

**REQUEST FOR PROPOSALS
FOR
529 Consultant**

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

Date Issued:

April 3, 2023

Question Cut-off Date:

April 14, 2023

Proposals Due:

May 15, 2023

**David J. Socolow
Executive Director**

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

**Contact:
Marnie Grodman
Director, Legal & Governmental Affairs**

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1.0 PURPOSE AND INTENT

The New Jersey Higher Education Student Assistance Authority (“HESAA” or “Authority”) is seeking proposals from qualified bidders to provide investment consultant services for the New Jersey Better Educational Savings Trust (NJBEST) Program, a qualified tuition program (the “Program” or the “NJBEST Program”) within the meaning of and in compliance with Section 529 of the Internal Revenue Code of 1986, as amended (the “Code”). Through this Request for Proposals (“RFP”), HESAA seeks to obtain the best net investment returns for Program participants and the most favorable array of Program services.

To be considered for this contract the bidder must meet the following minimum qualifications:

- At least five years’ experience advising on investment options in 529 or similar programs;
- Current assets under advisement of at least \$1 billion dollars; and
- Extensive knowledge of the Code Section 529.

The intent of this RFP is to award a contract to that responsible bidder whose proposal, conforming to this RFP, is most advantageous to the Authority, price and other factors considered. The Authority, however, reserves the right to separately procure individual requirements that are the subject of the contract during the contract term, when deemed by the Authority to be in HESAA’s best interest.

HESAA’s Standard Terms and Conditions are material terms of any contract made with the Authority as a result of this RFP and are attached to this RFP as Exhibit A. These terms are in addition to the terms and conditions set forth in this RFP and should be read in conjunction with the RFP, unless the RFP specifically indicates otherwise.

Note: Questions regarding HESAA’s Standard Terms and Conditions, and exceptions to mandatory requirements, must be posed during the Electronic Question and Answer period and should also contain the bidder’s suggested changes.

The bid response proposal is the Authority’s primary vehicle for obtaining the essential information on which contract award decisions are based.

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.

AUA or Assets under advisement - Assets for which the firm provides advice or consultation but for which the firm either does not have discretionary authority or does not arrange or effectuate transactions.

AUM or Assets under management - The total market value of the investments that a person or entity manages on behalf of clients.

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

Contract – This RFP, addenda to this RFP, the HESAA Standard Terms and Conditions, the Contractor’s proposal submitted in response to this RFP, and best and final offer, contractual language agreed to by the Contractor and HESAA governing the implementation of the services to be provided, and HESAA’s Notice of Intent to Award.

Contractor or Investment Consultant – The bidder awarded a contract resulting from this RFP.

DOI or Division – The New Jersey Department of the Treasury’s Division of Investment.

Evaluation Committee – A committee established by the Authority to review and evaluate proposals submitted in response to this RFP and to recommend a contract award to the Authority.

Firm Fixed Price – A price that is all-inclusive of direct cost and indirect costs, including but not limited to, direct labor costs, counsel fees, 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.

HESAA Contract Manager – The individual at the Authority responsible for the approval of all deliverables, i.e., tasks, subtasks or other work elements in the Scope of Services, as set forth in this RFP.

Investment Manager – The private entity designated by the Authority to provide a set of comprehensive services to the NJBEST Program including investment of the funds in the Program, custodial banking services, account establishment, fund and participant accounting, Program reporting, customer service, advertising and promotion.

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

May – Denotes that which is permissible, not mandatory.

Program or NJBEST Program – A qualified tuition program within the meaning of and in compliance with Code Section 529, as created by N.J.S.A. 18A:71B-35 et seq.

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 an NJBEST Consultant.

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 the 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, as well as for payment to the subcontractor. The subcontractor has no legal relationship with the Authority, only with the Contractor. The Contractor may not subcontract other than as identified in the Contractor’s proposal without the prior written consent of HESAA.

Task – A discrete unit of work to be performed.

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

3.0 BACKGROUND

The NJBEST Program is a qualified tuition program within the meaning of and in compliance with Code Section 529. The Program is administered by HESAA and operated under regulations promulgated by the Authority, N.J.A.C. 9A:10-7.

