



Request for Proposal 06-X-37901

For: Management Consulting: Management Audit of New Jersey Natural Gas

Event	Date	Time
Bidder's Electronic Question Due Date (Refer to RFP Section 1.3.1 for more information.)	04/24/06	5:00 PM
Mandatory Pre-bid Conference	Not Applicable	
Mandatory Site Visit	Not Applicable	
Bid Submission Due Date (Refer to RFP Section 1.3.2 for more information.)	06/06/06	2:00 PM

Dates are subject to change. All changes will be reflected in Addenda to the RFP posted on the Division of Purchase and Property website.

Small Business Set-Aside (Refer to RFP Section 4.4.2.2 for more information.)	<input type="checkbox"/> Not Applicable	Category <input checked="" type="checkbox"/> I <input checked="" type="checkbox"/> II <input checked="" type="checkbox"/> III
	<input type="checkbox"/> Entire Contract	
	<input type="checkbox"/> Partial Contract	
	<input checked="" type="checkbox"/> Subcontracting Only	
	<input type="checkbox"/> Other	

RFP Issued By

State of New Jersey
Department of the Treasury
Division of Purchase and Property
Trenton, New Jersey 08625-0230

Using Agency

State of New Jersey
Board of Public Utilities
Division of Audits
2 Gateway Center
Newark, NJ 07102

Date: April 4, 2006

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1.0 INFORMATION FOR BIDDERS

1.1 PURPOSE AND INTENT

This Request for Proposal (RFP) is issued by the Purchase Bureau, Division of Purchase and Property, Department of the Treasury (the "Division"), on behalf of the State of New Jersey, Board of Public Utilities (the Board). The purpose of this RFP is to solicit bid proposals to engage a contractor to perform a focused audit on the transactions between New Jersey Natural Gas (NJNG) and New Jersey Resources (NJR) and its affiliates. In addition, the contractor shall determine if any audits, operating procedures or other internal workings of NJNG are inefficient, imprudent, unreasonable, negligent or an abuse of discretion. The findings will be used by the BPU to order NJNG to adopt new and altered practices and procedures as the BPU shall find necessary to promote efficient and adequate service to meet the public convenience and necessity pursuant to N.J.A.C. 14:3-12.1. The audit shall be conducted on a "Firm Fixed Unit Price" basis. The BPU may select one or more consulting firms to perform this audit.

Any firm that has conducted a financial audit for NJNG within the past three (3) years is ineligible for an award of this management audit contract.

The intent of this RFP is to award a contract to that responsible bidder whose bid proposal, conforming to this RFP is most advantageous to the State, price and other factors considered.

The NJ Standard Terms & Conditions version 01 20 06 will apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in this RFP and should be read in conjunction with them unless the RFP specifically indicates otherwise.

1.2 BACKGROUND

New Jersey Resources (NJR) (NYSE: NJR) is a publicly held energy service holding company that provides retail and wholesale energy services to customers in New Jersey and in states from the Gulf Coast to New England, and Canada. NJR is a New Jersey corporation formed in 1982 pursuant to a corporate reorganization. NJR's subsidiaries are New Jersey Natural Gas (NJNG) and NJR Energy Service (NJRES). NJR is a *Fortune 1000* company and a member of the *Forbes Platinum 400*.

For 2005, New Jersey Resources' income statistics (rounded) were:

- Total operating revenues: \$3.1 billion
- Operating income: \$138.3 million
- Net income: \$76.3 million

New Jersey Natural Gas (NJNG), the principal subsidiary of NJR, is a local natural gas distribution company that provides regulated energy service to residential and commercial customers in central and northern New Jersey. NJNG is one of the fastest-growing local distribution companies in the United States, serving more than 462,000 customers in New Jersey's Monmouth, Ocean, Middlesex and Morris counties. NJNG has maintained an average annual customer growth rate of 2.5% over the past 10 years. Its service territory encompasses 1,436 square miles covering 104 municipalities with an estimated population of 1.3 million. NJNG also participates in the off-system sales and capacity release markets.

NJRES was formed in 1996 to provide unregulated fuel and capacity management and wholesale marketing service.

Additional retail and other operations owned by NJR include NJR retail holdings, NJR Capital Service, and NJR Service.

Organization charts of NJR and NJNG are available in [Appendix 1](#).

1.3 KEY EVENTS

1.3.1 ELECTRONIC QUESTION AND ANSWER PERIOD

The Purchase Bureau will accept questions and inquiries from all potential bidders electronically via web form. To submit a question, please go to Current Bid Opportunities webpage or to <http://ebid.nj.gov/QA.aspx>

Questions should be directly tied to the RFP and asked in consecutive order, from beginning to end, following the organization of the RFP. Each question should begin by referencing the RFP page number and section number to which it relates.

Bidders are not to contact the Using Agency directly, in person, by telephone or by email concerning this RFP.

The cut-off date for electronic questions and inquiries relating to this RFP is indicated on the cover sheet. Addenda to this RFP, if any, will be posted on the Purchase Bureau website after the cut-off date (see Section 1.4.1. of this RFP for further information.)

1.3.2 SUBMISSION OF BID PROPOSAL

In order to be considered for award, the bid proposal must be received by the Purchase Bureau of the Division of Purchase and Property at the p location by the required time. **ANY BID PROPOSAL NOT RECEIVED ON TIME AT THE LOCATION INDICATED BELOW WILL BE REJECTED. THE DATE AND TIME IS INDICATED ON THE COVER SHEET. THE LOCATION IS AS FOLLOWS:**

**BID RECEIVING ROOM - 9TH FLOOR
PURCHASE BUREAU
DIVISION OF PURCHASE AND PROPERTY
DEPARTMENT OF THE TREASURY
33 WEST STATE STREET, P.O. BOX 230
TRENTON, NJ 08625-0230**

Directions to the Purchase Bureau can be found at the following web address:

<http://www.state.nj.us/treasury/purchase/directions.shtml>

Note: Bidders using USPS Regular or Express mail services should allow additional time since USPS mail deliveries are not delivered directly to the Purchase Bureau.

1.3.3 Mandatory Site Visit

Not applicable

1.3.4 Mandatory Pre-Bid Conference

Not applicable

1.4 ADDITIONAL INFORMATION

1.4.1 ADDENDA: REVISIONS TO THIS RFP

In the event that it becomes necessary to clarify or revise this RFP, such clarification or revision will be by addendum. Any addendum to this RFP will become part of this RFP and part of any contract awarded as a result of this RFP.

ALL RFP ADDENDA WILL BE ISSUED ON THE DIVISION OF PURCHASE AND PROPERTY WEB SITE. TO ACCESS ADDENDA, SELECT THE BID NUMBER ON THE BIDDING OPPORTUNITIES WEB PAGE AT THE FOLLOWING ADDRESS:

[HTTP://WWW.STATE.NJ.US/TREASURY/PURCHASE/BID/SUMMARY/BID.SHTML.](http://www.state.nj.us/treasury/purchase/bid/summary/bid.shtml)

There are no designated dates for release of addenda. Therefore interested bidders should check the Purchase Bureau "Bidding Opportunities" website on a daily basis from time of RFP issuance through bid opening.

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

1.4.2 BIDDER RESPONSIBILITY

The bidder assumes sole responsibility for the complete effort required in submitting a bid proposal in response to this RFP. No special consideration will be given after bid proposals are opened because of a bidder's failure to be knowledgeable as to all of the requirements of this RFP.

1.4.3 COST LIABILITY

The State assumes no responsibility and bears no liability for costs incurred by a bidder in the preparation and submittal of a bid proposal in response to this RFP.

1.4.4 CONTENTS OF BID PROPOSAL

Subsequent to bid opening, all information submitted by bidders in response to the bid solicitation is considered public information, except as may be exempted from public disclosure by the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., the common law and N.J.A.C. 14:1-12.1 et seq. A bidder may designate specific information as not subject to disclosure when the bidder has a good faith legal/factual basis for such assertion. The State reserves the right to make the determination and shall so advise the bidder. The location in the bid proposal of any such designation should be clearly stated in a cover letter. **The State will not honor attempts by bidders either to designate their entire bid proposal as proprietary and/or to claim copyright protection for their entire proposal.**

All bid proposals, with the exception of information determined by the State to be proprietary, are available for public inspection.

Interested parties can make an appointment with the Purchase Bureau to inspect bid proposals received in response to this RFP.

1.4.5 PRICE ALTERATION

Bid 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.

1.4.6 JOINT VENTURE

If a joint venture is submitting a bid proposal, the agreement between the parties relating to such joint venture should be submitted with the joint venture's bid proposal. Authorized signatories from each party comprising the joint venture must sign the bid proposal. A separate Ownership Disclosure Form, Disclosure of Investigations and Actions Involving Bidder, Affirmative Action Employee Information Report, MacBride Principles Certification, and Business Registration or Interim Registration must be supplied for each party to a joint venture.

2.0 DEFINITIONS

2.1 GENERAL DEFINITIONS

The following definitions will be part of any contract awarded or order placed as result of this RFP.

Addendum – Written clarification or revision to this RFP issued by the Purchase Bureau.

All-Inclusive Hourly Rate – An hourly rate comprised of all direct and indirect costs including, but not limited to: overhead, fee or profit, clerical support, travel expenses, per diem, safety equipment, materials, supplies, managerial support and all documents, forms, and reproductions thereof. This rate also includes portal-to-portal expenses as well as per diem expenses such as food.

Amendment – A change in the scope of work to be performed by the contractor. An amendment is not effective until it is signed by the Director, Division of Purchase and Property.

Bidder – An individual or business entity submitting a bid proposal in response to this RFP.

Contract – This RFP, any addendum to this RFP, and the bidder's proposal submitted in response to this RFP, as accepted by the State.

Contractor – The bidder awarded a contract resulting from this RFP. Also referred to as the Implementation Contractor.

