notebook, to provide documentation of observed communications assets.

Performing this work, the OSP validates existing – expected – fiber optic installations. Further, the OSP will also document the existence of new fiber on the routes that are driven. Finally, the OSP will note the existence of new fiber assets which are connected into the existing fiber. This new fiber will be driven end to end and fully documented into the GIS database.

Caveats and Exclusions. This work is performed “...to the extent possible.” This means it may not always be possible to identify, in the field, the owner of a particular asset. Tags may fade, be defaced, or removed. Service providers building new infrastructure are less likely to place ownership information on the installation than in the past. In either case, it is not always possible to fully the current owner of the infrastructure.

In considering this phrase, it is also important to take into account that some infrastructure assets may not be visible or accessible. If buried cable routes through private property or through restricted areas, identification may not be possible. Though it is highly unlikely weather events could compromise the ability of the team to complete portions of the inventory, especially if infrastructure is damaged or destroyed.

In terms of exclusions, ECC is not proposing to inventory fiber optic infrastructure within incorporated areas unless the State requests an inventory for a specific location. Such tasks are not accounted for in the proposal or included in the quotation provided.

Most incorporated areas in the State have Broadband availability through fiber or coaxial infrastructure. Inventory work within these areas almost always requires that the processes be handled on foot. This is time-consuming with a limited return for significant investment. As part of the project, ECC will validate ingress and egress of the fiber relative to the incorporated area.

Additional information regarding the infrastructure inventory process is contained within Appendix C of this response.

B. Carrier Data

The second component of the plan will be requests made by ECC to carriers for their proprietary network data. Similar to our project in New York State, this data will be imported into the overall GIS database. Our expectation is that each carrier will tag this data as confidential and as such, will not be made available to the public.

The value of the data is several fold.

First, the very act of working with incumbent providers engages these companies. In many cases, incumbent providers represent opportunities for additional investment in counties, and engagement may result in advancing those investments.

Further, the engagement of these providers will allow the State to ascertain their state of mind, relative to potential initiatives by the State. This represents an opportunity to plan for actions which may forestall later protests or lobbying efforts designed to maintain the status quo and thwart the objectives of the project.

Third, the proprietary data submitted by the carriers allows for the development of a more complete map resource for the State. In reviewing this data, ECC will be able to quality check (QC) carrier provided data to ensure it is accurate relative to location and claims tied to areas served with Broadband service.

This database is the repository for data relating to infrastructure owned and/or operated by service providers in New Jersey. ECC and BPU acknowledge the advantages of utilizing infrastructure data acquired from service providers to populate the database.

Further, both ECC and BPU understand the advantages of utilizing the “power” of the state, combined with ECC’s experience collectively, to facilitate the collection of this data. As such, the parties will use their mutual best efforts to expedite outreach efforts to service providers

Additional information regarding the inventory infrastructure process is contained within Appendix C of this response.

C. Assessment

The BAAT program allows ECC to “round out” the assessment via a dialogue with both residential and non-residential users within the State.

ECC will develop and deploy a web based platform with a series of questions regarding availability and adoption. While the system is accessible via a PC or laptop, more than half of our participants will respond using their cellular telephone.

Program. ECC will develop a specific project plan for the State. Our team will interact at the State level and at each County. In the past, our objective has been active engagement with the County Manager. Through that contact, we are able to identify key individuals within county administration who can actively support our efforts in the County.

Active local support is the hallmark of successful BAAT programs. We not only work with each county, but also with the statewide association of counties. This adds additional resources to support us and credibility to the project.

Results. Information received from the BAAT program will be added to the overall database. In addition, multivariate analysis will be executed to provide additional insight for both residential and non-residential respondents.

Ancillary benefits which accrue from this work include linking the counties and the BPU more closely through this engagement. Because of the ongoing dialogue, counties will perceive BPU and the Commission as strong allies in the work to expand Broadband.

Finally, the localized components of the BAAT program area equally effective in showing respondents how active the State is in tackling the issues relating to Broadband which engenders ongoing public support for this work.

Additional information regarding the BAAT program is included in Appendix B of this response.

The web component of the project will be developed with the agile process and utilize cloud-based technologies for development and deployment of the BPU Broadband Mapping interactive web-based application.

Leveraging cloud-based technologies during development will increase the scalability of the final application, and lower post launch maintenance needs for reduced total cost of ownership. The team will designate a product owner that can identify which user stories are approved and prioritize feature requests.

D. Development of Scalable Broadband Mapping Tool

Requirement.

Section 3.1.1.B of the RFQ requires ECC to evaluate the feasibility of creating an accurate, scalable, interactive Broadband mapping tool. ECC has developed this type of tool as described and can work with the State to modify and deploy such as a system in New Jersey.

Systems Design.

ECC will work with Staff and BPU to fully understand and document the desired features/functions and incorporate any State branding guidelines. The interactive mapping website as proposed for development by ECC will provide address level detail for resident queries to display the associated service providers and service offerings for that location.

Development Debugging.

ECC will allocate resources to code the feature requests, and identify, address, and resolve issues or bugs, which may arise during the build phase. As the website application is developed, the team will identify and document newly defined requirements as change requests. ECC will use this process to continually clarify the State's requirements and produce initial outlines detailing application run time processes.

The foundational GIS mapping components supporting the interactive website queries will use ESRI products agreed upon between ECC and Staff. Depending on the storage requirements for the ESRI GIS database system, ECC will work in tandem with ITS to determine the appropriate platform to be used to host the platform during development.

The GIS system will be developed to support the reporting requirements to meet the standards for the State as well as additional analytical functions during the lifecycle of the project. The IT platforms to be used to host the website and GIS database will be determined using a team approach between ECC and Staff to adhere to current State standards and policies.

System Migration. Upon completion of the approved website platform and GIS database, ECC will work with Staff on a strategy to migrate and host the production systems on designated State resources.

ECC will provide support and training of the developed applications and related system components and operational procedures for the staff responsible for assuming management of the system.

We will further develop an implementation plan for updating relevant service provider data on a remote basis from the field or directly from the service provider. This plan will assure that such data is validated, scrubbed, analyzed, and placed into a geodatabase that can be incorporated into the production GIS database.

4.9.2 Potential Problems

In this section, ECC will identify potential problems and alternative solutions for resolution.

Carrier Interaction.

Based on experience in both statewide, regional, and county projects, ECC anticipates resistance from service providers to our requests for network information.

These issues are resolved in several ways.

First, ECC needs to ask for the information with the “power” of the State behind it. Scripts and emails should be jointly developed between Staff and ECC which allows for a consistent approach to request this information. The scripts should detail the importance of gathering the information.

Second, the parties need to agree on how to protect the data once it is provided. Most carriers consider their detailed network infrastructure as confidential and proprietary. These service providers will be reluctant to provide data without confidentiality agreements and data protection (for example, the data is for internal use by BPU staff only etc.).

Communications Issues.

Previously in this document, there are references to clarity and definitions. The BPU showed foresight when it chose to include definitions in the RFQ. However, we have found that misunderstandings can occur when words are not clearly understood in context by the other party.

This issue is resolved early in the process via the sharing of information which have created issues in the past for both parties. ECC for example, has recent experience in triangulating between legislation, language in an RFP, and requirements expressed by a client. Identifying and resolving as many of those components in advance represents a significant progression towards efficient communication.

Scope Refinement.

The RFQ states objectives and requirements in clear language, yet within that clarity, there will be questions regarding ultimate goals or deliverables. ECC wants to deliver effective results in the most efficient manner possible.

This issue is resolved by discussing specific deliverable requirements and determine both legislative and oversight intent. For example, does the State envision a Statewide open access network to foster expansion, or is the preference to examine county or municipal based Broadband authorities.

Weather

ECC envisions the majority of the outside plant inventory work occurring in the spring, summer, and early fall of 2022. As such it is not anticipated that seasonality will impact this work. However, there are opportunities for localized storms to impact outside plant work, as well as broader storms such as hurricanes and tropical storms which often impact New Jersey.

This issue is resolved by building flexibility into the project timelines and resources. In this way, trained individuals can be dispatched to an alternate location to work, or work can be rescheduled for a later date. The goal is to accelerate the work at the beginning of the project to allow for “make-up” days toward the end in case of delays due to weather or additional re-runs in the field for quality control purposes.

Disease

This is obviously a new category for this type of question. The issue focuses on the impact of disease on the ability of ECC to perform its responsibilities under the contract. These issues could rest with ECC, State, county, carrier, or other personnel.

ECC did not have issues in supporting its client through the current Pandemic. We executed against field inventory requirements and maintained interaction internally as well as with clients. We were aggressive users of virtual meeting tools and are adaptable to a variety of platforms.

We shared reports and data via specified applications. ECC was able to reference online project plans with clients utilizing the SmartSheet project management application. For original work produced by the ECC team, there are multiple processes in use to ensure full backup of data and work product.

Moreover, ECC followed all CDC and state recommended guidelines for employees. Each ECC employee is capable of, and equipped to, work from a remote location.

State, county, carrier, and other personnel are additional combines relative to disease. First, ECC, as previously described, builds added time into project plans. Not only does this added time allow for management due to weather or other events, but it also likewise makes allowances for the inability of key individuals to meet on a timely basis.

4.9.3 Organizational Support – Background and References

Background.

Founded in the greater Rochester, NY area, ECC has been in business for more than 25 years. In that period of time, the company has matured its focus into certain core areas: Network development design, development, and deployment; campus and enterprise network design and development, and consulting.

In addition, ECC is the exclusive marketer for the 2,200 mile MCNC network. This innovative network spans North Carolina and supports a variety of connections to anchor institutions. The network also provides high performance backhaul for terrestrial and mobile carriers.

This is unique experience and allows ECC a deeper understanding of Broadband networks beyond analysis and construction. Through our engagement with this client and the customers brought onto the network, ECC has a broad understanding of current requirements and issues facing carriers and users alike.

As can be seen in the organization charts and resumes included in this response, ECC is functionally organized to support various client requirements. Our company is not organized in silos, but instead groups resources together as required to support individual clients. This flexibility allows for better service delivery and ensures ongoing and active engagement of the entire ECC team.

References

These references demonstrate ECC's ability to work at all levels of Government to identify issues, develop solutions and implement programs. In an effort to limit the size of our response, we did not include

project documents and reports for each of the references, however, they are available upon request. Additional references are also available upon request.

Development Authority of the North Country (2000 – 2021)

Contact: David Wolf, Telecommunications General Manager

Phone: [REDACTED]

Email: dwolf@danc.org

The Development Authority of the North Country (DANC) located in the Watertown, NY region was created by the New York State Legislature to develop and manage infrastructure, and to serve the common interests of Jefferson, Lewis, and St. Lawrence counties. The Authority operates as a revenue-based public benefit corporation, independent of State operational funding.

In 2000, the North Country region was experiencing major telecommunications issues with respect to performance, reliability, costs, and competition. The region serves several public and private universities, a major military installation, an expansive border between the U.S. and Canada and well as many economic and business interests.

In the initial execution against the scope of work, ECC performed an inventory and assessment which determined major issues could be linked to a lack of fiber optic infrastructure and investment within the region.

ECC's work then turned to developing alternate business cases defining various options to resolve these issues. ECC led discussions with incumbent providers for input on the issues. ECC also took the lead in discussions with municipal leaders to review options for municipal involvement. After constructive dialogue and reviews, the selected solution to create a new telecommunications organization within DANC.

ECC developed the business strategy, business plan, consolidated financial statements, governance models, regulatory strategy. From a network development perspective, the ECC team was further responsible for design and engineering, routing, design specifications and construction oversight to completion.

During this project, ECC worked hand in hand with DANC, members of the NY Senate, US Congress, US Department of Commerce, Interested military parties, NYS Public Service Commission, local elected officials, and others.

The result was the development of a competitive telecommunications/ broadband entity which is successfully operating and serves the Northern portions of NY. More than 1800 miles of fiber and 31 co-location facilities provide services throughout the northern portion of New York State. Current operations continue to provide services to cellular providers, broadband providers, enterprise users and residential customers.

More recently In September of 2020, DANC contracted with ECC Technologies, Inc. (ECC) to perform a broadband inventory and study to accurately identify areas that are lacking in broadband infrastructure.

The data collected from this effort will be used to identify and develop solutions to address the lack of broadband in unserved and underserved areas of the region. Additionally, this helped to identify potential partners and funding sources to address these issues.

Central New York Regional Planning and Development Board (2019- present)

Contact: David Bottar, Executive Director
Phone: [REDACTED]
Email: dbottar@cnyrpdb.org

The Central New York region encompasses 3,700 square miles across a 5-county region surrounding the Syracuse NY, metro area. The Central New York Regional Planning and Development Board (CNYRPDB) provides planning and development services to the region.

The CNYRPDB awarded via competitive bid, a contract for broadband assessment services to ECC in 2019. The scope of services for this contract included a regionwide inventory of broadband infrastructure, an interactive survey of residents and businesses and an assessment of issues and potential solutions to resolve infrastructure as well as adoption issues facing the region.

ECC provided an interactive GIS based inventory of all infrastructure identified in the region. In addition, CNYRPDB information on issues related to adoption and availability based on direct input from 6,000+ respondents.

These questions pointed to issues related to the availability of broadband at their location, costs, speed, reliability as well as impacts to education, healthcare, and business.

This information was overlaid into the GIS database along with the inventory results to identify availability and adoption issues to the address level. Regional reports were developed with subsections broken down to address specific results and needs of each county.

ECC is currently working with CNYRPDB and each county to document and identify specific options needed to resolve broadband issues in each county.

Southern Tier Network 2008-2019

Contact: Marcia Weber, Board Chair
Phone: [REDACTED]
Email: mweber@stny.rr.com

The Southern Tier Network (STN) is a not-for-profit Local Development Corporation (LDC) located in the Corning, Elmira, and Watkins Glen areas of NY.

The LDC was created to address the lack of broadband infrastructure within the region. A broadband assessment was performed by ECC on behalf of the Southern Tier Central Regional Planning Development Board. The results of the study found a significant lack of infrastructure investment in Steuben, Chemung, and Schuyler counties

This investment shortfall was having a major impact on the ability to expand broadband beyond the population centers of the region. In conducting the study, results further showed that healthcare, education and in general, economic opportunities were impacted as a result.

ECC's analysis determined that each county would struggle on an individual basis in attempting to build, operate, and sustain a broadband system. One takeaway from the study concluded that a greater opportunity for grants and partnership funding would be available if the counties partnered in the development of a solution.

Under the recommendation and guidance of ECC the three counties established an intermunicipal agreement to create the Southern Tier Network (STN). STN's charter was the construction and operation of a 280-mile fiber network to serve the three counties.

ECC assisted in the formation of a Local Development Corporation. We further worked to secure regulatory approvals, pole attachment rights, and acquire funding for the development of infrastructure.

ECC was responsible for standards compliant design, bid, construction management, and ongoing operational and sales support services. As the project moved forward, additional benefits accrued to the project when incumbents began to utilize the assets.

The STN network expanded to a total of 8 counties covering more than 500 route miles of fiber infrastructure. The network supports a significant portion of the Finger Lakes Region and Southern Tier border between New York and Pennsylvania.

ECC supported the development of collaborative agreements and programs bringing 8 competitive providers into the network. At maturity, more than \$50,000,000 in public and private funding supported the development of infrastructure which today serves several hundred enterprise entities and as well as establishing fiber to the home services in 23 communities.

Madison County, NY 2019-2022

Contact: Mark Scimone – County Administrator

Phone: [REDACTED]

Emails: mark.scimone@madisoncounty.ny.gov

In 2019, Madison County, through a competitive bid process, contracted with ECC Technologies, Inc. to perform a county wide broadband Study. This study included a broadband infrastructure inventory, a web based interactive broadband Availability, and Adoption Survey of County residents and a GAP analysis across the County.

The results of this study were the development of a business case, and a comprehensive network solution was defined which were starting points for the resolution of broadband issues facing county residents.

ECC's recommendation to the County was to consider the potential of a Public Private Partnership (PPP) to solve infrastructure gap issues in the County. ECC played a lead role in seeking out and developing a public private partnership between the County and last mile broadband providers.