The NJBEST Program was signed into law on September 2, 1997, and opened in August 1998. The DOI was initially designated to serve as the investment manager for the Program. Between August 1998 and July 1, 2000, all NJBEST investments were in a single core fund with a common investment strategy for all accounts. In July 2000 a new age-sensitive investment strategy was introduced in coordination with the DOI. For accounts established after July 1, 2000 all funds for new participants were invested in age-bands according to the age of the beneficiary. Some participants who joined the Program before July 1, 2000 exercised an option to invest any new contributions in age-based bands. Participants who joined the Program before July 1, 2000 still have assets invested in the core fund.

In December 2001, the NJBEST statute, N.J.S.A. 18A:71B-35 et seq. was amended. The statute formerly restricted the investment options that could be offered by any private investment manager selected by the Authority to FDIC-insured or equivalent investments. The statutory amendments eliminated this restriction, requiring instead that any investment plan by a private investment manager be approved by the State Investment Council. Information on the State

Investment Council can be found at <http://www.state.nj.us/treasury/doinvest/sicreg.shtml>. The statute provides that, subject to appropriation, participants whose investments are managed by DOI are assured the return of the principal amount they contributed upon a qualified withdrawal. Investments made by any private investment manager selected by the Authority do not have the same assurance.

The goals of the NJBEST Program are to provide incentives for families to save for the future costs of a college education, to provide a convenient and affordable means for families to save for college, to provide favorable tax treatment under the New Jersey Gross Income Tax and federal income tax code for earnings from savings designated for the purpose of paying for college and other qualified postsecondary educational costs, to provide incentives for sustained efforts at college savings, to provide incentives to attend college in New Jersey, to maximize the returns of the Program while investing in a prudent manner, and to minimize the cost of services to participants while maintaining high quality customer service.

Program features include a scholarship to attend a New Jersey institution of higher education, a one-time grant of up to \$750 matched dollar-for-dollar of the initial deposit into an NJBEST account for certain newly-opened accounts, a New Jersey state gross income tax deduction of up to \$10,000 per year for taxpayers with gross income of \$200,000 or less, exclusion of account earnings from state and federal income taxation when distributions are used for qualified higher education expenses, exclusion of the first \$25,000 in savings from calculating state need-based student financial aid, low minimum contribution levels, and maximum contributions of \$305,000 per beneficiary.

In 2002, the Authority issued a Request for Proposals for an Investment Manager to provide a set of comprehensive services to the NJBEST Program. As a result of that Request for Proposals, HESAA entered into an agreement with Franklin Templeton Distributors, Inc. (“FTD”) in January 2003 to provide these services as the Investment Manager for the Program. As a result of a second Request for Proposals, HESAA entered a second agreement with FTD in 2014 to continue providing these services. The current contract is set to expire in April 2024.

Under the current contract FTD provides investment management services, custodial banking services, account establishment, fund and participant accounting, Program reporting, and customer service. FTD also provides all advertising and promotion services for the Program. Information on Program terms and conditions including the current investment strategy, can be found at NJBEST.com. Additionally, the NJBEST Annual Financial Statement can be found at <https://www.hesaa.org/Pages/AuditedFinancialStatements.aspx>.

As of June 30, 2022 the Program had approximately \$5.9 billion in AUM and 350,422 beneficiary accounts. Of this total, \$4.2 billion of the AUM and 269,698 beneficiary accounts result from the advisor-sold channel, and \$1.7 billion and 80,724 beneficiary accounts result from the direct enrollment channel. Of the direct-sold channel, \$134 million and 5,259 beneficiary accounts result from the DOI NJBEST portfolio, which does not enroll new accounts. The advisor channel accounts include those opened by New Jersey residents as well as nonresidents from across the country. The majority of participants choose age-based investment options in growth, moderate, or conservative tracks. Participants are also able to choose among a variety of other investment options including growth, income, growth and income, S&P 500 indexed funds, and stable value funds.

