

**REQUEST FOR PROPOSALS  
FOR  
Temporary Employment Services  
Administrative, Office & Clerical**

**Issued by:  
New Jersey Higher Education Student Assistance Authority**

**Date Issued:**

**February 22, 2016**

**Question Cut-off Date:**

**February 29, 2016**

**Proposals Due:**

**March 14, 2016**

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Executive Director**

**Higher Education Student Assistance Authority  
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**Contact:**

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Director, Legal & Governmental Affairs**

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## 1.0 PURPOSE AND INTENT

The New Jersey Higher Education Student Assistance Authority (“HESAA” or “Authority”), is seeking proposals for the provision of Temporary Employment Services for Administrative, Office & Clerical positions. The intent of this RFP is to award is to award a primary, secondary and tertiary contract for placing workers in these positions.

Through this RFP, HESAA seeks to obtain the best services at the most favorable, competitive prices.

## 2.0 DEFINITIONS

The following definitions will be part of any contract awarded as a result of this RFP.

**Addendum** – Written clarification or revision to this RFP issued by HESAA.

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

**Amendment** – A change in the scope of services to be provided by the contractor. An amendment is not effective until it is signed by the Authority.

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

**Contract** – As further defined in section 7.5 below, the contract entered as result of this RFP, which is inclusive of this RFP, addenda to this RFP, the HESAA Standard Terms and Conditions, the contractor’s proposal submitted in response to this RFP, and its best and final offer, contractual language agreed to by both the contractor and HESAA governing the implementation of the services to be provided, and HESAA’s Letter of Engagement.

**Contractor** – The bidder(s) awarded a contract resulting from this RFP.

**Firm Fixed Price** – A price that is all-inclusive of direct cost and indirect costs, including but not limited to, direct labor costs, overhead, fee or profit, clerical support, equipment, materials, supplies, managerial (administrative) support, all documents, reports, forms, travel, reproduction and any other costs. No additional fees or costs shall be paid by the Authority unless there is a change in the scope of services.

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

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

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

**Request for Proposal or RFP** – This document, which establishes the bidding and contract requirements and solicits proposals to meet the needs of the Authority for engaging a Senior Manager.

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

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

**State** – State of New Jersey.

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

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

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

**Transaction** – The payment or remuneration to the contractor for services rendered annually to the Authority pursuant to the terms of the contract, in accordance with the firm fixed price defined above.

### **3.0 BACKGROUND**

HESAA provides students and their families with financial aid and informational resources to pursue their education beyond high school. HESAA manages and administers student loan portfolios, provides State grants and scholarships, administers loan redemption programs and assists students, families, and educators each year by providing financial aid information.

In addition to a full time staff, HESAA utilizes temporary staff and consultants. Temporary administrative, office and clerical work includes but is not limited to answering the phones, handling mail, filing, faxing, data entry, electronic calendaring and email, preparing correspondences, spreadsheets, reports and presentations utilizing Word, Excel and Powerpoint, internet research, making travel arrangements, timekeeping and other general assistance to supervisors and work units. This also includes work related to the administration of Federal and State student loan programs

such as approving and distributing loans, collecting loan payments, customer service, program administration, financial counseling, default aversion, negotiating defaulted loan repayment plans, outreach, financial aid counseling, financial literacy, record keeping, financial aid seminars, training and printed materials, compliance, data analysis, budgeting, financial analysis, security, administration of employee programs, leave time compensation, payroll, benefits.

