

**REQUEST FOR PROPOSALS
FOR**

**Financial Advisor
New Jersey Higher Education Student Assistance Authority
Student Loan Program Revenue Bonds**

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

Date Issued:

August 28, 2023

Question Cut-off Date:

September 11, 2023

Proposals Due:

October 2, 2023

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Executive Director**

**Higher Education Student Assistance Authority
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Contact:

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1.0 PURPOSE AND INTENT

The New Jersey Higher Education Student Assistance Authority (“HESAA” or “Authority”), is seeking proposals from firms interested in serving as Financial Advisor to the Authority for bonds issued through negotiated sales. The Financial Advisor will serve as the Authority’s Independent Registered Municipal Advisor under the United States Securities and Exchange Commission (“SEC”) and Municipal Securities Rulemaking Board (“MSRB”) regulations and as such respondent firm must be qualified to serve in this capacity.

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

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

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

2.0 DEFINITIONS

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

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

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

AMT – Alternative minimum tax.

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

Closing Book - A compilation of documents provided by the Senior Manager following the closing of the transaction, containing but not limited to: Term Sheet, Financing Calendar, Distribution List, Closing Memorandum, Investor Presentation, Pricing Information, Management Case Cash Flow Projections, Rating Agency Information, and Summary of Outstanding Indebtedness.

Co-manager – a firm engaged by the financial advisor as part of the syndicate to assist in marketing the bonds and share in the profits and liabilities of the syndicate.

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.

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

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

Fairness Opinion - A letter summarizing an analysis indicating whether certain financial elements in a transaction, such as price, are fair to a specific constituent, from a financial point of view.

Finance Team – A subsection of the Working Group, comprised of the principal representatives from the Issuer and its Counsel, Bond Counsel, Municipal Advisor, Senior Manager and Co-Manager if applicable.

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

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

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

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

May – Denotes that which is permissible, not mandatory.

MSRB - Municipal Securities Rulemaking Board.

NJCLASS – New Jersey College Loans to Assist State Students, as provided by N.J.S.A. 18A:71C-21 through 31.8.

Official Statement or OS - A statement required by the SEC describing the issuer and the bond. It is the municipal issuer equivalent of registration of a corporate bond. In general, a broker-dealer or bank cannot underwrite a new issue of municipal securities unless it receives an official statement from the state or local government.

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

Rating Agency(s) – Companies that assess the creditworthiness of both debt securities and their issuers. Ratings published by these agencies are used by investment professionals to assess the likelihood that the debt will be repaid.

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

SEC – United States Securities and Exchange Commission.

Senior Manager – The underwriter serving as head of the underwriting syndicate and which is expected to handle negotiations and allocate securities among the members of the syndicate and to provide a range of services.

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

Should – Denotes that which is recommended, not mandatory.

State – State of New Jersey.

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

Subcontractor – An entity having an arrangement with the Contractor, whereby the Contractor uses the products and/or services of that entity to fulfill some of its obligations under its contract with the Authority, while the Contractor retains full responsibility for the performance of all of its obligations under the contract, as well as for payment to the subcontractor. The subcontractor has no legal relationship with the Authority, only with the Contractor. Without the prior written consent of HESAA, the Contractor may not subcontract other than as identified in the Contractor’s proposal.

Syndicate - A temporary group of investment banks and broker-dealers who come together to sell new offerings of equity or debt securities to investors.

Task – A discrete unit of work to be performed.

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

Working Group - The principal representatives from all parties to the transaction, including but not limited to, the Issuer and its Counsel, Bond Counsel, Municipal Advisor, Senior Manager and Co-Manager if applicable, Underwriter’s Counsel, Trustee and Trustee’s Counsel, and representatives from other contracted professional services as may be necessary to complete the transaction.

3.0 BACKGROUND

The Authority was established by N.J.S.A. 18A:71A through 18A:71C. in April 1999 to continue the mission of furthering access to postsecondary education whether by loans, grants, scholarships, or other means.

NJCLASS Program

The NJCLASS Program is a supplemental loan program created in 1991 to offer an additional source of financial support to students and their families in meeting the costs of a student's education at an eligible institution of higher education. NJCLASS loans supplement the federal Direct Loan program for postsecondary students who have additional unmet financial need after exhausting their eligibility for federal student loans. NJCLASS loans are available for New Jersey residents attending an approved institution in-state or out-of-state and for out-of-state-residents attending approved New Jersey institutions. The program also offers refinancing for NJCLASS, federal Parent PLUS, and school-certified education loans, as well as an option for borrowers to consolidate their prior NJCLASS loans.

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 2023 Official Statement at: <https://emma.msrb.org/P21741199.pdf>.

4.0 SCOPE OF SERVICES

4.1 Sizing, Structuring, and Maintenance

In its role as a fiduciary, the Financial Advisor will provide advice to the Authority and work with the Authority, the senior manager, and bond counsel with respect to the Authority's issuance of bonds to finance supplemental student loans under the NJCLASS program, as well as with respect to the Authority's servicing of its outstanding portfolio of bonds. The Financial Advisor will assist with sizing and structuring the issues as well as ongoing servicing requirements, including but not limited to strategies to manage acquired purpose interest liabilities. Required tasks include, but are not limited to, the following in the form and time required by the Authority and/or the regulatory and rating agencies:

- (a) Performing credit analyses;
- (b) Collecting and analyzing data;
- (c) Analyzing the Authority's existing portfolios;
- (d) Preparing presentations for the rating agencies and the Authority;
- (e) Procuring services from ancillary vendors that are regularly engaged by a financial advisor due to the financial advisor's expertise and ability to procure these services more efficiently and rapidly in the time period immediately before a bond deal is ready to go to market. These vendors include but are not limited to co-managers and printers;
- (f) Gathering information and preparing presentations for investors and co-managers; and
- (g) Interacting with working group members on any tasks necessary to complete the transaction and to service outstanding portfolios. These tasks include but are not limited to:
 - i. Preparing simulations of modifications to the financial structure of the program and their impact on the bond financing structure;
 - ii. Preparing legal documents, official statements and bid forms related to the bonds;
 - iii. Preparing financial instruments that may be required;
 - iv. Preparing cash flow models; and
 - v. Preparing guaranteed investment contracts for investment of the proceeds.