Through a RFQ process, ECC identified Empire Access, a local provider of fiber to the home internet, voice, and television services as a candidate. ECC was successful in creating an environment which allowed for Madison County and Empire Access to create a partnership.

ECC worked closely with Madison County and Empire to create and submit a USDA ReConnect Grant application on behalf of the County for support in developing a network. In 2021, the USDA awarded a ReConnect Grant to Madison County to construct a 269-mile network.

This FTTX (Fiber to the Home or Premises) network will deliver broadband internet service to 1087 unserved and underserved homes and businesses in the County.

ECC currently provides professional services to Madison County to act as the County's advocate to oversee the ReConnect Project. We currently serve as the liaison between the County and all other entities associated with the project.

ECC will provide an independent view of the project progress and report to Madison County regularly regarding project status, identifying potential issues and providing recommendations on how to proceed to ensure the success of the project being constructed on time and within budget.

4.9.4 Location

The New Jersey Broadband project will draw support from two ECC offices located in the greater Rochester, NY area, and the Research Triangle Park, NC area. The addresses are:

Greater Rochester NY Area

ECC Technologies, Inc.
2136 Five Mile Line Road
Penfield, NY 14526

Greater Research Triangle Park, NC Area

ECC Technologies, Inc.
13441 New Falls of Neuse Road
Raleigh, NC 27614

4.9.5 Organization Charts

The following illustrations show ECC's organization. The first chart, as requested, is the project organization. It indicates the personnel assigned to the project. As can be seen from the project chart, Joe Starks, ECC President, will be engaged in all phases of the project.

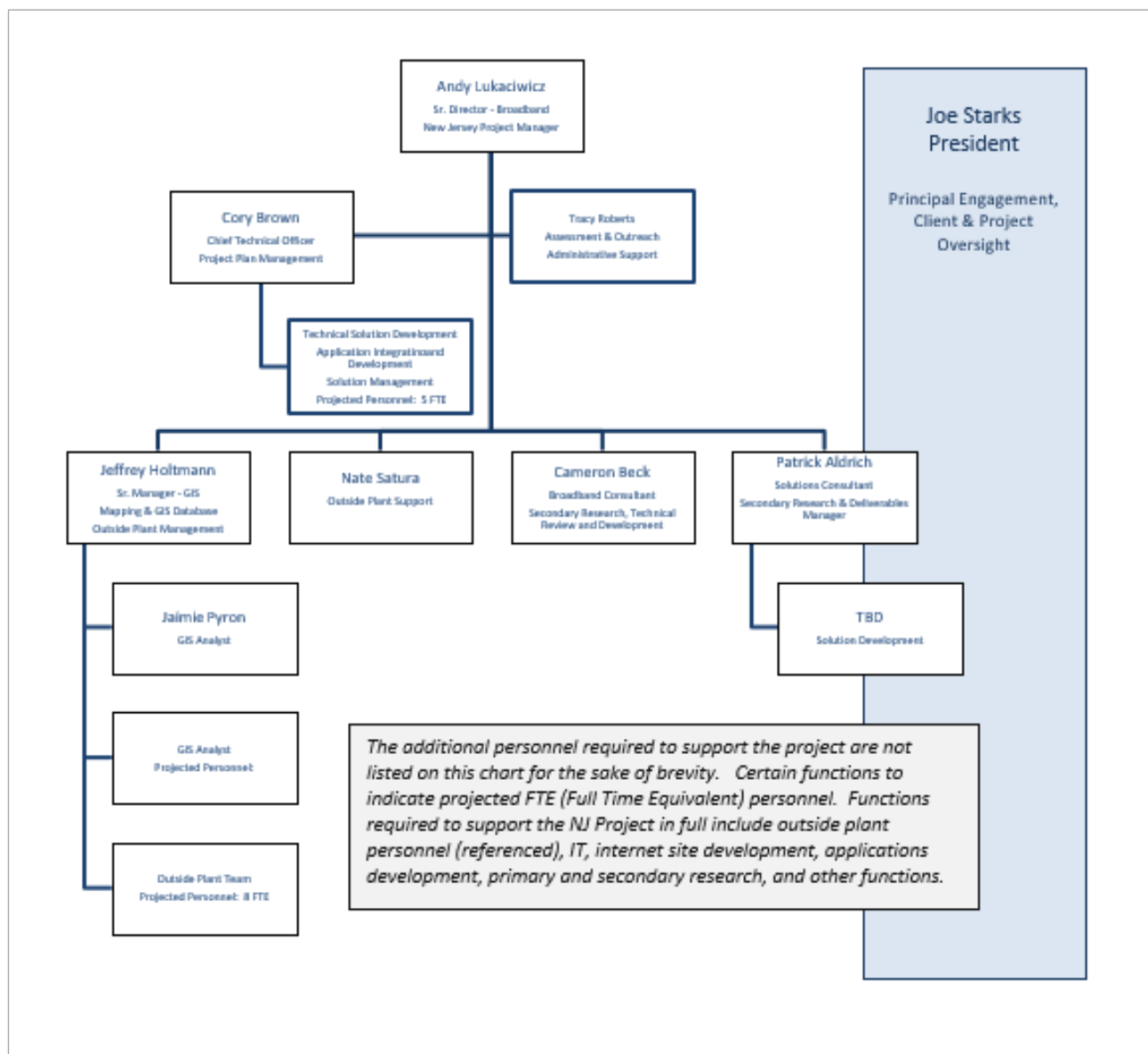


FIGURE 7 ECC PROGRAM TEAM FOR NJ BROADBAND PROJECT

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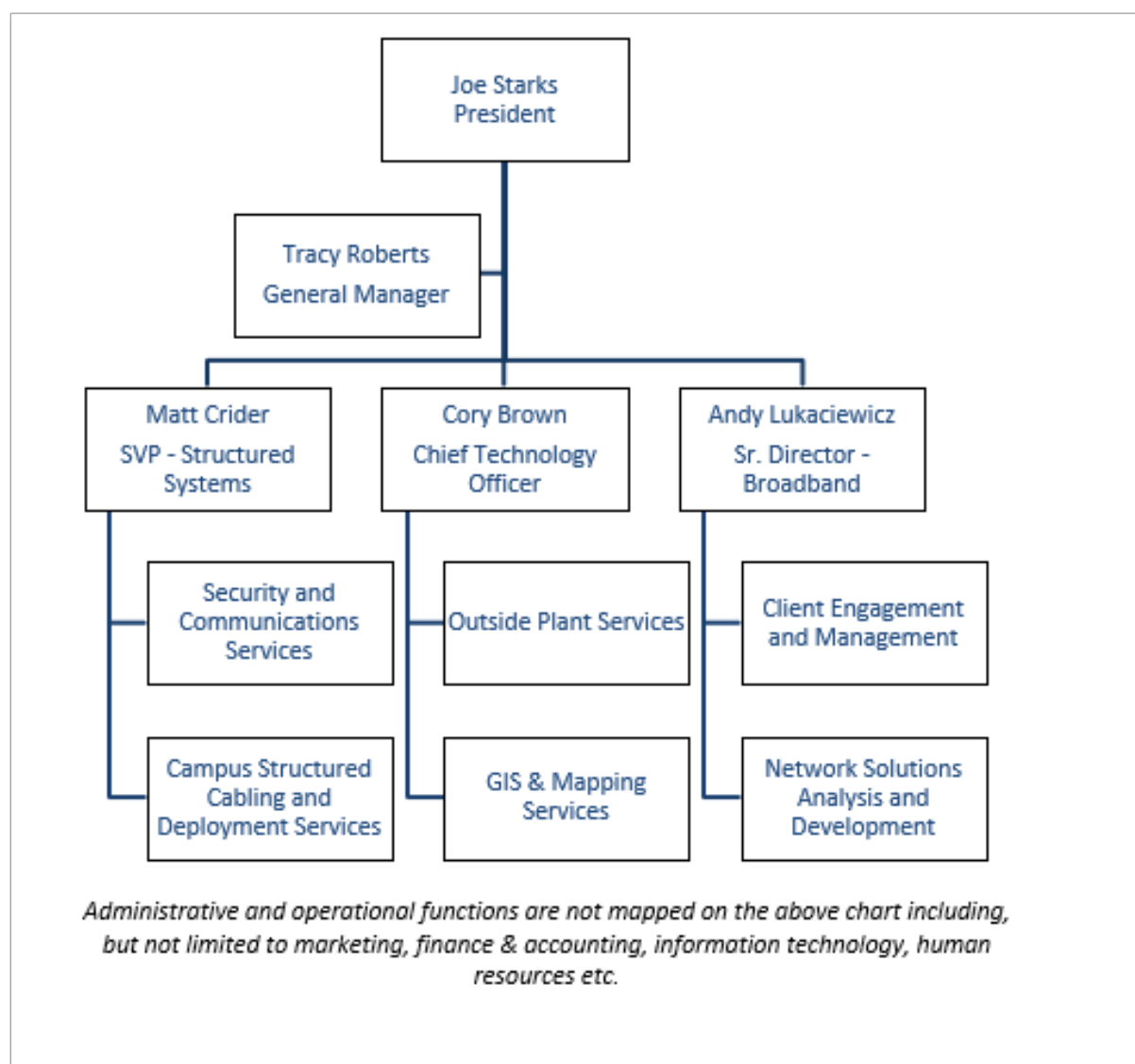


FIGURE 8 ECC ORGANIZATION CHART

4.9.6 Resumes

The following section includes resumes listing relevant experience of key members of the project team as defined in the Project Chart above.

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Joseph Starks

President

Joseph Starks (Joe) is founder and president of ECC Technologies, a 25-year-old consulting company credited with a number of successful broadband and healthcare start-ups

Representative experience includes:

ECC Technologies

As founder of ECC, Joe is credited with the development and maturation of the Open Access Broadband Model of which has been recognized by the FCC and Harvard as a “Best Practice” for under developed Broadband Communities. It should be noted that every Open Access Model developed by ECC is successfully operating today. Some operate as originally developed while others have matured to include some levels of privatization. All are successfully operating.

Collaborative Network Models

Joe excels at the development of collaborative business models supporting technology and Broadband development. He has performed start-up up consulting and business development services for dozens of for-profit and not for profit Broadband companies. In addition; has developed several successful operational, regulatory, and financial models needed to achieve success across several diverse environments. Very accomplished on shared cost and operational models needed to support various Open Access Broadband Models.

Broadband Investment and Public Private Partnerships (PPP)

Joe provides diligence and investment consulting to a number of privately held investment groups seeking to invest in Broadband technologies and services. These range from Open Access Dark Fiber models to P to P and P to MP Wireless and Fiber to the home opportunities across the US.

Broadband Development

Since inception Joe has managed the ECC team through the development of nearly \$3 billion in fiber and Broadband investment projects across the US.

Co-Op opportunities

Joe is a strong believer in the development of meaningful Broadband related Co-op programs. Our programs have been used by students attending Cornell University’s Johnston School of Business, Rochester Institute of Technology and University of Maryland, among others.

*United States Marine Corp
Service Veteran*

*Visionary with
entrepreneurial attitude*

*Start-up For-profits include
Fiber System LLC, Fibertech
LLC, Rapid Healthcare*

*Start-ups Not For-Profits
and collaboratives in NY
include Development
Authority of the North
Country Broadband
Network, Access Ontario,
Southern Tier Network, Erie
County fiber Consortium,
Monroe Net*

*Nationally recognized as an
authority on collaborative
based rural Broadband
development and performs
public speaking at a
national level*



Cory Brown

Chief Technology Officer

25+ years of IT experience

*Telecommunications
Network Design*

*IP and Logical Design
Experience including IP
management, mapping*

*Network Systems
Integration and Project
Management*

*Security & Emergency
Communications*

*Municipal Network Design
and Support Services
including Public Safety
Communications*

Cory Brown has been involved with Information Technology for the past 20 years with ECC Technologies. His responsibilities include project management, network design, installation, and support services for ECC clients such as government agencies, school districts, electrical co-ops, and healthcare facilities. These services include design and development of network systems for LAN and WAN topologies, development of IP networks, vendor independent network systems design, network systems integration, migration strategies for network installations, VPN services, network installations, wireless last mile service, and project management. Cory is experienced in Alcatel-Lucent, Cisco, Enterasys, HP, and Avaya (Nortel) network communications.

Representative projects include:

NYS Department of Public Service – (2021-Present)

The lead project manager working with NYS DPS to provide the deliverables required from the “Comprehensive Broadband Connectivity Act” of 2021. Project tasks included budget development, staffing for internal and contractor assignments, weekly status update reports, regular communications with NYS DPS on all facets of the project components. Direct communications and negotiations with internet service providers to obtain the necessary data sets for the legislative requirements. Participated in scheduled events for municipal outreach programs to promote the resident participation for the survey component. Management of the project schedule with adjustments as needed to keep the project in line with the milestones that have been identified for the key deliverables of the project.

Roanoke Electric Cooperative – Ahoskie, NC (2015-2019)

Heavily involved in the launch of the REC Connect Broadband initiative bringing smart grid device capabilities to REC customers to deliver demand management capabilities for COGS reduction and end user Internet access. Involved in all aspects of the network design of a hybrid fiber/wireless network system to deliver Internet services for the smart grid devices to participate on the REC network system. The network is comprised of Alcatel-Lucent switching, Cambium wireless systems, and Cisco routing and firewall platforms.

Monroe County Information Services – Rochester, NY (2005-2016)

Completed replacement of Monroe County’s 8000 node data network which included design, installation, and ongoing support services. Developed 10-Gigabit backbone network for all County required services. The project utilized multiple vendors, had a budget of \$2.5 million and time frame of 18 months to complete and was on time and on budget.



Jeff Holtmann

Project Design Manager

Jeff Holtmann has been involved with the complete design, contractor selection, and construction management of multiple fiber optic network projects. Adept at performing all phases of project development; overseeing projects from initial conception to final acceptance. Experienced with managing multiple projects at varying stages, through various public jurisdictions/agencies while maintaining effectiveness, efficiency and achieving deliverables on time and in budget. Excellent problem solver with unique solutions to complicated field and design problems; immediately responding to issues, minimizing design implications and client budget inflation. Jeff also brings his wealth of knowledge in CAD and GIS technologies both supporting fiber optic and RF/wireless design and implementation, along with regional broadband assessments.

*B.S. in Architecture -
University at Buffalo*

*Master of Architecture
University of Colorado*

NCARB Certification

Project Management

*Construction Administration
and Bid Creation*

*Fiber Network and
RF/wireless Design and
Oversight*

*Broadband Assessments and
Telecom Inventories*

GIS Mapping and Analysis

Representative projects include:

Piedmont Electric Members Corporation Fiber Backbone Network Phases 1-3 – Hillsborough, NC (2015-2020)

Project oversight for a 150+ mile OSP fiber optic infrastructure providing connectivity between three (3) office sites and 23 Substations. Responsible for scheduling design field crews, complete design package production, contractor selection, ROW/ permit procurements, construction administration/ closeout, and client coordination and satisfaction.

Roanoke Electric Cooperative Fiber Backbone, and Smart Grid Network Design project – Aulander, NC (2015-2019):

Involved in the design and construction management of the initial REC 110-mile fiber backbone network. Transitioning to Project oversight of the launch of the REC Connect Broadband initiative bringing smart grid device capabilities to the REC membership to help deliver demand management capabilities to reduce overall operating costs for electrical service distribution and Internet services to their membership.

NC Broadband – Broadband Communities, Raleigh, NC (2015-2020)

Working with the ECC Broadband Consulting Group, coordinating field crews, including sub-contract labor, for field analysis. Heavily involved in the GIS mapping and desktop research to support telecommunications competition, economic development, and municipal broadband programs across the State. Responsible for project deliverable execution on time and under budget.



Cameron Beck

Broadband Analyst

Cameron Beck has over 25 years of experience in the telecommunications and broadband industry. He held various network engineering related roles with a focus on design, development, and improvement. His experience includes process development, project management, cost savings analysis, circuit design and layout, installation, testing, and implementation of equipment and services.

