

**REQUEST FOR PROPOSALS
FOR**

AUDITING SERVICES

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

Date Issued:

January 11, 2021

Question Cut-off Date:

January 25, 2021

Proposals Due:

February 17, 2021

Evaluation Committee Chair

**Higher Education Student Assistance Authority
4 Quakerbridge Plaza
P.O. Box 545
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1.0 PURPOSE AND INTENT

The purpose of this Request For Proposal (“RFP”) is to solicit proposals from qualified accounting firms to act as the independent auditor for the New Jersey Higher Education Student Assistance Authority (“HESAA” or “Authority”) which is a public body corporate and politic which is “in but not of” the Department of State of the State of New Jersey and an instrumentality of the State. Under the provisions of Governor McGreevey’s Executive Order 122 and HESAA’s bond indentures, the Authority requires annual financial audits of its funds and accounts that are not recorded on the State’s accounting system, including separate financial and compliance audits for its Student Loan Revenue Bond issues used to fund loans originated pursuant to the New Jersey College Loans to Assist State Students (NJCLASS) loan program, other HESAA programs and funds, and the New Jersey World Trade Center Scholarship Fund. In addition, the independent auditor will be required to provide the Agreed Upon Procedure (AUP) review for HESAA’s annual bond transactions.

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.

AUP - Agreed Upon Procedure engagement for HESAA’s annual bond transactions wherein the contractor will act as fact-finder and issue a letter describing the procedures performed and the contractor’s findings.

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 – The bidder awarded a contract resulting from this RFP.

EO 122 – Executive Order 122 issued by Governor McGreevey on July 23, 2004. EO 122 governs the accountability of Authorities to the public in their accounting and financial reporting processes.

FASB – Financial Accounting Standards Board which creates the standards for private entities in the United States, and the generally accepted accounting principles that form the basis for a company’s financial statements.

Firm Fixed Price – A price that is all-inclusive of direct cost and indirect costs, including but not limited to, direct labor costs, overhead, fee or profit, clerical support, equipment, materials, supplies, managerial (administrative) support, all documents, reports, forms, travel, reproduction

and any other costs. No additional fees or costs shall be paid by the Authority unless there is a change in the scope of services.

GASB – Government Accounting Standards Board which creates the standards for governmental entities in the United States, and the generally accepted accounting principles that form the basis for those entities’ financial statements.

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

NJBEST – New Jersey Better Educational Savings Trust, as authorized by N.J.S.A. 18A:71B-35 et seq.

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

May – Denotes that which is permissible, not mandatory.

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

Request for Proposal or RFP – This document which establishes the bidding and contract requirements and solicits proposals to meet the needs of the Authority for engaging an independent auditor.

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

Should – Denotes that which is recommended, not mandatory.

State – State of New Jersey.

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

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

Task – A discrete unit of work to be performed.

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

3.0 BACKGROUND

3.1 The Higher Education Student Assistance Authority

HESAA provides students and their families with financial aid and informational resources to pursue their education beyond high school. HESAA is a comprehensive financial aid agency, which dates back to 1959 and provides nearly \$635 million in aid annually to help New Jersey students achieve their educational goals. HESAA also manages and administers student loan portfolios of approximately \$2.1 billion, as well as assisting over 1 million students, families, and educators each year by providing financial aid information and assistance.

The Authority's programs include over \$477 million annually in state funded grant and scholarship programs, up to \$160 million in state supplemental NJCLASS loan originations, and the NJBEST 529 College Savings program that has in excess of \$5.8 billion in assets under management.

3.2 HESAA Financial Systems

HESAA currently utilizes the State's financial systems to account for the majority of administrative expenditures related to the State grant and scholarship programs and the NJCLASS programs as well as the disbursement of all grant and scholarship payments to students. All of the transactions processed through the State accounting system fall under the scope of the State's annual financial statement audit conducted by the State Office of Legislative Services and are not included in the scope of services being requested under this RFP.