#### **4.0 SCOPE OF SERVICES**

##### **4.1 Provision of Qualified Staff**

- A. The contractor shall provide temporary personnel for administrative, office and clerical staff on an as needed basis as requested by HESAA. The list of titles for which the contractor shall provide temporary personnel includes but is not limited to the titles listed on the Price Sheet and Job Descriptions attached hereto as Attachment 2.
- B. The contractor shall furnish personnel on a timely basis as agreed to by both parties. The contractor has the right to initially decline to supply personnel in response to a specific request, due to unavailability of personnel or travel distance involved.
- C. In the event delivery of qualified resumes for available requested personnel is not made within three business days, HESAA will obtain said personnel from any available source including but not limited to the secondary and tertiary contractor.
- D. If the primary contractor supplied personnel cannot perform the services required, HESAA may request a replacement.
- E. After two documented occasions where the contractor either declines to furnish personnel, is unable to furnish qualified resumes for available personnel within three business days or supplies personnel who cannot perform the required services, HESAA may elect to either terminate the agreement with the contractor or bypass the contractor and obtain personnel from other sources, including but not limited to the secondary and tertiary contractors.
- F. HESAA reserves the right to hire temporary staff and consultants outside of the contracts awarded pursuant to this RFP.
- G. HESAA reserves the right to transfer a temporary employee to another title at the Authority upon the consent of the temporary employee and the contractor for which s/he is employed.

## **4.2 Licensing**

The contractor must be licensed by the State of New Jersey, Division of Consumer Affairs, Private Employment Agency Section, on or before the bid opening date for this RFP as a private employment agency or a temporary help service firm. A photocopy of the license shall be included with the RFP.

## **4.3 Security Clearances**

The contractor shall be responsible for ensuring that employees have legal immigration status to be working in the United States. Pursuant to N.J.A.C. 13:59-1.1 et seq., as a condition of employment, the contractor may be required to undertake a criminal history record background check for all its employees assigned to work at HESAA at its own cost.

In addition to the security clearances required, the contractor shall, if requested by HESAA, fingerprint personnel at no additional cost to the State.

At its discretion HESAA may undertake a criminal history record background check for assigned personnel at its own cost.

If the contractor is required to undertake a criminal history record background check, the contractor shall retain the result of the individual's criminal history background check for as long as the individual works at HESAA. The results of the criminal history background check must be made available to HESAA upon request. For a criminal history background check to be acceptable, the background check must have been made during the contract period or no earlier than six (6) months prior to the contract start date.

## **4.4 Personnel**

The contractor shall provide experienced personnel that are physically able and trained to perform the work assigned them.

All personnel shall be experienced employees thoroughly trained and qualified to perform the work assigned to them.

All personnel shall be required to agree to HESAA's confidentiality policy prior to commencing work. Personnel are subject to HESAA's employment policies and procedures, including but not limited to: Dress code; Drug Free Workplace; Equal Employment Opportunity; Ethics; Personal Computer, Internet and Email Usage; Privacy; Telephone Usage; and Workplace Violence. Personnel will receive a copy of such policies and procedures upon commencing their engagement with HESAA.

HESAA shall have the right to interview all prospective personnel and accept or reject any or all based upon required skills and the background and experience of each individual.

## **5.0 REQUIRED COMPONENTS OF THE RFP PROPOSAL**

### **5.1 General Information**

Please provide brief but thorough responses to the following:

- A. Provide a summary, listing any background information, on your company that you believe is relevant;
- B. Provide the names, titles and contact information for the people in your office with whom HESAA will be dealing;
- C. Provide three references of companies for which you provide temporary employees;
- D. Provide any additional information you feel uniquely qualifies your company for this contract.

### **5.2 Role of Services**

Please provide a description of the procedures your company uses to provide temporary employees. This description should include, but is not limited to:

- A. Contact method for requesting employees;
- B. Turnaround time between HESAA request for employees and company's provision of employees;
- C. Timesheet procedures; and
- D. Any additional procedures of which HESAA should be aware.

### **5.3 Fees**

The contractor must submit its all-inclusive hourly rates using the supplied price sheets attached to this RFP. In the event HESAA requests temporary personnel to fill positions not included on the attached list, HESAA will pay the contractor at a mutually agreeable all-inclusive hourly rate.

HESAA may choose to hire an assigned employee directly on either a part-time or full-time basis. HESAA shall be permitted to hire an employee directly without paying a fee to the contractor.

HESAA may request a pass-through rate, wherein HESAA finds the qualified employees the Authority wishes to retain for temporary work. The contractor would then hire the employee and provide that employee for HESAA's temporary needs. HESAA sets the hourly rate for these "pass-through" employees and pays the contractor a set

percentage above that rate. Contractors who provide pass-through rates shall provide the percentage above the hourly rate for which they would provide this service.

Each bidder is required to hold its prices firm through issuance of contract.

