



**REQUEST FOR PROPOSALS  
FOR**

**Depository Banking Services**

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

**Date Issued:**

**March 4, 2020**

**Question Cut-off Date:**

**March 13, 2020**

**Proposals Due:**

**March 30, 2020**

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## 1.0 PURPOSE AND INTENT

The Higher Education Student Assistance Authority (“HESAA” or the “Authority”) is soliciting proposals from qualified banks with a presence in New Jersey for depository banking services for its NJCLASS loan program. The contractor must be a state or nationally chartered bank, with a branch presence in the State of New Jersey, and be in compliance with all Federal and New Jersey State laws governing all services to be awarded. In addition, the contractor must be a member of an automated clearinghouse (ACH) association and be in compliance with all rules and regulations set by the National Automated Clearing House Association (NACHA), local ACH associations and ACH operators. The contractor must also be a member of the Federal Reserve direct wire system.

All services must be the responsibility of the primary vendor. HESAA will not enter into any agreements with subcontractors.

The required depository banking services include electronic banking services, which encompass batch processing of a daily file of one-day ACH debits from borrowers generated through HESAA’s web based on-line payment application, batch processing of two weekly files of two-day ACH debits generated through a recurring debit process, electronic lockbox (E-Box) paperless processing of customer initiated on-line banking payments, daily wholesale lockbox processing with associated data entry and daily deposit of funds received at HESAA offices, utilizing both remote deposit capture and branch banking, and daily deposits by contracted attorneys. One bank account with two separate lockboxes will be required for this project.

## 2.0 DEFINITIONS

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

**ACH** – Automated Clearinghouse.

**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.

**Barcode** - A machine readable optical label that contains information about the item to which it is attached.

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

**Contract** – This RFP, addenda to this RFP, the HESAA Standard Terms and Conditions, the contractor’s proposal submitted in response to this RFP, including any 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.

**Firm Fixed Price** – A price that is all-inclusive of direct cost and indirect costs, including but not limited to, direct labor costs, overhead, fee or profit, clerical support, equipment, materials,

supplies, managerial (administrative) support, all documents, reports, forms, travel, reproduction and any other costs. No additional fees or costs shall be paid by the Authority unless there is a change in the scope of services.

**ICR** – Intelligent Character Recognition.

**IETF** – Internet Engineering Task Force.

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

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

**May** – Denotes that which is permissible, not mandatory.

**MICR** – Magnetic Ink Character Recognition.

**NACHA** – National Automated Clearinghouse Association.

**OCR Processing** – Optical Character Recognition Processing.

**OpenPGP** – Open Specification for Pretty Good Privacy Working Group (IETF).

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

**QR Box** – A matrix barcode.

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

**SFTP** – Secured File Transfer Protocol.

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

**Should** – Denotes that which is recommended, not mandatory.

**State** – State of New Jersey.

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

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

**Task** – A discrete unit of work to be performed.

**TCP/IP** – Transmission Control Protocol/Internet Protocol.

### 3.0 BACKGROUND

In Fiscal Year 2019, the number of payments received from each major source and the dollar amounts were as follows:

| Payment Source                                    | Number of Payments | Amount           |
|---|--------------------|------------------|
| HESAA Online Payment ACH Application              | 829,317            | \$171,763,175.62 |
| Lockbox Processing                                | 206,493            | \$52,420,608.00  |
| Electronic Lockbox (Current Bank's E-Box Process) | 153,865            | \$26,450,631.54  |
| Weekly ACH Debit Process                          | 74,581             | \$11,658,196.72  |

If, prior to the commencement of or during the contract term, HESAA has intentions of modifying any of the current remittance documents, the contractor will be required to coordinate with HESAA regarding the placement of the remittance document scan line and all other related changes to the document at that time.

Below is the summary list of banking services, not necessarily all inclusive, requested. The detailed specifications are delineated in **Section 4.0, SCOPE OF SERVICES**.

|    |   |
|----|---|
| 1  | Zero Balance Account Services                                       |
| 2  | Monthly Bank Statements   |
| 3  | Automated daily balance reporting                                   |
| 4  | Intra-day reporting capabilities                                    |
| 5  | Report generation/customization                                     |
| 6  | Branch Presence in New Jersey                                       |
| 7  | PO BOX maintenance  |
| 8  | Lockbox Processing and Courier Services                             |
| 9  | Scan Line Process   |
| 10 | Ability to read Scan Lines with Check Digit                         |
| 11 | Data entry in the absence of a Scan Line Remittance Document        |
| 12 | Encoded deposit slips   |
| 13 | Branch deposit or remote deposit capability                         |
| 14 | Electronic transmission and receiving capability                    |
| 15 | ACH Debit and Credit capabilities (Electronic payment capabilities) |
| 16 | Lockbox Imaging Technology  |



|    |   |
|----|---|
| 17 | Web Based Check and Remittance Image Delivery       |
| 18 | Web Based Wire Transfer Functionality               |
| 19 | Web Based Bank Account Inquiry/Reporting capability |
| 20 | Timely, reliable customer service                   |
| 21 | Exception processing                                |

**4.0 SCOPE OF SERVICES**

**4.1 Depository Accounts**

Initially, HESAA will require the establishment of a NJCLASS Student Loan Depository Account along with accurate and timely processing of all banking transactions, services and reports related to this account:

See **EXHIBIT A** for a detailed diagram of the **HESAA Funds Flow**.

\* HESAA reserves the right to increase the number of depository accounts, as the need arises, during the course of this contract term. HESAA is solely responsible for the opening and closing of all bank accounts.

All acceptable lockbox remittances shall be totaled and deposited on the same day received with same day ledger credit. Contractor shall keep business records evidencing the date the payment was received, for example, by stamping the payments with a date stamp, and shall ensure that there are sufficient internal controls and reporting to demonstrate that the date of receipt noted in the system of record matches the date the physical payment was received. Availability of deposits must, at a minimum, be in accordance with the appropriate Federal Reserve District Availability Schedules. Cash and “on-us” checks must receive same day availability corresponding to the deposit credit date. Any delay in deposit credit based on this procedure may result in the contractor compensating HESAA for its lost earnings at the thirteen-week T-Bill rate.

**4.2 Lockbox Information**

Validated lockbox deposit slips must be delivered via courier the next business day by 8 a.m. Eastern time along with all other daily courier requirements applicable to HESAA.

All lockbox mail must be picked up every day at dedicated boxes opened by the contractor and located in a New Jersey post office or a post office within fifty (50) miles of the New Jersey border. As an alternative to a dedicated box, if the vendor utilizes a unique zip code for all its lockbox mail, HESAA’s mail can be received through separate box numbers or call numbers within that zip code.

Checks shall be acceptable for processing if they are made payable to payees listed on EXHIBIT B. HESAA reserves the right to add additional payees to EXHIBIT B at its discretion. The payee designations include but are not limited to the following:

- NJHEAA (New Jersey Higher Education Assistance Authority);
- HESAA (Higher Education Student Assistance Authority);

- Office of Student Assistance;
- Department of the Treasury, State of New Jersey;
- Check made out to Cash, endorsed by the debtor;
- New Jersey Class; and
- NJCLASS.

Although debtors are instructed to forward any “correspondence only” directly to HESAA, this may not eliminate correspondence received within the lockbox, either with or without a payment. Historically less than 5% of the lockbox documents are “correspondence only” with no payment attached. The contractor must forward all “correspondence only” items to HESAA.

See **EXHIBIT C Analysis of Processed Lockbox Items** for the remittance volumes and dollar amounts received during HESAA’s Fiscal Year 2019 for each application.

#### **4.3 Lockbox Statistics**

##### **1. NJCLASS Lockboxes (2)**

Approximately 17,000 remittances are received monthly generating an annual dollar value of \$52.4 million. The borrower has a variety of payment options from which to choose including the timing of the payments, either monthly or quarterly. The loan bills are generated either monthly or quarterly based on the repayment option chosen by the borrower. Approximately 75,000 NJCLASS bills are generated monthly.

Volume for this application is expected to decline slightly as more borrowers choose other payment methods.

The contractor must process all payments that meet the specifications outlined in this RFP and forward all original correspondence items to HESAA. The contractor must be able to process payment types that utilize remittance documents that include OCR scan lines, barcode, or QR box layout.