The Authority maintains a LAN-based General Ledger accounting package to account for transactions related to special programs not accounted for on the State accounting system due to specific operational requirements of certain non-state programs or due to the investment nature of the funds. The largest of these non-state programs is the bond-funded NJCLASS Loan Program. Additionally, FFELP loans held by the Authority under its bond financings are serviced by the Pennsylvania Higher Education Assistance Agency and Navient Solutions Inc., and all associated loan accounting records are maintained by these servicers. The auditing firm that is awarded this contract will need to rely on SSAE 16 reports prepared by the servicers' independent auditors. KPMG LLP and Baker Tilly, LLP currently audit the Pennsylvania Higher Education Assistance Agency and Navient Solutions, Inc., respectively. With respect to the NJBEST program, accounting records are maintained by the State Division of Investments and Franklin Templeton Investments for the respective college savings investments under their management and are subject to separate independent audits, currently being performed by Ernst & Young LLP.

3.3 HESAA Programs and Funds to be Audited

A. NJCLASS/FFELP Loan Programs

The NJCLASS loan program is a supplemental education loan program established by the Authority to offer an alternative source of loan funds to assist students and their parents, spouses, legal guardians or other relatives providing financial support in meeting the costs of the students' education at an eligible degree-granting college or university located within or outside New Jersey. The Authority administers the NJCLASS Loan Program in accordance with the rules and

regulations (the “Administrative Rules”) promulgated by the Authority. The Authority has issued bonds to fund NJCLASS loans since 1991.

In 2001, the Authority began using a portion of the NJCLASS Loan Program bond proceeds to purchase portfolios of existing loans with a New Jersey nexus issued through the Federal Family Education Loan program (FFELP). In addition to loans purchased from outside servicing organizations, the NJCLASS Loan Program also used bond proceeds to purchase portfolios of rehabilitated FFELP student loans from the portfolio of previously defaulted FFELP student loans owned by the Authority when it was the New Jersey State guaranty agency. The Authority is not the servicer on any of the FFELP loans acquired with NJCLASS/FFELP Bond proceeds. The Authority no longer purchases or originates FFELP loan due to the cancellation of FFELP in 2010.

Total Assets of the NJCLASS Loan Program (the “Program”) are in excess of \$1.98 billion. The assets consist primarily of education loan receivables (principal and interest). Other significant assets include cash and investments. The Program utilizes the services of a Trustee Bank to process all bond issues transactions.

Liabilities consist primarily of bonds payable. There are currently 32 series of bonds outstanding in 12 bond issues totaling approximately \$1.594 billion.

Operating Revenues are comprised of interest income on student loans and application/administrative fee income.

Operating Expenses include: bond interest expense (the largest component), fees paid to servicing agents, bad debt expense, and various program expenses.

Non-Operating Revenues/Expenses consists of income on investments and revenues earned through gains on redemptions of bonds as a result of refunding transactions, and expenses such as parity or equity releases, loans forgiven, underwriter expenses, and Repayment Assistance Program and Household Income Affordable Repayment Plan expenses.

From the inception of the program the NJCLASS loan records have been maintained on internally developed software, housed on an in-house IBM mainframe computer system. During the third quarter of 2021, it is expected that NJCLASS loan records will be transitioned to an Oracle-based system. Student loan records of the FFELP loan program are maintained on computer systems operated by the servicers, who provide loan program information to HESAA, consisting of monthly servicing reports, purchase transaction detail reports, and billings for contracted services and loan purchases.

Transactions for the Program are summarized and entered into the general ledger (via journal entries) on a monthly basis. There are several thousand monthly transactions that are summarized into approximately twenty (20) journal entries on a monthly basis.

Historically, NJCLASS loans have been funded using the proceeds from the periodic sale of tax-exempt bonds issued by the Authority. HESAA evaluates its options for issuing taxable bonds each year and such taxable bond financing could occur in the future. HESAA’s current bonds are backed solely by revenues generated by the repayment of student loans, investment agreements, and

the moral obligation of the State; no State appropriations for the payment of principal or interest are provided or necessary for the self-sustaining NJCLASS program.

More detailed information on HESAA and the NJCLASS loan program, including bond transaction history, can be found in the Higher Education Student Assistance Authority Student Loan Revenue Bonds Series 2020 Official Statement at:

<https://emma.msrb.org/IssueView/Details/RE399067>.

