

Request for Quotation
NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS
Short-Term Rental Assistance Program Consulting Services
RFQ Issued: October 27, 2020
Response Deadline: October 30, 2020

I. OBJECTIVE

The NJ Department of Community Affairs (the Department) is seeking quotations for professional consulting services (“Consultant”) to assist with the implementation and administration of a short-term rental assistance program for households impacted economically by the pandemic.

BACKGROUND

The economic consequences of the pandemic have resulted in significantly increased rates of unemployment among NJ residents, and have impacted the ability of residents to continue paying their rent. The Department has developed the Covid-19 Emergency Rental Assistance Program (“CVERAP”), which will dedicate \$100 million to provide up to six months of rental assistance to households that can demonstrate an inability to pay rent due to the effects of the pandemic, including a loss of employment. The Department seeks assistance from the Consultant in implementing this program.

II. QUALIFICATIONS

The State seeks a professional consultant with expertise and demonstrated experience in implementing rental assistance programs, including:

- Experience in quickly developing plans and strategies to process applications for a large volume of applicants (8,000 – 10,000 households)
- Experience with initiating and implementing emergency and/or disaster recovery housing assistance programs
- Experience with all aspects of rental assistance program administration, including determining eligibility, working with landlords, calculating rental portions, and fiscal management and reporting
- Knowledge and experience with public housing authority databases (experience with Housing Pro/HAPPY recommended)
- Experience in working with large governmental systems to implement and/or advise on housing assistance programs
- Extensive knowledge of Coronavirus Relief Fund requirements

DESCRIPTION of BIDDER’S ORGANIZATION

In an effort to establish the Bidder's ability to successfully provide the requisite services, for projects of similar scope, size and complexity, interested Bidders must provide a narrative that imparts general information about their organization. The narrative should address:

- the Bidder's business name and type (corporation, 501(c)(3), etc.), location, number of years in business, and details of any failure to complete a contract or any litigation within the past two years;
- the number of years the Bidder has provided rental assistance consulting services to other clients, as evidenced by submitting a copy of the Bidder's list of clients and years serviced;
- the Bidder's history of engagements of a similar size and scope for rental assistance programs with other clients
- the Bidder's staff qualifications, capacity, and experience in providing these services, by indicating the number of full-time employees (and, if applicable, part-time employees) qualified to do so;
- a staffing chart to show each position or title for those individuals who will, or who it is expected will, perform work against the resulting contract;
- if available, an organizational chart for the Bidder's entire organization, to evidence its depth of staff;
- the location and contact information (address, telephone, e-mail, etc.) of the Bidder's office that will be responsible for managing the resulting contract, as well as the locations of its corporate headquarters and any regional business offices; and
- the name, phone number, and e-mail address of the individual who will be responsible for managing the performance against the resulting contract.

As part of the quotation submission, the Bidder should provide a plan for making qualified replacement(s) available to provide the requisite services during the contract term and any extensions thereto, to ensure uninterrupted performance of the requisite services in the event of vacation, illness, or personal emergency of the Consultant Firm's staff assigned to perform the work against the resulting contract. This submittal can be as simple as identifying alternate staff for key positions identified in the Bidder's staffing chart.

RESUMES of KEY TEAM MEMBERS

The Bidder should provide a resume for each key individual who will perform work against the resulting contract (including executive, middle management, and support personnel) to clearly demonstrate their respective appropriate qualifications, capabilities, and background.

The resumes should indicate the individual's name, title, number of years employed with the bidding

organization, and any certifications or licenses held that are germane to performing the requisite tasks. At a minimum, the resume should include:

- demonstrable experience specific to providing the types of services required herein;
- employment history;
- education;
- degrees, professional certifications, and/or licenses; and
- any additional information that would allow the Department to assess the individual's abilities to perform against the contract, including particular skills relevant to conducting the assessment sought by the Department.

JOINT VENTURES and SUBCONTRACTORS

Two or more consultants may submit a joint quotation. A lead Consultant must be identified. The lead Consultant will be held accountable for contract performance and must maintain all research, notes, draft documents, and financial records for at least two years. Authorized signatories from each party comprising the joint venture must sign the bid quotation cover letter. All quotation submissions (compliance documents, evidence of experience, references, resumes, etc.) must be submitted for every party to the joint venture. The quotation must include a description of the organizational structure of the joint venture with a specific, detailed description of how the Consultants will work together and the key responsibilities of each partner.

Quotations may include a role for subcontractors. The Bidder must provide a detailed description of services to be provided by each subcontractor and/or subconsultant, and descriptions of prior projects in working with the subcontractor and/or subconsultant on similar projects. This information must be included with the quotation to evidence the subcontractor's capabilities and experience.

Detailed resumes should be provided for each member of the subcontractor's management, supervisory, and other key personnel who will perform work against the resulting contract. Such resumes must clearly demonstrate knowledge, ability, and experience relevant to that part of the work that the subcontractor is designated to perform. Subcontractors and subconsultants must also possess a valid New Jersey Business Registration Certificate.

Bidders intending to use subcontractors and/or subconsulting firms should note that the lead partner retains the sole and absolute responsibility for the management and supervision of all subcontractors and subconsultants to a high quality of service. Additionally, the lead partner assumes sole and absolute responsibility for all payments and monies due to its subcontractors and subconsultants.

CONFLICTS of INTEREST

The Bidder must disclose any potential conflicts of interest with regard to the Bidder's performance of the requisite services and the Bidder's relationship with any Department staff member including, but not limited to:

- any firms for which the Bidder, its joint venture partner(s) or subcontractor(s) have provided, or may provide, other related services, including the preparation of applications to the Department;
- representation of a previous or known future applicant to the Department's programs;

III. SCHEDULE AND SCOPE OF SERVICES

The contract's term will be six months. The Consultant will be expected to execute the following tasks:

- Within 5 business days of contract execution, review and reconciliation of all application materials received for approximately 10,000 applicants
- Communicate with landlords and tenants regarding incomplete applications and collect missing data
- Ensure entry of all needed applicant information into DCA housing database
- Review and determine eligibility of applications
- Communicate with all applicants and landlords regarding determination of eligibility
- Work with DCA staff and vendors to facilitate weekly subsidy payments
- Review payments for accuracy and report weekly to DCA
- Work with DCA staff and vendors to ensure quality administration of program

IV. EVALUATION CRITERIA AND SELECTION PROCESS

It is the Department's intent to conduct a comprehensive, fair, and impartial evaluation of submissions received in response to this RFQ. Only submissions found to be responsive to this RFQ will be evaluated and scored. A responsive submission must comply with all instructions in this RFQ including, but not limited to, the criteria listed below.

All bid submissions must include completed mandatory compliance forms. These documents can be found at the following links:

- [NJ Standard Terms and Conditions.pdf](#)
- [Waiver and DPA Contract Checklist.pdf](#)

The following evaluation criteria will be used to evaluate submissions received in response to this RFQ:

- demonstrated understanding of the scope of work. Awareness of implementation challenges and issues.

- a preliminary work plan that includes a timeline, significant milestones, and anticipated deliverables.
- the quality of the preliminary work plan describing a technical approach for completing the scope of work and a detailed description of all tasks and activities to be undertaken by the Bidder, indicating which tasks, if any, will be delegated to a subcontractor.
- the submitted staffing plan demonstrating the qualifications and experience of the Bidder's management, supervisory, and other key personnel assigned to perform work against the resulting contract.
- the extent and quality of the Bidder's documented experience in successfully providing similar services of comparable size and scope, as evidenced by the narratives submitted.
- the Bidder's price quotation including:
 - a detailed budget with estimated travel costs listed separately.
 - a detailed fixed fee proposal by task and estimated number of billable hours, based on a Preliminary Work Plan.
 - a proposal for billing schedule based on a performance-based contract (per service provided, etc.).

Bidders shall hold their quotation prices firm for a period of ninety days to accommodate the Department's evaluation and award processes.

V. RESERVATION OF RIGHTS

Upon determination that its best interests would be served, the Department shall have the right to do the following:

1. **Cancellation** - Cancel this procurement at any time before the contract award.
2. **Amendment of procurement** - Amend this procurement at any time before the contract award.
3. **Refusal to accept** - Refuse to accept or return accepted quotations that do not comply with procurement requirements.
4. **Rejection of incomplete quotations** - Reject any quotation in which any part of the quotation is incomplete or in which there are significant inconsistencies or inaccuracies (the State reserves the right to reject all quotations).
5. **Prior contract default** - Reject the quotation of any Bidder in default of any prior contract or for the misrepresentation of material presented.

6. **Receipt of quotations after stated due date and time** - Reject or refuse to evaluate any quotation that is received after the stated due date and time.
7. **Written clarification** - Require Bidders, at their own expense, to submit written clarification of quotations in a manner or format that the Department may require.
8. **Oral clarification** - Require Bidders, at their own expense, to make oral presentations at a time and in a place selected by the Department, if requested.
9. **Allowance of quotation changes** - Except as may be authorized by the Department, allow no additions or changes to the original quotation after the stated due date and time.
10. **Property of the State** - Own all materials submitted in response to this procurement upon receipt by the Department.
11. **Separate service negotiation** - Negotiate separately any services in any manner needed to serve the best interest of the State.
12. **All or any portion** - Contract for all or any portion of the Scope of Services or tasks contained in this RFQ.
13. **One or more Bidders** - Contract with one or more Bidders.
14. **Quotation most advantageous** - Consider cost and all factors in determining the most advantageous quotation for the Department when awarding a Bidder the right to negotiate a contract with the Department (while cost is a factor in determining the Bidder to be awarded the right to negotiate a contract, price alone shall not determine the successful Bidders).
15. **Technical defects** - Waive technical defects, irregularities, and omissions if in its judgment the best interest of the Department will be served.
16. **Privileged and confidential information** - Share the contents of any quotation with any of its designees for purpose of evaluating quotations to make an award (the contents of all meetings including the first, second, and any subsequent meetings and all communications in the course of negotiating and arriving at the resultant contract periods shall be privileged and confidential).
17. **Best and Final Offers** - Seek Best and Final Offers (BFO) on price from Bidders upon review of the scored criteria.
18. **Unacceptable quotations** - Reopen the bidding process if advantageous to the Department.

VI. BIDDER ASSURANCES

The Consultant Firm shall have sole and absolute responsibility for the complete effort specified in and required of the contract. Payment shall be made only to the Consultant Firm.

The Consultant Firm shall be responsible for the professional quality, technical accuracy and timely completion and submission of all deliverables, services, or commodities required under the contract.

Without additional compensation, the Consultant Firm shall 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 Consultant Firm of responsibility for the technical adequacy of its work. The review, approval, and acceptance of or payment for any of the services shall not be construed as a waiver of any rights that the Department may have arising out of the Consultant Firm's performance of this contract.