4.0 SCOPE OF SERVICES

The Investment Consultant shall provide the following services to the Authority:

- (a) Evaluate and monitor Investment Manager performance and compliance with the Program throughout the year;
- (b) Evaluate Program management and other underlying Program fees;
- (c) Evaluate and monitor the NJBEST investment policy, including the investment options, guidelines, and written policies;
- (d) Provide ongoing and annual due diligence on investment management of underlying funds;
- (e) Provide ongoing analysis of ratings by industry publications, including but not limited to Morningstar;
- (f) Assist in research, response, and overall review for annual requests for information sent to all 529 College Savings Plans, such as the information annually requested by Morningstar;
- (g) Provide general advice, counsel, and recommendations to HESAA and DOI regarding the design and implementation of investment products;
- (h) Provide general advice regarding existing Statewide initiatives, and recommendations about new initiatives, to encourage families to save for college education through NJBEST accounts;
- (i) Assist HESAA in Request for Proposal development and contract negotiation related to the Investment Manager for the Program;
- (j) Review, monitor, and report on at least an annual basis the extent to which the NJBEST Program has made a college education accessible and affordable to families across New Jersey.

5.0 REQUIRED COMPONENTS OF THE PROPOSAL IN RESPONSE TO THE RFP

5.1 General Information

Please provide brief but thorough responses to the following:

- (a) Provide a summary, listing any background information, on your company that you believe is relevant, including but not limited to number of years of experience providing investment consultation, and what services the company will bring to this contract;

- (b) Provide the following information for the people in your company with whom HESAA will be dealing:

Name
Phone number and email address
Title & Responsibility
Total Years of Experience
Years with the Company
Most advanced Degree and Certifications;

Please indicate which person will have ultimate responsibility for this contract.

- (c) Provide three references that currently use your services, including name of the organization and a contact's name and title, telephone number, and email address. HESAA may contact references to evaluate their experiences with the bidder;
- (d) Consideration will be given to minority-owned and women-owned companies, and to companies owned by disabled veterans. Provide any information about your company relevant to these considerations.
- (e) Indicate whether your company would be providing services to the Authority directly or subcontracting portions of the work to other companies. If subcontracting, indicate the work that would be performed by the subcontractor and the name of the subcontractor.
- (f) Provide any additional information you feel uniquely qualifies your company for this contract.

5.2 Experience

- (a) Describe your company's experience as a general investment consultant. Include the types and sizes of institutions and range of investments for which you have consulted. Provide information on any specific experience your company has with 529 plans.
- (b) Describe your strategy to address annual 529 College Savings Plan requests for information, including but not limited to the information annually requested by Morningstar.
- (c) Provide the names of all 529 qualified tuition Programs for which your company currently is or has been a consultant.
- (d) Describe your company's experience as an investment consultant for stable value investments, similar investment options, or fund-to-fund options. Indicate the AUM size and fund manager of the stable value investments.
- (e) Describe your company's approach to fiduciary due diligence.
- (f) Provide a sample quarterly report and/or describe the process and tools used to recommend, monitor, and report on investment portfolios.

- (g) Provide any additional information not already provided relevant to your company's approach to the tasks listed in Section 4.0 Scope of Work.

5.3 Compliance

- (a) Bidders must be a registered investment advisor or exempt from registration. Include your company's FORM ADV as currently on file with the Securities and Exchange Commission as an attachment to this proposal or include the basis of your company's exemption from registration.
- (b) Provide assurance that your company and the staff that will be assigned to HESAA are not currently in violation of the rules of any governmental regulatory agencies, industry associations, or other rule-making bodies. Additionally, provide details of any criminal investigation or material litigation, including administrative procedures, which your company or staff were or are currently involved in since 2013.
- (c) List any sanctions or penalties brought against your company, 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.
- (d) Disclose any business relationships which may be construed to be potential or actual conflicts of interest. The Contractor will have a continuing requirement to disclose any business relationships that may be construed to be a potential or actual conflict. The disclosure must be sufficiently detailed to inform HESAA of the nature, implications and potential consequences of each conflict and must include an explanation of how the bidder addresses, or intends to manage or mitigate, each conflict.
- (e) Provide the Security Plan described in Section 7.9. C. below.

5.4 Fees

Describe in detail your proposed fee structure, listing the itemized cost of each service, including expenses and hourly rates.

5.5 Additional Information

The selected Contractors will need to register with NJSTART.gov. Bidders who are already registered with NJSTART must provide their vendor ID number.

- (a) A copy of a valid New Jersey Business Registration must be submitted by the selected Contractors. 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:
<https://nj.gov/treasury/revenue/gettingregistered.shtml>.