The Authority services all NJCLASS loans after disbursement. The Authority utilizes the services of third parties for purposes of verification, processing, and servicing of its portfolio of FFELP student loans.

B. Other HESAA Programs and Funds

1. **Federal Collections Escrow** - is the conduit for collections received from defaulted borrowers in FFELP. The FFELP Program transitioned to KHEAA, the successor guaranty agency, in January 2021 and therefore is no longer accounted for by HESAA, but the results of prior years may possibly be shown in comparative statements.
2. **NJCLASS Loan Reserve Fund (LRF)** - reimburses the various HESAA bond issues for defaulted loans from five NJ Cash Management Funds. The accounts were established under the terms of the Master Indentures. The reserve no longer exists and therefore is no longer accounted for by the Agency but the results of prior years may possibly be shown in comparative statements.
3. **NJBEST Administrative Fund** - receives fee income from the fund managers, Franklin Templeton Investments. Income is used to pay any NJBEST program expenses not covered by Franklin Templeton, as well as fund NJBEST scholarships.

Receipts: This fund receives monthly fee income from Franklin Templeton on behalf of the accounts managed by both it and the New Jersey Department of Treasury, Division of Investments. In addition, interest income received in the New Jersey Cash Management Fund ("NJCMF") account is recorded monthly.

Disbursements: The Fund pays NJBEST Scholarships and program expenses through transfers to the NJBEST appropriation unit within the State general fund.

There are fewer than 120 transactions per year, which provide funding for approximately 600 scholarships and related program expenses.

4. **Direct Loan Servicing Revenue Fund** – In the past, this fund received fee income from Federal Direct Loan (DL) servicing revenue earned through the Teaming Contract Arrangement with the Higher Education Loan Authority of Missouri (MOHELA). While this contract no longer exists, the fund still exists.

Receipts: Monthly interest income on the NJCMF account.

Disbursements: Disbursements can be used for program expenses in the future.

There are 12 transactions per year for receipts plus a few disbursements.

5. **NJCLASS Life of Loan Servicing Reserve Fund** – on a monthly basis, this fund receives the unexpended balance, after deducting program expenses, of NJCLASS program revenue, which includes income from application, servicing, and administrative fees. In addition, the fund receives a share of collections on defaulted NJCLASS loans. This fund is held as a reserve against the expense of administering and servicing NJCLASS loans in future years. Further, the fund may receive parity or equity distributions from NJCLASS.

Receipts: This fund receives the revenue items described above, as well as monthly investment income on the NJCMF account.

Disbursements: The NJCLASS Life of Loan Servicing Reserve Fund pays NJCLASS program administrative expenses through transfers to the NJCLASS administration appropriation unit within the state general fund. Further, disbursements are made from the NJCLASS Life of Loan Servicing Reserve Fund for capital expenses of the agency and bond issue closing costs.

Other: Accrued expense (compensated absences) is adjusted annually (June).

There are fewer than 100 transactions per year.

C. The World Trade Center Scholarship Fund

The World Trade Center Scholarship Fund was statutorily created following the terrorist attacks of September 11, 2001. The Fund is a 501(c)3 non-profit organization charged with raising funds to assist in securing higher education for the surviving spouses and dependent children of persons who were New Jersey residents on September 11, 2001 and who were killed in the terrorist attack on the United States on September 11, 2001, who died as a result of injuries received in the attack, who died as a result of illness caused by exposure to the attack sites, or who are missing and officially presumed dead as a direct result of the attack. Scholarships are awarded annually to eligible recipients from the Fund for the costs of undergraduate study at an institution of higher education.

Accounting for the financial activities of the Fund is conducted in accordance with FASB standards for non-profit organizations.

Receipts: Annual State of New Jersey appropriation; Corporate and individual donations (several per year), and monthly NJCMF investment income on donations received.

Disbursements: Include scholarship awards (approximately 150 disbursements) and payment of program expenses.

Total annual transactions for the New Jersey World Trade Center Scholarship Fund are approximately 90.