#### **5.4 Additional Information**

- A. A copy of a valid New Jersey Business Registration must be submitted by the selected firm. To facilitate proposal evaluation and contract award process, the bidder shall submit the Business Registration form with the proposal. If not already registered with the New Jersey Division of Revenue, registration can be completed online at the Division of Revenue website: <http://www.state.nj.us/treasury/revenue/proofreg.shtml>.
- B. Pursuant to Public Law 2005, Chapter 51 (Chapter 51) State departments, agencies and authorities are precluded from awarding contracts exceeding \$17,500 to vendors who make certain political contributions on and after October 15, 2004, to avoid any appearance that the selection of State contractors is based on the contractors' political contributions. Chapter 51 also requires the disclosure of all contributions to any political organization organized under 26 U.S.C.A. 527 that also meets the definition of a continuing political committee within the meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The firm shall submit the required certification form(s) and disclosure form(s) with its proposal. Failure to submit such forms and/or failure of such forms to evidence compliance with Chapter 51 shall be cause for rejection of the firm's proposal. Any firm selected shall maintain compliance with Chapter 51 during the term of its engagement.
- C. Pursuant to Public Law, 2005 Chapter 271 (Chapter 271) firms must disclose their (and their principals') political contributions within the immediately preceding twelve (12) month period. No prospective firm will be precluded from being awarded a contract by virtue of the information provided in the Chapter 271 disclosure provided the form is fully and accurately completed. Prior to formal appointment the firm anticipated to be selected will be required to submit Chapter 271 disclosures. To facilitate proposal evaluation and contract award process, the vendor shall submit the Chapter 271 disclosure with the proposal.

Please also be advised of your 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-20.13 if your firm receives contracts in excess of \$50,000 from a public entity during a calendar year. It is your firm's responsibility to determine if filing is necessary. Failure to file can result in the imposition of financing penalties by ELEC. Additional information about this requirement is available from ELEC at (888) 313-3532 or [www.elec.state.nj.us](http://www.elec.state.nj.us).

- D. In accordance with Public Law 2005, Chapter 92, all services performed pursuant to this engagement shall be performed within the United States of America.
- E. Pursuant to Public Law 1995, Chapter 159, effective January 1, 1998, and notwithstanding the provision of any other 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 so much of that payment as shall be necessary to satisfy the indebtedness. The amount set-off shall not allow for the deduction of any expense or other deduction 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 of the set-off to the taxpayer, partner or shareholder and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under N.J.S.A. 54:49-19. No request for conference, protest, or subsequent appeal to the Tax Court from any protest shall stay the collection of the indebtedness.

- F. **CERTIFICATION OF NON-INVOLVEMENT IN PROHIBITED ACTIVITIES IN IRAN**  
Pursuant to N.J.S.A. 52:32-58, the bidder must 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 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.
- G. The Terms and Conditions set forth in Attachment 1 – HESAA Terms & Conditions, are material terms of any contract resulting from this RFP.

## **6.0 PROPOSAL SUBMISSION**

### **6.1 Delivery**

One original and 4 copies of the proposal must be marked "Employment Services – Administrative, Office and Clerical" and be delivered no later than 4:00 pm on March 14, 2016 to the following:

Marnie Grodman, Esquire  
Director, Legal & Governmental Affairs  
New Jersey Higher Education Student Assistance Authority  
4 Quakerbridge Plaza  
P.O. Box 545  
Trenton, NJ 08625-0545

Proposals **overnighted to the Authority must use the local address zip code of 08619.**

In addition to the hard copies of the proposal, bidders may submit a PDF of the proposal via email. PDF versions without hard copies will not be accepted. All PDFs of proposals may be sent to Roseann Sorrentino at the following email address:

rsorrentino@hesaa.org

### **6.2 Questions**

HESAA will accept questions pertaining to this RFP from all potential bidders electronically. Questions shall be directed to Roseann Sorrentino, at the following email address:

rsorrentino@hesaa.org

Questions will be accepted until 4:00 pm on February 29, 2016. In the event that it becomes necessary to clarify or revise this RFP, such clarifications or revisions will be by addendum. Any addendum to this RFP will become part of this RFP and part of any contract entered as a result of this RFP.

