

Request for Proposals (“RFP”) to Conduct Annual Audit

I. Request to Submit Qualifications

The New Jersey Highlands Water Protection and Planning Council (“Highlands Council”) is soliciting services from qualified nationally recognized firms of certified public accountants (“Firm”) with expertise in auditing to conduct a program audit for the fiscal year ending June 30, 2011 with the option of conducting such audits for each of the five subsequent fiscal years. These audits are to be performed in accordance with generally accepted auditing standards and the standards set forth in the United States General Accounting Office’s *Government Auditing Standards*.

The purpose of this RFP is to receive proposals from potential Firms, evaluate those submittals, and then select the Firm who is best suited to perform the audit.

II. Scope of Services

The Highlands Council is soliciting the services of nationally recognized firms of certified public accountants to conduct a program audit for the fiscal year ending June 30, 2011. The Firm shall be responsible for conducting a Single Audit given the Highlands receipt of State Grants, as per New Jersey Executive Order 122 (www.state.nj.us/infobank/circular/eom122.htm) and Federal OMB Circular A-133 (www.state.nj.us/infobank/circular/cir0404b.htm). The Highlands Council is not seeking a full audit in that the payroll expenses and grant accounts are held and administered by the State Department of Environmental Protection and the Department of Treasury, respectively.

Reports to be issued shall include a report on the fair presentation of the financial statements in conformity with generally accepted accounting principles; a report on the internal control structure based on the auditor’s understanding of the control structure and assessment of control risk; and a report on compliance with applicable laws and regulations. The auditor shall communicate any reportable conditions found during the audit. Non-reportable conditions discovered by the auditors shall be reportable in a separate letter to management.

Auditors shall be required to make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware of to the following parties:

Jim Rilee, Chairman, Highlands Council
Robert Walton, Chair, Highlands Council Audit Committee

The auditor shall report its finding to the Audit Committee.

The auditor must retain all working papers and reports, at the auditor’s expense, for a minimum of three (3) years. The auditor will be required to make working papers available upon request to the State of New Jersey, the Highlands Council and successor auditors.

III. RFP Submittal Requirements

A. Proposals must include the following items:

1. A cover letter setting forth the experience of the Firm, including any sub-contractors' experience, describing work performed on similar projects; key personnel qualifications and relevant experience;
2. Resumes of qualified professionals who will be conducting the audit;
3. A rate schedule in a separate sealed envelope that details fully loaded project hourly rates, which includes all overhead and profit that may be incurred in performing the project. All direct expenses shall be billed at cost;
4. A statement detailing the Firm's availability and anticipated time table for completion of the audit;
5. A detailed audit plan;
6. An affirmative statement that the Firm and all assigned key professional staff are properly registered/licensed to practice in New Jersey.
7. A statement certifying that Firm has no existing or foreseen conflicts to perform the services requested by the Highlands Council as envisioned under the above Scope of Services;
8. If the Firm, or any principal therein (in his or her official capacity with the Firm), has been engaged in any litigation as a defendant involving a sum of \$100,000 or more and/or subject to any professional disciplinary action over the last three years, provide a description of the litigation and/or disciplinary action;
9. A listing of three current clients (private or public), where the Firm is conducting work that is comparable;
10. Three references, including at least two clients for who services have been provided within the past three years. Provide the contact names, positions and phone numbers for representatives of each entity listed as a reference. The Highlands Council reserves the right to contact references for information that may be used in the evaluation process;
11. A copy of the Firm's most recent Peer Review Report conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants; and
12. Contact Information: Provide the name and address of the Firm, the name, telephone number, facsimile number and email address of the individual(s) responsible for preparation of the proposal who may be contacted in the event of questions or notification, and the location of the office, if other than that shown above at which the services to be provided hereunder will be performed.

- B. Three copies of the proposal must be received no later than **12:00 p.m. on February 29, 2012**. Qualifications Submittals must be mailed to: New Jersey Highlands Council, 100 North Road (Route 513), Chester, New Jersey 07930, attention: Kim Ball Kaiser, Staff Attorney. Additionally, Qualifications Submittals may be faxed to Ms. Kaiser at (908) 879-4205, or e-mailed to her at kim.kaiser@highlands.state.nj.us. Late Qualifications Submittals will not be considered.

IV. General Requirements and Information

- A. If submitted by a corporation (joint venture, associated firms, etc), the proposal shall be signed by a corporate officer authorized to do so. If made by an individual, that individual shall sign it. One or more of the partners shall sign if the Firm is a company or partnership.
- B. The Highlands Council reserves the right to require the submission of additional information regarding experience and qualifications as it may deem necessary, and may consider any available evidence on the financial, technical, or other qualifications and abilities of the Firm.
- C. Only the interpretations and/or corrections issued as a written Addendum to the RFP by Kim Ball Kaiser, Staff Attorney, shall be binding. No other source is authorized to give information regarding any explanation or interpretation of the RFP. Accordingly, any questions regarding this RFP must be submitted in writing to Ms. Kaiser at the address above. Firms are instructed not to communicate with any other representatives of the Highlands Council during the submission and selection process for this contract.
- D. This RFP does not commit the Highlands Council to award a contract to any Firm or to pay any costs incurred in the preparation or mailing of the proposal.
- E. The Highlands Council reserves the right to reject all proposals, or abandon all or part of this Project, prior to award of any contracts, pursuant to N.J.S.A. 13:20-1 et seq. Proposals may be rejected for any or all of the following reasons:
- Not responsive to this RFP;
 - Firm is not authorized to do business in the State of New Jersey;
 - Failure to include any required information with the submittal; and/or,
 - Failure to disclose any existing or potential conflict of interest.
- F. The Highlands Council reserves the right to waive any and all irregularities and informalities in the submission of qualifications, and to request clarification of qualifications prior to qualifying a Firm.
- G. The selected Firm must provide certification and disclosure documents in compliance with Public Law 2005, Chapter 51; Public Law 2005, Chapter 271, and Executive Order 129 (codified as P.L. 2005, c. 92) prior to the award of any contract. Certification forms relating to these provisions are attached hereto as Appendices A, B, and C respectively.
- H. Pursuant to N.J.S.A. 52:32-44, the selected Firm must provide proof of valid business registration with the Division of Revenue in the Department of Treasury prior to the award of any contract.

- I. If awarded the contract, the selected Firm shall be required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27-1.1 et seq. regarding affirmative action.
- J. After the receipt of proposals, the Highlands Council reserves the right to negotiate with any number of Firms it chooses in its discretion prior to awarding a contract.
- K. Documents/information submitted in response to this RFP generally shall be available to the public except as permitted by the common law, and State law, including the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

V. Firm Selection Process

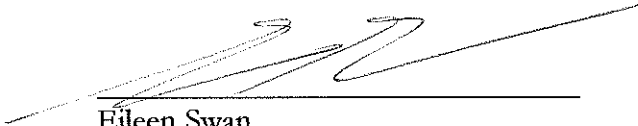
- A. Proposals will be evaluated by the Audit Evaluation Committee in accordance with the selection criteria in Executive Order 122 and a recommendation will be made to the Audit Committee. Based upon the proposals, the Council will issue a contract award. In selecting the most qualified Firm for the services of this RFP, the Highlands Council shall consider the following:
 - 1. proposed fee for services;
 - 2. quality of response to RFP package;
 - 3. demonstrated ability and qualifications to conduct governmental audits;
 - 4. quality of relevant service to the governmental entities in previous transactions; and
 - 5. familiarity with federal laws, rules and regulations relevant to governmental audits.
- B. During the process, the Audit Committee may, at its discretion request any one or all Firms to make oral presentations. Such presentation will provide the Firms with an opportunity to answer any questions the Audit Committee may have on a Firm's proposal. Not all firms may be asked to make such presentations.
- C. The professional services contract will be based upon the Highlands Council's Professional Services Contract Standard Terms and Conditions, which is attached hereto as Appendix D.