#### **4.4 Lockbox Remittance Documents**

All payments received for deposit, regardless of whether or not remittance documents are attached, must be deposited on the date of receipt.

The NJCLASS student payment types utilize remittance documents that include OCR scan lines. See **EXHIBIT D NJCLASS Bill Statements, Remittance Documents and Scan line Layout**.

The following items shall be included in the scan line on the NJCLASS remittance documents: 1). Invoice Number and 2). Check Digit.

Payments received may also be accompanied by various HESAA generated letters and debtor generated correspondence. See **EXHIBIT E Final Warning Default Letter** for an example of one of the letters generated by HESAA that may accompany a payment.

The primary remittance data (the invoice number, payment amount and identification number) for all processable items must be captured. Other remittance documents that do not contain scan lines, such as Default Letters and random correspondence submitted by debtors, must be manually keyed and verified by the contractor.

The contractor must also include a check digit calculation into its data entry program to automatically verify the invoice number. The check digit calculations must conform to the methodology illustrated in **EXHIBIT F NJCLASS Check Digit Calculation Procedure**.

#### **1. NJCLASS Remittance Document**

See **EXHIBIT D** for the NJCLASS bill statements and remittance document layouts for payments made by check. Note that this document is designed to handle both monthly (principal & interest) and quarterly (interest only) payments, and to serve as a notice of pending draft for borrowers making payments by recurring ACH draft. The document is designed for scan line and check digit processing.

Each of the three NJCLASS payment options described above are illustrated on the sample bill statements as follows:

- a. The first is designed for debtors making monthly payments via check.
- b. The second is designed for debtors making monthly payments via ACH (Debit) transactions.
- c. The third is designed for quarterly billings of interest for debtors that are deferring payment of principal.

#### **4.5 General Lockbox Processing Instructions**

##### **1. Automated Processing – When an unaltered scannable remittance document and check are present.**

Check copy and remittance document shall not be forwarded to HESAA. Any additional correspondence shall be forwarded to HESAA.

All payments received with an NJCLASS remittance document, containing a readable NJCLASS scan line, including the invoice number, check digit, etc., shall be processed in an automated manner.

Automated processing includes: running the scan line remittance document through OCR processing equipment to record account information, keying check dollar amount and verifying amount keyed (via ICR or other bank proposed means), and MICR read of check number, imaging the remittance document and front of the check, and depositing the funds.

##### **2. Semi-Automated Processing – When an altered scannable remittance document and check are present or when a check is not accompanied by a scannable remittance document.**

Check copy and remittance document shall not be forwarded to HESAA unless it is illegible to the lockbox operator. Any additional correspondence shall be forwarded to HESAA.

All payments received without a remittance form, but with an invoice number on the check, shall be manually keyed by the lockbox operator. All payments received without an NJCLASS remittance document or an invoice number shall be manually keyed by the lockbox operator by inserting all zeroes in the NJCLASS invoice number field.

If an NJCLASS payment is identified with one or more NJCLASS loan numbers (a loan number is eight digits in length and is prefixed with one of the following: "P", "C", "F", "V" or "M"), either on an altered remittance document or on the check itself, the operator shall key all zeroes in the NJCLASS invoice number field.

All NJCLASS payments received with an NJCLASS account number, which consists of 9 digits followed by the letters NJC and 9 additional digits followed by the letters R, I, or C, shall be manually processed using equipment capable of accepting the input of the account number, and processed in a separate file from payments containing the invoice number. The current service provider uses a designated box number to process all payments identified by the NJCLASS Account number.

Semi-automated processing includes: the manual data entry of account information; keying check dollar amount and verifying amount keyed (via ICR or other bank proposed means), and MICR read of check number, imaging the remittance document and front of the check, and depositing the funds.

### **3. Reporting Requirement**

NJCLASS reports, grouped by deposit batch type, must be available to HESAA both via the Web Based system and in paper form. The report shall be available by 8:00 a.m. Eastern time daily and include all prior-day deposited item detail. Paper copies of the batch listings shall also be forwarded daily to HESAA by 8:00 a.m. Eastern time.

The contractor shall also have the capabilities to create and download customized reports which HESAA may require from time to time.

All processable items, including checks with unaltered remittance document(s) (payment stubs), and checks with no remittance document(s) but with an account number, invoice number, or NJCLASS loan number, shall be grouped in batches of fifty (50) items.

Other processable NJCLASS items shall be grouped in separate batches by type of processed item. For example, NJCLASS payments containing a loan number or an account number in place of an invoice number shall be batched together. Also, processed items containing non-standard documentation shall be batched together.

#### **4.6 Processable Items**

All items received with a check made payable to an acceptable payee shall be processed and deposited. These items include:

- A payment for the same payer account, which can include multiple remittance documents with one check or multiple checks with one document;

- Multiple documents for different payer accounts with one check (e.g. separate loans/accounts may pay with one check);
- Multiple documents for different payer accounts with multiple checks; and
- Foreign checks, if payable in U.S. funds.

Post-dated checks, unsigned checks and checks with unequal written and numerical amounts shall be processed in accordance with applicable State and Federal laws and regulations.

Cash payments shall be processed, but the remittance document and/or correspondence must be stamped or marked, "PAID IN CASH."

All batches must be identified with a Batch Header Slip, batched approximately fifty (50) items per batch, rubber banded together, placed in a separate envelope marked "PROCESSABLE ITEMS WITH PAPER DOCUMENTS" and identified with the deposit date.

The sorting and batching specifications for the processable items that must be delivered to HESAA the next business day are as follows, with examples of suggested batch headers following each category in parentheses:

1. Check and Default letter remittance: Image check and send default letter to HESAA. **(DL \$)**;
2. Check with correspondence only and an account, loan or invoice number, entered on the correspondence: Image check and send correspondence to HESAA. **(CORR \$)**;
3. Payment with a change of address indicated on the remittance document or correspondence: Image check and remittance document; send remittance document or correspondence with address change to HESAA. **(COA \$)**;
4. Payment received with no remittance document or correspondence that can identify the payer account or invoice number: Image and include in batch. **(\$-NO DOC)**; and
5. Remittance advice or correspondence received with a cash payment: Mark/stamp "PAID" and batch. The remittance must be imaged and a credit advice created and imaged in place of a check image. **(CASH \$)**.

#### **4.7 Unprocessable Items**

Items that must be rejected and returned to HESAA in, or attached to, the original envelope instead of processing are as follows, with examples of suggested batch headers following each category in parentheses:

1. Remittance document but no payment. **(DOC-NO \$)**;
2. Items made payable to any other State Agency, corporation, or partnership, whether endorsed to order or not. **(X PAYEE)**;
3. Foreign check payable in other than US funds. **(X FRGN)**;
4. Correspondence received with no payment. **(CORR-NO \$)**;
5. Mutilated or torn payments and/or remittance documents that cannot be read or processed. **(MUTIL)**;
6. Change of address without payment. **(COA-NO\$)**; and
7. Any other item that the contractor considers a problem must be rejected as unprocessable. **(MISC)**.

The above types of sorted unprocessable items must be identified with a batch Header Slip, batched approximately fifty (50) items per batch, banded or clipped together, placed in a separate envelope marked "UNPROCESSABLE ITEMS", and identified with the processing date.

#### **4.8 Data Input Requirements**

The primary remittance data (the invoice number, payment amount, and check number) for all processable items shall be entered/captured in accordance with the instructions set forth in **EXHIBIT G** for **NJCLASS Input Instructions**.

#### **4.9 Lockbox Deposit Slips**

The contractor must utilize a two-part MICR encoded lockbox deposit slip. For each of the three lockbox applications, two deposit batches must be made each business day. The first and primary deposit consists of the processed remittance items, and the second deposit consists of exceptions such as checks deposited without a remittance document and other items not specifically instructed to be withheld from deposit. A copy of the validated daily deposit slips, together with all other correspondence, must be delivered to HESAA via courier the next business day.

#### **4.10 Packaging and Delivery Instructions**

Please see **EXHIBIT H** for the **Package and Delivery Instructions** required by HESAA. The instructions specify what items/information from the previous workday's remittance processing should be packaged together, as well as, when and where the items must be delivered each day.