4.2 Analysis

The Financial Advisor is required to provide any necessary analysis in conjunction with competitive bids and/or negotiated transactions. Firms will need to advise the Authority regarding swap transactions, fair pricing and suitability of any swap amendments, assignments/novations and terminations in compliance with Commodity Futures Trading Commission rules issued under the Dodd-Frank Wall Street Reform Consumer Protection Act.

4.3 Additional Services

The Financial Advisor will be requested to assist the Authority by conducting compliance-related reviews as required by securities regulations.

The Financial Advisor will also be responsible for monitoring financial databases, placing requests with the bond trustee, which is the Disclosure Agent, to ensure that all HESAA-related Material Events, as defined in HESAA's Continuing Disclosure agreements, are reported to EMMA.

In connection with the annual financial statement audits of the NJCLASS Loan Program, the financial advisor will be the designated provider of analytical services to determine the fair values and the effectiveness of all hedge transactions (Interest Rate Swaps and Caps) as required by Governmental Accounting Standards Board (GASB) Statement #53.

In connection with the issuance of directly placed or directly purchased bonds, the financial advisor will be asked to provide fairness opinions.

The financial advisor may also be requested to work with the Authority in designing new NJCLASS loan products or other types of student loan products that may evolve over the next two years, and to assist the Authority in retaining members of the working group.

5.0 REQUIRED COMPONENTS OF THE PROPOSAL IN RESPONSE TO THE RFP

5.1 General Information

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

- (a) Provide a brief summary, listing any background information on your firm that you believe is relevant to the Authority's Student Loan Programs.
- (b) Provide proof of registration as an Independent Registered Municipal Advisor.
- (c) Provide the names and the proposed roles of those individuals who will be responsible on a day-to-day basis for this transaction. List the student loan transactions, if any, or any similar type of transactions that these individuals have been involved with over the past three years. The lack of student loan experience will not in and of itself preclude a firm from being considered as financial advisor.

- (d) Describe up to three examples of transactions for which your firm provided financial advisory services that are similar to the transactions being contemplated by the Authority.
- (e) Describe your firm's ability to use Authority loan program data provided electronically to model cash flows and other simulations required by the rating agencies, including the software/programs your firm uses to perform modeling.
- (f) Describe your firm's approach to maintaining responsive communications with HESAA.
- (g) Provide assurance that your firm and its members are not currently in violation of the rules of any governmental regulatory agencies, industry associations, or other rule-making bodies. Please also provide details of any criminal investigation or material litigation, including administrative procedures, which your firm or members were or are currently involved in since 1991.
- (h) Particular consideration will be given to firms with a presence in New Jersey and for minority-owned and women-owned firms. Please provide any information about your firm relevant to these considerations.
- (i) Provide a brief summary of the role and services you could provide as Financial Advisor to the Authority.
- (j) Provide any other information that you feel uniquely qualifies your firm to assist the Authority in this capacity for the next three years.
- (k) Provided the Security Plan described in Section 7.10 C. below.

5.2 Fees

Describe your proposed fee structure, including expenses. Provide a flat fee for your financial advisor services provided in connection with the Authority's Annual Bond Issue (not a range based on the amount of bonds issued, but a specific dollar amount, including expenses, which should be linked to the amount of bonds issued and not inclusive of the fee for a fairness opinion provided in connection with directly placed or directly purchased bonds).

Provide a separate price quote for providing each of the additional services outlined in Section 4.3.

Provide a separate fee quote for providing the Authority with computer enterprise cash-flow modeling capability for all of the Authority's potential and existing bond issues.

Provide price quotations for any other financial advisory services your firm may provide. These services may not be included in the contract award, but are requested to inform the Authority of your firm's capabilities and associated costs.

5.3 Structuring Strategy

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

5.4 Marketing Strategy

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

5.5 Additional Information

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

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

Please also be advised of your responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27, if your firm receives contracts in excess of \$50,000 from a public entity during a calendar year. It is your firm's responsibility to determine if filing is necessary. Failure to file can result in the imposition of financing penalties by ELEC. Additional information about this requirement is available from ELEC at (888) 313-3532 or <https://www.elec.state.nj.us/>

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

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

- (g) A copy of a Disclosure of Investigations and Other Actions Involving the Vendor Form must be submitted by all bidders. The certification can be found at: <https://nj.gov/treasury/purchase/forms.shtml>.
- (h) **CERTIFICATION OF NON-INVOLVEMENT IN PROHIBITED ACTIVITIES IN IRAN**
Pursuant to N.J.S.A. 52:32-58, the bidder must certify that neither the bidder, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the bidder is unable to so certify, the bidder shall provide a detailed and precise description of such activities. The certification form can be found at: <https://nj.gov/treasury/purchase/forms.shtml>
- (i) **CERTIFICATION REGARDING PROHIBITED ACTIVITIES WITH RUSSIA OR BELARUS**
Pursuant to P.L.2022, c. 3, a person or entity seeking to enter into or renew a contract for the provision of goods or services shall certify that it is not Engaging in Prohibited Activities in Russia or Belarus as defined by P.L.2002, c. 3, sec. 1(e).
The certification form is available at: <https://www.nj.gov/treasury/administration/pdf/DisclosureofProhibitedActivitesinRussiaBelarus.pdf>

(j) The Terms and Conditions set forth in Attachment 1 – HESAA Standard Terms & Conditions, are material terms of any contract resulting from this RFP.

6.0 PROPOSAL SUBMISSION

6.1 Delivery

One original and four copies of the proposal must be marked “Financial Advisor” and be delivered no later than 4:00 pm on October 2, 2023 to the following:

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

Proposals sent via **overnight delivery service to the Authority 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 4:00 pm on October 2, 2023. Both print and email versions of the proposal must be received by the deadline to be considered.

6.2 Questions and Addendums

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

rsorrentino@hesaa.org

Questions will be accepted until 4:00 pm on September 11, 2023. In the event that it becomes necessary to clarify or revise this RFP, such clarifications or revisions will be by addendum. Any addendum to this RFP will become part of this RFP and part of any contract entered as a result of this RFP.