VI. Term and Termination

- A. The term of the professional services contract shall be for a period of one (1) year from when it is formally entered into by the parties. Subject to the annual review and recommendation of the Audit Committee, the satisfactory negotiation of terms (including a price acceptable to both the Highlands Council and the selected Firm), the concurrence of the Highlands Council members and the annual availability of an appropriation; the contract may be renewed annually without seeking other proposals for a period of five (5) additional years.
- B. The Highlands Council may, at any time, terminate the professional services contract in whole or in part for the Highlands Council's convenience and without cause when the Highlands Council determines in its sole discretion that termination is in the public interest. Upon receipt of an order of termination for convenience, the Firm shall not proceed with any item of work, unless specifically authorized to do so in writing. In such a case, unless mutually agreed to by the parties, the Firm will not be entitled to payment for any services provided after the effective date of such termination.

If there are any questions regarding this Request for Qualifications, please contact Kim Ball Kaiser, Esq. at (908) 879-6737 or by e-mail at kim.kaiser@highlands.state.nj.us.

NEW JERSEY HIGHLANDS COUNCIL

A handwritten signature in black ink, appearing to read 'Eileen Swan', is written over a solid horizontal line.

Eileen Swan
Executive Director

Dated: 1/18/12

Instructions

Instructions for Completing “Contractor Certification and Disclosure of Political Contributions” Forms

Who Should Sign and Submit Certification and Disclosure Forms

Public Law 2005, Chapter 51 requires submission of a Certification and Disclosure form from each Bidder with which the State intends to contract, as well as other related individuals or entities, depending upon the Bidder’s organizational structure. The following provides a summary of the most common requirements:

Where the Bidder is a corporation or other business organization:

Submit separate Certification and Disclosure forms for each of the following:

- The Bidder, certified by an officer or other authorized representative; AND
- All “Principals” of the Bidder’s Business Entity; namely, any individual or entity owning or controlling more than 10% of the Bidder’s Business Entity; AND
- Any subsidiary controlled by the Bidder’s Business Entity; AND
- Any Political Organization (as defined above, under “Business Entity”) controlled by the Bidder’s Business Entity.

Ownership Disclosure Forms

In order to determine whether all required “Principals” of the Bidder have submitted the necessary forms, the Bidder must submit a copy of an Ownership Disclosure form. This disclosure is required by statute – see N.J.S.A. 52:25-24.2. Generally, the contracting agency will provide the appropriate form to use for this purpose. Otherwise, please use the Ownership Disclosure form available at the Division of Purchase and Property’s website, at: <http://www.state.nj.us/treasury/purchase/forms/pbodf.pdf>.

ONE FORM may be used to submit compliance documentation on behalf of the Bidder *and* as a Principal (more than 10% owner) of the Bidder, as long as appropriate representatives have signed *both* in the space provided for signature on behalf of the company, as an officer or other authorized representative, *and* in the space provided for individual signature.

Where the Bidder is an individual (including a sole proprietor), not a corporation or other business organization:

Unless separate Certification and Disclosure forms are submitted, one Certification and Disclosure will be deemed to encompass all of the following persons or organizations:

- The Bidder; AND
- Any spouse or children of legal age, residing in the same household; AND
- Any Political Organization (as defined above) controlled by the Bidder’s Business Entity.

Instructions

Contractor Certification and Disclosure of Political Contributions

Examples

Scenario One: Two individuals each own 50% of the Bidder: Three signatures are required – one on behalf of the Bidder and one by each individual owner of more than 10% of the Bidder. NOTE: If one of the Principals (owners) signs on behalf of the Bidder, that Principal may also sign the same form, in his or her individual capacity. However, the other Principal must sign and submit a separate Certification and Disclosure form. Accordingly, either two or three separate Certification and Disclosure forms will be submitted.

Scenario Two: An individual owns 100% of a Bidder: Two signatures are required: the individual owner can submit one Certification and Disclosure form, provided he or she has signed in the space provided for signature on behalf of the Bidder (“ARROW #2”> “Certification on behalf of a company or organization”) and in the space provided for individual signature (“ARROW #3”> “Certification by an individual...”).

Scenario Three: Four individuals and one corporation each own 20% of the Bidder: six signatures are required – one by each individual and corporate owner of more than 10% of the Bidder, and one on behalf of the Bidder. NOTE: As in Scenario One, above, if one of the Principals (owners) signs on behalf of the Bidder, that Principal may also sign the same form, in his or her individual capacity.

Scenario Three: The Bidder is an individual, conducting business in his or her own name, or as a sole proprietorship: certification and disclosure by the Bidder applies to that person’s spouse and/or legal age child living in the same household, unless separate certification and disclosure forms are submitted.

Additional scenarios are the subject of some of the Questions and Answers posted on the Division of Purchase and Property’s website. Please refer to that site, at <http://www.state.nj.us/treasury/purchase/execorder134.htm> for additional information, or to submit questions regarding the completion of Political Contribution Compliance (EO 134) forms.

Continuing Disclosure Obligation

Pursuant to Public Law 2005, Chapter 51, all business entities which have been awarded a State contract on or after October 15, 2004, in an amount in excess of \$17,500, have a continuing obligation to disclose all Contributions made during the term of such contract.

Such disclosures are to be submitted by the business entity to the Agency or Agencies which awarded the applicable contract(s). The disclosures are to be made using the standard Certification and Disclosure form, which may be downloaded from the Division of Purchase and Property’s website.

Public Law 2005, Chapter 51

Formerly:

Executive Order
134

Instructions

Contractor Certification and Disclosure of Political Contributions

Agency Submission of Forms

The agency should submit the completed and signed Contractor Political Contribution Compliance (EO 134) and Ownership Disclosure forms, with an Executive Summary of Transaction form (available online at: http://www.state.nj.us/treasury/purchase/forms/eo134/dpp_134_esp.pdf), **completed by the agency**, to:

Chapter 51 Review Unit
P.O. Box 039
33 West State Street, 9th Floor
Trenton, New Jersey 08625

The agency should keep the original forms in its file, and submit copies to the Chapter 51 Review Unit.

Questions & Answers

Questions regarding the interpretation or application of **Public Law 2005, Chapter 51** (N.J.S.A. 19:44A-20.13-20.25, superseding Executive Order 134) (2004)) may be submitted electronically through the website of the Department of the Treasury, Division of Purchase and Property, <http://www.state.nj.us/treasury/purchase/execorder134.htm>. Responses to questions are posted at the website, as are additional reference materials and forms.

Definitions:

“Chapter 51” -- means Public Law 2005, Chapter 51 (N.J.S.A. 19:44A-20.13-20.25, superseding Executive Order 134 (2004)).

“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.

“Contribution” – means a contribution reportable by the recipient under the “New Jersey Campaign Contributions and Expenditures Reporting Act,” P.L. 1973, c.83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-10.1 et seq. Contributions made prior to January 1, 2005 in an amount in excess of \$400 during a reporting period are deemed “reportable” under these laws. As of January 1, 2005, contributions in excess of \$300 are deemed “reportable.”

References to **“Bidder”** include, but are not limited to, all entities which contemplate entering into a contractual relationship with the State, including vendors, potential vendors, contractors, consultants, sellers.

Solicitation No.: _____ Bidder: _____

The Bidder (Vendor) should complete the required Certification and Disclosure forms and submit them, together with a completed Ownership Disclosure form, **to the using agency, department or the Purchase Bureau**. Instructions for completing this form are at <http://www.state.nj.us/treasury/purchase/forms.htm#eo134>.

