

**REQUEST FOR PROPOSALS  
FOR  
Senior Manager  
New Jersey Higher Education Student Assistance Authority  
Student Loan Program Revenue Bonds**

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

**Date Issued:**

**August 31, 2015**

**Question and Answer Cut-off Date:**

**September 11, 2015**

**Proposals Due:**

**September 28, 2015**

**Gabrielle Charette, Esquire  
Executive Director**

**Higher Education Student Assistance Authority  
4 Quakerbridge Plaza  
P.O. Box 545  
Trenton, New Jersey 08625**

**Contact:  
Eugene Hutchins  
Chief Financial Officer**

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## 1.0 PURPOSE AND INTENT

The New Jersey Higher Education Student Assistance Authority (“HESAA” or “Authority”), is seeking proposals from firms interested in serving as Senior Manager to the Authority for bonds issued through negotiated sales.

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.

**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.

**AMT** – Alternative minimum tax.

**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 Notice of Intent to Award.

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

**EMMA** – Electronic Municipal Market Access municipal securities website database maintained by the Municipal Securities Rulemaking Board (MSRB).

**Financial Advisor** – A firm that provides advice with respect to the issuance of HESAA’s bonds.

**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.

**NJCLASS** – New Jersey College Loans to Assist State Students, as provided by N.J.S.A. 18A:71C-21 et seq.

**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.

**Senior Manager** – The underwriter serving as head of the underwriting syndicate and which is expected to handle negotiations and allocate securities among the members of the syndicate and to provide the range of services outlined in section 4.0 of this RFP.

**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**

The Authority was established by N.J.S.A. 18A:71A-1 et seq. in April 1999 to continue the mission of furthering access to postsecondary education whether by loans, grants, scholarships or other means. The statute consolidated higher education student assistance entities including the New Jersey Higher Education Assistance Authority, the Student Assistance Board and the New Jersey Office of Student Assistance under the new Authority. Prior to the 1999 statute, the New Jersey Higher Education Assistance Authority (HEAA), created in 1959, served as lender and guarantor of federal guaranteed student loans for New Jersey students. 1991 amendments to the HEAA statute authorized that body to create the NJCLASS Loan Program.

In the years 2008 through 2013 HESAA issued \$2.579 billion in tax-exempt fixed rate serial and term student loan revenue bonds to finance NJCLASS loans as well as refinance \$1.1 billion in failed auction bonds. Of the total amount issued, \$350 million was issued as tax-exempt bonds subject to AMT in 2008, \$450 million was issued in tax-exempt non-AMT bonds in 2009, and \$993 million was issued in tax-exempt non-AMT bonds in 2010, of which \$667.12 million were

refunding bonds and \$315.88 million were new bonds. In addition, the Authority issued \$145 million in tax-exempt LIBOR Floating Rate Student Loan Revenue Bonds subject to AMT to refinance failed auction bonds used to finance Federal Family Education Loans. In 2011, 2012, 2013, 2014 and 2015 the Authority issued \$326.5 million, \$259.3 million, \$200.0 million, \$220.0 million, and \$180.0 million in tax-exempt fixed rate serial and term student loan revenue bonds subject to AMT, respectively, to finance NJCLASS loans.

## **NJCLASS Program**

### History of the NJCLASS Program

The NJCLASS Program was established as a vehicle through which the Authority provides supplemental student loans to qualified New Jersey students attending a New Jersey institution or an out-of-state institution, or to qualified out-of-state students attending a New Jersey institution, unless otherwise restricted by regulation.

In 1996 the New Jersey Office of Student Assistance (HESAA's predecessor) re-examined the NJCLASS loan program in its entirety, to improve service to borrowers and schools. An initial set of regulatory modifications was approved by the HEAA with an effective date of February 3, 1997.

The two major changes approved in regulation were:

- Creation of a variable rate loan for graduate and professional students (which was modified to a fixed rate program in June 2006);
- Eligibility for NJCLASS loans for out-of-state students attending New Jersey colleges.

Although the Standard NJCLASS loan product is a popular version of the NJCLASS Loan Program loan that will remain the anchor of the program, it did not address the special needs of students attending graduate or professional schools. Through its NJCLASS Graduate/Professional Students Loan, which was originally offered as a variable rate loan in 1997 and as a fixed rate product beginning with the 2006-07 academic year, NJCLASS is able to offer a different loan type to meet these students' special needs, such as longer deferment and repayment terms.

