



**REVISED  
REQUEST FOR PROPOSALS FOR  
E-DISCOVERY SERVICES**

**Date Issued:** October 24, 2016

**First Question & Answer Cut-off Date:** November 4, 2016

**Second Question & Answer Cut-off Date:** November 30, 2016

**Proposals Due:** December 14, 2016

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**STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF LAW**  
Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 112 Trenton, N.J. 08625-0112

## **1.0 INFORMATION FOR BIDDERS**

### **1.1 PURPOSE AND INTENT**

This Request for Proposal is issued by the New Jersey Attorney General, head of the Department of Law and Public Safety, for use primarily by all divisions in the Department of Law and Public Safety, but primarily for the Division of Law.

The purpose of this RFP is to solicit bid proposals for a three-year term contract for the provision of e-discovery services, including forensically-defensible discovery document and data collection, processing of all Collected Materials, provision of Contractor-hosted and Contractor-supported tool(s) for the Division to analyze, parse, sort and produce documents and data collected, and related services, as further described herein.

The e-discovery services and the Contractor-hosted and Contractor-supported tool are described in [Section 3.0](#) (Scope of Work), below. The Bidder must submit with its technical proposal any proposed licensing agreement(s) for the tool(s) necessary to provide the services under this agreement. The Division reserves the right to negotiate the terms and conditions of any licensing agreement(s) to be consistent with the terms of this RFP. With respect to the Division's use of the e-discovery services and any proposed license agreement(s), it is understood and agreed that the Division and its clients or its Outside Counsel shall be considered the "end-user."

The intent of this RFP is to award a primary, secondary and tertiary contract or contracts to such responsible Bidders whose bid proposals, conforming to this RFP, are most advantageous to the Division, price and other factors considered. However, the Division reserves the right to separately procure individual requirements that are the subject of this RFP during the contract term, when deemed by the Division Director, to be in the State's best interest.

The Contract to be awarded will consist of this RFP and the Bidder's proposal, including its price proposal.

### **1.2 BACKGROUND**

The Attorney General, through the Division, pursuant to law, acts as the sole legal adviser, attorney or counsel for all officers, departments, boards, bodies, commissions and instrumentalities of the State of New Jersey, and their employees, and represents these persons and entities in all proceedings or actions of any kind that may be brought for or against them in administrative and court proceedings.

The Division has over 500 lawyers handling a large variety of litigation matters in administrative forums, the New Jersey Courts, federal courts, and other forums. In addition, from time to time, the Division retains Outside Counsel in certain matters. The Division in providing representation in all of these matters, must engage in e-discovery that complies with all applicable administrative and court rules, including but not limited to the New Jersey Court Rules, the

Federal Rules of Civil Procedure and the Local Rules of the District of New Jersey, and specific court orders in each matter.

At any one time, the Division may have roughly 40,000 separate legal matters on its docket, spanning a large variety of practice areas, many of which require at least some review and exchange of documents and information stored electronically, though relatively few of the matters involve a significant exchange of e-discovery. The Division anticipates that the Contractor will be specifically engaged to provide e-discovery services for the cases that have larger and more technologically-involved discovery needs. The Division has previously either handled e-discovery itself or obtained e-discovery service on a matter by matter basis.

No specific number of cases or volume of data to be hosted during the term of the contract is available to Bidders as part of this RFP. No specific number of matters, Task Orders or projects are guaranteed by the State during the term of the contract to be entered as a result of this RFP.

During the term of this contract, pursuant to RFP Section 3.1.1, the Division will issue Task Orders to the Contractor for work on specific cases.

### **1.3 KEY EVENTS**

#### **1.3.1 ELECTRONIC QUESTION AND ANSWER PERIOD**

The Division will electronically accept questions and inquiries from all potential Bidders via the web at [RFQUESTIONS@DOL.LPS.STATE.NJ.US](mailto:RFQUESTIONS@DOL.LPS.STATE.NJ.US).

- Questions should be directly tied to the RFP and asked in consecutive order, from beginning to end, following the organization of the RFP.
- Each question should begin by referencing the RFP page number and section number to which it relates.

The cut-off date for electronic questions and inquiries relating to this RFP is indicated on the cover sheet. Addenda to this RFP, if any, will be posted on the Division's website after the cutoff date. (See RFP Section 1.4.1 for further information.)

**Any proposed changes to the specific language in this RFP must be submitted as questions before the final Question and Answer Cut-off Date.**

#### **1.3.2 SUBMISSION OF PROPOSAL**

In order to be considered for award, the proposal must be received by the Division at the appropriate location by the required time. **ANY PROPOSAL NOT RECEIVED ON TIME AT THE LOCATION INDICATED BELOW WILL BE REJECTED. THE DATE AND TIME ARE INDICATED ON THE COVER SHEET. THE LOCATION IS AS FOLLOWS:**

NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF LAW

Richard J. Hughes Justice Complex  
25 Market Street, P.O. Box 112  
Trenton, N.J. 08625-0112

Directions to the Division are available on the web at <http://www.nj.gov/oag/law/rfqs.htm>

Note: Bidders using U.S. Postal Service regular or express mail services should allow additional time since the U.S. Postal Service does not deliver directly to the Division. Procedural inquiries concerning this RFP may be directed to [RFQQUESTIONS@DOL.LPS.STATE.NJ.US](mailto:RFQQUESTIONS@DOL.LPS.STATE.NJ.US). This e-mail address also may be used to submit requests to review proposal documents.

### **1.3.3 BID DUE DATE – LIST OF BIDDERS**

As soon as practicable after the bid due date, the Division will post on the website a list of bidders who submitted proposals that are being evaluated for possible contract award.

## **1.4 ADDITIONAL INFORMATION**

### **1.4.1 ADDENDA: REVISIONS TO THIS RFP**

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

ALL RFP ADDENDA WILL BE ISSUED ON THE DIVISION'S WEB SITE. TO ACCESS ADDENDA, THE BIDDER MUST SELECT THE PROPOSAL NUMBER ON THE WEB PAGE AT <http://www.nj.gov/oag/law/rfqs.htm>.

There are no designated dates for release of addenda. Therefore interested Bidders should check the Division's website on a daily basis from time of RFP issuance through the proposal submission opening. It is the sole responsibility of the Bidder to be knowledgeable of all addenda related to this procurement.

### **1.4.2 BIDDER RESPONSIBILITY**

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

### **1.4.3 COST LIABILITY**

The Division assumes no responsibility and bears no liability for costs incurred by a Bidder in the preparation and submittal of a proposal in response to this RFP.

### **1.4.4 CONTENTS OF PROPOSAL**

Your proposal can be released to the public during the protest period established herein or pursuant the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., (OPRA) or the common law right to know.

After the contract award, all information submitted by Bidders in response to a solicitation is considered public information, notwithstanding any disclaimers to the contrary submitted by a Bidder, except as may be exempted from public disclosure by OPRA and the common law.

Any proprietary and/or confidential information in your proposal will be redacted by the Division. A Bidder may designate specific information as not subject to disclosure pursuant to the exceptions to OPRA found at N.J.S.A. 47:1A-1.1, when the Bidder has a good faith legal and or factual basis for such assertion. The Division reserves the right to make the determination as to what is proprietary or confidential, and will advise the Bidder accordingly. The location in the proposal of any such designation should be clearly stated in a cover letter. **The Division will not honor any attempt by a Bidder to designate its entire proposal as proprietary, confidential and/or to claim copyright protection for its entire proposal.** In the event of any challenge to the Bidder's assertion of confidentiality with which the Division does not concur, the Bidder shall be solely responsible for defending its designation.

By signing the cover sheet of this RFP, the Bidder waives any claims of copyright protection set forth within the manufacturer's price list and/or catalogs. The price lists and/or catalogs must be accessible to the Division.

#### **1.4.5 PROPOSAL SUBMISSION**

On the date and time proposals are due under the RFP, all information concerning the proposals submitted may be publicly announced and those proposals, except for information appropriately designated as proprietary and/or confidential, shall be available for inspection and copying. In those cases where negotiation is contemplated, only the names and addresses of the Bidders submitting proposals will be announced and the contents of the proposals shall remain proprietary and/or confidential until the Notice of Intent to Award is issued by the Director.

#### **1.4.6 PRICE ALTERATION IN HARD COPY PROPOSALS**

Proposal prices must be typed or legibly written in ink. Any price change (including "white-outs") must be initialed. Failure to initial price changes shall preclude a contract award from being made to the Bidder.

#### **1.4.7 PROPOSAL ERRORS**

For purposes of this RFP, the Division will follow N.J.A.C. 17:12-2.11, "Proposal Errors," and consistent with that provision a Bidder may withdraw its proposal as described below. A Bidder may request that its proposal be withdrawn prior to the proposal submission opening. Such request must be made, in writing, to the Director. If the request is granted, the Bidder may submit a revised proposal as long as the proposal is received prior to the announced date and time for proposal submission and at the place specified. If, after the proposal submission opening but before contract award, a Bidder discovers an error in its proposal, the Bidder may make a written request to the Director

for authorization to withdraw its proposal from consideration for award. Evidence of the Bidder's good faith in making this request shall be used in making the determination. The factors that will be considered are that the mistake is so significant that to enforce the contract resulting from the proposal would be unconscionable; that the mistake relates to a material feature of the contract; that the mistake occurred notwithstanding the Bidder's exercise of reasonable care; and that the Division will not be significantly prejudiced by granting the withdrawal of the proposal. After the proposal submission opening, while pursuant to the provisions of this section, Bidder may request to withdraw your proposal and the Director may, in her discretion allow Bidder to withdraw it, the Division also may take notice of repeated or unusual requests to withdraw by a Bidder and take those prior requests to withdraw into consideration when evaluating the Bidder's future bids or proposals.

All proposal withdrawal requests must include the proposal identification number and the final proposal submission date and be sent to the following address:

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF LAW  
Richard J. Hughes Justice Complex  
25 Market Street, P.O. Box 112  
Trenton, N.J. 08625-0112

If during a proposal evaluation process, an obvious pricing error made by a potential contract awardee is found, the Director shall issue written notice to the Bidder. The Bidder will have five (5) days after receipt of the notice to confirm its pricing. If the vendor fails to respond, its proposal shall be considered withdrawn, and no further consideration shall be given it.

If it is discovered that there is an arithmetic disparity between the unit price and the total extended price, the unit price shall prevail. If there is any other ambiguity in the pricing other than a disparity between the unit price and extended price and the Bidder's intention is not readily discernible from other parts of the proposal, the Director may seek clarification from the Bidder to ascertain the true intent of the proposal.

#### **1.4.8 JOINT VENTURE**

If a joint venture is submitting a proposal, the agreement between the parties relating to such joint venture should be submitted with the joint venture's proposal. Authorized signatories from each party comprising the joint venture must sign the proposal. A separate Ownership Disclosure Form, Disclosure of Investigations and Actions Involving Bidder form, Disclosure of Investment Activities in Iran form, and Affirmative Action Employee Information Report must be supplied for each party to a joint venture. NOTE: Each party comprising the joint venture must also possess a valid Business Registration Certificate ("BRC") issued by the Division of Revenue and Enterprise Services, and

comply with Pay to Play Prohibitions. Refer to RFP Sections 5.7.1 and 6.9 for further information.

#### **1.4.9 RECIPROCITY FOR JURISDICTIONAL BIDDER PREFERENCE**

In accordance with N.J.S.A. 52:32-1.4 and N.J.A.C. 17:12-2.13, the State of New Jersey will invoke reciprocal action against an out-of-State Bidder whose state or locality maintains a preference practice for its Bidders. For States having preference laws, regulations, or practices, New Jersey will use the annual surveys compiled by the Council of State Governments, National Association of State Purchasing Officials, or the National Institute of Governmental Purchasing to invoke reciprocal actions. The Division may obtain additional information as it deems appropriate to supplement the stated survey information.

The Bidder may submit information related to preference practices enacted for a local entity outside the State of New Jersey. This information may be submitted in writing as part of the proposal response, including name of the locality having the preference practice, as well as identification of the county and state, and should include a copy of the appropriate documentation, i.e., resolution, regulation, law, notice to Bidder, etc. It is the responsibility of the Bidder to provide documentation with the proposal or submit it to the Director within five (5) working days of the public proposal submission date. Written evidence for a specific procurement that is not provided to the Director within five (5) working days of the public proposal submission date will not be considered in the evaluation of that procurement, but will be retained and considered in the evaluation of subsequent procurements.