Part I: Certification

I hereby certify as follows:

1. On or after October 15, 2004, the below-named person or entity has not solicited or made any Contribution of money, pledge of Contribution, including in-kind Contributions, company or organization Contributions, as set forth below that would bar the award of a contract to the Bidder, pursuant to the terms of Public Law 2005, Chapter 51 (N.J.S.A. 19:44A-20.13-20.25, superseding Executive Order 134 (2004)).
 - a) **Within the 18 months immediately preceding the Solicitation (exclusive of any contributions made prior to October 15, 2004), the below-named person or organization has not made a Contribution to**
 - (i) Any candidate committee and/or election fund of any candidate for or holder of the public office of Governor; or
 - (ii) Any State or county political party committee.
 - b) **During the term of office of the current Governor (exclusive of any Contributions made prior to October 15, 2004), the below-named person or organization has not made a Contribution to**
 - (i) Any candidate committee and/or election fund of the governor; or
 - (ii) Any State or county political party committee nominating such Governor in the election preceding the commencement of said Governor's term.
 - c) **Within the 18 months immediately prior to the first day of the term of office of the Governor (exclusive of any Contributions made prior to October 15, 2004), the below-named person or organization has not made a Contribution to**
 - (i) Any candidate committee and/or election fund of the Governor; or
 - (ii) Any State or County political party committee of the political party nominating the successful gubernatorial candidate in the last gubernatorial election.
2. If the Bidder is awarded a contract pursuant to the solicitation for this bid proposal, the below-named person or organization will, on a continuing basis, continue to report any Contributions it makes during the term of the contract, and any extension(s) thereof.

Public Law 2005, Chapter 51

Formerly:



Bidder: _____

Part II: Disclosure

Following is the required disclosure of all Contributions made from October 15, 2004, through the date of signing of this Certification and Disclosure to: (i) any entity designated and organized as a "political organization" under 26 U.S.C.A. § 527 that is also defined as "continuing political committee" under N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1 or (ii) any candidate committee and/or election fund of any candidate for or current holder of the public office of Governor; and any State or county political party committee. Such an entity is identified in the following chart as a "Committee."

Name and Address of Committee	Date of Contribution	Amount of Contribution	Type of Contribution i.e., Currency, Check, Loan, In Kind	Donor
Indicate "none" if no Contributions were made. Attach additional pages if necessary.				

#1

Certification on behalf of a COMPANY or organization:

I certify as an officer or authorized representative of the Company or Organization identified below that, to the best of my knowledge and belief, the foregoing statements by me are true. I am aware that if any of the statements are willfully false, I am subject to punishment.

Name of Company or Organization: _____

Signed: _____ Title: _____

Print Name: _____ Date: _____

(check one) (A) The **Company** or Organization is the Bidder, or (B) The **Company** or Organization is a Principal (more than 10% ownership or control) of the Bidder, a Subsidiary controlled by the Bidder, or a Political Organization (eg, PAC) controlled by the Bidder.

#2

Certification by an individual – for use by the individual Bidder, or as a Principal (more than 10% ownership or control) of the Bidder, or as the spouse or child of the Bidder:

I certify that, to the best of my knowledge and belief, the foregoing statements by me are true. I am aware that if any of the statements are willfully false, I am subject to punishment.

Signed: _____

Print Name: _____ Date: _____

Note: A person may certify BOTH as an officer or authorized representative of the Bidder, AND in his or her individual capacity, as a Principal of the Bidder.

#3

APPENDIX B

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL CONTRACT STANDARD TERMS AND CONDITIONS

Updated March 25, 2009

By submitting a proposal in response to the Council Request for services, the Firm certifies that it understands and agrees that all of the following terms, conditions and definitions (collectively, "Standard Terms and Conditions") are part of any contract(s) awarded or order(s) placed as a result of the Council Request unless specifically and expressly modified by reference in the Council Request or in a writing executed by the Executive Director of the Council or the designee thereof.

I. DEFINITIONS

As used in these Standard Terms and Conditions the following terms shall have the definitions set forth in this paragraph. These definitions shall also apply to the entire contract unless otherwise defined therein.

"Council" means the New Jersey Highlands Water Protection and Planning Council.

"Council Request" means a request made by the Council for offers or proposals to provide the sought after services as specified herein.

"Firm" means any person or entity submitting a proposal in response to the Council Request for the purpose of obtaining a contract to provide the services specified in the Council Request.

"Contract" means a mutually binding legal relationship obligating the Contractor to furnish services and the buyer to pay for them, subject to appropriation where the Council derives its annual budget by means of appropriation from the State Legislature. The Contract consists of these Standard Terms and Conditions, the Council Request, the proposal submitted by the Contractor, the subsequent written document memorializing the agreement (if any), any amendments or modifications and any attachments, addenda or other supporting documents of the foregoing. In the event of a conflict between these documents, the following documents shall control in order of precedence from the most controlling to least: subsequent written document, if any, memorializing the agreement between the parties; Professional Services Contract Standard Terms and Conditions; Council Request; and Firm proposal.

The Contract and/or its terms cannot be modified or amended by conduct or by course of dealings. Thus, the "contract" does not include the aforementioned actions and such actions, or reliance thereon, afford no rights whatsoever to any party to the Contract.

"Contractor" means the person or entity which submits a proposal in response to the Council Request and to whom (or which) the Contract is awarded.

"Designee" means the representative of the Executive Director, duly authorized by same to conduct specific activities and who also has the power to legally bind the Executive Director within the scope of the Contract. Actions taken by an unauthorized designee or which are beyond the scope of the designee's authorization or beyond the scope of the Contract are ultra vires and have no legal or equitable effect.

"Executive Director" means the Executive Director of the New Jersey Highlands Water Protection and Planning Council or the Designee thereof.

"Project" means the initiative, enterprise, undertaking or services for which the Contractor was contracted, and which is detailed in the Scope of Work attached hereto.

"Shall" denotes a mandatory condition.

"State" means the State of New Jersey and its agencies.

APPENDIX B

II. APPLICABILITY AND INCORPORATION OF STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions will apply to all services contracts made by the Council. These Standard Terms and Conditions are automatically incorporated into the Contract unless the Contractor is specifically instructed otherwise in the Council Request or in any amendment thereto. These Standard Terms and Conditions are in addition to the terms and conditions set forth in the Council Request and should be read in conjunction with same unless the Council Request specifically indicates otherwise.

III. CONTRACTOR'S STATUS AND RESPONSIBILITIES

- A. **CONTRACTOR'S STATUS:** The Contractor's status shall be that of an independent contractor and not that of an employee of the State.
- B. **CONTRACTOR'S CERTIFICATION AS TO ITS REPRESENTATIONS:** The Contractor certifies that all representations made by it in its proposal or other related and/or supporting materials are true, subject to penalty of law. Further, the Contractor agrees that its violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact in the proposal, award or performance of the Contract may be cause for termination of the contract award. In addition, the Contractor's violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact in the proposal, award or performance of the Contract shall serve as a legal bar to the Contractor's enforcement of its rights under the Contract, including any and all claims at law or equity.
- C. **CONTRACTOR'S PERFORMANCE:** The Contractor agrees to perform in a good, skillful and timely manner all services set forth in the Contract. To perform these services, the Contractor shall employ or engage the services of qualified persons and/or entities at its own expense except as otherwise specified in the Contract. The Contractor has an affirmative obligation to promptly notify, in writing, the State of any changes in circumstances which might affect the Contractor's ability to be awarded or to perform its obligations under the Contract.
- D. **RESPONSIBILITIES OF CONTRACTOR:**
- (1) The Contractor is responsible for the quality, technical accuracy and timely completion and delivery of all deliverables and other services to be furnished by the Contractor under the Contract. If circumstances beyond the control of the Contractor result in a late delivery, it is the responsibility and obligation of the Contractor to make the details known immediately to the Council.
 - (2) The Contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its services and deliverables furnished under the Contract. The approval of interim deliverables furnished under the Contract shall not in any way relieve the Contractor of fulfilling all of its obligations under the Contract. The acceptance or payment for any of the services rendered under the Contract shall not be construed as a waiver by the State or the Council, of any rights under the Contract or of any cause of action arising out of the Contractor's performance of the Contract.
 - (3) The acceptance of, approval of or payment for any of the services performed by the Contractor under the Contract shall not constitute a release or waiver of any claim the State or the Council, has or may have for latent defects or errors or other breaches of warranty or negligence.
 - (4) Should the Contractor hire, employ or otherwise engage subcontractors, the Contractor shall be considered the prime Contractor and the sole point of contact with regard to contractual matters. The Contractor assumes sole and full responsibility for the complete performance contemplated by the Contract including the performance of all subcontractors.