The Bidder agrees to the following:

1. **Independent price determination** - By submission of a quotation and through assurances given in its Transmittal Letter, the Bidder certifies that in connection with this procurement the following requirements have been met:
 - **Costs** - The costs proposed have been arrived at independently, without consultation, communication, or agreement for restricting competition, as to any matter relating to such process with any other organization or with any competitor.
 - **Disclosure** - Unless otherwise required by law, the costs quoted have not been knowingly disclosed by the Bidder on a prior basis directly or indirectly to any other organization or to any competitor.
 - **Competition** - No attempt has been made or will be made by the Bidder to induce any person or firm to submit or not submit a quotation for restricting competition.
 - **Prior knowledge** - The Bidder has no prior knowledge of the RFQ contents before actual receipt of this RFQ and had no part in RFQ development.
 - **Offer of gratuities** - The Bidder certifies that no elected or appointed official or employee of the State of New Jersey has or will benefit financially or materially from this procurement. Any resultant contracts may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by: any of the aforementioned officials, the Consultant Firm, its agent(s), or its employees.
2. **Valid and binding offer** - The quotation represents a valid and binding offer to provide services in accordance with the terms and provisions described in this RFQ and any amendments or attachments hereto.
3. **Press releases and advertising** - The Bidder agrees to obtain prior written consent and approval of the Department for press releases that relate in any manner to this RFQ or any resultant contracts. The Bidder agrees to obtain prior written consent and approval of the Department to use any names, logos, images, data, or results arising from this contract as a part of any commercial advertising.
4. **Restrictions on communications with Department staff** - The Bidder agrees that from the RFQ posting/release date until the Department makes an award that it shall not communicate with Department staff on matters relating to this RFQ except as provided herein. Any other

communication concerning this RFQ with Department staff may, at the decision of the Department, result in disqualification of that Bidder's quotation.

VII. AWARD

It is the intent of the Department to award a limited term contract to expire on or about **April 30, 2021**, for these Consulting Services. Prices, terms and conditions shall remain firm throughout the initial term of the contract and any extensions thereto. This is an estimated six-month engagement.

The Department will notify all Bidders of any award issued by it as a result of this RFQ. A final decision on the winning Bidder will be made no later than two weeks following the quotation submittal deadline. The contract award will be made to the Bidder whose bid quotation conforms to this RFQ, is most advantageous to the Department with price and other factors considered, and best aligns with the work of the Department, as determined by the Department, in its sole discretion. The Bidder must be capable and available to begin performing the work required by this RFQ within one week of the execution of the contract.

Notwithstanding the expiration or termination of the Agreement, the Department reserves the right, in its sole discretion, to extend the Agreement on a month-to-month basis beyond the expiration or termination, until a replacement Consultant Firm is procured for these services, at the same prices, terms and conditions. In the event the services are scheduled to end either due to expiration of the contract or by termination of the contract by the Department, in its sole discretion; the Consultant Firm will be required to continue to provide such services if so requested by the Department, until a replacement Consultant can become completely operational. Any services performed during interim periods of time shall be performed in accordance with the prices, terms, and conditions in effect prior to the expiration or termination of the contract. The Consultant Firm will be reimbursed for these services based on the hourly rates in effect under the most recent contract term.

The Department, at its sole discretion, may cancel the contract, at any time, without material cause, upon seven days' advanced written notice to the Consultant Firm. In such event, absent a default on the part of the Consultant Firm, the Firm shall be entitled to compensation for all services properly provided to the Department pursuant to the Contract, prior to such termination.

VIII. INSURANCE

The selected Bidder shall maintain professional liability insurance in amounts/limits that the Department dictates are reasonable and adequate to protect the Department from acts, omissions, and negligence on the part of the firm and/or of its partners, attorneys, or employees.

The Bidder shall furnish the Department with original certificates of insurance naming the Department as an additional insured and evidencing such coverage dictated by the Department on the effective date of the contract resulting from this RFQ.

If the Bidder fails to provide complete and adequate evidence of insurance coverage, the Department reserves the right to rescind its offer and award the contract to an alternate Bidder.

IX. QUOTATION SUBMITTAL

The State of New Jersey and the Department of Community Affairs assume no liability for payment of expenses incurred by Bidders in preparing and submitting quotations in response to this procurement.

Quotations with all supporting material must arrive by **12:00 PM on October 30, 2020.**

Submissions must be sent to:

Elena Gaines


If you anticipate submitting your quotation electronically, we cannot accept attachments of more than 10 MB in size.

All bid submissions must include completed mandatory compliance forms. These documents can be found at the following links:

- [NJ Standard Terms and Conditions.pdf](#)
- [Waiver and DPA Contract Checklist.pdf](#)

Click on this link for the NJSTART Vendor Portal: <https://www.njstart.gov/bsa/>

It is the bidding firm's sole responsibility to ensure that all required documentation and submissions indicated by this RFQ are included with the bid quotation. A quotation cannot be reviewed and evaluated unless and until all required information is received. Failure to provide all items as indicated in this document, in the level of detail specified, may prevent the Department from effectively and accurately evaluating the quotation and may result in rejection of the quotation.

Bidders should be aware that responses to this RFQ will be available, upon request, for public inspection. The Department, as an instrumentality of the State of New Jersey, is subject to the New Jersey Open Public Records Act ([N.J.S.A. 47:1A-1](#)) and New Jersey Right-to-Know statutory law and relevant case law.

REQUEST FOR QUOTATION

**NEW JERSEY DEPARTMENT
OF COMMUNITY AFFAIRS:**

SHORT-TERM RENTAL ASSISTANCE PROGRAM CONSULTING SERVICES

PROPOSAL DUE DATE: OCTOBER 30, 2020

A partnership that supports your goals
and ensures a vibrant community.



NAN MCKAY & ASSOCIATES, INC.
1810 GILLESPIE WAY, SUITE 202
EL CAJON, CA 92020
www.nanmckay.com
800.783.3100

nm
Nan McKay
AND ASSOCIATES, INC.

October 30, 2020

Attn: Elena Gaines
New Jersey Department of Community Affairs
P.O. Box 800
Trenton, NJ 08625-0800

Dear Ms. Gaines:

Nan McKay & Associates, Inc., (NMA) is pleased to submit our quotation to provide the New Jersey Department of Community Affairs with Short-Term Rental Assistance Program Consulting Services.

Since 1980, NMA has been the leader in providing innovative solutions for the affordable housing industry. Our deep understanding of federal programs is backed by four decades of practice working directly with the U.S. Department of Housing and Urban Development (HUD) and public agencies nationwide. Annually, we administer over 100,000 housing contracts, manage \$1B in federal housing assistance funds, and perform more than 270,000 inspections throughout the country.

We have direct and related experience supporting COVID-19 response and programmatic efforts. NMA is currently providing similar COVID-19 related services in [REDACTED]

[REDACTED] Our team of experts is dedicated to assisting you in understanding the ever-changing regulatory environment surrounding the CARES Act and COVID relief funding, while bringing real-time best practices in the implementation of COVID-19 related programming. In addition to extensive personal qualifications and experience with federal grants, the NMA team working for you will have access to detailed analysis, best practices, and lessons learned from our COVID-19 response and recovery teams around the country.



Our proposed team has deep knowledge of disaster recovery through our experience with communities devastated by Hurricanes Katrina, Rita, Wilma, Ike, Dolly, Gustav, and Harvey; Superstorm Sandy; and tornadoes in the Midwest. We've also had a unique opportunity to assist Harris County with full lifecycle disaster recovery grants administration and management, from allocation of funds to project closeout. Specifically, our team assisted with:

- HCV program management and voucher allocation
- Rental assistance programs, including ERAP, HCV, and public housing
- Development of assisted housing policies and procedures for federal programs
- Lobbying for funding allocations at both the congressional and state levels
- Development of Action Plans and Action Plan amendments
- Program and project creation
- Waiver request and negotiation
- Strategic management
- Project and program implementation
- IT systems creation and integration
- Compliance and monitoring
- Closeout

NMA is privately owned, incorporated in the state of California, and a certified Women-Owned Business Enterprise (WBE). Our headquarters is in the San Diego area and we have offices in Northern California, Illinois, Florida, Kentucky, Louisiana, and Texas. The NMA team includes more than 600 team members who specialize in a variety of affordable housing matters.

To discuss the proposal, or if you need clarification or further information, please contact me at catherine.ures@nanmckay.com or 800-783-3100, ext. 119.

Sincerely,



Catherine Ures

Vice President, Professional Services
Nan McKay and Associates, Inc.

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1. DESCRIPTION OF ORGANIZATION

For more than forty (40) years, NMA has been a leader in providing a broad range of professional services, including consulting, program management, strategic operations, inspections, training, and performance improvement solutions.

NMA's primary markets are the contiguous United States, Hawaii, Virgin Islands, Guam, and Puerto Rico. With over 600 team members throughout the country, we are committed to performance excellence and recognize that success is directly linked to the successful performance of individual staff.

As a WBE and Section 3 Business Concern, we leverage our workforce with diverse experiences to collaboratively develop solutions and seize opportunities.

Through our role as a trusted advisor, we are committed to helping reinvent how organizations serve their communities. NMA staff not only understand the complexities of U.S. Department of Housing and Urban Development (HUD) regulations and operational best practices, we also have real-life professional experience in the field. We leverage that expertise, exceptional customer service, and intelligent operations to ensure our clients reach their goals effectively and efficiently.

NMA's approach to COVID-19 programming and operations is unique because of our diverse experience across all functional areas. Through four (4) decades of providing direct operational support for affordable housing programs nationwide, we've developed a dynamic methodology that is centered on customer service and exceeding individual agency goals. We bring the following strengths that distinguish us from other firms:

- A clear focus on leadership and strategic planning;
- Unmatched experience and deep regulatory knowledge;
- Fact-based decision making and accountability;
- Process/procedure definition and monitoring;
- Innovative use of technology; and
- An emphasis on positive results, measurable outcomes, and successful solutions that support high performance.

THE NMA TEAM AT A GLANCE



WBE & Section 3
Business Concern



500+ housing-related
trainings annually



100,000+ HCV
contracts managed



\$1B+ in HUD funding
managed annually



1M housing-related
customer calls processed
annually



Industry-leading RAD
professional services



Collaborative partner to
support success

2. GENERAL INFORMATION

NMA was established in 1980 and is a privately held corporation. Nan McKay is the President and Chief Administrative Officer; John McKay has served as the Chief Executive Officer of the company since 2007. Additional company officers include Molly McKay and Heidi McKay.

Business Name:	Nan McKay & Associates, Inc. (NMA)
Business Type:	Corporation
Locations:	<u>Corporate Office:</u> 1810 Gillespie Way, Suite 202, El Cajon, CA 92020 <u>Satellite Offices:</u> 1815 Egbert Avenue, San Francisco, CA 94124 1347 Westbank Expressway, Suite D, Westwego, LA 70094 139 Scroggin Park Drive, Georgetown, KY 40324 2940 Grady Road, Tallahassee, FL 32312 60 E. Van Buren, Chicago, IL 60605 708 Main Street, Houston, TX 77002 7400 NW 19 th Street, Miami, FL 33126
Years in Business:	Forty (40) years
Disclosure:	NMA has no record of failure to complete a contract, nor any litigation within the past two (2) years.
# of Employees:	600+ full-time employees and contractors
Core Business:	Professional consulting and training services for the affordable housing industry, including program design, disaster recovery administration, and public housing and housing choice voucher program administration.
Principals:	Nan McKay, President & CAO John McKay, Chief Executive Officer Dorian Jenkins, Vice President, Program Management Catherine Ures, Vice President, Consulting Services Michael Petro, Vice President, Financial Services Sarah Quinn, Vice President, Operations Michael Petragallo, Vice President, Inspection Services
Certifications:	NMA is the only International Association of Continued Education Training (IACET) certified professional services company authorized to provide Continuing Education units (CEUs). NMA is also registered with the National Associate of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education.

