

# NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

## REQUEST FOR PROPOSALS FOR INTEGRITY OVERSIGHT MONITOR (Reference RFP #2022-RFP-144)

September 12, 2022

### ADDENDUM #2

The following constitutes an Addendum, which can be a Clarification and/or Modification to the above-referenced solicitation. This Addendum is divided as follows:

- Part 1: Answers to Questions Submitted
- Part 2: Additions, Deletions, Clarifications and Modifications to the RFP

Part 1: Answers to Questions Submitted		
No	Question	Answer
1.	Page 1  Would the Authority consider a change in the procurement schedule to allow for 15 business days between release of Q&A and the submission date?	Pursuant to Addendum no. 1, the Authority extended the proposal submission deadline from September 13, 2022 to September 20, 2022.
2.	Page 5 - Section 1.1  The Authority introduces the potential extension options. Should either the Primary or Secondary vendor not be afforded an extension, would the remaining vendor then take on sole contractor responsibilities?	The Authority envisions that it will likely exercise the extension option(s) for both the Primary and Secondary vendors barring unforeseen circumstances.
3.	Page 1  This is not a Small Business Set-Aside; however, will NJEDA consider awarding to a Small Business or a Small Disadvantaged Business?	Yes. Although this is not a Small Business Set-Aside, the Authority may award to a Small Business or a Small Disadvantaged Business and encourages such businesses to respond.  The proposal submissions shall be evaluated based upon the evaluation criteria as set forth in Section 6.7 and awarded pursuant to the terms of the RFP.
4.	Page 1	Although there are no mandatory MWBE or Veteran-Owned goals

	Please confirm whether there are no MWBE or Veteran-Owned goals, requirements or expectations for this proposal?	set forth in the RFP, the Authority encourages participation from same.
5.	<p>Page 5 – Section 1.1</p> <p>What are the actual-to-date and anticipated total amount of COVID-19 Recovery Fund expenditures subject to monitorship by the IOM?</p>	<p>The NJEDA has received COVID-19 Recovery Funds from several sources. For example, it received and administered approximately \$337 million in Coronavirus Relief Funds (none of which will be subject of monitoring under this contract). It also received \$235 million in appropriations from the State General Fund (\$25 million of which will be subject to monitoring under this contract).</p> <p>To date, the NJEDA has received \$137 million in Coronavirus State Fiscal Recovery Funds (CSFRF). It anticipates receiving approximately \$242M in additional CSFRF. Additionally, it has applied for \$255 million in funding through the State Small Business Credit Initiative (SSBCI) program and anticipates receiving that funding starting in late 2022.</p> <p>NJEDA currently estimates and anticipates the need for an IOM for thirteen (13) programs, each of which is valued at over \$20 million.</p>
6.	<p>Page 5 – Section 1.1</p> <p>What is the actual or anticipated total budget of all of COVID-19 Recovery Programs that the IOM will monitor?</p>	NJEDA estimates that the IOM will monitor approximately \$525 million. However, this number is not guaranteed and is subject to both increase or decrease.
7.	Section 1.1	The intent of this RFP is to award one (1) one primary, and one (1) secondary contract for one (1)