#### **4.11 Daily Control Summary Reports**

On a daily basis, the vendor must fax the Daily Control Summary Reports to HESAA and deliver, via courier, a hard copy of the prior day's Daily Control Summary Reports and Summary Data Reports. These control reports shall also be available electronically and list the following remittance information by daily deposit date and for each batch number:

Summary Data: A summary of the current day's activity must be available electronically to HESAA each afternoon by 4:00 p.m. Eastern time including the following:

- Batch Number;
- Total Number of Checks Within a Batch;
- Total Dollars Within a Batch;
- Total Checks and Dollars - All Batches; and
- Report Sequence - By Batch Number.

Detail Data: A detailed hard copy of all the prior day's activity must be delivered on a daily basis via courier by 8:00 a.m. Eastern time. The detailed hard copy should be in a format that is similar to the prior day's electronic transmission and contain the following:

- Batch Item Sequence Number (assigned to each payment);
- Invoice Number – for NJCLASS Payments;

- Check Number;
- Check Amount;
- Total Checks and Dollar Amount Per Batch; and
- Report Sequence - By Batch Number and By Item Sequence Number.

#### 4.12 Lockbox Output Requirements (Data Transmission)

The vendor must be able to electronically transmit two separate transmissions (one file for each lockbox) of the current day's student loan payment information to HESAA no later than 4:00 p.m. Eastern time.

The electronic transmission protocol, format, and encryption must be compatible with the computer systems and communication software at HESAA.

The **primary method** of delivery for Lockbox files sent to HESAA must be over the Internet via TCP/IP push delivery to the HESAA server. If the initial attempt at file transmission fails for any reason, the contractor must contact the designated file transmission representative at HESAA and, working in conjunction with this individual or other assigned authorized HESAA personnel, make additional attempts to resend the data.

If all attempts to send the file through the primary method are unsuccessful, the procedure for the **secondary method** of file transmission must be followed.

The secondary method is a procedure that allows designated HESAA personnel with a contractor-assigned user ID and password to download the files from the contractor's secure website.

If both the primary and secondary methods of file transmission have failed, such as in the case of the failure of internet service, the contractor shall follow the **third method** of file delivery. The third method is physical delivery to HESAA of a USB Flash Drive, containing a separate file for each lockbox account that has an incoming file on that day. Each filename should be the same as the transmission filename in order to uniquely identify the file contents. The USB flash drive must be delivered to HESAA via courier no later than 8:00 a.m. Eastern time the next working morning after deposit date.

Files must be delivered daily, Monday through Friday, excluding State holidays.

Files must be delivered by 4:00 p.m. Eastern time. Files shall not be delivered before 2:00 p.m. Eastern time, unless specifically requested by HESAA due to special circumstances.

Files delivered via TCP/IP, using either FTP or SFTP must be transmitted to HESAA via the Put command.

Files delivered via TCP/IP must be encrypted using the OpenPGP standard.

Files delivered via SFTP are automatically encrypted, though OpenPGP may be used in addition.

The OpenPGP standard is implemented by the proprietary program known as PGP. This is available from PGP Corporation at [www.PGP.com](http://www.PGP.com). The Open PGP standard is also implemented

as free software from the GNU Privacy Guard Project. That program is known as GnuPG or "GPG" and is available from [www.gnupg.com](http://www.gnupg.com). The PGP or GPG Public key must be provided to HESAA. In turn, HESAA shall provide its Public key to the successful bidder.

The following data elements and field sizes shall be utilized in the three or four daily transmissions forwarded to HESAA. Additional details of the daily control report requirements are illustrated in **EXHIBIT I - NJCLASS Output Requirements**.

- File Header;
- Batch Header;
- Batch Detail;
- Batch Trailer; and
- File Trailer.

#### **4.13 ACH Receipts**

In addition to Lockbox and manual deposits, HESAA also receives ACH deposits into the NJCLASS Student Loan Depository Account. HESAA generates and transmits ACH debit transaction files for contractor processing for each account. There are currently two HESAA processes involving ACH.

The first, as described below in section 4.14 "ACH Debit Process," involves the creation of two weekly debit transaction files for payments from borrowers who have signed authorization arrangements with HESAA to make their loan payments through monthly ACH debits on one of the available dates.

The second process, as described in section 4.16(1) "HESAA NJCLASS On-line payment," involves creation of a daily ACH file for payments from borrowers who have utilized HESAA's NJCLASS On-line Payment web application.

#### **4.14 ACH Debit Process**

The contractor must be a member of NACHA and follow the rules outlined in the published ACH manual. The contractor must have electronic transmission sending and receiving capabilities.

When data is received or transmitted electronically to the contractor or by the contractor, the contractor must utilize the proper security techniques to insure the protection of the data and the system.

For all accounts with ACH deposits, HESAA maintains the individual ACH authorization agreements throughout the life of the payments and for a minimum of two years after the termination or revocation of such authorization.

##### **1. NJCLASS ACH Debit (weekly process)**

NJCLASS borrowers making monthly payments have the option of making payments via an ACH debit rather than by check. Payment/settlement due dates for NJCLASS are the 7<sup>th</sup>, 14<sup>th</sup>, 21<sup>st</sup> and 28<sup>th</sup> of the month, which defaults to the next business day if these dates fall on a weekend or



holiday. The net dollar amount of the ACH payments collected in Fiscal Year 2019 was \$11.7 million representing an average of 6200 payments per month, and 74,400 for the year.

#### **4.15 ACH Debit Transmission**

##### **WEEKLY ACH DEBIT TRANSMISSIONS**

For its weekly ACH debit process, HESAA electronically transmits the ACH debit information (for each account respectively) in the standard NACHA PPD format to the contractor two days prior to the required settlement date. For each application, HESAA provides an annual transmission schedule to the contractor each year.

HESAA transmits separate files to the contractor via FTP or SFTP for each application/contractor account. HESAA reports control totals to the contractor as required.

In the event of a faulty transmission, HESAA initiates a second or subsequent transmission. If HESAA determines that a USB Flash Drive must replace the electronic transmission, HESAA personnel will call the contractor to instruct the contractor to make courier arrangements for USB Flash Drive pickup.

If a file scheduled for transmission is not received by 12:00 noon Eastern Time, contractor personnel should telephone HESAA.

HESAA also expects to initiate pre-notes for ALL weekly ACH items/applications. The pre-notification process shall follow the NACHA guidelines. The pre-note information shall be processed as part of the normal weekly file.

All returned pre-notes, NOCs and ACH files shall be accessible to HESAA via the web based on-line inquiry system. HESAA shall be notified of all pre-notes failures and NOCs through the contractor's Web based Communication/Inquiry system, or online banking system.

#### **4.16 Other Electronic and Web Based Payment Types**

##### **1. HESAA NJCLASS On-Line Payment**

The HESAA NJCLASS On-line payment process involves a daily transmission of one batch of files from HESAA to the contractor's ODFI of borrower initiated on-line payments made through an on-line application on the HESAA website. The outgoing files conform to NACHA standards for ACH files. The contractor returns a file of accepted customer payments containing the data needed to post the payments to HESAA's loan system. The daily on-line payment transmission occurs after the 2:00 pm Eastern Time processing deadline for each day that HESAA offices are open.

##### **2. Automated Payment Reversal**

HESAA processes any returns electronically and receives a single file from the contractor each workday, containing the NJCLASS payments. The format for processing returns uses the NACHA standards.

### **3. Customer initiated on-line banking using the Electronic Lockbox process**

For its NJCLASS loan program, HESAA currently utilizes an electronic lockbox service that enables the bills paid by customers through their bank's online banking service to be processed electronically, without conversion to paper checks and the subsequent mailing to and processing by HESAA's bank's lockbox facility.

This service is made possible through arrangements with third-party bank service providers that consolidate and send the remittance information and funds from online transactions at many banks to HESAA's bank.