4.0 SCOPE OF SERVICES

Within 90 days after the close of each fiscal year, the Authority is required to file financial reports on programs and funds where financial records are not maintained on the State's accounting system.

HESAA is seeking the services of an independent auditing firm to issue three separate audit reports. Each report will contain financial statements prepared in accordance with generally accepted accounting principles and in compliance with GASB/FASB pronouncements, as applicable. The Independent Auditor's Report will be required for each audit. Additionally, for the NJCLASS Loan Program, an Independent Auditor's Report on Compliance and on Internal Control over Financial Reporting is to be provided. Each report will be posted on HESAA's website and used in HESAA's bond offering documents.

4.1 Audit Objectives

For all programs and funds audited, the independent auditor shall, in accordance with the provisions of EO 122, and in order to ensure HESAA compliance thereto, determine:

- a. Whether the financial statements present fairly the financial position, the results of operations and cash flows in accordance with generally accepted accounting principles; and
- b. Whether the Authority has an internal control structure that provides reasonable assurance that the programs and funds are in compliance with applicable laws and regulations, and that the assets of these programs and funds are adequately safeguarded.

4.2 Audit Reports

The audit reports to be issued under the terms of this RFP shall be in accordance with EO 122, in a format agreeable to the Authority, and shall cover the periods July 1st to June 30th of each fiscal year being audited. Each report shall be made up of at least the following specific parts:

- A. For the NJCLASS Loan Program – (A two-year presentation is required)
 1. Independent Auditor's Report
 2. Management's Discussion and Analysis, which the accounting firm has subjected to limited procedures;
 3. Statement of Net Assets;
 4. Statement of Revenues, Expenses, and Changes in Net Assets;
 5. Statement of Cash Flows (direct method);
 6. Footnote disclosures that are complete and satisfy all GASB/FASB disclosure requirements, as applicable;
 7. Supplemental schedules and reports consisting of:
 - a. Combining Schedules of Net Assets by individual bond fund;
 - b. Combining Schedules of Revenues, Expenses, and Changes in Net Assets by individual bond fund;

These schedules are to be subjected to the auditing procedures applied in the audit of the basic financial statements, and included in the report.

- c. An Independent Auditor's Report on Compliance and on Internal Control over Financial Reporting.

The Auditor's Report on Compliance shall be based on the following criteria:

- i. An opinion as to whether the Funds were administered in compliance with applicable laws and regulations. A statement of positive assurance on those items that were tested for compliance and negative assurance on those items not tested.
- ii. Material findings of non-compliance presented in their proper perspective: size of universe in number of items and dollars, number and dollar amount of transactions tested, number and corresponding dollar amount of instances of noncompliance.
- iii. Identification of total amounts questioned, if any, as a result of noncompliance and the auditor's recommendations for necessary corrective action.
- iv. The auditor's report on the internal control structure that includes the auditor's understanding of the current internal control structure and the assessment of control risk.

- B. Specific requirements for the Other HESAA Programs and Funds audit— (A two-year presentation is required)

- 1. Management's Discussion and Analysis, which the accounting firm has subjected to limited procedures; and
- 2. Combined Statements of Fiduciary Net Assets;
- 3. Combined Statements of Changes in Fiduciary Net Assets;
- 4. Notes to Combined Financial Statements;
- 5. Supplemental schedules and reports consisting of:
 - a. Combining Schedules of Fiduciary Net Assets by individual program or fund;
 - b. Combining Schedules of Changes in Fiduciary Net Assets by individual program or fund.

These schedules are to be subjected to the auditing procedures applied in the audit of the basic financial statements, and included in the report.

- c. An Independent Auditor's Report on Compliance and on Internal Control over Financial Reporting.

The Auditor's Report on Compliance shall be based on the following criteria:

- i. An opinion as to whether the Funds were administered in compliance with applicable laws and regulations. A statement of positive assurance on those items

that were tested for compliance and negative assurance on those items not tested.