Projects Include:

NYS Department of Public Service – (2021-Present)

Projects Broadband Analyst on the New York State Department of Public Services (NYS DPS) to provide the deliverables required from the “Comprehensive Broadband Connectivity Act” of 2021. Functions include project development, report writing and project components relating to deliverables of the legislation.

Erie County, NY – (2021-Present)

Provided physical inventory of broadband infrastructure within Erie County that consisted of mapping, charts, and reports relating to current inventory of fiber optic and coaxial infrastructure, towers, and owners of the infrastructure. Established Geographical Information System (GIS) maps to identify areas with infrastructure or without and included areas lacking service or below standard service requirement of the FCC or State of New York standards to develop an Open Access Network.

Black & Veatch (Avangrid) – Engineer Technologist (2019-2021)

Gather audit information, interpret, and formulate network designs based on network operating requirements. Established Infrastructure and Network Rings relating to interconnect/cabling, power/fuses, rack/cabinet detailed drawings, equipment review and standardization. Identified best practices for successfully control change, maintenance activities and rollback procedures for all engineering/quality control processes and procedures. Overall project management and control for technical issues.

*BS Telecommunications Engineering
Technology – Rochester Institute of
Technology*

*Circle of Excellence Award –
interconnection of multiple provider
networks into one*

*Single Point of Contact for CALEA
Services*

Engineering Project Platform

*100% Migration Success – client
moves to New Operator Service
Platform*

*Uniform Translations over 15 5E
Switches*

Forecasting Tool for Access Planning

Other Pertinent Skills

*Company Wide Network Policy,
Procedures and Standards*

NPA Splits and Overlays

*Inventory Management Control and
Cost Savings*

OSHA 30 Certification



Andy Lukasiewicz

Sr. Director Broadband Services

Andy Lukasiewicz is an award-winning broadband pioneer who brings more than 35 years of experience in leadership and innovation in the data and telecommunications industry. He has successfully established and grown new lines of business, managed multi-million-dollar budgets, and driven nationally recognized businesses.

*B.T. Electrical Engineering
Technology (High Honors) –
Rochester Institute of Technology*

*Recognized by the State of NY with
the “Broadband Leadership
Award”*

*Achieved #1 ranking out of 30
divisions nationally for “Business
Class Customer Service Satisfaction
in Technical Support”*

*Honored with prestigious “Business
Class Achievers Cup” three out of
four years for surpassing sales and
revenue objectives*

*Presented with “US Marines
Award” for preparedness and
organization of the RR launch.*

Other Pertinent Skills

*Business Plan Development and
Execution*

Start-Up Operations

Policy Formulation

Profit & Loss Management

Team Building

Representative Projects include:

Madison County – Broadband Consultant/PM (2019 – Present)

Project managed the physical inventory of broadband infrastructure in Madison County as well as survey of residents and businesses in the County. Developed the business plan and project managed County’s successful application for a USDA ReConnect broadband grant award in the amount of \$10.1M. Currently contracted to advise the County, representing the County’s interests throughout the implementation of the \$16M FTTH project.

Central NY Regional Planning & Development Board – (2020-Present)

Project managed the physical inventory of broadband infrastructure in Cayuga, Cortland, Onondaga and Oswego Counties as well as the Broadband Availability and Adoption Tool (BAAT) survey of residents and businesses in the Counties. Analyzed data, prepared, and presented report with recommendations.

Southern Tier Network – Chief Operating Officer (2010-2019)

Developed business model for the project. Achieved \$20M in contracted revenues through procuring 189 contracts. Successfully secured more than \$10M in grant funding to expand the open access network. Oversaw two major network expansion completed on time and under-budget. Developed and implemented operating strategies and procedures for the 550-mile open access network operating in 8 counties of New York State.

Access Ontario – Chief Operating Officer (2009-2017)

Successfully negotiated and executed 95 contracts generating over \$10.6 million in revenues. Guided the transition from construction mode to operations mode. Developed and implemented operating strategies and procedures for the 200-mile open access network.



Patrick Aldrich

Solutions Consultant

Patrick is responsible for the assessment, design, specification, and contract administration of LAN/WAN networks and security systems. Patrick currently manages the design team and is responsible for the project management and construction administration for active telecommunications projects in Municipal, Higher Education, K-12, and corporate organizations.

B.S. Computer Information Systems

Project Management

Construction Administration

WAN/LAN/WLAN Design

Cabling & Pathway Design

Niagara Frontier Transportation Authority – Buffalo, NY

Lead Designer for new \$2.3 million surface parking facility at Buffalo Niagara Falls International Airport. Tasked with requirements analysis, design, specification, estimation, and construction administration services. Responsible for the design of new communications pathways and conduit system, and all telecommunications and security systems and devices.

New York State University Police – SUNY Purchase, NY

Lead Security Designer for State University Police's new fixed and mobile License Plate Reader (LPR) system. Responsible for assessment, design, specification, and construction administration services. Existing conditions required design of new communications duct-bank conduit system and hybrid powered fiber optic cabling extending from campus facility to remote LPR pole locations. Project included design of new duct-bank and fiber optic cabling extending from existing data center to new remote pump-house facility.

Bankers Healthcare Group – Syracuse, NY

Lead technology designer and project manager for new \$34 million, five story headquarters building. Project includes design communications duct-bank extending from existing telecom provider locations to building BDF, and from BDF to site locations using hybrid powered fiber technology. Additionally responsible for the design of state-of-the-art A/V control and conferencing systems, localized sound systems, digital signage, horizontal cabling, backbone cabling, telecommunications room infrastructure, cabling pathways, standby power, pervasive wireless, door access control, card access, video surveillance including license plate recognition, and Cisco network switch hardware.



Tracy Roberts

General Manager

As General Manager for ECC Technologies, Tracy Roberts is responsible for human resource support and management, accounts payable and receivable and internal office management support for both the New York and North Carolina offices.

Tracy brings more than 15 years of experience in project support, research, management, and customer service to this role, providing her with the expertise to successfully perform, but also the interpersonal skills necessary to build and inspire meaningful professional relationships throughout the company. Her high regard for her colleagues and customers is made abundantly clear in each interaction.

Representative experience includes:

ECC Technologies

Tracy has provided significant support for multiple client facing projects including the State of New York, the Lumber River Council of Governments, and the Central New York Regional Development Board.

She has coordinated data collation for BAAT programs, provider data and has executed key secondary research projects tied to FCC, NTIA, and USDA grant programs.

Her responsibilities to support major client initiatives include participation in client meetings and review sessions, active engagement in project plan management, and coordinating added administrative support, as required, across project teams.

NFTA Telecommunications Help Desk Specialist

Supported a NY State agency Telecommunications Help Desk for all NFTA bus, rail, and airport sites. Troubleshooting of local, long distance, dedicated circuits, wireless, and telephone systems. Opened service tickets research projects and analyses. Research providers for services and equipment. Writes procedures to ensure highly consistent tracking of repair, billing, and service issues.

*BS Management – St. John
Fisher College*

*General Management
Functions*

Secondary Research

Data Mining

Office Management

Human Resources

*Responsible for the
development of processes
supporting major client
initiatives*

4.9.7 Diversity Plan

ECC Technologies, Inc. is committed to fostering, cultivating, and preserving a culture of diversity, equity, and inclusion.

Our human capital is the most valuable asset we have. The collective sum of the individual differences, life experiences, knowledge, inventiveness, innovation, self-expression, unique capabilities, and talent that our employees invest in their work represents a significant part of not only our culture, but our reputation and company's achievement as well.

We embrace and encourage our employees' differences in age, color, disability, ethnicity, family or marital status, gender identity or expression, language, national origin, physical and mental ability, political affiliation, race, religion, sexual orientation, socio-economic status, veteran status, and other characteristics that make our employees unique.

ECC Technologies diversity initiatives are applicable—but not limited—to our practices and policies and those of our subcontractors, on recruitment and selection; compensation and benefits; professional development and training; promotions; transfers; social and recreational programs; layoffs; terminations; and the ongoing development of a work environment built on the premise of gender and diversity equity that encourages and enforces:

- Respectful communication and cooperation between all employees.
- Teamwork and employee participation, permitting the representation of all groups and employee perspectives.
- Work/life balance through flexible work schedules to accommodate employees' varying needs.
- Employer and employee contributions to the communities we serve to promote a greater understanding and respect for the diversity.

All employees of ECC Technologies have a responsibility to always treat others with dignity and respect. All employees are expected to exhibit conduct that reflects inclusion during work, at work functions on or off the work site, and at all other company-sponsored and participative events. Employee awareness is delivered through emails, employee handbook and internal training.

Any employee found to have exhibited any inappropriate conduct or behavior against others may be subject to disciplinary action.

Employees who believe they have been subjected to any kind of discrimination that conflicts with the company's diversity policy and initiatives should seek assistance from a supervisor or an HR representative.

4.9.8 Backup Staff

As requested in the RFQ, the following list specifies primary backups for the previously mentioned team:

Primary	Backup	Responsibility
Jeff Holtmann	Jaimee Pyron	GIS Analyst, Programmer
Andy Lukasiewicz	Bill Hayes	Project Management
Ron Healy	George White	OSP / Field Management
Tracy Roberts	Holley Keyser	Secondary Research
Matt Crider	Cameron Beck	Broadband Consulting
Jon Van Tol	Nate Satura	Outside Plant Sr.

4.9.9 Experience with Similar Contracts

ECC has executed a variety of contracts over the years to support states such as Georgia, North Carolina, and most recently New York. Changes in perception about the value of broadband have changed the environment in which these types of projects exist.

In the past, selected entities applied for, and were awarded grants such as the BTOP, CAF or CAF II awards to support broadband expansion. The expense of deployment combined with perceptions equating broadband as a “nice to have” service limited additional involvement by states.

Nonetheless, ECC provided significant support in the development of assessment campaigns in the State of Georgia. Likewise, ECC supported the forerunner of North Carolina’s Broadband Infrastructure Office by developing and coordinating infrastructure assessment work in 13 counties in central North Carolina.

Other North Carolina projects, for example, have supported regional authorities consisting of 7 counties in the far west, and 10 counties in the east, as well as multiple projects in between.

In the reference section of this proposal, we referenced more than ten years of history in working with multiclient counties. An advantage offered to all of these clients is our role as an independent advisor. ECC is not a service provider and as such, has as its only focus, the needs, and requirements of its clients.

Our hands on experience in working with large groups of independent counties, states, and even our work in New York demonstrates both our capabilities and competence in executing against the requirements of the State of NJ BPU and Advisory Commission.

Section 5. Pricing Summary (RFQ 4.5 | RFQ 9.0)

ECC is submitting all pricing for this proposal as directed In accordance with Sections 4.5 and 4.5.1.1 of the RFQ. For convenience, ECC is including pricing information in this Section 5 for reference purposes only.

The descriptions, rates and calculations as listed on the separate State supplied Price Sheet (RFQ 9) are to be considered as valid components of this agreement. This document is in a separate set of files attached to the submission email.

[The remainder of this page intentionally blank.]

STATE-SUPPLIED PRICE SHEET
RFQ Consulting Services related to the Broadband Access Study Commission

The Vendor {Bidder} must provide pricing for all price lines on this State-Supplied Price Sheet

Part A		
Vendor's {Bidder's} Name : ECC Technologies, Inc.		
	All-Inclusive Hourly Labor Rates	
1	Partner/Principal Director	\$260.00
2	Program Manager	\$225.00
3	Project Manager	\$200.00
4	Subject Matter Expert	\$180.00
5	Supervisory/Senior Consultant	\$150.00
6	Consultant	\$135.00
7	Associate/Staff	\$110.00

Part B					
	Description	Unit	Estimated Quantity	Unit Price Year 1	Sub Total
8	Scope of Work Section 3.1.1 A, C-G	Task	1	\$1,500,000	\$1,500,000
9	Scope of Work Section 3.1.1 B (Optional)	Task	1	\$178,100	\$178,100
10	Scope of Work Section 3.1.2	Task	1	\$1	\$320,500
11	Scope of Work Section 3.1.3	Hours*	200	\$100	\$40,000
12	Scope of Work Section 3.1.4	Task	1	\$200,275	\$200,275
13	Scope of Work Section 3.1.5	Hours*	200	\$100	\$40,000
14	Final Report Section 3.2.10	Task	1	\$809,850	\$480,350
15	Litigation Support Section 3.2.12	n/a	n/a		n/a
					Total Quotation Price
					\$2,759,225

Instructions

*Bidders should provide a detailed breakdown of Part B's Unit Pricing using Part A's All-Inclusive Hourly Labor Rates to justify the Total Quotation Price. Bidders will be evaluated and ranked based upon the Total Quotation Price of Part B.

**Bidders should provide a mixed hourly rate for the anticipated personnel that will be working on these sections. There is no guaranteed quantity.

TABLE 1 PRICING INFORMATION (PROVIDED IN EXCEL FORMAT AS SEPARATE DOCUMENT)

Section 3.1.1		FTE	Hours	Rate	Total
ECC/ HMI	Project Manager	3	1000	\$200	\$200,000
ECC	GIS Analyst	5	2000	\$150	\$300,000
ECC/ HMI	OSP Technician	8	8000	\$150	\$1,200,000
SECTION 3.1.1					\$1,500,000

Section 3.1.1B					
ECC/ VHB	Principle in charge	2	48	\$250	\$12,000
ECC/ VHB	Project Manager	3	150	\$200	\$30,000
VHB	Solutions Architect	1	140	\$200	\$28,000
ECC/ VHB	GIS Analyst	5	80	\$150	\$12,000
VHB	Systems Administrator	2	120	\$150	\$18,000
VHB	Application Developer	2	550	\$130	\$71,500
VHB	graphic designer (VHB)	2	60	\$110	\$6,600
SECTION 3.1.1 B					\$178,100

Section 3.1.2					
ECC	Principle in charge	2	80	\$250	\$20,000
ECC	Executive/Directors	1	100	\$225	\$22,500
ECC/ HMI/ VHB	Project Manager	3	100	\$200	\$20,000
ECC	Broadband Consultant	2	600	\$200	\$120,000
ECC	GIS Analyst	5	200	\$150	\$30,000
ECC	TelCom Analyst	2	800	\$135	\$108,000
SECTION 3.1.2					\$320,500

Section 3.1.4					
ECC	Principle in charge	2	20	\$250	\$5,000
ECC	Executive/Directors	1	67	\$225	\$15,075
ECC/ HMI/ VHB	Project Manager	3	125	\$200	\$25,000
ECC	Broadband Consultant	2	500	\$200	\$100,000
ECC	GIS Analyst	5	80	\$150	\$12,000
ECC	TelCom Analyst	2	320	\$135	\$43,200
SECTION 3.1.4					\$200,275

Section 3.2.10					
ECC	Principle in charge	2	20	\$250	\$5,000
ECC	Executive/Directors	1	50	\$225	\$11,250
ECC/ HMI/ VHB	Project Manager	3	500	\$200	\$100,000
ECC	Broadband Consultant	2	1000	\$200	\$200,000
ECC	GIS Analyst	5	600	\$150	\$90,000
ECC	TelCom Analyst	2	500	\$135	\$67,500
ECC	Admin	1	120	\$130	\$15,600
SECTION 3.1.5					\$489,350
TOTAL					\$2,688,225

TABLE 2 COST BREAKDOWN BY TASK BY PERSONNEL

Appendix

Appendix A. RFQ Stipulations

This Appendix will contain requirements as stated in the RFQ and concurrence by ECC to those requirements. The requirements will be ordered as they appeared in the RFQ.

RFQ Section 1.4 ADDITIONAL INFORMATION

1.4.1 BIDDER RESPONSIBILITY

The Bidder assumes sole responsibility for the submission of a fully completed Quotation in response to this RFQ. Once quotations are opened, no special consideration will be given due to a Bidder's lack of knowledge of all the requirements of this RFQ.