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

ALL RFP ADDENDA WILL BE POSTED ON THE HESAA WEBSITE.

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

6.3 Cost liability

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

7.0 SPECIAL TERMS & CONDITIONS

7.1 Term

The contract entered as a result of this RFP will be for transactions issued in 2024 and 2025.

7.2 Termination

As further detailed in section 5.7 of the HESAA Standard Terms & Conditions, HESAA reserves the right to terminate any agreement entered into as a result of this RFP for convenience provided written notice has been given to the Contractor at least thirty (30) days prior to such proposed termination date and for cause upon ten (10) days' notice to the contractor with an opportunity to respond. In cases of emergency, HESAA may shorten the time periods of notification and may dispense with an opportunity to respond.

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, the HESAA Standard Terms and Conditions, any Addendum to this RFP provided pursuant to Section 6.2 of this RFP, the Company's bid proposal, and the Authority's Letter of Engagement.

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

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

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

7.6 Open Public Records Act

Pursuant to the New Jersey Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., or the common law right to know, all documents submitted in response to this RFP are subject to disclosure by HESAA as “government records” in accordance with N.J.A.C. 17:12-1.2(b) and (c).

Contractor should submit a completed and signed Confidentiality/Commitment to Defend Form with the proposal. In the event that Contractor does not submit the Confidentiality form with the proposal, HESAA reserves the right to request that the Contractor submit the form after proposal submission. The Confidentiality/Commitment to Defend Form can be found at: [ConfidentialityForm.pdf \(nj.gov\)](#).

After the opening of the proposals, all information submitted by a Contractor in response to this RFP is considered public information notwithstanding any disclaimers to the contrary submitted by a Contractor. Proprietary, financial, security, and confidential information may be exempt from public disclosure by OPRA and/or the common law when the Contractor has a good faith, legal/factual basis for such assertion.

When the RFP contains a negotiation component, the proposal will not be subject to public disclosure until a notice of intent to award a Contract is announced.

As part of its proposal, a Contractor may request that portions of the proposal be exempt from public disclosure under OPRA and/or the common law. Contractor must provide a detailed statement clearly identifying those sections of the proposal that it claims are exempt from production, and the legal and factual basis that supports said exemption(s) as a matter of law. The State will not honor any attempts by a Contractor to designate its price sheet, price list/catalog, and/or the entire proposal as proprietary and/or confidential, and/or to claim copyright protection for its entire proposal. If HESAA does not agree with a Contractor’s designation of proprietary and/or confidential information, HESAA will use commercially reasonable efforts to advise the Contractor. Copyright law does not prohibit access to a record which is otherwise available under OPRA.

In order not to delay consideration of the proposal or HESAA’s response to a request for documents, HESAA requires that Contractor respond to any request regarding confidentiality markings within the timeframe designated in HESAA’s correspondence regarding confidentiality. If no response is received by the designated date and time, HESAA will be permitted to release a copy of the proposal with HESAA making the determination regarding what may be proprietary or confidential.

HESAA reserves the right to make the determination as to what to disclose in response to an OPRA request. Any information that HESAA determines to be exempt from disclosure under OPRA will be redacted.

In the event of any challenge to the Contractor's assertion of confidentiality that is contrary to HESAA's determination of confidentiality, the Contractor shall be solely responsible for defending its designation, and in doing so, all costs and expenses associated therewith shall be the responsibility of the Contractor. HESAA assumes no such responsibility or liability.

7.7 Price Alteration

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

7.8 Proposal Errors

A bidder may request that its proposal be withdrawn prior to the proposal submission opening. Such request must be made, in writing, to Marnie Grodman. If the request is granted, the bidder may submit a revised proposal as long as the proposal is received prior to the announced date and time for proposal submission and at the place specified.

If, after the proposal submission opening but before contract award, a bidder discovers an error in its proposal, the bidder may make a written request to Marnie Grodman for authorization to withdraw its proposal from consideration for award. Evidence of the bidder's good faith in making this request shall be used in making the determination. The factors that will be considered are that the mistake is so significant that to enforce the contract resulting from the proposal would be unconscionable; that the mistake relates to a material feature of the contract; that the mistake occurred notwithstanding the bidder's exercise of reasonable care; and that HESAA or the State will not be significantly prejudiced by granting the withdrawal of the proposal. After the proposal submission opening, 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, "Financial Advisor," include the final proposal submission date, and be sent to the following address:

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

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

If it is discovered that there is an arithmetic disparity between the unit price and the total extended price, the unit price shall prevail. If there is any other ambiguity in the pricing other than

a disparity between the unit price and the extended price and the bidder's intention is not readily discernible from other parts of the proposal, HESAA may seek clarification from the bidder to ascertain the true intent of the proposal.

7.9 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 the Vendor form, Disclosure of Investment Activities in Iran form, Disclosure of Prohibited Activities in Russia and Belarus, and Affirmative Action Employee Information Report. Each party comprising the joint venture must also possess a valid Business Registration Certificate issued by the Department of the Treasury, Division of Revenue prior to the award of a contract. Refer to Section 5.5 of this RFP.

7.10 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 7.9 A.: Any information that (a) was in Contractor's possession before receipt from a data owner; (b) is independently developed or acquired by or for Contractor without use of a data owner's proprietary information; (c) is rightfully received by Contractor from a third party without a duty of confidentiality; (d) was disclosed by a data owner to a third party not under an obligation of confidentiality; or (e) is or becomes available to the public through no fault of Contractor. Contractor will not release any confidential information to a third party without the consent of the data owner unless required in order to comply with judicial or administrative process. Prior to releasing a data owner's confidential information in response to judicial process, the Contractor shall give the data owner advanced written notice of the subpoena, if not legally prohibited, and provide the data owner the opportunity to object to the required disclosure. Any other use, sale, or offering of these data to a third party without the data owner's consent in any form by the Contractor, or any individual or entity in the Contractor's charge or employ, will be considered a violation of this contract and may result in contract termination and the Contractor's suspension or debarment from State contracting. In addition, such conduct may be reported to the State

Attorney General for possible criminal prosecution. The Contractor shall be liable to HESAA for a breach of confidentiality.