- ii. Material findings of non-compliance presented in their proper perspective: size of universe in number of items and dollars, number and dollar amount of transactions tested, number and corresponding dollar amount of instances of noncompliance.
- iii. Identification of total amounts questioned, if any, as a result of noncompliance and the auditor's recommendations for necessary corrective action.
- iv. The auditor's report on the internal control structure that includes the auditor's understanding of the current internal control structure and the assessment of control risk.

C. Specific requirements for the New Jersey World Trade Center Scholarship Fund audit – (A single year presentation is required)

1. Independent Auditor's Report
2. Statement of Financial Position
3. Statement of Activities
4. Statement of Cash Flows
5. Notes to Financial Statements

D. Additionally, for all three audit reports, if reportable conditions exist, the independent auditor shall provide a separate management letter that should be based upon:

1. The scope of the work done in obtaining an understanding of the internal control structure and in assessing control risks.
2. The Authority's significant internal controls or control structure including the controls established to ensure compliance with laws and regulations that have a material impact on the financial statements and those that provide reasonable assurance that assets are being managed in compliance with applicable laws and regulations; and
3. The reportable conditions, including the identification of material weaknesses, identified as a result of the auditor's work in understanding and assessing the control risk. If the auditor limits its consideration of the internal control structure for any reason, the circumstances should be disclosed in the management letter.

4.3 Additional Services

The auditor will also be required to perform Agreed Upon Procedure (AUP) reviews that test the data prepared to be included in the Preliminary and Final Official Statements published as part of the Authority's annual issuance of bonds to fund the NJCLASS loan program. The auditor will be required to provide letters approving the use of the most recent audited financial statements of the Authority in these offering documents.

5.0 REQUIRED COMPONENTS OF THE RFP PROPOSAL

5.1 Overview

This section of the bidder's response proposal shall set forth the bidder's overall technical approach and plans to meet the requirements of section 4.0 of this RFP. The response should include an overview of the firm's organization and structure and should document to the Authority that the bidder understands the objectives of the audits to be conducted under the scope of work, the nature of the required work, and the level of effort necessary to successfully complete the audit engagement. The narrative should also document to the Authority that the bidder's general approach and plans to undertake and complete the engagement are appropriate to the tasks involved.

In addition, the proposal shall outline the firm's experience in the audit of bond funds, its familiarity with student loan programs and the requirements of all relevant GASB/FASB Pronouncements and E.O. 122, and should list the specific staff that would be assigned to the audit engagement.

5.2 Cost Proposal

The fixed cost proposal shall present the total cost of performing all three audits and the AUP. No further costs shall be added or billed to the Agency. In addition, the proposal should separately detail the cost of each year's annual financial statement and compliance audits for the NJCLASS Programs, the Other HESAA Programs and Funds, and the World Trade Center Scholarship Fund, as well as the AUP. The acceptable format for the cost proposal is presented in Attachment 1 (Cost Proposal by Contract Year). It must include the fixed costs for the initial three-year contract term and each of the optional extension years.

The firm will also be required to submit a detailed chart showing the person-hours for each audit, by staffing level, proposed to meet the requirements of this RFP for each year of the initial three-year contract and each of the optional extension years.

For purposes of determining the reasonability of the firm's proposal and estimating the cost of any additional work that the Authority may request, the proposal should also include an estimated staffing plan, which is a schedule detailing the all-inclusive hourly rate of each staff level at the firm, and the estimated hours to be spent by each staff level on each of the three audits. The acceptable format for the estimated staffing plan is presented in Attachment 2 (Estimated Staffing Plan by Contract Year).

5.3 Additional Information

- A. A copy of a valid New Jersey Business Registration must be submitted by the selected firm. To facilitate proposal evaluation and the 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/purchase/doingbusiness.shtml>.