3. CLIENT LIST & SIMILAR ENGAGEMENTS

3.1 HCV Program Management Experience

Currently managing over 100,000 housing choice voucher (HCV) contracts for several agencies across the nation, **NMA is the premier provider of program management services in the affordable housing industry.** We leverage that experience and our deep bench of industry experts to carefully balance and allocate resources across all our projects, ensuring that we maintain high levels of quality and customer service. Presented within the following pages is a sample listing of similar engagements within the past five (5) years.

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The NMA team brings significant experience in working with federal, state, and local governments in all areas of federal grants administration and disaster recovery (both FEMA and HUD). Specifically, we've performed services related to grants management, program management, project management, program operations, stakeholder engagement, training, compliance, and monitoring.

[illegible]

4. STAFF QUALIFICATIONS, CAPACITY & EXPERIENCE

NMA's dynamic group of professionals brings an invaluable history of working collaboratively with PHAs and affordable housing providers across the nation and will utilize this extensive experience to exceed performance expectations. We pride ourselves on providing unprecedented levels of customer service, doing whatever is necessary to achieve your goals. Full resumes of all proposed team members are included in *Section 9, Resumes of Key Team Members*.



John McKay

Role: Executive Sponsor

Mr. John McKay has been with NMA since 1998 and has served as the chief executive officer since 2007. Under his leadership, NMA has grown to be known as the gold standard for professional services in the affordable housing industry. John has provided executive oversight for large housing programs for more than twenty (20) years, including overseeing more than \$1B of HCV program subsidy annually.

After Hurricane Katrina, John was part of the team that worked in Houston and New Orleans helping create the first Disaster Housing Assistance Program (DHAP) and ran the program for two (2) years in both cities. He also participated in launching the City of Joplin's Homebuyer Assistance Program (JHAP).

As executive sponsor, John brings his knowledge of housing regulations and industry best practices to oversee contracts with large agencies at a high level and ensure successful outcomes for all stakeholders.



Steven Rosario

Role: Engagement Manager

In his current role as HCV program director, Steven Rosario oversees the operations of Miami-Dade County's housing choice voucher program. He previously served as director of some of the largest voucher programs in the nation, administering more than 45,000 vouchers in Chicago and San Francisco. With extensive experience in program and project designs, Steven is a fiscally conscious and goal-driven leader who has earned a reputation for building and leading strong and collaborative team efforts.

Mr. Rosario will be the engagement manager for this project. He will work closely with the DCA to ensure that all deliverables are met, that the work performed exceeds expectations, and that we are continuing to build a strong partnership.



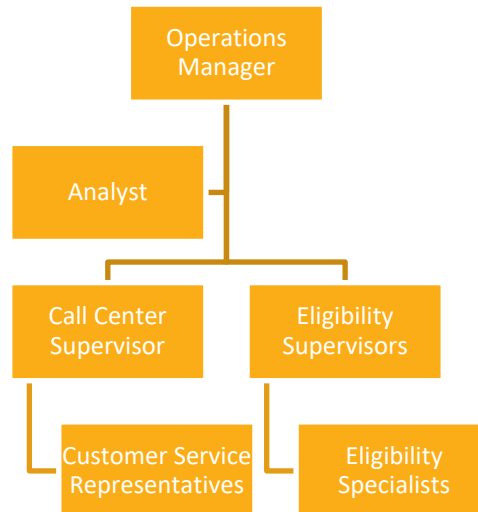
Catherine Ures

Role: Executive Advisor

Ms. Catherine Ures is NMA's vice president of professional services, with over eighteen (18) years of professional experience in community redevelopment, recovery, and strategic planning. Catherine has the unique qualifications of having worked in a management capacity in both the public and private sectors. Catherine's public service encompasses over a decade in California municipal government, in both the affordable housing and redevelopment fields. Her time in the private sector has focused on serving federal, state, and local entities with strategic planning, urban design, grants management, disaster recovery, HUD program management, monitoring and compliance, and training.

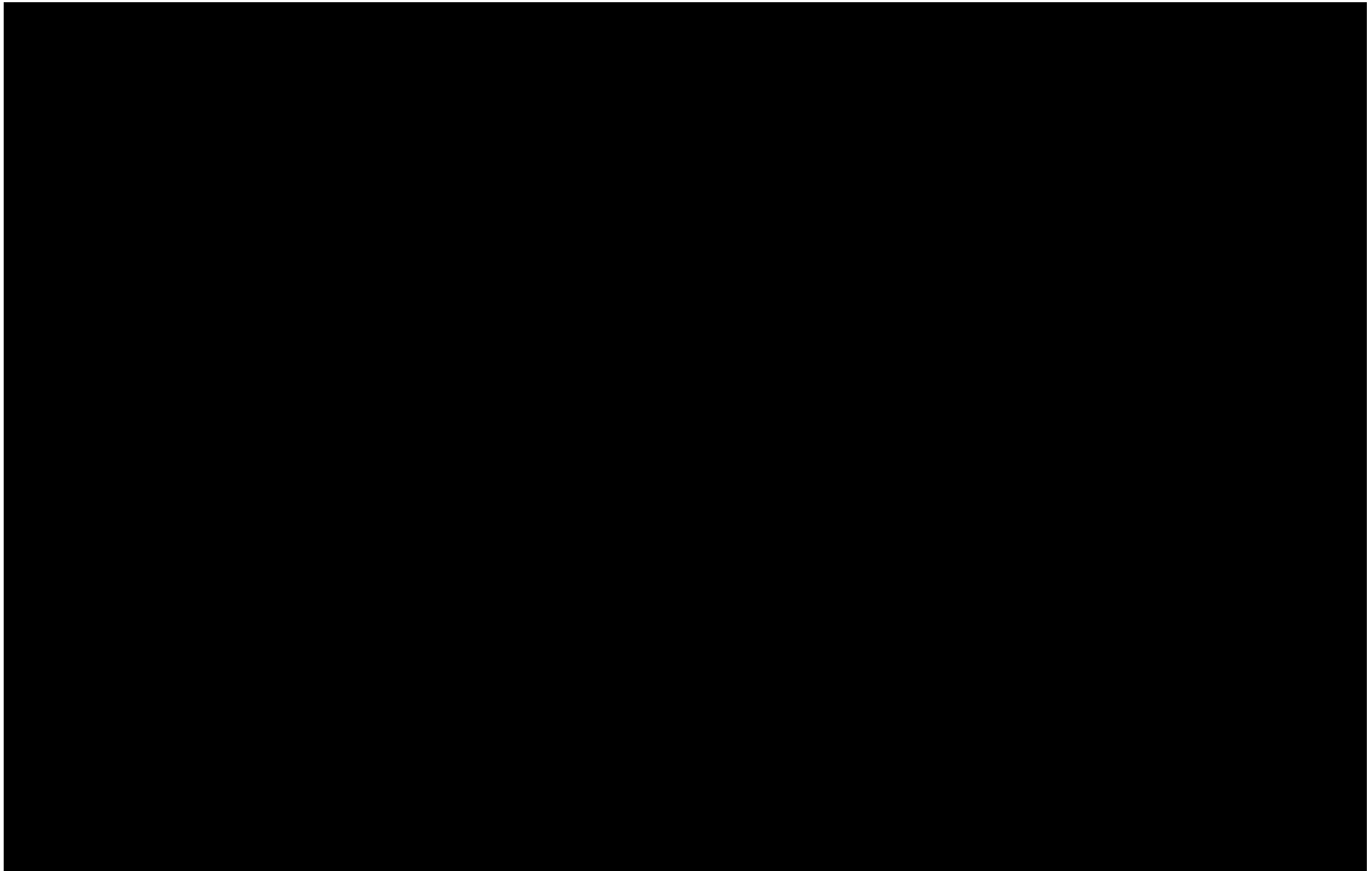
5. STAFFING CHART

The organizational chart below reflects the structure of the NMA-DCA team during the proposed project.



6. COMPANY ORGANIZATIONAL CHART

Included within this section is NMA's company-wide organizational chart.



7. CONTACT INFORMATION

NMA's corporate office is located in the San Diego area at 1810 Gillespie Way, Suite 202, El Cajon, CA 92020 and will be responsible for managing the resulting contract.

Primary Contact:

Catherine Ures, Vice President of Professional Services
800-783-3100, ext. 119
catherine.ures@nanmckay.com

NMA also has satellite offices in the following locations:

- 1815 Egbert Avenue, San Francisco, CA 94124
- 1347 Westbank Expressway, Suite D, Westwego, LA 70094
- 139 Scroggin Park Drive, Georgetown, KY 40324
- 2940 Grady Road, Tallahassee, FL 32312
- 60 E. Van Buren, Chicago, IL 60605
- 708 Main Street, Houston, TX 77002
- 7400 NW 19th Street, Miami, FL 33126

8. TECHNICAL CAPABILITIES & MANAGEMENT PLAN

NMA will leverage our deep bench of over 600 resources to ensure that qualified replacement(s) are available to provide the requisite services during the contract term and any extensions thereto and that the NMA team continues to deliver uninterrupted performance of the requisite services in the event of vacation, illness, or personal emergency of the staff assigned to perform the work against the resulting contract. Catherine Ures, NMA's vice president of professional services, will serve as the engagement manager and will ensure that all tasks performed under this engagement are provided efficiently, accurately, on time, and in compliance with the requirements of the executed contract. NMA's extensive resources of subject matter experts will guarantee we have the most talented staff working on the NMA-DCA project and allow us to quickly fill vacancies when needed.

9. RESUMES OF KEY TEAM MEMBERS

Included within this section are full resumes of NMA's proposed key personnel.



John McKay

Chief Executive Officer

EXPERTISE

- ✔ Information Technology
- ✔ Executive Management
- ✔ Technology Solutions
- ✔ Strategic Planning
- ✔ Program Assessments
- ✔ Performance Management

EDUCATION

DePaul University | Chicago, IL

Master of Science, Computer Science

San Diego State University | San Diego, CA

Master of Arts, Information Systems

San Diego State University | San Diego, CA

Bachelor of Arts, History

CERTIFICATIONS

HCV Executive Management

CA Council for Excellence – Board Member

Microsoft Business Solutions

Developer IEEE Computer Society Member

PROFILE

Mr. John McKay has been with Nan McKay & Associates (NMA) since 1998, and has served as the chief executive officer since 2007. Under his leadership, NMA has grown to be known as the gold standard for professional services in the affordable housing industry. Mr. McKay has provided executive oversight for large housing programs for more than twenty (20) years. His experience includes overseeing more than \$1B of Housing Choice Voucher (HCV) program subsidy annually:

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After Hurricane Katrina, Mr. McKay was part of the team that worked in

In 2013, Mr. McKay started an inspections division of NMA known as NMA Inspections, LLC. (NMAI). NMAI specializes in HQS, UPCS, and Residential Rental Inspection Programs (RRIP) for housing authorities, cities, and municipalities. The NMAI team has completed over 1.5M inspections, including more than 250,000 annually for 50+ clients nationwide.