The Contractor shall assume the total financial liability incurred by the Contractor associated with any breach of confidentiality.

When requested, the Contractor and all project staff including its subcontractor(s) must complete and sign confidentiality and non-disclosure agreements provided by HESAA. The Contractor shall require all staff to view yearly security awareness and confidentiality training modules provided by the Contractor. It shall be the Contractor's responsibility to ensure that any new staff sign the confidentiality agreement and complete the security awareness and confidentiality training modules within one month of the employee's start date.

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

B. SECURITY STANDARDS

1. Network Security: The Contractor shall maintain the Contractor's network security that -- at a minimum -- includes: network firewall provisioning, intrusion detection and prevention, vulnerability assessments and regular independent third-party penetration testing. The Contractor shall maintain network security that conforms to one of the following:
 - (a) Current standards set forth and maintained by the National Institute of Standards and Technology (NIST), including those at <http://web.nvd.nist.gov/view/ncp/repository>.

or

 - (b) Any recognized comparable security standard that the Contractor then applies to its own infrastructure and is approved by the NJ Office of Information Technology (NJOIT). Industry standards such as ISO 27002, PCI Data Security Standard, and ISF Standard of Good Practice, align with security best practices from SANS and CISecurity.
- The Contractor shall be subject to the same security and infrastructure review processes that are required by NJOIT and its partner Departments and Agencies. The Contractor shall submit relevant documentation and participate in the System Architecture Review (SAR) process.
- For "outsourced hosting services," the Contractor must demonstrate the ability to not only secure the physical application infrastructure utilizing the above-mentioned security requirements, but also control and secure physical access to the application hosting facilities, and the racks supporting network infrastructure and processing server equipment, web, application and database servers.

- If the Contractor is not supplying “dedicated” hardware resources to host HESAA applications and data, the Contractor must demonstrate its strategy to maintain application and/or stack isolation using commercially available security devices to maintain security zones, routing isolation and access control to infrastructure devices and access/security logging (Authentication, Authorizing, and Accounting, or “AAA”) within its infrastructure.
 - The Contractor shall provide a detailed system design document showing a Network Plan, Disaster Contingency Plan and Security Plan. Logical and physical diagrams are required.
2. Application Security: The Contractor at a minimum shall run application vulnerability assessment scans during development and system testing. Vulnerabilities shall be remediated prior to production release.

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

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

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

Data usage, storage, and protection is subject to all applicable federal and state statutory and regulatory requirements, as amended from time to time, including, without limitation, those for Health Insurance Portability and Accountability Act of 1996 (HIPAA), Personally Identifiable Information (PII), Tax Information Security Guidelines for Federal, State, and Local Agencies (IRS Publication 1075), New Jersey State tax confidentiality statute, N.J.S.A. 54:50-8, New Jersey Identity Theft Prevention Act, N.J.S.A. 56:11-44 et seq., the federal Drivers’ Privacy Protection Act of 1994, Pub. L. 103-322, and the confidentiality requirements of N.J.S.A. 39:2-3.4. Contractor shall also conform to Payment Card Industry (PCI) Data Security Standard.

4. Data Transmission: The Contractor shall only transmit or exchange HESAA data with other parties when expressly requested in writing by HESAA or other authorized parties as permitted by and in accordance with requirements of the State of New Jersey. The Contractor shall only transmit or exchange data with HESAA or other parties through secure means supported by current technologies. The Contractor shall encrypt all data defined as personally identifiable or confidential by HESAA or by applicable law, regulation or standard during any transmission or exchange of that data.
5. Data Storage: All data provided by HESAA or gathered by the Contractor on behalf of HESAA must be stored, processed, and maintained solely in accordance with a project plan and system topology approved by the HESAA Contract Manager. No HESAA data shall be processed on or transferred to any device or storage medium including portable media, smart

devices and/or USB devices, unless that device or storage medium has been approved in advance in writing by the HESAA Contract Manager.

6. Data Scope: All provisions applicable to data include data in any form of transmission or storage, including but not limited to: database files, text files, backup files, log files, XML files, and printed copies of the data.
7. Data Re-Use: All HESAA provided data shall be used expressly and solely for the purposes enumerated in the contract. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of the Contractor. No HESAA data of any kind shall be transmitted, exchanged or otherwise passed to other Contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by the HESAA Contract Manager.
8. Data Breach - Unauthorized Release Notification: The Contractor shall comply with all applicable State and Federal laws that require the notification of individuals in the event of unauthorized release of personally-identifiable information or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law ("Notification Event"), the Contractor shall assume responsibility for informing the HESAA Contract Manager and all such individuals in accordance with applicable law and shall indemnify, hold harmless and defend HESAA, its officials, and employees from and against any claims, damages or other harm related to such Notification Event.
9. End of Contract Data Handling: Upon termination of this contract, the Contractor shall maintain all data pursuant to the Records Retention requirements enumerated in section 7.16 of this RFP. The Contractor shall erase, destroy, and render unreadable all Contractor copies of HESAA data not being transferred to HESAA according to the standards enumerated in accordance with the New Jersey Statewide Security Manual (https://www.nj.gov/it/docs/ps/NJ_Statewide_Information_Security_Manual.pdf) and certify in writing that these actions have been completed within 30 days of the end of the retention period, or within seven days of the request of an agent of HESAA, whichever shall come first.
10. Security Audit: The Authority has the option to conduct a Security Audit. If HESAA exercises this option, the Contractor must allow HESAA-assigned staff full access to all operations for security inspections and audits. The Security Audit may include reviews of all issues addressed in the description of the security plan. Contractor agrees to enter into good faith discussions to implement any changes recommended by any Security Audit.

C. SECURITY PLAN

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

- Facilities Physical Security
- System Security

- System Data Security
- Administrative and Personnel Security

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

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

In addition, the security plan shall identify and define:

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

14. Data Integrity -- the products and methods used to ensure the integrity of all stored data and the electronic images, and the security of all files from unauthorized access. The Contractor must be able to provide reports on an as-needed basis on access to or changes to any file within the system.

7.11 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 through 7, and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 through 10.

