

**REQUEST FOR PROPOSALS
FOR
CREDENTIAL PATHWAYS TECHNICAL ASSISTANT
BUILDING STRONGER NEW JERSEY CREDENTIAL PATHWAYS INITIATIVE**

**Issued by:
New Jersey Office of the Secretary of Higher Education**

Date Issued:

July 26, 2021

Question Cut-off Date:

August 4, 2021

Proposals Due:

August 6, 2021

**Dr. Brian K. Bridges
Secretary of Higher Education**

**Office of the Secretary of Higher Education
1 John Fitch Way, 10th floor
P.O. Box 542
Trenton, New Jersey 08625**

**Contact:
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Policy Advisor**

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1.0 PURPOSE AND INTENT

The New Jersey Office of the Secretary of Higher Education (“OSHE”), is seeking proposals from organizations interested in serving as a Credential Pathways Technical Assistant to help develop, pilot, and promote OSHE’s Building Stronger NJ Credential Pathways Initiative (Credential Pathways Initiative). OSHE’s Credential Pathways Initiative shall enable students to build the critical skills necessary to enter careers in New Jersey’s growing industries.

Through this Request for Proposals (“RFP”), the OSHE seek to obtain the best services to achieve the goals of the State. The Bidder engaged pursuant to this RFP will enter into an agreement with OSHE as more particularly described below (the “Contract”) and will be considered and independent contractor, and not an employee or entity of the State.

2.0 MINIMUM QUALIFICATIONS

At a minimum, Bidders must satisfy the following requirements:

Business allowed to operate in the State of New Jersey in accordance with N.J.A.C. 18:7-1.9.

3.0 DEFINITIONS

The following definitions will be part of the Contract awarded as a result of this RFP.

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

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

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

Credential Pathways Technical Assistant - The entity selected pursuant to the RFP to undertake and operate the Credential Pathways Initiative.

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

Contractor – The Bidder awarded a Contract resulting from this RFP.

May – Denotes that which is permissible, not mandatory.

OSHE – New Jersey Office of the Secretary of Higher Education.

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

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

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

Should – Denotes that which is recommended, not mandatory.

State – State of New Jersey.

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

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

Task – A discrete unit of work to be performed.

4.0 BACKGROUND

The future of higher education and the workforce requires lifelong learning and re-skilling, where individuals navigate multiple entry and exit points to gain the knowledge and skills necessary to be successful. Pathway mapping is an opportunity for college leaders, communities, and state agencies to work collaboratively in sequencing, aligning, and improving pathways to train the local workforce with the credentials and skills needed to take on jobs within the economic industries of the future.

The Credential Pathways Initiative shall focus on aligning programs and careers within the State, sharing of educational opportunities with students, and promoting education and employer collaboration in an effort to meet the training needs of residents and the staffing needs of employers.

To market New Jersey’s credential and degree programs and align them to a remunerative, in-demand career, the Credential Pathways Technical Assistant will map stackable credential paths in three key industries:

- 1) Renewable Energy;
- 2) Global Manufacturing and Supply Chain Management; and
- 3) Innovation and Technology.

A. Pathway Definition

For the purposes of the Credential Pathway Initiative, a pathway is a set of stackable credentials that lead students to careers within an industry and offer students multiple entry and exit points to assist them in moving to each level in their career. Pathway mapping are based on education and employer-informed competencies and, thus, have market value.

B. Essential Components of Credential Pathway Mapping

OSHE’s Credential Pathway Initiative shall be designed to strengthen short-term credential and training programs that are nested in and aligned within 2- and 4-year degree programs. Each

component within the education-to-career map should build upon necessary job-related skill and lead to further educational opportunities. The pathway structure should include most of the following components:

- Structured information of curriculum and courses offered for credit that apply to future credentials within each industry
- Clear, easily accessible information on how prior learning and each credential builds upon the next and the jobs aligned with each credential.
- A visual map of the pathway that includes opportunities for attainment of additional educational opportunities, including more advanced credentials/degrees and transfer to four-year institutions.
- Labor market information and workforce data (as available) to improve the design and dissemination of career pathway and program information.

The parameters of the Credential Pathways Initiative are subject to change at the discretion of OSHE.