In 1998, the HEAA approved further regulatory changes to the NJCLASS Program. All of the programmatic changes adopted by the HEAA were carried over under the new Authority structure and remain in effect. In 1999 the Higher Education Student Assistance Authority Act was enacted by the New Jersey State Legislature and made additional changes to the NJCLASS Loan Program.

The legislation allows the Authority to issue bonds with maturities of up to 35 years, which has provided greater flexibility to the NJCLASS program.

The Authority continued to improve the program with regulatory amendments in 2000, 2005, 2009 and 2014.

In 2005, the Authority established the NJCLASS Consolidation Loan program, which to date has made available nearly \$254.3 million for borrowers with total balances of NJCLASS loans in

excess of \$30,000 with the opportunity to consolidate these loans with an extended repayment period. In 2006, the Authority made amendments to the regulations, including the addition of regulations to administer the Consolidation Loan program.

These alternative loan programs have become an important safety net for many families in meeting their college expenses. As college costs rise and other financial aid resources become more limited, NJCLASS provides a critical source of funding for students and families.

Under the Bond Indentures and related Supplements, the NJCLASS Program currently issues loans subject to the following conditions:

1. Granting NJCLASS loans to only credit worthy individuals.
2. Ensuring that all related loan documents are duly and fully executed as to have valid recourse.
3. Taking all the steps required to maintain the cash inflows needed to service scheduled interest payments on the existing bonds and to maintain the appropriate reserves to redeem bonds.
4. Keeping those accounts which are more than thirty days delinquent at an acceptable level so as to avoid a disruption in cash inflow.

NJCLASS began to provide loans to qualified New Jersey resident students in early September, 1991. As of June 30, 2015, NJCLASS had originated approximately 278,500 loans with an original principal amount of nearly \$3.5 billion. These loans, along with those included in the portfolios of FFELP loans owned by the NJCLASS/FFELP Trust, have been funded through twenty-eight student loan bond issues totaling nearly \$5.0 billion.

#### Current NJCLASS Loan Program

##### Undergraduate Loans

The NJCLASS program currently offers five types of undergraduate loan products. These loans require that a borrower have a minimum score of 670 and a minimum income of \$40,000 and student borrowers are most typically required to have a creditworthy cosigner. The undergraduate loan products are outlined below:

##### Fixed Rate Options

Option 1 Ten-Year Loan which requires immediate repayment of principal and interest and carries the lowest interest rate. Interest rate on loan steps up by 75 basis points in 49<sup>th</sup> month of repayment.

Option 1 Fifteen Year Loan which also requires immediate repayment of principal and interest and carries a higher interest rate than the ten-year option. Interest rate on loan steps up by 75 basis points in 49<sup>th</sup> month of repayment.

Option 2 Fifteen Year Loan which requires immediate interest payments while deferring principal during the in-school period and carries the same interest rate as the Option 1 Loan. Interest rate on loan steps up by 75 basis points in 49<sup>th</sup> month of repayment.

Option 3 Twenty Year Loan which defers principal and interest during the in-school period and carries the highest interest rate of the undergraduate loan products. Interest on loan is capitalized annually during the in-school deferment period and the interest rate on loan steps up in the 13<sup>th</sup> month of repayment.

#### Variable Rate Option

Ten year Loan, which requires immediate repayment of principal and interest. The interest rate is based on the three-month LIBOR plus a fixed percentage and adjusts quarterly while the payment amount adjusts annually.

#### Graduate Loans

The NJCLASS program also offers graduate loans modeled after the Option 1 Fifteen year, Option 2 and Option 3 loans outlined above, except that the graduate student borrowers are not required to meet minimum income requirements or obtain a creditworthy cosigner. Currently interest rates for graduate loans are the same as for the undergraduate options.

#### Consolidation Loans

Consolidation Loans are also available to borrowers with more than one NJCLASS loan and total indebtedness of \$30,000 or higher. The interest rate on the consolidation loans is equal to the weighted average interest rate of the NJCLASS loans being consolidated plus 0.25%. There is no step up rate for this loan.