1.4.2. COST LIABILITY

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

ECC acknowledges and agrees to the requirement set forth in RFQ Sections 1.4.1 and 1.4.2

RFQ Section 1.5 CONTENTS OF QUOTATION

Quotations can be released to the public pursuant to N.J.A.C. 17:12-1.2(b) and (c), the New Jersey Open Public Records Act (OPRA), N.J.S.A. 47:1A-1.1 et seq., or the common law right to know.

After the opening of sealed Quotations... Cooperative Purchasing Program participants (if the RFQ has been extended to these participants), and thus must be made public to allow all eligible purchasing entities access to the pricing information.

ECC acknowledges and agrees to the requirement set forth in RFQ Section 1.5

RFQ Section 2.0 Definitions

RFQ 2.1 General Definitions

RFQ 2.2 Contract Definitions

ECC acknowledges and agrees to the definitions as set forth in RFQ Sections 2.1 and 2.2.

RFQ Section 3.0 Scope of Work Requirements

ECC acknowledges its review of Section 3 and confirms its response is included within the body of this proposal.

RFQ Section 4.0 Quotation Preparation and Submission

RFQ 4.1 General.

ECC acknowledges and agrees to the requirement set forth in RFQ Section 4.1

RFQ 4.2 Non-Collusion

ECC acknowledges and agrees to the requirements set for in RFQ Section 4.2.

RFQ 4.3 New Jersey Business Ethics Guide Certification

ECC acknowledges and agrees to the requirements set for in RFQ Section 4.2.

RFQ Sections 4.4 to 4.8 Inclusive

ECC acknowledges and agrees to the requirements set for in RFQ Sections 4.4 to 4.8 inclusive.

RFQ Section 5.0 Special Contractual Terms and Conditions Applicable to the Contract

ECC acknowledges and agrees to the requirements set forth in RFQ Section 5.0

RFQ Section 6.0 QUOTATION EVALUATION

ECC acknowledges and agrees to the requirements set forth in RFQ Section 6.0

RFQ 7.0 CONTRACT AWARD

ECC acknowledges and agrees to the requirements set forth in RFQ Section 7.0

RFQ 8.0 CONTRACT ADMINISTRATION

ECC acknowledges and agrees to the requirements set forth in RFQ Section 8.0

Appendix B. Broadband Availability & Assessment Toolset

B.1 BAAT Program Overview

New Jersey and the twenty two counties in the state are extremely interested in learning more about the level of service available to households and non-residential establishments. Based on our experience, we clearly understand that *each county is unique*. Our understanding of common issues facing counties allows us to bring unique focus and attention to their unique challenges.

This is important when working with a client, whether a county or a service provider, for example, in developing a program to solicit input from county residents or from customers of a cooperative.

ECC's statistical program is termed the Broadband Aggregation and Adoption Toolset (BAAT). The BAAT is a web-based application allowing documentation of demand for broadband services, with Speed Test data and survey responses captured within a single portal.

We consider data received from each county, the United States Census Bureau, and other sources, in evaluating median income, the poverty level, home and automobile ownership and other indicators which help us in planning the BAAT program work. In many cases, adoption becomes as important as availability in terms of broadband expansion.

For a potential service provider, it is important to utilize this perspective in the development of the outreach program as con-joint analysis is utilized to determine purchase sentiment.

The BAAT is accessible to a respondent via desktop, tablet, or cellular telephone. We provide a version that allows our clients to develop a written survey instrument for distribution. The application includes a Speedtest component, which helps in the assessment of the identification of "speeds" of non-mobile respondents who are online via DSL, broadband, or those accessing the BAAT via a mobile device.

The BAAT program allows customized questions in the assessment section for both residential and business respondents, as well as respondents with service vs. those without. The BAAT allows for near real-time reporting to be produced on survey responses, including geographic locations.

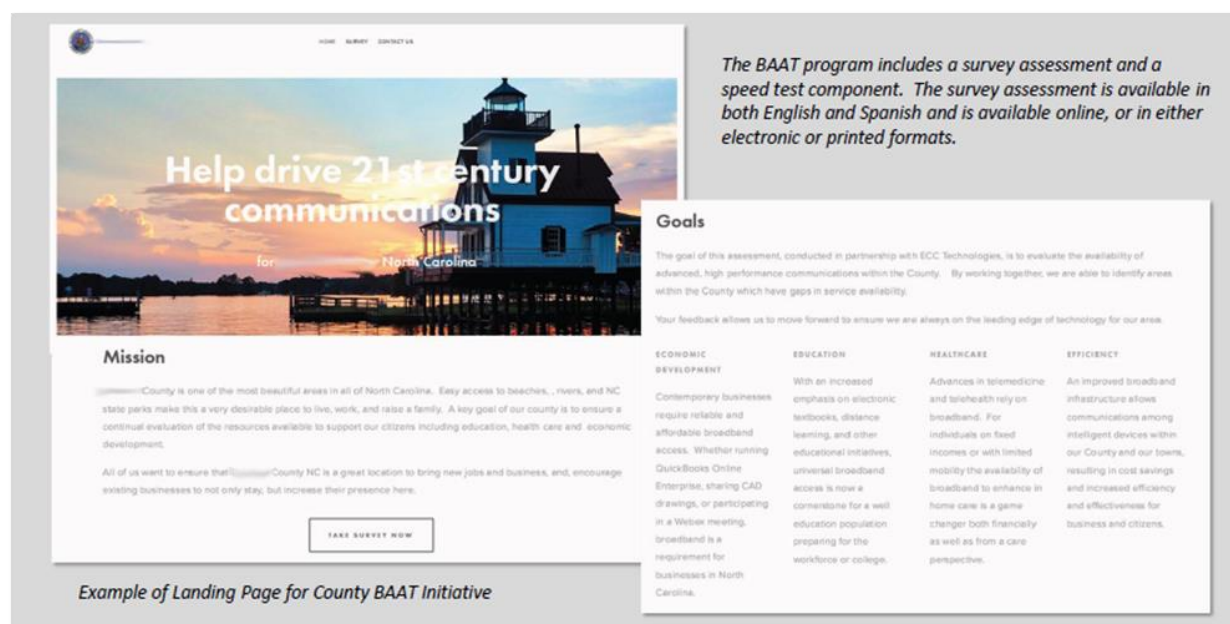


FIGURE 9 EXAMPLE LANDING PAGE FOR BAAT PROGRAM

Assessment Results. Geolocation based analytics determine where there are “holes” in the response rates, as well as identifying broadband service gaps are in the community.

The BAAT further returns data to allow analysis of obstacles to adoption for residents who already have access to broadband services but choose not to subscribe.

It will help determine paths to address those issues—holding classes on computer usage at the library, for instance.

The process uncovers areas that may be profitable to serve for a service provider. It also identifies areas needing future work or subsidy, either due to affordability issues or low population density.

The definitive, specific customer information gathered and documented during a campaign can be used to support further funding/investment for advancing broadband projects. The data can also be used to identify “champions” willing to advocate for broadband efforts within their community.

Based on requirements, ECC can develop multivariate, conjoint, and sentiment components to the survey instrument to support additional analysis.

ECC offers additional value in comparing the responses from a New Jersey focused BAAT program with cumulative results from other BAAT campaigns. This allows for added insights in evaluating the local results with a larger control group with more than 50,000 responses over the past few years.

How It Works. Residents and businesses access a community-promoted Internet site developed and deployed by ECC using devices such as a PC, iPad, laptop, or even mobile devices. The assessment results are valid no matter what device is used by the respondent.

Multivariate 8

What type of Internet access do you have at this home in M-HC?*

Please specify your ethnicity.

What is the estimated annual income of your household?

	TOTAL	BLACK	WHITE	OTHER	DID NOT SAY*
No Internet Access LT 32,000 year	60	2	45	5	8
No Internet Access LT 65,000 year	135	2	113	6	14
No Internet All Income	2246	2	261	11	1972
Low Band Internet Access LT 32,000 year	70	0	65	2	3
Low Band Internet Access LT. 65,000 year	214	3	206	0	5
Low Band All Income	2383	5	521	17	1840
No and Low Band LT 32,000 year	130	2	110	7	11
No and Low Band LT 65,000 year	349	5	319	6	19
No and Low Band All Income	4629	7	782	28	3812

* Indicates required question

TABLE 3 SIMPLE MULTIVARIATE DATA

The respondent enters their local address (required for geolocation) and answers questions regarding their current Internet service or lack thereof.

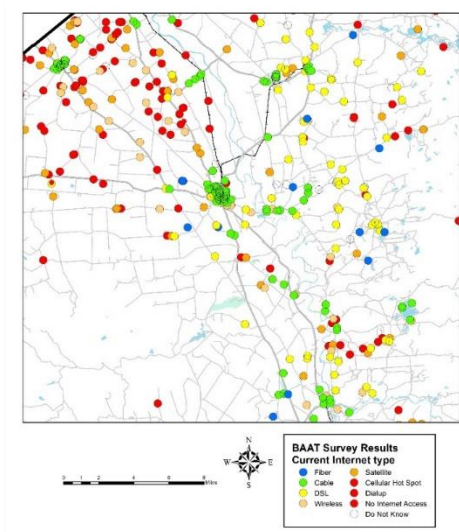


FIGURE 10 SAMPLE RESPONSE DATA
MAPPED

availability, as well as allowing focus on adoption issues.

ECC collects demographic / firmographic information from each respondent to help in overall analysis.

Having conducted many BAAT campaigns over the past five years, ECC has identified and developed question sets for residential and commercial respondents – both with and without broadband access.

The results are statistically valid and feature key insights for decision makers and potential service providers. The anecdotal information collected during the process is equally valuable, providing a voice to respondents concerning broadband issues.

By combining the BAAT program as an overlay to the infrastructure inventory and carrier provided network data, a more complete picture is available to policy makers, the State, and counties. This picture aids in identifying gaps due to

B.2 BAAT Program Outline

ECC has extensive experience in the development and deployment of programs to access information from respondents in counties, regions, or other areas. ECC’s programmatic approach to this work is its BAAT (Broadband Availability and Adoption Toolset).

B.2.1 BAAT Site

As delivered by ECC to clients, the BAAT program includes the development of a personalized internet site including a unique URL (such as newjerseybroadband.com or gardenstatebroadband.com), A form-based Contact Us page, general information for the county or entity, a Frequently Asked Questions page, and certain embedded applications.

Standard embedded applications include a Ookla Technologies based “speed test” and a statistically valid questionnaire or survey instrument.

B.2.2 BAAT Project Plan.

A key component of ECC’s success in executing BAAT programs is a detailed project plan ensuring our client is completely engaged in the process. This requires the client to actively participate in the marketing/promotion of the programs including the engagement of county management, elected officials and organizations throughout the county including media, non-profits, school systems, and other stakeholders.

A key component includes the development of outreach for households that do not have access to broadband. This includes encourage to participate in the Questionnaire via cellular telephone, or delivery or paper-based survey instruments.

A. Questionnaire Development

1. ECC will work with BPU to develop the relevant questionnaire
 - a. Questionnaire development leverages the experience of ECC’s previous campaigns
 - b. ECC will work with Staff to guide and develop additional questions as necessary to meet the objectives of the program.
 - c. It is requested that Staff participate to provide guidance relative to:
 1. Residential vs Non-residential data/goals
 2. Language requirements.
 3. Broadband adoption and availability requirements (direct survey) vs. demographic / firmographic information (indirect)
 4. Survey questions are designed to address availability, adoption, competition, and reliability issues for the current condition of broadband or lack thereof in each county. ECC will work with Staff to evaluate additional questions or areas of interest for inclusion.

5. Question development includes an analysis of single focus, multi-factor, con-joint (non-retail), sentiment, and other type of questions.
6. Key decisions must be agreed to between ECC and Staff in terms of how the data obtained from the BAAT will be aggregated, presented, reported, and archived.

B. Questionnaire Presentation

1. ECC will develop a “comp” comparative site for review with Staff.
 - a. The comp will include a proposed visual representation as well as a hierarchical depiction of the site.
2. ECC and Staff will jointly work to define the appropriate development and deployment process for an Internet based site. Fundamental components for development and deployment include:
 - a. Hosting site (ECC provided).
 - b. ECC’s hosting provider utilizing certain development and authoring tools
Requirement for SEO work and/or investment
 - i. Keyword management
 - ii. Link management
 - c. Decisions relative to unique URL’s

C. Site and Program Marketing

1. ECC and BPU will work together throughout the campaign lifecycle to manage the critical marketing efforts to provide statistical relevancy. ECC believes this will require state and local elected officials’ participation and support.
2. Successful marketing efforts will require print media, news outlets, social media, flyers, and radio ads, etc.
 - a. ECC will schedule monthly meetings to review the period to date results and focus on areas of underperforming response rates
 - 1.The meeting will allow ECC to strategize with BPU and other groups as necessary achieve the desired results.
 - 2.Based on current program experience ECC anticipates an aggressive marketing effort will be needed to promote the urban/suburban response.
 - i. ECC will provide the raw data from the surveys and Speed tests in a CSV format to BPU monthly during the project.
 - 3.ECC will further work with individual counties to develop marketing plans.
 1. Replicating a success program from other projects, ECC will approach the New Jersey Association of Counties to solicit their support in working with

Counties. ECC will be prepared to develop an ancillary site for the NJAC which can function as a resource for all counties in the State.

2. ECC will assist counties in developing collateral, provide sample emails, create unique county based URL's, develop QR codes, and produce paper copies of survey's for alternate distribution.

D. Approval and Launch.

1. Upon approval and launch, ECC will review site statistics on a weekly basis.
2. ECC will use its commercially reasonable best efforts to review and resolve issues related to system availability and access to applications in a timely fashion where ECC has responsibility for the systems and applications.
 - a. This could include the Internet site.
 - b. This would include the applications
 - i. Questionnaire
 - ii. Speed test
 - c. ECC does not make any guarantee of performance or application uptime.
3. ECC will report any major outages for the applications/site(s) for which it is responsible to Staff and the BPU in a timely manner.
 - a. Major outages are defined as the inability to access an application or site for a period that exceeds 4 hours during a business workweek and 8 hours on a weekend.
 - b. ECC will use its commercially reasonable best efforts to resolve such outages working with the hosting or application provider in an expeditious manner.
 - c. During the past five years, ECC has not recorded downtime from the Ookla applications, one outage which extended for thirty minutes from the survey application server, and one outage which extended for twenty minutes from our hosting provider. Each Application Service Provider (ASP) provides multiple server instances to alleviate issues related to equipment or network failure, congestion, or application failure.

Appendix C. Infrastructure and Provider Inventory

ECC estimates it will 6 months to gather this information using ECC resources.

C. 1 Obtain Infrastructure Data from Service Providers

- A. Service Provider Identification.** ECC and BPU will work together to develop a plan to identify all service providers in the agreed upon areas of the State.
- B. Provider Contact Plan.** ECC and BPU will work together to specify a contact plan which include the process, timeline, responsible party, and data requirements for outreach to service providers.
- C. Provider Data Collection.** Utilizing the contact plan as outlined, all identified providers will be contacted.
 - 1. Service providers will be requested for address level data on their network infrastructure demographics of the following:
 - a. Broadband service information
 - 1. Service levels
 - i. Download and upload speeds
 - ii. Pricing
 - b. Infrastructure type
 - 1. FTTP, HFC, Fixed wireless, etc.
 - c. Participation in FCC or other Low Income Broadband Program(s)
 - d. Company contact information
 - 1. Telephone number
 - 2. Website
 - 3. Other information as may be required by BPU or ECC, or as specifically identified and requested by BPU.

2. The information format requested may include, but not be limited to a geodatabase, shape file, KMZ, CSV plus anecdotal information. Information about planned construction is desirable.
3. ECC will maintain the data reported by and received from, service providers.
4. ECC will advise BPU of those providers who are non-responsive, uncooperative, or contesting the requests (all or in part). ECC will work with BPU to address and resolve the concerns outlined above. This work may include defining alternative approaches to acquire the needed data.

D. Provider Database Maintenance. ECC will, on an ongoing basis, maintain the infrastructure data for analysis for the length of the project.

1. ECC will develop the processes to facilitate the acquisition and ongoing management of the data and deliver those processes to the State at the conclusion of the project.