Director – Director, Division of Purchase and Property, Department of the Treasury. By statutory authority, the Director is the chief contracting officer for the State of New Jersey.

Division – The Division of Purchase and Property.

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

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 State unless there is a change in the scope of work.

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

May – Denotes that which is permissible, not mandatory.

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

Request for Proposal (RFP) – This document which establishes the bidding and contract requirements and solicits bid proposals to meet the purchase needs of the using Agencies as identified herein.

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

Should – Denotes that which is recommended, not mandatory.

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

State – State of New Jersey.

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

Task – A discrete unit of work to be performed.

Using Agency[ies] – The entity[ies] for which the Division has issued this RFP and will enter into a contract.

2.2 CONTRACT SPECIFIC DEFINITIONS

Affiliate - Any company that is a parent, subsidiary or under common control with another company.

“At Arms Length” - A transaction between two related or affiliated parties that is conducted as if they were unrelated, so that there is no question of a conflict of interest. Or sometimes, a transaction between two otherwise unrelated or affiliated parties.

Basic Gas Supply Service (BGSS) - The BPU regulated natural gas service that is supplied by NJNG to its customers who have not chosen an alternative supplier.

Board (BPU) - The Board is the Board of Public Utilities, the entity using the contract for this audit.

BPU Contract Manager – The individual responsible for the approval of all deliverables, i.e., tasks, sub-tasks or other work elements in the Scope of Work as set forth in Sections 5.2, 5.2.1, 5.2.2 and 5.2.3.

Competitive Service - Any service offered by an electric public utility or gas public utility that the Board determines to be competitive pursuant to N.J.S.A. 48:8 (electric) or N.J.S.A 48:10 (gas) or that is not regulated by the Board.

Cross-subsidization - The use of resources from one part of a company to operate another part of a company.

Design Day - A 24-hour period of demand used as a basis for planning capacity requirements.

Federal Energy Regulatory Commission (FERC) - The federal agency within the Department of Energy that regulates transmission, price, terms and conditions of power sold in interstate commerce.

Going Concern - A company that will continue to operate indefinitely, and will not go out of business and liquidate its assets. For this to occur, the company must be able to generate and/or raise enough resources to stay operational.

Hedging - Offset of a position with the intent of managing risk; the process of protecting the value of an investment from the risk of loss in case the price fluctuates. Hedging is accomplished by protecting one transaction with another. A “long” position in an underlying instrument can be hedged or protected with an offsetting “short” position in a related underlying instrument.

Large Volume Sales Customer (LVS) - The top 25% of commercial accounts of any gas utility.

Manufactured Gas Plant (MGP) – A site where fuel, prior to natural gas, was manufactured and stored. Waste and contamination from MGPs still pose an environmental and public health concern.

Mark-outs – The marking, staking or locating of a gas pipeline or facility for work pursuant to N.J.S.A. 48:2-81.

Marketer - An entity engaged in bringing together sellers and buyers, usually on a spot-market basis, assisting in negotiations and arranging transportation and delivery terms.

New Jersey Natural Gas (NJNG) –The utility that is the subject of the audit

New Jersey Resources (NJR) –The parent company of New Jersey Natural Gas

New Jersey Resources Energy Services (NJRES) –The wholly owned subsidiary of New Jersey Resources. NJRES provides unregulated fuel and capacity management and wholesale marketing service.

Open Season - The process of bidding on the acquisition of supply through an open bid process that generally does not entail an obligation to accept any particular bid.

Pipeline - All parts through which gas is transported, including pipes and valves.

Pipeline Capacity - The maximum quantity of gas movable through a pipeline.

Remediation Cost - All investigation, testing, land acquisition, remediation and/or litigation costs and expenses, or other liabilities, excluding personal injury claims, specifically relating to former Manufactured Gas Plant (MGP) facility sites, disposal sites, or sites to which material may have migrated, as a result of the earlier operation or decommissioning of MGP sites.

The Electric Discount and Energy Competition Act (EDECA) - A 1999 law enacted to give New Jersey energy customers the opportunity to access competitive markets from electric power generation and gas supply service.

Spot Market - A market, typically with a large numbers of buyers and sellers, where gas is traded for immediate delivery.

Staff – Employees of the Board of Public Utilities

Stakeholders - Those with ties to NJNG’s prosperity, performance, and overall well-being, e.g., its stockholders, creditors, employees, customers, contractors and suppliers, and all those who reside, do business, or serve the general public in the service territory in which NJNG is the gas utility.

Third Party Supplier (TPS) - An entity determined to be eligible by the BPU and holding a BPU issued license to provide competitive energy supply to customers in accordance with applicable legal authorities.

Utility - The regulated entity that is subject of the audit.

Virtual Storage - The payment of a reservation fee for the right to purchase or sell gas at daily market prices.

3.0 SCOPE OF WORK

The work of this contract shall be performed in two concurrent phases. Phase One shall examine NJNG's procurement strategies, in particular the impact of transactions with affiliates of NJR on a retail and wholesale basis. Phase Two shall focus on NJNG's financial control and integrity, corporate accountability, the adequacy of the separation of functions within NJNG operations, and all transactions between NJNG, NJR and other affiliates.

3.01 PROJECT SCHEDULE

It is the intent of this RFP that all work be completed within eight **(8) months** of contract award.

The contractor shall adhere to a schedule as set out in the approved Work Plan in Section 3.3. The Work Plan should adhere to the schedule indicated below. This schedule constitutes an approximate time line which is subject to direction from the Board and other potential factors.

Activity	Approximate Date	Timeframe from Date of Award
Projected BPU Contractor Selection (Contract Award)	August 7, 2006	
Initiation of Audit / Entrance Conference	August 18, 2006	11 Days
Receipt of Draft Work Plan	August 22, 2006	15 Days
Release of Work Plan	August 29, 2006	22 Days
Receipt of Draft Final Phase One Audit Report	November 28, 2006	113 Days
Release of Draft Final Phase One Audit Report to Utilities	December 8, 2006	123 Days
Receipt of Utilities' Comments on Final Phase One Draft Audit Report	January 9, 2006	155 Days
Receipt of Draft Final Phase Two Audit Report	January 2, 2006	148 Days
Release of Draft Final Phase Two Audit Report to Utilities	January 12, 2006	158 Days
Receipt of Utilities' Comments on Final Phase Two Draft Audit Report	February 13, 2007	190 Days
Exit Conference	February 26, 2007	203 Days
Receipt of Final Audit Report	March 12, 2007	217 Days
Receipt of Utilities' Comments on Findings and Recommendations	March 27, 2007	232 Days

3.1 PROJECT CONTROL

The contractor shall report directly to the BPU Contract Manager. All written and oral communications shall be through the BPU Contract Manager. If a situation is urgent, the BPU Contract Manager shall be notified immediately. The contractor may be requested to discuss the audit's progress with the BPU Contract Manager as necessary.

3.2 ENTRANCE CONFERENCE

Upon the award of the contract, the contractor shall schedule and attend a meeting within **five (5) business days** with the BPU and BPU Contract Manager to discuss all pertinent items relative to the audit.

3.3 APPROACH TO SERVICES (WORK PLAN)

The contractor shall prepare and submit an Approach to Services (Work Plan) within **five (5) business days** of the entrance conference. This work plan shall include, at a minimum:

- The contractor's approach to performing the scope of work, with emphasis on the techniques to be used for collecting and analyzing data
- The sequence of NJNG's functional areas to be audited
- The methods to be used in managing the project
- Anticipated time for each task to be completed

3.4 PHASE ONE – FOCUSED AUDIT OF AFFILIATE TRANASCTIONS

Phase One shall concentrate on NJNG's gas procurement strategies, particularly the impact of retail and wholesale transactions with NJR and its affiliates. Specific transactions to be examined by the contractor include NJNG's gas procurement activities with NJR and its affiliates as well as other financial hedging and gas business transactions. Further, the contractor shall review and assess affiliate gas and capacity cost allocation methodologies to determine accounting and allocation procedures for separating the costs of inter-company transactions. The contractor's analysis shall determine if current accounting and allocation procedures are equitable, fair, and do not favor certain affiliates over NJNG and its ratepayers. Additionally, the contractor's examination shall assess the gas commodity policies, capacity release policies, and assignment strategies of NJNG and its affiliates. The contractor shall complete Phase One within **ninety (90) days** from the date of contract award and shall produce a final report containing quantifiable findings, conclusions, and supporting recommendations.

3.4.1 REVIEW OF GAS PROCUREMENT ACTIVITIES

The contractor shall perform a complete review of NJNG's gas procurement activities which shall include assessments of the following areas:

3.4.1.1 PROCUREMENT AND PURCHASING

The contractor shall review and determine if the pricing of NJNG goods and services to and from NJR and its affiliates is non-discriminatory and does not exceed market rates.

The contractor shall identify and evaluate NJNG's performance over the past eight (8) years with regard to the designated matters and shall:

- a) Define, document and support all of NJNG's gas procurement activities and evaluate NJNG's effectiveness in procuring optimal gas prices for NJNG's customers.
- b) Identify NJNG's strategy for gas procurement.
- c) Measure NJNG's supply reliability and identify any problems that caused financial harm to ratepayers.
- d) Identify NJNG's spot market, gas commodity purchasing and interstate pipeline capacity purchasing philosophies and provide recommendations for an optimal mix between price and reliability for each.
- e) Determine the recommended gas supply, including interstate pipeline capacity and storage, for NJNG. Further, determine if NJNG's purchases are and have been allocated across customer classes according to industry practices.

3.4.1.2 AFFILIATE RELATIONSHIPS

The contractor shall examine and determine if the holding company structure, affiliates and their diversified activities have had or may have any detrimental effects on NJNG.