APPENDIX B

- (5) When the Contractor intends to subcontract for any work under the Contract, the subcontractor must be approved by the Executive Director in writing. It is understood, however, that consent of the Executive Director for the subcontracting of any work under the Contract in no way relieves the Contractor from its full obligations under the Contract. In addition, the Contractor must notify and receive the approval of the Council's Project Manager before hiring any subcontractor for the Contract work. The Contractor shall at all times give due attention to the fulfillment of the Contract and shall keep the work under its control. Consent to the subcontracting of any part of the work by the Executive Director in writing shall not be construed to be an approval of said subcontract or of any of its terms, but shall operate only as an approval of the subcontractor. The Contractor shall be responsible for all work performed by the subcontractor, which shall conform to the provisions of the Contract and all requirements of law. The failure of any subcontractor to adhere to the terms of the Contract or requirements of law may, in the Council's discretion, be cause for termination of the contract award.
 - (6) All payments for services under the Contract will be made only to the Contractor. The Contractor assumes sole and full responsibility for any payments due to its subcontractors under the Contract.
 - (7) Nothing herein or in the Contract shall be construed as creating a contractual relationship between any subcontractor and the State and/or the Council.
 - (8) The Contractor's obligations under this clause are in addition to the Contractor's other expressed or implied assurances under the Contract or law and in no way diminish any other rights that the State or the Council may have against the Contractor.
- E. **INVESTIGATION:** By submitting a proposal in response to the Council Request, the Firm certifies and warrants that it has satisfied itself, from its own investigation, of the conditions to be met and that it fully understands its obligations and if awarded the Contract agrees that it will not make any claim for, or have right to, cancellation or relief from the Contract without penalty because of its misunderstanding or lack of information.
- F. **PRICE FLUCTUATION DURING CONTRACT:** Unless otherwise set forth in writing by the Executive Director, all rates and costs quoted shall be firm and not be subject to increase during the duration of the Contract. However, in the event of a manufacturer's price or Contractor's rate or cost decrease during the Contract period, the State shall receive the full benefit of such reduction on any undelivered purchase order and on any subsequent order placed during the Contract period. The Executive Director must be notified in writing of any rate or cost reduction within five (5) days of the effective date. Failure to report and/or pass on reductions may result in the termination of the contract award for cause.
- G. **COST LIABILITY:** The State assumes no responsibility and no liability for costs incurred by the Firm prior to the award of the Contract and thereafter only as specifically provided in the Contract.
- H. **INDEMNITY/LIABILITY TO THIRD PARTIES:**
- (1) 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 are caused by the negligent act, error or omission of the Contractor during the performance of services

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under this Contract. This indemnification obligation is not limited by, but is in addition to the insurance obligations contained in this Contract.

- (2) 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 un-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this Contract.
- (3) The Contractor further agrees that:
 - (a) any approval by the State or the Council of the work performed and/or reports, plans or specifications provided by the Contractor shall not operate to limit the obligations of the Contractor assumed in the Contract;
 - (b) the State and the Council assume no obligation to indemnify or save harmless the Contractor, its agents, servants, employees or subcontractors for any claim which may arise out of its performance of the Contract; and
 - (c) the provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in the Contract, nor shall they be construed to relieve the Contractor from any liability, nor preclude the State or the Council from taking any other actions available to it under any other provisions of the Contract or otherwise at law or equity.

I. **INSURANCE:** The Contractor shall procure and maintain at its own expense, until at least two years after the completion of all work performed under the Contract, extensions and/or modifications thereto, liability insurance for damages imposed by law and assumed under the Contract, of the kinds and in the amounts hereinafter provided, from insurance companies admitted or approved to do business in the State of New Jersey. By submitting a proposal in response to the Council Request, the Contractor expressly agrees that any insurance protection required herein or by the Contract shall in no way limit the Contractor's obligations assumed in the Contract and shall not be construed to relieve the Contractor from liability in excess of such coverage nor shall it preclude the State from taking such other actions as are available to it under other provisions of the Contract or otherwise in law or equity.

- (1) The insurance to be provided by the Contractor shall be as follows:
 - (a) Commercial General Liability policy as broad as the standard coverage forms in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breadth of coverage. The limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit.
 - (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.
 - (c) Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than \$1,000,000 BODILY INJURY, EACH OCCURRENCE; \$1,000,000 DISEASE EACH EMPLOYEE; \$1,000,000 DISEASE AGGREGATE LIMIT.
 - (d) Professional Liability Insurance: When it is common to the Contractor's profession to do so, the Contractor shall carry Errors and Omissions,

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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.

- 2) The Contractor shall, prior to commencement of the work required under the Contract, provide the Executive Director with a valid original Certificates of Insurance as evidence of the Contractor's insurance coverage in accordance with the foregoing provisions. Such certificates of insurance shall specify that the insurance provided is of the types and is in the amounts required in 1(a), (b), (c) and (d) above.

The certificates shall provide for thirty (30) days written notice to the Executive Director prior to any cancellation, expiration or non-renewal of insurance during the term required in the Contract, extensions and/or modifications thereto. The Contractor shall further be required to provide the Executive Director with valid original certificates of renewal of the insurance upon the expiration of the policies. All certificates shall be forwarded to the Council's address as listed herein.

In the event that the Contractor provides evidence of insurance in the form of certificates of insurance valid for a period of time less than the period during which the Contractor is required by the terms of these Standard Terms and Conditions and the Contract to maintain insurance, i.e. two (2) years after the expiration of the Contract, said certificates shall be acceptable, but the Contractor shall be obligated to renew its insurance policies as necessary and to provide new certificates of insurance from time to time, so that the Council is continuously in possession of evidence of the Contractor's insurance in accordance with the foregoing provisions.

In the event the Contractor fails or refuses to renew any of its insurance policies as necessary, or any policy is canceled, terminated or modified so that the insurance does not meet the requirements of these Standard Terms and Conditions or the Contract, the State and/or Council may refuse to make payment of any further amounts due under the Contract or refuse to make payments due or coming due under other agreements between the Contractor and the State. The State, in its sole discretion, may use funds retained under this paragraph to renew the Contractor's insurance for the periods and amounts referred to above. During any period when the required insurance is not in effect, the Executive Director may, at the Executive Director's option, recommend to the Council to either suspend work under the Contract or proceed to default the Contractor and thereby terminate the contract award.

- J. **AVAILABILITY OF RECORDS:** The Contractor shall maintain and retain weekly payroll, overhead, cost and accounting records and all other records related to the services performed on the Project, including expenses pertaining to additional services required by the State on the Project. Such records shall be maintained and available for the State's and/or Council's inspection as to all aspects of the work, whether performed by the Contractor or any independent firms. These records shall be kept in accordance with generally accepted accounting principles and practices for a period of three (3) fiscal years after the expiration of the State's fiscal year in which the Contract expires or in which final payment is received by the Contractor under the Contract, whichever ever occurs later. (The State's fiscal year is from July 1 through June 30). The Executive Director has the right to request, and Contractor agrees to furnish free of charge, all information and copies of all records which the Executive Director requests. The Contractor shall allow the Executive Director to visit the office(s) of the Contractor periodically, upon reasonable

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notice, in order to review any document related to the Contract or to otherwise monitor work being performed by the Contractor pursuant to the Contract. Any failure by the Contractor to maintain or produce such records or to otherwise cooperate with the Executive Director may be, at the Council's discretion, cause for termination of the Contract award and/or suspension or debarment of the Contractor from State contracts.