Mr. McKay brings his knowledge of housing regulations and industry best practices into his role as project executive on many of NMA's contracts with large clients and HUD.

EXPERIENCE

Chief Executive Officer

Nan McKay & Associates, Inc., El Cajon, CA | 1998 to Present

- Leads all internal and external company operations for over 600 employees and six corporate offices
- Trusted advisor to Federal, State, Local governments throughout the country
- Works directly with key clients on engagements, including disaster recovery, program management, organizational consulting, and strategic technology consulting.

CERTIFICATIONS (CONTINUED)

Performance Management Institute

Member American Society for
Training & Development National
Contract Management Association

CONTACT INFORMATION

Email: john@nanmckay.com

Phone: 800.783.3100

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Steven Rosario

Senior Director of Program Management

EXPERTISE

- ✓ HCV Administration
- ✓ Program Audits
- ✓ MTW Initiatives
- ✓ Program Regulations
- ✓ Transforming Operations
- ✓ Team Building

EDUCATION

University of Phoenix | Phoenix, AZ

Studies: Business Administration

CERTIFICATIONS

HCV Executive Management

HCV Financial Accounting and Reporting

HCV Program Management

HCV Financial Management

Management Skills for Managers

CONTACT INFORMATION

Email: srosario@mdvoucher.com

Phone: 786.233.9826

PROFILE

Steven currently serves as a senior director for NMA. In this capacity, Steven is responsible for the day-to-day operations of the Miami-Dade Housing Choice Voucher Program. Prior to this, Steven served as the director of some of the largest programs in the country and spent over 15 years consulting with public housing authorities (PHAs) focusing on operational improvement initiatives. He has extensive experience in program and project designs and has earned his reputation for getting HCV programs into High Performing status. Steven is a high energy, fiscally conscious, and goal-driven leader that approaches each new challenge with his intrinsic flair for innovation, creative problem solving, and measured risk-taking to drive positive change in the programs he is entrusted with.

EXPERIENCE

Senior Director, Program Management

Nan McKay and Associates, Miami, FL | 2019 to Present

- Oversee the day-to-day operations of the Miami-Dade HCV Program.
- Plan, direct, coordinate activities related to the Miami-Dade HCV Program ensuring compliance with HUD regulations and applicable County Ordinances.
- Oversee staff of 120 and its related supervisory functions.
- Administer and enforce housing assistance contracts with owners, brokers, and management agents.
- Manage the administrative and subsidy budgets of over \$150m.
- Prepare and respond to disaster recovery efforts.

Director, Program Management

Nan McKay and Associates, Miami, FL | 2015 to 2019

- Oversee the day-to-day operations of the Miami-Dade Housing Choice Voucher (HCV) Program.
- Plan, direct, coordinate activities related to the Miami-Dade HCV Program ensuring compliance with HUD regulations and applicable County Ordinances.
- Oversee staff of 120 and its related supervisory functions.
- Administer and enforce housing assistance contracts with owners, brokers, and management agents.
- Ensure compliance with the Section Eight Management Assessment Program (SEMAP).
- Achieved SEMAP High Performer for 4 consecutive years

Director, Leased Housing

San Francisco Housing Authority, San Francisco, CA | 2014 to 2015

- Plan, direct, coordinate activities related to the Housing Choice Voucher and Moderate Rehabilitation Programs, ensuring compliance with HUD regulations and applicable City and County of San Francisco ordinances.
- Administer the Annual Contributions Contract between SFHA and HUD.
- Respond and enforce the HCV components of the Public Housing Agency Recovery and Sustainability (PHARS) Agreement.

- Administer the Project-Based Section 8 Housing Assistance Payments (HAP) Contracts for properties and units in its portfolio, including RAD conversion properties.
- Administer and enforce housing assistance contracts with owners, brokers, and management agents.

Sr. Housing Consultant

Puerto Rico Department of Housing, San Juan, PR | 2011 to 2014

- Provide expert advice and technical assistance to the Secretary of Housing and regional directors of the Authority who oversee the administration of over 9,000 Vouchers and over 55,000 Public Housing Units.
- Provide expert and specialized negotiations with other PHAs, the local HUD PIH office, HUD NJ Office of Fair Housing, HUD headquarters, and other governmental agencies.

Program Director

Chicago Housing Authority, Chicago, IL | 2010 to 2011

- Directed the administration of 38,000 vouchers and 17,000 property owners along with a waiting list with 40,000 applicants.
- Coordinated and facilitated communication with the Illinois Department of Children and Family Services, the Coalition to End Homelessness, and the VA Hospital.
- Directed and managed an annual operating budget of over \$331,000,000.00.
- Negotiated performance-based managing contracts of over \$52,000,000.00.
- Amended Administrative Plan and implemented first-of-a-kind Moving-To-Work (MTW) initiatives.

Sr. Housing Consultant

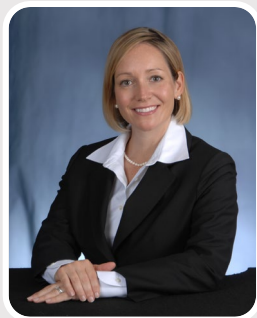
Nan McKay & Associates, Inc, El Cajon, CA | 2008 to 2009

- Sr. Project Manager on contract with Los Angeles to provide Annual Re-Examination Services through a remote mail operation.
- Project Director for Harris County responsible for the transition of over 5,000 DHAP families from the DHAP Program to the HCV Program in 3 months.
- Deputy Project Manager responsible for the financial planning, organization, and implementation of a HUD contract to provide Financial Services to the Miami-Dade Housing Agency.
- Project Manager responsible to provide utilization and lease-up services to the Puerto Rico Department of Housing.

Project Manager

Atlanta Housing Authority, Atlanta, GA | 2007 to 2008

- Responsible for over 2,000 families processed for eligibility and vouchers issued under AHA's MTW Quality of Life Initiative.
- Analyzed operational reports, identified areas of improvement; developed corrective action plans.
- Represented the Housing Choice Department as an expert witness, reviewed assigned cases and actions taken by Housing Choice, determined if HCV staff actions were appropriate, adjusted and/or corrections as appropriate.



Catherine J. Ures

Vice President of Professional Services

EXPERTISE

- ✔ Grant Administration
- ✔ Project Management Strategic Planning
- ✔ Planning Assessments & Initiatives
- ✔ Disaster Recovery and Resilience

EDUCATION

University of Southern California
Master of Public Administration (MPA), 2008

University of Southern California
Bachelor of Arts, Urban Planning & Community Development, 2000

CERTIFICATIONS

Secret Clearance
Certified Scrum Master

CONTACT INFORMATION

Email:
Catherine.ures@nanmckay.com
Phone: 800.783.3100

PROFILE

Ms. Catherine Ures is the Vice President of Professional Services for Nan McKay and Associates, with over 18 years of professional experience in community redevelopment, recovery, and strategic planning. Catherine has the unique qualifications of having worked in a management capacity in both the public and private sectors. Catherine's public service encompasses over a decade in California municipal government, in both the affordable housing and redevelopment fields. Her time in the private sector has focused on: serving federal, state and local entities with strategic planning, urban design, grants management, disaster recovery, HUD program management, FEMA program management, federal procurement, monitoring & compliance, and training.

EXPERIENCE

Vice President of Professional Services

Nan McKay & Associates, Inc., El Cajon, CA | 2018 to Present

- Manages all disaster recovery engagements, and related program creation for active contracts throughout the U.S and Puerto Rico.
- Provides technical expertise and management solutions to federal, state, and local arms of government throughout the county.
- Manages all consulting and training engagements for NMA, spanning across 99% of PHA's and over 300 cities throughout the country.
- Past Positions:**
- Director of Consulting | Nan McKay & Associates, Inc. | 2016 to 2018
- Senior Consultant | Nan McKay & Associates, Inc. | 2015 to 2015
- President | Juliette Allen Solutions, Inc. | 2014 to 2016
- Senior Consultant | Deloitte & Touche, LLP | 2012 to 2014
- Senior Management Analyst | City of Palm Desert Redevelopment Agency | 2001 to 2012

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Project Manager

City of Palm Desert Redevelopment Agency, Palm Desert, CA | 2001 to 2011

- Created and brokered an innovative, long-term research agreement with the University of California, Irvine, California Institute for Telecommunications and Information Technology, leveraging a technology incubator studying the long-term social and material effects of energy usage and the viability of energy efficiency tools.
- Served as the Project Manager for several multimillion-dollar redevelopment projects including: the construction of master planned affordable housing developments, senior affordable housing, workforce housing, core commercial revitalization, civic centers, recreation and open space preservation, and environmentally sensitive urban landscape design.
- Successfully managed and negotiated a multi-million dollar core commercial revitalization project, with a seven year life span leveraging joint funding from both the Redevelopment Agency, private developers, and twenty-five business owners.

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- ✔ Program Design
- ✔ Regulatory Compliance
- ✔ Grant Administration
- ✔ Disaster Recovery and Resilience
- ✔ Procurement
- ✔ Policy and Procedure Development
- ✔ Internal Audits

University of Chicago | Chicago, IL
Master of Arts, Public Policy

North Central College |
Naperville, IL
Bachelor of Arts, Psychology

Project Management Professional
ISO 9001:2000 Internal Auditor

Email: npaufve@nanmckay.com
Phone: 800.783.3100

Mr. Nathan Pauve is a Consulting Manager in Nan McKay and Associates' Professional Services practice and is a certified Project Management Professional (PMP) with expertise in program design and implementation, strategic planning, grants management and administration, regulatory compliance and monitoring, risk assessment and internal controls, program and project management, process improvement, workflow mapping and design, and measuring performance. He specializes in working collaboratively with federal, state, and local entities to develop and implement grant funded programs that address strategic disaster recovery, resiliency, social vulnerability, housing, and economic development.

Nan McKay & Associates, Inc., El Cajon, CA | January 2018 to Present

- Senior Consultant | Nan McKay & Associates, Inc. | 2015 to 2018
- Consultant | Nan McKay & Associates, Inc. | 2011 to 2015
- Operations Supervisor | Nan McKay & Associates, Inc. | 2011

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Senior Associate

Quadel Consulting Corporation, Chicago, IL | June 2007 to Dec. 2010

- Developed, implemented, and monitored a funding utilization plan to ensure that 98 percent of allocated vouchers and payments were utilized.
- Audited Project-Based Contract Administration (PBCA) operations and quality assurance systems of subsidiaries, identified weaknesses and opportunities for improvement, and made recommendations for enhancement and improved effectiveness resulting in successful ISO certification.
- Led pre-audit reviews utilizing Department of Housing and Urban Development (HUD) systems PIC, EIV, and ad hoc reports which identified more than 560 potential multiple subsidy cases, a risk of \$1.1 million of incorrectly paid housing subsidies.
- Created a centralized workflow tracking and reporting tool.

10. JOINT VENTURES & SUBCONTRACTORS

NMA does not intend to use any subcontractor and/or enter into a joint venture with another firm to deliver the services outlined within the RFQ.

11. CONFLICTS OF INTEREST

NMA is not aware of any potential conflicts of interest with regard to our performance of the requisite services nor our relationship with any DCA staff member including, but not limited to:

- Any firms for which NMA, its joint venture partner(s) or subcontractor(s) have provided, or may provide, other related services, including the preparation of applications to the Department; and
- Representation of a previous or known future applicant to the Department's programs.