The contractor shall review and evaluate NJNG's interactions with its affiliates over the past eight (8) years. The contractor shall:

- a) Review NJNG's files covering all contracts and transactions with NJR and other affiliates.
- b) Evaluate the independence of the gas supply department in purchasing supplies on behalf of NJNG on all staff levels. Assess its performance in acting in the best interest of NJNG and its ratepayers.
- c) Evaluate NJNG's relationship with NJR and its affiliates and the ability of NJR's internal controls and structure to allow it to make purchases on behalf of NJNG that are in the best interest of NJNG and its ratepayers.

The contractor shall examine and determine if NJNG has an internal system to provide assurance that its goals and objectives are accomplished at the lowest possible cost and maximum benefit to its ratepayers. The internal controls should give a true and accurate account of the transactions of NJNG and its affiliates and should show that the transactions have been carried out with integrity and according to standards consistent with regulatory and legal requirements.

The contractor shall examine and determine if NJNG has internal controls that protect against irregular, illegal, and/or improper transactions, including accounting and financial activities that could result in trading irregularities, market price manipulation, false price information or unfair capacity and gas cost allocations from NJR or any of its affiliates to NJNG.

In addition, the contractor shall review the following communication areas and shall:

- a) Evaluate the internal controls and flow of information between NJNG and its affiliates with regard to gas purchases.
- b) Evaluate all correspondence between directors and officers in the area of gas procurement activities to determine if discussions were conducted:
 - At arms-length
 - In a way that ensured compliance with affiliate relationships and fair competition standards
 - In the best interest of NJNG's ratepayers

3.4.1.3 MARKET CONDITIONS

The contractor shall evaluate NJNG's market environment over the past eight (8) years by addressing the indicated areas and shall:

- a) Examine and document the level of customer activity in transferring natural gas to third party suppliers (TPS) as well as the competitiveness of the TPS market in NJNG's service territory. Additionally, the contractor shall provide suggestions on how to improve TPS market competitiveness in NJNG territory.
- b) Review NJNG's strategy and philosophy of hedging Basic Gas Supply Service (BGSS) by five percent (5%) and evaluate its effects on pricing, refunds, and other relevant areas.
- c) Evaluate the impact of commodity and capacity release and assignment transactions made by NJNG and/or its affiliates on the competition within NJNG's service territory and

determine whether the transactions were executed in the best interest of NJNG's ratepayers.

3.4.1.4 RECOMMENDATIONS AND REVIEW OF PREVIOUS AUDIT

The contractor shall review the previous audit as it relates to gas procurement activities as follows:

- a) The contractor shall provide findings, recommendations and suggested solutions to correct any problems uncovered through the previous audit.
- b) The Board, at its agenda meeting on June 23, 2004, directed the staff to revisit the findings and recommendations resulting from a previous competitive services audit of New Jersey Natural Jersey Gas (Docket No. GA02020100); available at http://www.state.nj.us/bpu/compServOffer/NJNG_Audit_Report_Redacted.pdf) performed by Overland Consulting Inc. ("Overland"), covering the period from September 2002 to December 2002. The contractor shall review Overland's report and comment on the continued viability of the recommendations.

3.4.2 AFFILIATE COST ALLOCATION METHODOLOGIES

The contractor shall review and describe the cost allocation methods among NJNG and NJR and its affiliates, and determine whether the cost allocation methods are the result of arms-length negotiations and whether costs are allocated on a direct assignment basis insofar as possible. In any event, the contractor shall explain the allocations and rationale for the allocation methods, and make recommendations for adjustments if appropriate.

The contractor shall:

- a) Identify the accounting and allocation procedures for separating the costs of inter-company transactions of NJNG from affiliates.
- b) Determine the accuracy of allocations when allocating joint/common costs between NJNG and NJR and its affiliates. Any discrepancies shall be corrected by providing direct cost allocations when possible and explanations where the cash cannot be directly allocated.
- c) Review the time sheet reporting practices of employees with shared NJNG/NJR responsibilities to determine allocations. Further, determine if the duties of employees who bill time for NJNG and NJR, and/or its affiliates permit for cross-subsidization.
- d) Review and assess pricing policies between affiliate interests, e.g. the market price of gas compared to the cost of gas purchased by NJNG.
- e) Evaluate competitive and noncompetitive bidding procedures.
- f) Identify all of NJNG's lease arrangements with NJR and its affiliates, determine if the terms of the arrangements are consistent with lease arrangements in competing local markets, have recommended cost allocations and are set at arms length.
- g) Review affiliate charges and cost allocation methodologies among NJNG and NJR and its affiliates for adherence to applicable legal, regulatory and contractual requirements.

3.4.3 REMEDATION COSTS

The contractor shall evaluate the following remediation cost attributes:

- a) The internal controls and flow of information to ensure that all gas remediation costs are properly recorded.
- b) If the costs were properly recorded and the amount of any outstanding balance.

- c) The reasonability of the expenses and efficiency of the engineering and financial methods used to calculate the expenses from the ratepayer's point of view. Additionally, the contractor shall investigate if NJNG acted in its own self-interest, shared expenses with the ratepayers, and was effective in controlling costs.
- d) The effectiveness of NJNG to negotiate effectively with Department of Environmental Protection (DEP) despite pass-through charges.

3.5 PHASE TWO – FOCUSED AUDIT OF AFFILIATED TRANSACTIONS

In Phase Two, the contractor shall perform a comprehensive audit of NJNG's major organizational areas other than those identified in Phase One, functional processes, procedures and internal workings and the effect of NJNG's association with NJR and affiliates. This includes an examination of executive management and corporate governance, strategic planning, finance, accounting and property records, distribution and operation management, human resources, customer services, external relations and support services. Additionally, Phase Two requires the contractor to examine NJNG's activities in light of the requirements of the Electric Discount and Energy Competition Act ("EDECA") as specified in N.J.S.A. 48:3-49, N.J.S.A. 48:3-55, N.J.S.A. 48:3-56, N.J.S.A. 48:3-58 and N.J.A.C. 14:4-5 et seq.

In Phase Two, the contractor shall examine NJNG's financial controls and integrity, organizational structure, corporate accountability, and standards of conduct. Additionally, the contractor's evaluation shall determine the adequacy of the separations of functions within NJNG operations for its competitive services and all transactions with NJR and other affiliates. The purpose of the evaluation is to determine if NJNG customers are supporting the activities of its affiliates and its parent and if NJNG has been exposed to risk as a result of being associated with its affiliates.

At minimum, the contractor's evaluation shall address the following areas:

3.5.1 EXECUTIVE MANAGEMENT AND CORPORATE GOVERNANCE

The contractor shall evaluate the corporate structure and determine whether the Board of Directors and senior management are able to anticipate and respond to strategic issues on an ongoing basis by ensuring that the ratepayers are insulated as much as possible from financial harm. The contractor shall determine whether the Board of Directors has the experience and knowledge to fulfill the corporate goals and objectives and ensure that no director has any conflicts of interest, self-interest, or unreasonable influence while sitting on the Board. To make this determination the contractor shall:

- a) Evaluate the selection of directors for NJNG and NJR.
- b) Examine the separation of the chairman and chief executive officer titles.
- c) Review NJNG's executive compensation, including a comparison with other New Jersey utilities.
- d) Assess the independence of NJNG's senior management relative to its own performance and the best interests of its rate payers.
- e) Assess the independence of NJNG's auditors, i.e. that they do not have conflicts of interest.
- f) Evaluate the appropriateness of committee structures.
- g) Determine if NJNG is in compliance with New York Stock Exchange (NYSE) requirements and the Sarbanes-Oxley Act.
- h) Examine the relationships between affiliates, determining if NJNG is in compliance with affiliate relation and Federal Energy Regulatory Commission (FERC) rules.
- i) Evaluate lawsuits that have been brought before NJNG's Board of Directors or officers determining if they relate to executive management or corporate governance issues and their potential impact on NJR/NJNG.

3.5.2 ORGANIZATIONAL STRUCTURE

The contractor shall evaluate the policies and procedures that define the need, necessity, legal entitlement and the nature of the relationship among affiliates. To make this evaluation the contractor shall:

- a) Assess the resources allocated to NJNG-regulated activities versus the non-regulated activities of NJNG, NJR and its affiliates.
- b) Identify and evaluate NJNG, NJR and its affiliates' policies and procedures for effectiveness and adherence to legal, regulatory and contractual requirements.
- c) Review and assess affiliated interest contracts to determine if they are executed strictly "at arms length" and industry appropriate in light of current market conditions, without cross-subsidization.
- d) Determine the relationship of gas sales by NJR and its affiliates to NJNG and the relative dependence by NJNG on these sales to continue as a "going concern," without cross-subsidization.
- e) Review and assess internal controls to determine their effectiveness and independence.

3.5.2.1 HUMAN RESOURCES

The contractor shall review NJNG's human resources policies and procedures in the following areas to determine the effectiveness of their workforces:

- a) Review NJNG's salary, wage and compensation and benefits package practices
- b) Assess the effectiveness of NJNG's development, training and evaluation techniques
- c) Review the current labor relations status and methodology
- d) Assess the productivity and utilization level of NJNG's workforces
- e) Assess the human resources departments capability to access personnel information and perform their assigned duties
- f) Assess the affirmative action and equal employment opportunity (AA/EEO) policies, procedures, and functions.

3.5.3 STRATEGIC PLANNING

The contractor shall evaluate NJNG's strategic planning methodology. The contractor shall:

- a) Review and assess how well the organization's purpose and mission is defined.
- b) Define the specific short and long term goals and objectives of each affiliate. Additionally, suggest improvements in NJNG's strategic planning needed to adapt to the current market environment and where it is discovered that affiliate goals are in conflict with NJNG's goals, provide recommendations for improvement.
- c) Evaluate and recommend, as necessary, the development and implementation of NJNG's business strategy for:
 - Customer impact.
 - Responsiveness to market conditions.
 - Clarity and employee training.
 - Commitment and resources for implementation.
 - Financial risk.
- d) Determine if the focus of NJNG's management and expertise is on NJNG or is being diverted elsewhere.