- B. Pursuant to Public Law 2005, Chapter 51 (Chapter 51) State departments, agencies and authorities are precluded from awarding contracts exceeding \$17,500 to vendors who make certain political contributions on and after October 15, 2004, to avoid any appearance that the selection of State contractors is based on the contractors' political contributions. Chapter 51 also requires the disclosure of all contributions to any political organization organized under 26 U.S.C.A. 527 that also meets the definition of a continuing political committee within the meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The firm shall submit the required certification form(s) and disclosure form(s) with its proposal. Failure to submit such forms and/or failure of such forms to evidence compliance with Chapter 51 shall be cause for rejection of the firm's proposal. Any firm selected shall maintain compliance with Chapter 51 during the term of its engagement.
- C. Pursuant to Public Law, 2005 Chapter 271 (Chapter 271) firms must disclose their (and their principals') political contributions within the immediately preceding twelve (12) month period. No prospective firm will be precluded from being awarded a contract by virtue of the information provided in the Chapter 271 disclosure provided the form is fully and accurately completed. Prior to formal appointment the firm anticipated to be selected will be required to submit Chapter 271 disclosures. To facilitate proposal evaluation and contract award process, the vendor shall submit the Chapter 271 disclosure with the proposal.

Please also be advised of your responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A.19:44A-20.13 if your firm receives contracts in excess of \$50,000 from a public entity during a calendar year. It is your firm's responsibility to determine if filing is necessary. Failure to file can result in the imposition of financing penalties by ELEC. Additional information about this requirement is available from ELEC at (888) 313-3532 or www.elec.state.nj.us.

- D. In accordance with Public Law 2005, Chapter 92, all services performed pursuant to this engagement shall be performed within the United States of America.
- E. Pursuant to Public Law 1995, Chapter 159, effective January 1, 1998 and notwithstanding the provision of any other law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as shall be necessary to satisfy the indebtedness. The amount set-off shall not allow for the deduction of any expense or other deduction which might be attributable to the taxpayer, partner, or shareholder subject to set-off under this Act.

The Director of the Division of Taxation shall give notice of the set-off to the taxpayer, partner or shareholder and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under N.J.S.A.54:49-19. No request for conference, protest, or subsequent appeal to the Tax Court from any protest shall stay the collection of the indebtedness.

F. **CERTIFICATION OF NON-INVOLVEMENT IN PROHIBITED ACTIVITIES IN IRAN**

Pursuant to N.J.S.A. 52:32-58, the bidder must certify that neither the bidder, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the bidder is unable to so certify, the bidder shall provide a detailed and precise description of such activities.

G. The Terms and Conditions set forth in Attachment 3 – HESAA Terms & Conditions, are material terms of any contract resulting from this RFP.

6.0 PROPOSAL SUBMISSION

6.1 Delivery

One original and nine copies of the proposal must be marked "Auditing Services" and be delivered no later than 4:00 pm on February 17, 2021 to the following:

Evaluation Committee
New Jersey Higher Education Student Assistance Authority
4 Quakerbridge Plaza
P.O. Box 545
Trenton, NJ 08625-0545
Attention: Roseann Sorrentino

Proposals **overnighted to the Authority 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 February 17, 2021. Both print and email versions of the proposal must be received by the deadline to be considered.

6.2 Questions

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

rsorrentino@hesaa.org

Questions will be accepted until 4:00 pm on January 25, 2021. In the event that it becomes necessary to clarify or revise this RFP, such clarifications or revisions will be by addendum. Any addendum to this RFP will become part of this RFP and part of any contract entered as a result of this RFP.

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

ALL RFP ADDENDA WILL BE POSTED ON THE HESAA WEBSITE.

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

6.3 Cost liability

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

7.0 SPECIAL TERMS & CONDITIONS

7.1 Term

The contract entered as a result of this RFP will be for three years, commencing July 1, 2021 with the independent audit of HESAA's fiscal year 2021 financial statements. HESAA shall have the option to extend the contract for two (2) one-year periods, if it is deemed in the best interest of the Authority to do so.

7.2 Termination

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

7.3 Transition

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

7.4 Compliance

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

7.5 Contract

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

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

In the event of a conflict between the bidder's proposal and the provisions of this RFP, including the HESAA Terms and Conditions, attached hereto as Attachment 3, 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.

7.6 Open Public Records Act

All documents submitted in response to this RFP are subject to disclosure by HESAA as "government records" under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. ("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 requested redactions and/or requests to withhold the documents from release. Upon receiving a request for such information, HESAA will advise the Contractor if any such information is not deemed to be exempted. 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. HESAA will not honor attempts by bidders or Contractors either to designate their entire bid proposal as proprietary and/or to claim copyright protection for their entire proposal.