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 seven years after contract completion, plus any additional period required by federal or state statutes, regulations or guidelines. At the end of a contract period, the Contractor must be prepared to transfer, in a manner specified by the Authority, all records to the Authority or to the successor Contractor as directed by the Authority.

7.18 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- and Disabled Veteran-Owned Firms

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

8.2 Evaluation Criteria

The Authority will review proposals in connection with its expected issuances, presently estimated at \$275 million annually, although this amount may be increased or decreased dependent on the scope of programs to be financed through the issuances. The Authority will select a firm based on responses to the proposals. The Authority will review the responses and select qualified firms based on the following criteria, not necessarily in order of importance:

- (a) 20 percent: The experience of the firm in advising on tax-exempt student loan revenue bond offerings;
- (b) 20 percent: The relevant experience of the staff assigned to the Authority;
- (c) 20 percent: The quality of the response to the RFP, including but not limited to the level of detail of the response;
- (d) 20 percent: The ability to meet the needs of the Authority as detailed in this RFP; and
- (e) 20 percent: The fee proposed.

8.3 Interviews

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

8.4 Right to Waive

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

8.5 Proposal Discrepancies

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

8.6 Negotiation and Best and Final Offer (BAFO)

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

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

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

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

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

8.7 Board Approval

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

Attachments: 1. HESAA Standard Terms & Conditions

**HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY
STANDARD TERMS AND CONDITIONS
(revised July 3, 2023)**

1. STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT - 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”). The Authority’s terms and conditions shall prevail over any conflicts set forth in a contractor’s quote or proposal.

2. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS
The statutes, laws, regulations, or codes cited herein are available for review at the [Home - New Jersey State Library \(njstatelib.org\)](http://www.njstatelib.org), 185 West State Street, Trenton, New Jersey 08625.

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 contractor and each subcontractor named in the bid or proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the contractor who shall provide it to HESAA.

The contractor shall maintain and submit to HESAA a list of subcontractors and their addresses that may be updated from time to time with the prior written consent of HESAA during the course of the contract performance. The contractor shall submit to HESAA a complete and accurate list of all subcontractors used and their addresses before final payment is made under the contract.

Pursuant to the N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of the business registration, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with State contracting agency.

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) 292-1730. Form NJ-REG can be filed online at <https://nj.gov/treasury/revenue/gettingregistered.shtml>.

2.2 OWNERSHIP DISCLOSURE – Pursuant to N.J.S.A. 52:25-24.2, in the event the contractor is a corporation, Partnership, or limited liability company, the contractor must complete the Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted proposal. A contractor’s failure to submit the completed and signed form prior to or with its proposal will result in the contractor being ineligible for a contract award, unless HESAA has on file a signed and accurate Ownership Disclosure Form dated and received no more than 6 months prior to the proposal submission deadline for this procurement. If any ownership change has occurred within the last 6 months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote.

In the alternative, a contractor with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

2.3 **DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN** – Pursuant to the N.J.S.A. 52:32-58, the contractor must utilize the Disclosure of Investment Activities in Iran form to certify that neither the contractor 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 Treasury’s List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the contractor, nor one of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the contractor is unable to so certify, the contractor shall provide a detailed and precise description of such activities as directed on the form. A contractor’s failure to submit the completed and signed form will preclude the award of a contract to said Contractor.

2.4 **ANTI-DISCRIMINATION** - All parties to any contract with the Authority agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38 and all rules and regulations issued thereunder are hereby incorporated by reference. The agreement to abide by the provisions of N.J.S.A. 10:5-31 through 10:5-38 include those provisions indicated for Goods, Professional Service and General Service Contracts (Exhibit A, attached).

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq. as amended and supplemented from time to time.

2.5 **AFFIRMATIVE ACTION** – In accordance with N.J.A.C. 17:27-1.1, prior to award, the contractor and subcontractor must submit a copy of the New Jersey Certificate of Employee Information Report, or a copy of Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program. Contractors not in possession of either a New Jersey Certificate of Employee Information Report or a Federal Letter of Approval, must complete the Affirmative Action Employee Information Report (AA-302) found at [NJ Department of the Treasury Contract Compliance \(state.nj.us\)](http://NJ Department of the Treasury Contract Compliance (state.nj.us)).

2.6 **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.

2.7 **MACBRIDE PRINCIPLES** – The contractor 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>

- 2.8 PAY TO PLAY PROHIBITIONS** – New Jersey law insulates the negotiation and award of State contracts from political contribution that pose a risk of improper influence, purchase of access or the appearance thereof. P.L.2005, c.51., as amended by the Elections Transparency Act, P.L.2023, c.30, codified at N.J.S.A. 19:44A-20.13 to 20.25 (“Chapter 51”) and Executive Order 333 (2023).

Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L.2005, c. 51, rev. P.L.2023, c.30), a “fair and open process” means, at a minimum, that the contract shall be: publicly advertised in newspapers or on the Internet website maintained by the public entity in sufficient time to give notice in advance of the contract; awarded under a process that provides for public solicitation of proposals or qualifications and awarded and disclosed under criteria established in writing by the public entity prior to the solicitation of proposals or qualifications; and publicly opened and announced when awarded. A contract awarded under a process that includes public bidding or competitive contracting pursuant to the State contracts law shall constitute a fair and open process. N.J.S.A. 19:44A:20.23. The agency conducting the procurement will need to determine whether the procurement meets the Election Transparency Act definition of “fair and open process” and instruct vendors on the applicability of Chapter 51.

A. For Contracts Awarded Pursuant to a Fair and Open Process

Pursuant to P.L.2005, c.51, as amended by the Elections Transparency Act, P.L.2023, c.30, codified at N.J.S.A. 19:44A-20.13 to 20.25 (“Chapter 51”), and Executive Order No. 333 (2023), contracts awarded pursuant to a fair and open process do not require a certification or disclosure of any solicitation or contribution of money, or pledge of contribution, including in-kind contributions.