- e) Determine if there are any negative effects of diversification on NJNG and recommend how they can be ameliorated.

3.5.4 FINANCE

3.5.4.1 GENERAL OVERVIEW

The contractor shall perform a general overview review of NJNG's finances including:

- a) Performing a complete review of the direct and indirect effects of the financing of NJNG, NJR, and all affiliates on NJNG.
- b) Reviewing and assessing the financial performance of NJNG, NJR, and all affiliates, including the effects of affiliate interrelationships on individual company's performance.
- c) Assessing the effect of NJR and affiliate activities on NJNG's credit worthiness.

3.5.4.2 FINANCING

In relation to NJNG's financing, the contractor shall:

- a) Review the debt management policies for NJNG, NJR and all affiliates, identifying any real or perceived encumbrance of utility assets for non-utility purposes as well as the extent of any negative effects from business diversification.
- b) Evaluate the investment decisions of NJNG and NJR and its affiliates with respect to the degree to which tax considerations may have outweighed other investment criteria (e.g., safety) in making decisions. Additionally, the contractor shall assess the effect of NJR's financing on NJNG.
- c) Evaluate the methods that NJNG and NJR and its affiliates have used to determine and allocate consolidated income taxes over the past 8 years. Additionally, the contractor shall evaluate any other tax treatments allowed by the IRS and report on their advantages and disadvantages.
- d) Assess the degree to which the historical and projected tax benefits from diversified activities have been and are projected to be realized as a result of the taxable income of NJNG and provide the identities of the chief beneficiaries.

3.5.4.3 CASH MANAGEMENT

In relation to NJNG's cash management, the contractor shall:

- a) Evaluate the cash forecasting and diversification of investments between all subsidiary corporations to determine:
 - The details of NJNG and NJR and its affiliate's cash management methodologies.
 - If NJNG's cash is held separately from the cash of NJR and its affiliates.
 - Identify the extent to which funds generated from the Utility's depreciation are used for non-utility purposes and make recommendations for improvement.
- b) Determine the effect of NJR and its affiliates' use of NJNG's generated income on NJNG's financing ability, company value, dividend policy, retained earnings, cash flow, and other financial performance measurements.
- c) Assess the quantified or potential impact of write-offs by NJNG, NJR and its affiliates on NJNG.
- d) Determine the effects of diversifying activities on NJNG's cost of capital.
- e) Review and assess the cost of capital to NJNG relative to the cost of capital to utilities with comparable risk but without non-utility affiliates. Additionally, the contractor shall provide recommendations to insulate NJNG's capital costs from non-utility operations.

3.5.4.4 ACCOUNTING AND PROPERTY RECORDS

In relation to NJNG's accounting and property records, the contractor shall:

- a) Evaluate the processing, recording, authorization and accountability of the accounts payable function among all levels of affiliate management.
- b) Review the processes for receiving and securing accounts receivable.
- c) Review the independence, processing and accountability of the payroll function, including the time and resources spent by employees on payroll.
- d) Determine and detail:
 - The reasonableness of NJNG's as well as NJR's and its affiliates executive compensation packages.
 - The basis and reasonableness for the allocation of these costs to NJNG.
- e) Evaluate the budget reporting, tracking, revision and analysis at all levels.
- f) Evaluate work order procedures, corporate accounting manual and property records at all levels.

3.5.4.5 CAPACITY ASSIGNMENT ISSUES WITH RESPECT TO "OPEN SEASON"

The contractor shall evaluate NJNG's allocation of the costs of its design day resources to particular customer class or classes. The contractor shall also examine and determine whether NJNG holds an "open season" for capacity assignment to Large Volume Sales (LVS) customers. To make this evaluation, the contractor shall:

- a) Assess the quantity, pipeline location, renewal and recall rights of capacity that is available.
- b) Determine which customers may acquire capacity outside of the "open season."
- c) Determine if the entire capacity assignment is to be subject to margin sharing.
- d) Identify the methodology to make "virtual" storage available to LVS customers who receive pipeline capacity during the "open season."
- e) Identify the process for an "open season" capacity assignment to become eligible for two (2) consecutive renewals before being returned to the company's portfolio. Additionally, the contractor shall identify LVS customers who have received a capacity assignment and then participated in an "open season."
- f) Review the terms of the two current LVS customers that received capacity assignment allocations into their pre-existing capacity simultaneously with the first "open season."
- g) Review NJNG's portfolio mix of interstate pipeline capacity and "virtual" interstate storage capacity for marketers.
- h) Review the capacity that is assigned based upon the requirements of residential and commercial & industrial customers served by the marketer.
- i) Recommend a process to restrict marketers from remarketing pipeline capacity.
- j) Recommend a process for assigning pipeline and storage capacity subject to recall rights and protocols to exercise those rights.

3.5.5 CONTRACTOR PERFORMANCE

In relation to NJNG's overall performance, the contractor shall:

- a) Evaluate NJNG's method of reviewing the effectiveness of its contracted service to comply with its obligation to locate and temporarily mark its underground gas pipeline in accordance with the requirements of the NJ One Call Law.
- b) Identify the type and frequency of random field audits that are performed.

- c) Evaluate the procedure for reviewing the accuracy and detail of mark-outs.
- d) Identify the frequency and scope of audits that are performed at contractor facilities.
- e) Identify NJNG's process for determining when there is a need to modify procedures when deficiencies are discovered.

Further, the contractor shall evaluate NJNG's procedures for inspecting the work of contractors it has engaged to install new and replacement mains and services. The contractor shall:

- a) Identify NJNG's process for reviewing the performance of its contracted services in installing new and replacement mains and services.
- b) Assess the procedures, percentage and areas of jobs that are inspected on a daily basis.
- c) Identify and analyze the inspection forms that are used.

3.6 INTERMITTENT CONFERENCES

The contractor shall attend meetings to discuss any and all pertinent items as requested by the BPU staff.

3.7 MONTHLY PROGRESS REPORT

The contractor shall submit a monthly written report to the BPU Contract Manager for any month in which work was performed. The report shall consist of a general narrative providing adequate and detailed information regarding the status of the audit with an explanation of any discrepancies between the approved work plan and actual progress.

3.8 DRAFT FINAL AUDIT REPORT

A draft of the final audit report including a summary of the audit process and all recommendations shall be submitted in accordance with the contract schedule. After appropriate review and authorization by the BPU Contract Manager, the contractor shall release the draft report to NJNG for its review. NJNG's critique of the draft report shall be confined to factual discrepancies and communicated to the BPU Contract Manager. Subsequently, the BPU Contract Manager shall authorize the preparation of the final audit report. NJNG will be permitted to comment upon the contractor's findings and recommendations after the BPU or the BPU Contract Manager releases the final report. These comments shall be in the form of a separate correspondence and shall not be incorporated into the contractor's final audit report.

3.9 EXIT CONFERENCE

Upon completion of the audit engagement and prior to submission of the final audit report, the contractor shall meet with the BPU staff to discuss audit findings.

3.10 FINAL AUDIT REPORT

The contractor shall provide 25 bound copies, one unbound master photocopy and one electronic copy on CD-ROM of the final audit report all marked "Confidential". To protect proprietary information and/or data, such as intellectual property, trade secrets, business plans and personal information the contractor shall also provide the same number of BPU approved redacted copies, a redacted reproducible copy and a redacted electronic copy on CD ROM to the BPU Contract Manager within ten (10) business days of draft approval. The final audit report shall be released only upon authorization from the BPU. In addition, the contractor shall provide twenty five (25) bound copies, one (1) reproducible copy and one (1) electronic copy on CD-ROM of the final audit

report all marked "Confidential" to NJNG. The CD must be in PDF file format to be viewable using Adobe Acrobat Reader software.

3.11 WORK PAPERS

Work papers developed during the engagement shall be the property of the contractor. The contractor shall, at any given time during the course of the audit and at the conclusion thereof, make the work papers developed during the engagement available to the BPU Contract Manager for inspection or review. These work papers shall include:

- (a) The facts gathered and documents obtained
- (b) Computations and analyses performed
- (c) Other pertinent data relating to the audit

Audit work papers must be indexed in a logical manner and show evidence that each work paper or group of papers has been subjected to appropriate supervisory review. Work papers must show the name of the auditor who prepared the paper and must be clearly titled and dated.

Audit work papers must be retained for a period of not less than five (5) years from date of receipt of the contractor's final payment and shall be made available to the BPU Contract Manager when requested.

The contractor shall photocopy these papers upon request of the BPU Contract Manager.

3.12 LITIGATION SUPPORT

Litigation support is not included in the bid price. The contractor shall provide expert testimony regarding any litigation resulting from audit work done as part of this contract when necessary. Expert testimony support shall be provided at the hourly rates and by the labor titles listed on the contractor's budget list for litigation support.

4.0 BID PROPOSAL PREPARATION AND SUBMISSION

4.1 GENERAL

The bidder is advised to thoroughly read and follow all instructions contained in this RFP, including the instructions on the RFP's signatory page, in preparing and submitting its bid proposal.

4.2 BID PROPOSAL DELIVERY AND IDENTIFICATION

In order to be considered, a bid proposal must arrive at the Purchase Bureau in accordance with the instructions on the RFP signatory page

<http://www.state.nj.us/treasury/purchase/bid/summary/06X37901.shtml> . Bidders are cautioned to allow adequate delivery time to ensure timely delivery of bid proposals. **State regulation mandates that late bid proposals are ineligible for consideration. THE EXTERIOR OF ALL BID PROPOSAL PACKAGES ARE TO BE LABELED WITH THE BID IDENTIFICATION NUMBER AND THE FINAL BID OPENING DATE OR RISK NOT BEING RECEIVED IN TIME.**

4.3 NUMBER OF BID PROPOSAL COPIES

The bidder must submit **one (1) complete ORIGINAL bid proposal**, clearly marked as the "ORIGINAL" bid proposal. The bidder should submit **ten (10) full, complete and exact copies of the original (1) full, complete and exact copies** of the original. The copies requested are necessary in the evaluation of the bid proposal. A bidder failing to provide the requested number of copies will be charged the cost incurred by the State in producing the requested number of copies. It is suggested that the bidder make and retain a copy of its bid proposal.