7.7 Price Alteration

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

7.8 Proposal Errors

A bidder may request that its proposal be withdrawn prior to the opening of proposal submissions. 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 deadline (date and time) for proposal submission and at the place specified.

If, after the opening of proposal submissions 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 opening of proposal submissions, 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 "Auditing Services," include the final proposal submission date, and be sent to the following address:

Evaluation Committee
New Jersey Higher Education Student Assistance Authority
4 Quakerbridge Plaza
P.O. Box 545
Trenton, NJ 08625-0545
Attention: Roseann Sorrentino

And emailed to: rsorrentino@hesaa.org

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

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

7.9 Joint Venture

If a joint venture submits a proposal, the agreement between the parties relating to such joint venture should be submitted with the joint venture's proposal. Authorized signatories from each party comprising the joint venture must sign the proposal. Each party to a joint venture must submit a separate Ownership Disclosure Form, Political Disclosure Forms, Disclosure of Investigations and Actions Involving Bidder form, Disclosure of Investment Activities in Iran form, 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 5.3 of this RFP.

7.10 Security and Confidentiality

A. DATA CONFIDENTIALITY

All data contained in the source documents supplied by the Authority are to be considered confidential and shall be solely for the use of the Authority. The contractor will be required to use reasonable care to protect the confidentiality of the data. Any use, sale, or offering of 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 7.10 A.: Any information that (a) was in contractor's possession before receipt from a HESAA; (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 subject to the insurance requirements set forth in this RFP.

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, and 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 State’s Asset Classification and Control policy, 08-04-NJOIT (<https://www.nj.gov/it/services/policies.shtml>). Additionally, data must be disposed of in accordance with the State’s Information Disposal and Media Sanitation policy, 09-10-NJOIT (<https://www.nj.gov/it/services/policies.shtml>).

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 and permitted by and in accordance with requirements of the State of New Jersey. The contractor shall only transmit or exchange data with HESAA or other parties through secure means supported by current technologies. The contractor shall encrypt all data defined as personally identifiable or confidential by HESAA or applicable law, regulation or standard during any transmission or exchange of that data.
5. Data Storage: All data provided by HESAA or gathered by the contractor on behalf of HESAA must be stored, processed, and maintained solely in accordance with a project plan and system topology approved by the HESAA Contract Manager. No HESAA data shall be processed on or transferred to any device or storage medium including portable media, smart devices and/or USB devices, unless that device or storage medium has been approved in advance in writing by the HESAA Contract Manager.
6. Data Scope: All provisions applicable to data include data in any form of transmission or storage, including but not limited to: database files, text files, backup files, log files, XML files, and printed copies of the data.
7. Data Re-Use: All HESAA provided data shall be used expressly and solely for the purposes enumerated in the contract. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of the contractor. No HESAA data of any kind shall be transmitted, exchanged or otherwise passed to other contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by the HESAA Contract Manager.
8. Data Breach and 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. The contractor shall erase, destroy, and render unreadable all contractor copies of non-financial HESAA data according to the standards enumerated in accordance with the State's Information Security Policy, 18-02-NJOIT: (https://www.nj.gov/it/docs/ps/18-02-NJOIT_Information_Security_Policy.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's 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 its 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 the access to or change of any file within the system.

7.11 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>

7.12 News Releases

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

7.13 Advertising

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

7.14 Licenses & Permits

The contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this contract. The contractor shall supply 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.

7.15 Claims & Remedies

A. CLAIMS

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

B. REMEDIES

Nothing in this contract shall be construed to be a waiver by HESAA of any warranty, expressed or implied, or of any remedy at law or equity, except as specifically and expressly stated in a writing executed by the Executive Director of HESAA.

7.16 Additional Work and/or Special Projects

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

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

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

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

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.

7.17 Record Retention

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

manner specified by the Authority, all records to the Authority or to the successor contractor as directed by the Authority.