- (b) Pursuant to Public Law 2005, Chapter 51 (“Chapter 51”), to avoid any appearance that the selection of State Contractors is based on the Contractors’ political contributions, State departments, agencies and authorities are precluded from awarding contracts exceeding \$17,500 to vendors who make, or have made, certain political contributions on and after October 15, 2004. Chapter 51 also requires the disclosure of all contributions to any political organization organized under 26 U.S.C. 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. Bidders shall submit the required certification form(s) and disclosure form(s) with their proposals. Failure to submit such forms and/or failure of such forms to evidence compliance with Chapter 51 shall be cause for rejection of a bidder’s proposal. Any bidder selected shall maintain compliance with Chapter 51 during the term of its engagement. The disclosure form can be found at: <https://nj.gov/treasury/purchase/forms.shtml>

- (c) Pursuant to Public Law 2005, Chapter 271 (“Chapter 271”) bidders must disclose their (and their principals’) political contributions within the immediately preceding twelve (12) month period. No prospective company 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. The disclosure form can be found at: <https://nj.gov/treasury/purchase/forms.shtml>

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-20.27 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 <https://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) A copy of a Disclosure of Investigations and Other Actions Involving the Vendor Form must be submitted by all bidders. The certification can be found at:
<https://nj.gov/treasury/purchase/forms.shtml>.

(g) **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. The certification form can be found at:
<https://nj.gov/treasury/purchase/forms.shtml>

(h) **CERTIFICATION REGARDING PROHIBITED ACTIVITIES WITH RUSSIA OR BELARUS**

Pursuant to P.L.2022, c. 3, a person or entity seeking to enter into or renew a contract for the provision of goods or services shall certify that it is not Engaging in Prohibited Activities in Russia or Belarus as defined by P.L.2002, c. 3, sec. 1(e). If the bidder is unable to so certify, the bidder shall provide a detailed and precise description of such activities.

If the bidder certifies that it is engaged in activities prohibited by P.L. 2022, c. 3, the bidder shall have 90 days to cease engaging in any prohibited activities and on or before the 90th day after this certification, shall provide an updated certification. If the bidder does not provide the updated certification or at that time cannot certify on behalf of the bidder that it is not engaged in prohibited activities, HESAA shall not award the bidder any contracts, renew any contracts, and shall be required to terminate any contract(s) the holds with HESAA that were issued on or after the effective date of P.L. 2022, c. 3. The certification form is available at:

<https://www.nj.gov/treasury/administration/pdf/DisclosureofProhibitedActivitesinRussiaBelarus.pdf>

(i) 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 “NJBEST 529 Investment Consultant” and be delivered no later than 4:00 pm on May 15, 2023 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 sent via **overnight delivery service to the Authority, or hand delivered, must use the local address zip code of 08619.** Proposals may not be delivered by fax.

In addition, a PDF of the proposal must be emailed to rsorrentino@hesaa.org no later than May 15, 2023. Both print and email versions of the proposal must be received by the deadline to be considered.

6.2 Questions and Addendums

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 April 14, 2023. 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 about 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 with three optional one-year extensions.

7.2 Termination

a. For Convenience:

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

- b. For Cause:
 - 1. Where a Contractor fails to perform or comply with a contract or a portion thereof, the Authority may terminate the contract, in whole or in part, upon ten (10) days' notice to the Contractor with an opportunity to respond.
 - 2. Where in the reasonable opinion of the Authority, a Contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, or short-shipping and there has been a failure on the part of the Contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, HESAA may terminate the contract, in whole or in part, upon ten (10) days' notice to the Contractor with an opportunity to respond.
- c. In cases of emergency HESAA may shorten the time periods of notification and may dispense with an opportunity to respond.
- d. In the event of termination under this section, the Contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

7.3 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.

7.4 Contract

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

In the event of a conflict between the provisions of this RFP, including the HESAA Terms and Conditions, attached hereto as Attachment 1, and any addendum to the RFP, such addendum shall govern.

In the event of a conflict between the bidder's proposal and the provisions of this RFP, including the HESAA Terms and Conditions, attached hereto as Attachment 1, and including any addendum to this RFP, the provisions of this RFP and/or the addendum shall govern.

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 an authorized representative of the vendor selected as a result of this RFP.