12. SCHEDULE & SCOPE OF SERVICES

It is our understanding that NMA is being engaged to assist in implementation of the DCA's COVID-19 Emergency Rental Assistance Program (CVERAP), currently funded in the amount of \$90 million. The NMA team has demonstrated experience in implementing rental assistance programs, including:

- Experience in quickly developing plans and strategies to process applications for a large volume of applicants (8,000 – 10,000 households). For details, please see *Section 3.1, HCV Program Management Experience*.
- Experience with initiating and implementing emergency and/or disaster recovery housing assistance programs. For details, please see *Section 3.2, Federal Grants Administration Experience*.
- Experience with all aspects of rental assistance program administration, including determining eligibility, working with landlords, calculating rental portions, and fiscal management and reporting. For details, please see *Section 3.1, HCV Program Management Experience*.
- Knowledge and experience with public housing authority databases, including extensive experience with Housing Pro/HAPPY. For details, please see *Section 3.1, HCV Program Management Experience*.
- Experience in working with large governmental systems to implement and/or advise on housing assistance programs. For details, please see *Section 3.1, HCV Program Management Experience*.
- Extensive knowledge of Coronavirus Relief Fund requirements. For details, please see *Section 3.2, Federal Grants Administration Experience*.

NMA's goal is not only to help DCA implement the COVID-19 Emergency Rental Assistance Program, but to also help maximize the impact of that federal assistance.

We will effectively and efficiently execute the following tasks:

- Communicate with landlords and tenants regarding incomplete applications and collect missing data.
- Ensure entry of all needed applicant information into DCA housing database.
- Review and determine eligibility of applications.
- Communicate with all applicants and landlords regarding determination of eligibility
- Work with DCA staff and vendors to facilitate weekly subsidy payments
- Review payments for accuracy and report weekly to DCA
- Work with DCA staff and vendors to ensure quality administration of program

The NMA team will follow a five (5) phased approach to provide the requested services:

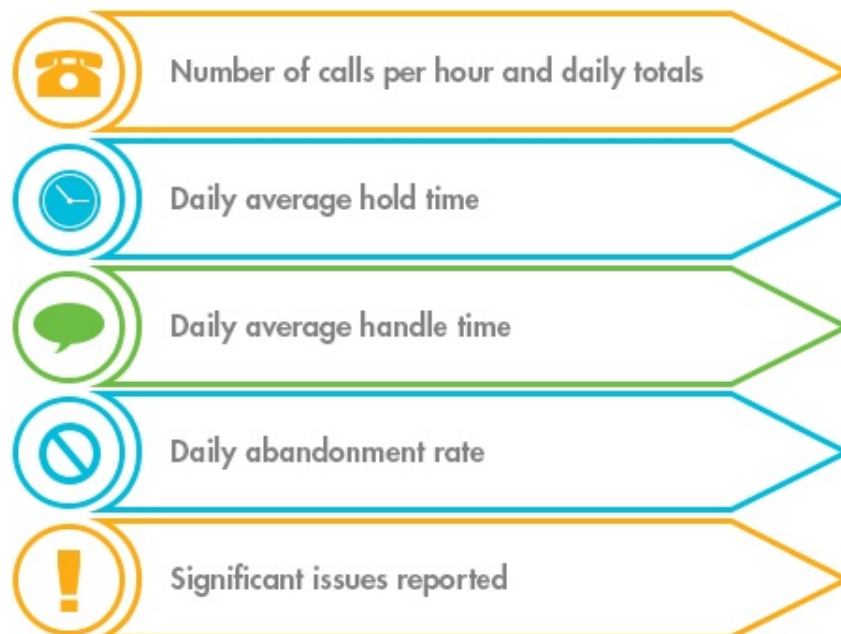


PHASE I Call Center

NMA will set up a call center specific to the CVERAP. Our customer service representatives are well versed in COVID-19 related programming and will handle all customer service calls in an expediated and efficient manner. All call center metrics will be reported daily to the DCA.

NMA's full-service call centers provide administrative support for program administration, inspection services, and program operational functions for agencies across the nation. Utilizing a robust contact center solution, we provide high-quality customer service with a first-call resolution focus. Our call center staff are certified housing specialists to ensure accurate and timely solutions for our callers. Our call center supports agencies Monday through Friday, across all time zones.

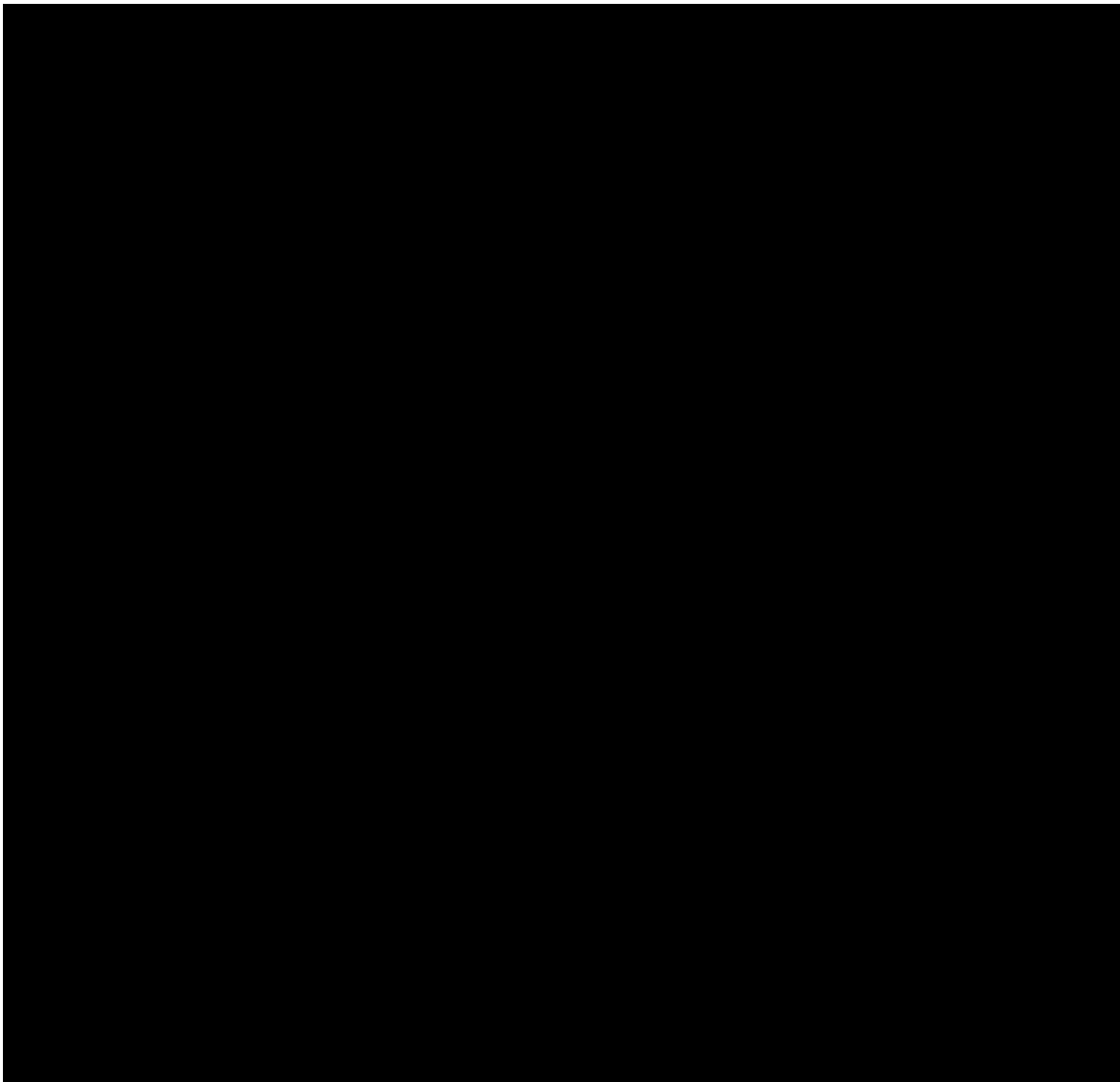
Our daily call center reports capture:



PHASE II Technology

NMA will assist in any necessary enhancements, modifications, and/or integrations for DCA's technology platform specific to program applicants. NMA will establish a first-come, first-serve review methodology for eligibility determination.

We regularly enhance our technology products by adopting the latest innovations to efficiently manage staff and program performance. We have created multiple technological platforms that allow our teams and PHAs to manage their programs more effectively including, but not limited to:



PHASE III Eligibility

NMA's team of housing specialists, in conjunction with our call center staff, will assist clients with the eligibility review for program participation. All applicant files will be reviewed to ensure evidence of the following exists:

- Valid lease agreement
- Evidence or self-certification of unpaid rent
 - NMA will calculate the total rent amount due and provide to the DCA
- Evidence of loss of income due to COVID-19
- All necessary forms as required by DCA

Our eligibility specialists will review submitted applicant documentation, answer any programmatic questions, and make an eligibility determination and request issuance of award by scheduling the payments in DCA's operating software. Our team of eligibility specialists will review for completeness and hand off to the DCA for final approval and disbursement of payments.

PHASE IV Compliance

We begin to think about program closeout on Day 1. On July 2, 2020, the U.S. Department of the Treasury issued compliance and monitoring guidance titled *Coronavirus Relief Fund Reporting and Record Retention Requirements (OIG CA-20-021)*. Our team of experienced consultants will create a quality control methodology and compliance and monitoring methodology based on industry best practices and recent guidance from the Department of the Treasury.

12.1 Quality Control Measures

As the industry leader in affordable housing, NMA is committed to developing the most knowledgeable team in the industry. Ongoing quarterly training integrates quality control (QC) and customer service results to improve overall program performance and inform staff about policy changes. NMA's QC team will develop and implement a parallel QC effort for both the call center and eligibility workstreams. Our methodology and QC plan will be presented to the DCA for review and approval prior to implementation.

12.2 Compliance & Monitoring

Our team will assist in developing and/or updating:

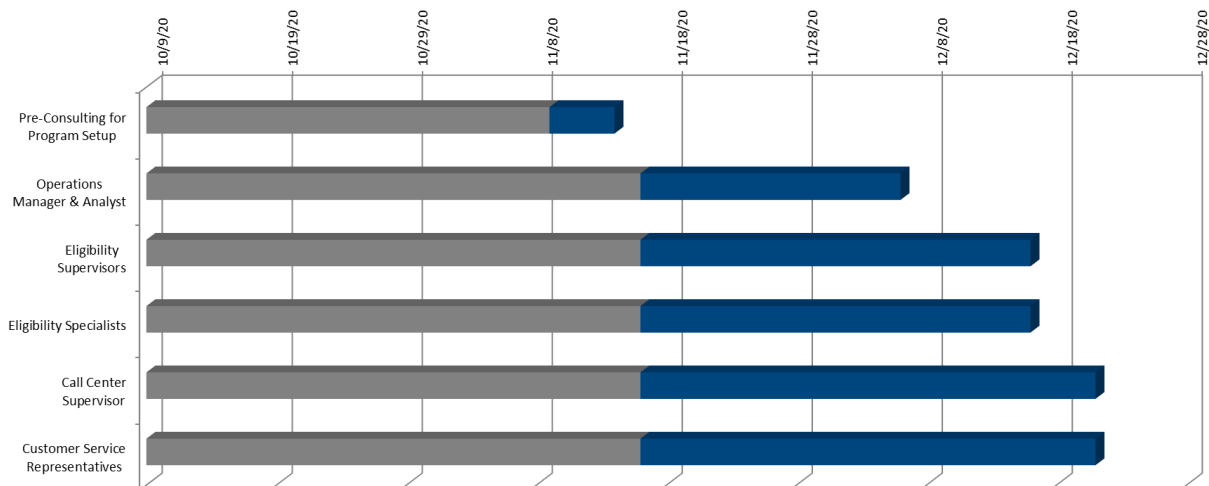
- A. Structure for procedures and checklists, as needed.
- B. Recommendations for the development and/or update policies and procedures, as needed.
- C. Methodology for regular risk assessment, mitigation, and status tracking to close out any identified issues and risks.
- D. Compliance review methodology for desk reviews.