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

The Director reserves the right to waive minor irregularities or omissions in a proposal. In addition, the Director retains the right to reject all proposals if it is in the public interest.

## **2.0 DEFINITIONS**

### **2.1 GENERAL DEFINITIONS**

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

**Addendum** – Written clarification or revision to this RFP issued by the Division of Law.

**Amendment** – An alteration or modification of the terms of a contract between the State and the Contractor(s). An amendment is not effective until approved in writing by the Director, Division of Law.

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

**Contract** – The agreement for the provision of e-discovery services that will be awarded as a result of this RFP. The Contract will consist of this RFP, any addendum to this RFP, and the Bidder’s proposal submitted in response to this RFP including all prices, as accepted by the Division.

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

**Director** – Director, Division of Law, Department of Law and Public Safety.

**Division or DOL** – The New Jersey Department of Law and Public Safety, Division of Law except that in the event that the a division in the Department of Law and Public Safety other than the Division of Law issues a Task Order under this contract, for purposes of that Task Order, Division shall mean that division of the New Jersey Department of Law and Public Safety.

**Evaluation Committee** – A committee established or Division staff member assigned by the Director to review and evaluate proposals submitted in response to this RFP and to recommend a contract award to the Director.

**May** – Denotes that which is permissible, not mandatory.

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

**Request for Proposal (RFP)** – This document which establishes the bidding and contract requirements and solicits proposals to meet the purchase needs of the using Agencies identified herein.

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

**Should** – Denotes that which is recommended, not mandatory.

**State Contract Manager** – The individual responsible for the approval of all deliverables, i.e., tasks, sub-tasks or other work elements in the Scope of Work, as set forth in this RFP.

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

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

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

**Transaction** - The payment or remuneration to the Contractor for services rendered or products provided to the State pursuant to the terms of the contract, including but not limited to the



following: purchase orders, invoices, hourly rates, firm fixed price, commission payments, progress payments and contingency payments.

## **2.2 CONTRACT SPECIFIC DEFINITIONS**

**Business Day** - Any day other than Saturday, Sunday, or a holiday recognized by the State of New Jersey.

**Business Hours** - 9:00 AM to 5:00 PM on any Business Day.

**Division Users** - The Division of Law employees, outside counsel employees, and employees of the State agencies to which the Division provides legal counsel who will require access to the Contractor's Review and/or Production Tool(s) except that in the event that the a division in the Department of Law and Public Safety other than the Division of Law other than the Division of Law issues a Task Order under this contract, for purposes of that Task Order, Division Users shall mean the users in that division of the New Jersey Department of Law and Public Safety.

**Collection Material and Collected Material** - Documents and ESI from any medium that contains documents, information, data or ESI for a particular matter. Collection Material or Collected Material includes, but is not limited to: Documents; Electronically-stored Information; sound, image or sound and image recording devices of any type; electronic storage devices of any kind (including but not limited to hard drives, discs, CDs, DVDs and flash drives), servers, cell phones, handheld devices, and information posted to social media sites or websites (including but not limited to Facebook, Twitter, YouTube, Instagram and LinkedIn).

**Documents** - Paper or other tangible forms of: hard copy printed or handwritten documents; photographs; plans; diagrams; blueprints; maps; design plans; project schedules, transcripts; and spreadsheets. Documents also include non-electronically stored audio and video/film recordings.

**Electronically-stored Information or ESI** - Data or information that has been created, manipulated, communicated electronically including, but not limited to, documents, word documents, spreadsheets, CADD files, E-Builder files, Primavera files, ASCII, websites, Excel files, digital photographs, videos, emails from any source and email attachments of any type, text and instant messages from any source, PowerPoint presentations, call logs, voicemails; any of which are electronically stored. ESI shall include all such materials wherever stored, whether on hard drives, servers, discs, CDs, DVDs, flash drives, storage area networks, thumb (USB) drives, the Cloud, and databases. ESI may be produced in various software programs including, but not limited to, Microsoft Outlook, Microsoft Exchange, Project Manager, Novell GroupWise, Lotus Notes, Microsoft Office Premium Suite, Microsoft SharePoint, and WordPerfect Suite.

**Outside Counsel** - Any lawyer or law firm retained by the Attorney General to represent any agency or instrumentality of the State of New Jersey.

**Platform** - The secure electronic environment in which the Collected Material is hosted by the Contractor and in which the Processing, Review and Production Tool(s) operate.

**Review Tool** - The secure, Web-based tool(s) provided to the Division for use to review all Collected Material and produce all selected material as part of litigation pursuant to RFP section 3.2.4.

**Task Order** – A statement of the specific work by Contractor needed by the Division on a particular matter, project or case, as further explained in Section 3.1.1 of this RFP.

### **2.3 TERMS OF ART AFFORDED THEIR CUSTOMARY MEANINGS**

Terms of art in the electronic discovery industry, including, for purposes of illustration only, “forensically defensible” and “Technology Assisted Review (“TAR”)", have the meanings generally ascribed to them in the electronic discovery industry.

## **3.0 SCOPE OF WORK**

### **3.1 GENERAL INFORMATION**

The DOL’s needs for electronic litigation support services vary from year to year depending on the number and type of matters with significant e-discovery needs, and have been increasing. In peak periods, the Vendor must be able to accommodate up to 100 terabytes of data from DOL and up to 250 concurrent users.

In order to meet the DOL’s anticipated eDiscovery years for the term of this contract to be awarded as a result of this RFP, the Division will award contracts to a Primary, Secondary and Tertiary vendor.

#### **3.1.1 TASK ORDERS**

The Division will issue Task Orders to the Contractor on a project (matter) basis.

##### **3.1.1.1 Initial Conference**

The Division will contact the Primary Contractor about new projects. The Division and the Contractor shall have an initial conference to discuss the project, including the forum for the matter and the applicable e-discovery rules in that forum; the anticipated number of reviewers of the Collected Material; the anticipated sources for material; the estimated volume of material to be collected; the number of custodians; the estimated number of duplicates within the collected material; the estimated time for hosting; estimated volume of production; additional services to be provided; and all scheduling and delivery dates. In addition, the parties shall discuss what specific additional e-discovery services, if any are anticipated to be needed for the project.

The purpose of the initial conference is for the parties to understand the scope of the Task Order to be issued for the project and the estimated costs for the Task Order.

The Primary Contractor shall advise DOL within no less than one business day after the initial conference whether it will be able to provide eDiscovery services for the project. If the Primary Contractor is unable to do so, DOL shall contact the Secondary Contractor for an initial conference.

The Secondary Contractor shall advise DOL within no less than one business day after the initial conference whether it will be able to provide eDiscovery services for the project. If the Secondary Contractor is unable to do so, DOL shall contact the Tertiary Contractor for an initial conference.

The Tertiary Contractor shall advise DOL within no less than one business day after the initial conference whether it will be able to provide eDiscovery services for the project.

#### **3.1.1.2 Issuing Task Order**

Following the initial conference, the Division will issue a Task Order to the Contractor that, pursuant to Section 3.1.1.1 will be able to provide the eDiscovery Services for the project that shall include the Division's preliminary determination of services required, including:

- A) the forum for the matter;
- B) the anticipated number of reviewers of the Collected Material;
- C) the anticipated sources for material to be collected;
- D) estimated volume of material to be collected;
- E) estimated number of custodians;
- F) estimated number of duplicates within the collected material, if known;
- G) estimated period of time for the Contractor to host the Collected Material;
- H) estimated volume of production, if known;
- I) additional services to be provided , if known;
- J) all scheduling and delivery dates, if known;
- K) the specific, additional e-discovery services requested by the Division;  
and
- L) the Division contact person for the matter.

#### **3.1.1.3 Contractor Project Team and Estimated Cost**

Contractor shall develop a scalable and efficient project team of qualified individuals to be assigned to the project and shall estimate cost for each project/Task Order. The Contractor shall provide the forgoing in writing for each Task Order.

The Contractor must have the ability to invoice the State separately for each Task Order.

#### **3.1.1.4 Task Order Updates**

Upon receipt of the Contractor's estimated cost, the DOL may revise the Task Order. In addition, the Division may update or revise the Task Order from time to time as additional information about the project becomes available.

After every Task Order revision or update, the project manager and Division contact for the matter shall discuss and determine if the project team should be increased or decreased and whether the estimated cost will need to be revised. Any updates to the Task Order, project team and/or estimated cost shall be provided in writing to the Division contact for the matter.

#### **3.1.1.5 Changes in Estimated Price For Task Order**

The estimated cost provided by the Contractor is for the Division's use in anticipating and tracking litigation or project costs of each matter. If and when the Contractor becomes aware that the estimated cost for a Task Order is no longer accurate, the Contractor shall promptly notify the Division and explain the degree of difference between the estimate and the costs that are or will be incurred and the reasons for the difference. Upon receipt of the forgoing notice, the Division shall have the opportunity to revise the Task Order. Whether or not the Division revises the Task Order, the Contractor will develop a revised estimate for the project and provide it to the Division.

### **3.2 E-DISCOVERY SERVICES**

The Contractor will provide the e-discovery services based on the specific Task Order issued by the Division.

#### **3.2.1 Collection of Material**

The Contractor shall collect all material identified on the Task Order issued by the Division. The Contractor shall have the personnel and resources to perform on-site collection at State agencies (located in the State of New Jersey). Collection sites will be in the State of New Jersey. If a collection is necessary from a site other than in New Jersey, the Contractor may invoice the Division for the difference in the cost between collection from a site in New Jersey and the cost of collection at a site outside of the State of New Jersey.

The Contractor shall collect documents and harvest, collect, and extract ESI, in a forensically-defensible manner, from all sources and custodians, including from current and legacy computer storage systems, personal network drives, laptops or personal computers, handheld devices, and other sources such as social media websites.

When collecting, harvesting or extracting ESI, the Contractor must maintain the integrity of the ESI extracted such that the data may be produced in its original form.

The Contractor shall collect, harvest and extract all Collected Materials in a forensically-defensible manner.

The Contractor shall scan all Documents at the collection site or at a location arranged by the Division.

The Contractor will provide quality-checking of the integrity of all Collected Material and if any material must be collected again as a result of a Contractor collection error, the Contractor must recollect the Documents or ESI at no cost to the State. If any material must be collected again as a result of a non-Contractor collection error, the Contractor shall promptly notify the Division of the need for recollection and the non-Contractor collection error that makes recollection necessary, as well as the cost of recollection.

The Contractor shall maintain a strict and forensically-defensible chain of custody protocol/process for all Collected Material within the meaning of the applicable administrative or court rules all applicable law.

The Contractor shall offer a secure method of electronic collection of data and electronic exchanging with the Division and the State entities from which data ESI will be collected. For purposes of this paragraph secure shall mean consistent or equivalent to with the security standards set forth in Section 6.36 of the RFP.

During collection, the Contractor shall take all reasonable and appropriate steps necessary to implement administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of the State's information systems.

The Contractor shall maintain the parent/child relationship of emails and attachments while collecting, harvesting and extracting ESI.

The Contractor shall identify and respond to any viruses, malware, or other electronic contamination contained in collected, harvested and extracted data, shall take all appropriate steps to nonetheless collect, harvest and extract the data, and shall provide the Division with a report of all such viruses, malware or electronic contamination and all steps taken to collect, harvest and extract the data in light of same. The Contractor shall promptly notify the Division if as a result of any virus, malware, or other electronic contamination shall preclude or limit the collection of the accuracy of the collection of the data.

### **3.2.2 Processing and Hosting of Collected Material**

The Contractor shall process and Host all Collected Material as necessary to make it available to the Division for review and production.

The Contractor must be able to host up to 100 terabytes of data across multiple matters.

The Contractor shall provide de-duplication (both within a single custodian's data and across custodians' data) of Collected Material when requested.

The Contractor shall maintain the parent/child relationship between all data and documents during processing.

The Contractor shall perform optical character recognition (OCR) on scanned Documents and on any ESI or electronic documents that require such OCR to render their text electronically searchable when requested.