7.18 Severability

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

8.0 SELECTION PROCESS

8.1 Minority- & Women-Owned Firms

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

8.2 Evaluation Criteria

The Authority contemplates awarding a contract to the firm whose proposal demonstrates the most advantageous services to the Authority, based on the proposed services, their costs, experience of the firm, and other factors considered.

Selection procedures will be based upon:

1. The proposed fee for services;
2. The quality of response to the RFP package including the firm's general and technical approach and plans to meet the requirements of the RFP;
3. The demonstrated ability and qualifications to conduct governmental audits and the firm's demonstration of the ability and qualifications to conduct audits for the volume of borrowers and complexity of the HESAA investment portfolio;
4. The quality of relevant service to governmental entities in previous transactions;
5. The firm's familiarity with laws, rules and regulations relevant to governmental audits;
6. The qualifications and experience of the assigned staffing providing the auditing services; and
7. The assurance of the availability and timely performance of the staff assigned to the Authority's audit engagement.

8.3 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.

8.4 Proposal Discrepancies

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

8.5 Negotiation and Best and Final Offer (BAFO)

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

Similarly, HESAA may invite one bidder or multiple bidders to submit a best and final offer ("BAFO"). Said invitation will establish the time and place for submission of the BAFO. Any BAFO that is not equal to or lower in price than the pricing offered in the bidder's original proposal will be rejected as non-responsive and HESAA will revert to consideration and evaluation of the bidder's original pricing.

If required, after review of the BAFO(s), clarification may be sought from the bidder(s). HESAA may conduct more than one round of negotiation and/or BAFO in order to attain the best value for HESAA.

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

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

8.6 Board Approval

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

- Attachments:
1. Cost Proposal by Contract Year
 2. Estimated Staffing Plan by Contract Year
 3. HESAA Terms & Conditions

Attachment 1

Cost Proposal by Contract Year

	Total Cost	NJCLASS Loan Programs	Individual Audits Other HESAA Programs And Funds	World Trade Center	AUP
Year 1					
Year 2					
Year 3					
Total Initial Term Cost					
Extension Year 1					
Extension Year 2					
Total Proposal Cost					

Attachment 2

Estimated Staffing Plan by Contract Year

		Estimated Staffing Plan – Individual Audits			
		Total Hours	NJCLASS Loan Programs (hours)	Other HESAA Programs and Funds (hours)	World Trade Center (hours)
Year 1					
	Staff level				
	Staff level				
	Staff level				
	Staff level				
	Staff level				
	Staff level				
	Staff level				
	Staff level				
Totals					
Year 2					
	Staff level				
	Staff level				
	Staff level				
	Staff level				
	Staff level				
	Staff level				
	Staff level				
Totals					
Year 3					
	Staff level				
	Staff level				
	Staff level				
	Staff level				
	Staff level				
	Staff level				
	Staff level				
Totals					
Extension Year 1					
	Staff level				
	Staff level				
	Staff level				
	Staff level				
	Staff level				
	Staff level				
	Staff level				
Totals					
Extension Year 2					
	Staff level				
	Staff level				
	Staff level				
	Staff level				
	Staff level				
	Staff level				
	Staff level				
Totals					

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

1. **STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT** - Unless the bidder/offeree 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/offeree 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/offeree 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/offeree’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 uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.

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

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

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

- a. Occurrence Form Comprehensive General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. 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

- 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.

5.8 SUBCONTRACTING OR ASSIGNMENT

- a. Subcontracting: The contractor may not subcontract other than as identified in the

contractor's proposal without the prior written consent of HESAA. Such consent, if granted in part, shall not relieve the contractor of any of its responsibilities under the contract, nor shall it create privity of contract between the Authority and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws.

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

5.9 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND THE AUTHORITY -

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

5.10 MERGERS, ACQUISITIONS -

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

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

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

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

- rejected for failure to meet the requirements of the contract.
- g. All services rendered to the Authority shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the Authority is rendered.

5.12 DELIVERY REQUIREMENTS -

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

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

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

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

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

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

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

becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey.

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

6. TERMS RELATING TO PRICE AND PAYMENT

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

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

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

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

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

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

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