PHASE V Technical Assistance

During *Phase V*, the NMA team will provide the DCA with ongoing technical assistance related to the CARES Act and COVID relief funding. NMA's team of experts who are working on similar projects across the country will be available to advise the DCA with regards to programmatic changes as they related to COVID funding.

12.3 Sample Project Schedule

Provided below is a sample project schedule for DCA's reference. Upon contract award, we will work collaboratively to develop a detailed project schedule that aligns with DCA's goals and team availability.



13. QUOTATION

Presented below are four (4) levels of effort and pricing options based on the approximate number of applications to be reviewed and approved.

Call Center				
Resource	QTY			
Customer Service Representative (CSR)	18			
CSR Team Lead	3			
Total Call Center Costs	\$ 354,960.00			
Semi-Monthly firm fixed fee - Call Center	\$ 70,992.00			
*2.5 month minimum				
Eligibility Determination				
Resource	QTY			
Manager	1			
Analyst & Reports Specialist	1			
Team Leads	7			
Eligibility Specialists	50			
Reviewed Applications	24000			
Approval Rate	66%			
Est. Approved Applications	15750			
Est. Funds Obligated @ \$900 PUC X 6 months	\$ 85,050,000.00			
Total Eligibility Review Costs	\$ 1,804,935.00			
Semi-Monthly firm fixed fee - Reviews*	\$ 360,987.00			
Total Project (w/ call center)	\$ 2,159,895.00			
*2.5 month minimum				

14. MANDATORY COMPLIANCE FORMS

Included within this section are the following required documents:

- Waiver and DPA Contract Checklist
- State of New Jersey Standard Terms and Conditions
- Waivered Contracts Supplement to the State of New Jersey Standard Terms and Conditions
- Ownership Disclosure Form
- Disclosure of Investigations and Other Actions Involving Vendor
- Disclosure of Investment Activities in Iran
- Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions
- Chapter 271 Vendor Certification and Political Disclosure Form
- MacBride Principals Form
- Business Registration Certificate
- Certificate of Insurance
- Source Disclosure Form
- Affirmative Action Employee Information Report



SOURCE DISCLOSURE FORM

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

BID SOLICITATION # AND TITLE: Short-Term Rental Assistance Program Consulting Services

VENDOR/BIDDER NAME: Nan McKay and Associates, Inc.

The Vendor/Bidder submits this Form in response to a Bid Solicitation issued by the State of New Jersey, Department of the Treasury, Division of Purchase and Property, in accordance with the requirements of N.J.S.A. 52:34-13.2.

PART 1

- ☒ All services will be performed by the Contractor and Subcontractors in the United States. Skip Part 2.
- ☐ Services will be performed by the Contractor and/or Subcontractors outside of the United States. **Complete Part 2.**

PART 2

Where services will be performed outside of the United States, please list every country where services will be performed by the Contractor and all Subcontractors. If any of the services cannot be performed within the United States, the Contractor shall state, with specificity, the reasons why the services cannot be performed in the United States. The Director of the Division of Purchase and Property will review this justification and if deemed sufficient, the Director may seek the Treasurer's approval.

Name of Contractor / Sub-contractor	Performance by Country	Location	Description of Service(s) to be Performed Outside of the U.S. *	Reason Why the Service(s) Cannot be Performed in the U.S. *

**Attach additional sheets if necessary to describe which service(s), if any, will be performed outside of the U.S. and the reason(s) why the service(s) cannot be performed in the U.S.*

Any changes to the information set forth in this Form during the term of any Contract awarded under the referenced Bid Solicitation or extension thereof shall be immediately reported by the Contractor to the Director of the Division of Purchase and Property. If during the term of the Contract, the Contractor shifts the location of services outside the United States, without a prior written determination by the Director, the Contractor shall be deemed in breach of Contract, and the Contract will be subject to termination for cause pursuant to the State of New Jersey Standard Terms and Conditions.

CERTIFICATION

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor/Bidder, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein, and that the Vendor/Bidder is under a continuing obligation from the date of this certification through the completion of any Contract(s) with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I will be subject to criminal prosecution under the law, and it will constitute a material breach of my agreement(s) with the State, permitting the State to declare any contract(s) resulting from this certification to be void and unenforceable.

Signature

John McKay, Chief Executive Officer

Print Name and Title

10/28/20

Date

STATE OF NEW JERSEY AGENCY PURCHASE ORDER				DOCUMENT		DATE	REQUISITION NUMBER	FY
				TC PO	AGY 022	NUMBER 80208879577	12/18/20	R
PO #: 8879577				(WAO) SPECIAL PROCUREMENT/ WAIVER AUTHORIZATION				VENDOR ID NUMBER
CONTRACT NO	AGENCY REF	BUYER	TERMS					TOTAL AMOUNT
	EMER COVID		NONE					\$ 1500000.00

VENDOR NAME AND ADDRESS

NAN MCKAY ASSOCIATES
1855 GILLESPIE WAY
EL CAJON CA 92020-1095

SHIP F.O.B. DESTINATION TO:

DIV OF ADMINISTRATION
FISCAL/PROCUREMENT OFFICE
101 S BROAD ST 8TH FL
PO BOX 800 ROOM 812
TRENTON NJ 08625-0800 (228070/S007)

Direct Purchase or Special Procurement, Indicate Date Quotation Received → 10/28/20

CONTACT [REDACTED]

WAIVER NUMBER: A0040

IMPORTANT: THIS PURCHASE ORDER CONTAINS PROMPT PAYMENT INFORMATION

BILL TO:

DEPT OF COMMUNITY AFFAIRS
DIV OF ADMINISTRATION
FISCAL/PROCUREMENT OFFICE
101 S BROAD ST 8TH FL
PO BOX 800 ROOM 812
TRENTON NJ 08625 (228070/B005)

VENDOR REFERENCE

BFY 20

FUND	AGCY	ORG CODE	SUBORG	APPR UNIT	ACTIVITY CD	OBJECT CD	SUB-OBJ	REV SRCE	SUB-REV	PROJECT/JOB NO
100	022	8020		209	2001	3620				

RPT CT	AMOUNT
1 CVAD	1500000.00
2	
3	

INSTRUCTIONS TO VENDORS: ENCLOSE PACKING SLIP WITH SHIPMENTS. SUBMIT ALL BILLS ON ATTACHED STATE VOUCHER FORMS. IF PARTIAL BILLING SUBMIT BALANCE ON SEPARATE STATE VOUCHER FORMS. SHOW PURCHASE ORDER NUMBER ON ALL BILLS OF LADING. INVOICES AND CORRESPONDENCE TO THE STATE AGENCY INDICATED ABOVE. N.J.S.A. 54:32B-1 ET SEQ. EXEMPTS NJ STATE AGENCIES FROM SALES OR USE TAXES. DO NOT INCLUDE THEM IN YOUR PRICE.

ITEM NO.	COMMODITY CODE/DESCRIPTION OF ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
00001	DELIVERY: 030 DAYS ARO COMMODITY CODE: 918-32-000000 [CONSULTING SERVICES (NOT OTHERWISE...)] ITEM DESCRIPTION: CONSULTANT SERVICES TO IMPLEMENT AND ADMINISTER THE COVID 19 EMERGENCY RENTAL ASSISTANCE PROGRAM. <i>feeder</i>	1.000	EACH	1500000.00	\$ 1500000.00

AGENCY APPROVAL: This transaction is authorized by the Director, Division of Purchase and Property in accordance with the provision of Chap. 107 P.L. 1985 as amended. The issuing Agency's Approval Officer's signature guarantees compliance with all provisions governing the authorization granted by the Director. Signature affixed to this document serves as certification that: 1) items purchased under DPA authorization are not currently available under the provisions of a current State contract, nor from the State Distribution Center, nor from DEPTCOR (State Use Industries); 2) funds required and authorized for this purpose are available. Unauthorized use is subject to prosecution.

Cindy McDowell
Authorized Signature
Director
12/18/2020
Title Date

STATE OF NEW JERSEY AGENCY PURCHASE ORDER				DOCUMENT		DATE	REQUISITION NUMBER	FY
				TC PO	AGY 022	NUMBER 80208879588	12/18/20	R
P O #: 8879588				(WAO) SPECIAL PROCUREMENT/ WAIVER AUTHORIZATION				
CONTRACT NO	AGENCY REF	BUYER	TERMS	TOTAL AMOUNT				
	EMER COVID		NONE	\$ 659895.00				

VENDOR NAME AND ADDRESS

NAN MCKAY ASSOCIATES
1855 GILLESPIE WAY
EL CAJON CA 92020-1095

SHIP F.O.B. DESTINATION TO:

DIV OF ADMINISTRATION (228070/S007)
FISCAL/PROCUREMENT OFFICE
101 S BROAD ST 8TH FL
PO BOX 800 ROOM 812
TRENTON NJ 08625-0800

Direct Purchase or Special Procurement, Indicate Date Quotation Received → 10/28/20

CONTACT [REDACTED]

WAIVER NUMBER: A0040

IMPORTANT: THIS PURCHASE ORDER CONTAINS PROMPT PAYMENT INFORMATION

BILL TO:

DEPT OF COMMUNITY AFFAIRS (228070/B005)
DIV OF ADMINISTRATION
FISCAL/PROCUREMENT OFFICE
101 S BROAD ST 8TH FL
PO BOX 800 ROOM 812
TRENTON NJ 08625

VENDOR REFERENCE

BFY 21

FUND	AGCY	ORG CODE	SUBORG	APPR UNIT	ACTIVITY CD	OBJECT CD	SUB-OBJ	REV SRCE	SUB-REV	PROJECT/JOB NO
100	022	8020		117	2001	3620				

RPT CT	AMOUNT
1	659895.00
2	
3	

INSTRUCTIONS TO VENDORS: ENCLOSE PACKING SLIP WITH SHIPMENTS. SUBMIT ALL BILLS ON ATTACHED STATE VOUCHER FORMS. IF PARTIAL BILLING SUBMIT BALANCE ON SEPARATE STATE VOUCHER FORMS. SHOW PURCHASE ORDER NUMBER ON ALL BILLS OF LADING. INVOICES AND CORRESPONDENCE TO THE STATE AGENCY INDICATED ABOVE. N.J.S.A. 54:32B-1 ET SEQ. EXEMPTS NJ STATE AGENCIES FROM SALES OR USE TAXES. DO NOT INCLUDE THEM IN YOUR PRICE.