The Contractor shall Bates number and/or otherwise individually number all Collected Material received. The Contractor shall provide Bates and other individual numbering, with no duplications.

Processing shall include integration of Documents that are part of Collected Material along with the ESI such that a complete set of all Collected Material is available for review and production.

### **3.2.3 Contractor Platform**

The Contractor shall process and provide review and production tools to the Division on a secure, Web-based platform, housed in the continental United States with the understanding that the Division users may be accessing the Contractor's platform from multiple locations with different security environments.

Access to the platform must be available on a 24/7/365 basis with minimal downtime for necessary maintenance. The Contractor must provide electronic notice to all registered users of any tools on the platform of anticipated unavailability of the platform at least five business days before the anticipated unavailability of the platform, with repeated notices two days (48 hours) and one day (24 hours) before the unavailability of the platform.

The platform must allow for an unlimited number of Division Users to access the Review and Production Tools as all Task Orders will require during the term of the Contract.

The Contractor shall make available to the State any enhancements or upgrades to the Platform at no additional cost during the contract term.

The Division presently has staff at five offices for which the Contractor must provide connectivity. Those offices are at 25 Market Street, Trenton, New Jersey, 124 Halsey Street, Newark, New Jersey; 1 Penn Plaza East, Newark, New Jersey, 283-299 Market Street, Gateway II, Newark New Jersey, 4 Echelon Plaza, 201 Laurel Road, Voorhees, New Jersey. The specifications for connectivity for each office are as follows:

25 Market Street, Trenton, New Jersey  
WAN Building Circuit: 200 Mbps  
LAN to each Desktop: 1Gbps  
Desktops: 8GB Memory, 3.2GHzprocessor, 64bit Windows7,IE11

124 Halsey Street, Newark, New Jersey

WAN Building Circuit: 100 Mbps  
LAN to each Desktop: 1Gbps  
Desktops: 8GB Memory, 3.2GHzprocessor, 64bit Windows7,IE11

283-299 Market Street, Gateway II, Newark New Jersey  
WAN Building Circuit: 10 Mbps  
LAN to each Desktop: 1Gbps  
Desktops: 8GB Memory, 3.2GHzprocessor, 64bit Windows7,IE11

1 Penn Plaza East, Newark, New Jersey  
(same as 25 Market Street)

4 Echelon Plaza, 201 Laurel Road, Voorhees, New Jersey  
WAN Building Circuit: 10 Mbps

The Contractor shall, at its own expense and without charge to the Division, at the outset of the contract term (and during the contract, as may be required by changes in the Contractor's or the Divisions' systems) ensure that Division's systems have reliable, high-speed connectivity to the Contractor's Review Tool and to the State's data hosted by the Contractor and if it cannot be accomplished remotely, the Contractor shall send one or more employees to the Division's offices to work with the Division's staff to ensure Division's systems have reliable, high-speed connectivity to the Bidder's review tool(s) and to the State's data hosted by the Contractor.

In the event that the Division must acquire hardware to facilitate such connection, and/or must install hardware or software furnished by the Contractor or reconfigure existing software or settings (*i.e.*, opening ports), such needs—and, in the case of hardware or software, any costs thereof to the Division—must be fully described in the Contractor's proposal.

### **3.2.4 Review Tool**

The Contractor shall provide a Review Tool that allows for review of all Collected Material and shall be consistent with all specifications of this RFP, any addenda hereto, and the Contractor's Proposal.

At a minimum, the Review Tool must be a secure Web-based tool. The Review Tool must be accessible on desktop and laptop computers operating Windows 7 and Internet Explorer 11 or using an application furnished by the Bidder. In addition, the Review Tool must be accessible on mobile devices running the current iOS and Android operating systems, either through the web browser function of such devices or using an application available to the mobile device user.

The Contractor shall make available to the Division any enhancements or upgrades to the Review Tool at no additional cost during the contract term.

The Review Tool furnished by the Contractor shall include, at a minimum, the following features:

- A) Ability to provide up to 250 concurrent logins for DOL Users;
- B) accessibility by unique login for each Division User and shall require password protection to prevent unauthorized access;
- C) a mechanism by which e-discovery review sessions will be automatically terminated if no activity is recognized within a specified period of time;
- D) Web-based access must not be limited to any group or type of IP addresses unless requested by the Division, and all Division Users must be able to access the Review Tool in an unlimited manner;
- E) concurrent access to the same database by multiple users;
- F) case summaries and user analytics;
- G) robust natural language and Boolean search of all Collected Material and the meta-data of all ESI that:
  - 1. provide an accurate and complete presentation of the search result displays;
  - 2. comprehensively contain all of the results that fit within the parameters of the search request;
  - 3. does not contain extraneous material beyond the scope of the search request;
  - 4. are displayed in a logical and easily understandable format that allows the user to readily find the key terms, concepts, and/or document components requested in the search;
- H) access to all Collected Material in both native and processed formats;
- I) review of all Documents that are part of Collected Material, in the same manner as ESI is reviewable;
- J) multiple reviewers located at the same or different physical locations throughout the State to access the Collected Material at the same time;
- K) notations to electronic documents without permanently altering documents by all users with each user's notations separately tracked so that one or more, or all user notations can be displayed;
- L) sorting of Collected Material by date, user, subject, author, sender, recipient and volume;
- M) identification of email conversation threads;



- N) identification of near-duplicate data and documents;
- O) creation of electronic logs of data subsets for use in creation of document and privilege logs;
- P) printing reports of data and documents;
- Q) creation or identification of document and data subsets for subsequent review;
- R) creation or identification of document and data subsets for production. All document and data subsets for production shall be Bates numbered, with no duplications. Production Bates numbering shall be clearly distinguishable from the Bates numbering initially applied to all Collected Material during processing. Initial Bates numbering shall not appear on documents ultimately produced;
- S) privilege review, marking and redaction capability;
- T) production and export of redacted and un-redacted documents in electronic format;
- U) generate productions of data in a variety of formats (i.e., native, TIFF, etc.) as may be dictated by courts or litigation adversaries, appropriately quality-checked to ensure that the production contains all documents it is meant to contain and only such documents, and that the documents are appropriately formatted and accessible;
- V) printing of redacted and un-redacted documents;
- W) downloading files to the Division User's PC or network drives, and to print to the user's PC- and/or network-attached printers.
- X) text highlighting;
- Y) online help functions;
- Z) technology assisted review, also known as predictive coding, whereby a subset of documents is reviewed for relevance and the review tool then applies the relevance criteria gleaned from review of the subset of documents to other subsets or the remainder of the Collected Materials; and
- AA) early data assessment, also known as early case assessment, whereby the Collected Materials are rapidly sorted and categorized by the Review Tool, prior to full review of Collected Material, to find the most pertinent of the Collected Material to assist the Division User in developing a general understanding of the matter for which the materials have been collected.

### **3.2.5 Other e-discovery services which may be required**

The Contractor must make following services available:

- A) Conversion from non-defined formats;

- B) Forensic recovery of damaged or corrupted data;
- C) Forensic imaging of computers and servers in locations throughout New Jersey;
- D) Password cracking;
- E) De-NISTing, whereby certain common ESI file types identified on a list compiled by the National Institute of Standards and Technology, which are very unlikely to have discoverable information are identified within the Collected Materials and removed from the subsets identified for review;
- F) Sworn written or in-person testimony regarding security, search quality, chain of custody or other services;
- G) Investigation for deleted files, data carving, recovery of files from unallocated space, internet history and other information;
- H) Destruction of ESI, including written certification (in a form that is admissible in the forum where the matter is venued) that the specified Collected Material has been destroyed;
- I) Archiving of Collected Material for projects; and
- J) Restoration of archived project collected materials.

**3.2.6 Other services which may be offered but are not required**

The Contractor may make following services available, and if offered, the Division may include in a Task Order:

- A) Document review services by Contactor, including contract reviewers and managers for contract reviewers**
- B) Privilege log generation by Contractor;**
- C) Document and ESI Collection Services and, including on-site forensic imaging of hard drives and on-site non-forensic collection of data from custodian computers/devices.

**3.3 GENERAL REQUIREMENTS**

**3.3.1 Training**

Contractor shall provide training to DOL Users. Training shall include availability of online tutorials and offering of initial and periodic in-person training sessions for the Contractor provided Review Tool(s).

In-person training may be conducted remotely, but, in selecting the Contractor(s), the Division may favor vendors capable of providing in-person training at locations of the State's choosing.

In-person training shall be for groups of up to 25 people per session, using trainers with significant, direct experience in electronic litigation support and with the Contractor's full suite of tools and familiar with all of the Contractor's e-discovery services.

Both In-person training and on-line tutorials must at least include the following topics:

- Accessing the website;
- Becoming familiar with the available tools;
- Conducting simple searches (Natural Language and Boolean);
- Saving search results;
- Conducting subsequent searches within search results;
- Conducting complex searches;
  - Boolean logic, including
    - Nested searches
    - Wild-card searches;
  - Constructing an efficient search;
  - Constructing searches that can be saved and rerun in the future;
- Use of technology assisted review, including explanation of limits of technology assisted review;
- Use of early data assessment, including explanation of limits of early data assessment;
- Printing search results;
- Downloading search results to the user's computer;
- Reviewing Documents;
- Redacting Documents;
- Creating data and document subsets for further review;
- Creating data and documents subsets for production in litigation; and
- Using the online help.

### **3.3.2 Technical Support.**

The Contractor shall provide 24/7/365 technical support. At least during regular Eastern Standard/Daylight Time Division of Law business hours, support must be provided by the Contractor personnel familiar with Division's projects. Support provided outside such business hours may be furnished by a call center with wait times of ten or fewer minutes, but technical support for all Litigation Support services must be available on a 24/7/365 basis.

The Contractor shall have capabilities to add new Division User accounts within two hours of request.

### **3.3.3 Project Teams/Project Managers**

The Contractor shall develop a scalable and efficient project team of qualified individuals for each project.

When selected by Division for a project, the Contractor shall specify the project team, which shall at a minimum include a designation project manager with the qualifications identified in Section 5 below, and provide the proposed scope of project responsibility for each project team member.

The Contractor's project manager shall be the Division's point of contact for each project/Task Order and responsible for the delivery and the quality of Vendor's services for that project/Task Order.

The Contractor shall assign other project team members to ensure that the project team includes an experienced person for each of Vendor's products and services that will be required for the project.

The Contractor shall assign project teams such that project team members' other responsibilities, including on other Division projects, shall not prevent the timely delivery of services for that project/Task Order.

If, the Contractor will need to substitute a project manager on a Task Order before the Task Order is fully performed, the Division shall have the right to review and accept or reject the Contractor's proposed substitute for the originally designated project manager.

The Division shall be notified in advance if the Contractor will need to substitute project team members before the Task Order is fully performed.

### **3.4 DATA STORAGE AND BACKUP**

The Contractor agrees that once collected, all State data will be stored, processed, and maintained solely on designated server(s) located in the continental United States and that no data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that storage medium is in use as part of the Contractor's designated backup and recovery processes. This provision shall not limit the Contractor's obligation to provide deliverables to the State pursuant to this RFP. All servers, storage, backups, and network paths utilized in the delivery of the service shall be contained within the states, districts, and territories of the United States unless specifically agreed to in writing by the Director with designated data, security, or signature authority.

- a) Data Security: The Contractor agrees to protect and maintain the security of data with appropriate measures that include maintaining secure environments that are patched and up to date with all appropriate security updates as designated by a relevant authority and as further described in RFP Section 6.36 (Security and Confidentiality).
- b) Data Encryption: The Contractor agrees to store all backup data in an offsite facility (located in the continental United States) as part of its designated backup and recovery processes in encrypted form, using a robust and commercially tested encryption solution. The Contractor further agrees that any and all data defined as personally

identifiable information under legislation or regulations, wherever stored (including any portable or laptop computing device or any portable storage medium) be likewise encrypted. Encryption solutions must have no less than a 128-bit key for symmetric encryption and a 1024 (or larger) bit key length for asymmetric encryption.