After payments are received and consolidated by the contractor, the electronic lockbox process applies optional multistep validation to payments received, as appropriate. It also identifies, filters, and repairs invalid payments or other exceptions. Defined processing masks for invoice number, loan application number, and account number, as well as lists of acceptable payees and remittance addresses are used to ensure that processed items can be identified as payments to HESAA and successfully uploaded to the NJCLASS loan system. A list of the processing masks and acceptable payees is attached as EXHIBIT B. After the daily processing deadline, the bank transmits to HESAA a daily remittance file with correct account and payment information, which identifies payments by invoice number, loan number, or account number. The payment data on this file is then automatically uploaded to and processed through HESAA's loan accounting system, crediting our customers' accounts.

At the conclusion of the process, HESAA's bank processes a consolidated credit to our NJCLASS lockbox account.

HESAA requires the same type of Electronic Lockbox functionality as described above to be provided by the contractor selected under this procurement.

### **4. Remote Deposit Capture**

The contractor must be willing and able to assist HESAA to maintain or institute remote deposit services, as applicable, and implement the necessary technologies for this service, including providing any related equipment, if needed, at a reasonable cost. The costs of all services and equipment related to remote deposit capture must be included in the contractor's cost proposal.

The successor contractor must make arrangements to ensure that there is no interruption during the transition period in remote deposit services already established prior to the start date of the 2020 depository banking services contract.

The bidder's proposal must contain a detailed description of its remote deposit capture service, including a listing of the business unit and personnel who would be assigned to assist HESAA with the technical implementation of this service.

#### **4.17 Web Based Inquiry/Communication System**

HESAA personnel must have the ability to access Electronic and Web Based, lockbox, ACH, and manual deposit activity via the contractor provided Web Based Inquiry/Communication System.

The Web Based Inquiry/Communication System must be menu driven with a minimum capacity of ten concurrent users capable of accessing the same account. Only authorized HESAA personnel will be permitted to initiate inquiries. The authorized personnel will be identified after contract award.

The contractor must provide the proper security measures to prevent other contractor clients from accessing HESAA's information, and conversely, to prohibit HESAA personnel from accessing non-HESAA information.

The system must have the capacity to enable HESAA personnel to create customized reports that meet the business needs of the Authority.

The contractor must provide adequate operational training to HESAA personnel on the Web Based Inquiry/Communication System, including user manuals and instructions on its use. HESAA personnel must have access to a telephone hot-line "help desk" during working hours 8:00 a.m. to 5:30 p.m. Eastern time at a minimum. The contractor must provide on-going maintenance and emergency service when necessary.

#### **1. Web Based Inquiry/Communication System Features**

The contractor-provided Web Based Inquiry/Communication System must provide HESAA the capability to view, sort, print, and download the daily individual transaction information for all types of deposits and returns, as well as information summarized at the bank account level.

#### **2. Web Based Funds Transfers**

The contractor must provide HESAA with a Web Based ACH and wire transfer system. The system shall be capable of warehousing data for a minimum of 31 days until the transmission execution date. The system shall have the capability of establishing repetitive ACH transactions and wire templates requiring only date, amount, and description. The system must contain the proper security features to insure the protection of the data and to maintain the integrity of the system.

The contractor shall have an established backup procedure for manual wire and ACH transfer processes to be employed in the event of an electronic failure.

The contractor must promptly initiate all HESSA wire transactions. On a weekly basis, or more often as HESAA sees fit, in accordance with instructions issued by HESAA's Finance/Accounting Unit, funds shall be transferred via a Fed Wire out of this account and into the NJCLASS Trustee clearing account.

### **4.18 Lockbox Imaging and Web-Based Retrieval Services**

The contractor must provide the following services: imaging, storage and Web Based retrieval services for lockbox deposited checks and remittance documents. Items must be scanned, converted to electronic images, and accessible via the Internet. In addition, all items processed must be backed up monthly on a CD ROM and two (2) copies must be furnished to HESAA. The

software required to read the CD ROMs or other type of media provided for this purpose must be provided to HESAA for installation on its own hardware.

During the term of this contract, or during the implementation phase, HESAA may request that the monthly backup CD ROMs be replaced with secured file transmissions. The contractor should be capable of providing this service.

HESAA must have web-based access to all imaged items for a period of seven years from the date of deposit, or the end of the contractual relationship with the contractor, whichever comes first.

Under no circumstances shall the contractor release any HESAA records, including copies and images of checks, bank statements, etc., to anyone except authorized individuals of HESAA, or as required by law.

## **1. Retrieval**

HESAA expects to retrieve a varying number of images on a monthly basis as determined by need.

An image is defined as the front of a check and the accompanying remittance document. The majority of image retrieval activity usually occurs within one month from the check deposit date; however, HESAA occasionally needs to retrieve images dating back as long as seven (7) years from date of deposit.

Internet retrieval of documents should be through a secure browser compatible with Microsoft Windows. Only authorized HESAA personnel shall be permitted to initiate inquiries. In order to adequately protect HESAA records, the following security features must be built into the application:

- a. The contractor must establish a secure web based connection directly between the client's and the vendor's servers (https:protocol);
- b. The contractor must require and provide digital security certificates designed to authenticate the computer prior to accessing images for all HESAA computers being used for lockbox work;
- c. The contractor's system must include password access to the contractor's web site;
- d. The contractor's system must offer client access control that allows HESAA to internally establish users and user passwords. Initially, HESAA will require a minimum of two HESAA administrators and ten users; and
- e. The contractor's system should provide the ability for HESAA to limit its user's access to designated functions within designated bank accounts.

The bidder may offer additional security features that may be beneficial to HESAA. These features should be listed in the bidder's proposal as an optional service.

With an estimated 1.4 million transactions per year, the contractor's web applications must provide HESAA the ability to perform successful search inquiries based on batch deposit date, batch deposit header, and batch deposit sequence.

## **2. Image Retrieval Performance**

If during the course of retrieval, the contractor is unable to produce a legible copy of the image, the contractor, at no additional cost to HESAA, must provide a copy of the imaged item to HESAA.

### **4.19 Dishonored Payments**

Payments, which includes checks and ACH transactions, that are not honored the first time because of insufficient funds must be immediately re-deposited by the contractor. Only after a payment is returned twice shall the account be debited.

After a second deposit attempt, all dishonored payments, together with the debit advice, must be forwarded electronically to HESAA within 24 hours of contractor receipt, through the contractor's web-based Communication/Inquiry system. The debit memo must contain, at a minimum, the following information for each returned item:

- Bank Account Number;
- Reason for Return;
- Date Charged to the Account; and
- Amount of the payment.

### **4.20 Discrepancies and Adjustments**

Information regarding all deposit discrepancies and adjustments shall be delivered to HESAA within three business days of the deposit date. The following detail information must be included for each discrepancy and/or adjustment:

- Bank Account Number;
- Deposit Date;
- Original Deposit Total; and
- Specific Discrepancy and Amount of Discrepancy.

### **4.21 Monthly Bank Statements**

The monthly bank statement must contain information through the close of the last business day of the month. The statement must include all debits and credits posted, including discrepancies and adjustments, and must be supported by debit and credit notices, with full detail explanation. The statements should be delivered to HESAA no later than 3:00 p.m. Eastern time ten working days after statement closing.

### **4.22 Daily Automated Balance Reporting**

All accounts identified in **EXHIBIT A HESAA Funds Flow** and any future accounts established will require daily automated balance reporting accessed through electronic reporting mechanisms such that are currently employed by the contractor, such as a Web-based Communication/Inquiry

system. Every working day, by 7:30 a.m. Eastern time, the contractor must electronically provide access to account balance information to HESAA.

For each account the report shall include at a minimum the following data fields:

|   |                   |
|---|-------------------|
| 1 | Ledger balance    |
| 2 | Collected balance |
| 3 | Total credits     |
| 4 | Total debits      |
| 5 | 1-day float       |
| 6 | 2-day float       |

For all the reporting fields, there shall always be data reported. Therefore, if there is no amount reported, the contractor should input 00.00 in the specific amount field.

As technology improves, HESAA requires that the chosen contractor remain flexible, throughout the term of this contract and any extensions, as it relates to the method of balance reporting.

#### **4.23 Contractor Contact Personnel Requirements**

The contractor must appoint a senior officer (vice president or above) and a qualified substitute as a representative for contact and liaison with HESAA. This representative shall be solely responsible for insuring that the contract requirements are met, implementing HESAA instructions and resolving problems that may arise on a day-to-day basis during the term of the contract.