### **4.0 SCOPE OF SERVICES**

#### **4.1 Sizing and Structuring**

The Senior Manager will work with the Authority, the financial advisor and bond counsel with respect to the Authority's issuance of bonds to finance supplemental student loans under the NJCLASS program. The Senior Manager will assist with the development of financial structures that lead to investment grade rating and result in a successful bond issue. Specifically, the Senior Manager will be responsible for proposing the size and structure of the bond issues. This task includes, but is not limited to, the following, in the form and time required by the Authority and/or the regulatory and rating agencies:

- a) Performing credit analyses;
- b) Collecting and analyzing data;
- c) Analyzing the Authority's existing portfolios;
- d) Preparing presentations for the rating agencies and the Authority;
- e) Gathering information and preparing presentations for investors and co-managers;
- f) Interacting with working group members on any tasks necessary to complete the transaction; and
- g) Marketing and selling the bonds through retail and institutional channels.

#### **4.2 Preliminary Official Statement**

The Senior Manager is responsible for preparing the Preliminary Official Statement prior to the Authority's Board meeting in April of the respective year and preparing and distributing the Official Statement within two weeks of the sale of the bonds, as well as preparing bid forms



related to the bonds, legal documents and other financial instruments that may be required as part of the bond issue.

#### **4.3 Analysis**

The Senior Manager is responsible for ongoing data and portfolio analysis to determine, and advise the Authority as to, the progress of current and upcoming bond issues. This task requires the Senior Manager to provide the following types of information and analyses in the form and time required by the Authority and/or the regulatory and rating agencies:

- a) Running cash flows;
- b) Factoring stress case assumptions into cash flow models;
- c) Monitoring the bonds and related funding over time;
- d) Determining actual and potential delinquency rates, for example from a delay in origination or various stress factors;
- e) Running simulations of modifications to the financial structure of the program and their impact on the bond financing structure; and
- f) Performing any analysis required in conjunction with negotiated transactions.

#### **4.4 Additional Services**

In addition, the Senior Manager may be requested to work with the Authority in designing new NJCLASS loan products or other types of student loan products that may evolve during the term of the contract entered through this RFP.

HESAA also currently has a 1998 Master Trust with approximately \$98.8 million in failed auction bonds with associated variable to fixed interest rate amortizing swaps used to finance its fixed NJCLASS loans. The Senior Manager should be prepared to assist the Authority in developing workable re-financing vehicles and to act as tender agent in the event HESAA has a tender offer for its auction bonds.

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

#### **5.1 General Information**

Please provide brief but complete answers to the following questions. Appendices may be used for additional general information.

- (a) Provide a brief summary, listing any background information on your firm that you believe is relevant to the Authority's Student Loan Programs.
- (b) Please provide the names and the proposed roles of those individuals who will be responsible on a day-to-day basis for this transaction. List the student loan transactions, if any, or any similar type of transactions that they have been involved with at your firm over the past three years.
- (c) Please describe your firm's ability to use Authority loan program data provided electronically to model cash flows and other simulations required by the rating agencies.

- (d) List any ongoing relationships with other student loan entities and describe your firm's role. Indicate whether your firm would be providing services to the Authority directly or subcontracting portions of the work to other firms. If subcontracting, indicate the work that would be performed and the name of the subcontractor.
- (e) Please provide assurance that your firm and its members are not currently in violation of the rules of any governmental regulatory agencies, industry associations, or other rule-making bodies. Please also provide details of any criminal investigation or material litigation, including administrative procedures, which your firm or members were or are currently involved in since 1990.
- (f) Particular consideration will be given to firms with a presence in New Jersey and for minority-owned and women-owned firms. Please provide any information about your firm relevant to these considerations.
- (g) Identify any existing or potential conflict of interest, or any relationship that might be considered a conflict of interest that may affect or involve transactions for HESAA, including but not limited to conflicts with financial advisors, law firms providing services to HESAA and HESAA employees.
- (h) Describe any pending, concluded or threatened litigation, administrative proceedings or federal or state investigations or audits, subpoenas or other information requests of or involving your firm or the owners, principals or employees. Describe the nature and status of the matter and the resolution, if any.
- (i) List any sanctions or penalties brought against your firm, or any of its personnel (including suspension or disbarment) by any regulatory or licensing agencies. Include a description of the reasons for the sanctions or penalties and whether such sanctions or penalties are subject to appeal.
- (j) Please provide other information that you feel uniquely qualifies your firm to assist the Authority in this capacity for the next two years.

## **5.2 Fees**

Describe your proposed fee structure, listing the specific cost of each service, including expenses. Your fees should be expressed in terms of a specific dollar amount per \$1,000 of bonds for an assumed dollar amount of issuance, resulting in a maximum fee for your services (not a range, but a specific dollar amount). In connection with the Authority's efforts to retire its remaining auction rate debt, please provide the fees your firm would charge, also expressed as a dollar amount per \$1,000 of bonds tendered, for management of bond tenders and related services. In addition, if the Authority wanted to use your firm's computer modeling capabilities and a competitive sale was chosen, would you provide these services for the Authority? If so, describe your proposed fee structure.