- c) Right to Audit: The Contractor agrees that, as required by applicable state and federal law, and as determined by the Division in its own discretion, auditors from the State or its designee shall have the option to audit the Data Security. Records pertaining to the service shall be made available to auditors and the State during normal working hours for this purpose.
- d) Safekeeping and Security: As part of the Service, the Contractor will be responsible for safekeeping all keys, access codes, combinations, access cards, personal identification numbers and similar security codes and identifiers issued to the Contractor's employees, agents or subcontractors and as further described in RFP Section 6.36 (Safety and Security). The Contractor agrees to require its employees to promptly report a lost or stolen access device or information.
- e) Disaster Recovery Plan: The Contractor shall provide the State with a written copy of its disaster recovery plan.

### **3.5 Transition Services**

All Collected Material in the Contractor's custody must be exportable and transferable by the State to a new or alternative platform upon expiration or termination of this contract, at no cost to the Division.

## **4.0 QUALIFICATIONS**

### **4.1 BIDDER QUALIFICATIONS**

The Bidder must be a business entity with at least ten years of experience in providing e-discovery services to clients of similar size or nature (public entity) as the Division.

The Bidder must be able to host up to 100 terabytes of data across multiple matters and provide up to 250 concurrent logins for DOL Users.

### **4.2 KEY PERSONNEL**

Each Bidder shall identify its key personnel for the Contract, who shall have at least five years of experience in providing e-discovery services which key personnel shall include:

- The individual(s) who will be responsible for the overall provision of services to the Division through the oversight and responsibility for supervision of Project Managers.
- The Bidder's forensic team available to provide forensic recovery of damaged or corrupted data, forensic imaging of computers and servers and investigation(s) for deleted files, data carving, recovery of files from unallocated space, internet history and other information.

### **4.3 PROJECT MANAGER QUALIFICATIONS**

Each Bidder must demonstrate that its proposed key personnel, one of which will serve as a project manager for each Task Order, have experience in and qualifications to perform the e-discovery services required by this RFP, as set forth above, including:

- At least three years of hands-on experience with management of e-discovery services and with Bidder's Review Tool(s), including but not limited to the loading, conversion and maintenance of electronic data and the provision of support services in connection with e-discovery;
- Demonstrable experience in managing projects involving collecting ESI, processing Collected Materials and making them available in the Review Tool(s) from standard software applications including but not limited to Lotus Notes, LiveNote, Adobe Acrobat, Microsoft Excel, Microsoft Word, Microsoft Outlook; WordPerfect and GroupWise;
- Demonstrable experience handling private and protected electronic data, specifically including personal financial and health care records;
- Ability to support, with attention to detail, the provision of the e-discovery services required by this RFP;
- Demonstrable experience providing e-discovery services under typical litigation deadlines, for more than one project/matter;
- Demonstrable experience in providing quality control to e-discovery project tasks; and
- Demonstrable experience in providing sworn, written or in person testimony regarding security, search quality, chain of custody or other services.

Detailed resumes should be submitted for all key personnel to be assigned to the contract. Resumes should emphasize relevant qualifications and experience of these individuals in successfully completing contracts of a similar scope to those required by this RFP. Resumes should show all criteria above and should include the following:

- The individual's previous experience in being responsible for three or more similar projects contemplated by this contract, with beginning and ending dates for each project; and
- A description of the project demonstrating how the individual's work on the completed project relates to the individual's ability to serve as a project manager providing the e-discovery services required by this RFP.

During the term of the Contract, should key personnel no longer be available to work on the Contract, the Contractor shall submit the same information respecting replacement key personnel.

The Division reserves the right to terminate the contract at its sole discretion if a person identified as key personnel ceases to be available to work on the contract and, in DOL's sole judgment, a sufficient number of adequate replacements are not promptly identified by Vendor.

## **5.0 PROPOSAL PREPARATION AND SUBMISSION**

### **5.1 GENERAL**

Proposals including supplemental terms and conditions may be accepted, but supplemental terms or conditions that conflict with those contained in this RFP or the State's NJ Standard Terms and Conditions ("RFP/SSTC"), as may be amended by addenda, or that diminish the Division's rights under any contract resulting from the RFP will be considered null and void. The Division is not responsible for identifying conflicting supplemental terms and conditions before issuing a contract award. In the event that prior to notice of intent to award, the Division notifies the Bidder of any such term or condition and the conflict it poses, the Division may require the Bidder to either withdraw it or withdraw its proposal.

After award of contract:

- A) if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP/SSTC, the term or condition of the RFP/SSTC will prevail; and
- B) if the result of the application of a supplemental term or condition included in the proposal would diminish the Division's rights, the supplemental term or condition will be considered null and void.

The Bidder is advised to thoroughly read and follow all instructions contained in this RFP, including the instructions on the RFP's mandatory coversheet, in preparing and submitting its proposal. Use of URLs in a proposal should be kept to a minimum and may not be used to satisfy any material term of an RFP. If a preprinted or other document included as part of the proposal contains a URL, a printed (or if a proposal is submitted electronically, electronic) copy of the URL page shall be provided and will be considered as part of the proposal. Additional URLs on the copy of the URL page shall not be considered as part of the proposal unless a copy of those URL pages are also provided.

### **5.2 PROPOSAL DELIVERY AND IDENTIFICATION**

In order to be considered, a proposal must arrive at the Division in accordance with the instructions on the RFP mandatory cover sheet accompanying this RFP. Bidders are cautioned to allow adequate delivery time to ensure timely delivery of proposals. **State regulation mandates that late proposals are ineligible for consideration. THE EXTERIOR OF ALL PROPOSAL PACKAGES ARE TO BE LABELED WITH THE NAME OF THE RFP AND THE FINAL PROPOSAL SUBMISSION DATE OR RISK NOT BEING RECEIVED IN TIME.**

### **5.3 BID SUBMISSION**

The Bidder must submit the following proposal copies:

**One (1) complete ORIGINAL proposal**, clearly marked as the "ORIGINAL" proposal.

One (1) complete and exact copy, clearly marked "COPY".

**One (1) unbound, complete and exact copy** of the original, clearly marked "COPY".

**One (1) complete and exact ELECTRONIC copy** of the original proposal in PDF file format on disc (CD or DVD) to be viewable and "read only" by State evaluators using Adobe Acrobat Reader software.

**One (1) complete and exact ELECTRONIC copy** of the original proposal in an editable and "writable" PDF file format on disc (CD or DVD) for redaction.

Copies are necessary in the evaluation of the proposal and for record retention purposes. A Bidder failing to provide the requested number of copies will be charged the cost incurred by the State in producing the requested number of copies. The Bidder should retain a copy of its submitted proposal.

#### **5.4 NON-COLLUSION**

***By submitting a proposal, the signatory for the Bidder is certifying as follows:***

- A) The price(s) and amount of Bidder's proposal have been arrived at independently and without consultation, communication or agreement with any other Contractor, Bidder or potential Bidder.
- B) Neither the price(s) nor the amount of its proposal, and neither the approximate price(s) nor approximate amount of this proposal, have been disclosed to any other firm or person who is a Bidder or potential Bidder, and they will not be disclosed before the proposal submission.
  - a. No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- C) The proposal of the firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- D) The Bidder, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four (4) years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

#### **5.5 NEW JERSEY BUSINESS ETHICS GUIDE CERTIFICATION**

The Treasurer has established a business ethics guide to be followed by State contractors in their dealings with the State. The guide provides further information about compliance with RFP Section 6.6. The guide can be found at:

[http://www.state.nj.us/treasury/purchase/ethics\\_guide.shtml](http://www.state.nj.us/treasury/purchase/ethics_guide.shtml).



***By signing the RFP mandatory cover sheet the signatory for the Bidder is certifying that the Bidder's staff have read the guide, understand its provisions and is in compliance with its provisions.***

## **5.6 FORMS REQUIRED TO BE SUBMITTED WITH PROPOSAL**

Forms required to be submitted with the proposal are listed and available as indicated below. For Solicitation Number, please use "DOL eDiscovery"

### **5.6.1 OWNERSHIP DISCLOSURE FORM**

Pursuant to N.J.S.A. 52:25-24.2, in the event the Bidder is a corporation, partnership or sole proprietorship, the Bidder must complete and sign the attached Ownership Disclosure Form. A current completed Ownership Disclosure Form must be received prior to or accompany the submitted proposal. A Bidder'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 Bidder unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six months prior to the proposal submission deadline for this procurement. If any ownership change has occurred within the last six months, a new Ownership Disclosure Form must be completed, signed and submitted with the proposal.

The form is available at:

<http://www.state.nj.us/treasury/purchase/forms/OwnershipFinal12-14.pdf>

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

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

The form is available at:

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

The list of persons or entities engaged in Prohibited Investment Activities in Iran is at:

<http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>

## **5.7 FORMS REQUIRED BEFORE CONTRACT AWARD AND THAT SHOULD BE SUBMITTED WITH THE PROPOSAL**

### **5.7.1 BUSINESS REGISTRATION**

In accordance with N.J.S.A. 52:32-44(b), a Bidder and its named subcontractors must have a valid Business Registration Certificate (“BRC”) issued by the Department of Treasury, Division of Revenue prior to the award of a contract. To facilitate the proposal evaluation and contract award process, the Bidder should submit a copy of its valid BRC and those of any named subcontractors with its proposal. Refer to RFP Section 6.6 for more information. Any Bidder, inclusive of any named subcontractors, who does not have a valid business registration at the time of the proposal submission opening or whose BRC was revoked prior to the submission of the proposal should proceed immediately to register its business or seek reinstatement of a revoked BRC. Bidders are cautioned that it may require a significant amount of time to secure the reinstatement of a revoked BRC. The process can require actions by both the Division of Revenue and the Division of Taxation. For this reason, a Bidder’s early attention to this requirement is highly recommended.

The Bidder and its named subcontractors may register with the Division of Revenue, obtain a copy of an existing BRC or obtain information necessary to seek re-instatement of a revoked BRC online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

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

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

### **5.7.2 DISCLOSURE OF INVESTIGATIONS AND ACTIONS INVOLVING BIDDER FORM**

The Bidder should submit the New Jersey Division of Purchase and Property’s Disclosure of Investigations and Actions Involving Bidder Form with its proposal to the Division, to provide a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five (5) years, including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. If a Bidder does not submit the form with the proposal, the Bidder must comply within seven (7)

business days of the State's request or the State may deem the proposal non-responsive.

The form is available at:

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

### **5.7.3 SERVICES SOURCE DISCLOSURE CERTIFICATION FORM**

Pursuant to N.J.S.A. 52:34-13.2, prior to an award of contract, the Bidder is required to submit a completed source disclosure form. The Bidder's inclusion of the completed Services Source Disclosure Form with the proposal is requested and advised. Refer to RFP Section 8.1.2 for additional information concerning this requirement.

The form is available at:

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

## **5.8 CONTENTS OF BID**

The Bidder's proposal should contain all of the information specified below. The Bidder's responses to each section below must demonstrate to the State's satisfaction that the Bidder understands the objectives that the contract is intended to meet, the nature of the required work and the level of effort necessary to successfully complete the contract, and that the Bidder's general approach and plans to undertake and complete the contract are appropriate to the tasks and subtasks involved. Mere reiterations of RFP tasks and subtasks are strongly discouraged, as they do not provide insight into the Bidder's ability to complete the contract.

In this section, the Bidder shall describe its approach and plans for accomplishing the work outlined in the Scope of Work section, i.e., Section 3.0. The Bidder must set forth its understanding of the requirements of this RFP and its ability to successfully complete the contract. This section of the proposal should minimally contain the information identified below.

### **5.8.1 ORGANIZATIONAL SUPPORT AND EXPERIENCE**

The Bidder should include information relating to its organization, personnel, and experience, including, but not limited to, references, together with contact names and telephone numbers, evidencing the Bidder's qualifications, and capabilities to perform the services required by this RFP. This section of the proposal must minimally contain the information identified below.