5.0 SCOPE OF SERVICES

5.1 Establishing Industry Work Group Partnerships

The Credential Pathways Technical Assistant duties include establishing and convening industry working groups of business and union representatives for each of the three pathways. Industry working groups are partnerships of employers from the same industry in New Jersey who will work with institutions of higher education to address workforce needs and align academic programs with the skills needed to enter jobs in the targeted industry.

In consultation with OSHE, the Credential Pathways Technical Assistant shall identify representatives to be included in the working group and solicit their participation in working group meetings. The Credential Pathways Technical Assistant shall schedule a series of meetings to engage the working group, set meeting agendas, and facilitate meeting discussions. Industry working group meetings facilitate industry-based dialog sessions to identify workforce challenges, credential requirements, and skill gaps. During the pathway piloting phase, the Credential Pathway Technical Assistant shall engage the Industry Working Groups to continue providing feedback on the established pathway maps.

5.2 Designing and Piloting Credential Pathway Maps

The Credential Pathways Technical Assistant shall conduct background research on New Jersey's higher education and workforce landscape to begin designing the pathway maps and to ensure that curriculum is demand-driven. Information collected by the Credential Pathways Technical Assistant shall include an inventory of existing credential and degree programs that are aligned with each industry and the jobs students can receive upon completion of the program. Additional research activities may include:

- Creating and deploying an employer survey on available careers within the industry and the necessary skills or credentials needed.
- Facilitating employer focus groups to answer additional questions about their respective industry.

- Analyzing labor market data for each pathway. OSHE will assist the Credential Pathways Technical Assistant with accessing any labor market data, as available.

To pilot the credential pathway maps, the Credential Pathways Technical Assistant shall work with the county colleges within the state and involve extensive partnerships with four-year colleges and universities, vocational-technical high schools, and employers from the Industry Working Groups. In consultation with OSHE, the Credential Pathways Technical Assistant shall determine the focus of each industry's credential pathway pilot. Possible focus areas for each of the industry pilots include:

- Development of new curriculum,
- Modifications to existing curriculum,
- Development of model transfer and partnership agreements, and
- Development of Prior Learning Assessment protocols and agreements.

The Credential Pathways Technical Assistant shall provide OSHE a detailed pilot plan upon completion of the initial background research and Industry Working Group feedback.

5.4 Marketing New Jersey Credential Pathways

The Credential Pathway Technical Assistant, shall create print and digital marketing materials for each industry, in consultation with OSHE, that are vetted by the Industry Working Groups and the institutions of higher education. Print and digital marketing materials include credential maps, ladders, and other visual aids that identify entry and exit points and show alignment with associated career opportunities. The marketing aids will assist provide New Jersey residents information about the available education opportunities.

The Credential Pathway Technical Assistant, or a Subcontractor the Credential Pathway Technical Assistant selects in consultation with OSHE, shall draft the narrative information and design each industry's marketing material. The Credential Pathway Technical Assistant shall establish a review period for OSHE to provide feedback on final design of marketing materials. Final copies of the marketing materials shall be provided to OSHE by completion of the term.

5.5 Timeline and Standards

All activities outlined in this RFP for the Credential Pathways Initiative must be completed by February 28, 2022.

The Credential Pathway Technical Assistant shall have weekly meetings with the Policy Advisor to discuss any issues that may need to be resolved and to keep her apprised of the progress of the pilots.

6.0 REQUIRED COMPONENTS OF THE RFP PROPOSAL

6.1 General Information

All Bidders shall provide brief but concise responses to the following. Appendices can be used for additional general information.

- A. Narrative – Bidders shall provide an overview of how the services detailed in the scope of work will be implemented and the timeframes involved, specifically addressing the following:
 - (a) Explanation of how the Bidder's approach satisfies the requirements as stated in the RFP.
 - (b) A detailed proposal with a person/hour and staff classification mix to meet the scope of work describing how the vendor intends to accomplish each component of the scope of work.
 - (c) A detailed budget to perform the scope of work.
 - (d) A schedule identifying the deliverables to be submitted under this Engagement Query.
 - (e) Identification of any potential conflicts of interest regarding the delivery of services for the scope of work under this Engagement Query.
- B. Organizational Commitment and Capacity -- Bidders shall describe their commitment to addressing the conditions and/or needs identified in this RFP, including the organizational support that exists for implementing the activities associated with the Credential Pathways Initiative. The Bidder should describe its experience implementing innovative stackable credential pathway mapping and managing education-employer partnerships.
- C. Budget Summary - Bidders shall provide a budget summary detailing the estimated administrative costs of managing this initiative, a general staffing plan, and timeline. No funding for the Credential Pathway Technical Assistant's costs of administration shall be provided pursuant to the Contract awarded through this RFP.
- D. Particular consideration will be given to Bidders with a presence in New Jersey. Please provide any information relevant to these considerations.
- E. Provide any other information that you feel uniquely qualifies you to assist OSHE in this capacity for the term of the Contract.