E. Map Development. ECC will develop maps for each county in the State. Map creation is required to direct the work of field teams.

1. ECC will develop a map for each county within the State of New Jersey
 - a. The developed county map allows for the determination of locations for manual data collection efforts by ECC field crews or outside plant personnel (OSP).
2. ECC will develop the initial “drive maps” for use by the field crews in performing either field inventory or provider spot checks.

F. Outside Plant (Field) Study. Outside plant personnel / field crews will manually collect network inventory from field surveys based on the drive maps.

1. As previously noted, we develop maps in advance of dispatch to support full inventory work in each county. This step ensures these maps are complete and ready for field crews
2. Schedule and deploy field crews to spot check on a county-by-county basis.

G. Field Study Detail. Our telecommunications infrastructure inventory process will consist of compiling data from fieldwork and secondary research to create a database, by county, detailing current infrastructure (all information will be gathered to the extent possible):

1. Fiber optic cabling
2. Coaxial cabling
3. Central office and remote terminal locations
4. Wire-line boundaries
5. Other telecommunications infrastructure observed in the field that may be relevant or pertinent, in the sole discretion of ECC, to the drive-based study research.

H. Local Providers Services. ECC will research local providers in each county to collect information on existing broadband services. ECC will document and assess the availability and cost of broadband services within each of the Counties.

Appendix D. Section 7 Certifications and Disclosures

7.1.1 New Jersey Standard Terms & Conditions



State of New Jersey Standard Terms and Conditions

(Revised December 13, 2021)

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY - DIVISION OF PURCHASE AND PROPERTY
33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230

1.0 STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT

The following terms and conditions shall apply to all contracts or purchase agreements made with the State of New Jersey. The State's terms and conditions shall prevail over any conflicts set forth in a Contractor's Quote or Proposal.

2.0 STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS

The statutes, laws, regulations or codes cited herein are available for review at the [New Jersey State Library](http://www.state.nj.us/treasury/revenue/busregcert.shtml), 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 Contractor and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the Contractor who shall provide it to the State.

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

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

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

2.2 OWNERSHIP DISCLOSURE

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

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

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

2.3 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

Pursuant to N.J.S.A. 52:32-58, the Contractor must utilize this Disclosure of Investment Activities in Iran form to certify that neither the Contractor, nor one (1) of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Contractor, nor one (1) of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Contractor is unable to so certify, the Contractor shall provide a detailed and precise description of such activities as directed on the form. A Contractor's failure to submit the completed and signed form will preclude the award of a Contract to said Contractor.

2.4 ANTI-DISCRIMINATION

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

Contracts (Exhibit B and Exhibit C - Executive Order 151 Requirements) as appropriate.

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

2.5 AFFIRMATIVE ACTION

In accordance with N.J.A.C. 17:27-1.1, prior to award, the Contractor and subcontractor must submit a copy of a New Jersey Certificate of Employee Information Report, or a copy of Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program. Contractors or subcontractors not in possession of either a New Jersey Certificate of Employee Information Report or a Federal Letter of Approval must complete the Affirmative Action Employee Information Report (AA-302) located on the web at https://www.state.nj.us/treasury/contract_compliance/.

2.6 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.

2.7 MACBRIDE PRINCIPLES

The Contractor 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.

2.8 PAY TO PLAY PROHIBITIONS

Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L. 2005, c. 51), The State shall not enter into a Contract to procure services or any material, supplies or equipment, or to acquire, sell, or lease any land or building from any Business Entity, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions, to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor, to any State, county, municipal political party committee, or to any legislative leadership committee during certain specified time periods. It shall be a breach of the terms of the contract for the business entity to:

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

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

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

2.9 POLITICAL CONTRIBUTION DISCLOSURE

The contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, §3 as amended) if in a calendar year the contractor

receives one (1) or more contracts valued at \$50,000.00 or more. It is the contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888)313-3532 or on the internet at <http://www.elec.state.nj.us/>.

2.10 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 New Jersey Office of the Attorney General and the Executive Commission on Ethical Standards, now known as the State Ethics Commission;
- 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/she is employed or associated or in which he/she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, now known as the State Ethics Commission, 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/her 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/her official position to secure unwarranted privileges or advantages for the vendor or any other person; and
- 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, now known as the State Ethics Commission may promulgate under paragraph 3c of Executive Order No. 189.

2.11 NEW JERSEY BUSINESS ETHICS GUIDE CERTIFICATION

The Treasurer has established a business ethics guide to be followed by a Contractor in dealings with the State. The guide can be found at: <https://www.nj.gov/treasury/purchase/pdf/BusinessEthicsGuide.pdf>.

2.12 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE

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

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

2.13 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.

2.14 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.

2.15 WARRANTY OF NO SOLICITATION ON COMMISSION OR CONTINGENT FEE BASIS

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

2.16 DISCLOSURE OF INVESTIGATIONS AND OTHER ACTIONS

The Contractor should submit the Disclosure of Investigations and Other Actions Form which provides a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five (5) years, including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. If a Contractor does not submit the form with the Quote, the Contractor must comply within seven (7) business days of the State's request or the State may deem the Quote non-responsive.

3.0 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 New Jersey Uniform Construction Code and the latest National Electrical Code 70®, B.O.C.A. Basic Building code, Occupational Safety and Health Administration and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.

3.2 PREVAILING WAGE ACT

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

3.3 PUBLIC WORKS CONTRACTOR REGISTRATION ACT

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

3.4 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS

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

- A. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- B. No contractor, subcontractor, nor any person on his/her behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
- C. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and
- D. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

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

- A. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion,

or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;

- B. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
- C. The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment, N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows:
 - 1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2;
 - 2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;
 - 3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions; and
 - 4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

3.5 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.

3.6 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.

3.7 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.

3.8 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, whenever available, and the contractor shall be required to so certify.

3.9 DOMESTIC MATERIALS

Pursuant to N.J.S.A. 52:33-2 et seq., if the contract is for the construction, alteration or repair of any public work, the contractor and all subcontractors shall use only domestic materials in the performance of the work unless otherwise noted in the specifications.

3.10 DIANE B. ALLEN EQUAL PAY ACT

Pursuant to N.J.S.A. 34:11-56.14 and N.J.A.C. 12:10-1.1 et seq., a contractor performing "qualifying services" or "public work" to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. For more information and report templates see <https://nj.gov/labor/equalpay/equalpay.html>.

3.11 EMPLOYEE MISCLASSIFICATION

In accordance with [Governor Murphy's Executive Order #25](#) and the [Task Force's July 2019 Report](#), employers are required to properly classify their employees. Workers are presumed to be employees and not independent contractors, unless the employer can demonstrate all three factors of the "ABC Test" below:

- A. Such individual has been and will continue to be free from control or direction of the performance of such service, but under his or her contract of service and in fact; and
- B. Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all places of business of the enterprise for which such service is performed; and
- C. Such individual is customarily engaged in an independently established trade, occupation, profession or business.

This test has been adopted by New Jersey under its Wage & Hour, Wage Payment and Unemployment Insurance Laws to determine whether a worker is properly classified. Under N.J.S.A. 34:1A-1.17-1.19, the Department of Labor and Workforce Development has the authority to investigate potential violations of these laws and issue penalties and stop work order to employers found to be in violation of the laws.

3.12 EXECUTIVE ORDER NO. 271 (MURPHY)

Pursuant to [Governor Murphy's Executive Order No. 271](#) (EO 271) which was signed and went into effect on October 20, 2021, a covered contractor, must certify that it has a policy in place:

- (1) that requires all covered workers to provide adequate proof, in accordance with EO 271, to the covered contractor that the covered worker has been fully vaccinated; or
- (2) that requires that unvaccinated covered workers submit to COVID-19 screening testing at minimum one to two times weekly until such time as the covered worker is fully vaccinated; and
- (3) that the covered contractor has a policy for tracking COVID-19 screening test results as required by EO 271 and must report the results to local public health departments.

The requirements of EO 271 apply to all covered contractors and subcontractors, at any tier, providing services, construction, demolition, remediation, removal of hazardous substances, alteration, custom fabrication, repair work, or maintenance work, or a leasehold interest in real property through which covered workers have access to State property.

These requirements shall automatically expire when EO 271 is rescinded.

4.0 INDEMNIFICATION AND INSURANCE

4.1 INDEMNIFICATION

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

- A. Indemnification for Third Party Claims - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract, including liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract;
- B. The contractor's indemnification and liability under subsection (A) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions; and
- C. In the event of a patent and copyright claim or suit, the contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

4.2 INSURANCE

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

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

- A. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New

- Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage;
- B. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1,000,000 per occurrence as a combined single limit. The State must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property;
 - C. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:
 1. \$1,000,000 BODILY INJURY, EACH OCCURRENCE;
 2. \$1,000,000 DISEASE EACH EMPLOYEE; and
 3. \$1,000,000 DISEASE AGGREGATE LIMIT.

This \$1,000,000 amount may be raised when deemed necessary by the Director;

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 be amended for certain commodities when deemed in the best interests of the State by the Director.

5.0 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 RESERVED

5.3 CONTRACT TERM AND EXTENSION OPTION

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

5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK

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

- A. If the contractor does not agree with the Director's proposed adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price; and
- B. If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

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

5.5 CHANGE IN LAW

If, after award, a change in applicable law or regulation occurs which affects the Contract, the parties may amend the Contract, including pricing, in order to provide equitable relief for the party disadvantaged by the change in law. The parties shall negotiate in good faith, however if agreement is not possible after reasonable efforts, the Director shall make a prompt decision as to an equitable adjustment, taking all relevant information into account, and shall notify the Contractor of the final adjusted contract price.

5.6 SUSPENSION OF WORK

The State may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director shall make an equitable adjustment, if any is

required, to the contract price. The contractor shall provide whatever information that Director may require related to the equitable adjustment.

5.7 TERMINATION OF CONTRACT

- A. For Convenience:
Notwithstanding any provision or language in this contract to the contrary, the Director may terminate this contract at any time, in whole or in part, for the convenience of the State, upon no less than 30 days written notice to the contractor;
- B. For Cause:
 - 1. Where a contractor fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond; and
 - 2. Where in the reasonable opinion of the Director, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond.
- C. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond; and
- D. In the event of termination under this section, the contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

5.8 SUBCONTRACTING

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/her responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws. Nothing contained in any of the contract documents, shall be construed as creating any contractual relationship between any subcontractor and the State.

5.9 RESERVED

5.10 MERGERS, ACQUISITIONS AND ASSIGNMENTS

If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than 30 days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within 30 days of the request. Failure to do so may result in termination of the contract for cause.

If, at any time during the term of the contract, the contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

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

5.11 PERFORMANCE GUARANTEE OF CONTRACTOR

The contractor hereby certifies that:

- A. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice;
- B. All equipment supplied to the State and operated by electrical current is UL listed where applicable;
- C. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the State. The contractor shall render prompt service without charge, regardless of geographic location;
- D. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters;
- E. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice;
- F. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract; and
- G. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

required, to the contract price. The contractor shall provide whatever information that Director may require related to the equitable adjustment.

5.7 TERMINATION OF CONTRACT

- A. For Convenience:
Notwithstanding any provision or language in this contract to the contrary, the Director may terminate this contract at any time, in whole or in part, for the convenience of the State, upon no less than 30 days written notice to the contractor;
- B. For Cause:
 - 1. Where a contractor fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond; and
 - 2. Where in the reasonable opinion of the Director, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond.
- C. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond; and
- D. In the event of termination under this section, the contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

5.8 SUBCONTRACTING

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/her responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws. Nothing contained in any of the contract documents, shall be construed as creating any contractual relationship between any subcontractor and the State.

5.9 RESERVED

5.10 MERGERS, ACQUISITIONS AND ASSIGNMENTS

If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than 30 days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within 30 days of the request. Failure to do so may result in termination of the contract for cause.

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- B. All equipment supplied to the State and operated by electrical current is UL listed where applicable;
- C. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the State. The contractor shall render prompt service without charge, regardless of geographic location;
- D. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters;
- E. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice;
- F. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract; and
- G. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

5.12 DELIVERY REQUIREMENTS

- A. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract;
- B. The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract and in accordance with good commercial practice;
- C. Items delivered must be strictly in accordance with the contract; and
- D. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

5.13 APPLICABLE LAW AND JURISDICTION

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

5.14 CONTRACT AMENDMENT

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

5.15 MAINTENANCE OF RECORDS

Pursuant to N.J.A.C. 17:44-2.2, the contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five (5) years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)

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

In connection with this assignment, the following are the express obligations of the contractor:

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

5.17 NEWS RELEASES

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

5.18 ADVERTISING

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

5.19 ORGAN DONATION

As required by N.J.S.A. 52:32-33.1, the State encourages the contractor to disseminate information relative to organ donation and to notify its employees, through information and materials or through an organ and tissue awareness program, of organ donation options. The information provided to employees should be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. 1320b-8 to serve in this State.

5.20 LICENSES AND PERMITS

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

5.21 CLAIMS AND REMEDIES

- A. All claims asserted against the State by the Contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.
- B. Nothing in this Contract shall be construed to be a waiver by the State of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in a writing executed by the Director.
- C. In the event that the Contractor fails to comply with any material Contract requirements, the Director may take steps to terminate this Contract in accordance with the SSTC, authorize the delivery of Contract items by any available means, with the difference between the price paid and the defaulting Contractor's price either being deducted from any monies due the defaulting Contractor or being an obligation owed the State by the defaulting Contractor, as provided for in the State administrative code, or take any other action or seek any other remedies available at law or in equity.

5.22 ACCESSIBILITY COMPLIANCE

The Contractor acknowledges that the State may be required to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. The Contractor agrees that any information that it provides to the State in the form of a Voluntary Product Accessibility Template (VPAT) about the accessibility of the Software is accurate to a commercially reasonable standard and the Contractor agrees to provide the State with technical information available to support such VPAT documentation in the event that the State relied on any of Contractor's VPAT information to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. In addition, Contractor shall defend any claims against the State that the Software does not meet the accessibility standards set forth in the VPAT provided by Provider in order to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794 and will indemnify the State with regard to any claim made against the State with regard to any judgment or settlement resulting from those claims to the extent the Provider's Software provided under this Contract was not accessible in the same manner as or to the degree set forth in the Contractor's statements or information about accessibility as set forth in the then-current version of an applicable VPAT.

5.23 CONFIDENTIALITY

- A. The obligations of the State under this provision are subject to the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq., the New Jersey common law right to know, and any other lawful document request or subpoena;
- B. By virtue of this Contract, the parties may have access to information that is confidential to one another. The parties agree to disclose to each other only information that is required for the performance of their obligations under this Contract. Contractor's Confidential Information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure Vendor Intellectual Property ("Contractor Confidential Information"). Notwithstanding the previous sentence, the terms and pricing of this Contract are subject to disclosure under OPRA, the common law right to know, and any other lawful document request or subpoena;
- C. The State's Confidential Information shall consist of all information or data contained in documents supplied by the State, any information or data gathered by the Contractor in fulfillment of the Contract and any analysis thereof (whether in fulfillment of the Contract or not);
- D. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party, except that if the information is personally identifying to a person or entity regardless of whether it has become part of the public domain through other means, the other party must maintain full efforts under the Contract to keep it confidential; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party;
- E. The State agrees to hold Contractor's Confidential Information in confidence, using at least the same degree of care used to protect its own Confidential Information;
- F. In the event that the State receives a request for Contractor Confidential Information related to this Contract pursuant to a court order, subpoena, or other operation of law, the State agrees, if permitted by law, to provide Contractor with as much notice, in writing, as is reasonably practicable and the State's intended response to such order of law. Contractor shall take any action it deems appropriate to protect its documents and/or information;
- G. In addition, in the event Contractor receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, Contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Contractor's intended response to such order of law. The State shall take any action it deems appropriate to protect its documents and/or information; and
- H. Notwithstanding the requirements of nondisclosure described in this Section, either party may release the other party's Confidential Information:
 - (i) if directed to do so by a court or arbitrator of competent jurisdiction; or
 - (ii) pursuant to a lawfully issued subpoena or other lawful document request:
 - (a) in the case of the State, if the State determines the documents or information are subject to disclosure and Contractor does not exercise its rights as described in Section 5.23(F), or if Contractor is unsuccessful in defending its rights as described in Section 5.23(F); or
 - (b) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the State does not exercise its rights described in Section 5.23(G), or if the State is unsuccessful in defending its rights as described in Section 5.23(G).