### **5.8.2 LOCATION**

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

### **5.8.3 ORGANIZATION CHARTS**

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

#### **5.8.4 GENERAL INFORMATION**

- A) Cover Letter addressing the Bidder's qualifications as outlined in the Section 4.0, above;
  
- B) List of similar contracts the Bidder has undertaken for entities similar to the Division of Law, with New Jersey-based and/or governmental client clients preferred;
  
- C) A description of how the Bidder defines a conflict between and/or among clients or potential clients such that the Bidder would, as matter of its professional judgment, not provide e-discovery services to one of the clients involved in the conflict, and the manner in which the Bidder ensures the absence of conflicts between and/or among its clients;
  
- D) A detailed description of the Bidder's data security arrangements;
  
- E) A written assurance that it will comply with all State of New Jersey Office of Information Technology data security and other technical requirements;
  
- F) A copy of the Bidder's forensically-defensible chain-of-custody protocol;
  
- G) Provide the particulars of any circumstances over the past three (3) years in which the Bidder or its proposed subcontractor(s)/strategic partner(s) have caused or experienced a breach of the security, confidentiality or integrity of a customer's data, including loss of data. Describe each such incident in full and complete detail, including all remedial and corrective steps taken to mitigate the risk created by the breach the security, confidentiality or integrity of a customer's data.
  
- H) Three or more references of clients who can speak to the Division about the Bidder's experience and capabilities, with New Jersey-based and/or governmental client references preferred; and
  
- I) All forms required with the bid that are listed in RFP Section 5.6
  
- J) A list of cases for which the Bidder's personnel have submitted affidavits, certifications or testified in open court about chain of custody, processing or search

methodologies in the last five years, For each matter listed, please provide a brief description of the matter and testimony provided.

- K) Any proposed licensing agreement(s) for the tool(s) necessary to provide the services under this agreement.
- L) Bidder's Disaster Recovery Plan required by RFP Section 3.4.

#### **5.8.5 BIDDERS HISTORY AND PROFILE**

- A) The Bidder shall describe and provide detailed information about its expertise and experience in providing electronic litigation support services. The Bidder should include its years in business, information about its founding and founders, its core product and service offerings, number of employees and any significant mergers or acquisitions in the past five (5) years.
- B) If applicable, Bidder shall describe its parent company, affiliates and their core business. If any services above are to be provided by Bidder's parent or affiliates, they must be considered subcontractors to the Bidder.
- C) The Bidder shall provide a list of all of its locations and describe the services under the RFP that are offered at each.

#### **5.8.6 SUBCONTRACTORS**

If applicable, Bidder should clearly describe which services or portions thereof are subcontracted, identify the subcontractor, and state the qualifications of those subcontract providers or strategic partners, and how the Bidder shall ensure the quality of any subcontracted services or services provided by a strategic partner under this RFP.

#### **5.8.7 EXPERIENCE IN PROVIDING E-DISCOVERY SERVICES**

- A) The Bidder shall describe and provide detailed information about its expertise and experience in each aspect of the Scope or Work;
- B) The Bidder should describe its experience providing electronic litigation support to governmental entities;
- C) Bidder shall provide three case studies illustrating its experience in litigation support;
- D) If applicable, the Bidder shall describe how it ensures consistent output across multiple locations or divisions;
- E) The Bidder should furnish copies of all relevant licenses, certifications, or similar designations of knowledge, experience and/or expertise that it possesses with respect to data security as part of their bid submissions, along with an explanation of the nature of each such license, certification, or similar designation;

- F) The Bidder should provide a general description of its client base, including the approximate percentage of its business devoted to each of governmental, law firm and corporate clients; and
- G) The Bidder should state whether it performs client satisfaction surveys, and if so, at what intervals. If it does, the Bidder shall provide the results from the most recent 3 surveys.

#### **5.8.8 EXPERIENCE OF KEY PERSONNEL**

- A) The Bidder shall describe the experience of the Key Personnel to be assigned to the DOL, including Bidder's forensic team.
- B) The Bidder should furnish copies of all relevant licenses, certifications, or similar designations of knowledge, experience and/or expertise that its key personnel possess with respect to data security as part of their bid submissions, along with an explanation of the nature of each such license, certification, or similar designation.
- C) The Bidder shall provide a resume for each such individual identified as Key Personnel.

#### **5.8.9 EXPERIENCE OF PROJECT MANAGERS**

- A) The Bidder shall describe the experience of the Project Managers to be assigned to the DOL.
- B) The Bidder should furnish copies of all relevant licenses, certifications, or similar designations of knowledge, experience and/or expertise that its project managers possess with respect to data security as part of their bid submissions, along with an explanation of the nature of each such license, certification, or similar designation.

#### **5.8.10 Experience in Training**

- A) The Bidder shall indicate number of trainers, and their level and the nature of their experience with electronic litigation support and with the Bidder's e-discovery services and Review Tool(s), and the credentials they hold, including relevant certifications, course completions or other qualifications.
- B) The Bidder shall provide an overview of its training curriculum.

#### **5.8.11 Financial Capacity to Perform**

- A) The Bidder should provide audited consolidated financial statements from its most recently completed fiscal year.
- B) The Bidder should provide the percentage of gross annual revenue from its largest five customers.

- C) Bidder should state whether it or any of its parents, subsidiaries or affiliates has filed for bankruptcy and give the date, type and current status of such filing(s).
- D) The Bidder should state its average R&D investment as a percentage of gross profits.

#### **5.8.12 Potential Problems**

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

### **5.9 PRICING AND PRICE SCENARIOS**

**The Contractor shall not charge, and the State shall not pay, any additional charges to any service and/or product other than those specified in the Bidder's proposal in response to the RFP or any BAFO accepted by the Division.**

#### **5.9.1 General Pricing Requirements**

##### **5.9.1.1 Delivery Costs of Tangible Goods**

Unless otherwise noted elsewhere in the RFP, all prices for items in proposals shall be submitted F.O.B. Destination. Proposals submitted other than F.O.B. Destination may not be considered. Regardless of the method of quoting shipments, the Contractor shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to the State's using agency or designated purchaser. F.O.B. Destination does not cover "spotting" but does include delivery on the receiving platform of the ordering 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 Contractor's convenience when a single shipment is ordered. The weights and measures of the State's using agency receiving the shipment shall govern.

##### **5.9.1.2 C.O.D. Terms Not Accepted**

C.O.D. terms are not acceptable as part of a proposal and will be cause for rejection of a proposal.

##### **5.9.1.3 Most Favored Nation Pricing**

To the extent that any of the prices specified above are higher than those charged by the Bidder to any current customer, set forth the difference and explain why those pricing terms cannot be offered to the State. Failing to provide any such explanation constitutes the Bidder's representation to the State that the Bidder does not offer more favorable pricing to any current customer.

##### **5.9.1.4 Cash Discounts**

Bidders are encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts, but discounts will not be considered in determining the lowest proposal.

- 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.
- 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.

#### **5.9.1.5 PRICE FLUCTUATION DURING CONTRACT**

Unless otherwise agreed to in writing by the Division, 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 Division 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.

#### **5.9.1.6 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 Division's Federal Excise Tax Exemption number is 22-75-0050K.

#### **5.9.2 PRICING MODEL(S) PROPOSAL(S)**

The Bidder must provide a detailed proposal for each pricing model that the Bidder is proposing to the Division for consideration. All costs that are part of each pricing model should be clearly explained.

If as part of a pricing model, the Bidder would require the Division to agree to certain minimum charges—for example, a minimum quantity of hosted data per Task Order, or across all Task Orders—those minimum requirements must be clearly explained in the proposal. The State may prefer bids that do not contain such minimums.

The Division will consider tiered pricing models whereby prices will decline as the State delivers more data to Vendor for processing. The Bidder must be able to host up to 100 terabytes of data across multiple matters and 250 concurrent logins, see RFP Sections 3.0 and 4.1, and the tiered pricing model proposal(s), if any, must clearly explain the costs the State will incur as it requires more data to be hosted and more accounts to be created, and how quickly the State can scale down in these areas when projects are completed.



The Bidder must have the ability to invoice the State separately for each Task Order. To the extent the Bidder will charge per-hour for time expended by its personnel, each time entry should be accompanied by a description of the work performed.

#### **5.9.2.1 Pricing Model(s) Specific Charges**

Responses to this RFP must include all charges that may result from engaging the Bidder for each pricing model proposed by the Bidder.

For each pricing model proposed the Bidder must:

- A) Provide a detailed explanation of each and every charge the State may incur;
- B) State the unit price for each charge the State may incur;
- C) State the unit basis upon which each price is charged (for example, per hour, per item, per task, per gigabyte, or any other unit basis);
- D) If the Bidder does not offer the service, please state “service not offered”;
- E) If the Bidder does offer the services, but does not specifically charge for the service, please state “no specific charge”; and
- F) If the Bidder offers services that are not listed, the Bidder should list the service, and provide the information requested in A) through E), immediately above.

The list of services or tasks, below, is meant to be illustrative but not necessarily comprehensive: If a Bidder does not offer one or more of the services listed below, or proposes to provide other services beyond those listed below, the Bidder should so indicate. If the Bidder levies charges within each task category other than those listed, the Bidder should describe in detail each additional service and the charges associated with it. Further, if the Bidder does perform the services but does not charge an additional fee for the listed service, the Bidder should so indicate.

#### **Collection/Data Hosting Prices**

For each pricing model:

List all information requested in Section 5.6.2.1 for Collection/Data Hosting, including:

- Database setup
- Hosting (on-line)
- Hosting (near-line; include any charges to restore to on-line)
- Storage (offline and archival off your systems; include any charges to restore to on-line)

### **Data Processing/Data Review and Production Prices**

List all information requested in 5.6.2.1 for Data Processing, including:

- Early data assessment
- Processing (extracting metadata/ text, native file linking)
- Creating searchable text (OCR) for files not yielding text during processing (i.e., PDF, eFax)
- Conversion from non-defined formats
- Uploading of data to processing platform from received media (per item and/or GB)
- De-NISTing
- De-duplication
- Filtering by file type, keywords and/or date ranges
- Password cracking
- Email conversation thread identification
- Near-duplicate identification
- Bates numbering of Collected Materials
- Use of technology assisted review
- TIFF creation
- Endorsing
- Native file production
- PDF creation
- Delivery of production data on portable hard drives
- Load File

### **Services that May be Required from the Vendor**

List all information requested in 5.6.2.1 for Services that May be Required from the Vendor, including:

- Forensic recovery of damaged or corrupted data;
- Forensic imaging of computers and servers in locations throughout New Jersey;
- Sworn written testimony regarding security, search quality, chain of custody or other services;
- Sworn in-person testimony regarding security, search quality, chain of custody or other services;
- Investigation for deleted files, data carving, recovery of files from unallocated space, internet history and other information;
- Archiving hosted Collected Material
- Restoring archived Collected Material

### **Services that are Not Required but that May be Offered by the Vendor**

List all information requested in 5.6.2.1 for Services that Not Required but that May be Offered by the Vendor, including:

- Document Review Services
- Contracted reviewers
- Managers for review
- Generation of privilege log
- Document and ESI Collection Services within the State of New Jersey
- On-site forensic imaging of hard drives
- On-site non-forensic collection of data from custodian computers/devices
- Related travel charges for Document and ESI Collection Services.

### **5.9.2.2 Application of Bidders Pricing Models to Case Composites**

The Bidder shall provide the Division with proposed staffing and actual pricing, including the breakdown under your pricing model(s), for the following three representative examples of Division cases, see below. Note that these are case composites and not specific cases handled by Division. These price quotes will be used to compare the Bidders pricing.

- A) If the Bidder is proposing more than one pricing model, the Bidder should submit pricing under each pricing model for each case composite.
- B) For each case and pricing model, please provide all information about prices of any type, referring to the above lists of costs to ensure a complete price quote for each composite case.

#### **Case Composite 1**

Plaintiff in a disability and race discrimination case served a Request for Production of Documents on Defendants requesting all emails “relevant to Plaintiff’s complaint.” Defendants initially objected to these requests as overbroad, unduly burdensome and requesting confidential materials. Defendants suggested more narrowly tailored search terms and years. Plaintiff offered to narrow the search terms. Following oral argument, the Court ordered that:

“Defendants shall cause their IT department to search for and turn over any and all emails that have ever been exchanged between 2012 and 2014, by certain individuals agreed upon by counsel for the parties, where the following terms are found anywhere in the email: "Heart" (where it is used as a proper name) and/or "princess" and/or "nub" and/or "Egyptian".