## **5.3 Structuring Strategy**

Based on the information provided, describe your firm's strategy for structuring a state supplemental student loan revenue bond issue, which may include a recommendation to issue a combination of fixed and variable rate bonds.

Also provide preliminary recommendations for the restructuring of the currently outstanding \$98.8 million in HESAA Auction Rate Bonds and related interest rate swaps with a current notional amount of \$69.0 million.

#### **5.4 Marketing Strategy**

Given the previous financings of the Authority, provide your firm's strategy for rating and marketing a state supplemental student loan bond issue.

#### **5.5 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 four copies of the proposal must be marked "Senior Manager" and be delivered no later than 4:00 pm on September 28, 2015 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.** Proposals may not be delivered by fax. Transcripts of prior issues are available for review at the HESAA offices. If you would like to review the transcripts, please call Eugene Hutchins at 609-588-4584.

## **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 September 11, 2015. 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 contract entered as a result of this RFP will be for two years, 2016 and 2017.

### **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 the services are scheduled to end either by contract expiration or by termination, it shall be incumbent upon the firm to continue the service, if requested by HESAA, until new services can be completely operational. At no time shall this transitional period extend more than ninety (90) days beyond the expiration date of the existing contract. The firm will be reimbursed for this service at the rate in effect when this transitional period clause is invoked by HESAA.

#### **7.4 Compliance**

The selected firm 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 Intent to Award.

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 "Senior Manager," 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 Security and Confidentiality**

### **A. DATA CONFIDENTIALITY**

All data contained in the source documents supplied by the Authority are to be considered confidential and shall be solely for the use of the Authority. The contractor will be required to use reasonable care to protect the confidentiality of the data. Any use, sale or offering of this data in any form by the contractor, his/her employees or assignees will be considered in violation of this contract and will cause infraction to be reported to the State Attorney General for possible prosecution. Penalties for violations of such guarantees will include, but are not limited to, cancellation of contract and/or legal action with no damages paid by the Authority or the State of New Jersey.

All financial, statistical, personnel, customer and/or technical data supplied by HESAA to the contractor are confidential. 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 that is deemed confidential. The following shall not be considered confidential information and shall not be subject to the provisions of this section 7.10 A.: Any information that (a) was in contractor's possession before receipt from a data owner; (b) is independently developed or acquired by or for contractor without use of a data owner's proprietary information; (c) is rightfully received by contractor from a third party without a duty of confidentiality; (d) was disclosed by a data owner to a third party not under an obligation of confidentiality; or (e) is or becomes available to the public through no fault of contractor. Contractor will not release any confidential information to a third party without the consent of the data owner unless required in order to comply with judicial or administrative process. Prior to releasing a data owner's confidential information in response to judicial process, the contractor shall give the data owner advanced written notice of the subpoena, if not legally prohibited, and provide the data owner the opportunity to object to the required disclosure. Any other use, sale, or offering of this data to a third party without the data owner's consent 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 be liable to HESAA for a breach of confidentiality subject to the insurance requirements set forth in this RFP.

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 HESAA. The contractor shall require all staff to view yearly security awareness and confidentiality training modules provided by the contractor. 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 employee's start date.

Security clearance/background check for all contractors and project staff must be obtained and provided to HESAA (to protect the State of New Jersey from losses resulting from contractor employee theft, fraud or dishonesty) upon request. Refer to the National Institute of Standards and Technology (NIST) Special Publication (SP) 300-12, An Introduction to Computer Security: The NIST Handbook, Section 10.1.3, Filling the Position – Screening and Selecting.

## **B. SECURITY STANDARDS**

1. Network Security: The contractor shall maintain the contractor's network security that -- at a minimum -- includes: network firewall provisioning, intrusion detection and prevention, vulnerability assessments and regular independent third party penetration testing. The contractor shall maintain network security that conforms to one of the following:

(a) Current standards set forth and maintained by the National Institute of Standards and Technology (NIST), including those at <http://web.nvd.nist.gov/view/ncp/repository>.

or

(b) Any recognized comparable security standard that the contractor then applies to its own infrastructure and is approved by the NJ Office of Information Technology (NJOIT). Industry standards such as ISO 27002, PCI Data Security Standard, and ISF Standard of Good Practice, align with security best practices from SANS and CISecurity.