The contractor must provide the lines of communication, (proper contact personnel, names, location and telephone numbers), for immediate response to any request for information pertaining to these accounts. HESAA requires that the contractor designate a minimum of two professionals per category who will be responsible for the daily inquiries and any problems, including, but not limited to the following:

- Lockbox Services;
- Reports and Bank Statements;
- Invoice and Analysis;
- Transmission Issues;
- Courier Service, if applicable;
- On-Line Transaction Processing;
- Web Based Inquiry/Communication System; and
- Technology Issues.

#### **4.24 Implementation Schedule**

Based on the information provided in the Scope of Work and relevant Exhibits, the contractor must provide an implementation schedule starting with the anticipated award date to contract

commencement and beyond if applicable. The implementation schedule should include both contractor and HESAA personnel commitment during the conversion period.

#### **4.25 Transitional Period**

After the contract expiration date, the contractor must keep the lockbox open for up to six months. The mail must be picked up daily on a temporary basis and delivered directly to HESAA. At some point in time, HESAA may request that the messenger delivery service be discontinued and that any mail still received in the contractor's lockbox be forwarded directly to HESAA. To properly compensate the contractor for this phase-out service, the contractor will be paid a per-delivery fee for each delivery during this transitional time period only. During the regular contract term, the daily delivery service charge must be bundled into the lockbox processing charges. During the transitional period, the lockbox maintenance fee shall also be a billable item until officially notified by HESAA that the post office box is no longer required.

#### **4.26 Unanticipated Curtailment of Branch Services**

If at a time during the term of the contract, the contractor reduces or otherwise alters the level of branch service that was in place at the beginning of the contract to the detriment of HESAA, the contractor must make arrangements, at its own expense, to maintain the level of service that was in effect at contract initiation.

#### **4.27 Payment Method and Terms**

HESAA pays for vendor services primarily with fees and compensating balances when they exist. It is HESAA's intent to maintain compensating balances at a minimum and to pay for services primarily with fees.

##### **1. Compensating Balances**

The compensating balances must be considered as the total average collected balance of the account(s). The minimal acceptable earnings rate shall be the greater of the current month's average 13-week Treasury Bill yield or a proprietary formula determined by the contractor. At no point shall the earnings rate fall below the monthly average 13-week Treasury Bill yield. All auctions for which the settlement date falls in that month will be included in the month's simple average.

It is HESAA's policy to avoid the maintenance of sizable balances. However, for any balances that do exist, HESAA requires full compensating balance credit.

The earnings rate developed is applied each month against the average daily net collected balance of the account(s) to determine the value of bank services earned that month with compensating balances. If the earnings of the compensating balances exceed the value of total bank services provided in any month, the excess is applied to subsequent monthly analyses on a continuous basis without regard to calendar year end.

## 2. Payment Terms

If fees are due, the contractor shall invoice HESAA monthly. The contractor must provide the invoice within 30 days after the close of each month (on a calendar month basis) for which services were provided. The standard State of New Jersey purchase voucher and instructions for preparation of the form will be provided to the contractor after contract award. 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. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest will not be paid until it exceeds \$5.00 per properly executed invoice.

## 3. Monthly Analysis

Together with the invoices, the contractor must provide HESAA with a monthly analysis for all services.

The contract prices are applied against the total volumes for each billable category in order to establish the total billing for the month. HESAA shall be invoiced for the total billing less the compensating balance earnings for that month.

## 4.28 Project Management

All decisions regarding this process and the granting of the subsequent contract will be the sole responsibility of HESAA personnel. HESAA is responsible for the day-to-day operational administration of the account(s) and is the contact agency for operational issues after contract award.

The primary point of contact for HESAA for day-to-day matters and all other processes associated with the lockbox operations will be established after contract award.

## 5.0 REQUIRED COMPONENTS OF THE RFP PROPOSAL

### 5.1 General Information

Please provide brief but concise answers to the following questions.

1. Briefly acknowledge your understanding and acceptance of all the TERMS AND CONDITIONS, OTHER MANDATORY PROVISIONS, and PAYMENT METHOD AND TERMS as stated in the RFP. The terms and conditions of HESAA's RFP supersede any conflicting terms and conditions submitted by the contractor unless waived by HESAA and modified and mutually agreed to in writing.
2. Include a narrative description and a diagram of the corporate structure of which the bidder is a part. Such information shall disclose any bank holding companies, parent companies or corporate affiliates, and/or any branch banks or processing facilities, which will be significantly utilized in providing services under this procurement. Identify the bank processing location(s) and the lockbox processing location(s) that will be utilized in providing the services for HESAA.



3. Identify any and all subcontractors to be used by the bidder, its officers, the contractual arrangements made therewith and state what services will be subcontracted.
4. Provide the names and contact information for the officers and management personnel who will be responsible for the fulfillment of the services requested herein; e.g., operations, reporting/bank statements, invoices/analysis, data entry, transmission issues, ACH credit/debit functionality, web based inquiring/communication system, disaster and recovery, technology issues, customer service, and error/ and adjustment inquiries. See SECTION 4.23 Contractor Contact Personnel Requirements for specific requirements.
5. For reference purposes, provide the names, addresses, contact information, and telephone numbers of three present customers for whom the bidder is providing similar services as those requested herein; e.g. depository accounts, lockbox services, document scanning and retrieval services, wire transfers, ACH credit /debit services, on-line payment processing services, and web based inquiry/communication services. If possible, provide references with collection volumes equal to or greater than those of HESAA.
6. Include copies of any and all written agreements required for any of the services requested herein. No additional agreements will be accepted after the bid due date, unless they are related to out-of-scope requirements/enhancements that are initiated by HESAA. **Please indicate the bidder's degree of flexibility regarding the negotiation of written agreement language. Also clearly indicate whether or not services can begin while agreements are negotiated.**
7. OTHER MANDATORY PROVISIONS:
  - a. Disaster Recovery Plan: Bidder must include a summarized Disaster Recovery Plan in the bidder's proposal. Detailed Disaster Recovery Plans must be made available for HESAA review. Specifically, the Disaster Recovery Plan must address contingency plans for data processing systems, equipment, power, or other failures that could affect lockbox services or information reporting of lockbox data. As part of HESAA's Disaster Recovery Exercises, the contractor's Disaster Recovery Plan, contingency, and backup procedures may be subject to annual review. The contractor must be able to demonstrate during an inspection of operation and a review of documented procedures that, in the event of a system breakdown or catastrophic event, HESAA's operations will be minimally affected and its records recovered intact. Given the worst-case scenario, the contractor must be completely functional within 24 hours of a major disaster. The contractor must fully cooperate during any and all disaster recovery testing operations initiated by HESAA.
  - b. Collateralization of Deposits: The State Treasurer shall require from the bidder a deposit of bonds, notes, certificates of indebtedness or bills or other obligations of or guaranteed by the United States; or other obligations of or guaranteed by the State of New Jersey; or any other obligations now or hereafter authorized by law as security for public deposits. To confirm the bidder's ability to adhere to the State of New Jersey Department of Treasury Collateralization Policy, refer to **EXHIBIT J**.