B. For Contracts Awarded Pursuant to a Non-Fair and Open Process

Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L.2005, c. 51, rev. P.L.2023, c.30) and Executive Order No. 333 (2023), the State shall not enter into a Contract to procure services or any material, supplies or equipment, or to acquire, sell or lease any land or building from any Business Entity, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions, to a Continuing Political Committee or to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor during certain specified time periods. It shall be a breach of the terms of the contract for the Business entity to:

1. Make or solicit a contribution in violation of the statute;
2. Knowingly conceal or misrepresent a contribution given or received;
3. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
4. Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor or Lieutenant Governor;
5. 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;
6. Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
 7. Engage in any exchange of contributions to circumvent the intent of the Legislation; or
 8. 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.

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

A "Continuing Political Committee" means any political organization (a) organized under section 527 of the Internal Revenue Code; and (b) consisting of any group of two or more persons acting jointly, or an corporation, partnership, or any other incorporated or unincorporated association, including a political club, political action committee, civic association or other organization, which in any calendar year contributes or expects to contribute at least \$5,500 to the aid or promotion of the candidacy of an individual, or of the candidacies of individuals, for elective public office, or the passage or defeat of a public question or public questions, and which may be expected to make contributions toward such aid or promotion or passage or defeat during a subsequent election, provided that the group, corporation, partnership, association or other organization has been determined to be a Continuing Political Committee by the New Jersey Election Law Enforcement Commission under N.J.S.A. 19:44A-8. A Continuing Political Committee does not include a "political party committee," a "legislative leadership committee," or an "independent expenditure committee," as defined in N.J.S.A. 19:44A-3.

Prior to awarding any contract or agreement to any Business Entity pursuant to a non-fair and open process, the Business Entity proposed as the intended contractor of the contract shall submit the Two-Year Chapter 51/Executive Order 333 Vendor Certification and Disclosure of Political Contributions for Non-Fair and Open Contracts, certifying either that no contributions to a Continuing Political Committee or to a candidate committee or election fund of a gubernatorial candidate have been made by the Business Entity and reporting all qualifying contributions made by the Business Entity or any person or entity whose contributions are attributable to the Business Entity. The required form and instructions are available at: <https://nj.gov/treasury/purchase/forms.shtml>

2.9 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 (P.L. 2005, c. 271, rev. P.L.2023 c. 30) 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/>.

2.10 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 their 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, their official position to secure unwarranted privileges or advantages for the vendor or any other person; and
 - f. The provisions cited above in paragraphs 2.10a through 2.10e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the State Ethics Commission may promulgate under paragraph 3c of Executive Order No. 189.

2.11 NOTICE TO ALL CONTRACTORS: SET-OFF FOR STATE TAX NOTICE - Pursuant to N.J.S.A. 54:49-19, 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 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.

- 2.12 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.
- 2.13 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.
- 2.14 WARRANTY OF NO SOLICITATION ON COMMISSION OR CONTINGENT FEE BASIS** – The contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. If a breach or violations of this section occurs, HESAA shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.
- 2.15 DISCLOSURE OF INVESTIGATIONS AND OTHER ACTIONS** – The contractor shall submit the Disclosure of Investigations and Other Actions Form which provides a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five years, including the nature and status of the investigation, and, for any litigations, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. If a contractor does not submit the form with the quote, the contractor must comply within seven business days of HESAA’s requires or HESAA may deem the quote non-responsive.
- 2.16 DISCLOSURE OF PROHIBITED ACTIVITIES WITH RUSSIA OR BELARUS** – Pursuant to N.J.S.A. 52:32-60.1 (P.L. 2022, c. 3), a person or entity seeking to enter into or renew a contract for the provision of goods or services shall certify that it is not identified on the Department of the Treasury’s List of Persons or Entities Engaging in Prohibited Activities in Russia or Belarus. If the contractor is unable to so certify, the contractor shall provide a detailed and precise description of such activities. A contractor’s failure to submit a certification will preclude the award or renewal of a contract to said contractor.
- 3. STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT**
- 3.1 COMPLIANCE – CODES** – The contractor must comply with New Jersey Uniform Construction Code and the Latest National Electrical Code 70, B.O.C.A. Basic Building code, Occupational Safety and

Health Administration and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits where applicable.

- 3.2 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.
- 3.3 PUBLIC WORKS CONTRACTOR REGISTRATION ACT** – The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors, and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.51. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance.
- 3.4 PUBLIC WORKS CONTRACT – ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS** – N.J.S.A. 10:2-1 requires that during the performance of this contract, the contractor must agree as follows:
- a. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
 - b. No contractor, subcontractor, nor any person on their behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex.
 - c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and
 - d. This contract may be canceled or terminated by the Authority, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from HESAA of any prior violation of this section of the contract.

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:

- a. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex. Except with respect to affectional or sexual orientation and gender identities or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability nationality, or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotions, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- b. The contractor or subcontractor, where applicable will, in all solicitations or advertisement for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regards to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
- c. The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment, N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows:
 1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2;
 2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the bases of age, race, creed color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability nationality, or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
 3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions; and
 4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability nationality, or sex, consistent with statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

- 3.5 BUILDING SERVICE** – Pursuant to the N.J.S.A. 34:11-56.58 et seq. in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11-56.59. The prevailing wage shall be adjusted annually during the term of the contract.
- 3.6 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT** – The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to HESAA must be labeled by the contractor in compliance with the provisions of the statute.
- 3.7 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 5.7B.1. of the Standard Terms and Conditions, unless such shift was previously approved by the Director and the Treasurer.

- 3.8 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.
- 3.9 DOMESTIC MATERIALS** – Pursuant to N.J.S.A. 52:33-2 et seq., if the contract is for the construction, alteration or repair of any public work, the contractor and all subcontractors shall use only domestic materials in the performance of the work unless otherwise noted in the specifications.
- 3.10 DIANE B. ALLEN EQUAL PAY ACT** – Pursuant to N.J.S.A. 34:11-56.14 and N.J.A.C. 12:10-1.1 et seq., a contractor performing “qualifying services” or “public work” to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. For information and report templates see <https://www.nj.gov/labor/wageandhour/tools-resources/equal-pay/>.
- 3.11 EMPLOYEE MISCLASSIFICATION** – In accordance with Governor Murphy’s [Executive Order-25](#) and the [Task Force’s July 2019 Report](#), employers are required to properly classify their employees. Workers are presumed to be employees and not independent contractors, unless the employer can demonstrate all three factors of the “ABC Test” below:

- a. Such individual has been and will continue to be free from control or direction of the performance of such service, but under his or her contract of service and in fact; and

- b. Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all places of business of the enterprise for which such service is performed; and
- c. Such individual is customarily engaged in an independently established trade, occupation, profession or business.