4.4 BID PROPOSAL CONTENT

The bid proposal should be submitted in one volume and that volume divided into four (4) sections with tabs (separators), and the content of the material located behind each tab, as follows:

- Section 1 - Forms ([Section 4.4.1 - 4.4.3.](#))
- Section 2 - Technical Proposal ([Section 4.4.4](#))
- Section 3 - Organizational Support and Experience ([Section 4.4.5](#))
- Section 4 - Cost Proposal ([Section 4.4.6](#))

4.4.1 FORMS THAT MUST BE SUBMITTED WITH BID PROPOSAL

4.4.1.1 SIGNATORY PAGE

The bidder shall complete and submit the Signatory page provided on the Advertised Solicitation, Current Bid Opportunities webpage

<http://www.state.nj.us/treasury/purchase/bid/summary/06X37901.shtml> . The Signatory page shall be signed by an authorized representative of the bidder. If the bidder is a limited partnership, the Signatory page must be signed by a general partner. If the bidder is a joint venture, the Signatory page must be signed by a principal of each party to the joint venture. Failure to comply will result in rejection of the bid proposal.

4.4.1.2 OWNERSHIP DISCLOSURE FORM

In the event the bidder is a corporation, partnership or sole proprietorship, the bidder must complete the attached Ownership Disclosure Form. A current completed Ownership Disclosure

Form must be received prior to or accompany the bid proposal. Failure to do so will preclude the award of a contract.

The Ownership Disclosure Form is located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/06X37901.shtml> .

4.4.1.3 DISCLOSURE OF INVESTIGATIONS/ACTIONS INVOLVING BIDDER

The bidder shall provide a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five years including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. The bidder shall use the Disclosure of Investigations and Actions Involving Bidder form located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/06X37901.shtml> .

4.4.1.4 NOTICE OF INTENT TO SUBCONTRACT FORM

All bidders shall complete the attached Notice of Intent to Subcontract Form <http://www.state.nj.us/treasury/purchase/bid/summary/06X37901.shtml> to advise the State as to whether or not a subcontractor will be utilized to provide any goods or services under the contract. If this is a Small Business Subcontracting set-aside contract, the bidder must comply with the Procedures for Small Business Participation as Subcontractors set forth in <http://www.state.nj.us/treasury/purchase/bid/summary/06X37901.shtml> .

4.4.1.5 SUBCONTRACTOR UTILIZATION FORM

If the bidder intends to utilize a subcontractor, the Subcontractor Utilization Form <http://www.state.nj.us/treasury/purchase/bid/summary/06X37901.shtml> must be completed and submitted with the bid proposal.

4.4.2 PROOF OF REGISTRATIONS THAT MUST BE SUBMITTED WITH THE BID PROPOSAL

4.4.2.1 BUSINESS REGISTRATION CERTIFICATE FROM THE DIVISION OF REVENUE

FAILURE TO SUBMIT A COPY OF THE BIDDER'S BUSINESS REGISTRATION CERTIFICATE (OR INTERIM REGISTRATION) FROM THE DIVISION OF REVENUE WITH THE BID PROPOSAL MAY BE CAUSE FOR REJECTION OF THE BID PROPOSAL.

The bidder may go to www.nj.gov/njbgs to register with the New Jersey Division of Revenue or to obtain a copy of an existing Business Registration Certificate.

Refer to Section 1.1. of the NJ Standard Terms and Conditions version 01 20 06 located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/06X37901.shtml>

4.4.2.2 SMALL BUSINESS SET-ASIDE CONTRACTS

This is a contract with set aside subcontracting goals for Small Businesses. All bidders must include in their bid proposal a completed and signed **Notice of Intent to Subcontract** form located on the Advertised Solicitation, Current Bid Opportunities webpage

<http://www.state.nj.us/treasury/purchase/bid/summary/06X37901.shtml> . Bidders intending to utilize subcontractors must also include a completed and signed Subcontractor Utilization Plan form located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/06X37901.shtml> . Failure to submit the required forms shall result in a determination that the bid is materially non-responsive. Bidders seeking eligible small businesses should contact the New Jersey Commerce and Economic Growth Commission at (609) 292-2146.

4.4.3 FORMS THAT MUST BE SUBMITTED BEFORE CONTRACT AWARD AND SHOULD BE SUBMITTED WITH THE BID PROPOSAL.

4.4.3.1 MACBRIDE PRINCIPLES CERTIFICATION

The bidder is required to complete the attached MacBride Principles Certification evidencing compliance with the MacBride Principles. The requirement is a precondition to entering into a State contract. The MacBride Principles Certification Form is located on the Advertised Solicitation, Current Bid Opportunities webpage:

<http://www.state.nj.us/treasury/purchase/bid/summary/06X37901.shtml> .

4.4.3.2 AFFIRMATIVE ACTION

The bidder is required to complete the attached Affirmative Action Employee Information Report, 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. The Affirmative Action Forms are located on the Advertised Solicitation, Current Bid Opportunities webpage

<http://www.state.nj.us/treasury/purchase/bid/summary/06X37901.shtml> .

4.4.3.3 SERVICES SOURCE DISCLOSURE FORM

Pursuant to N.J.S.A. 52:34-13.2, the bidder is required to submit with its bid proposal a completed source disclosure form. <http://www.state.nj.us/treasury/purchase/bid/summary/06X37901.shtml> . Refer to Section 7.1.2 of this RFP.

4.4.4 TECHNICAL PROPOSAL

In this Section, the bidder shall describe its approach and plans for accomplishing the work outlined in the Scope of Work Section, i.e., Section 3.0. The bidder must set forth its understanding of the requirements of this RFP and its ability to successfully complete the contract. This section of the bid proposal should contain at least the following information:

4.4.4.1 MANAGEMENT OVERVIEW

The bidder shall set forth its overall technical approach and plans to meet the requirements of the RFP in a narrative format. This narrative should convince the State that the bidder understands the objectives that the contract is intended to meet, the nature of the required work and the level of effort necessary to successfully complete the contract. This narrative should convince the State that the bidder's general approach and plans to undertake and complete the contract are appropriate to the tasks and subtasks involved.

Mere reiterations of RFP tasks and subtasks are strongly discouraged, as they do not provide insight into the bidder's ability to complete the contract. The bidder's response to this section should be designed to convince the State that the bidder's detailed plans and approach

proposed to complete the Scope of Work are realistic, attainable and appropriate and that the bidder's bid proposal will lead to successful contract completion.

4.4.4.2 CONTRACT MANAGEMENT

The bidder should describe its specific plans to manage, control and supervise the contract to ensure satisfactory contract completion according to the required schedule. The plan should include the bidder's approach to communicate with the BPU Contract Manager including, but not limited to, status meetings, status reports, etc.

4.4.4.3 CONTRACT SCHEDULE

The bidder should include a contract schedule. If key dates are a part of this RFP, the bidder's schedule should incorporate such key dates and should identify the completion date for each task and sub-task required by the Scope of Work. Such schedule should also identify the associated deliverable item(s) to be submitted as evidence of completion of each task and/or subtask.

The bidder must identify the contract scheduling and control methodology to be used and must provide the rationale for choosing such methodology. The use of Gantt, PERT or other charts is required of the bidder.

4.4.4.4 MOBILIZATION AND IMPLEMENTATION PLAN

Not applicable to this procurement.

4.4.4.5 POTENTIAL PROBLEMS

The bidder should set forth a summary of any and all problems that the bidder anticipates during the term of the contract. For each problem identified, the bidder should provide its proposed solution.

4.4.5 ORGANIZATIONAL SUPPORT AND EXPERIENCE

The bidder should include information relating to its organization, personnel, and experience, including, but not limited to, references, together with contact names and telephone numbers, evidencing the bidder's qualifications, and capabilities to perform the services required by this RFP.

4.4.5.1 LOCATION

The bidder should include the location of the bidder's office that will be responsible for managing the contract. The bidder should include the telephone number and name of the individual to contact.

4.4.5.2 ORGANIZATION CHART (CONTRACT SPECIFIC)

The bidder should include a contract organization chart, with names showing management, supervisory and other key personnel (including sub-vendor's management, supervisory or other key personnel) to be assigned to the contract. The chart should include the labor category and title of each such individual.

4.4.5.3 RESUMES

Detailed resumes should be submitted for all management, supervisory and key personnel to be assigned to the contract. Resumes should be structured to emphasize relevant qualifications and experience of these individuals in successfully completing contracts of a similar size and scope to those required by this RFP. Resumes should include the following:

- Clearly identify the individual's previous experience in completing similar contracts.
 - Team should contain expertise in the following areas
 - 10 years extensive gas supply experience is desired to analyze gas procurement
 - 3-5 years Competitive Service experience within the gas utility industry.
 - Detailed knowledge of the requirements of Sarbanes-Oxley Act implementation
- Beginning and ending dates should be given for each similar contract.
- A description of the contract should be given and should demonstrate how the individual's work on the completed contract relates to the individual's ability to contribute to successfully providing the services required by this RFP.
- With respect to each similar contract, the bidder should include the name and address of each reference together with a person to contact for a reference check and a telephone number.

4.4.5.4 BACKUP STAFF

The bidder should include a list of backup staff that may be called upon to assist or replace primary individuals assigned. Backup staff must be clearly identified as backup staff.

In the event the bidder must hire management, supervisory and/or key personnel if awarded the contract, the bidder should include, as part of its recruitment plan, a plan to secure backup staff in the event personnel initially recruited need assistance or need to be replaced during the contract term.