7.5 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. ("OPRA") A Contractor may assert that specific information is exempted from disclosure under that Act. Contractors will be required to submit a written Commitment to Defend and Indemnify HESAA affirming that they will cooperate in defense of any action filed against HESAA that results from a denial of access based on the Contractor's requested redactions and/or requests to withhold the documents from release. In the cover letter to a proposal, the bidder should clearly state the

location within the bid proposal of any information for which the bidder asserts exemption from disclosure under OPRA. Upon receiving a request for such information, HESAA will provide Contractor with as much notice, in writing, as is reasonably practicable and HESAA will advise the Contractor if any such information is not deemed to be exempted. HESAA will not honor attempts by bidders or Contractors to designate their entire bid proposal as proprietary and/or to claim copyright protection for their entire proposal.

7.6 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.

7.7 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, 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 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 requests to withdraw a proposal must identify the RFP, “NJBEST 529 Investment Consultant,” 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 the 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 to 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.

7.8 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. Each party to a joint venture must submit a separate Ownership Disclosure Form, Political Disclosure Forms, Disclosure of Investigations and Actions Involving the Vendor form, Disclosure of Investment Activities in Iran form, Disclosure of Prohibited Activities in Russia and Belarus, and Affirmative Action Employee Information Report. 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.

7.9 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 these data in any form by the Contractor or his/her employees or assignees will be considered in violation of this contract and will cause an 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 are deemed confidential. The following shall not be considered confidential information and shall not be subject to the provisions of this section 7.9 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 these 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.

The Contractor shall assume the 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.

To protect the State of New Jersey from losses resulting from Contractor employee theft, fraud or dishonesty, security clearance/background check for all Contractors and project staff must be obtained and must be provided to HESAA upon request. Refer to the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-12, An Introduction to Computer Security: The NIST Handbook, Section 10.1.3, Filling the Position – Screening and Selecting.

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, and 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 (Authentication, Authorizing, and Accounting, or “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 NJOIT.

Any Personally Identifiable Information (“PII”) must be protected. All data must be classified in accordance with the New Jersey Statewide Security Manual (https://www.nj.gov/it/docs/ps/NJ_Statewide_Information_Security_Manual.pdf). Additionally, data must be disposed of in accordance with the New Jersey Statewide Security (https://www.nj.gov/it/docs/ps/NJ_Statewide_Information_Security_Manual.pdf).

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 by HESAA or other authorized parties as 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 by 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 shall 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 pursuant to the Records Retention requirements enumerated in section 7.16 of this RFP. The Contractor shall erase, destroy, and render unreadable all Contractor copies of non-financial HESAA data not being transferred to HESAA according to the standards enumerated in accordance with the New Jersey Statewide Security (https://www.nj.gov/it/docs/ps/NJ_Statewide_Information_Security_Manual.pdf) 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. The Security Audit may include reviews of all issues addressed in the description of the security plan. Contractor agrees to enter into good faith discussions to implement any changes recommended by any Security Audit.

C. SECURITY PLAN

The Contractor must provide a copy of its system security plan. The document shall describe the administrative, physical, technical and systems controls to be used by the system and/or services. The Contractor's security plan must, at a minimum, provide security measures for the following areas:

- Facilities Physical Security

- System Security
- System Data Security
- Administrative and Personnel Security

The security plan shall provide for regular review of the Contractor's operations and control system by an independent auditor pursuant to industry standards. The Contractor shall have the capability to detect and report attempted unauthorized entries into the facility and system. All security requirements for the Contractor apply to development, testing, production and backup systems.

The Contractor shall provide a summary overview of the security document and describe how it has been incorporated into a larger security program for automated data processing. In the plan, the Contractor shall highlight security features in the system.