ITEM NO.	COMMODITY CODE/DESCRIPTION OF ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
00001	DELIVERY: 030 DAYS ARO COMMODITY CODE: 918-32-000000 [CONSULTING SERVICES (NOT OTHERWISE...)] ITEM DESCRIPTION: CONSULTANT SERVICES TO IMPLEMENT AND ADMINISTER THE COVID 19 EMERGENCY RENTAL ASSISTANCE PROGRAM <i>State</i>	1.000	EACH	659895.00	\$ 659895.00

AGENCY APPROVAL: This transaction is authorized by the Director, Division of Purchase and Property in accordance with the provision of Chap. 107 P.L. 1985 as amended. The issuing Agency's Approval Officer's signature guarantees compliance with all provisions governing the authorization granted by the Director. Signature affixed to this document serves as certification that: 1) Items purchased under DPA authorization are not currently available under the provisions of a current State contract, nor from the State Distribution Center, nor from DEPTCOR (State Use Industries); 2) funds required and authorized for this purpose are available. Unauthorized use is subject to prosecution.

Cindy McDowell
Authorized Signature

Director 12/18/2020
Title Date



State of New Jersey Standard Terms and Conditions

(Revised 11/12/2020)

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. STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT

Unless the bidder/offeror is specifically instructed otherwise in the Bid Solicitation/Request for Proposals (RFP), the following terms and conditions shall apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in the RFP and should be read in conjunction with same unless the RFP specifically indicates otherwise. In the event that the bidder/offeror would like to present terms and conditions that are in conflict with either these terms and conditions or those set forth in the RFP, the bidder/offeror must present those conflicts during the Question and Answer period for the State to consider. Any conflicting terms and conditions that the State is willing to accept will be reflected in an addendum to the RFP. The State's terms and conditions shall prevail over any conflicts set forth in a bidder/offeror's Proposal that were not submitted through the question and answer process and approved by the State. Nothing in these terms and conditions shall prohibit the Director of the Division of Purchase and Property (Director) from amending a contract when the Director determines it is in the best interests of the State.

1.1 CONTRACT TERMS CROSSWALK

NJSTART Term	Equivalent Statutory, Regulatory and/or Legacy Term
Bid/Bid Solicitation	Request For Proposal (RFP)/Solicitation
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order (Blanket P.O.)	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor	Bidder/Contractor

2. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS

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

2.1 BUSINESS REGISTRATION

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

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

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

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

2.2 ANTI-DISCRIMINATION

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

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

2.3 PREVAILING WAGE ACT

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

2.4 AMERICANS WITH DISABILITIES ACT

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

2.5 MACBRIDE PRINCIPLES

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

2.6 PAY TO PLAY PROHIBITIONS

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

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

2.7 POLITICAL CONTRIBUTION DISCLOSURE

The contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, §3 as amended) if in a calendar year the contractor receives one (1) or more contracts valued at \$50,000.00 or more. It is the contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC.

Additional information about this requirement is available from ELEC by calling 1(888)313-3532 or on the internet at <http://www.elec.state.nj.us/>.

2.8 STANDARDS PROHIBITING CONFLICTS OF INTEREST

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

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

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

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;

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

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

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

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

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

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of

the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

2.10 COMPLIANCE - LAWS

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

2.11 COMPLIANCE - STATE LAWS

It is agreed and understood that any contracts and/or orders placed as a result of [this 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.

2.12 WARRANTY OF NO SOLICITATION ON COMMISSION OR CONTINGENT FEE BASIS

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

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

3.1 COMPLIANCE - CODES

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

3.2 PUBLIC WORKS CONTRACTOR REGISTRATION ACT

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

3.3 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS

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

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

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

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

3.4 BUILDING SERVICE

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

3.5 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT

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

3.6 SERVICE PERFORMANCE WITHIN U.S.

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

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b) (1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

3.7 BUY AMERICAN

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

3.8 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.

3.9 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>.

4. INDEMNIFICATION AND INSURANCE

4.1 INDEMNIFICATION

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

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

4.2 INSURANCE

The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A-VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days' written notice of cancellation or material change to the State of New Jersey at the address shown below. If the contractor's insurer cannot provide 30 days written notice, then it will become the obligation of the contractor to provide the same. The contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of 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.
- D. This \$1,000,000 amount may have been raised by the RFP when deemed necessary by the Director; and
- E. In the case of a contract entered into pursuant to N.J.S.A. 52:32-17 et seq., (small business set asides) the minimum amount of insurance coverage in subsections a., b., and c. above may have been lowered in the RFP for certain commodities when deemed in the best interests of the State by the Director.

5. TERMS GOVERNING ALL CONTRACTS

5.1 CONTRACTOR IS INDEPENDENT CONTRACTOR

The contractor's status shall be that of any independent contractor and not as an employee of the State.

5.2 CONTRACT AMOUNT

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

5.3 CONTRACT TERM AND EXTENSION OPTION

If, in the opinion of the Director, it is in the best interest of the State to extend a contract, the contractor shall be so notified of the Director's Intent at least 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.

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 Vendor {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 OR ASSIGNMENT

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

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

5.9 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND STATE

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

5.10 MERGERS, ACQUISITIONS

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

Identification Number. The documents must be submitted within 30 days of the request. Failure to do so may result in termination of the contract for cause.

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

5.11 PERFORMANCE GUARANTEE OF CONTRACTOR

The contractor hereby certifies that:

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

5.12 DELIVERY REQUIREMENTS

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

5.13 APPLICABLE LAW AND JURISDICTION

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

5.14 CONTRACT AMENDMENT

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

5.15 MAINTENANCE OF RECORDS

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

5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)

The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself

and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract.

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

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

6. TERMS RELATING TO PRICE AND PAYMENT

6.1 PRICE FLUCTUATION DURING CONTRACT

Unless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract. In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified, in writing, of any price reduction within five (5) days of the effective date. Failure to report price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1.

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 section of the RFP and must be in strict accordance with the firm, fixed prices submitted for each task or subtask on the RFP pricing sheets. When applicable, invoices should reference the appropriate RFP price sheet line number from the contractor's bid proposal. All invoices must be approved by the State Contract Manager or using agency before payment will be authorized;
- C. In all time and materials contracts, the State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls; and

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

6.4 OPTIONAL PAYMENT METHOD: P-CARD

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

6.5 NEW JERSEY PROMPT PAYMENT ACT

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

Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

6.6 AVAILABILITY OF FUNDS

The State's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenue.

7. TERMS RELATING TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS

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

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

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

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

7.5 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

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.
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.

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.

EXHIBIT A**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)N.J.A.C. 17:27 et seq.**GOODS, GENERAL SERVICE AND PROFESSIONAL SERVICES CONTRACTS**

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

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

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

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

The contractor or subcontractor, 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**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.**CONSTRUCTION CONTRACTS**

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

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, 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;

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

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

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

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

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

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

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

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

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or

subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.

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

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

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

The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Dept. of LWD, Construction EEO Monitoring Program and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on the job and/or off the job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

EXECUTIVE ORDER NO. 151 REQUIREMENTS

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

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

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

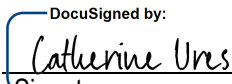
1. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at <https://newjersey.usnlx.com/>;
2. The Contractor shall keep specific records of its efforts, including records of all individuals 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

(Rev: 11/12/2020)

**I HEREBY ACCEPT THE TERMS AND CONDITIONS OF THIS
CONTRACT**

DocuSigned by:

Signature 34EFE4CC...

11/19/2020

Date

Catherine Ures Vice President

Print Name and Title

Nan McKay and Associates

Print Name of Contractor

**WAIVERED CONTRACTS SUPPLEMENT TO THE
STATE OF NEW JERSEY STANDARD TERMS AND CONDITIONS
(Rev. 6/14/2018)**

- A. WAIVERED CONTRACTS SUPPLEMENT TO THE STATE OF NEW JERSEY STANDARD TERMS AND CONDITIONS** - 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 modify the terms of the New Jersey Division of Purchase and Property's Standard Terms and Conditions as may be updated from time to time ("Standard Terms and Conditions"). The combined terms of the Standard Terms and Conditions and this Supplement, in addition to the terms and conditions set forth in the Request for Proposal, Request for Quotation, and/or other agency request ("Solicitation"), if applicable, shall prevail over any conflicts set forth in or incorporated by reference into a contractor's proposal submitted in response to a Solicitation including any standard license, service or other agreement ("Contractor Standard Form Agreement").

The "Contract" shall consist of this Supplement, the Standard Terms and Conditions, the Solicitation, and the proposal submitted by the contractor.

The Standard Terms and Conditions are hereby incorporated by reference. Section numbering of the changes and additions enumerated below continue the number scheme of the Standard Terms and Conditions.

- B. CHANGES/ADDITIONS TO THE STANDARD TERMS AND CONDITIONS FOR ALL GOODS, SERVICES, AND INFORMATION TECHNOLOGY WAIVERED CONTRACTS:**

2.13 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 proposal. A contractor's failure to submit the completed and signed form with its proposal will result in the rejection of the proposal as non-responsive and preclude the award of a Contract to said contractor 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 receipt of the proposal. 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 proposal.

In the alternative, to comply with this section, 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.

2.14 PROHIBITED INVESTMENT 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.

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2.15 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.

2.16 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.

2.17 DELIVERY TIME AND COSTS

Unless otherwise noted elsewhere in the Solicitation, 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.

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

C.O.D. terms will not be accepted.

2.19 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:

- A. Discount periods shall be calculated starting from the next business day after the Using Agency has accepted the goods or services, received a properly signed and executed invoice and, when required, a properly executed performance security, whichever is latest; and
- B. The date on the check issued by the State in payment of that invoice shall be deemed the date of the State's response to that invoice.

2.20 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.

**WAIVERED CONTRACTS SUPPLEMENT TO THE
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- 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 Standard Terms and Conditions, authorize the delivery of contract items by any available means, with the difference between the price paid and the defaulting contractor's price either being deducted from any monies due the defaulting contractor or being an obligation owed the State by the defaulting contractor, as provided for in the State administrative code, or take any other action or seek any other remedies available at law or in equity.

2.21 NEWS RELEASES & ADVERTISING

- A. 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.
- B. 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.

2.22 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.

3.8 PERFORMANCE SECURITY

If performance security is required, such security must be submitted with the bid in the amount listed in the Solicitation. 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.

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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.

3.9 RETAINAGE

If retainage is required on the Contract as stated in the Solicitation, 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.

3.10 SUBCONTRACTOR UTILIZATION PLAN

A contractor that will subcontract any of the work or services to be provided under the Contract shall submit to the agency along with its proposal a Subcontractor Utilization Plan located at the following webpage: <http://www.state.nj.us/treasury/purchase/forms/subcontracting.pdf>. See also Section 5.8 of the Standard Terms and Conditions.