6.2 Additional Information

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

- (a) A copy of a valid New Jersey Business Registration must be submitted by the Bidders. To facilitate proposal evaluation and contract award process, the Bidder shall submit the Business Registration form with the proposal. If not already registered with the New Jersey Division of Revenue, registration can be completed online at the Division of Revenue website: <https://nj.gov/treasury/revenue/gettingregistered.shtml>.
- (b) Pursuant to Public Law 2005, Chapter 51 (Chapter 51), to avoid any appearance that the selection of State Contractors is based on the Contractors' political contributions, State departments, agencies and authorities are precluded from awarding contracts exceeding \$17,500 to vendors who make, or have made, certain political contributions on and after October 15, 2004. Chapter 51 also requires the disclosure of all contributions to any political organization organized under 26 U.S.C.A. 527 that also meets the definition of a continuing political committee within the meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. Bidders

shall submit the required certification form(s) and disclosure form(s) with their proposals. Failure to submit such forms and/or failure of such forms to evidence compliance with Chapter 51 shall be cause for rejection of a Bidder's proposal. Any Bidder selected shall maintain compliance with Chapter 51 during the term of its engagement. The disclosure form can be found at: <https://nj.gov/treasury/purchase/forms.shtml>.

- (c) Pursuant to Public Law 2005, Chapter 271 (Chapter 271) Bidders must disclose their (and their principals') political contributions within the immediately preceding twelve (12) month period. No prospective firm will be precluded from being awarded a contract by virtue of the information provided in the Chapter 271 disclosure provided the form is fully and accurately completed. Prior to formal appointment the firm anticipated to be selected will be required to submit Chapter 271 disclosures. To facilitate proposal evaluation and contract award process, the vendor shall submit the Chapter 271 disclosure with the proposal. The disclosure form can be found at: <https://nj.gov/treasury/purchase/forms.shtml>.

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

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

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

(f) **CERTIFICATION OF NON-INVOLVEMENT IN PROHIBITED ACTIVITIES IN IRAN**

Pursuant to N.J.S.A. 52:32-58, the Bidder must certify that neither the Bidder, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment

Activities in Iran and that neither is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Bidder is unable to so certify, the Bidder shall provide a detailed and precise description of such activities. The certification form can be found at: <https://nj.gov/treasury/purchase/forms.shtml>.

(g) A copy of a Disclosure of Investigations and Other Actions Involving the Vendor Form must be submitted by all Bidders. The certification can be found at:

<https://www.state.nj.us/treasury/purchase/forms/DisclosureofInvestigations.pdf>.

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

7.0 PROPOSAL SUBMISSION

7.1 Delivery

A PDF of the proposal must be emailed to FinanceDocs@OSHE.nj.gov no later than August 6, 2021 to be considered.

7.2 Questions

OSHE will accept questions pertaining to this RFP from all potential bidders electronically. Questions shall be directed to Karen Bussey at the following email address:

OSHE@oshe.nj.gov

Questions will be accepted until 5pm Est. on August 4, 2021. In the event that it becomes necessary to clarify or revise this RFP, such clarifications or revisions will be by addendum. Any addendum to this RFP will become part of this RFP and part of any contract entered as a result of this RFP.

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

ALL RFP ADDENDA WILL BE POSTED ON THE OSHE WEBSITE.

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

7.3 Cost liability

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

8.0 SPECIAL TERMS & CONDITIONS

8.1 Term

The initial term of the Contract entered pursuant to this Request for Proposals shall be for the Credential Pathways Initiative originated between 2021 and February 28, 2022.