In addition, the security plan shall identify and define:

1. Regulations and security requirements -- how the Contractor will address security requirements such as PCI, HIPAA, FISMA, etc.;
2. System, Administrative and Personnel Security -- the security responsibilities and supervision required for information owned and/or operated by the Contractor. Security responsibilities include responsibilities for administration of the infrastructure, implementing or maintaining security and the protection of the confidentiality, integrity, and availability of information, systems or processes;
3. Workforce Security -- the control process for the hiring and termination of Contractor's employees, and method used for granting and denying access to the Contractor's network, systems and applications. Identify and define audit controls for when employment of the employee terminates;
4. Role-based security access -- the products and methods for role-based security, including access to the Contractor's infrastructure and access to HESAA's infrastructure;
5. Password Management -- the appropriate password management controls to meet defined regulation or security requirements;
6. Logging/Auditing Controls -- the Contractor's audit control methods and requirements;
7. Incident Management -- the methods for detecting, reporting and responding to an incident, vulnerabilities and threats;
8. Vulnerability/Security Assessment -- the products and methods used for scanning Contractor's infrastructure for vulnerabilities and remediation of the vulnerabilities. Identify and define methods used for initiating and completing security assessments.
9. Anti-virus/malware controls -- the products and methods for anti-virus and malware controls that meet industry standards. It shall include policy statements that require periodic anti-viral software checks of the system to preclude infections and set forth its commitment to periodically upgrade its capability to maintain maximum effectiveness against new strains of software viruses;
10. Firewall -- the products and methods for firewall control process and intrusion detection methodology;
11. Database -- the products and methods for safeguarding the database(s);
12. Server and infrastructure -- the products and methods for "hardening" of the hardware operating systems;

13. Transmission -- the products and methods on how the Contractor's system addresses security measures regarding communication transmission, access and message validation; and
14. Data Integrity -- the products and methods used to ensure the integrity of all stored data and the electronic images, and the security of all files from unauthorized access. The Contractor must be able to provide reports on an as-needed basis on access to or changes to any file within the system.

7.10 Privacy Policy

The Contractor is responsible for adhering to the Authority's 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. HESAA's Privacy Policy can be found at:

<https://www.hesaa.org/Documents/PrivacyNotice.pdf>

7.11 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.

7.12 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.

7.13 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 HESAA 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.

7.14 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, or of any remedy at law or equity, except as specifically and expressly stated in a writing executed by the Executive Director of HESAA.

7.15 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.

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.

7.16 Record Retention

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

7.17 Severability

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

8.0 SELECTION PROCESS

8.1 Minority-, Women- and Disabled Veteran-Owned Firms

Particular consideration will be given to firms with a presence in New Jersey and for firms owned by minorities, women, and/or disabled veterans.

8.2 Evaluation Criteria

The Authority will select a consultant based upon responses to the proposals. The Authority will review all responses determined to meet all of the requirements of this RFP and will select a qualified firm based on the following criteria:

- (a) 20 percent: The relevant experience of the of the Contractor and staff assigned to the Authority;
- (b) 30 percent: The quality of the response to the RFP, including but not limited to the level of detail of the response;
- (c) 30 percent: The ability to meet the needs of the Authority as detailed in this RFP; and
- (d) 20 percent: 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 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 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 Standard Terms & Conditions

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

1. **STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT** - Unless the bidder/offeror is specifically instructed otherwise in the Request for Proposals (RFP), the following terms and conditions shall apply to all contracts or purchase agreements made with the Higher Education Student Assistance Authority (“HESAA” or the “Authority”). These terms are in addition to the terms and conditions set forth in the RFP and should be read in conjunction with same unless the RFP specifically indicates otherwise. In the event that the bidder/offeror would like to present terms and conditions that are in conflict with either these terms and conditions or those set forth in the RFP, the bidder/offeror must present those conflicts during the Question and Answer period for HESAA to consider. Any conflicting terms and conditions that HESAA is willing to accept will be reflected in an addendum to the RFP. The Authority’s terms and conditions shall prevail over any conflicts set forth in a bidder/offeror's proposal that were not submitted through the question and answer process and approved by the Authority. Nothing in these terms and conditions shall prohibit HESAA from amending a contract when it is determined to be in the best interests of the Authority.

2. **STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS**

2.1 **BUSINESS REGISTRATION** – Pursuant to N.J.S.A. 52:32-44, the Authority is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue.

The Contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the Authority. Any questions in this regard can be directed to the Division of Revenue at (609) 292-9292. Form NJ-REG can be filed online at <https://nj.gov/treasury/revenue/gettingregistered.shtml>.

2.2 **ANTI-DISCRIMINATION** - All parties to any contract with the Authority agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38. All rules and regulations issued thereunder are hereby incorporated by reference.