- The contractor shall be subject to the same security and infrastructure review processes that are required by NJOIT and its partner Departments and Agencies. The contractor shall submit relevant documentation and participate in the System Architecture Review (SAR) process.
- For "outsourced hosting services," the contractor must demonstrate the ability to not only secure the physical application infrastructure utilizing the above-mentioned security requirements, but also control and secure physical access to the application hosting facilities, the racks supporting network infrastructure and processing server equipment, web, application and database servers.
- If the contractor is not supplying "dedicated" hardware resources to host HESAA applications and data, the contractor must demonstrate its strategy to maintain application and/or stack isolation using commercially available security devices to maintain security zones, routing isolation and access control to infrastructure devices and access/security logging (AAA) within its infrastructure.
- The contractor shall provide a detailed system design document showing a Network Plan, Disaster Contingency Plan and Security Plan. Logical and physical diagrams are required.

2. Application Security: The contractor at a minimum shall run application vulnerability assessment scans during development and system testing. Vulnerabilities shall be remediated prior to production release.

All systems and applications shall be subject to Vulnerability Assessment scans on a regular basis.

3. Data Security: The contractor at a minimum shall protect and maintain the security of data in accordance with generally accepted industry practices and to the standards and practices required by NJDOIT.

Any Personally Identifiable Information must be protected. All data must be classified in accordance with the State's Asset Classification and Control policy, 08-04-NJOIT ([www.nj.gov/it/ps](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 shall also conform to Payment Card Industry (PCI) Data Security Standard.

4. Data Transmission: The contractor shall only transmit or exchange HESAA 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 shall only transmit or exchange data with HESAA or other parties through secure means supported by current technologies. The contractor shall encrypt all data defined as personally identifiable or confidential by HESAA or applicable law, regulation or standard during any transmission or exchange of that data.
5. Data Storage: All data provided by HESAA or gathered by the contractor on behalf of HESAA must be stored, processed, and maintained solely in accordance with a project plan and system topology approved by the HESAA Contract Manager. No HESAA 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 HESAA Contract Manager.
6. Data Scope: All provisions applicable to 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.
7. Data Re-Use: All HESAA provided data shall be used expressly and solely for the purposes enumerated in the contract. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of the contractor. No HESAA data of any

kind shall be transmitted, exchanged or otherwise passed to other contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by the HESAA Contract Manager.

8. **Data Breach: Unauthorized Release Notification:** The contractor shall 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 shall assume responsibility for informing the HESAA Contract Manager and all such individuals in accordance with applicable law and to indemnify, hold harmless and defend HESAA, its officials, and employees from and against any claims, damages or other harm related to such Notification Event.
9. **End of Contract Data Handling:** Upon termination of this contract, the contractor shall maintain all financial data. The contractor shall erase, destroy, and render unreadable all contractor copies of non financial HESAA data according to the standards enumerated 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)) and certify in writing that these actions have been completed within 30 days of the termination of this contract or within seven days of the request of an agent of HESAA, whichever shall come first.
10. **Security Audit:** The Authority has the option to conduct a Security Audit. If HESAA exercises this option, the contractor must allow HESAA assigned staff full access to all operations for security inspections and audits which may include reviews of all issues addressed in description of the security approach and willingness to enter into good faith discussions to implement any changes.

#### **7.11 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.

#### **7.12 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 Additional Work and/or Special Projects**

The pricing response in this RFP is intended to be all-inclusive; the Authority anticipates that no additional work or special projects will be necessary. However, the Authority recognizes that changes in federal and state law and regulations over the course of the term of the contract may create additional work required from the contractor.

In the event of additional work and/or special projects, the contractor must present a written proposal to perform the additional work to HESAA. 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.

Complete documentation confirming the need for additional work must be submitted. Documentation forwarded to HESAA must include all other required State approvals, such as those that may be required from the State of New Jersey's Office of Management and Budget and NJOIT.

No additional work and/or special project may commence without the Authority's written approval. In the event the contractor proceeds with additional work and/or special projects without the Authority's written approval, it shall be at the contractor's sole risk. HESAA shall be under no obligation to pay for work performed without HESAA's written approval.