- K. **DATA CONFIDENTIALITY:** All information or data supplied by the State or the Council after the award of the Contract, any data gathered by the Contractor in fulfillment of the Contract, and any analysis thereof (whether in fulfillment of the Contract or not) are to be considered strictly confidential and shall be used only as set forth in the Confidentiality Agreement.
- L. **NO WAIVER OF WARRANTIES OR REMEDIES AT LAW OR EQUITY:** Nothing in the Contract shall be construed to be a waiver by the State or Council of any warranty, expressed or implied, except as specifically and expressly stated in a writing executed by the Council. Further, nothing in the Contract shall be construed to be a waiver by the State or Council of any remedy available to the State or Council under the Contract, at law or equity except as specifically and expressly stated in a writing executed by the Council.
- M. **OWNERSHIP OF MATERIAL:** All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the Contract, including but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the services required under this Contract shall be and remain the property of the State of New Jersey and shall be delivered to the State of New Jersey upon 30 days notice by the State. With respect to software computer programs and/or source codes developed for the State, the work shall be considered "work for hire", i.e. the State, not the contractor or subcontractor, shall have full and complete ownership of all software computer programs and/or source codes developed. To the extent that any of such materials may not, by operation of law, be a work made for hire in accordance with the terms of this Contract, Contractor or subcontractor hereby assigns to the State all right, title and interest in and to any copyright in perpetuity, and the State shall have the right to obtain and hold in its own name any copyrights, registrations and any other proprietary rights that may be available.
- N. **PUBLICITY:** Publicity and/or public announcements pertaining to the project or the contractual relationship between the parties shall be approved by the Executive Director prior to release.

IV. **CONTRACTUAL RELATIONSHIP**

- A. **ASSIGNMENT:** The Contractor shall not assign or transfer its obligations or rights under the Contract without the prior written consent of the Council. Any assignment or transfer of the Contractor's rights under the Contract without the prior written consent of the Council shall not relieve the Contractor of any duty, obligation or liability assumed by it under the Contract and shall be cause for termination of the contract award.
- B. **MERGERS, ACQUISITIONS AND DISSOLUTION:**
 - (1) **Merger or Acquisition:** If, subsequent to the award of any contract resulting from the Council Request, the Contractor shall merge with or be acquired by another firm, for purposes of this Contract only, the documents set forth below must be submitted to the Executive Director for approval within thirty (30) days of completion of the merger or acquisition. Failure to do so may result in termination of the Contract award for cause. Any such merger or acquisition will require the assignment of the Contract pursuant to the provisions related thereto set forth herein.

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- (a) Corporate resolutions prepared by the awarded Contractor and new entity ratifying acceptance of the Contract terms, conditions and prices, as may be amended.
 - (b) State of New Jersey Bidders Application reflecting all updated information including ownership disclosure, pursuant to the provisions contained herein.
 - (c) Vendor Federal Employer Identification Number.
 - (d) Ownership Disclosure: Within thirty (30) days after any merger or acquisition, the Contractor must disclose the names and addresses of all of its owners and potential owners which hold or may acquire 10% or more of its stock or interest. The Contractor has the continuing obligation to notify the Council of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed. Compliance with this provision does not give rise to any rights to the Contract to the acquirer or resulting entity (in the case of a merger) without the written consent of the Council.
- (2) Dissolution: If, during the term of the Contract, the Contractor's partnership, joint venture or corporation shall dissolve, the Executive Director must be so notified. All responsible parties of the dissolved partnership or corporation must submit to the Executive Director, in writing, the names of the parties proposed to perform the contract and the names of the parties to whom payment should be made. No payment will be made until all parties to the dissolved partnership, joint venture or corporation submit the required documents to the Executive Director. If the Contractor is (1) a corporation, it must provide a copy of the corporate resolution to dissolve; (2) a partnership, the written statement of the partnership, general partner, receiver or custodian thereof that the partnership has dissolved; and (3) a joint venture, the written agreement of the principal parties thereto to dissolve the joint venture.
- C. **NOTICE:** The Contractor shall promptly provide notice to the Executive Director of all information related to its merger, acquisition and/or dissolution.

V. ADDITIONAL TERMS

- A. **CONTRACT AMOUNT:** The estimated amount of the contract(s), when stated in the Council Request, shall not be construed as either the maximum or minimum amount which the State and/or the Council shall be obligated to order or expend as the result of the Council Request or any contract entered into as a result of the Council Request.
- B. **PERFORMANCE SECURITY:**
- (1) Performance Security: If performance security is required in the Council Request, the successful Firm shall furnish performance security in such amount on any award of the Contract or line item purchase. See N.J.A.C. 17:12-2.5. Acceptable forms of performance security are as follows:
 - (a) an irrevocable security in the amount listed in the Council Request payable to the Treasurer, State of New Jersey, binding the Contractor to provide faithful performance of the Contract;
 - (b) a properly executed individual or annual performance bond issued by an insurance or security company authorized to do business in the State of New Jersey, a certified or cashier's check drawn to the order of the Treasurer, State of New

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Jersey, or an irrevocable letter of credit drawn naming the Treasurer, State of New Jersey, as beneficiary issued by a federally insured financial institution; and

- (c) the amount of the performance security will be stated on the cover sheet to the Council Request. If the requirement for performance security is expressed as a percentage, security will be required only if the total amount of the Contract exceeds \$250,000.

The Performance Security must be submitted to the Executive Director within thirty (30) days of the effective date of the Contract award and cover the period of the Contract and any extensions thereof. Failure to submit performance security may result in termination of the Contract award for cause and nonpayment for work performed.

- C. **TIME PERIODS:** The Council may extend or shorten any time period specified in the Contract for good cause. Moreover, when, in the discretion of the Executive Director, non-performance by the Contractor may affect the health, safety or welfare of the State, the Executive Director may dispense with any time period specified Paragraph VII B herein.

VI. MANDATORY COMPLIANCE WITH LAW

The Contractor's compliance with the legal requirements set forth in this paragraph as well as any other applicable laws, regulations or codes is mandatory and cannot be waived by the State, the Council or the Executive Director. The list of laws, regulations and/or codes cited herein is not intended to be an exhaustive list and is available for review at the State Library, 185 W. State Street, Trenton, New Jersey 08625.

A. **BUSINESS REGISTRATION:**

- (1) All New Jersey and out of State corporations must obtain a Business Registration Certificate (BRC) from the Department of the Treasury, Division of Revenue prior to conducting business in the State of New Jersey.
- (2) Proof of valid business registration with the Department of the Treasury, Division of Revenue shall be submitted by the Firm and, if applicable, by every subcontractor of the Firm, with the Firm's bid. No contract will be awarded without proof of business registration with the Division of Revenue. 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 www.state.nj.us/njbgs/services.html.
- (3) Before performing work under the Contract, all subcontractors of the Contractor must provide to the Contractor proof of New Jersey business registration. The Contractor shall forward the business registration documents on to the Council.

- B. **AFFIRMATIVE ACTION:** The Contractor shall not discriminate in employment and agree to abide by all antidiscrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, inclusive, N.J.S.A. 10:5-1, et seq., and N.J.S.A. 10:5-38 and all rules and regulations issued thereunder.

- C. **AMERICANS WITH DISABILITIES ACT:** The Contractor shall abide by the provisions of the Americans With Disabilities Act, 42 U.S.C. §12101, et seq.

- D. **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 State of New Jersey through the Council, except those contracts which are not within the contemplation of the Act. The Firm's signature on its proposal is its guarantee that neither the Firm nor any subcontractors

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the Firm might employ to perform the work covered by its proposal has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act.