2.3 **PREVAILING WAGE ACT** - The New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.26 et seq. is hereby made part of every contract entered into on behalf of the Authority, except those contracts which are not within the contemplation of the Act. The bidder's submission of a proposal is their guarantee that neither they nor any subcontractors they might employ to perform the work covered by the proposal has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts. The bidder’s submission of the proposal is also their guarantee that they and any subcontractors they might employ to perform the work covered by the proposal shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

- 2.4 AMERICANS WITH DISABILITIES ACT** - The Contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L 101-336, in accordance with 42 U.S.C. 12101, et seq.
- 2.5 MACBRIDE PRINCIPLES** – The bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom’s Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles. The MacBride Principles form can be found at: <https://nj.gov/treasury/purchase/forms.shtml>
- 2.6 PAY TO PLAY PROHIBITIONS** – Pursuant to N.J.S.A. 19:44A-20.13 et seq. (L.2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for the business entity to:
- a. make or solicit a contribution in violation of the statute;
 - b. knowingly conceal or misrepresent a contribution given or received;
 - c. make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
 - d. make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee;
 - e. engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself would subject that entity to the restrictions of the Legislation;
 - f. fund contributions made by third parties, including consultants, attorneys, family members, and employees;
 - g. engage in any exchange of contributions to circumvent the intent of the Legislation; or
 - h. directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.
- 2.7 POLITICAL CONTRIBUTION DISCLOSURE** – The Contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (L. 2005, c. 271, §3 as amended) if in a calendar year the Contractor receives one or more contracts valued at \$50,000.00 or more. It is the Contractor’s responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1 (888) 313-3532 or on the internet at <https://www.elec.state.nj.us/>.
- 2.8 STANDARDS PROHIBITING CONFLICTS OF INTEREST**- The following prohibitions on Contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).
- a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Authority or any other agency with which such vendor transacts or offers or

proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52: 13D-13g.

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

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

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under N.J.S.A. 54:49-18. No requests for conference, protest, or subsequent

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

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

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

2.12 AFFIRMATIVE ACTION - The bidder is required to complete the Affirmative Action Employee Information Report, AA302, found at <https://nj.gov/treasury/purchase/forms.shtml>, 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.

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

3.1 SERVICE PERFORMANCE WITHIN U.S. – Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Authority shall be performed within the United States, except when the Director of Legal & Governmental Affairs certifies in writing a finding that a required service cannot be provided by a Contractor or subcontractor within the United States and the certification is approved by the Executive Director.

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

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

4. INDEMNIFICATION AND INSURANCE

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

a. Indemnification for Third Party Claims - The Contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the Authority and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract, including

liability of any nature or kind for or on account of the use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.

- b. The Contractor's indemnification and liability under subsection (a) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions.
- c. In the event of a patent and copyright claim or suit, the Contractor, at its option, may: (1) procure for the Authority the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

4.2 INSURANCE - The Contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best & Company. The Contractor shall provide the Authority with current certificates of insurance for all coverages and renewals thereof, and the certificates shall reflect that the insurance policies shall not be canceled for any reason except after sixty (60) days written notice to the Authority. Certificates of renewals shall be provided within thirty (30) days of the expiration of the insurance. The Contractor shall not begin to provide services or goods to the Authority until evidence of the required insurance is provided. The certificates of insurance shall indicate the title of the contract in the Description of Operations box and shall list the Higher Education Student Assistance Authority, PO Box 545, Trenton, New Jersey 08625 in the Certificate Holder box.

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

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

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

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

5. TERMS GOVERNING ALL CONTRACTS

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

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

5.3 CONTRACT TERM AND EXTENSION OPTION - If, in the opinion of the Authority, it is in the best interest of the Authority to extend a contract, the Contractor shall be so notified of the Authority's Intent at least thirty (30) days prior to the expiration date of the existing contract. The Contractor shall have fifteen (15) calendar days to respond to the Authority's request to extend the term and period of performance of the contract. If the Contractor agrees to the extension, all terms and conditions including pricing of the original contract shall apply unless more favorable terms for the Authority have been negotiated.