4.4.5.5 ORGANIZATION CHART (ENTIRE FIRM)

The bidder should include an organization chart showing the bidder's entire organizational structure. This chart should show the relationship of the individuals assigned to the contract to the bidder's overall organizational structure.

4.4.5.6 EXPERIENCE OF BIDDER ON CONTRACTS OF SIMILAR SIZE AND SCOPE

The bidder should provide a comprehensive listing of contracts of similar size and scope that it has successfully completed, as evidence of the bidder's ability to successfully complete the services required by this RFP. Emphasis should be placed on contracts that are similar in size and scope to the work required by this RFP. A description of all such contracts should be included and should show how such contracts relate to the ability of the firm to complete the services required by this RFP. For each such contract, the bidder should provide two names and telephone numbers of individuals for the other contract party. Beginning and ending dates should also be given for each contract.

4.4.5.7 FINANCIAL CAPABILITY OF THE BIDDER

In order to provide the State with the ability to judge the bidder's financial capacity and capabilities to undertake and successfully complete the contract, the bidder should submit certified financial statements to include a balance sheet, income statement and statement of cash flow, and all applicable notes for the most recent calendar year or the bidder's most recent

fiscal year. If certified financial statements are not available, the bidder should provide either a reviewed or compiled statement from an independent accountant setting forth the same information required for the certified financial statements, together with a certification from the Chief Executive Officer and the Chief Financial Officer, that the financial statements and other information included in the statements fairly present in all material respects the financial condition, results of operations and cash flows of the bidder as of, and for, the periods presented in the statements. In addition, the bidder should submit a bank reference.

A bidder may designate specific financial information as not subject to disclosure when the bidder has a good faith legal/factual basis for such assertion. Bidder may submit specific financial documents in a separate, sealed package clearly marked "Confidential-Financial Information" along with the Bid Proposal.

The State reserves the right to make the determination to accept the assertion and shall so advise the bidder.

4.4.5.8 SUBCONTRACTOR(S)

- A. **All bidders** must complete the **Notice of Intent to Subcontract Form** whether or not they intend to utilize subcontractors in connection with the work set forth in this RFP. If the bidder intends to utilize subcontractor(s), then the **Subcontractor Utilization Plan** must also be submitted with the bid.
- B. Should the bidder propose to utilize a subcontractor(s) to fulfill any of its obligations, the bidder shall be responsible for the subcontractor's(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.
- C. The bidder must provide a detailed description of services to be provided by each subcontractor, referencing the applicable Section or Subsection of this RFP.
- D. The bidder should provide detailed resumes for each subcontractor's management, supervisory and other key personnel that demonstrate knowledge, ability and experience relevant to that part of the work which the subcontractor is designated to perform.
- E. The bidder should provide documented experience to demonstrate that each subcontractor has successfully performed work on contracts of a similar size and scope to the work that the subcontractor is designated to perform in the bidder's proposal.

4.4.6 PRICE SCHEDULE

The price schedule is located in [Section 9.0](#).

The bidder should provide a budget with labor titles and hourly rates for each labor title that ties into the total budget proposed and provide the hourly rates and staff titles for litigation support.

Failure to submit all requested pricing information may result in the bidder's proposal being considered materially non-responsive. Each bidder must hold its price(s) firm through issuance of contract to permit the completion of the evaluation of bid proposals received and the contract award process.

5.0 SPECIAL CONTRACTUAL TERMS AND CONDITIONS

5.1 PRECEDENCE OF SPECIAL CONTRACTUAL TERMS AND CONDITIONS

The contract awarded as a result of this RFP shall consist of this RFP, addendum to this RFP, the contractor's bid proposal and the Division's Notice of Award.

Unless specifically stated within this RFP, the Special Contractual Terms and Conditions of the RFP take precedence over the NJ Standard Terms and Conditions version 01 20 06 located on the Advertised Solicitation, Current Bid Opportunities webpage:

<http://www.state.nj.us/treasury/purchase/bid/summary/06X37901.shtml> .

In the event of a conflict between the provisions of this RFP, including the Special Contractual Terms and Conditions and the NJ Standard Terms and Conditions version 01 20 06, and any Addendum to this RFP, the Addendum shall govern.

In the event of a conflict between the provisions of this RFP, including any Addendum to this RFP, and the bidder's bid proposal, the RFP and/or the Addendum shall govern.

5.2 CONTRACT TERM AND EXTENSION OPTION

The term of the contract shall be for a period of **one (1) year**. The anticipated "Contract Effective Date" is provided on the signatory page of this RFP:

<http://www.state.nj.us/treasury/purchase/bid/summary/06X37901.shtml> . If delays in the procurement process result in a change to the anticipated Contract Effective Date, the bidder agrees to accept a contract for the full term of the contract. The contract may be extended for all or part of **two (2) one-year** periods, by the mutual written consent of the contractor and the Director.

5.3 CONTRACT TRANSITION

In the event that a new contract has not been awarded prior to the contract expiration date, as may be extended herein, it shall be incumbent upon the contractor to continue the contract under the same terms and conditions until a new contract can be completely operational. At no time shall this transition period extend more than **ninety (90) days** beyond the expiration date of the contract.

5.4 CONTRACT AMENDMENT

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

5.5 CONTRACTOR RESPONSIBILITIES

The contractor shall have sole responsibility for the complete effort specified in the contract. Payment will be made only to the contractor. The contractor shall have sole responsibility for all payments due any subcontractor.

The contractor is responsible for the professional quality, technical accuracy and timely completion and submission of all deliverables, services or commodities required to be provided under the contract. The contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its deliverables and other services. The approval of deliverables furnished under this contract shall not in any way relieve the contractor of

responsibility for the technical adequacy of its work. The review, approval, acceptance or payment for any of the services shall not be construed as a waiver of any rights that the State may have arising out of the contractor's performance of this contract.

5.6 SUBSTITUTION OF STAFF

If it becomes necessary for the contractor to substitute any management, supervisory or key personnel, the contractor will identify the substitute personnel and the work to be performed.

The contractor must provide detailed justification documenting the necessity for the substitution. Resumes must be submitted evidencing that the individual(s) proposed as substitution(s) have qualifications and experience equal to or better than the individual(s) originally proposed or currently assigned.

The contractor shall forward a request to substitute staff to the BPU Contract Manager for consideration and approval. No substitute personnel are authorized to begin work until the contractor has received written approval to proceed from the BPU Contract Manager.

5.7 SUBSTITUTION OR ADDITION OF SUBCONTRACTOR(S)

This Subsection serves to supplement but not to supersede Section 3.11 of the NJ Standard Terms and Conditions version 01 20 06 located on the Advertised Solicitation, Current Bid Opportunities webpage.

If it becomes necessary for the contractor to substitute a subcontractor, add a subcontractor or substitute its own staff for a subcontractor, the contractor will identify the proposed new subcontractor or staff member(s) and the work to be performed. The contractor must provide detailed justification documenting the necessity for the substitution or addition.

The contractor must provide detailed resumes of its proposed replacement staff or of the proposed subcontractor's management, supervisory and other key personnel that demonstrate knowledge, ability and experience relevant to that part of the work which the subcontractor is to undertake.

The qualifications and experience of the replacement(s) must equal or exceed those of similar personnel proposed by the contractor in its bid proposal.

The contractor shall forward a written request to substitute or add a subcontractor or to substitute its own staff for a subcontractor to the BPU Contract Manager for consideration. If the BPU Contract Manager approves the request, the BPU Contract Manager will forward the request to the Director for final approval.

No substituted or additional subcontractors are authorized to begin work until the contractor has received written approval from the Director.

5.8 OWNERSHIP OF MATERIAL

All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the contract, including, but not limited to, all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the services required under this contract shall be and remain the property of the State of New Jersey and shall be delivered to the State of New Jersey upon 30 days notice by the State. With respect to

software computer programs and/or source codes developed for the State, the work shall be considered "work for hire", i.e., the State, not the contractor or subcontractor, shall have full and complete ownership of all software computer programs and/or source codes developed. To the extent that any of such materials may not, by operation of the law, be a work made for hire in accordance with the terms of this Agreement, contractor or subcontractor hereby assigns to the State all right, title and interest in and to any such material, and the State shall have the right to obtain and hold in its own name and copyrights, registrations and any other proprietary rights that may be available.

Should the bidder anticipate bringing pre-existing intellectual property into the project, the intellectual property must be identified in the bid proposal. Otherwise, the language in the first paragraph of this section prevails. If the bidder identifies such intellectual property ("Background IP") in its bid proposal, then the Background IP owned by the bidder on the date of the contract, as well as any modifications or adaptations thereto, remain the property of the bidder. Upon contract award, the bidder or contractor shall grant the State a non-exclusive, perpetual royalty free license to use any of the bidder/contractor's Background IP delivered to the State for the purposes contemplated by the Contract.

5.9 DATA CONFIDENTIALITY

All financial, statistical, personnel and/or technical data supplied by the State to the contractor are confidential. The contractor is required to use reasonable care to protect the confidentiality of such data. Any use, sale or offering of this data 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.

5.10 NEWS RELEASES

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

5.11 ADVERTISING

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

5.12 LICENSES AND PERMITS

The contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this contract. The contractor shall supply the BPU Contract Manager 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 bid proposal.

5.13 CLAIMS AND REMEDIES

5.13.1 CLAIMS

All claims asserted against the State 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.

5.13.2 REMEDIES

Nothing in the contract shall be construed to be a waiver by the State 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 Director.

5.13.3 REMEDIES FOR FAILURE TO COMPLY WITH MATERIAL CONTRACT REQUIREMENTS

In the event that the contractor fails to comply with any material contract requirements, the Director may take steps to terminate the contract in accordance with the State administrative code and/or authorize the delivery of contract items by any available means, with the difference between the price paid and the defaulting contractor's price either being deducted from any monies due the defaulting contractor or being an obligation owed the State by the defaulting contractor.