8.2 Termination

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

At the end of the Term, the Contractor shall remit a report to OSHE providing a full accounting of any monies left. Any monies received from the State shall be returned to the State. Any monies received from private donors shall be applied by the Contractor in a manner consistent with State and federal law governing charitable contributions.

8.3 Compliance

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

8.4 Contract

The Contract entered as a result of this RFP will consist of this RFP, any Addendum to this RFP provided pursuant to Section 7.2 of this RFP, the firm's bid proposal, and the OSHE's Letter of Engagement.

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

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

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

8.5 Open Public Records Act

All documents submitted in response to this RFP are subject to disclosure by OSHE as "government records" under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. ("OPRA"). A Contractor may assert that specific information is exempted from disclosure under that Act. Contractors will be required to submit a written Commitment to Defend and Indemnify OSHE affirming that they will cooperate in defense of any action filed against OSHE that results from a denial of access based on the requested redactions and/or requests to withhold the documents from release. Upon receiving a request for such information, OSHE will advise the Contractor if any such information is not deemed to be exempted. In the cover letter to a proposal, the bidder

should clearly state the location within the bid proposal of any information for which the bidder asserts exemption from disclosure under OPRA. OSHE will not honor attempts by bidders or Contractors either to designate their entire bid proposal as proprietary and/or to claim copyright protection for their entire proposal.

8.7 Proposal Errors

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

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

All requests to withdraw a proposal must identify the RFP, "Building Stronger New Jersey Credential Pathways Initiative," include the final proposal submission date, and be sent to the following address:

Maisha Howard, Director of Finance and State Contract Manager
New Jersey Office of the Secretary of Higher Education 1 John Fitch Plaza, 10th Floor
P.O. Box 542 Trenton, NJ 08625-542

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

8.8 News Releases

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

8.9 Advertising

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

8.10 Licenses & Permits

The Contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this contract. The Contractor shall supply OSHE with evidence of all such licenses, permits and authorizations. This evidence shall be submitted subsequent to the contract award. All costs associated with any such licenses, permits and authorizations must be considered by the Bidder in its proposal.

8.11 Claims & Remedies

A. CLAIMS

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

B. REMEDIES

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

8.12 Additional Work and/or Special Projects

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

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

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

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

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

8.13 Record Retention

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

8.14 Severability

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

9.0 SELECTION PROCESS

9.1 New Jersey Presence

Particular consideration will be given to firms with a presence in New Jersey.

9.2 Evaluation Criteria

OSHE will review the responses and select qualified firms based on the following criteria:

Proposal Content: At minimum, the vendor’s proposal shall include the following:	0 – Did not supply 1 – Supplied partial info 2 – Supplied general info 3 – Supplied detailed info	0 – Content did not reflect SOW 1 – Content covers only parts of SOW 2 – Content covers most of SOW 3 – Content covers full SOW
1. Explanation of how the Bidder's approach satisfies the requirements as stated in the RFP.		
2. A detailed proposal with a person/hour and staff classification mix to meet the scope of work describing how the vendor intends to accomplish each component of the scope of work.		
3. A detailed budget to perform the scope of work.		
4. A schedule identifying the deliverables to be submitted under this Engagement Query.		
5. Identification of any potential conflicts of interest		

regarding the delivery of services for the scope of work under this Engagement Query.		
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9.3 Right to Waive

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

9.4 Proposal Discrepancies

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

Attachments: 1. OSHE Standard Terms & Conditions

**OFFICE OF THE SECRETARY OF HIGHER EDUCATION
STANDARD TERMS AND CONDITIONS**

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

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

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

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

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

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

- 2.4 AMERICANS WITH DISABILITIES ACT** - The Contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L 101-336, in accordance with 42 U.S.C. 12101, et seq.

- 2.5 MACBRIDE PRINCIPLES** – The Bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles. The MacBride Principles form can be found at: <https://nj.gov/treasury/purchase/forms.shtml>

- 2.6 PAY TO PLAY PROHIBITIONS** – Pursuant to N.J.S.A. 19:44A-20.13 et seq. (L.2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the Contract for the business entity to:

- a. make or solicit a contribution in violation of the statute;
- b. knowingly conceal or misrepresent a contribution given or received;
- c. make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- d. make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee;
- e. engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself would subject that entity to the restrictions of the Legislation;
- f. fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- g. engage in any exchange of contributions to circumvent the intent of the Legislation; or
- h. directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

2.7 POLITICAL CONTRIBUTION DISCLOSURE – The Contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (L. 2005, c. 271, §3 as amended) if in a calendar year the Contractor receives one or more contracts valued at \$50,000.00 or more. It is the Contractor’s responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1 (888) 313-3532 or on the internet at <https://www.elec.state.nj.us/>.