5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK – The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, the Authority shall provide to the Contractor advance written notice of the change in scope of work and what the Authority believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- a. If the Contractor does not agree with the Authority's proposed adjusted contract price, the Contractor shall submit to the Authority any additional information that the Contractor believes impacts the adjusted contract price with a request that the Authority reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Authority shall make a prompt decision taking all such information into account, and shall notify the Contractor of the final adjusted contract price.
- b. If the Contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the Contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the Contractor shall submit to the Authority an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Authority may request. The Authority shall make a prompt decision taking all such information into account, and shall notify the Contractor of the compensation to be paid for such work effort.

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

- a. If the Contractor does not agree with the adjusted contract price, the Contractor shall

submit to the Authority any additional information that the Contractor believes impacts the adjusted contract price with a request that the Authority reconsider the adjusted contract price. The Authority shall make a prompt decision taking all such information into account, and shall notify the Contractor of the final adjusted contract price.

- b. If the Contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the Contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the Contractor shall submit to the Authority an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Authority may request. The Authority shall make a prompt decision taking all such information into account, and shall notify the Contractor of the compensation to be paid for such work effort.

5.6 SUSPENSION OF WORK - The Authority may, for valid reason, issue a stop order directing the Contractor to suspend work under the contract for a specific time. The Contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The Contractor shall resume work upon the date specified in the stop order, or upon such other date as the Authority may thereafter direct in writing. The period of suspension shall be deemed added to the Contractor's approved schedule of performance. The Authority shall make an equitable adjustment, if any is required, to the contract price. The Contractor shall provide whatever information that HESAA may require related to the equitable adjustment.

5.7 TERMINATION OF CONTRACT

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

5.8 SUBCONTRACTING OR ASSIGNMENT

- a. Subcontracting: The Contractor may not subcontract other than as identified in the Contractor's proposal without the prior written consent of HESAA. Such consent, if granted

in part, shall not relieve the Contractor of any of its responsibilities under the contract, nor shall it create privity of contract between the Authority and any subcontractor. If the Contractor uses a subcontractor to fulfill any of its obligations, the Contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws.

- b. Assignment: The Contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Authority.

5.9 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND THE AUTHORITY -

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

5.10 MERGERS, ACQUISITIONS -

If, during the term of this contract, the Contractor shall merge with or be acquired by another firm, the Contractor shall give notice to the Authority as soon as practicable and in no event longer than thirty (30) days after said merger or acquisition. The Contractor shall provide such documents as may be requested by the Authority, which may include but need not be limited to the following: corporate resolutions prepared by the awarded Contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within thirty (30) days of the request. Failure to do so may result in termination of the contract for cause.

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

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

5.11 PERFORMANCE GUARANTEE OF CONTRACTOR - The Contractor hereby certifies that:

- a. Any equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.
- b. All equipment supplied to the Authority and operated by electrical current is UL listed where applicable.
- c. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the Authority. The Contractor shall render prompt service without charge, regardless of geographic location.
- d. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters.
- e. Trained mechanics are regularly employed to make necessary repairs to equipment in the

territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice.

- f. During the warranty period the Contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract.
- g. All services rendered to the Authority shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the Authority is rendered.

5.12 DELIVERY REQUIREMENTS -

- a. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract.
- b. The Contractor shall be responsible for the delivery of material in first class condition to the Authority in accordance with good commercial practice.
- c. Items delivered must be strictly in accordance with the contract.
- d. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, HESAA shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the Contractor.

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

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

5.15 MAINTENANCE OF RECORDS- The Contractor shall maintain records for products and/or services delivered against the contract for a period of seven (7) years from the date of final payment unless otherwise specified in the RFP. Such records shall be made available to the Authority and State Comptroller, for audit and review.

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

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

- a. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder.
- b. It shall advise the Attorney General of New Jersey:
 - 1. in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;
 - 2. immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.

- c. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the Contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey.
- d. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the Contractor, it shall promptly pay over to the Authority the allotted share thereof, if any, assigned to the Authority hereunder.

6. TERMS RELATING TO PRICE AND PAYMENT

- 6.1 PRICE FLUCTUATION DURING CONTRACT** - Unless otherwise agreed to in writing by the Authority, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract.

In the event of a manufacturer's or Contractor's price decrease during the contract period, the Authority shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Authority must be notified, in writing, of any price reduction within five (5) days of the effective date.

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

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

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

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

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