- E. **OWNERSHIP DISCLOSURE:** Pursuant to N.J.S.A. 52:25-24.2, contracts for any work, goods or services cannot be issued to any corporation or partnership unless prior to or at the time of the bid submission, the Firm disclosed the names and addresses of all of its owners holding 10% or more of the corporation or partnership's stock or interest during the term of the Contract. The Contractor has the continuing obligation to notify the Council of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed.
- F. **FIRM'S WARRANTY:** By submitting a proposal in response to the Council Request, the Firm warrants and represents that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. The penalty for breach or violation of this provision may result in termination of the contract award without the State being liable for damages, costs and/or attorney fees or, in the Council's discretion, a deduction from the Contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.
- G. **MACBRIDE PRINCIPLES:** The Contractor shall comply with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:34-12.2.
- H. **CODES:** The Contractor shall comply with the requirements of the New Jersey Uniform Commercial Code, the latest National Electrical Code, Building Officials & Code Administrators International, Inc. (B.O.C.A.) Basic Building Code, and the Occupational Safety and Health Administration to the extent applicable to the Contract.
- I. **P.L. 2004, C.57:** The Contractor and its subcontractors must comply with P.L. 2004, C.57, which requires the Contractor and its subcontractors to collect and remit applicable State use tax to the New Jersey Division of Taxation on the sale of all goods and services in the State of New Jersey subject to the provisions of the "Sales and Use Tax Act," P.L. 1966, C.30 (N.J.S.A. 54:32B-1 et seq.).
- J. **COMPLIANCE WITH N.J.S.A. 19:44A-20.13 et seq.** The Contractor is required to comply with the "pay to play" disclosure requirements set forth in the statutes. Compliance requires the Contractor to submit the Executive Order 134 Certification and Disclosure (DPP134-C & D). In addition, the Contractor is under a continuing duty to disclose during the time of the Contract all contributions made during the term of the Contract covered under the statute. Towards satisfying that duty, the contractor shall submit the Continuing Disclosure of Political Contributions (DPP134-CD) when required under the statute. Failure to comply with any of the requirements of the statute may result in the termination of the Contract. All forms and instructions are available on the New Jersey Treasury Department, Division of Purchase and Property web-site: <http://www.state.nj.us/treasury/purchase/forms.htm>.
- K. **COMPLIANCE WITH REQUIREMENTS OF NJSA 52:34-13.2:**
 - (1) Subject to the exceptions below, N.J.S.A. 52:34-13.2 requires that all contracts that are "primarily for the performance of services" shall be performed within the United States. This provision applies to all contractors and sub-contractors performing such contracts for the State. This provision is not applicable to a contract that is "primarily for the performance of services" if:

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- (a) the Executive Director certifies in writing a finding that a service is required by the Executive Branch of the State and that the service cannot be provided by a contractor or sub-contractor within the United States and the certification is approved by the State Treasurer; or
 - (b) the Executive Director certifies in writing that the inclusion of the provision set forth within the statute for a contract would violate the terms, conditions, or limitations of any grant, funding or financial assistance from the federal government or any agency thereof, and the certification is approved by the appropriate approval officer.
- (2) **SOURCE DISCLOSURE REQUIREMENTS:** Pursuant to NJSA 52:34-13.2, all Firms seeking a contract with the State of New Jersey must disclose:
- (a) The location by country where services under the contract will be performed; and
 - (b) The location by country where any subcontracted services will be performed. Accordingly, the Contractor should submit the Source Disclosure Certification Form filled out with the sourcing information required for it and any proposed subcontractor under the Contract with the State. If the information is not submitted with the Firm's proposal, it shall be submitted within five (5) business days of the State's request for the information. All forms and instructions are available on the New Jersey Treasury Department, Division of Purchase and Property, web-site:
<http://www.state.nj.us/treasury/purchase/forms.htm>.

FAILURE TO SUBMIT SOURCING INFORMATION WHEN REQUESTED BY THE STATE SHALL PRECLUDE AWARD OF A CONTRACT TO THE FIRM.

- (3) **BREACH OF CONTRACT:** A SHIFT TO OUTSOURCED SERVICES DURING THE TERM OF THE CONTRACT SHALL BE DEEMED A BREACH OF THE CONTRACT.
 - (4) If, during the term of the Contract, the Contractor or subcontractor, who had on Contract award declared that services would be performed in the United States, proceeds to shift the performance of the services outside of the United States, the Contractor shall be deemed in breach of the Contract, which Contract shall be subject to termination for cause pursuant to Section VII B (3) (c).
- L. **SET-OFF FOR STATE TAXES AND CHILD SUPPORT:** Pursuant to N.J.S.A. 54:49-19, if the Contractor is entitled to payment under the Contract at the same time as it is indebted for any State tax (or is otherwise indebted to the State) or child support, the State Treasurer may set off that payment by the amount of the indebtedness.
- M. **STANDARDS PROHIBITING CONFLICTS OF INTEREST:** The following prohibitions on Contractor activities shall apply to all contracts and purchase agreements made with the State or Council:
- (1) No Contractor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such Contractor transacts or offers or proposes to transact business, or to any member of

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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.

- (2) 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 Contractor to the Attorney General and the Executive Commission on Ethical Standards.
- (3) No Contractor 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 Contractor to, any State officer or employee or special State officer or employee or 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 Executive Commission on Ethical Standards which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding the present or proposed relationship does not present the potential, actual or appearance, of a conflict of interest.
- (4) No Contractor 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.
- (5) No Contractor shall cause or influence, or attempt to cause or influence, any State officer or employees 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.
- (6) The provisions cited in this paragraph shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with the Contractor under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines in the Executive Commission on Ethical Standards may promulgate under the provisions contained herein.

VII. **PROJECT SUSPENSION AND TERMINATION OF THE CONTRACT AWARD**

- A. **SUSPENSION OF PROJECT:** If, for any reason, the Project for which the Contractor's services were contracted should be suspended, the Council may suspend this contract upon seven (7) days written notice to the Contractor. Upon receipt of such notice, unless otherwise directed in writing by the Executive Director, the Contractor shall immediately discontinue all work under the Contract. Upon such notification, the Contractor shall be paid a proportion of the fee which the services actually and satisfactorily performed by it shall bear to the total services completed under the Contract, less payments previously made. The State may order that the work on the Project be stopped temporarily, and upon seven (7) days written notice from the Executive Director, the Contractor shall cease all work on the Project except as necessary to properly secure the Project. If the State directs that the work on the Project resume within six (6) months, the Contractor shall be obliged to complete the Project for the basic fee provided for in this Contract, plus additional compensation for any work necessitated by the stop order as approved by the Executive Director in writing.

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However, in the event that services are scheduled to end either by Contract expiration or by termination of the contract award by the Council, it shall be incumbent upon the Contractor to continue the service if requested by the Executive Director to do so, until new services, if any, are completely operational. At no time shall this transitional period extend more than ninety (90) days beyond the expiration or termination date of the existing Contract, except by agreement of the parties. The Contractor will be reimbursed for this service at the rate in effect when this transitional period clause is invoked by the Executive Director.

B. TERMINATION OF THE CONTRACT AWARD: The Council may terminate the contract award at any time during the duration of the Contract, without penalty, subject to the following provisions:

- (1) Change of Circumstances: Where circumstances change and/or the needs of the State or Council change, or the Contract is otherwise deemed by the Council to no longer be in the public interest, the Council may terminate the contract award upon no less than thirty (30) days notice to the Contractor. In the event of such a termination of the contract award, the Contractor shall furnish to the Council, free of charge, such close-out reports as may reasonably be required.
- (2) For Convenience: Notwithstanding any provision or language in this contract to the contrary, the Council may terminate at any time, in whole or in part, any contract entered into as a result of the Council Request for the convenience of the State, upon no less than 30 days written notice to the Contractor.
- (3) For Cause:
 - (a) Where a Contractor fails to perform or comply with the Contract and/or fails to comply with the complaints procedure set forth in N.J.A.C. 17:12-4.1, et seq., the Council may terminate the contract award upon ten (10) days notice to the Contractor with an opportunity to protest said termination and/or request an informal hearing. If the Contractor protests, the Council will complete the informal hearing, if necessary, and issue a final agency decision regarding termination of the Contract.
 - (b) Where a Contractor continues to perform a contract poorly as demonstrated by one or more formal complaints resolved against it, the Council may issue a Notice of Intent to Terminate the Contract Award with a ten (10) day opportunity for the Contractor to protest such termination and/or request an informal hearing. If the Contractor protests, the Council will complete the hearing, if necessary, and issue a final agency decision regarding termination and related issues including, but not limited to, damages payable to the State, subject to Paragraph VII B(5).
 - (c) The Council's right to terminate the contract award for cause includes any reason set forth in any other provision contained in the Contract.
 - (d) The failure of a Contractor to respond to the Council's notice of intent to terminate the contract award within the ten (10) day period automatically converts said notice into a final agency decision without further action of the Council.
 - (e) The Council's right to terminate the contract award for cause includes the Contractor's performance on any other State contract, a violation of state or federal law (as demonstrated by the Contractor's admissions of same or a final decision of an appropriate decision-making body), or any reason related to the

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ability of the Contractor to fulfill its contractual obligations. The Council may also terminate any contract with a federally debarred contractor or a contractor which is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

- (4) In cases of emergency, the Council may shorten the time periods of notification and may dispense with an opportunity to respond.
- (5) Upon a termination of the Contract award under this or any other paragraph herein, the Contractor shall be entitled to receive as full compensation for services rendered to the date of termination that portion of the fee which the services actually and satisfactorily performed by it, as determined by the Executive Director, shall bear to the total services contemplated under this contract, less payments previously made.
- (6) Except for termination of the contract by the Council for convenience, upon termination of the contract award, the Council may acquire the services which are the subject of the Contract from another source and may charge the Contractor whose contract award has been terminated the difference in price, and the said Contractor shall be liable for same.
- (7) All protests of the Council's intent to terminate a contract award must be accompanied by a statement of the factual and/or legal basis of the protest and copies of all documents which the Contractor believes support its position.
- (8) If Council determines that an informal hearing is required, said informal hearing shall be conducted by the Council, prior to the issuance of the final agency decision regarding the interpretation of the Contract, Contractor performance and/or termination of the contract award.