The Authority also reserves the right to distribute additional background information or material to all bidding firms.

**ALL RFP ADDENDA WILL BE POSTED ON THE HESAA WEBSITE.**

It is the sole responsibility of the bidder to be knowledgeable of all addenda related to this RFP.

### **6.3 Cost liability**

HESAA will not be responsible for any expenses in the preparation and/or presentation of the proposals and oral interviews, if any, or for the disclosure of any information or material received in connection with the solicitation, whether by negligence or otherwise.

## **7.0 SPECIAL TERMS & CONDITIONS**

### **7.1 Term**

The contracts entered as a result of this RFP will be for three years commencing with new temporary employee hired on or after June 1, 2016. HESAA will have the option to extend the contracts for two (2) one-year periods. The contractor will be notified in writing of the Authority's intent to extend prior to the expiration date of the existing contract. If the contractor agrees to the extension, all terms and conditions of the original contract, and any mutually agreed to changes, will apply.

HESAA reserves the right to retain temporary employees assigned to the Authority prior to June 1, 2016 in their current positions through the contractors for which they are employed, regardless of whether the contractor is awarded a new contract through this RFP.

### **7.2 Termination**

HESAA reserves the right to terminate any agreement entered into as a result of this RFP provided written notice has been given to the firm at least thirty (30) days prior to such proposed termination date unless otherwise provided herein. The firm may terminate the contract upon 60 days' notice to the Authority. At contract termination, the firm must cooperate fully with HESAA and the new contracted firm to affect a smooth transition.

### **7.3 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 can be completely operational. At no time shall this transition period for the placement of new temporary employees extend more than 180 days beyond the expiration date of the contract

#### **7.4 Compliance**

The selected contractors must comply with all local, State and federal laws, rules and regulations applicable to the engagement and to services performed there under.

#### **7.5 Contract**

The contract entered as a result of this RFP will consist of this RFP, any Addendum to this RFP provided pursuant to Section 6.2 of this RFP, the firm's bid proposal, and the Authority's Letter of Engagement.

In the event of a conflict between the provisions of this RFP, including the Terms and Conditions, Attached hereto as Attachment 1, and any addendum to the 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. See ATTACHMENT 1 for the HESAA Terms and Conditions.

In the event that it becomes necessary to revise, modify, clarify or otherwise alter the contract resulting from the RFP, amendments will be in writing signed by an authorized representative of HESAA and the vendor selected as a result of this RFP.

#### **7.6 Open Public Records Act**

All documents submitted in response to this RFP are subject to disclosure by HESAA as "government records" under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. A contractor may assert that specific information is exempted from disclosure under that Act. Upon receiving a request for such information, HESAA will advise the contractor if any such information is not deemed to be exempted. The location in the bid proposal of any such asserted exemption should be clearly stated in a cover letter. HESAA will not honor attempts by contractors either to designate their entire bid proposal as proprietary and/or to claim copyright protection for their entire proposal.

#### **7.7 Price Alteration**

Proposal prices must be typed or 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.

#### **7.8 Proposal Errors**

A bidder may request that its proposal be withdrawn prior to the proposal submission opening. Such request must be made, in writing, to Marnie Grodman. 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 Marnie Grodman 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 HESAA or the State 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, a bidder may request to withdraw its proposal and HESAA may, in its discretion, allow the bidder to withdraw it; HESAA 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 proposals.

All proposal withdraw requests must identify the RFP "Employment Services - Administrative, Office and Clerical," include the final proposal submission date and be sent to the following address:

Marnie Grodman, Esquire  
Director, Legal & Governmental Affairs  
New Jersey Higher Education Student Assistance Authority  
4 Quakerbridge Plaza  
P.O. Box 545  
Trenton, NJ 08625-545

If during a proposal evaluation process, an obvious pricing error made by a potential contract awardee is found, HESAA shall issue a written notice to the bidder. The bidder will have five days after receipt of the notice to confirm its pricing. If the bidder 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 the extended price and the bidder's intention is not readily discernible from other parts of the proposal, HESAA may seek clarification from the bidder to ascertain the true intent of the proposal.