5.14 LATE DELIVERY

The contractor must immediately advise the BPU Contract Manager of any circumstance or event that could result in late completion of any task or subtask called for to be completed on a date certain.

5.15 RETAINAGE

Not applicable

5.16 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 task or subtask called for under this contract. In such an event, the Director shall provide advance written notice to the contractor.

Upon receipt of such written notice, the contractor will submit, within five (5) working days to the Director and the BPU Contract Manager, an itemization of the work effort already completed by task or subtask. The contractor shall be compensated for such work effort according to the applicable portions of its price schedule.

5.17 SUSPENSION OF WORK

The BPU Contract Manager 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 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 BPU Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director and the contractor shall negotiate an equitable adjustment, if any, to the contract price.

5.18 CHANGE IN LAW

Whenever an unforeseen change in applicable law or regulation affects the services that are the subject of this contract, the contractor shall advise the BPU Contract Manager and the Director in writing and include in such written transmittal any estimated increase or decrease in the cost of its performance of the services as a result of such change in law or regulation. The Director and the contractor shall negotiate an equitable adjustment, if any, to the contract price.

5.19 CONTRACT PRICE INCREASE (PREVAILING WAGE)

If the Prevailing Wage Act (N.J.S.A. 34:11-56 et seq.) is applicable to the contract, the contractor may apply to the Director, on the anniversary of the effective date of the contract, for a contract price increase. The contract price increase will be available only for an increase in the prevailing wages of trades and occupations covered under this contract during the prior year. The contractor must substantiate with documentation the need for the increase and submit it to the Director for review and determination of the amount, if any, of the requested increase, which shall be available for the upcoming contract year. No retroactive increases will be approved by the Director.

5.20 ADDITIONAL WORK AND/OR SPECIAL PROJECTS

The contractor shall not begin performing any additional work or special projects without first obtaining written approval from both the BPU Contract Manager and the Director.

In the event of additional work and/or special projects, the contractor must present a written proposal to perform the additional work to the BPU Contract Manager. 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 bid proposal submitted in response to this RFP. Whenever possible, the price schedule should be a firm, fixed cost 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 bid proposal. A payment schedule, tied to successful completion of tasks and subtasks, must be included.

Upon receipt and approval of the contractor's written proposal, the BPU Contract Manager shall forward same to the Director for the Director's written approval. Complete documentation from the Using Agency, confirming the need for the additional work, must be submitted.

Documentation forwarded by the BPU Contract Manager to the Director must include all other required State approvals, such as those that may be required from the State of New Jersey's Office of Management and Budget (OMB) and Office of Information and Technology (OIT).

No additional work and/or special project may commence without the Director's written approval. In the event the contractor proceeds with additional work and/or special projects without the Director's written approval, it shall be at the contractor's sole risk. The State shall be under no obligation to pay for work performed without the Director's written approval.

5.21 FORM OF COMPENSATION AND PAYMENT

This Section supplements Section 4.5 of the NJ Standard Terms and Conditions version 01 20 06, located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/06X37901.shtml> . The contractor must submit official State invoice forms to the Using Agency with supporting documentation evidencing that work for which payment is sought has been satisfactorily completed. Invoices must reference the tasks or subtasks detailed in the Scope of Work section of the RFP and must be in strict

accordance with the firm, fixed prices submitted for each task or subtask on the RFP pricing sheets. When applicable, invoices should reference the appropriate RFP price sheet line number from the contractor's bid proposal. All invoices must be approved by the BPU Contract Manager before payment will be authorized.

In addition, primary contractors must provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business subcontractor(s). This breakdown shall be sent to the Purchase Bureau Business Unit, Set-Aside Coordinator.

Monthly payments will be a percentage of the total firm fixed price made in accordance with the schedule approved in [Section 3.3](#).

Invoices must also be submitted for any special projects, additional work or other items properly authorized and satisfactorily completed under the contract. Invoices shall be submitted according to the payment schedule agreed upon when the work was authorized and approved. Payment can only be made for work when it has received all required written approvals and has been satisfactorily completed.

Note: In no event shall more than seventy-five percent (75%) of the total contract cost be paid to the contractor until the final End of Year Plan or End of Contract Plan is complete, submitted to and accepted by the BPU Contract Manager.

Litigation support shall be paid in accordance with the hourly rates bid and hours negotiated at the time of engagement.

5.21.1 PAYMENT TO CONTRACTOR - OPTIONAL METHOD

Not applicable

5.22 MODIFICATIONS AND CHANGES TO THE NJ STANDARD TERMS AND CONDITIONS VERSION 01 20 06

NJ Standard Terms and Conditions version 01 20 06 are located on the Advertised Solicitation, Current Bid Opportunities webpage
<http://www.state.nj.us/treasury/purchase/bid/summary/06X37901.shtml>

5.22.1 INDEMNIFICATION

Section 2.2 of the NJ Standard Terms and Conditions version 01 20 06, is deleted and replaced with the following:

2.2 Indemnification

The contractor's liability to the State for actual, direct damages resulting from the contractor's performance or non-performance, or in any manner related to the contract, for any and all claims, shall be limited in the aggregate to 500 % of the value of the contract, except that such limitation of liability shall not apply to the following:

1. The contractor's obligation to indemnify the State of New Jersey and its employees from and against any claim, demand, loss, damage or expense relating to bodily injury or the death of any person or damage to real property or tangible personal property, incurred from the work or materials supplied by the contractor under the contract caused by negligence or willful misconduct of the contractor;

2. The contractor's breach of its obligations of confidentiality; and,
3. Contractor's liability with respect to copyright indemnification.

The contractor's indemnification obligation is not limited by but is in addition to the insurance obligations contained in Section 2.3 of the NJ Standard Terms and Conditions version 01 20 06.

The contractor shall not be liable for special, consequential, or incidental damages.

5.22.2 INSURANCE - PROFESSIONAL LIABILITY INSURANCE

Section 2.3 of the NJ Standard Terms and Conditions version 01 20 06 regarding insurance is modified with the addition of the following section regarding Professional Liability Insurance.

d) Professional Liability Insurance: The Contractor shall carry Errors and Omissions, Professional Liability Insurance and/or Professional Liability Malpractice Insurance sufficient to protect the Contractor from any liability arising out the professional obligations performed pursuant to the requirements of the Contract. The insurance shall be in the amount of not less than \$5,000,000 and in such policy forms as shall be approved by the State. If the Contractor has claims-made coverage and subsequently changes carriers during the term of the Contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

5. 23 CONTRACTOR'S WARRANTY

- 1) The Contractor is responsible for the quality, technical accuracy and timely completion and delivery of all deliverables and other services to be furnished by the Contractor under the Contract. The Contractor agrees to perform in a good, skillful and timely manner all services set forth in the Contract.
- 2) The Contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its services and deliverables furnished under the Contract. The approval of interim deliverables furnished under the Contract shall not in any way relieve the Contractor of fulfilling all of its obligations under the Contract. The acceptance or payment for any of the services rendered under the Contract shall not be construed as a waiver by the State or Agency, of any rights under the agreement or of any cause of action arising out of the Contractor's performance of the Contract.

6.0 PROPOSAL EVALUATION/CONTRACT AWARD

6.1 PROPOSAL EVALUATION COMMITTEE

Bid proposals may be evaluated by an Evaluation Committee composed of members of affected departments and agencies together with representative(s) from the Purchase Bureau. Representatives from other governmental agencies may also serve on the Evaluation Committee. On occasion, the Evaluation Committee may choose to make use of the expertise of outside consultant in an advisory role.

6.2 ORAL PRESENTATION AND/OR CLARIFICATION OF BID PROPOSAL

After the submission of bid proposals, unless requested by the State, contact with the State is limited to status inquiries only and such inquiries are only to be directed to the buyer. Any further contact or information about the proposal to the buyer or any other State official connected with the solicitation will be considered an impermissible supplementation of the bidder's bid proposal.

A bidder may be required to give an oral presentation to the Evaluation Committee concerning its bid proposal. The Evaluation Committee may also require a bidder to submit written responses to questions regarding its bid proposal.

The purpose of such communication with a bidder, either through an oral presentation or a letter of clarification, is to provide an opportunity for the bidder to clarify or elaborate on its bid proposal. Original bid proposals submitted, however, cannot be supplemented, changed, or corrected in any way. No comments regarding other bid proposals are permitted. Bidders may not attend presentations made by their competitors.

It is within the Evaluation Committee's discretion whether to require a bidder to give an oral presentation or require a bidder to submit written responses to questions regarding its bid proposal. Action by the Evaluation Committee in this regard should not be construed to imply acceptance or rejection of a bid proposal. The Purchase Bureau buyer will be the sole point of contact regarding any request for an oral presentation or clarification.

6.3 EVALUATION CRITERIA

The following evaluation criteria categories, not necessarily listed in order of significance, will be used to evaluate bid proposals received in response to this RFP. The evaluation criteria categories may be used to develop more detailed evaluation criteria to be used in the evaluation process:

6.3.1 TECHNICAL EVALUATION CRITERIA

- A) The bidder's general approach and plans in meeting the requirements of this RFP.
- B) The bidder's detailed approach and plans to perform the services required by the Scope of Work of this RFP.
- C) The bidder's documented experience in successfully completing contracts of a similar size and scope to the work required by this RFP.

- D) The qualifications and experience of the bidder's management, supervisory or other key personnel assigned to the contract, with emphasis on documented experience in successfully completing work on contracts of similar size and scope to the work required by this RFP.
- E) The overall ability of the bidder to mobilize, undertake and successfully complete the contract. This judgment will include, but not be limited to, the following factors: the number and qualifications of management, supervisory and other staff proposed by the bidder to complete the contract, the availability and commitment to the contract of the bidder's management, supervisory and other staff proposed and the bidder's contract management plan, including the bidder's contract organizational chart.