Plaintiff then provided a list of 19 individuals whose email accounts she wanted searched. The client provided these emails to Defense counsel in Outlook format. The initial gathering of the emails revealed an excess of 3,268 GB of data of emails that met the parameters set by the Court Order. Each email must then be printed, along with the attachment, reviewed to see if it is responsive, scanned, Bates-labeled, reviewed for

privilege, and redacted. The emails also needed to be reviewed to determine whether the word “Heart” was being used as a proper noun and removing all other references to “heart.” After the initial review by the paralegal, the attorney assigned to the case reviewed each document again to ensure appropriate withholding and redactions had been done. The documents were then produced to Plaintiff. Defendants provided documents on a rolling basis, and after 622.4 hours were able to produce over 9,900 pages of emails for the first 8 email accounts. This number is not reflective of documents that were removed as non-responsive.

The word “Heart” appears in a number of contexts that are not “Heart as a proper name.” The individuals whose emails are being searched are also state employees, so the majority of the emails pertain to residents, whose names and information are confidential and need to be redacted. Plaintiff’s counsel agreed to modify the demand to exclude from production any email or attachment that pertains only to the residents. The modified demand cut down on the quantity of emails being provided significantly.

The most common context in which the word “Heart” is found is in the body of a “reply-all” email. For example, an email announcing a promotion, retirement, or baby shower, along with many “congratulations” reply-all emails, shows up because Heart was copied on the email. The same “congratulations” emails will then show up 19 times for each of the individuals for whom we are providing emails. Plaintiff’s counsel ultimately limited the search criteria to emails with 6 or less recipients, and the number of responsive emails was reduced drastically.

### **Case Composite 2**

In connection with an investigation, a target made seven electronic discovery productions over four months. The target produced the documents on DVDs, and each document was provided in TIFF, text and native format (with limited exceptions). The productions contained 13,281 documents with 55,922 pages. The total file size of the productions was 9.02 GB. The native files totaled 3.93 GB and included approximately 22 different file types, with .msg (7,144), .xls (3,621) .doc (617), and .ppt (564) files the most common. The productions included ten custodians and covered approximately nine years.

In order to analyze the documents, the DOL Users need the ability to do the following:

- Segregate the documents according to custodians.
- After segregating by custodian, sort the documents chronologically.
- Run iterative key word and phrase searches across the entire set of documents and by custodian.
- Sort the documents by topics created by the Deputies after searches were completed. Many documents had to be sorted into more than one topic category.

### **Case Composite 3**

Plaintiff, a contractor on a construction project, filed a claim for additional costs due to delays and inefficiencies on the project. The NJDOT filed a third party complaint against the design consultant and the utility companies worked on the project. The plaintiff and third party defendants served request for production of documents on the NJDOT requesting all emails “relevant to the project.” After the initial objection to these requests

as overbroad, unduly burdensome, and requesting confidential materials, the NJDOT suggested and the parties agreed to a more narrowly tailored list of search terms, a date range for the search, and 20 to 25 key NJDOT custodians. In construction projects, the design phase usually begins about 5 years prior to the construction phase. Therefore, the discovery requests for a typical project would typically span a date range of 5 to 10 years.

The Office of Information Technology on behalf of the NJDOT conducted the search of the NJDOT's GroupWise and Outlook e-mail accounts for the key NJDOT 20 to 25 custodians who worked on the project and came up with an initial gathering of 4,000 to 6,000 GB of data with emails meeting the parameters comprising 2,000 to 3,000 GB of this total. This data was sent to the litigation expert who, using Early Case Assessment and Law Electronic Discovery Processing software and the agreed upon search parameters further narrowed the data/documents to approximately 50 to 100 GB. These were then uploaded into a Litigation Document Management Solution such as Relativity or Concordance to be used by the Division for review for relevancy, privilege, and confidentiality. Each email was then reviewed by the Division User assigned to the case, along with any attachments, to determine if it was responsive. Responsive documents were then reviewed for privilege. Responsive, non-privileged documents were then prepared for production: bates-labeled, endorsed, redacted, compiled in a load file, and processed to meet other production specifications. After reviewing and issue-coding 50,000 to 100,000 documents, the Division was able to produce (in multiple productions) over 45,000 to 85,000 documents consisting of a total of 55,000 to 100,000 pages using the ftp site provided by the litigation expert. This number is not reflective of documents that were removed as non-responsive. A privilege coding template was created to prepare the privilege log. The results were exported and formatted into a privilege log.

The original upload and production will need to be hosted for 12 months to be available for trial. The matter will be appealed and then remanded for additional discovery and retrial and thus, archived for 18 months and then restored and hosted for another 6 months after restoration.

## **6.0 TERMS AND CONDITIONS**

### **6.1 TERMS AND CONDITIONS**

In the event that the Bidder would like to present terms and conditions that are in conflict with either these terms and conditions any other section of the RFP, the Bidder must present those conflicts during the Question and Answer period for the Division to consider. Any conflicting terms and conditions that the Division is willing to accept will be reflected in an addendum to the RFP. The Division's RFP shall prevail over any conflicts set forth in a Bidder proposal that were not submitted through the question and answer process and approved by the Division. Nothing in these terms and conditions shall prohibit the Director from amending a contract when the Director determines it is in the best interests of the Division.

### **6.2 ORDER OF PRECEDENCE**

The Contract awarded as a result of this RFP, shall consist of this RFP, addenda to this RFP, the Contractor's proposal, any best and final offer and the Division's Notice of Award.

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

### **6.3 APPLICABLE LAW AND JURISDICTION**

This contract, any task orders 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 State of the New Jersey Superior Court.

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

### **6.4 CONTRACTOR 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.

### **6.5 LICENSES AND PERMITS**

The Contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this contract. The Contractor shall supply the Division with evidence of all such licenses, permits and authorizations. This evidence shall be submitted subsequent to the contract award. All costs associated with any such licenses, permits and authorizations must be considered by the Bidder in its proposal.

### **6.6 BUSINESS REGISTRATION**

Pursuant to N.J.S.A. 52:32-44, the Division 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. See RFP Section 5.7.1.

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

<http://www.Division.nj.us/treasury/revenue/busregcert.shtml>.

N.J.S.A. 54:32B-1 et seq. on all their sales of tangible personal property delivered into the Division. 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

### **6.7 ANTI-DISCRIMINATION**

All parties to any contract with the Division 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.

### **6.8 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.

### **6.9 PAY TO PLAY PROHIBITIONS**

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

- a. make or solicit a contribution in violation of the statute;
- b. knowingly conceal or misrepresent a contribution given or received;
- c. make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- d. make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee;
- e. engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
- f. fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- g. engage in any exchange of contributions to circumvent the intent of the Legislation; or
- h. directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

### **6.10 POLITICAL CONTRIBUTION DISCLOSURE**

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

### **6.11 STANDARDS PROHIBITING CONFLICTS OF INTEREST**

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

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

firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52: 13D-13g.

- B) The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.
- C) No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any Division agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52: 130-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
- D) No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- E) No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
- F) The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of Executive Order No. 189.

#### **6.12 NOTICE TO ALL CONTRACTORS SET-OFF FOR DIVISION TAX NOTICE**

Pursuant to L 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.



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

### **6.13 AFFIRMATIVE ACTION REQUIREMENTS**

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

- A) The Contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- B) The Contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
- C) The Contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the State, 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:

- D) 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.
- E) 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.

- F) 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.
- G) 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.

#### **6.14 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 State, 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 Division 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, unless previously approved by the Director and the Treasurer.

#### **6.15 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.

#### **6.16 CONTRACTOR IS INDEPENDENT CONTRACTOR**

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

#### **6.17 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND DIVISION**

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

#### **6.18 SUBCONTRACTING OR ASSIGNMENT**

- A) Subcontracting: The Contractor may not subcontract other than as identified in the Contractor's proposal without the prior written consent of the Director. Such consent, if granted in part, shall not relieve the contractor of any of his responsibilities under the contract, nor shall it create privity of contract between the Division and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be

responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws.

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

### **6.19 MERGERS, ACQUISITIONS**

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

### **6.20 CONTRACTOR RESPONSIBILITIES**

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

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

### **6.21 CONTRACTOR WARRANTIES**

A) Commercial Off the Shelf Software

1. Contractor warrants that a product licensed to the State shall operate in all material respects as described in the Solicitation and/or Contractor technical documentation for ninety (90) days after Acceptance. The State shall notify Contractor of any product deficiency within ninety (90) days after Acceptance.

2. Except for the portion of Contractor's COTS product that intentionally contains one or more of the following for the purpose of anti-virus protection, Contractor warrants that, at the time of delivery and installation of the 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 Software, collect unlawful personally identifiable information on users, or prevent the Software from performing as required under the contract.
3. In the event of any breach of this warranty, the Contractor shall correct the product errors that caused the breach of warranty, or if Contractor cannot substantially correct such breach in a commercially reasonable manner, the State may end its usage and recover the fees paid to Contractor for the license and any unused, prepaid technical support fees paid. Under no circumstances does this warranty provision limit the Contractor's obligation in the event of a breach of confidentiality.
4. Contractor does not warrant that Software is error-free or that it will operate uninterrupted.

#### B) Custom Software

1. Contractor warrants that 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 Contractor of any Software deficiency within one hundred and eighty (180) days after Acceptance of the Software Deliverable.
2. Contractor warrants that, at the time of Acceptance of the 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 Software, collect unlawful personally identifiable information on users, or prevent the 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.
3. In the event of any breach of this warranty, Contractor shall correct the Software errors that caused the breach of warranty, or if Contractor cannot substantially correct such breach in a commercially reasonable manner, the State may recover a portion of the fees paid to Contractor for the Software Deliverable to reflect any reduction in the value of the 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.
4. Contractor does not warrant that Software is error-free or that it will operate uninterrupted.

#### C) IT Services

1. Contractor warrants that all Services will be provided in a professional manner consistent with industry standards. The State shall notify Contractor of any Services warranty deficiencies within ninety (90) days from performance of the deficient Services.
2. In the event of any breach of this warranty, the Contractor shall re-perform the deficient Services, or if Contractor cannot substantially correct a breach in a commercially reasonable manner, the State may end the relevant Services and recover the fees paid to Contractor for the deficient Services.

D) Hardware

1. Contractor warrants that the equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.
2. Contractor warrants that all equipment supplied to the State and operated by electrical current is UL listed where applicable.
3. Contractor warrants that all new machines are to be guaranteed as fully operational for one year from time of Acceptance by the State. For the avoidance of doubt, Acceptance with respect to Hardware in this Section 6.21 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.
4. Contractor warrants that sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters.
5. Contractor warrants that trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice.
6. Contractor warrants that all Software included with the Hardware shall perform substantially in accordance with specifications, for one year from the time of Acceptance. Contractor warrants that Software media will be free from material defects in materials and workmanship for a period of one year from the date of Acceptance.
7. In the event of any breach of this warranty, Contractor shall promptly repair, replace or refund the purchase price of product rejected for failure to conform with Contractor's product specifications.

- E) All services rendered to the Division 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 of work under all Task Orders by the Division is rendered.

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

#### **6.22 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 Division under this contract and in accordance with good commercial practice.
- C) Items delivered must be strictly in accordance with the contract.
- D) In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

#### **6.23 MAINTENANCE OF RECORDS**

The contractor shall maintain records for products and/or services delivered against the contract for a period of five (5) years from the date of final payment unless otherwise specified in the RFP. Such records shall be made available to the Division, including the Comptroller, for audit and review.

#### **6.24 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 Division, 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 Division relating to the particular goods and services purchased or acquired by the Division pursuant to this contract.

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

- A) It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder.
- B) It shall advise the Attorney General of New Jersey:
  - 1. in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;
  - 2. immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- C) It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey.

- D) It is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the Division the allotted share thereof, if any, assigned to the Division hereunder.

### **6.25 PAYMENT TO VENDORS**

The Division is authorized to order and the Contractor is authorized to ship only those items and deliver only those services covered by the contract resulting from the RFP. If a review of orders placed by the Division 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 Division the full purchase price.