#### **7.18 Liquidated Damages**

HESAA and the bidder (the "Parties") agree that it would be extremely difficult to determine actual damages which HESAA will sustain as the result of the contractor's failure to meet the performance requirements of the contract. Any breach by the contractor will: adversely impact HESAA's ability to meet federal commitments; and disrupt operations and HESAA's ability to adjudicate claims, which may lead to damages suffered by HESAA. Therefore, the Parties agree that the liquidated damages specified are reasonable estimates of the damages HESAA may sustain from the contractor's performance deficiencies set forth within this section and are not to be construed as penalties.

HESAA has the sole discretion to determine whether liquidated damages should be assessed.

Assessment of liquidated damages shall be in addition to, and not in lieu of, such other remedies as may be available to HESAA. Except and to the extent expressly provided herein, HESAA shall be entitled to recover liquidated damages under each section applicable to any given incident.

##### **A. NOTIFICATION OF LIQUIDATED DAMAGES**

Upon determination that liquidated damages are to be assessed, HESAA shall notify the contractor of the assessment in writing. The availability of any period of cure will depend on the situation and will be in the sole discretion of HESAA. HESAA may, in its sole discretion, elect to notify the contractor that liquidated damages may be assessed so as to provide a warning, prior to assessing them in accordance with this section, but if HESAA does not provide such a warning the Authority is not precluded from assessing liquidated damages in accordance with this contract.

##### **B. CONDITIONS FOR TERMINATION OF LIQUIDATED DAMAGES**

The continued assessment of liquidated damages may be terminated at the sole discretion of HESAA, only if all of the following conditions are met:

1. The contractor corrects the condition(s) for which liquidated damages were imposed;
2. The contractor notifies HESAA in writing that the condition(s) has (have) been corrected; and
3. HESAA has verified all correction(s) after appropriate verification.

##### **C. SEVERABILITY OF INDIVIDUAL LIQUIDATED DAMAGES**

If any portion of the liquidated damages provisions is determined to be unenforceable in one or more applications, that portion remains in effect in all applications not determined to be invalid and is severable from the invalid applications. If any portion of the liquidated damages

provisions is determined to be unenforceable, the other provision(s) shall remain in full force and effect.

**D. WAIVER OF LIQUIDATED DAMAGES/LIQUIDATED DAMAGES NOT EXCLUSIVE REMEDY**

The waiver of any liquidated damages due HESAA shall constitute a waiver only as to such assessment of liquidated damages and not a waiver of any future liquidated damage assessments. Failure to assess liquidated damages or to demand payment of liquidated damages within any period of time shall not constitute a waiver of such claim by HESAA.

**E. PAYMENT OF LIQUIDATED DAMAGES**

Once assessed pursuant to Section 7.18, liquidated damages will be deducted from any moneys owed to the contractor by HESAA, and in the event the amount due the contractor is not sufficient to satisfy the amount of the liquidated damages, the contractor shall pay the balance to HESAA within 30 calendar days of written notification of the assessment. If the amount due is not paid in full, the balance will be deducted from subsequent payments to the contractor.

**7.19 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.

**7.20 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.

**7.21 Additional Information**

Any firm chosen as the Senior Manager will not be prohibited from bidding on an Authority bond issued offered at competitive sale. Any payments of underwriting fees to the Senior Manager will be contingent upon the closing of the bond sale.

As a result of the potential complexity of the financing of the future bond issues, the Authority is considering using a negotiated method of sale pursuant to Executive Order 26. The Authority engaged a Financial Advisor through an RFP issued in 2014. The Authority would like to appoint a team to help address the needs of the NJCLASS program or other programs of the Authority. Any decision to issue debt competitively or through negotiation will be done on a case by case basis in accordance with Executive Order 26.

**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**

The Authority will review proposals in connection with its expected issuances, presently estimated at \$250 million annually, although this amount may be increased or decreased dependent on the scope of programs to be financed through the issuances. The Authority will select a firm based on responses to the proposals. The Authority will review the responses and select qualified firms based on:

- (a) The experience of the firm in advising on tax-exempt student loan revenue bond offerings;
- (b) The relevant experience of the staff assigned to the Authority;
- (c) The quality of the response to the RFP;
- (d) The ability to meet the needs of the Authority; and
- (e) The fee proposed.

## **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. Ownership Disclosure
  3. Affirmative Action Principles
  4. Source Disclosure
  5. Chapters 51 and EO 117 Certification and Disclosure
  6. Chapter 271 Certification and Disclosure
  7. Disclosure of Investment Activities in Iran



## 1. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS

- 1.1 BUSINESS REGISTRATION** –Effective January 18, 2010, pursuant to an amendment to N.J.S.A. 52:32-44, State and local entities are prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the bid proposal has provided a copy of its business registration certificate (or interim registration). To facilitate proposal evaluation and contract award process, the vendor should submit the registration with the proposal.