8. It is currently necessary for HESAA personnel and HESAA contracted attorneys to make daily deposits at a branch location. Please indicate in miles, the approximate distance from the following locations to the closet bank branch location:

|  |  |
|--|--|
| 4 Quakerbridge Plaza<br>Trenton NJ 08625           | 3705 Quakerbridge Road<br>Suite 116<br>Hamilton NJ 08619 |
| 7 Century Drive, Suite 201<br>Parsippany, NJ 07054 | 17 Prospect Street<br>Morristown, NJ 07960               |
| 1 Columbia Circle, #102<br>Albany NY 12203         |  |

9. Include the procedures the bank takes to insure optimum availability of funds for lockbox deposits. How will the bidder compute the availability that is passed on to the lockbox customer? If the bidder provides availability by individual check, include the bidder's latest availability schedule.
10. Using the most recent analysis, complete the table below by indicating the percentage of lockbox mail received for each pickup, and the corresponding deposit cutoff time for same day ledger credit. Indicate the latest mail pickup time to be included for same day ledger credit. Will HESAA's lockbox mail be processed on all shifts?

|                               | <b>Pickup Time<br/>From PO BOX</b> | <b>Percent of<br/>Total<br/>Volume</b> | <b>Cumulative<br/>Percent</b> | <b>Expected Deposit Time<br/>for Same Day Credit</b> |
|-------------------------------|------------------------------------|--|-------------------------------|--|
| <b>Weekdays</b>               |                                    |  |                               |  |
|                               |                                    |  |                               |  |
| <b>Weekends/<br/>Holidays</b> |                                    |  |                               |  |

11. If the lockbox and transit proof departments work on weekends and holidays, indicate whether the lockbox items processed are cleared during the weekend or holiday. How is availability determined for these items and when is ledger credit given?
12. Describe the major components of the lockbox department's processing procedures. Include a schematic or flow chart of the processing procedures. In addition, explain the procedure for the data entry and daily transmission to HESAA.
13. Explain the productivity standards and quality control procedures that ensure performance efficiency and verification of the data processed. What is the lockbox overall error rate for the most recent period that statistics are available? What are the error types?

14. For the months of March and August 2019, provide the volume of items deposited for each individual working day. For the past six months, what was the average monthly volume of items and dollars processed for the facility where HESAA work will be processed?
15. Provide the number of full-time and part-time employees employed at the lockbox processing facilities and the number of data entry personnel. Provide this same information for the specific facility that will be used to process HESAA's work. What arrangements are made to adjust staffing levels to handle weekly/monthly/quarterly peak processing periods?
16. If the processing center is located outside New Jersey, describe the procedure to ensure that mail is received and processed in a timely fashion that would result in no additional delay.
17. What is the bidder's procedure for processing post-dated checks, unsigned checks, and checks with unequal written and numeric amounts?
18. Based on the requirements of the RFP, describe how the bidder will batch, identify, and package the physical processed and unprocessed documents for NJCLASS. Describe the method to be used to deliver the daily lockbox information to HESAA. Confirm that the 8:00 a.m. Eastern time delivery time for these items is attainable.
19. Include a brief description and an example of the Daily Control Summary Report and the Daily Control Detail Report that the system produces to display items and dollars deposited. Are Batch totals included?
20. Can the bidder electronically provide the daily required automated balance reporting accessed via the Bidder's web-based Communication/Inquiry system by 7:30 a.m. Eastern time?
21. Confirm the bidder's ability to produce files and reports in accordance with the **Output Requirements** depicted in **EXHIBITS I**.
22. Describe the bidder's procedures for solving all potential file transmission problems, related to the electronic transmissions outlined in this RFP including transmission failures, erroneous data transmission, etc.
23. Describe the bidder's commercial customer service operation, procedures, turnaround/response times, and staffing. Complete customer service capabilities and resources may be reviewed at an oral presentation or viewed and critiqued by the committee if a site visit is requested by HESAA.
24. Explain the bidder's procedure, including response time, for responding to discrepancies and adjustments inquiries. Are there established turn-around times for inquiries related to research and adjustments?

25. State whether the bidder is a member of a local clearinghouse. If yes:
- a. What is the specific clearinghouse(s)?
  - b. What is the settlement hour for the clearinghouse?
  - c. What is the latest pickup time from the post office box for presentment at that day's clearinghouse meeting?
26. Include a brief description and examples (Web Screen Shots) of an account transaction detail screen, lockbox transaction detail screen, an imaged check, and an imaged remittance document.
27. List the number of hours the bidder's web-based services were unavailable to customers due to bank-related technical issues for the month of September 2019.
28. In light of the rise in identity thefts, describe the security features of the bidder's web based services that ensures HESAA's data will be secure. Have there been any security breaches involving the bidder's web based systems during the last twelve months?
29. Does the bidder have a quality system (ISO or other) in place? If yes, were there any major noncompliance issues in the last audit? If there were any major noncompliance issues, provide an explanation of the issues and how they were rectified.
30. Provide a detailed implementation schedule to achieve contract commencement. Include delivery dates for each of the elements the bidder defines as critical steps towards implementation. Include time frames for opening bank accounts, setting up lockboxes, establishing access to the web-based inquiry/communication system, file transmission/testing, and training. Define both bidder and HESAA personnel commitment requirements during conversion.

## 5.2 Fees

Prices submitted are to be firm for the term of the contract. All prices proposed shall be inclusive of all vendor supplied forms, postage, supplies, equipment, delivery (courier service), boxes, overhead, etc., as required to meet the RFP specifications. Bidders shall submit their fees using the **Vendor Cost Schedule**, attached hereto as **EXHIBIT K**. All methods of measurements that differ from the pre-establish methods listed in **EXHIBIT K** should be clearly identified for each priced item.

## 5.3 Financial Statements

Provide the latest audited financial statements, or financial comments if a privately held company, for the prime vendor and any subcontractors directly involved with providing any part of the services.

## 5.4 Additional Information

The selected firm will need to register with NJSTART.gov. If your firm is already registered with NJSTART, please provide your vendor ID number.

- (a) A copy of a valid New Jersey Business Registration must be submitted by the selected contractor and all subcontractors. To facilitate the 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.A. 527 that also meets the definition of a continuing political committee within the meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The bidder shall submit the required certification form(s) and disclosure form(s) with its proposal. Failure to submit such forms and/or failure of such forms to evidence compliance with Chapter 51 shall be cause for rejection of the 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 bidder 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 bidder anticipated to be selected will be required to submit Chapter 271 disclosures. To facilitate proposal evaluation and contract award process, the bidder shall submit the Chapter 271 disclosure with the proposal. The disclosure can be found at: <https://nj.gov/treasury/purchase/forms.shtml>

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

- (d) In accordance with Public Law 2005, Chapter 92, all services performed pursuant to this engagement shall be performed within the United States of America.
- (e) Pursuant to Public Law 1995, Chapter 159, effective January 1, 1998, and notwithstanding the provision of any other law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as shall be

necessary to satisfy the indebtedness. The amount set-off shall not allow for the deduction of any expense or other deduction which might be attributable to the taxpayer, partner, or shareholder subject to set-off under this Act.

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

(f) **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>

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

## **6.0 PROPOSAL SUBMISSION**

### **6.1 Delivery**

One original and four copies of the proposal must be marked "Depository Banking Services" and be delivered no later than 4:00 pm on March 30, 2020 to the following:

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

Proposals **overnighted to the Authority must use the local address zip code of 08619**. Proposals may not be delivered by fax.

In addition, a PDF of the proposal must be emailed to [rsorrentino@hesaa.org](mailto:rsorrentino@hesaa.org) no later than March 30, 2020. Both print and email versions of the proposal must be received by the deadline to be considered.

### **6.2 Questions**

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

Questions will be accepted until 4:00 pm on March 13, 2020. 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 bidders.

**ALL RFP ADDENDA WILL BE POSTED ON THE HESAA WEBSITE.**

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

**6.3 Cost liability**

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

**7.0 SPECIAL TERMS & CONDITIONS**

**7.1 Term**

The contract entered as a result of this RFP will be for a three-year term. The contractor may not open or close any accounts until officially notified in writing by HESAA.

HESAA will have the option to extend the contract for two (2) one-year periods, or any portion thereof, if deemed in its best interests to do so.

At the time of contract extension, an increase in price will be considered. The unit prices during the extension periods may be adjusted utilizing the Consumer Price Index unadjusted for All Urban Consumers, New York-Northern New Jersey Region and Philadelphia-South Jersey Region using a 2/3 to 1/3 weight respectively, as published by the Bureau of Labor Statistics of the United States Department of Labor. For price adjustments during the option periods, the prices may be increased by the same percentage as the percentage increase shown in the index for January of the extension year compared to the Index for January of the prior year or for the most recent reported twelve-month period. At the time of the extension option, the contractor must include in their response to HESAA the price increases, from and to, for each of the line item charges, along with supporting Labor Statistics documentation. HESAA will then independently verify the price adjustment.