VIII. CONTRACTOR COMPENSATION

- A. **INVOICING AND PROGRESS REPORTING:** The Contractor shall submit monthly invoices for work satisfactorily completed. Invoices must specify in detail the costs incurred, must be in strict accordance with the hourly rates and costs agreed to by the Council, and shall otherwise be in accordance with the terms of the Contract. The Contractor shall also submit any other supporting documentation necessary for the Council to determine that costs incurred during invoiced period have in fact been incurred.

In addition to monthly invoices, the Contractor shall submit a Progress Report as requested by the Council, which report shall set forth the Contract number; Contractor contact information; a detailed description of work conducted during the reporting period, including a list of tasks performed and percent completeness for each task based upon overall Scope of Work; percentage of Contract budget expended to date; and a list of critical issues or problems encountered during the reporting period.

- B. **PAYMENT TO CONTRACTOR:** Payment for services purchased by the Council will only be made upon the submission of monthly invoices along with supporting documentation substantiating that the work has been satisfactorily completed as required in Section VIII A. Notwithstanding Section VIII C, payment will not be made until the Executive Director has approved payment.
- C. **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 New Jersey Payment Voucher or within sixty (60) days of receipt and acceptance of goods and services, which ever is later. Properly executed performance security, when required, must be received by the Council prior to processing any payments for

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goods and services accepted by the Council. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest will not be paid unless it exceeds \$5.00 per properly executed invoice. A good faith dispute creates an exception to the Prompt Payment Act. Except as noted above, cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

- D. **AVAILABILITY OF FUNDS:** The Council's obligation to make payment under the Contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Council for payment of any money shall arise unless and until funds are made available each fiscal year to the Council by the State Legislature.
- E. **RETAINAGE:** If retainage is required on the Contract, the State and/or Council will retain the stated percentage or retainage from each invoice. Payment of retainage will be authorized after satisfactory completion and submission of all services, deliverables or work products by the Contractor and acceptance by the Council of all services, deliverables or work products required by the Contract.

For ongoing term contracts, the Council will retain the stated percentage of each invoice submitted. At the end of the three (3) month period after payment of each invoice, the Council will review the Contractor's performance and if performance has been satisfactory, the Council will release the retainage for the preceding three (3) month period. Following the expiration of the Contract, retained fees will be released to the Contractor after certification by the Council's project manager, if any, that all services have been satisfactorily performed.

IX. AMENDMENT OR MODIFICATION

Any amendment or modification to this Contract must be made in writing and executed by both parties.

X. NOTICES

All notices required under this contract shall be in writing and shall be validly and sufficiently served by the Council upon the Contractor, and vice versa, if addressed and mailed by certified mail to the addresses set forth in the Contract.

For purposes of this Contract, all correspondence and documentation to the Council shall be sent to:

Jeffrey P. LeJava, Esq.
Staff Attorney
New Jersey Highlands Council
100 North Road (Route 513)
Chester, New Jersey 07930

XI. CLAIMS

The following shall govern claims made by the Contractor against the State concerning interpretation of the Contract, Contractor performance and/or termination of the contract award: All claims asserted against the State and/or Council by the Contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

APPENDIX B

XII. **APPLICABLE LAW**

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.

XIII. **SEVERABILITY**

If any term of this Contract is held by a court of competent jurisdiction to be invalid or unenforceable, then this Contract, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

XIV. **HEADINGS**

Headings used in this Contract are provided for convenience only and shall not be used to construe meaning or intent.

XV. **AUTHORIZATION TO BIND**

The person signing below represents that he or she is authorized to bind the entity listed below to the terms and conditions set forth above.

I HEREBY ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT:

NAME: _____

TITLE: _____

COMPANY NAME: _____

DATE: _____

**PUBLIC LAW 2005, C. 271
VENDOR CERTIFICATION AND POLITICAL CONTRIBUTION DISCLOSURE FORM**

Contract Reference No:

Vendor:

At least ten (10) days prior to entering into the above-referenced contract, the Vendor must complete this Certification and Disclosure Form, in accordance with the directions below and submit it to the State contact for such contract. **Please note that the disclosure requirements under Public Law 2005, Chapter 271 are separate and different from the disclosure requirements under Public Law 2005, Chapter 51 (formerly Executive Order 134). Although no vendor will be precluded from entering into a contract by any information submitted on this form, a vendor's failure to fully, accurately and truthfully complete this form and submit it to the appropriate State agency may result in the imposition of fines by the New Jersey Election Law Enforcement Commission.**

Disclosure

Following is the required Vendor disclosure of all Reportable Contributions made in the twelve (12) months prior to and including the date of signing of this Certification and Disclosure to: (i) any State, county, or municipal committee of a political party, legislative leadership committee, candidate committee of a candidate for, or holder of, a State elective office, or (ii) any entity that is also defined as a "continuing political committee" under N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.

The Vendor is required to disclose Reportable Contributions by: the Vendor itself; all persons or other business entities owning or controlling more than 10% of the profits of the Vendor or more than 10% of the stock of the Vendor, if the Vendor is a corporation for profit; a spouse or child living with a natural person that is a Vendor; all of the principals, partners, officers or directors of the Vendor and all of their spouses; any subsidiaries directly or indirectly controlled by the Vendor; and any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the Vendor, other than a candidate committee, election fund, or political party committee.

"Reportable Contributions" are those contributions that are required to be reported by the recipient under the "New Jersey Campaign Contributions and Expenditures Reporting Act," P.L. 1973, c.83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-10.1 et seq. As of January 1, 2005, contributions in excess of \$300 during a reporting period are deemed "reportable."

Name and Address of Committee to Which Contribution Was Made	Date of Contribution	Amount of Contribution	Contributor's Name
Indicate " <u>none</u> " if no Reportable Contributions were made. Attach Additional Pages As Needed			

Certification:

I certify as an officer or authorized representative of the Vendor that, to the best of my knowledge and belief, the foregoing statements by me are true. I am aware that if any of the statements are willfully false, I am subject to punishment.

Name of Vendor: _____

Signed: _____ **Title:** _____

Print Name: _____

EXECUTIVE ORDER 129 CERTIFICATION
SOURCE DISCLOSURE CERTIFICATION FORM

Bidder: _____ Solicitation Number: _____

I hereby certify and say:

I have personal knowledge of the facts set forth herein and am authorized to make this Certification on behalf of the Bidder.

The Bidder submits this Certification as part of a bid proposal in response to the referenced solicitation issued by the Division of Purchase and Property, Department of the Treasury, State of New Jersey (the "Division"), in accordance with the requirements of Executive Order 129, issued by Governor James E. McGreevey on September 9, 2004 (hereinafter "E.O. No. 129").

The following is a list of every location where services will be performed by the bidder and all subcontractors.

Bidder or Subcontractor	Description of Services	Performance Location[s] by Country
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Any changes to the information set forth in this Certification during the term of any contract awarded under the referenced solicitation or extension thereof will be immediately reported by the Vendor to the Director, Division of Purchase and Property (the "Director").