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, N.J.S.A. 54:32B-1 et seq. on all their sales of tangible personal property delivered into the State. This requirement shall apply to all contracts awarded on and after September 1, 2004. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at: <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

- 1.2 ANTI-DISCRIMINATION** - All parties to any contract with the State of New Jersey 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 there under.

- 1.3 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.

- 1.4 OWNERSHIP DISCLOSURE** - Contracts for any work, goods or services cannot be issued to any corporation or partnership unless the contractor has disclosed the names and addresses of all its owners holding 10% or more of the corporation or partnership's stock or interest. Refer to N.J.S.A. 52:25-24.2.

- 1.5 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.

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

## 2. LIABILITIES

- 2.1 LIABILITY - COPYRIGHT** - The contractor shall hold and save the State of New Jersey, its officers, agents, servants and employees, harmless from 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.

**2.2** **INDEMNIFICATION** - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith 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 materials supplied under this contract.

The contractor's liability to HESAA for actual, direct damages resulting from the contractor's performance or non-performance, or in any manner related to the contract, for any and all claims, shall be limited in the aggregate to 100% of the value of the contract, except that such limitation of liability shall not apply to the following:

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

The contractor's indemnification obligation is not limited by but is in addition to the insurance obligations contained in Section 2.3

**2.3** The vendor will furnish to the Authority such evidence of insurance as the Authority may require at the time of award and for all periods during the term of the agreement and any extensions to the agreement.

For all coverages and renewals, the documents must contain the proviso that the insurance provided shall not be canceled for any reason except after thirty (30) days written notice to the Authority. All insurance shall be written for not less than any limits of liability herein specified or required by law, whichever is greater. Comprehensive general liability policy shall be endorsed to include broad-form comprehensive general liability, products/completed operations, and premises/operations. The limits of liability for bodily injury and property shall not be less than \$1 million per occurrence as a combined single unit.

Automobile liability insurance 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.

Workers' compensation insurance must be provided applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits of not less than \$100,000 bodily injury each occurrence, \$100,000 disease each employee, and \$500,000 disease aggregate limit.

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

### **3. TERMS GOVERNING ALL PROPOSALS TO NEW JERSEY PURCHASE BUREAU**

#### **3.1 TERMINATION OF CONTRACT**

##### a. For Convenience

Notwithstanding any provision or language in this contract to the contrary, HESAA may terminate at any time, in whole or in part, for the convenience of the State, upon no less than 30 days written notice to the contractor.

##### b. For cause:

1) Where a contractor fails to perform or comply with a contract HESAA may terminate the contract upon 10 days written 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 will be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

**3.2 COMPLAINTS** - Where a bidder has a history of performance problems as demonstrated by formal complaints and/or contract cancellations for cause pursuant to 3.1b a bidder may be bypassed for this award. See N.J.A.C.17:12-2.8.

**3.3 SUBCONTRACTING OR ASSIGNMENT** - The contract may not be subcontracted or assigned by the contractor, in whole or in part, without the prior written consent of HESAA. Such consent, if granted, shall not relieve the contractor of any of its responsibilities under the contract.

In the event the bidder proposes to subcontract for the services to be performed under the terms of the contract award, it shall state so in its bid and attach for approval a list of said subcontractors and an itemization of the products and/or services to be supplied by them.

Nothing contained in the specification shall be construed as creating any contractual relationship between any subcontractor and the State.

**3.4 MERGERS, ACQUISITIONS** - If, subsequent to entering this contract the contractor shall merge with or be acquired by another firm, the following documents must be submitted to HESAA:

a. Corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices.

b. Standard forms including ownership disclosure and P.L. 2005 c. 51 disclosures.

c. Vendor's Federal Employer Identification Number.

The documents must be submitted within thirty (30) days of completion of the merger or acquisition. Failure to do so may result in termination of contract pursuant to provision 3.1.

If subsequent to entering this agreement, the contractor's partnership or corporation shall dissolve, HESAA must be notified. All responsible parties of the dissolved partnership or corporation must submit to HESAA 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 should be made until all parties to the dissolved partnership or corporation submit the required documents to HESAA.