2.8 STANDARDS PROHIBITING CONFLICTS OF INTEREST- The following prohibitions on Contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

- a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in OSHE or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52: 13D-13g.
- b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the State Ethics Commission.
- c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any

State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the State Ethics Commission, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

- d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
- f. The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of Executive Order No. 189.

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

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under N.J.S.A. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

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

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

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

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

3.1 SERVICE PERFORMANCE WITHIN U.S. – Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by OSHE shall be performed within the United States, except when the State Contract Manager 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 Assistant Secretary/CFO.

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

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

4. INDEMNIFICATION AND INSURANCE

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

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

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

4.2 INSURANCE - The Contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best & Company. The Contractor shall provide OSHE with current certificates of insurance for all coverages and renewals thereof, and the certificates shall reflect that the insurance policies shall not be canceled for any reason except after sixty (60) days written notice to OSHE. Certificates of renewals shall be provided within thirty (30) days of the expiration of the insurance. The Contractor shall not begin to provide services or goods to OSHE until evidence of the required insurance is provided. The certificates of insurance shall indicate the title of the Contract in the Description of Operations box and shall list the Office of the Secretary of Higher Education, PO Box 542, Trenton, New Jersey 08625 in the Certificate Holder box.

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

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

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

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

5. TERMS GOVERNING ALL CONTRACTS

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

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

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

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

a. If the Contractor does not agree with OSHE's proposed adjusted Contract price, the Contractor shall submit to OSHE any additional information that the Contractor believes impacts the adjusted Contract price with a request that OSHE reconsider the proposed adjusted Contract price. The parties shall negotiate the adjusted Contract price. If the parties are unable to agree on an adjusted Contract price, OSHE shall make a prompt decision taking all such information into account, and shall notify the Contractor of the final adjusted Contract price.

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

5.5 CHANGE IN LAW – Whenever a change in applicable law or regulation affects the scope of work, OSHE shall provide written notice to the Contractor of the change and OSHE's determination as

to the corresponding adjusted change in the scope of work and corresponding adjusted Contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

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

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

5.7 TERMINATION OF CONTRACT

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

5.8 SUBCONTRACTING OR ASSIGNMENT–

- a. Subcontracting: The Contractor may not subcontract other than as identified in the Contractor’s proposal without the prior written consent of OSHE. Such consent, if granted in part, shall not relieve the Contractor of any of its responsibilities under the contract, nor shall it create privity of contract between OSHE and any Subcontractor. If the Contractor uses a Subcontractor to fulfill any of its obligations, the Contractor shall be responsible for the Subcontractor’s: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws.
- b. Assignment: The Contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of OSHE.

5.9 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND OSHE - Nothing contained in any of the Contract documents, including the RFP and vendor’s bid or proposal shall be construed as creating any contractual relationship between any Subcontractor and OSHE.

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

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

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

- a. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.
- b. All equipment supplied to OSHE and operated by electrical current is UL listed where applicable.
- c. All new machines are to be guaranteed as fully operational for the period stated in the Contract from time of written acceptance by OSHE. The Contractor shall render prompt service without charge, regardless of geographic location.

- d. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters.
- e. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice.
- f. During the warranty period the Contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract.
- g. All services rendered to OSHE shall be performed in strict and full accordance with the specifications stated in the contract. The Contract shall not be considered complete until final approval by OSHE is rendered.

5.12 DELIVERY REQUIREMENTS -

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

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

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

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

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

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

- a. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder.
- b. It shall advise the Attorney General of New Jersey:
 - 1. in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;
 - 2. immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- c. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the Contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey.
- d. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the Contractor, it shall promptly pay over to OSHE the allotted share thereof, if any, assigned to OSHE hereunder.

6. TERMS RELATING TO PRICE AND PAYMENT

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

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

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

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

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

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

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