I understand that, after award of a contract to the Bidder, it is determined that the Bidder has shifted services declared above to be provided within the United States to sources outside the United States, prior to a written determination by the Director that extraordinary circumstances require the shift of services or that the failure to shift the services would result in economic hardship to the State of New Jersey, the Bidder shall be deemed in breach of contract, which contract will be subject to termination for cause pursuant to Section 3.5b.1 of the Standard Terms and Conditions.

I further understand that this Certification is submitted on behalf of the Bidder in order to induce the Division to accept a bid proposal, with knowledge that the Division is relying upon the truth of the statements contained herein.

I certify that, to the best of my knowledge and belief, the foregoing statements by me are true. I am aware that if any of the statements are willfully false, I am subject to punishment.

Bidder: _____
[Name of Organization or Entity]

By: _____

Title: _____

Print Name: _____

Date: _____

OWNERSHIP DISCLOSURE FORM

NUMBER :
 OPEN DATE :
 T-NUMBER :
 BIDDER :

PAGE

INSTRUCTIONS: Provide below the names, home addresses, dates of birth, offices held and any ownership interest of all officers of the firm named above. If additional space is necessary, provide on an attached sheet.

NAME	HOME ADDRESS	DATE OF BIRTH	OFFICE HELD	OWNERSHIP INTEREST (Shares Owned or % of Partnership)

INSTRUCTIONS: Provide below the names, home addresses, dates of birth, and ownership interest of all individuals not listed above, and any partnerships, corporations and any other owner having a 10% or greater interest in the firm named above. If a listed owner is a corporation or partnership, provide below the same information for the holders of 10% or more interest in that corporation or partnership. If additional space is necessary, provide that information on an attached sheet. **If there are no owners with 10% or more interest in your firm, enter "None" below.** Complete the certification at the bottom of this form. If this form has previously been submitted to the Purchase Bureau in connection with another bid, indicate changes, if any, where appropriate, and complete the certification below.

NAME	HOME ADDRESS	DATE OF BIRTH	OFFICE HELD	OWNERSHIP INTEREST (Shares Owned or % of Partnership)

COMPLETE ALL QUESTIONS BELOW

	YES	NO
1. Within the past five years has another company or corporation had a 10% or greater interest in the firm identified above? <i>(If yes, complete and attach a separate disclosure form reflecting previous ownership interests.)</i>	_____	_____
2. Has any person or entity listed in this form or its attachments ever been arrested, charged, indicted or convicted in a criminal or disorderly persons matter by the State of New Jersey, any other state or the U.S. Government? <i>(If yes, attach a detailed explanation for each instance.)</i>	_____	_____
3. Has any person or entity listed in this form or its attachments ever been suspended, debarred or otherwise declared ineligible by any agency of government from bidding or contracting to provide services, labor, material or supplies? <i>(If yes, attach a detailed explanation for each instance.)</i>	_____	_____
4. Are there now any criminal matters or debarment proceedings pending in which the firm and/or its officers and/or managers are involved? <i>(If yes, attach a detailed explanation for each instance.)</i>	_____	_____
5. Has any federal, state or local license, permit or other similar authorization, necessary to perform the work applied for herein and held or applied for by any person or entity listed in this form, been suspended or revoked, or been the subject of any pending proceedings specifically seeking or litigating the issue of suspension or revocation? <i>(If yes to any part of this question, attach a detailed explanation for each instance.)</i>	_____	_____

CERTIFICATION: I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein and thereby acknowledge that **I am under a continuing obligation from the date of this certification through the completion of any contracts with the State to notify the State in writing of any changes to the answers or information contained herein.** I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the State of New Jersey and that the State at its option, may declare any contract(s) resulting from this certification void and unenforceable.

I, being duly authorized, certify that the information supplied above, including all attached pages, is complete and correct to the best of my knowledge. I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

COMPANY NAME: _____ (Signature)

ADDRESS: _____ PRINT OR TYPE { _____ (Name)

_____ { _____ (Title)

FEIN/SSN#: _____ Date: _____

IMPORTANT NOTICE

NEW “PAY-TO-PLAY” RESTRICTIONS TO TAKE EFFECT NOVEMBER 15, 2008

Governor Jon S. Corzine recently signed Executive Order No. 117, which is designed to enhance New Jersey’s efforts to protect the integrity of government contractual decisions and increase the public’s confidence in government. The Executive Order builds on the provisions of P.L. 2005, c. 51 (“Chapter 51”), which limits contributions to certain political candidates and committees by for-profit business entities that are, or seek to become, State government vendors.

Executive Order No. 117 extends the provisions of Chapter 51 in two ways:

1. The definition of “business entity” is revised and expanded so that contributions by the following individuals also are considered contributions attributable to the business entity:
 - Officers of corporations and professional services corporations, with the term “officer” being defined in the same manner as in the regulations of the Election Law Enforcement Commission regarding vendor disclosure requirements (N.J.A.C. 19:25-26.1), with the exception of officers of non-profit entities;
 - Partners of general partnerships, limited partnerships, and limited liability partnerships and members of limited liability companies (LLCs), with the term “partner” being defined in the same manner as in the regulations of the Election Law Enforcement Commission regarding vendor disclosure requirements (N.J.A.C. 19:25-26.1); and
 - Spouses, civil union partners, and resident children of officers, partners, LLC members and persons owning or controlling 10% or more of a corporation’s stock are included within the new definition, except for contributions by spouses, civil union partners, or resident children to a candidate for whom the contributor is eligible to vote or to a political party committee within whose jurisdiction the contributor resides.
2. Reportable contributions (those over \$300.00 in the aggregate) to legislative leadership committees, municipal political party committees, and candidate committees or election funds for Lieutenant Governor are disqualifying contributions in the same manner as reportable contributions to State and county political party committees and candidate committees or election funds for Governor have been disqualifying contributions under Chapter 51.

Executive Order No. 117 applies only to contributions made on or after November 15, 2008, and to contracts executed on or after November 15, 2008.

Updated forms and materials are currently being developed and will be made available on the website as soon as they are available. In the meantime, beginning November 15, 2008, prospective vendors will be required to submit, ***in addition to the currently required Chapter 51 and Chapter 271 forms***, the attached Certification of Compliance with Executive Order No. 117.

**Certification on Behalf of A Company, Partnership or Organization and All Individuals
Whose Contributions are Attributable to the Entity
Pursuant to Executive Order No. 117 (2008)**

I hereby certify as follows:

On or after November 15, 2008, neither the below-named entity nor any individual whose contributions are attributable to the entity pursuant to Executive Order No. 117 (2008) has solicited or made any reportable contribution of money or pledge of contribution, including in-kind contributions or company or organization contributions, to the following:

- a) **Any candidate committee and/or election fund of the Governor;**
- b) **A State political party committee;**
- c) **A legislative leadership committee;**
- d) **A county political party committee; or**
- e) **A municipal political party committee.**

I certify as an officer or authorized representative of the Company or Organization identified below that, to the best of my knowledge and belief, the foregoing statements by me are true. I am aware that if any of the statements are willfully false, I am subject to punishment.

Name of Company, Partnership or Organization:

Signed: _____ **Title:** _____

Print Name: _____ **Date:** _____

(circle one) (A) The Company, Partnership or Organization is the vendor;

or

(B) the Company, Partnership or Organization is a Principal (more than 10% ownership or control) of the vendor, a Subsidiary controlled by the vendor, or a Political Organization (e.g., PAC) controlled by the vendor.

**Please note that if the person signing this Certification is not signing on behalf of all individuals whose contributions are attributable to the entity pursuant to Executive Order No. 117 (2008), each of those individuals will be required to submit a separate individual Certification.*

Individual Certification of Compliance with Executive Order No. 117 (2008)

I hereby certify as follows:

On or after November 15, 2008, I have not solicited or made any reportable contribution of money or pledge of contribution, including in-kind contributions or company or organization contributions, to the following:

- a) Any candidate committee and/or election fund of the Governor;**
- b) A State political party committee;**
- c) A legislative leadership committee;**
- d) A county political party committee; or**
- e) A municipal political party committee.**

I certify that, to the best of my knowledge and belief, the foregoing statements by me are true. I am aware that if any of the statements are willfully false, I am subject to punishment.

Signed: _____

Print Name: _____ **Date:** _____