6.0 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.

In an exceptional situation the State may consider a price adjustment. Requests for price adjustments must include justification and documentation.

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 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 Bill of Lading, and/or other documentation to confirm shipment and receipt of contracted goods must be received by the using agency prior to payment. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work and must be in strict accordance with the firm, fixed prices submitted for each task or subtask. When applicable, invoices should reference the appropriate task or subtask or price line number from the contractor's 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; and
- D. The contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Office of Diversity and Inclusion.
- E. The Contractor shall have sole responsibility for all payments due any Subcontractor

6.4 OPTIONAL PAYMENT METHOD: P-CARD

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

6.5 NEW JERSEY PROMPT PAYMENT ACT

The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within 60 days of the agency's receipt of a properly executed State Payment Voucher or within 60 days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds \$5.00 per properly executed invoice. Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

6.6 AVAILABILITY OF FUNDS

The State's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenue.

7.0 TERMS RELATING TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS

The provisions set forth in this Section of the Standard Terms and Conditions apply to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

7.1 CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.

Pursuant to 2 CFR 200.321, the State must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Accordingly, if subawards are to be made the Contractor shall:

- (1) Include qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and,
- (5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

7.2 DOMESTIC PREFERENCE FOR PROCUREMENTS

Pursuant to 2 CFR 200.322, where appropriate, the State has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). If subawards are to be made the Contractor shall include a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

7.3 PROCUREMENT OF RECOVERED MATERIALS

Where applicable, in the performance of contract, pursuant to 2 CFR 200.323, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

To the extent that the scope of work or specifications in the contract requires the contractor to provide recovered materials the scope of work or specifications are modified to require that as follows.

- i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 1. Competitively within a timeframe providing for compliance with the contract performance schedule;
 2. Meeting contract performance requirements; or
 3. At a reasonable price.
- ii. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

7.4 EQUAL EMPLOYMENT OPPORTUNITY

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." See, 2 CFR Part 200, Appendix II, para. C.

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous

places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

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

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

7.5 DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED

When required by Federal program legislation, all prime construction contracts in excess of \$ 2,000 shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

Additionally, contractors are required to pay wages not less than once a week.

7.6 COPELAND ANTI-KICK-BACK ACT

Where applicable, the Contractor must comply with Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

- a. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the OGS centralized contract.
- b. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the clauses above may be grounds for termination of the OGS centralized contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

7.7 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, 40 U.S.C. 3701-3708

Where applicable, all contracts awarded by the non-Federal entity in excess of \$ 100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The unauthorized user shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

7.8 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

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

7.9 CLEAN AIR ACT, 42 U.S.C. 7401-7671Q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED

Where applicable, Contract and subgrants of amounts in excess of \$150,000, must comply with the following:

Clean Air Act

- 7.9.1.1 The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- 7.9.1.2 The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 7.9.1.3 The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

2. The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

7.10 DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the State or authorized user. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State or authorized user, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

7.11 BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. 1352

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

7.12 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

- (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 - (1) Procure or obtain;
 - (2) Extend or renew a contract to procure or obtain; or
 - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in *Public Law 115-232*, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

EXHIBIT A - GOODS, GENERAL SERVICE AND PROFESSIONAL SERVICES CONTRACTS

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

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

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

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

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

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

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

The contractor or subcontractor agrees to 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.

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

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

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

- Letter of Federal Affirmative Action Plan Approval;
- Certificate of Employee Information Report; or
- Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at http://www.state.nj.us/treasury/contract_compliance).

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

EXHIBIT B - CONSTRUCTION CONTRACTS

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)

N.J.S.A. 10:5-39 et seq. (P.L. 1983, c. 197)

N.J.A.C. 17:27-1.1 et seq.

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

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

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

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

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

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

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

- (A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.
- (B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:
 - (1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

EXHIBIT C - EXECUTIVE ORDER NO. 151 REQUIREMENTS

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

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

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

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

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

State of New Jersey Standard Terms and Conditions
(Revised December 13, 2021)

I HEREBY ACCEPT THE TERMS AND CONDITIONS OF THIS CONTRACT



Signature

03/03/2022

Date

Joseph Starks - President

Print Name and Title

ECC Technologies, Inc.

Print Name of Contractor

7.1.2 Waiver Supplement to Standard Terms and Conditions



WAIVERED CONTRACTS SUPPLEMENT TO THE STATE OF NEW JERSEY STANDARD TERMS AND CONDITIONS (Revised January 11, 2022)

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY - DIVISION OF PURCHASE AND PROPERTY
33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230

This Supplement to the State of New Jersey Standard Terms and Conditions ("Supplement") shall apply to all contracts or purchase agreements made with the State of New Jersey ("State") under N.J.S.A. 52:34-9 or -10 ("Waivered Contracts"). The terms in this Supplement are in addition to, or modify the State of New Jersey Standard Terms and Conditions (SSTCs) as applicable and noted below.

I. ADDITIONS TO THE STANDARD TERMS AND CONDITIONS FOR ALL WAIVERED CONTRACTS

A. ORDER OF PRECEDENCE

The "Contract" shall consist of the following documents: (1) this Supplement; (2) the State of New Jersey Standard Terms and Conditions; (3) the agency's scope of work; and, (4) the Contractor's proposal including any attachments or documents incorporated by reference. In the event of a conflict in the terms and conditions among the documents comprising this Contract, the order of precedence, for purposes of interpretation thereof, listed from highest ranking to lowest ranking as noted above.

B. NO ARBITRATION

Notwithstanding anything to the contrary in Contractor's Standard Form Agreement ("SFA") or Scope of Work ("SOW"), the State does not agree to binding arbitration.

C. NO AUTO-RENEWAL

Notwithstanding anything to the contrary in Contractor's SFA or SOW, the State does not agree to auto-renewal of any services, standard software maintenance, technical support or service fees.

II. ADDITIONS TO THE STANDARD TERMS AND CONDITIONS FOR WAIVERED CONTRACTS, AS APPLICABLE

A. STATE'S RIGHT TO INSPECT CONTRACTOR'S FACILITIES

The State reserves the right to inspect the contractor's establishment before making an award, for the purposes of ascertaining whether the contractor has the necessary facilities for performing the Contract. The State may also consult with clients of the contractor to assist the State in making a contract award that is most advantageous to the State.

B. STATE'S RIGHT TO REQUEST FURTHER INFORMATION

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

C. DELIVERY TIME AND COSTS

Unless otherwise noted elsewhere in the scope of work, all delivery times are 30 calendar days after receipt of order (ARO) and prices for items in proposals shall be submitted Freight On Board (F.O.B.) Destination (30 calendar days ARO/F.O.B.). The contractor shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to the State's Using Agency or designated purchaser. Thirty calendar days ARO/F.O.B. does not cover "spotting" but does include delivery on the receiving platform of the Using Agency at any destination in the State of New Jersey unless otherwise specified. No additional charges will be allowed for any additional transportation costs resulting from partial shipments made at the contractor's convenience when a single shipment is ordered. The weights and measures of the State's Using Agency receiving the shipment shall govern.

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

C.O.D. terms will not be accepted.

E. CASH DISCOUNTS

The contractor is encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts. Should the contractor choose to offer cash discounts the following shall apply:

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

F. PERFORMANCE SECURITY

If performance security is required, such security must be submitted with the bid in the amount listed in the scope of work. N.J.A.C. 17:12-2.5. Acceptable forms of performance security are as follows:

1. A properly executed individual or annual performance bond issued by an insurance or security company authorized to do business in the State of New Jersey,

2. A certified or cashier's check drawn to the order of "Treasurer, State of New Jersey," or
3. An irrevocable letter of credit issued by a federally insured financial institution and naming "Treasurer, State of New Jersey," as beneficiary.

The Performance Security must be submitted to the State within 30 days of the effective date of the Contract award and cover the period of the Contract and any extensions thereof. Failure to submit performance security may result in cancellation of the Contract for cause and nonpayment for work performed.

Although the performance bond is required for the full term of the Contract, the Director recognizes that the industry practice of sureties is to issue a one (1) year performance bond for goods and services contracts. Thus, the contractor is permitted to submit a one (1) year performance bond for the amount required under the Contract and, on each succeeding anniversary date of the Contract, provide a continuation or renewal certificate to evidence that the bond is in effect for the next year of the Contract. This procedure will remain in place for each year of the Contract thereafter until the termination of the Contract. Failure to provide such proof on the anniversary date of the Contract shall result in suspension of the Contract, and possibly, termination of the Contract.

For performance bonds based on a percentage of the total estimated Contract price. On each anniversary of the effective date of the Contract, the amount of the required performance bond, unless otherwise noted, is calculated by applying the established RFQ performance bond percentage to the outstanding balance of the estimated amount of the Contract price to be paid to the contractor.

In the event that the Contract price is increased by a Contract Amendment, the contractor may be required to provide, within 30 calendar days of the effective date of the Contract Amendment, performance bond coverage for the increase in Contract price. The required increase in the performance bond amount is calculated by applying the established bond percentage set forth above to the increase in Contract price. Failure to provide such proof to the Director of this required coverage may result in the suspension of payment to the contractor until such time the contractor complies with this requirement.

G. RETAINAGE

If retainage is required on the Contract as stated in the scope of work, the state and/or agency will retain the stated percentage or retainage from each invoice. Payment of retainage will be authorized after satisfactory completion and submission of all services, deliverables or work products by the contractor and acceptance by the agency of all services, deliverables or work products required by the Contract.

For ongoing contracts, the agency will retain the stated percentage of each invoice submitted. At the end of the three (3) month period after payment of each invoice, the agency will review the contractor's performance and if performance has been satisfactory, the agency will release the retainage for the preceding three (3) month period. Following the expiration of the Contract, retained fees will be released to the contractor after certification by the agency's project manager, if any, that all services have been satisfactorily performed.

H. AUDIT NOTICE AND DISPUTE RESOLUTION

To the extent the contractor's proposal or Standard Form Agreement permits the contractor to conduct periodic audits of the State's usage of the Contractor Intellectual Property provided thereunder, such provision is amended to include the following audit notice and dispute resolution process:

1. **AUDIT NOTICE** -- Notwithstanding anything to the contrary in the contractor's proposal or Standard Form Agreement, in the event that the contractor seeks to exercise a right in its proposal or Standard Form Agreement to audit the State's use of Contractor Intellectual Property, the contractor shall deliver simultaneous written notice, no less than thirty days in advance of the audit start date (unless the contractor's notice provides a longer notice period), to the: Agency requesting the waiver contract.
2. The notice shall reference the specific audit provision(s) in the contractor's proposal or Standard Form Agreement being exercised and include copies of same, specify the means by which the contractor will conduct the audit, and shall require the audit to be conducted in accordance with generally accepted standards in the field of such audits.
3. **AUDIT DISPUTE RESOLUTION** -- If the State, in good faith, provides the contractor with written notice of an alleged error in the amount of underpaid fees due the contractor as a result of an audit (the "dispute"), then the parties will endeavor to resolve the dispute in accordance with this paragraph. Each party will appoint a Vice President, Assistant Director, or the equivalent (hereinafter referred to as "Representative") to discuss the dispute and no formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., may begin until either such Representative concludes, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely. In addition, the parties shall refrain from exercising any termination right related to the dispute being considered under this paragraph and shall continue to perform their respective obligations under the Contract while they endeavor to resolve the dispute under this paragraph.
4. **STATE NOT LIABLE FOR AUDIT COSTS** -- Notwithstanding anything to the contrary in the contractor's proposal or Standard Form Agreement, the State will not reimburse the contractor for any costs related to an audit.
5. **NO AUDIT RIGHT CREATED** -- In the event that the contractor's proposal or Standard Form Agreement does not permit audits of the State's usage of Contractor Intellectual Property, Section 5.19 of this Supplement shall not be interpreted to provide such an audit right.

III. ADDITIONS TO THE STANDARD TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES CONTRACTS

A. **INSURANCE FOR PROFESSIONAL SERVICES CONTRACTS**

Section 4.2 Insurance of the SSTC is supplemented with the following:

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 of the professional obligations performed pursuant to the requirements of this Contract. The insurance shall be in the amount of not less than \$1,000,000 and in such policy forms as shall be approved by the State. If the Contractor has claims-made coverage and subsequently changes carriers during the term of this Contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance, and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

B. **LIMITATION OF LIABILITY FOR PROFESSIONAL SERVICES CONTRACTS**

Section 4.0 Indemnification and Insurance of the SSTC is supplemented with the following:

4.3 LIMITATION OF LIABILITY

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

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

The Contractor's indemnification obligation is not limited by but is in addition to the insurance obligations.

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

IV. ADDITIONS TO THE STANDARD TERMS AND CONDITIONS FOR ALL INFORMATION TECHNOLOGY CONTRACTS

A. **DEFINITIONS**

The following definitions shall apply to information technology contracts:

1. The term "Acceptance" means the written confirmation by an Agency that the contractor has completed a Deliverable according to the specified requirements.
2. As defined by N.J.S.A. 56:8-161, the term "Breach of Security" means unauthorized access to electronic files, media, or data containing Personal Data that compromises the security, confidentiality, or integrity of Personal Data when access to the Personal Data has not been secured by encryption or by any other method or technology that renders the Personal Data unreadable or unusable. Good faith acquisition of Personal Data by an employee or agent of the Provider for a legitimate business purpose is not a Breach of Security, provided that the Personal Data is not used for a purposes unrelated to the business or subject to further unauthorized disclosure.
3. The term "Contractor Intellectual Property" means any intellectual property that is owned by the contractor and contained in or necessary for the use of the Deliverables or which the contractor makes available for the State to use as part of the work under the Contract. Contractor Intellectual Property includes COTS or Customized Software owned by the contractor, the contractor's technical documentation, and derivative works and compilations of any Contractor Intellectual Property.
4. The term Commercial Off the Shelf Software ("COTS") means Software provided by the contractor that is intended for general use.
5. The term "Custom Software" means Software and Work Product that is developed by the contractor at the request of the Agency to meet the specific requirements of the Agency and is intended for its use.
6. The term "Customized Software" means COTS that is adapted by the contractor to meet specific requirements of the Agency that differ from the standard requirements of the base product.
7. The term "Deliverable" means the goods, products, Services and Work Product that the contractor is required to deliver to the State under the Contract;
8. The term "End User" means the user of the Provider's solution.
9. The terms "goods" and "products" shall be deemed to include, without limitation, Software and Hardware.
10. The term "Hardware" shall be deemed to include computer equipment and any Software provided with the Hardware that is necessary for the Hardware to operate.
11. The term "Information Technology Contract" shall mean, notwithstanding any definition in New Jersey Statutes, a Contract for one or more of the following: Hardware, Software, Services, telecommunication goods and services, and all related goods.
12. The term "Mobile Device" means any device used by Provider that can move or transmit data, including but not limited to laptops, hard drives, and flash drives.
13. The term "Non-Public Data" means data, other than Personal Data, that is not subject to distribution to the public as public information. Non-Public Data is data that is identified by the State as non-public information or otherwise deemed to be sensitive and confidential by

the State because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.