- A) 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 goods, the invoice, together with the original Bill of Lading, express receipt and other related papers must be sent to the Division on the date of each delivery. For services, invoices must reference the tasks or subtasks detailed in the Scope of Work section of the RFP and Task Order 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 Division before payment will be authorized.
- B) For all time and materials portions of the contract, the Division 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](http://www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls)
- C) **AVAILABILITY OF FUNDS** - The Division'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 Division for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenues.

D)

### **6.26 NEW JERSEY PROMPT PAYMENT ACT**

The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires State agencies to pay for goods and services within sixty (60) days of the agency's receipt of a properly executed Division Payment Voucher or within sixty (60) days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the Division 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.

### **6.27 ELECTRONIC PAYMENTS**

With the award of this contract, the successful vendor(s) will be required to receive their payment(s) electronically. In order to receive your payments via automatic deposit from the State of New Jersey, complete and return the "Credit Authorization Agreement for Automatic Deposits (ACH Credits)" Form with an **original voided check or bank letter**. The form must include ABA number (routing or transit number), bank account number and if the bank account is a checking or savings account. The form and instructions are located on the Office of Management & Budget's website at: <http://www.state.nj.us/treasury/omb/forms/index.shtml>. The completed form along with the required voided check or bank letter should be mailed or faxed to: Department of the Treasury, Office of Management and Budget, PO Box 221, 6TH Floor – Room 674, Trenton, N.J. 8625-0221; fax: (609)-984-5210. To assist in identifying payments, the State offers vendors access to the Vendor Payment Inquiry web application (VPI) which offers check stub information online. Contact the State of New Jersey at [AAIUNIT@treas.state.nj.us](mailto:AAIUNIT@treas.state.nj.us) to request access to this application.

### **6.28 CONTRACT TERM AND EXTENSION OPTION**

The term of the Contract shall be for a period of three (3) years from the date of the final award of the contract. If delays in the procurement process result in a change to the anticipated Contract Effective Date, the Bidder agrees to accept a Contract for the full term of the contract.

The contract may be extended for all or part of **three (3) one-year periods**, by the mutual written consent of the Contractor and the Director at the same terms, conditions, and pricing at the rates in effect in the last year of the contract or rates more favorable to the State.

If, in the opinion of the Director, it is in the best interest of the Division to extend a contract beyond the term and extensions provided for above, the contractor shall be so notified of the Director's intent at least thirty (30) days prior to the expiration date of the existing contract. The Contractor shall have fifteen (15) calendar days to respond to the Director's request to extend the term and period of performance of the contract. If the contractor agrees to the extension, all terms and conditions including pricing of the original contract shall apply unless more favorable terms for the Division have been negotiated.

### **6.29 DIVISION'S OPTION TO REDUCE SCOPE OF WORK**

The Division 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.
  
- 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.

### **6.30 CONTRACT TRANSITION**

In the event that a new Contract has not been awarded prior to the contract expiration date, as may be extended herein, it shall be incumbent upon the Contractor to continue the contract under the same terms and conditions until a new contract is completely operational. At no time shall this transition period extend more than **180 days** beyond the expiration date of the contract.

### **6.31 CONTRACT AMENDMENT**

Any changes or modifications to the terms of the Contract shall be valid only when they have they are in a writing signed by the Contractor and the Director.

### **6.32 CHANGE IN LAW**

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

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

scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

### **6.33 SUBSTITUTION OF STAFF**

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

If it becomes necessary for the Contractor to substitute any management, supervisory or key personnel, the Contractor shall identify the substitute personnel and the work to be performed. The Contractor must provide detailed justification documenting the necessity for the substitution. Resumes must be submitted evidencing that the individual(s) proposed as substitute(s) have qualifications and experience equal to or better than the individual(s) originally proposed or currently assigned.

### **6.34 SUBSTITUTION OR ADDITION OF SUBCONTRACTOR(S)**

In addition to the Subcontractor requirements elsewhere in this RFP:

- A) The Contractor shall forward a written request to substitute or add a subcontractor or to substitute its own staff for a subcontractor to the Division for consideration. No substituted or additional subcontractors are authorized to begin work until the Contractor has received written approval from the Director.

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

- B) The Contractor must provide detailed resumes of its proposed replacement staff or of the proposed subcontractor's management, supervisory and other key personnel that demonstrate knowledge, ability and experience relevant to that part of the work which the subcontractor is to undertake.
- C) The qualifications and experience of the replacement(s) must equal or exceed those of similar personnel proposed by the Contractor in its proposal.

### **6.35 OWNERSHIP OF MATERIAL**

All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the consulting and/or professional services under this Contract, including, but not limited to, all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the consulting and/or professional services required under this contract

shall be and remain the property of the Division and shall be delivered to the Division upon thirty (30) Days' notice by the Division. With respect to software computer programs and/or source codes developed for the Division, except those modifications or adaptations made to Bidder or Contractor's Background IP as defined below, the work shall be considered "work for hire", i.e., the State, not the Contractor or subcontractor, shall have full and complete ownership of all software computer programs and/or source codes developed. To the extent that any of such materials may not, by operation of the law, be a work made for hire in accordance with the terms of this Contract, the Contractor or subcontractor hereby assigns to the Division all right, title and interest in and to any such material, and the Division shall have the right to obtain and hold in its own name and copyrights, registrations and any other proprietary rights that may be available.

Should the Bidder anticipate bringing pre-existing intellectual property into the project, including but not limited to commercial off-the-shelf software and/or proprietary online databases, the intellectual property must be identified in the proposal. Otherwise, the language in the first paragraph of this section prevails. If the Bidder identifies such intellectual property ("Background IP") in its proposal, then the Background IP owned by the Bidder or third party on the date of the contract, as well as any modifications or adaptations thereto, remain the property of the Bidder or third party. Upon contract award, and for the purposes contemplated by the contract, the Bidder/Contractor shall grant the State a non-exclusive, perpetual royalty free license to use any commercial off-the-shelf software identified as Background IP and a non-exclusive, non-transferable, limited license to access proprietary online databases identified as Background IP.

## **6.36 SECURITY AND CONFIDENTIALITY**

### **6.36.1 DATA CONFIDENTIALITY**

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

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

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

#### **6.36.1.1 CONTRACTOR'S CONFIDENTIAL INFORMATION**

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

the State's intended response to such order of law. The Contractor shall take any action it deems appropriate to protect its documents and/or information.

- F) 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, 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 order of law. The State shall take any action it deems appropriate to protect its documents and/or information.
- G) Notwithstanding the requirements of nondisclosure described in these Section 6.36, 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 Contractor does not exercise its rights as described in Section 6.36, or if Contractor is unsuccessful in defending its rights as described in Section 6.36, in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the State does not exercise its rights described in Section 6.36, or if the State is unsuccessful in defending its rights as described in Section 6.36.

#### **6.36.2 DATA SECURITY STANDARDS**

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

Any Personally Identifiable Information must be protected. All data must be classified in accordance with the State's Asset Classification and Control policy, 08-04-NJOIT 40 ([www.nj.gov/it/ps](http://www.nj.gov/it/ps)). Additionally, data must be disposed of in accordance with the State's Information Disposal and Media Sanitation policy, 09-10-NJOIT ([www.nj.gov/it/ps](http://www.nj.gov/it/ps)).

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

Data Transmission: The Contractor must only transmit or exchange State of New Jersey data with other parties when expressly requested in writing and permitted by and in accordance with requirements of the State of New Jersey. The Contractor must only

transmit or exchange data with the State of New Jersey or other parties through secure means supported by current technologies. The Contractor must encrypt all data defined as personally identifiable or confidential by the State of New Jersey or applicable law, regulation or standard during any transmission or exchange of that data.

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

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

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

**Data Breach: Unauthorized Release Notification:** The Contractor must comply with all applicable State and Federal laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law ("Notification Event"), the Contractor must assume responsibility for informing the Division within 24 hours and all such individuals in accordance with applicable law and to indemnify, hold harmless and defend the State of New Jersey, its officials, and employees from and against any claims, damages, or other harm related to such Notification Event. All communications must be coordinated with the State of New Jersey.

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

termination/expiration of the Contract or within seven (7) days of the request of an agent of the State whichever shall come first.

### **6.36.3 TAX RETURN DATA SECURITY**

#### **A) PERFORMANCE**

1. In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:
2. All work will be done under the supervision of the Contractor or the contractor's employees.
3. Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.
4. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
5. The Contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and the Contractor will retain no output at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
6. Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
7. All computer systems receiving, processing, storing, or transmitting federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to federal tax information.

8. No work involving federal tax information furnished under this contract will be subcontracted without prior written approval of the IRS.
9. The Contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
10. The agency will have the right to void the contract if the Contractor fails to provide the safeguards described above.

**B) CRIMINAL/CIVIL SANCTIONS:**

1. Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by Internal Revenue Code (IRC) sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
2. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.
3. Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of



1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

4. Granting a contractor access to Federal Tax Information (FTI) must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, IRC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information and Exhibit 5, IRC Sec. 7213 Unauthorized Disclosure of Information). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10, IRS Publication 1075, January 2014, et seq.) For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

#### C) INSPECTION:

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

#### **6.37 NEWS RELEASES**

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

#### **6.38 ADVERTISING**

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

#### **6.39 SUSPENSION OF WORK**

The Division 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 Division 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.

#### **6.40 TERMINATION OF CONTRACT**

A) By the State 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 Division, upon no less than thirty (30) days written notice to the contractor.

B) By the State for Cause

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.

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

D) By the Contractor, for Cause

If the contractor believes that to continue providing services under a task order issued under the Contract because doing so would violate applicable law, the Contractor must immediately provide 10 days' written notice to the Director of the circumstance that the Contractor believes violate applicable law. The Division shall have 10 days to resolve the issue. If the issue is not resolved, the Contractor may terminate the contract by sending a notice of termination, which termination will be effective at the close of the third business day after the Division receives the notice of termination.

E) 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.

#### **6.41 CLAIMS AND REMEDIES**

##### **6.41.1 CLAIMS**

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

##### **6.41.2 REMEDIES**

Nothing in the contract shall be construed to be a waiver by the Division 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.

### **6.41.3 REMEDIES FOR FAILURE TO COMPLY WITH MATERIAL CONTRACT REQUIREMENTS**

In the event that the Contractor fails to comply with any material contract requirements, the Director may take steps to terminate the Contract in accordance with the RFP, 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.

### **6.42 LATE DELIVERY**

The Contractor must immediately advise the Division of any circumstance or event that could result in late completion of any task or subtask called for to be completed on a date certain.

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

The Contractor shall not begin performing any additional work or special projects without first obtaining written approval from the Director.

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

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

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

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

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

#### **6.44 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 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, including attorney fees:
1. For or on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or products supplied under the contract or the order; and
  2. For or on account of the use of any patent, copyright, trademark, trade secret or other proprietary right of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance ("Intellectual Property Rights") furnished or used in the performance of the contract; and iii.

The Contractor's indemnification and liability under RFP Section 6.44 (A) is not limited by, but is in addition to the insurance obligations contained in RFP Section 6.46.

- 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 for use that is agreed to by both parties. The State will (1) promptly notify Contractor in writing of the claim or suit; (2) Contractor shall have control of the defense and settlement of any claim that is subject to Section 6.44 (A) (2); 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 claims and confer with the Contractor at the State's expense. Furthermore, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of New Jersey or any Authorized Purchaser, nor purport to act as legal representative of the State of New Jersey or any Authorized Purchaser, without having provided notice to the Director of the Division of Law in the Department of Law and Public Safety. The State of New Jersey may, at its election and expense, assume its own defense and settlement.

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 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 Contractor with such designs, specifications, requests, or instructions, Contractor reviews same and advises that such designs, specifications, requests or instructions present potential issues of patent or copyright infringement and the State nonetheless directs the Contractor to proceed with one or more designs, specifications, requests or instructions that present potential issues of patent or copyright infringement; or (4) the State's failure to promptly implement a required update or modification to the product provided by Contractor.

C) Contractor will be relieved of its responsibilities under Section 6.44 (A) for any claims made by an unaffiliated third party that arise solely from the actions or omissions of the State, its officers, employees or agents. Subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 *et seq.*), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 *et seq.*) and the appropriation and availability of funds, the State will be responsible for any cost or damage arising out of actions or inactions of the State, its employees or agents under Section 6.44(A) which results in an unaffiliated third party claim. This is Contractor's exclusive remedy for these claims.