**7.2 Termination**

Unless otherwise provided herein, HESAA reserves the right to terminate any agreement entered into as a result of this RFP provided written notice has been given to the vendor at least thirty days prior to such proposed termination date. The vendor may terminate the contract upon sixty

days' notice to the Authority. At contract termination, the vendor must cooperate fully with HESAA and the newly contracted vendor to affect a smooth transition, which would include transferring all necessary databases, files, and other information needed for the continued operation of the application.

### **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 vendor 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 one hundred eighty days beyond the expiration date of the existing contract. The vendor 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 contractor 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, addenda to this RFP, the HESAA Standard Terms and Conditions, the contractor's proposal submitted in response to this RFP, including any 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.

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, the 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 any addendum to this RFP, the provisions of the 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.

Any statistics or values shown in the RFP are either based on past history or best estimates and are not a guarantee of future volumes and trends. The future quantities, values or activities may be more or less than those noted herein and could change during the course of the contract term. HESAA will make no allowances or concessions to a bidder for any alleged misunderstanding because of quantity, character or other conditions.



## **7.6 Open Public Records Act**

All documents submitted in response to this RFP are subject to disclosure by HESAA as “government records” under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. (“OPRA”). A contractor may assert that specific information is exempted from disclosure under that Act. Upon receiving a request for such information, HESAA will advise the contractor if any such information is not deemed to be exempted. In the cover letter to a proposal, the bidder should clearly state the location within the bid proposal of any information for which the bidder asserts exemption from disclosure under OPRA. HESAA will not honor attempts by bidders or contractors either to designate their entire bid proposal as proprietary and/or to claim copyright protection for their entire proposal.

## **7.7 Price Alteration**

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

## **7.8 Proposal Errors**

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

If, after the proposal submission opening but before contract award, a bidder discovers an error in its proposal, the bidder may make a written request to Marnie Grodman for authorization to withdraw its proposal from consideration for award. Evidence of the bidder’s good faith in making this request shall be used in making the determination. The factors that will be considered are that the mistake is so significant that to enforce the contract resulting from the proposal would be unconscionable; that the mistake relates to a material feature of the contract; that the mistake occurred notwithstanding the bidder’s exercise of reasonable care; and that HESAA or the State will not be significantly prejudiced by granting the withdrawal of the proposal. After the proposal submission opening, while pursuant to the provisions of this section, a bidder may request to withdraw its proposal and HESAA may, in its discretion, allow the bidder to withdraw it; HESAA also may take notice of repeated or unusual requests to withdraw by a bidder and take those prior requests to withdraw into consideration when evaluating the bidder’s proposals.

All proposal withdraw requests must identify the RFP “Depository Banking Services,” 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, Disclosure of Investigations and Actions Involving Bidder form, Disclosure of Investment Activities in Iran form, and Affirmative Action Employee Information Report. Each party comprising the joint venture must also possess a valid Business Registration Certificate issued by the Department of the Treasury, Division of Revenue prior to the award of a contract. Refer to Section 5.4 of this RFP.

## **7.10 Prime Contractor Responsibilities**

The selected contractor, **and any successor contractor**, (in the event of merger/acquisition or other change in operating status), will be required to assume sole responsibility for the complete effort of any contract(s) awarded to the contractor subsequent to its bid submission, and assume all cost incurred by HESAA, directly or indirectly, in connection with or as a result of the transition. If a merger/acquisition has been announced prior to or during the contractor's proposal preparation period, the bidder shall identify all relevant or emerging dates surrounding the merger relative to official name change, system changes, account number changes, etc., if known at the time of bid submission.

HESAA will consider the prime contractor to be the sole point of contact with regard to contractual matters. The prime contractor is responsible for the professional quality, technical accuracy, and timely completion of all services awarded to the contractor as a result of this solicitation, and will, without additional compensation, correct or revise any errors, omissions, or other deficiencies in their products, services, reports, equipment, information, etc. in order to meet the requirements as specified herein. The successful contractor will furnish the names of the officers and management personnel who will be utilized in the fulfillment of any agreement resulting from this request.

## **7.11 Subcontracting and Assignment**

All subcontractors must be approved by HESAA. If the contractor has knowledge prior to the proposal submission date that any part of the work covered by this request will be subcontracted, the contractor must identify the subcontracting organization, its officers, and the contractual arrangements made therewith, and state what services are to be subcontracted.

If, during the contract term, the contractor desires to employ or replace any subcontractor, the contractor must provide ninety days written notice to HESAA. HESAA will evaluate the replacement firm's qualifications. No replacement firm shall begin work without prior HESAA approval.

The prime contractor is totally responsible for adherence by the subcontractor to all provisions of the contract between the contractor and HESAA. Nothing contained in these specifications or subsequent specifications shall be construed as creating any contractual responsibility between the subcontractor(s) and HESAA.

The contractor is prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of this agreement or its rights, title, or interest therein or its power to execute such agreement to any other person, company, or corporation without the previous consent and approval, in writing, by HESAA. Unless otherwise agreed to in writing by HESAA, the assignee shall bear all cost incurred by the Authority, directly or indirectly, in connection with or as a result of such an assignment.

## **7.12 Security and Confidentiality**

### **A. DATA CONFIDENTIALITY**

All data contained in the source documents supplied by the Authority are to be considered confidential and shall be solely for the use of the Authority. The contractor will be required to use reasonable care to protect the confidentiality of the data. Any use, sale or offering of this data in any form by the contractor, or his/her employees or assignees will be considered in violation of this contract and will cause the 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 the contract and/or legal action with no damages paid by the Authority or the State of New Jersey.

All financial, statistical, personnel, customer, and/or technical data supplied by HESAA to the contractor are confidential. The contractor must secure all data from manipulation, sabotage, theft, or breach of confidentiality. The contractor is prohibited from releasing any financial, statistical, personnel, customer, and/or technical data that is deemed confidential. The following shall not be considered confidential information and shall not be subject to the provisions of this section 7.12 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 to do so in order to comply with judicial or administrative process. Prior to releasing a data owner's confidential information in response to judicial process, the contractor shall give the data owner advanced written notice of the subpoena, if not legally prohibited, and provide the data owner the opportunity to object to the required disclosure. Any other use, sale, or offering of this data to a third party without the data owner's consent in any form by the contractor, or any individual or entity in the contractor's charge or employ, will be

considered a violation of this contract and may result in contract termination and the contractor's suspension or debarment from State contracting. In addition, such conduct may be reported to the State Attorney General for possible criminal prosecution. The contractor shall be liable to HESAA for a breach of confidentiality subject to the insurance requirements set forth in this RFP.

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

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 provided to HESAA upon request. Refer to the National Institute of Standards and Technology (NIST) Special Publication (SP) 300-12, An Introduction to Computer Security: The NIST Handbook, Section 10.1.3, Filling the Position – Screening and Selecting.

## **B. SECURITY STANDARDS**

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

or

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

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

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

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

Any Personally Identifiable Information must be protected. All data must be classified in accordance with the State’s Asset Classification and Control policy, 08-04-NJOIT ([www.nj.gov/it/ps](http://www.nj.gov/it/ps)). Additionally, data must be disposed of in accordance with the State’s Information Disposal and Media Sanitation policy, 09-10-NJOIT ([www.nj.gov/it/ps](http://www.nj.gov/it/ps)).

Data usage, storage, and protection is subject to all applicable federal and state statutory and regulatory requirements, as amended from time to time, including, without limitation, those set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Personal Information and Privacy Protection Act, the 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, P.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 Standards.

4. Data Transmission: The contractor shall only transmit or exchange HESAA data with other parties when expressly requested in writing and permitted by and in accordance with requirements of the State of New Jersey. The contractor shall only transmit or exchange data with HESAA or other parties through secure means supported by current technologies. The contractor shall encrypt all data defined as personally identifiable or confidential by HESAA or 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 notifying all affected individuals in accordance with applicable law. The contractor shall indemnify, hold harmless, and defend HESAA, its officials, and employees from and against any claims, damages, or other harm related to such Notification Event.
9. End of Contract Data Handling: Upon termination of this contract, the contractor shall maintain all financial data. The contractor shall erase, destroy, and render unreadable all contractor copies of non-financial HESAA data according to the standards enumerated in accordance with the State's Information Disposal and Media Sanitation Policy, 09-10-NJOIT (<https://www.nj.gov/it/services/policies.shtml>) and certify in writing that these actions have been completed within 30 days of the termination of this contract or within seven days of the request of an agent of HESAA, whichever shall come first.
10. Security and/or Regulatory Compliance Audit: The Authority has the option to conduct a Security Audit and/or Regulatory Compliance Audit. If HESAA exercises this option, the contractor must allow HESAA assigned staff full access to all operations for security and/or regulatory compliance inspections and audits which may include reviews of all issues addressed in the description of security approach as well as by any applicable federal or state law or regulation. The contractor shall demonstrate willingness to enter into good faith discussions to implement any needed or recommended changes.