This test has been adopted by New Jersey under its Wage & Hour, Wage Payment, and Unemployment Insurance Laws to determine whether a worker is properly classified. Under N.J.S.A. 34:1A-1.17-1.19, the Department of Labor and Workforce Development has the authority to investigate potential violations of these laws and issue penalties and stop work order to employers found to be in violation of the laws.

3.14 CYBERSECURITY INCIDENT REPORTING REQUIREMENTS – Pursuant to N.J.S.A. 52:17B-193.2 et seq. (P.L. 2023,c.19), contractors that have access to, or host the State’s network(s), system(s), application(s), or information shall report all Cybersecurity Incidents to the New Jersey Office of Homeland Security and Preparedness (NJ OHSP) at <https://www.cyber.nj.gov/report/> within 72 hours of when the contractor reasonably believes that a Cybersecurity Incident has occurred.

Consistent with N.J.S.A. 52:17B-193.2, “Cybersecurity Incident” means a malicious or suspicious event occurring on or conducted through a computer network that jeopardizes the integrity, confidentiality, or availability of an information system or the information the system processes, stores, or transmits.

Consistent with N.J.S.A. 52:17B-193.3(f), any Cybersecurity Incident notification submitted to the NJ OHSP shall be deemed confidential, non-public, and not subject to the provisions of N.J.S.A. 47:1A-1, et seq., commonly known as the Open Public Records Act, as amended and supplemented and may not be discoverable in any civil or criminal action or subject to subpoena, unless the subpoena is issued by the New Jersey State Legislature and deemed necessary for the purposes of legislative oversight.

This reporting required by N.J.S.A. 52:17B-193.2 et seq. (P.L. 2023, c.19) to NJ OHSP is in addition to the contractor’s responsibility to report Security Incidents as may be set forth in the Contract Scope of Work. If the Contract Scope of Work does specify a notification period the contractor shall give notice of the Cybersecurity Incident to HESAA as soon as practicable, but not more than one business day after the Contractor reasonably believes that a Cybersecurity Incident has occurred.

4. INDEMNIFICATION AND INSURANCE

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

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

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

4.2 INSURANCE - The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A-VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days' written notice of cancellation or material change to the Authority at the address shown below. If the contractor's insurer cannot provide 30 days written notices, then it will become the obligation of the contractor to provide the same. The contractor shall provide the Authority with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 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; and
\$1,000,000 DISEASE AGGREGATE LIMIT.

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

In the case of a contract entered into pursuant to N.J.S.A. 52:32-17 et seq. (small business set-asides) the minimum amount of insurance coverage in subsections a, b, and c above may be amended for certain commodities when deemed in the best interest of the Authority by the Executive Director.

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 **FORCE MAJEURE** – Neither party will be liable to the other for any delay or inability to perform its obligations if such delay or inability arises from any act of G-d, fire, natural disaster, act of war (declared or undeclared), act of terrorism (domestic or international), riot, civil disturbance, pandemic, or other health crises (arising during the term of the contract). In the event of such a delay or inability to perform, the time for performance will be extended by an amount reasonable under the specific circumstances and mutually agreed-upon date sufficient to allow contractor to perform the work delayed by the force majeure.

- 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 30 days prior to the expiration date of the existing contract. The contractor shall have 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 Authority 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 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.

Any changes or modifications to the terms of this Contract shall be valid only when they have been reduced to writing and signed by the contractor and HESAA.

5.5 CHANGE IN LAW – If, after award, a change in applicable law or regulations occurs which affects the contract, the parties may amend the contract, which including new work required by the change in law or to eliminated work no longer required by the change in law along with a commensurate price changes. The parties shall negotiate the terms of the change in good faith, however if agreement is not possible after reasonable efforts, HESAA shall make a prompt decision taking all relevant information into account, and shall notify the contractor of the final adjusted scope of work and contract price.

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.

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 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 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 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– 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. Nothing contained in any of the contract documents shall be construed as creating any contractual relationship between any subcontractor and HESAA.

5.9 RESERVED

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 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 30 days of the request. Failure to do so may result in termination of the contract for cause.

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

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

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

- a. 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; and
- 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–

- a. Pursuant to N.J.AC. 17:44-2.2, the contractor shall maintain all documentation related to products, transactions or services under this contract for a period of 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.
- b. The State may request, receive, review, and audit copies of any and all records and documents related to a State contract at any time. The contractor shall make a good faith effort to cooperate with the request and upon receipt of the request, the contractor shall promptly provide the requested records and documents free of charge in the time, place, and manner specified. Failure of the contractor to comply with the request or the audit may be used by HESAA to establish contract non-compliance, to take any action, or seek any remedy available under the contract, at law, or in equity.

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; and

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; and
 - 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.
- 5.17 NEWS RELEASES** – The contractor is not permitted to issue news releases pertaining to any aspect of the services being provided under this contract without prior written consent of the Authority.
- 5.18 ADVERTISING** – The contractor shall not use the State’s name, seal, or logos as part of any commercial advertising without first obtaining the prior written consent of the New Jersey Secretary of State. The contractor shall not use HESAA’s name, seal, logos, images or any data or results arising from this contract as part of any commercial advertising without first obtaining the prior written consent of the Authority.
- 5.19 ORGAN DONATION** – As required by N.J.S.A. 52:32-33.1, the State encourages the contractor to disseminate information relative to organ donation and to notify its employees, through information and materials or through an organ and tissue awareness program, of organ donation options. The information provided to employees should be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. 1320b-8 to serve in this State.
- 5.20 LICENSES AND PERMITS** – the contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this contract. Notwithstanding the requirements of the RFP, 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 of all such licenses, permits and authorizations must be considered by the contractor in its quote.
- 5.21 CLAIMS AND REMEDIES** –
- a. 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. Noting in this contract shall be construed to be a waiver by HESAA of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in writing executed by the Authority.
 - c. In the event that the contractor fails to comply with any material contract requirements, the Authority may take steps to terminate this contract in accordance with these Standard Terms and Conditions, authority the delivery of contract items by any available means, with the difference between the price paid and the defaulting contractor’s price either being deducted from any monies due the defaulting contractor or being an obligation owed the State by the defaulting contractor, as provided for in the State administrative code, or take any other action or seek any other remedies available at law or in equity.