14. The term "Personal Data" means:
 - a. "Personal Information" as defined in N.J.S.A. 56:8-161, means an individual's first name or first initial and last name linked with any one or more of the following data elements: (1) Social Security number, (2) driver's license number or State identification card number or (3) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account. Dissociated data that, if linked would constitute Personal Information is Personal Information if the means to link the dissociated were accessed in connection with access to the dissociated data. Personal Information shall not include publicly available information that is lawfully made available to the general public from federal, state or local government records, or widely distributed media.
 - b. data, either alone or in combination with other data, that includes information relating to an individual that identifies the person or entity by name, identifying number, mark or description that can be readily associated with a particular individual and which is not a public record, including but not limited to, Personally Identifiable Information (PII); government-issued identification numbers (e.g., Social Security, driver's license, passport); Protected Health Information (PHI) as that term is defined in the regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191 (1996) and found in 45 CFR Parts 160 to 164 and defined below; and Education Records, as that term is defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.
15. The term "Personally Identifiable Information" or "PII," as defined by the U.S. Department of Commerce, National Institute of Standards and Technology, means any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.
16. The term "Protected Health Information" or "PHI," has the same meaning as the term is defined in the regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191 (1996) and found in 45 CFR Parts 160 to 164 means Individually Identifiable Health Information (as defined below) transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer. The term "Individually Identifiable Health Information" has the same meaning as the term is defined in the regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191 (1996) and found in 45 CFR Parts 160 to 164 and means information that is a subset of Protected Health Information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
17. The term "Recovery Time Objective" or "RTO," means the maximum tolerable length of time that the Provider's solution may be unavailable after a failure or disaster occurs.
18. The term "Security Incident" means the potential access by non-authorized person(s) to Personal Data or Non-Public Data that the Provider believes could reasonably result in the use, disclosure, or access or theft of State's unencrypted Personal Data or Non-Public Data within the possession or control of the Provider. A Security Incident may or may not turn into a Breach of Security.
19. The term "Service Level Agreement" or "SLA," means the document that is part of the Provider's SFA that typically includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered and addressed, and (6) any remedies for performance failures.
20. The terms "Services" shall be deemed to include, without limitation (i) Information Technology ("IT") professional services; (ii) Software and Hardware-related services, including without limitation, installation, configuration, and training and (iii) Software and Hardware maintenance and support and/or Software and Hardware technical support services.
21. The term "Software" means, without limitation, computer programs, source codes, routines, or subroutines supplied by the contractor, including operating software, programming aids, application programs, application programming interfaces and software products, and includes COTS, Customized Software and Custom Software, unless the context indicates otherwise.
22. The term "State Data" means all data and metadata created or in any way originating with the State, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with the State, whether such data or output is stored on the State's hardware, the Provider's hardware or exists in any system owned, maintained or otherwise controlled by the State or by the Provider. State Data includes Personal Data and Non-Public Data.
23. The term "State Intellectual Property" means any intellectual property that is owned by the State. State Intellectual Property includes any derivative works and compilations of any State Intellectual Property.
24. The term "Third Party Intellectual Property" means any intellectual property owned by parties other than the State or the contractor and contained in or necessary for the use of the Deliverables. Third Party Intellectual Property includes COTS owned by Third Parties, and derivative works and compilations of any Third Party Intellectual Property.
25. The term "Work Product" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, Software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registrable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by the

contractor or the contractor's subcontractors or a third party engaged by the contractor or its subcontractor pursuant to the Contract. Notwithstanding anything to the contrary in the preceding sentence, Work Product does not include State Intellectual Property, Contractor Intellectual Property or Third Party Intellectual Property.

B. INDEMNIFICATION FOR STANDARD TECHNOLOGY CONTRACTS

Section 4.1 Indemnification of the SSTC is deleted in its entirety and replaced with the following:

4.1 INDEMNIFICATION

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

- A. The Contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State and its officers, agents, servants and employees, from and against any and all third party claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith:
 1. For or on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or products supplied under this Contract or the order; and
 2. For or on account of the use of any patent, copyright, trademark, trade secret or other proprietary right of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance ("Intellectual Property Rights") furnished or used in the performance of this Contract; and
 3. The Contractor's indemnification and liability under subsection (A) is not limited by, but is in addition to the insurance obligations.
- B. In the event of a claim or suit involving third-party Intellectual Property Rights, the Contractor, at its option, may:
 1. procure for the State the legal right to continue the use of the product;
 2. replace or modify the product to provide a non-infringing product that is the functional equivalent; or
 3. in the event that the Contractor cannot do (1) or (2) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.
- C. The State will:
 1. promptly notify Contractor in writing of the claim or suit;
 2. give Contractor shall have control of the defense and settlement of any claim that is subject to Section 4.1(a); provided, however, that the State must approve any settlement of the alleged claim, which approval shall not be unreasonably withheld. The State may observe the proceedings relating to the alleged claim and confer with the Contractor at its expense.
- D. Notwithstanding the foregoing, Contractor has no obligation or liability for any claim or suit concerning third-party Intellectual Property Rights arising from:
 1. the State's unauthorized combination, operation, or use of a product supplied under this Contract with any product, device, or Software not supplied by Contractor;
 2. the State's unauthorized alteration or modification of any product supplied under this Contract;
 3. the Contractor's compliance with the State's designs, specifications, requests, or instructions, provided that if the State provides Contractor with such designs, specifications, requests, or instructions, Contractor reviews same and advises that such designs, specifications, requests or instructions present potential issues of patent or copyright infringement and the State nonetheless directs the Contractor to proceed with one (1) or more designs, specifications, requests or instructions that present potential issues of patent or copyright infringement; or
 4. the State's failure to promptly implement a required update or modification to the product provided by Contractor after the Contractor has given written notice to the State of a need for such an update or modification.
- E. Contractor will be relieved of its responsibilities under Subsection 4.1(a)(i) and (ii) for any claims made by an unaffiliated third party that arise solely from the actions or omissions of the State, its officers, employees or agents.
- F. Subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.) and the appropriation and availability of funds, the State will be responsible for any cost or damage arising out of actions or inactions of the State, its employees or agents under Subsection 4.1(a)(i) and (ii) which results in an unaffiliated third party claim. This is Contractor's exclusive remedy for these claims;
- G. This section states the entire obligation of Contractor and its suppliers, and the exclusive remedy of the State, in respect of any infringement or alleged infringement of any Intellectual Property Rights. This indemnity obligation and remedy are given to the State solely for its benefit and in lieu of, and Contractor disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any product; and
- H. Furthermore, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of New Jersey or any Authorized Purchaser, nor purport to act as legal representative of the State of New Jersey or any Authorized Purchaser, without having provided notice to the Director of the Division of Law in the Department of Law and Public Safety and to the Director of the Division of Purchase and Property. The State of New Jersey may, at its election and expense, assume its own defense and settlement; and
- I. The State of New Jersey will not indemnify, defend, pay or reimburse for claims or take similar actions on behalf of the Contractor.

C. INSURANCE FOR STANDARD TECHNOLOGY CONTRACTS

Section 4.2 Insurance of the SSTC is supplemented with the following:

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 of the professional obligations performed pursuant to the requirements of this Contract. The insurance shall be in the amount of not less than \$1,000,000 and in such policy forms as shall be approved by the State. If the Contractor has claims-made coverage and subsequently changes carriers during the term of this Contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance, and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

D. LIMITATION OF LIABILITY FOR STANDARD TECHNOLOGY CONTRACTS

Section 4.0 Indemnification and Insurance of the SSTC is supplemented with the following:

4.3 LIMITATION OF LIABILITY

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

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

The Contractor's indemnification obligation is not limited by but is in addition to the insurance obligations.

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

E. PERFORMANCE GUARANTEE OF THE CONTRACTOR

Section 5.11 Performance Guarantee of the Contractor of the SSTC is supplemented with the following:

1. COTS and Customized Software

- a. Unless the Contractor Standard Form Agreement provides greater coverage as determined by the State, in its sole discretion, the contractor warrants that COTS and Customized Software products licensed to the State shall operate in all material respects as described in the Solicitation and/or contractor technical documentation for ninety (90) days after Acceptance. The State shall notify the contractor of any COTS or Customized Software product deficiency within ninety (90) days after Acceptance. For a Contract requiring the delivery of COTS or Customized Software and Custom Software, a notice within one hundred eighty (180) days that describes a deficiency in functional terms without specifying whether the deficiency is with COTS, Customized Software or Custom Software shall be deemed a notice that triggers the warranty provisions in both Section 5.11(a) and 5.11(b) of this Supplement.
- b. Except for the portion of the contractor's COTS or Customized Software product that intentionally contains one or more of the following for the purpose of anti-virus protection, the contractor warrants that, at the time of delivery and installation of the COTS or Customized Software provided pursuant to the Contract, its product shall be free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the COTS or Customized Software, collect unlawful personally identifiable information on users, or prevent the COTS or Customized Software from performing as required under the Contract.
- c. In the event of any breach of this warranty, the contractor shall correct the product errors that caused the breach of warranty, or if the contractor cannot substantially correct such breach in a commercially reasonable manner, the State may end its usage and recover the fees paid to the contractor for the license and any unused, prepaid, technical support fees paid. Under no circumstances does this warranty provision limit the contractor's obligation in the event of a breach of confidentiality.
- d. The contractor does not warrant that COTS or Customized Software is error-free or that it will operate uninterrupted.

2. Custom Software

- a. Unless the Contractor Standard Form Agreement provides greater coverage, as determined by the State, in its sole discretion, the contractor warrants that Custom Software Deliverables shall operate in all material respects as described in the applicable specification documentation for one hundred and eighty (180) days after Acceptance. The State shall notify the contractor of any Custom Software deficiency within one hundred and eighty (180) days after Acceptance of the Custom Software Deliverable (the "Notice Period"). Where the contractor is providing multiple Custom Software Deliverables over the term of the Contract, the Notice Period shall begin to run after the Acceptance of the final Custom Software Deliverable under the Contract. At that time, the State may assert defect claims relating to any and all of the Custom Software Deliverables provided under the Contract; however, the State may also assert claims earlier, in its discretion, without waiving the Notice Period.
- b. For a Contract requiring the delivery of COTS or Customized Software and Custom Software, a notice within one hundred eighty (180) days that describes a deficiency in functional terms without specifying whether the deficiency is with COTS, Customized

Software or Custom Software shall be deemed a notice that triggers the warranty provisions in both Section 5.11(a) and 5.11(b) of this Supplement.

- c. The contractor warrants that, at the time of Acceptance of the Custom Software Deliverable provided pursuant to the Contract, its product shall be free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the Custom Software, collect unlawful personally identifiable information on users, or prevent the Custom Software from performing as required under the Contract. Under no circumstances does this warranty provision limit the contractor's obligation in the event of a breach of confidentiality.
- d. In the event of any breach of this warranty, the contractor shall correct the Custom Software errors that caused the breach of warranty, or if the contractor cannot substantially correct such breach in a commercially reasonable manner, the State may recover a portion of the fees paid to the contractor for the Custom Software with the uncorrected defect or in the event that the Custom Software is still deemed, by the State in its sole discretion, to be usable by the State even with the uncorrected defect, the State may recover a portion of the fees paid to the contractor for the Custom Software (up to the total amount of such charges for such Custom Software) to reflect any reduction in the value of the Custom Software Deliverable as a result of the uncorrected defect. Under no circumstances does this warranty provision limit the contractor's obligations in the event of a breach of confidentiality.
- e. The contractor does not warrant that Custom Software is error-free or that it will operate uninterrupted.
3. IT Services
 - a. Unless the Contractor Standard Form Agreement provides greater coverage, as determined by the State, in its sole discretion, the contractor warrants that all Services will be provided in a professional manner consistent with industry standards. The State shall notify the contractor of any Services warranty deficiencies within ninety (90) days from performance of the deficient Services.
 - b. In the event of any breach of this warranty, the contractor shall re-perform the deficient Services, or if the contractor cannot substantially correct a breach in a commercially reasonable manner, the State may end the relevant Services and recover the fees paid to the contractor for the deficient Services.
4. Hardware
 - a. Unless the Contractor Standard Form Agreement provides greater coverage, as determined by the State, in its sole discretion, the contractor warrants that the equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.
 - b. The contractor warrants that all equipment supplied to the State and operated by electrical current is UL listed where applicable.
 - c. The contractor warrants that all new machines are to be guaranteed as fully operational for one (1) year from time of Acceptance by the State. For the avoidance of doubt, Acceptance with respect to Hardware in this subsection (d) shall occur no later than sixty (60) days after delivery, as evidenced by a signed delivery receipt. The contractor shall render prompt service without charge, regardless of geographic location.
 - d. The contractor warrants that sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters.
 - e. The contractor warrants that trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice.
 - f. The contractor warrants that all Software included with the Hardware shall perform substantially in accordance with specifications, for one (1) year from the time of Acceptance. The contractor warrants that Software media will be free from material defects in materials and workmanship for a period of one (1) year from the date of Acceptance.
 - g. In the event of any breach of this warranty, the contractor shall promptly repair, replace or refund the purchase price of product rejected for failure to conform with the contractor's product specifications.
5. THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND THE CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

V. ADDITIONS TO THE STANDARD TERMS AND CONDITIONS FOR ALL INFORMATION TECHNOLOGY CONTRACTS WHICH INCLUDE SOFTWARE AS A SERVICE (SAAS)/CLOUD SOLUTION

A. **ADDITIONAL TERMS FOR A CONTRACTOR'S DATA PROTECTION OBLIGATIONS**

1. Data Ownership: The State will own all right, title and interest in its State Data that is related to the services provided by this contract. The Provider shall not use or access State user accounts or State Data, except (i) in the course of data center operations, (ii) in response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at the State's written request.

Provider shall not collect, access, or use State Data except as strictly necessary to provide its solution to the State. No information regarding the State's use of the solution may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall survive and extend beyond the term of this contract.

2. Data Protection: Protection of personal privacy and data shall be an integral part of the business activities of the Provider to ensure that there is no inappropriate or unauthorized use of State Data at any time. To this end, the Provider shall safeguard the confidentiality, integrity, and availability of State Data and comply with the following conditions:

- a. The Provider shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized good industry practice and not less stringent than the measures the Provider applies to its own Personal Data and Non-Public Data of similar kind.
 - b. All Personal Data shall be encrypted at rest and in transit with controlled access. Provider is responsible for encryption of the Personal Data. The level of protection and encryption for all Personal Data shall be identified and made a part of this contract.
 - c. Provider shall encrypt all Non-Public Data at rest and in transit. The level of protection and encryption for all Non-Public Data shall be identified and made a part of this contract.
 - d. Personal Data shall not be stored on Mobile Devices. Where Mobile Devices are required for Provider to accomplish the work, the Provider shall ensure the Mobile Device is hard drive encrypted consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all Personal Data.
 - e. At no time shall any data or processes, which either belongs to or are intended for the use of State or its officers, agents, or employees, be copied, disclosed, or retained by the Provider or any party related to the Provider for subsequent use in any capacity that does not include the State.
3. Data Location: Provider shall provide its services to State and its End Users solely from data centers in the U.S. Storage of State Data at rest shall be located solely in data centers in the U.S. Provider shall not allow its personnel or contractors to store State Data on Mobile Devices, including personal computers, except for devices that are used and kept within the physical structure of its U.S. data centers. Provider shall permit its personnel and contractors to access State Data remotely only as required to provide technical support or upon prior notice and approval. The Provider may provide technical user support on a seven-day by 24-hour basis, unless otherwise prohibited in this contract.
 4. Security Incident and Breach of Security Responsibilities.
 - a. Security Incident Reporting Requirements: Once Provider reasonably determines that a Security Incident occurred, the Provider shall report a Security Incident to the appropriate State identified contact within 24 hours by the agreed upon method as defined in the contract. Provider will provide the State regular updates and all available relevant information including a description of the incident and those measures taken by Provider in response to the Security Incident.
 - b. Breach of Security Reporting Requirements: If the Provider confirms or reasonably believes that there has been a Breach of Security, the Provider shall (1) immediately notify the appropriate State identified contact by the agreed upon method within 24 hours, unless a shorter time is required by applicable law, (2) take commercially reasonable measures to address and investigate the Breach of Security in a timely manner and (3) cooperate with the State as reasonably requested by the State and/or law enforcement to investigate and resolve the Breach of Security. Provider will provide the State regular updates and all available information to assist the State with notification to law enforcement and third parties as required by applicable law, including a description of the Breach of Security and those measures taken by Provider in response to the Breach of Security.
 - c. Incident Response: When commercially reasonable to do so, Provider may communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries (subject to preapproval by the State if Provider specifically identifies the State or State Data), and seeking external expertise as mutually agreed at the time, defined by law, or contained in the SLA. Discussing Security Incidents with the State should be handled on an urgent as needed basis, as part of Provider communication and mitigation processes as mutually agreed at the time, defined by law, or contained in the SLA.
 - d. Following a Security Incident or Breach of Security, Provider shall promptly implement necessary remedial measures, if necessary, and document responsive actions taken related to the Security Incident or Breach of Security, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
 5. Termination and Suspension of Service:
 - a. In the event of termination of the contract, the Provider shall implement an orderly return of State Data in a mutually agreeable format and the subsequent secure disposal of State Data remaining in Provider's possession.
 - b. Suspension of services: During any period of suspension, the Provider shall not take any action to intentionally erase any State Data.
 - c. Unless otherwise stipulated, in the event of termination of any services, SLA, or this contract in its entirety, the Provider shall not take any action to intentionally erase any State Data for a period of:
 - 1) 10 business days after the effective date of termination, if the termination is in accordance with the expiration of the defined contract term;
 - 2) 30 business days after the effective date of termination, if the termination is for convenience; or
 - 3) 60 business days after the effective date of termination, if the termination is for cause.