5.17 CONFIDENTIALITY

- a. The State's obligation to maintain the confidentiality of the contractor's confidential information provided to the State under the Contract is conditioned upon and subject to the State's obligations under the New Jersey Public Records Act, N.J.S.A. 47:1A-1 et seq., ("OPRA"), the New Jersey common law right to know, and any other lawful document request or subpoena.
- b. By virtue of the Contract, the parties may have access to information that is confidential to one another. The parties agree to disclose only information that is required for the performance of their obligations under the Contract. The 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 ("Contractor Confidential Information"). Notwithstanding the previous sentence, the contractor acknowledges the terms and pricing of the Contract are subject to disclosure under OPRA, the New Jersey 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 in any form whatsoever 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

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- 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 parties agree to hold each other's Confidential Information in confidence, using at least the same degree of care in doing so that it uses to protect its own confidential information.
 - f. In the event that the State receives a request for Contractor Confidential Information related to the Contract pursuant to a court order, subpoena, lawful document request or other operation of law, the State agrees, if permitted by law, to provide the contractor with as much notice, in writing, as is reasonably practicable and the State's intended response to such request. The contractor shall take any action it deems appropriate to protect its documents and/or information.
 - g. In addition, in the event the contractor receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, the contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and the contractor's intended response to such request. The State shall take any action it deems appropriate to protect its documents and/or information. Notice to the State shall not relieve the contractor of its obligation to take action to protect such information if the contractor is aware of a legal reason to do so.
 - h. Notwithstanding the requirements of nondisclosure described in this Section 5.17, either party may release the other party's Confidential Information (i) if directed to do so by a court or arbitrator of competent jurisdiction, (ii) pursuant to a lawfully issued subpoena or other lawful document request, (iii) in the case of the State, if the State determines the documents or information are subject to disclosure and the contractor does not exercise its rights as described in subsection (f), or if the contractor is unsuccessful in defending its rights as described in subsection (f), or (iv) in the case of the contractor, if the contractor determines the documents or information are subject to disclosure and the State does not exercise its rights as described in subsection (g), or if the State is unsuccessful in defending its rights as described in subsection (g).

C. CHANGES/ADDITIONS TO THE STANDARD TERMS AND CONDITIONS APPLICABLE TO SERVICES AND INFORMATION TECHNOLOGY WAIVERED CONTRACTS:

4.2 INSURANCE

The following paragraph D is added to section 4.2 of the Standard Terms and Conditions:

- 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 and in such policy forms as shall be approved by the State. If the contractor has claims-made coverage and subsequently changes carriers during the term of the Contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

5.18 OWNERSHIP

Capitalized terms used but not defined are defined in Subsection D of this Supplement, below.

- a. Contractor Intellectual Property; COTS and Customized Software – The contractor retains ownership of all Contractor Intellectual Property, and any modifications thereto and derivatives thereof, that the contractor supplies to the State pursuant to the Contract. The contractor grants the State a non-exclusive, perpetual royalty-free license to use Contractor Intellectual Property delivered to the State for the purposes contemplated by the Contract.

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- b. Third Party Intellectual Property – Unless otherwise specified in the Solicitation that the State, on its own, will acquire and obtain a license to Third Party Intellectual Property, the contractor shall secure on the State's behalf, in the name of the State and subject to the State's approval, a license to Third Party Intellectual Property sufficient to fulfill the business objectives, requirements and specifications identified in the Contract at no additional cost to the State beyond that in the bid price. Under no circumstances will the State accept a license for Third Party Intellectual Property that contains terms and conditions that conflict with the terms and conditions of the Contract. If the contractor uses Third Party Intellectual Property, the contractor must indemnify the State for infringement claims with respect to the Third Party Intellectual Property. The contractor agrees that its use of Third Party Intellectual Property shall be consistent with the license for the Third Party Intellectual Property, whether supplied by the contractor, secured by the State as required by the Solicitation, or otherwise supplied by the State.
- c. Work Product; Custom Software – The State owns all Custom Software which shall be considered "work made for hire", i.e., the State, not the contractor, subcontractor, or third party, shall have full and complete ownership of all such Custom Software. To the extent that any Custom Software may not, by operation of the law, be a "work made for hire" in accordance with the terms of the Contract, contractor, subcontractor, or third party hereby assigns to the State, or the contractor shall cause to be assigned to the State, all right, title and interest in and to any such Custom Software and any copyright thereof, and the State shall have the right to obtain and hold in its own name any copyrights, registrations and any other proprietary rights that may be available.
- d. Work Product; Services – The State owns all Deliverables developed for the State in the course of providing Services under the Contract, including but not limited to, all data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the Contract, including but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, 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 the Contract.
- e. State Intellectual Property – Data and Background Information. The State owns all State Intellectual Property and State data and background information provided to the contractor pursuant to the Contract. The State's data and background information shall include, without limitation, all data, technical information, and materials provided to the contractor by the State to facilitate performance of the Contract, including but not limited to all reports, 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. The items described in the preceding sentence shall be delivered or returned to the State of New Jersey upon thirty (30) days' notice by the State or thirty (30) days after the expiration or termination of the Contract. Only to fulfill the purposes of the Contract does the State grant the contractor a non-exclusive, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of State Intellectual Property and State data and background information. Notwithstanding anything to the contrary contained in the Terms and Conditions or this Supplement, no part of the State's data will be disclosed, sold, assigned, leased or otherwise disposed of to any person or entity other than the State unless specifically directed to do so in writing by the Contract Manager. The State's license to the contractor is limited by the term of the Contract and the confidentiality obligations set forth in Section 5.17 of this Supplement.
- f. No Rights – Except as expressly set forth in the Contract, nothing in the Contract shall be construed as granting to or conferring upon the contractor any right, title, or interest in State Intellectual Property or any intellectual property that is now owned or licensed to or subsequently owned by or licensed by the State. Except as expressly set forth in the Contract, nothing in the Contract shall be construed as granting to or conferring upon the State any right, title, or interest in any Contractor Intellectual Property that is now owned or subsequently owned by the contractor. Except as expressly set forth in the Contract, nothing in the Contract shall be construed as granting to or conferring upon the State any right, title, or interest in any Third Party Intellectual Property that is now owned or subsequently owned by a Third Party.

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**D. CHANGES/ADDITIONS TO THE STANDARD TERMS AND CONDITIONS FOR ALL INFORMATION
TECHNOLOGY WAIVERED CONTRACTS:**

1.2 DEFINITIONS

The following definitions shall apply to information technology contracts:

- i. The term "Acceptance" means the written confirmation by an Agency that the contractor has completed a Deliverable according to the specified requirements.
- ii. 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.
- iii. The term Commercial Off the Shelf Software ("COTS") means Software provided by the contractor that is intended for general use.
- iv. 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.
- v. 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.
- vi. The term "Deliverable" means the goods, products, Services and Work Product that the contractor is required to deliver to the State under the Contract;
- vii. The terms "goods" and "products" shall be deemed to include, without limitation, Software and Hardware.
- viii. 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.
- ix. 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.
- x. 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.
- xi. 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.
- xii. 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.
- xiii. 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.
- xiv. 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 registerable 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.

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2.10 COMPLIANCE - LAWS

The following is added to section 2.10 of the Standard Terms and Conditions:

COMPLIANCE – DATA AND PRIVACY LAWS – The contractor must comply with all State and Federal data and privacy laws, rules and regulations applicable to both the contractor and the State under the Contract.

4.1 INDEMNIFICATION

Section 4.1 of the Standard Terms and Conditions is deleted in its entirety and replaced with the following:

INDEMNIFICATION AND LIMITATION OF LIABILITY:

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:
 - i. For or on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or products supplied under the Contract or the order; and
 - ii. For or on account of the use of any patent, copyright, trademark, trade secret or other proprietary right of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance ("Intellectual Property Rights") furnished or used in the performance of the Contract; and
 - iii. The contractor's indemnification and liability under subsection (a) is not limited by, but is in addition to the insurance obligations contained in these Standard Terms and Conditions.
 - b) In the event of a claim or suit involving third-party Intellectual Property Rights, the contractor, at its option, may: (1) procure for the State the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties. The State will (1) promptly notify the contractor in writing of the claim or suit; (2) the contractor shall have control of the defense and settlement of any claim that is subject to subsection (a); provided, however, that the State must approve any settlement of the alleged claim, which approval shall not be unreasonably withheld. The State may observe the proceedings relating to the alleged claim and confer with the contractor at its expense. Furthermore, neither the contractor nor any attorney engaged by the contractor shall defend the claim in the name of the State of New Jersey or any Agency, nor purport to act as legal representative of the State of New Jersey or any Agency, without having provided notice to the Director of the Division of Law in the Department of Law and Public Safety and to the Director of DPP. The State of New Jersey may, at its election and expense, assume its own defense and settlement.
 - c) Notwithstanding the foregoing, the 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 the Contract with any product, device, or Software not supplied by the contractor; (2) the State's unauthorized alteration or modification of any product supplied under the Contract; (3) the contractor's compliance with the State's designs, specifications, requests, or instructions, provided that if the State provides the contractor with such designs, specifications, requests, or instructions, the 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 or more designs, specifications, requests or instructions that

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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 the contractor.

- d) The contractor will be relieved of its responsibilities under subsection (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.
- e) This section states the entire obligation of the 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 the contractor disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any product.
- f) 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.
- g) The contractor agrees that any approval by the State or Using Agency 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.
- h) 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(2) of this Supplement and a determination by the State to pay the claim or a final order of a court of competent jurisdiction.

2. 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(1)(a)(i) and (ii) of this Supplement which results in an unaffiliated third party claim. This is the contractor's exclusive remedy for these claims.

3. LIMITATION OF LIABILITY

- a) 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, the Contract for any and all claims, shall be limited in the aggregate to 200% of the fees paid to the contractor for the products or Services giving rise to such damages, except that such limitation of liability shall not apply to the following:
 - i. The contractor's indemnification obligations as described in Section 4.1(1) of this Supplement; and
 - ii. The contractor's breach of its obligations of confidentiality described in Section 5.17 of this Supplement; and
- b) The contractor shall not be liable for consequential or incidental damages.

5.11 CONTRACTOR PERFORMANCE WARRANTIES

Section 5.11 of the Standard Terms and Conditions is deleted in its entirety and replaced 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

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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

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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.**

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5.19 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:

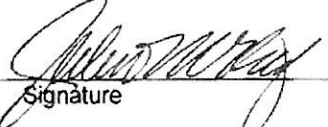
- a. **AUDIT NOTICE** – Notwithstanding anything to the contrary in the contractor's proposal or Standard Form Agreement, in the event that the contractor seeks to exercise a right in its proposal or Standard Form Agreement to audit the State's use of Contractor Intellectual Property, the contractor 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:
 - i. Director of the New Jersey Department of Treasury, Division of Purchase and Property:
Procurement Bureau, Technology Unit
P.O. Box 230
Trenton, NJ 08625-0230
 - ii. Chief of Staff of the New Jersey Office of Information Technology:
Office of the Chief Technology Officer
300 Riverview Plaza
Trenton, NJ 08625
 - iii. State Contract Manager.

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.

- b. **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.
- c. **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.
- d. **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.

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**I HEREBY ACCEPT THE TERMS AND CONDITIONS
OF THIS CONTRACT**



Signature

10/29/2020
Date

John McKay, Chief Executive Officer
Print Name and Title

Nan McKay and Associates, Inc.
Print Name of Contractor