### **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 review of the contractor's operations and control system. 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 of 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 hiring and terminating 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 when employment of the employee terminates;
4. Role-based security access -- the products and methods for role based security and 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/or threats;
8. Vulnerability/Security Assessment -- the products and methods used for scanning the 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 used 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 maintain the integrity of all stored data including electronic images, and the security of all files from unauthorized access. The

contractor must be able to provide reports on an as-needed basis on the accessing of or change history for any file within the system.

### **7.13 Privacy Policy**

The contractor is responsible for adhering to the Authority privacy policy and ensuring that any subcontractors to the prime contractor also adhere to the policy. The Authority retains the right to seek any and all legal remedies in the event of a breach of the privacy policy by the prime contractor or any subcontractor.

### **7.14 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.

### **7.15 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.

### **7.16 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.

### **7.17 Claims & Remedies**

#### **A. CLAIMS**

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

#### **B. REMEDIES**

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

### **7.18 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. HESAA reserves the right to negotiate with the contractor reasonable fees for services unanticipated or not existing at the time of contract award. Such services may include, but are not limited, to the initiation of an electronic payment



system to be integrated into lockbox item processing, with associated posting and reporting functions. The contractor shall work with other HESAA contractors, if needed, to incorporate such products and functions. Should such a situation occur, HESAA personnel will be appointed at the appropriate time to act as project leader.

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.

#### **7.19 Liquidated Damages**

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

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

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

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

Upon determination that liquidated damages are to be assessed, HESAA shall notify the contractor of the assessment in writing. The availability of any period of cure will depend on the situation and will be in the sole discretion of HESAA. HESAA may, in its sole discretion, elect

to notify the contractor that liquidated damages may be assessed so as to provide a warning, prior to assessing them in accordance with this section, but if HESAA does not provide such a warning the Authority is not precluded from assessing liquidated damages in accordance with this contract.

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

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

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

**C. SEVERABILITY OF INDIVIDUAL LIQUIDATED DAMAGES**

If any portion of the liquidated damages provisions is determined to be unenforceable in one or more applications, that portion remains in effect in all applications not determined to be invalid and is severable from the invalid applications. If any portion of the liquidated damages provisions is determined to be unenforceable, the other provision(s) shall remain in full force and effect.

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

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

**E. PAYMENT OF LIQUIDATED DAMAGES**

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

**7.20 Record Retention**

The contractor is required to maintain accounting records and other documentation needed for the execution of any and all agreements. This will include, but not be limited to, copies of deposit slips and checks, monthly invoices, and monthly analyses. These records must be made available to HESAA at all reasonable times during the contract term and for a period up to seven (7) years from the date of final payment.

HESAA reserves the right to have its personnel, or its designated representatives, including employees of other State organizations and firms contracted by HESAA, monitor and audit as often as it deems necessary the activities and related processing and accounting records of the contractor and all subcontractors, to ensure proper compliance to the terms as specified within this document.

The contractor must provide adequate facilities for HESAA's auditors to use when they perform their regular and random audits.

## **7.21 Severability**

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

## **8.0 SELECTION PROCESS**

### **8.1 Minority & Women Owned Firms**

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

### **8.2 Evaluation Criteria**

HESAA must be satisfied that the bidder has the necessary technical expertise, experience and resource capabilities to satisfactorily perform the requisite services stated in this request. HESAA reserves the right to obtain any information from an independent source to evaluate these criteria. Selection of other than the apparent low bid will be fully documented. The lowest cost bidder is not necessarily the most responsive and responsible bidder.

The following general criteria, not necessarily listed in order of significance, will be used to evaluate the bidder's proposals. A more detailed evaluation worksheet may be developed which may expand on the technical requirements of the RFP. HESAA reserves the right to request additional information prior to contract award.

- Bidder's overall response to the questions in SECTION 5.1;
- Response to possible follow-up inquiries;
- Prior experience with similar services;
- HESAA's assessment of client references';
- Adequacy of the security measures and contingency plans;
- Bidder's commitment to provide adequate physical and personnel resources to satisfactorily meet the requirements of the RFP;
- Customer service capabilities;
- The inclusion in the bidder's proposal of any proposed limitations of bidder liability that are in addition to existing laws and regulations;
- Bidder's financial condition and ratings;
- Completeness of required reports and documents;
- Web Based Inquiry/Communication capabilities;
- Any other information that would assist HESAA in the selection process; and
- Cost (not a weighted factor).

### **8.3 Interviews**

Bidders who submit a proposal may be required to give an oral presentation to the evaluation committee. This will provide an opportunity for the bidder to clarify or elaborate on its proposal.

However, an oral presentation does not provide the bidder the opportunity to change the original bid or correct any deficiencies in its proposal. Bidders should not construe the invitation for an oral presentation to imply any acceptance or rejection of bids. A representative of HESAA will schedule any such site visits or oral presentation meetings.

At the time of proposal evaluation, HESAA reserves the right to inspect the bidder's facilities, including any and all subcontractors' facilities. Any time after award, HESAA reserves the right to inspect the bidder's facilities, including any and all subcontractors' facilities, without prior notice by HESAA. However, if circumstances warrant prior notice because of security or proprietary considerations, please include an explanation of such reservation in your response. Failure to comply with this request may result in disqualification or termination of the contract.

Prior to contract award, the oral presentation and vendor site inspection may be combined.

#### **8.4 Right to Waive**

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

A single response to this RFP may be deemed a failure of competition and, at the option of HESAA, the RFP may be canceled. Likewise, receipt of only one response may allow HESAA to claim it as a valid sole source acquisition of services.

#### **8.5 Proposal Discrepancies**

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

#### **8.6 Negotiation and Best and Final Offer (BAFO)**

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

Similarly, HESAA may invite one bidder or multiple bidders to submit a best and final offer (BAFO). Said invitation will establish the time and place for submission of the BAFO. Any BAFO that is not

equal to or lower in price than the pricing offered in the bidder's original proposal will be rejected as non-responsive and HESAA will revert to consideration and evaluation of the bidder's original pricing.

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

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

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

## **8.7 Board Approval**

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

**2.12 AFFIRMATIVE ACTION** - The bidder is required to complete the Affirmative Action Employee Information Report, AA302, found at <https://nj.gov/treasury/purchase/forms.shtml>, or in the alternative, supply either a New Jersey Affirmative Action Certificate or evidence that the bidder is operating under a federally approved or sanctioned affirmative action program. The requirement is a precondition to entering into a State contract.

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

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

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

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

**4. INDEMNIFICATION AND INSURANCE**

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

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

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

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

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

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

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

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

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

**5. TERMS GOVERNING ALL CONTRACTS**

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

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

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

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

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

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

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

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

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

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

**5.7 TERMINATION OF CONTRACT**

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

**5.8 SUBCONTRACTING OR ASSIGNMENT**

- a. Subcontracting: The contractor may not subcontract other than as identified in the contractor's proposal without the prior written consent of HESAA. Such consent, if granted in part, shall not relieve the contractor of any of its responsibilities under the contract, nor shall

it create privity of contract between the Authority and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws.

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

**5.9 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND THE AUTHORITY** - Nothing contained in any of the contract documents, including the RFP and vendor's bid or proposal shall be construed as creating any contractual relationship between any subcontractor and the Authority.

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

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

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

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

the specifications stated in the contract. The contract shall not be considered complete until final approval by the Authority is rendered.

**5.12 DELIVERY REQUIREMENTS -**

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

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

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

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

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

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

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

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

**6. TERMS RELATING TO PRICE AND PAYMENT**

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

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

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

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

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

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

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