After such period, the Provider shall have no obligation to maintain or provide any State Data and shall thereafter, unless legally prohibited, delete all State Data in its systems or otherwise in its possession or under its control in accordance with subsection (e) below.
 - d. Post-Termination Assistance: The State shall be entitled to any post-termination assistance with respect to the services unless a unique data retrieval arrangement has been established as part of the contract.
 - e. Secure Data Disposal: When requested by the State, the provider shall destroy all requested data in all of its forms, including but not limited to: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be

recoverable, according to National Institute of Standards and Technology (NIST) approved methods and certificates of destruction shall be provided to the State.

6. **Background Checks:** The Provider shall conduct criminal background checks and not utilize any staff, including sub-contractors, to fulfill the obligations of the contract who has been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or any misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Provider shall promote and maintain an awareness of the importance of securing the State's Data among the Provider's employees and agents.
7. **Access to security logs and other reports:** The Provider shall provide logs and reports to the State in a format as specified in the contract and agreed to by both the Provider and the State. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all State Data related to this contract, including but not limited to data, file management, transactions, or tools used to provide, manage, secure, or analyze the State's Data. The Provider shall maintain the reports and logs for the contract term and for two (2) years after the conclusion of the term, and shall provide them to the State in the course of a State audit or upon written request from the State.
8. **Service Level Audit:** The Provider shall allow the State to audit conformance to the contract terms. The State may perform this audit or contract with a third party at its discretion, at the State's expense.
9. **Data Center Audit:** The Provider shall have an independent third party audit of its data center(s) performed at least annually at their own expense, and provide the audit report to the State upon request.
10. **Change Control and Advance Notice:** The Provider shall give advance notice to the State of any upgrades (e.g. major upgrades, minor upgrades, system changes) that may impact service availability and performance. Said notice shall be provided at least thirty days in advance of the upgrade, unless otherwise agreed in the SLA.
11. **Security:** The Provider shall disclose its non-proprietary security processes and technical limitations to the State by completing the State's Security Controls Checklist or equivalent system security document, available upon request from the Office of Information Technology, as updated from time to time, such that adequate protection and flexibility can be attained between the State and the Provider.
12. **Non-disclosure and Separation of Duties:** The Provider shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of State Data to that which is absolutely needed to perform job duties.
13. **Import and Export of Data:** The State shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Provider. This includes the ability for the State to import or export data to/from other Providers.
14. **Responsibilities and Uptime Guarantee:** The Provider shall be responsible for the acquisition and operation of all hardware, software, and network support related to the services being provided. The technical and professional activities required for establishing, managing, and maintaining the environment are the responsibilities of the Provider. The system shall be available 24 hours per day, 365 days per year (with agreed-upon maintenance downtime), and Provider shall provide service to the State as defined in the Service Level Agreement.
15. **Right to Remove Individuals:** The State shall have the right at any time to require that the Provider remove from interaction with the State any Provider representative who the State believes is detrimental to its working relationship with the Provider. The State will provide the Provider with notice of its determination, and the reasons it requests the removal. If the State signifies that a potential security violation exists with respect to the request, the Provider shall immediately remove such individual. The Provider shall not assign the person to any aspect of the contract or future work orders without the State's consent.

Business Continuity and Disaster Recovery: The Provider shall provide a business continuity and disaster recovery plan upon request and ensure that the State's Recovery Time Objective (RTO) is met. The RTO shall be defined in the SLA.

B. INDEMNIFICATION FOR SAAS

Section 4.1 Indemnification of the SSTC is deleted in its entirety and replaced with the following:

4.1 INDEMNIFICATION

- A. **CONTRACTOR RESPONSIBILITIES** - The Contractor's liability to the State and its employees in third party suits shall be as follows:
 1. The Contractor shall indemnify, defend, and save harmless the State and its officers, agents, servants and employees, from and against any and all third party claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith:
 - i. For or on account of the loss of life, tangible property (not including lost or damaged data) or injury or damage to the person, body or property (not including lost or damaged data) of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or products supplied under this Contract; and

- ii. For or on account of the use of any patent, copyright, trademark, trade secret or other proprietary right of any copyrighted or uncopied composition, secret process, patented or unpatented invention, article or appliance ("Intellectual Property Rights") furnished or used in the performance of the contract; and
 - iii. For or on account of a Breach of Security resulting from Contractor's breach of its obligation to encrypt Personal Data or otherwise prevent its release or misuse; and
 - iv. The Contractor's indemnification and liability under Section 4.1(A)(1) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of the State Standard Terms and Conditions.
- 2. In the event of a claim or suit involving third-party Intellectual Property Rights, the Contractor, at its option, may: (1) procure for the State the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties. The State will: (1) promptly notify Contractor in writing of the claim or suit; (2) Contractor shall have control of the defense and settlement of any claim that is subject to Section 4.1(A)(1); provided, however, that the State must approve any settlement of the alleged claim, which approval shall not be unreasonably withheld. The State may observe the proceedings relating to the alleged claim and confer with the Contractor at its expense. Furthermore, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of New Jersey, nor purport to act as legal representative of the State of New Jersey, without having provided notice to the Director of the Division of Law in the Department of Law and Public Safety and to the Director of DPP. The State of New Jersey may, at its election and expense, assume its own defense and settlement.
- 3. Notwithstanding the foregoing, Contractor has no obligation or liability for any claim or suit concerning third-party Intellectual Property Rights arising from: (1) the State's unauthorized combination, operation, or use of a product supplied under this contract with any product, device, or software not supplied by Contractor; (2) the State's unauthorized alteration or modification of any product supplied under this contract; (3) the Contractor's compliance with the State's designs, specifications, requests, or instructions, provided that if the State provides Contractor with such designs, specifications, requests, or instructions, Contractor shall review same and advise if such designs, specifications, requests or instructions present potential issues of patent or copyright infringement and the State nonetheless directs the Contractor to proceed with one or more designs, specifications, requests or instructions that present potential issues of patent or copyright infringement; or (4) the State's failure to promptly implement a required update, use a new version of the product, or to make a change or modification to the product if requested in writing by Contractor.
- 4. Contractor will be relieved of its responsibilities under Subsection 4.1(A)(1)(i), (ii), and (iii) for any claims made by an unaffiliated third party that arise solely from the actions or omissions of the State, its officers, employees or agents.
- 5. This section states the entire obligation of Contractor and the exclusive remedy of the State, in respect of any infringement or alleged infringement of any Intellectual Property Rights. This indemnity obligation and remedy are given to the State solely for its benefit and in lieu of, and Contractor disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any product.
- 6. The provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in the Contract, nor shall they be construed to relieve the Contractor from any liability, nor preclude the State from taking any other actions available to it under any other provisions of the contract or otherwise at law or equity.
- 7. The Contractor agrees that any approval by the State of the work performed and/or reports, plans or specifications provided by the Contractor shall not operate to limit the obligations of the Contractor assumed in the Contract.
- 8. The State of New Jersey will not indemnify, defend or hold harmless the Contractor. The State will not pay or reimburse for claims absent compliance with Section 4.1(B) below and a determination by the State to pay the claim or a final order of a court of competent jurisdiction.
- B. STATE RESPONSIBILITIES - Subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.) and the appropriation and availability of funds, the State will be responsible for any cost or damage arising out of actions or inactions of the State, its employees or agents under Section 4.1(A)(1)(i), (ii), and (iii) which results in an unaffiliated third party claim. This is Contractor's exclusive remedy for these claims.

B. INSURANCE FOR SAAS

Section 4.2 Insurance of the SSTC is supplemented with the following:

- 1. Professional Liability Insurance
The Contractor shall carry Errors and Omissions, Professional Liability Insurance, and/or Professional Liability Malpractice Insurance sufficient to protect the Contractor from any liability arising out the professional obligations performed pursuant to the requirements of this Contract. The insurance shall be in the amount of not less than \$1,000,000 and in such policy forms as shall be approved by the State. If the Contractor has claims-made coverage and subsequently changes carriers during the term of this Contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance, and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.
- 2. Cyber Breach Insurance
The Contractor shall carry Cyber Breach Insurance in sufficient to protect the Contractor from any liability arising out of its performance pursuant to the requirements of this Contract. The insurance shall be in an amount of not less than \$2,000,000 in such policy forms as shall be approved by the State. The insurance shall at a minimum cover the following: Data loss, ransomware and similar breaches to computers, servers and software; Protection against third-party claims; cost of notifying affected parties; cost of providing credit

monitoring to affected parties; forensics; cost of public relations consultants; regulatory compliance costs; costs to pursue indemnity rights; costs to Data Breach and Credit Monitoring Services analyze the insured's legal response obligations; costs of defending lawsuits; judgments and settlements; regulatory response costs; costs of responding to regulatory investigations; and costs of settling regulatory claims.

C. LIMITATION OF LIABILITY FOR SAAS

Section 4.0 Indemnification and Insurance of the SSTC is supplemented with the following:

4.3 LIMITATION OF LIABILITY

- A. The Contractor's liability for actual, direct damages resulting from the Contractor's performance or non-performance of, or in any manner related to, the Contract for any and all third party claims, shall be limited in the aggregate to 200% of the fees paid by the State during the previous twelve months to Contractor for the products or services giving rise to such damages. Notwithstanding the preceding sentence, in no event shall the limit of liability be less than \$1,000,000. This limitation of liability shall not apply to the following:
 - i. The Contractor's indemnification obligations as described in Section 4.1; and
 - ii. The Contractor's breach of its obligations of confidentiality described in this Bid Solicitation.
- A. Notwithstanding the foregoing exclusions, where a Breach of Security is a direct result of Contractor's breach of its contractual obligation to encrypt Personal Data pursuant to this Bid Solicitation or otherwise prevent its release as reasonably determined by the State, the Contractor shall bear the costs associated with (1) the investigation and resolution of the Breach of Security; (2) notifications to individuals, regulators, or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state or federal law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record, per person cost calculated for data breaches in the United States in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute for the public sector at the time of the Breach of Security; and (5) completing all corrective actions as reasonably determined by Contractor based on root cause of the Breach of Security.
- B. The Contractor shall not be liable for punitive, special, indirect, incidental, or consequential damages.

I HEREBY ACCEPT THE TERMS AND CONDITIONS OF THIS CONTRACT



 Signature

3/3/2022

 Date

Joseph Starks - President

 Print Name and Title

ECC Technologies, Inc.

 Print Name of Contractor

Appendix E. Excerpt of Project Plan

On the following page is a high level excerpt from an initial project plan developed by ECC. The full plan is developed to support the creation of the proposal. The utilization of project planning allows for an assessment of milestones and a full assessment of required resources.

Only a subsection of the project plan is shown to conserve space in this document; as such multiple layers of subtasks are not contained in the image.

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NJ Broadband Assessment
High Level Initial Project Plan
3/1/2022 through 5/1/2023

Primary	START	END
RFQ Submissions Due	03/03/22	03/03/22
NJ Review of RFP responses	03/04/22	03/25/22
Interviews for finalists	03/21/22	04/01/22
Finalist Selected	04/04/22	04/04/22
Contract Negotiations	04/05/22	04/29/22
SOW 3.1.1	05/02/22	03/31/23
Development of GIS Standards and Formats	05/02/22	05/13/22
Review current GIS data sets	05/02/22	05/06/22
Revise GIS data sets to accommodate requirements	05/09/22	05/11/22
Determine ESRI GIS hosting platform (ArcGIS Enterprise or ArcGIS Online)	05/09/22	05/13/22
3.1.1.A Service Provider Data Acquisition	05/16/22	01/27/23
Identification of all NJ service providers	05/16/22	05/18/22
Draft and send joint request letter for ISP data	05/18/22	05/20/22
Track service provider response	05/23/22	06/24/22
Escalation procedure for unresponsive providers	06/27/22	07/29/22
Determine field survey requirements	05/16/22	05/20/22
Develop drive maps by county	05/23/22	05/27/22
Field surveys for inventory	05/30/22	12/30/22
Compile and analyze provider data and field data in GIS	05/30/22	01/27/23
3.1.1.A Identify broadband availability and adoption issues	05/02/22	01/27/23
Development of BAAT	05/02/22	01/27/23
BAAT program	05/30/22	12/30/22
3.1.1.B Website development and GIS database (Optional)	05/02/22	03/31/23
Determine Website standards	05/02/22	06/03/22
Development of beta website based off of identified standard platforms	07/11/22	01/27/23
Creation of master GIS database system	06/06/22	07/08/22
Import of approved GIS data sets	07/11/22	01/27/23
Transition of production website and GIS database	02/06/23	03/03/23
Development of documentation, methods, and procedures	02/06/23	03/03/23
Training for operational service of production systems	03/06/23	03/31/23
Closeout 3.1.1		
3.1.1.C Cost Benefit Analysis Broadband Infrastructure	06/01/22	11/21/22
Review objectives with SCM & Staff	06/01/22	06/07/22
Establish network baseline components	06/08/22	07/04/22
Determine analysis methodology applicable to New Jersey - State and counties	07/05/22	07/13/22
Develop cost groups	07/14/22	07/18/22
Determine applicable budgetary components	07/19/22	07/21/22
Determine Applicable Revenue and Revenue share rates	07/22/22	07/28/22
Internal Review	07/29/22	07/29/22
Model Development	08/01/22	10/11/22
Live Data	10/12/22	11/21/22

STATE-SUPPLIED PRICE SHEET
RFQ Consulting Services related to the Broadband Access Study Commission

The Vendor {Bidder} must provide pricing for all price lines on this State-Supplied Price Sheet

Part A		
Vendor's {Bidder's} Name :		
	All-Inclusive Hourly Labor Rates	
1	Partner/Principal Director	\$260.00
2	Program Manager	\$225.00
3	Project Manager	\$200.00
4	Subject Matter Expert	\$180.00
5	Supervisory/Senior Consultant	\$150.00
6	Consultant	\$135.00
7	Associate/Staff	\$110.00

Part B					
	Description	Unit	Estimated Quantity	Unit Price Year 1	Sub Total
8	Scope of Work Section 3.1.1	Task	1	1678100	1678100
9	Scope of Work Section 3.1.2	Task	1	320500	320500
10	Scope of Work Section 3.1.3	Hours*	200	100	40000
11	Scope of Work Section 3.1.4	Task	1	200275	200275
12	Scope of Work Section 3.1.5	Hours*	200	100	40000
13	Final Report Section 3.2.10	Task	1	489350	489350
14	Litigation Support Section 3.2.12	n/a	n/a		n/a
Total Quotation Price					
\$					2,768,225.00

This section is an internal document that is not a public record pursuant to N.J.S.A. 47:1a-1.1 as it constitutes intra-agency advisory, consultative, or deliberative material.