5.22 ACCESSIBILITY COMPLIANCE – The contractor acknowledges that HESAA may be required to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. 794. The contractor agrees that any information that it provides to HESAA in the form of a Voluntary Product Accessibility Template (VPAT) about the accessibility of the Software is accurate to a commercially reasonable standard and the contractor agrees to provide HESAA with technical information available to support such VPAT documentation in the event that HESAA relied on any of the contractor’s VPAT information to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. 794. In addition, contractor shall defend any claims against HESAA that the Software does not meet the accessibility standards set forth in the VPAT provided by the provider in order to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. 794 and will indemnify HESAA with regards to any claim made against HESAA with regards to any judgment or settlement resulting from those claims to the extent the contractor’s Software provided under this contract was not accessible in the same manner as, or to the degree set forth, in the contractor’s statements or information about accessibility as set forth in the then-current version of an applicable VPAT.

5.23 CONFIDENTIALITY–

- a. The obligations of HESAA under this provision are subject to the New Jersey Open Public Records Act (“OPRA”), N.J.S.A. 47:1A-1 et seq., the New Jersey common law right to know, and any other lawful document request or subpoena.;
- b. By virtue of this contract, the parties may have access to information that is confidential to one another. The parties agree to disclose to each other only information that is required for the performance of their obligations under this contract. Contractor’s Confidential Information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure of Vendor Intellectual Property (“Contractor Confidential Property”). Notwithstanding the previous sentence, the terms and pricing of this contract are subject to disclosure under OPRA, the common law right to know, and any other lawful document request or subpoena.;
- c. HESAA’s Confidential Information shall consist of all information or data contained in documents supplied by HESAA, any information or data gathered by the contractor in fulfillment of the contract and any analysis thereof (whether in fulfillment of the contract or not);
- d. A party’s Confidential Information shall not include information that (a) is or becomes a part of the public domain through no act or omission of the other party, except that if the information is personally identifying to a person or entity regardless of whether it has become part of the public domain through other means, the other party must maintain full efforts under the contract to keep it confidential; (b) was in the other party’s lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party;
- e. HESAA agrees to hold Contractor’s Confidential Information in confidence, using at least the same degree of care used to protect its own Confidential Information;
- f. In the event that HESAA receives a request for Contractor Confidential Information related to this contract pursuant to a court order, subpoena, or other operation of law, HESAA agrees, if permitted by law, to provide contractor with as much notice, in writing, as is reasonably practicable and HESAA’s intended response to such order of law. Contractor shall take any action it deems appropriate to protect its documents and/or information;

- g. In addition, in the event contractor receives a request for HESAA Confidential Information pursuant to a court order, subpoena, or other operation of law, contractor shall, if permitted by law, provide HESAA with as much notice, in writing, as is reasonably practicable and contractor's intended response to such order of law. HESAA shall take any action it deems appropriate to protect its documents and/or information; and
- h. Notwithstanding the requirements of nondisclosure described in this section, either party may release the other party's Confidential Information:
 - 1. If directed to do so by a court or arbitrator of competent jurisdiction; or
 - 2. Pursuant to lawfully issued subpoena or other lawful document request:
 - i. in the case of HESAA, if HESAA determines the documents or information are subject to disclosure and contractor does not exercise its rights as described in section 5.23f., or if contractor is unsuccessful in defending its rights as described in section 5.23f.; or
 - ii. in the case of contractor, if contractor determines the documents or information are subject to disclosure and HESAA does not exercise its rights described in section 5.23g, or if HESAA is unsuccessful in defending its rights as described in section 5.23g.

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 5 days of the effective date. Failure to report price reductions may result in cancellation of contract for cause, pursuant to section 5.7b.1.

In an exceptional situation HESAA may consider a price adjustment. Requests for price adjustments must include justification and documentation.

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

6.3 PAYMENT TO VENDORS –

- a. HESAA is authorized to order and the contractor is authorized to ship only those items covered by the contract resulting from the RFP. If a review of orders placed by HESAA reveals that goods and/or services other than those covered by the contract have been ordered and delivered, such delivery shall be a violation of the terms of the contract and may be considered by HESAA as a basis to terminate the contract and/or not award the contractor a subsequent contract. HESAA may take such steps as are necessary to have the items returned by the Authority, regardless of the time between the date of delivery and discovery of the violations. In Such event, the contractor shall reimburse HESAA the full purchase price;
- b. The contractor must submit invoices to HESAA with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily completed or delivered. For commodity contracts, the invoice, together with the Bill of Lading, and/or other documentation to confirm shipment and receipt of contracted goods must be received by

HESAA prior to payment. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work and must be in strict accordance with the firm, fixed prices submitted for each task or subtask. When applicable, invoices should reference the appropriate tasks or subtask or price line number from the contractor's proposal. All invoices must be approved by HESAA before payment will be authorized.

- c. In all time and materials contracts, HESAA shall monitor and approve the hours of work and the work accomplished by contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adopted as appropriate for the Scope of Work being performed can be found at [Vendor Timesheet.xls \(live.com\)](#); and
- d. The contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned, or disable veteran owned subcontractors. This breakdown shall be send to the Office of Diversity and Inclusion.
- e. The contractor shall have sole responsibility for all payments due any subcontractor.

6.4 OPTIONAL PAYMENT METHOD: P-CARD – The State offers contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and HESAA's use of the p-card are optional. P-card transactions do not require the submission of a contractor invoice; purchasing transactions using the p-card will usually result in payment to a contractor in three days. A contractor should take note that there will be a transaction-processing fee for each p-card transaction. To participate, a contractor must be capably of accepting MasterCard. Additional information can be obtained from banks or merchant service companies.

6.5 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 60 days of the agency's receipt of a properly executed State Payment Voucher or within 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 HESAA by the State Legislature and made available through receipt of revenues.