## **7.9 Joint Venture**

If a joint venture submits 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 issued by the Department of the Treasury, Division of Revenue prior to the award of a contract. Refer to Section 5.5 of this RFP.

## **7.10 Privacy Policy**

The contractor is responsible for adhering to the Authority privacy policy and ensuring that any subcontractors to the prime contractor also adhere to the policy. The Authority retains the right to seek any and all legal remedies in the event of a breach of the privacy policy by the prime contractor or any subcontractor.

## **7.11 Ownership of Material**

All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the contract, regardless of the state of completion, which are prepared for or are a result of the services required under this contract shall be and remain the property of the Authority. With respect to software computer programs and/or source codes developed for HESAA, the work shall be considered "work for hire", i.e. HESAA, 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 HESAA all right, title and interest in and to any such material, and HESAA shall have the right to obtain and hold in its own name any copyrights, registrations and any other proprietary rights that may be available.

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

### **7.12 News Releases**

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

### **7.13 Advertising**

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

### **7.14 Licenses & 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 HESAA Contract Manager 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.

### **7.15 Claims & Remedies**

#### **A. CLAIMS**

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

#### **B. REMEDIES**

Nothing in this contract shall be construed to be a waiver by HESAA 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 Executive Director of HESAA.

### **7.16 Record Retention**

All records created as a result of this project shall be retained in their original form by the contractor or in other forms agreed to by the Authority for no less than five years after contract completion, plus any additional period required by federal or state statutes, regulations or guidelines. At the end of a contract period, the contractor must be prepared to transfer, in a manner specified by the Authority, all records to the Authority or to the successor contractor as directed by the Authority.

### **7.17 Severability**

In the event that any provision of this RFP or any agreement executed in accordance herewith shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision.

## **8.0 SELECTION PROCESS**

### **8.1 Minority & Women Owned Firms**

Particular consideration will be given to firms with a presence in New Jersey and for minority-owned and women-owned firms.

### **8.2 Evaluation Criteria**

For a proposal that has been determined to be in compliance with this RFP, the contract shall be awarded based upon, but not limited to, the following criteria, not necessarily listed in the order of importance:

1. Price;
2. Experience of the bidder;
3. Ability of the bidder to provide needed personnel;
4. The bidder's past performance under similar contracts.

### **8.3 Interviews**

The Authority reserves the right to schedule interviews with, and to request additional information from, any and all firms.

### **8.4 Right to Waive**

The Authority reserves the right to (i) cancel this solicitation; (ii) reject any and all responses to this request; (iii) waive any requirements or minor informalities; (iv) modify or amend, with consent of the submitting firm, any statements; (v) request that some or all respondents submit additional information not covered by the Request for Proposal which, in the view of the Authority, would be germane to its decision; (vi) negotiate the proposal of the potential provider that, in the Authority's sole discretion, will best meet the Authority's needs; and (vii) affect any agreement deemed by the Authority to be in its best interests or in the best interests of the State.

### **8.5 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.

## **8.6 Negotiation and Best and Final Offer (BAFO)**

After evaluating proposals, HESAA may enter into negotiations with one bidder or multiple bidders. The primary purpose of negotiations is to maximize HESAA's ability to obtain the best value based on the requirements, evaluation criteria, and cost. Multiple rounds of negotiations may be conducted with one bidder or multiple bidders. Negotiations will be structured by HESAA to safeguard information and ensure that all bidders are treated fairly.

Similarly, HESAA 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 HESAA 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). HESAA may conduct more than one round of negotiation and/or BAFO in order to attain the best value for HESAA.

**Negotiations will be conducted only in those circumstances where they are deemed by HESAA to be in HESAA's best interests and to maximize HESAA'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 HESAA 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, and the Award Recommendation, will remain confidential until a Notice of Intent to Award a contract is issued.

## **8.7 Board Approval**

Appointment of a firm is subject to approval by the Authority's Board.