6.3.2 BIDDER'S PRICE SCHEDULE

For evaluation purposes, bidders will be ranked according to the total bid price located on the Price Sheet located on the Advertised Solicitation, Current Bid Opportunities webpage, <http://www.state.nj.us/treasury/purchase/bid/summary/06X37901.shtml>

6.3.3 BID DISCREPANCIES

In evaluating bids, 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 corrected sum of the column of figures.

6.4 NEGOTIATION AND BEST AND FINAL OFFER (BAFO)

Following the opening of bid proposals, the State reserves the right, pursuant to N.J.S.A. 52:34-12(f), to negotiate: the technical services offered, the terms and conditions and/or the price of a proposed contract award with any bidder. In addition, the State reserves the right to seek a Best and Final Offer (BAFO) from one or more bidders. In response to the State's request to negotiate, bidders must continue to satisfy all mandatory RFP requirements but may improve upon their original technical proposal in any revised technical proposal. However, any revised technical proposal that does not continue to satisfy all mandatory requirements will be rejected as non-responsive and the original technical proposal will be used for any further evaluation purposes, in accordance with the following procedure.

The Evaluation Committee will conduct an initial review and determine whether and with which bidder(s) it will negotiate, and will communicate its request to each such bidder. In response, the bidder will submit any required revisions to its proposal.

In response to the State's request for a BAFO, bidders may submit a revised price proposal that is equal to or lower in price than their original submission, but must continue to satisfy all mandatory requirements. Any revised price proposal that is higher in price than the original will be rejected as non-responsive and the original bid will be used for any further evaluation purposes.

After receipt of the results of the negotiation and/or the BAFO(s), the Evaluation Committee will complete its evaluation and recommend to the Director for award that responsible bidder(s) whose bid proposal, conforming to this RFP, is most advantageous to the State, price and other factors considered.

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

7.0 CONTRACT AWARD

7.1 DOCUMENTS REQUIRED BEFORE CONTRACT AWARD

7.1.1 REQUIREMENTS OF N.J.S.A. 19:44A-20.13-25 (FORMERLY EXECUTIVE ORDER 134)

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the negotiation and award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, the Legislature enacted N.J.S.A. 19:44A-20.13 – 25 on March 22, 2005 the “Legislation”), retroactive to October 15, 2004, superseding the terms of Executive Order 134. Pursuant to the requirements of the Legislation, the terms and conditions set forth in this section are material terms of any contract resulting from this RFP:

7.1.1.1 DEFINITIONS

For the purpose of this section, the following shall be defined as follows:

a) Contribution – means a contribution reportable as a recipient under “The New Jersey Campaign Contributions and Expenditures Reporting Act.” P.L. 1973, c. 83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq. Through December 31, 2004, contributions in excess of \$400 during a reporting period were deemed "reportable" under these laws. As of January 1, 2005, that threshold was reduced to contributions in excess of \$300.

b) Business Entity – means any natural or legal person, business corporation, professional services corporation, Limited Liability Company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. The definition of a business entity includes (i) all principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate; (ii) any subsidiaries directly or indirectly controlled by the business entity; (iii) any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and (iv) if a business entity is a natural person, that person’s spouse or child, residing in the same household.

7.1.1.2 BREACH OF TERMS OF THE LEGISLATION

It shall be a breach of the terms of the contract for the Business Entity to (i) make or solicit a contribution in violation of the Legislation, (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) 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; (v) 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; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange of contributions to circumvent the intent of the Legislation; or

(viii) 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.

7.1.1.3 CERTIFICATION AND DISCLOSURE REQUIREMENTS

a) The State shall not enter into a contract to procure from any Business Entity services or any material, supplies or equipment, or to acquire, sell or lease any land or building, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor, or to any State or county political party committee during certain specified time periods

b) Prior to awarding any contract or agreement to any Business Entity, the Business Entity proposed as the intended awardee of the contract shall submit the Certification and Disclosure form, certifying that no contributions prohibited by the Legislation have been made by the Business Entity and reporting all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C.527 of the Internal Revenue Code that also meets the definition of a "continuing political committee" within the mean of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The required form and instructions, available for review on the Purchase Bureau website at <http://www.state.nj.us/treasury/purchase/forms.htm#eo134> , shall be provided to the intended awardee for completion and submission to the Purchase Bureau with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Contract, the intended awardee shall submit to the Division, in care of the Purchase Bureau Buyer, the Certification and Disclosure(s) within five (5) business days of the State's request. Failure to submit the required forms will preclude award of a contract under this RFP, as well as future contract opportunities.

c) Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the contract, and any extension(s) thereof, at the time any such contribution is made. The required form and instructions, available for review on the Purchase Bureau website at <http://www.state.nj.us/treasury/purchase/forms.htm#eo134> , shall be provided to the intended awardee with the Notice of Intent to Award.

7.1.1.4 STATE TREASURER REVIEW

The State Treasurer or his designee shall review the Disclosures submitted pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended awardee, prior to award, or during the term of the contract, by the contractor. If the State Treasurer determines that any contribution or action by the contractor constitutes a breach of contract that poses a conflict of interest in the awarding of the contract under this solicitation, the State Treasurer shall disqualify the Business Entity from award of such contract.

7.1.1.5 ADDITIONAL DISCLOSURE REQUIREMENT OF P.L. 2005, C. 271

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 P.L. 2005, c. 271, section 3 if the contractor receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the contractor's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

7.1.2 SOURCE DISCLOSURE REQUIREMENTS

7.1.2.1 REQUIREMENTS OF N.J.S.A. 52:34-13.2

Under the referenced statute, effective August 3, 2005, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director 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 State Treasurer.

7.1.2.2 SOURCE DISCLOSURE REQUIREMENTS

Pursuant to the statutory requirements, the intended awardee of a contract primarily for services with the State of New Jersey must disclose the location by country where services under the contract, including subcontracted services, will be performed. The Source Disclosure Certification form is located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/06X37901.shtml> .

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

If any of the services cannot be performed within the United States, the bidder shall state with specificity the reasons why the services cannot be so performed. The Director shall determine whether sufficient justification has been provided by the bidder to form the basis of his certification that the services cannot be performed in the United States and whether to seek the approval of the Treasurer.

7.1.2.3 BREACH OF CONTRACT OF EXECUTIVE ORDER 129

A SHIFT TO PROVISION 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, who had on contract award declared that services would be performed in the United States, 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 3.5b.1 of the Standard Terms and Conditions of the RFP, unless previously approved by the Director and the Treasurer.

7.2 FINAL CONTRACT AWARD

Contract award[s] shall be made with reasonable promptness by written notice to that responsible bidder(s), whose bid proposal(s), conforming to this RFP, is(are) most advantageous to the State, price, and other factors considered. Any or all bid proposals may be rejected when the State Treasurer or the Director determines that it is in the public interest so to do.

7.3 INSURANCE CERTIFICATES

The contractor shall provide the State with current certificates of insurance for all coverages required by the terms of this contract, naming the State as an Additional Insured.

7.4 PERFORMANCE BOND

Not applicable

8.0 CONTRACT ADMINISTRATION

8.1 CONTRACT MANAGER

The BPU Contract Manager is the State employee responsible for the overall management and administration of the contract.

The BPU Contract Manager for this project will be identified at the time of execution of contract. At that time, the contractor will be provided with the BPU Contract Manager's name, department, division, agency, address, telephone number, fax phone number, and email address.

8.1.1 BPU CONTRACT MANAGER RESPONSIBILITIES

For an agency contract where only one State office uses the contract, the BPU Contract Manager will be responsible for engaging the contractor, assuring that Purchase Orders are issued to the contractor, directing the contractor to perform the work of the contract, approving the deliverables and approving payment vouchers. The BPU Contract Manager is the person that the contractor will contact **after the contract is executed** for answers to any questions and concerns about any aspect of the contract. The BPU Contract Manager is responsible for coordinating the use and resolving minor disputes between the contractor and any component part of the BPU Contract Manager's Department.

If the contract has multiple users, then the BPU Contract Manager shall be the central coordinator of the use of the contract for all Using Agencies, while other State employees engage and pay the contractor. All persons and agencies that use the contract must notify and coordinate the use of the contract with the BPU Contract Manager.

8.1.2 COORDINATION WITH THE BPU CONTRACT MANAGER

Any contract user that is unable to resolve disputes with a contractor shall refer those disputes to the BPU Contract Manager for resolution. Any questions related to performance of the work of the contract by contract users shall be directed to the BPU Contract Manager. The contractor may contact the BPU Contract Manager if the contractor can not resolve a dispute with contract users.

9.0 PRICE SCHEDULE

MANAGEMENT AUDIT OF NEW JERSEY NATURAL GAS

Bid Number 06-X-37901

Refer to [RFP Section 3.0](#) (Scope of Work) for task requirements and deliverables & [RFP Section 2.1](#) for definitions of "Firm Fixed Price"

Line Number	Commodity - Service Description	Quantity	Unit	Firm Fixed Unit Price	Amount
1	Firm Fixed Price for Management Audit and Final Report*	1	Each	\$	\$

* Note: The bidder shall submit a budget including labor titles and hourly rates for each labor title that supports and explains the firm fixed price submitted on its price schedule. The bidder must provide a price for each bid item or the bid proposal may be considered non-responsive.

Line Number	Commodity - Service Description	Estimated Quantity	Unit	Firm Fixed Unit Price	Amount
2	Additional Final Bound Copies of the Management Audit Report: If additional copies of the final bound report are needed beyond those specified in Section 3.5 included in Line Number 1 above, the contractor shall deliver final bound and printed copies of the Management Audit Report to the BPU Contract Manager (Price per additional Report).	20	Each	\$	\$
3	Litigation Support**				\$ NA

**The bidder must also provide a list of labor titles and hourly rates for litigation support.