D) Section 6.44 states the entire obligation of Contractor and its suppliers, and the exclusive remedy of the State, in respect of any infringement or alleged infringement of any Intellectual Property Rights. This indemnity obligation and remedy are given to the State solely for its benefit and in lieu of, and Contractor disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any product.

E) The State of New Jersey shall not indemnify, defend, pay or reimburse for claims or take any similar actions on behalf of the Contractor.

#### **6.45 LIMITATION OF LIABILITY**

A) The Contractor's liability to the State for actual, direct damages (i) resulting from the Contractor's performance or non-performance of; or (ii) in any manner related to; the Contract, for any and all claims shall be limited in the aggregate to 250% of the fees paid to Contractor under the Contract, except that this limitation of liability shall not apply to the following:

1. The Contractor's indemnification obligations described in RFP Section 6.44(A) and
2. The Contractor's breach of its obligations described in RFP Section 6.36 or elsewhere in this RFP.

B) The Contractor shall not be liable for consequential or incidental damages.

#### **6.46 INSURANCE**

The Contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best & Company. The Contractor shall provide the Division with current certificates of insurance for all coverages and renewals thereof, and the certificates shall reflect that the insurance policies shall not be canceled for any reason except after sixty (60) days written notice to the Division. Certificates of renewals shall be provided within thirty (30) days of the expiration of the insurance. The Contractor shall not begin to provide services or goods to the Division 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 Law and Public Safety, Division of Law PO Box 112, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancelation shall be emailed to the Division at:

Director  
New Jersey Division of Law  
PO Box 112  
Trenton, New Jersey 08625-0112

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

- A) Occurrence Form Comprehensive General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Comprehensive General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic, unamended, and unendorsed Comprehensive General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage.
- B) Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit. The State must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the Division's behalf or on State controlled property.
- C) Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:

\$1,000,000 BODILY INJURY, EACH OCCURRENCE  
\$1,000,000 DISEASE EACH EMPLOYEE  
\$1,000,000 DISEASE AGGREGATE LIMIT

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

#### **6.47 CONTRACT ACTIVITY REPORT**

The Contractor must provide, on a calendar quarter basis, to the Division a record of all Task Orders issued under the contract resulting from this RFP, and the amount billed to each currently active Task Order. Contractor must submit the required information in unlocked Microsoft Excel format.

### **7.0 PROPOSAL EVALUATION**

#### **7.1 RIGHT TO WAIVE**

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

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

#### **7.2 DIRECTOR'S RIGHT OF FINAL PROPOSAL ACCEPTANCE**

The Director reserves the right to reject any or all proposals, or to award in whole or in part if deemed to be in the best interest of the State to do so. The Director shall have authority to award orders or contracts to the Bidder or Bidders whose proposals are most advantageous to the State, price and other factors considered.

#### **7.3 STATE'S RIGHT TO INSPECT BIDDER'S FACILITIES**

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

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

#### **7.4 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 Bidder's financial capabilities to perform the Contract. Further, the Director reserves the right to request a Bidder to explain, in detail, how the proposal price was determined. Bidder may, upon request by DOL, be required

to meet with DOL and provide a comprehensive demonstration of the platform and tool. The demonstration shall include provision of:

- ten (10) user logon IDs to access the Bidder's system for 15 consecutive business days for evaluation purposes.
- a set of test data to its review platform to facilitate testing,
- one day of training for up to ten (10) users and provide all documentation needed to use the system for this testing period.

## **7.5 PROPOSAL EVALUATION COMMITTEE**

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

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

After the submission of proposals, unless requested by the Division as noted below, the Bidder's contact with the Division is still not permitted. After the proposals are reviewed, one, some or all of the Bidders may be asked to clarify certain aspects of their proposals. A request for clarification may be made in order to resolve minor ambiguities, irregularities, informalities or clerical errors. Clarifications cannot correct any deficiencies or material omissions or revise or modify a proposal, except to the extent that correction of apparent clerical mistakes results in a modification. The Bidder may be required to give an oral presentation to the Division concerning its proposal. Bidders may not attend the oral presentations of their competitors. It is within the Division's discretion whether to require the Bidder to give an oral presentation or require the Bidder to submit written responses to questions regarding its proposal. Action by the State in this regard should not be construed to imply acceptance or rejection of a proposal. The Division will be the sole point of contact regarding any request for an oral presentation or clarification.

## **7.7 EVALUATION OF PROPOSALS**

The Contract(s) will be awarded to the Bidders whose proposal meets minimum requirements and is most advantageous to the Division, price and other factors considered.

### **7.7.1 Minimum Requirements**

See RFP Section 4.0.

### **7.7.2 Technical Evaluation Criteria**

- A) Personnel: The qualifications and experience of the Bidder's management, supervisory, and key personnel assigned to the contract, including the candidates recommended for each of the positions/roles required.
- B) Experience of firm: The Bidder's documented experience in successfully completing contracts of a similar size and scope in relation to the work required by this RFP.
- C) Ability of firm to complete the Scope of Work based on its Technical Proposal: The Bidder's demonstration in the proposal that the Bidder understands the requirements of the Scope of Work and presents an approach that would permit successful performance of the technical requirements of the contract.



D) Bidder's Review Tool: Ease of use of Review Tool; Robustness of Review Tool features;

### **7.7.3 BIDDER'S PRICE SCHEDULE**

For evaluation purposes, pricing submitted by Bidders will be evaluated utilizing Pricing Models, the Specific Charges in each Pricing Model and the application of the Pricing Models to the Three Case Composites. The Evaluation Committee shall rank each Bidder's Proposal by how favorable the Pricing Models proposed appears to be to the State in light of the Case Composites.

### **7.7.4 PROPOSAL DISCREPANCIES**

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

### **7.7.5 EVALUATION COMMITTEE RECOMMENDATION**

After the Evaluation Committee completes its evaluation, it recommends to the Director for award the responsible Bidder(s) whose proposal, conforming to this RFP, is most advantageous to the State, price and other factors considered. Along with the recommendation to award to a particular bidder or bidders, the Evaluation Committee may recommend a specific Bidder pricing model for award if a Bidder proposed more than one pricing model. The Evaluation Committee considers and assesses price, technical criteria, and other factors during the evaluation process and makes a recommendation to the Director. The Director may accept, reject or modify the recommendation of the Evaluation Committee. Whether or not there has been a negotiation process as outlined in Section 7.7.5 below, the Director reserves the right to negotiate price reductions with the selected Bidder.

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

After evaluating proposals, the Division may enter into negotiations with one Bidder or multiple Bidders. The primary purpose of negotiations is to maximize the State's ability to obtain the best value based on the mandatory requirements, evaluation criteria, and cost. Multiple rounds of negotiations may be conducted with one Bidder or multiple Bidders. Negotiations will be structured by the Division to safeguard information and ensure that all Bidders are treated fairly. Similarly, the Division may invite one Bidder or multiple Bidders to submit a best and final offer (BAFO). Said invitation will establish the time and place for submission of the BAFO.

Any BAFO that is not equal to or lower in price than the pricing offered in the Bidder's original proposal will be rejected as non-responsive and the State will revert to consideration and evaluation of the Bidder's original pricing.

If required, after review of the BAFO(s), clarification may be sought from the Bidder(s). The Division may conduct more than one round of negotiation and/or BAFO in order to attain the best value for the State. After evaluation of proposals and as applicable, negotiation(s) and/or BAFO(s), the Division will recommend, to the Director, the responsible Bidder(s) whose proposal(s), conforming to the RFP, is/are most advantageous to the State, price and other factors considered. The Director may accept, reject or modify the recommendation of the Division. The Director may initiate additional negotiation or BAFO procedures with the selected Bidder(s).

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

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

## **8.0 CONTRACT AWARD**

### **8.1 DOCUMENTS REQUIRED BEFORE CONTRACT AWARD**

#### **8.1.1 Requirements of P.L. 2005, c.51, N.J.S.A. 19:44A-20.13, et seq. and Executive Order No. 117 (2008)**

- A) The State shall not enter into a contract to procure from any Business Entity services or any material, supplies or equipment, or to acquire, sell or lease any land or building, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions, to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor, to any State, county, municipal political party committee, or to any legislative leadership committee during certain specified time periods;
- B) Prior to awarding any contract or agreement to any Business Entity, the Business Entity;
- C) proposed as the intended awardee of the contract shall submit the Certification and Disclosure form, certifying that no contributions prohibited by either Chapter 51 or Executive Order No. 117 have been made by the Business Entity and reporting all contributions the Business Entity made during the preceding four years to any

political organization organized under 26 U.S.C.527 of the Internal Revenue Code that also meets the definition of a “continuing political committee” within the means of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The required form and instructions, available for review on the Division’s website at:

<http://www.state.nj.us/treasury/purchase/forms.shtml#eo134>, shall be provided to the intended awardee for completion and submission to the Division with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Contract, the intended awardee shall submit to the Division, in care of the Director, the Certification and Disclosure(s) within five (5) business days of the State’s request. Failure to submit the required forms will preclude award of a contract under this RFP, as well as future contract opportunities.

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

### **8.1.2 SOURCE DISCLOSURE REQUIREMENTS**

Pursuant to N.J.S.A. 52:34-13.2, all contracts primarily for services shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer. Also refer to RFP Section 6.14 Service Performance Within U.S. Pursuant to the statutory requirements, the intended awardee of a contract primarily for services with the State of New Jersey must disclose the location by country where services under the contract, including subcontracted services, will be performed. The Source Disclosure Certification form accompanies the subject RFP. FAILURE TO SUBMIT SOURCING INFORMATION WHEN REQUESTED BY THE STATE SHALL PRECLUDE FINAL AWARD OF A CONTRACT TO THE BIDDER.

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

A SHIFT TO PROVISION OF SERVICES OUTSIDE THE UNITED STATES DURING THE TERM OF THE CONTRACT SHALL BE DEEMED A BREACH OF CONTRACT. If, during the term of the contract, the contractor or subcontractor, who had on contract award declared that services would be performed in the United States, proceeds to shift the performance of any of the services outside the United States, the Contractor shall be deemed to be in breach of its contract. Such contract shall be subject to termination for cause, unless such shift in performance was previously approved by the Director.

### **8.1.3 Affirmative Action**

The intended awardee must submit a copy of a New Jersey Certificate of Employee Information Report, or a copy of Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program. Intended awardee(s) not in possession of either a New Jersey Certificate of Employee Information Report or a Federal Letter of Approval must complete the Affirmative Action Employee Information Report (AA-302) located on the web at

[http://www.nj.gov/treasury/purchase/forms/AA\\_%20Supplement.pdf](http://www.nj.gov/treasury/purchase/forms/AA_%20Supplement.pdf).

### **8.1.5 BUSINESS REGISTRATION**

In accordance with N.J.S.A. 52:32-44(b), a Bidder and its named subcontractors must have a valid Business Registration Certificate ("BRC") issued by the Department of Treasury, Division of Revenue prior to the award of a contract. (Refer to RFP Sections 5.7.1 and 6.6 for further information.)

### **8.1.6 INSURANCE CERTIFICATES**

The Contractor shall provide the Division with current certificates of insurance for all coverages required by the terms of this contract, naming the State as an Additional Insured. Refer to RFP Section 6.46.

## **8.2 FINAL CONTRACT AWARD**

Contract award[s] shall be made with reasonable promptness by written notice to that responsible Bidder(s), whose proposal(s), conforming to this RFP, is(are) most advantageous to the State, price and other factors considered. Contract awards shall be made based on the Bidder's combined technical and price score to determine a total proposal score. Bidder(s) with the highest proposal score(s) shall be considered for contract award. Any or all proposals may be rejected when the Director determines that it is in the public interest to do so.

## **8.3 POSSIBLE PROTEST CONTRACT AWARD**

Any disappointed bidder may, within 7 calendar days of the notice of intent to award the contract, may request to review the procurement record by writing to the Director. For purposes of this RFP, the Division shall follow N.J.A.C. 17:12-3.3 and -3.4 except that the Director of the Division of Law shall perform all the duties specified in the regulation of the Director of the New Jersey Division of Purchase and Property.