### Attachments:

1. HESAA Terms & Conditions
2. Price Sheet and Job Descriptions
3. Ownership Disclosure
4. Affirmative Action Principles
5. Source Disclosure
6. Chapters 51 and EO 117 Certification and Disclosure
7. Chapter 271 Certification and Disclosure
8. Disclosure of Investment Activities in Iran
9. MacBride Principles
10. Disclosure of Investigations

**HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY  
STANDARD TERMS AND CONDITIONS**

1. **STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT-** Unless the bidder/offeror is specifically instructed otherwise in the Request for Proposals (RFP), the following terms and conditions shall apply to all contracts or purchase agreements made with the Higher Education Student Assistance Authority (“HESAA” or the “Authority”). These terms are in addition to the terms and conditions set forth in the RFP and should be read in conjunction with same unless the RFP specifically indicates otherwise. In the event that the bidder/offeror would like to present terms and conditions that are in conflict with either these terms and conditions or those set forth in the RFP, the bidder/offeror must present those conflicts during the Question and Answer period for HESAA to consider. Any conflicting terms and conditions that HESAA is willing to accept will be reflected in an addendum to the RFP. The Authority’s terms and conditions shall prevail over any conflicts set forth in a bidder/offeror’s proposal that were not submitted through the question and answer process and approved by the Authority. Nothing in these terms and conditions shall prohibit HESAA from amending a contract when it is determined to be in the best interests of the Authority.
  
2. **STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS -**
  - 2.1 **BUSINESS REGISTRATION** – Pursuant to N.J.S.A. 52:32-44, the Authority is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the “Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the Authority. Any questions in this regard can be directed to the Division of Revenue at (609) 292-9292. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.
  - 2.2 **ANTI-DISCRIMINATION** - All parties to any contract with the Authority agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference.
  - 2.3 **PREVAILING WAGE ACT** - The New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.26 et seq. is hereby made part of every contract entered into on behalf of the Authority, except those contracts which are not within the contemplation of the Act. The bidder’s submission of this proposal is their guarantee that neither they nor any subcontractors they might employ to perform the work covered by this proposal has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder’s submission of the proposal is also their guarantee that they and any subcontractors they might employ to perform the work covered by this proposal shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

- 2.4 AMERICANS WITH DISABILITIES ACT** - The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L 101-336, in accordance with 42 U.S.C. 12101, et seq.
- 2.5 MACBRIDE PRINCIPLES** – The bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom’s Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.
- 2.6 PAY TO PLAY PROHIBITIONS** – Pursuant to N.J.S.A. 19:44A-20.13 et seq. (L.2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for the business entity to:
- a. make or solicit a contribution in violation of the statute;
  - b. knowingly conceal or misrepresent a contribution given or received;
  - c. make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
  - d. make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor, or to any State or county party committee;
  - e. engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself would subject that entity to the restrictions of the Legislation;
  - f. fund contributions made by third parties, including consultants, attorneys, family members, and employees;
  - g. engage in any exchange of contributions to circumvent the intent of the Legislation; or
  - h. directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.
- 2.7 POLITICAL CONTRIBUTION DISCLOSURE** – The contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (L. 2005, c. 271, §3 as amended) if in a calendar year the contractor receives one or more contracts valued at \$50,000.00 or more. It is the contractor’s responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888) 313-3532 or on the internet at <http://www.elec.state.nj.us/>.
- 2.8 STANDARDS PROHIBITING CONFLICTS OF INTEREST** - The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).
- a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Authority 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 State Ethics Commission.
- c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the State Ethics Commission, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
- d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
- f. The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of Executive Order No. 189.

**2.9 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE** - Pursuant to L 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set-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 N.J.S.A. 54:49-18. No requests for conference, protest, or

subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

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

**2.11 COMPLIANCE - STATE LAWS** - It is agreed and understood that any contracts and/or orders placed as a result of this proposal shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the STATE OF NEW JERSEY.

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

**3.1 SERVICE PERFORMANCE WITHIN U.S.** – Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Authority shall be performed within the United States, except when the Director of Legal & Governmental Affairs 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 Executive Director.

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

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

**4. INDEMNIFICATION AND INSURANCE**

**4.1 INDEMNIFICATION** - The contractor's liability to the Authority and its employees in third party suits shall be as follows:

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

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

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

**4.2 INSURANCE** - The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best & Company. The contractor shall provide the Authority 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 Authority. 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 Authority until evidence of the required insurance is provided. The certificates of insurance shall indicate the title of the contract in the Description of Operations box and shall list the Higher Education Student Assistance Authority, PO Box 545, Trenton, New Jersey 08625 in the Certificate Holder box.