**4. TERMS RELATING TO PRICE QUOTATION**

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

**5. STANDARDS PROHIBITING CONFLICTS OF INTEREST** - The following prohibitions on vendor 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., at HESAA, 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 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 paragraph 5a through 5e 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 State Ethics Commission may promulgate under paragraph 5c.

#### **6. NOTICE TO ALL BIDDERS SET-OFF FOR STATE TAX NOTICE**

Please be advised that, pursuant to P.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 of the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under 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 N.J.S.A. 52:32-32 et seq., to the taxpayer shall be stayed.

7. **APPLICABLE LAW** - This contract and any and all litigation arising there from 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.

8. **OTHER MANDATORY REQUIREMENTS**

- 8.1 **MACBRIDE PRINCIPLES CERTIFICATION** – The contractor is required to complete the attached MacBride Principles Certification evidencing compliance with the MacBride Principles. The requirement is a precondition to entering into a State contract. To facilitate proposal evaluation and contract award process, the vendor should submit the Certification with the proposal.
- 8.2 **AFFIRMATIVE ACTION** - The contractor is required to complete the attached Affirmative Action Employee Information Report, or in the alternative, supply either a New Jersey Affirmative Action Certificate or evidence that the bidder is operating under a federally approved or sanctioned affirmative action program. The requirement is a precondition to entering into a State contract. To facilitate proposal evaluation and contract award process, the vendor should submit the Report with the proposal.
- 8.3 **REQUIREMENTS OF N.J.S.A. 19:44A through 20.13-25** - In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, the Legislature enacted N.J.S.A 19:44A through 20.13-25 on March 22, 2005 (the “legislation”), retroactive to October 15, 2004, superseding the terms of Executive Order 134. Pursuant to the requirement of the legislation, the terms and conditions set forth in this section are material terms of any contract.

**1. Definitions**

For the purpose of this section, the following shall be defined as follows:

a. **Contribution** – means a contribution reportable as a recipient under “The New Jersey Campaign Contributions and Expenditures Reporting Act.” N.J.S.A.10:44A-1 et seq., and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq. Currently, contributions in excess of \$300 during a reporting period are deemed “reportable” under these laws.

b. **Business Entity** – means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. It also includes (i) all principals who own or

control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate; (ii) any subsidiaries directly or indirectly controlled by the business entity; (iii) any political organization organized under 26 U.S.C.A. 527 that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and (iv) if a business entity is a natural person, that person's spouse or child, residing in the same household.

## **2. Breach of Terms of the Legislation**

It shall be a breach of the terms of the contract for the Business Entity to (i) make or solicit a contribution in violation of the legislation; (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) 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 Lieutenant Governor, or to any State or county party committee; (v) 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; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange of contributions to circumvent the intent of the legislation; or (viii) 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.

## **3. Certification and Disclosure Requirements**

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, or to any State or county political party committee prior to completion of the contract.

b. Prior to awarding any contract or agreement to any Business Entity, the Business Entity proposed as the intended awardee of the contract shall submit the Certification and Disclosure form, certifying that no contributions prohibited by the legislation 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.A. 527 of the Internal Revenue Code that also meets the definition of a "continuing political committee" within the mean of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7, in the form of the Disclosure attached hereto. The required form and instructions are attached hereto. To facilitate proposal evaluation and contract award process, the Contractor shall submit the Disclosure(s) to HESAA with the proposal.

c. Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the contract, and any extension(s) thereof, at the time any such

contribution is made. The required form and instructions are available on the Purchase Bureau website at:

<http://www.state.nj.us/treasury/purchase/forms.htm#eo134>.

#### **8.4 REQUIREMENTS OF N.J.S.A. 52:34-13.2**

Under the referenced statute, effective August 3, 2005, all contracts primarily for services awarded by HESAA, shall be performed within the United States, except when the Executive Director of the Authority 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.

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 Form is located on the Treasury website at:

<https://wwwnet1.state.nj.us/Webdocs/Treasury/DPP/eBid/SourceDisclosureCertificate.pdf>.

To facilitate proposal evaluation and contract award process, the Contractor shall submit the Disclosure(s) to HESAA with the proposal.

#### **8.5 BREACH OF CONTRACT OF EXECUTIVE ORDER 129**

If, during the term of the contract, the contractor or subcontractor, declared that the 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, which contract shall be subject to termination for cause, unless previously approved by the Executive Director of the Authority and the Treasurer.

#### **8.6 PROHIBITED INVESTMENT 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.