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 Authority, 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 Authority 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 Authority's behalf or on Authority controlled property.
- c. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:

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

- d. This \$1 million amount may have been raised by the RFP when deemed necessary by the Authority.

**5. TERMS GOVERNING ALL CONTRACTS**

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

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

**5.3 CONTRACT TERM AND EXTENSION OPTION** - If, in the opinion of the Authority, it is in the best interest of the Authority to extend a contract, the contractor shall be so notified of the Authority'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 Authority'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 Authority have been negotiated.

**5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK** – The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, the Authority shall provide to the contractor advance written notice of the change in scope of work and what the Authority 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 Authority's proposed adjusted contract price, the contractor shall submit to the Authority any additional information that the contractor believes impacts the adjusted contract price with a request that the Authority 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 Authority 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 Authority an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Authority may request. The Authority shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

**5.5 CHANGE IN LAW** – Whenever a change in applicable law or regulation affects the scope of work, the Authority shall provide written notice to the contractor of the change and the Authority'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 Authority any additional information that the contractor believes impacts the adjusted contract price with a request that the Authority reconsider the adjusted contract price. The Authority 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 Authority an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Authority may request. The Authority shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

**5.6 SUSPENSION OF WORK** - The Authority 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 Authority may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Authority shall make an equitable adjustment, if any is required, to the contract price. The contractor shall provide whatever information that HESAA may require related to the equitable adjustment.

**5.7 TERMINATION OF CONTRACT**

- a. For Convenience:  
Notwithstanding any provision or language in this contract to the contrary, HESAA may terminate this contract at any time, in whole or in part, for the convenience of the Authority, upon no less than thirty (30) days written notice to the contractor.
- b. For Cause:
  1. Where a contractor fails to perform or comply with a contract or a portion thereof, the Authority may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond.
  2. Where in the reasonable opinion of the Authority, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, HESAA 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 HESAA may shorten the time periods of notification and may dispense with an opportunity to respond.
- d. In the event of termination under this section, the contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

**5.8 SUBCONTRACTING OR ASSIGNMENT** –

- a. Subcontracting: The contractor may not subcontract other than as identified in the contractor's proposal without the prior written consent of HESAA. Such consent, if granted in part, shall not relieve the contractor of any of its responsibilities under the contract, nor shall it create privity of contract between the Authority 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 Authority.

**5.9 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND THE AUTHORITY -**

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

**5.10 MERGERS, ACQUISITIONS -** If, during the term of this contract, the contractor shall merge

with or be acquired by another firm, the contractor shall give notice to the Authority 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 Authority, 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 Authority must be so notified. All responsible parties of the dissolved business entity must submit to the Authority 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 Authority.

**5.11 PERFORMANCE GUARANTEE OF CONTRACTOR -** The contractor hereby certifies that:

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

the specifications stated in the contract. The contract shall not be considered complete until final approval by the Authority is rendered.

**5.12 DELIVERY REQUIREMENTS -**

- a. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract.
- b. The contractor shall be responsible for the delivery of material in first class condition to the Authority 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, HESAA shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

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

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

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

**5.16 ASSIGNMENT OF ANTITRUST CLAIM(S) -** The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the Authority, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the Authority 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 Authority the allotted share thereof, if any, assigned to the Authority hereunder.

**6. TERMS RELATING TO PRICE AND PAYMENT**

- 6.1 PRICE FLUCTUATION DURING CONTRACT** - Unless otherwise agreed to in writing by the Authority, 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 Authority 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 Authority must be notified, in writing, of any price reduction within five (5) days of the effective date.

Failure to report price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1.

- 6.2 TAX CHARGES** - The State of New Jersey Authority, HESAA is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

- 6.3 NEW JERSEY PROMPT PAYMENT ACT** - The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within sixty (60) days of the agency's receipt of a properly executed State Payment Voucher or within sixty (60) days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the Authority prior to processing any payments for goods and services accepted by HESAA. 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.

- 6.4 AVAILABILITY OF FUNDS** – The Authority'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 Authority 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.