	<p>What is the anticipated percentage of this contract that will be allocated to the Primary awardee and the Secondary awardee?</p>	<p>year with two (2), one (1) year extension options, if deemed necessary by the Authority and dependent upon funding, to the responsible Proposer(s) whose Proposal(s), conforming to this RFP are most advantageous to the Authority, price and other factors considered.</p> <p>For all COVID-19 Recovery programs valued at \$20 million or more, the task order requests will be provided to the Primary and Secondary awardees who will provide responses and pricing; and will be evaluated and awarded accordingly.</p> <p>For all other programs, the task order request will be provided to the Primary Contractor. In the event there is a conflict with the Primary Contractor, the task order will be provided to the Secondary Contractor.</p> <p>At this time, the Authority is uncertain as to the percentage and allocation of the TORs.</p>
8.	<p>Page 6 – Section 1.2.1</p> <p>What kinds of goods and services were obtained through the expenditure of COVID-19 Recovery Funds that the IOM will monitor?</p>	<p>To date the NJEDA has used COVID-19 Recovery Funds for a variety of grant and loan programs to support primarily small businesses. An overview of NJEDA's current programs is available on our website <a href="https://www.njeda.com/">https://www.njeda.com/</a></p> <p>Limited funding was used for certain services, including temporary employees and to procure marketing services.</p>
9.	<p>Page 6 – Section 1.2.1</p> <p>Will the IOM be performing both 1) "look-back," or retrospective monitoring of COVID-19 Recovery Fund expenditures and COVID-19 Recovery Programs and also 2)</p>	<p>The IOM will be performing both. It is anticipated that the IPM will perform a retrospective monitoring of COVID-19</p>

	ongoing, or prospective monitoring of COVID-19 Recovery Fund expenditures and COVID-19 Recovery Program activities as they are taking place?	Recovery Fund expenditures and COVID-19 Recovery Programs; as well prospective monitoring of said expenditures and activities.
10.	<p>Section 1.4.5</p> <p>Will proposers be advised of how they can attend (in person or remotely) the public announcement of proposals received?</p>	<p>Please review RFP, page 1 and Section 1.3.4, and 1.4.5 and related sections.</p> <p>On the date and time Proposals are due under the RFP, only the names and addresses of the Proposer(s) submitting Proposals will be publicly announced and the contents of the Proposals shall remain proprietary and/or confidential, pursuant to Negotiation and Best and Final Offer (BAFO) Section 6.8, until the Conditional/Notice of Intent to Award is issued.</p> <p>As set forth therein, the bid opening shall be conducted on September 13, 2022 at 2:00 PM ET at the NJEDA headquarters located at 36 West State Street, Trenton, New Jersey.</p>
11.	<p>Page 12 – Section 1.4.8</p> <p>Since the subcontractors that might be needed (commercial lending, economic development, and engineering) will be part of the task orders instead of the fee schedule associated with the assessment of the authority, are you expecting the subcontractor utilization forms to be submitted as part of this proposal or with the task orders as the services of the subcontractors are required?</p>	<p>The subcontractor utilization form is to be provided with the proposal. This form is to be updated as applicable during the term of the contract and/or any extensions and the task order requests.</p>
12.	<p>Section 1.4.8</p> <p>If a Proposer is using sub-consultants, can the Proposer provide a mark-up on rates for the sub-consultants?</p>	<p>Mark-up on rates are not permitted under this contract. Rates are to be fully inclusive, and should include all costs, including accounting for sub-consultants. In regards to the pricing inquiry, please see RFP Section 4.2.2 pertaining to the</p>

		<p>Fee Schedule and the Fee Schedule itself.</p> <p>Note: Failure to submit hourly rate pricing or altering the format of the Fee Schedule will result in the proposal being considered nonresponsive. Merely attaching the Proposer's billing schedule or price list is not acceptable.</p> <p>For each TOR, the Contractor will be asked to submit a not-to-exceed total price, based on the All-inclusive Hourly Rates specified on the Fee Schedule for the Position/Title listed and the total number of hours each Position/Title will require to complete the services. Billing will be based on actual hours expended on a given project, as provided on the TOR.</p>
13.	<p>Page 18 – Section 3.1.1</p> <p>Is the COVID vaccine mandate only applicable to personnel working at state facilities? Are personnel visiting state facilities required to prove vaccination or proof of negative test? This question is to validate our interpretation of EO271, page 7.</p>	<p>Governor Phil Murphy previously issued Executive Order 271 (EO 271) that addressed COVID-19 vaccination and/or testing of personnel working at State facilities.</p> <p>Governor Murphy has recently issued Executive Order 302 that repeals EO 271 effective September 1, 2022.</p> <p>Please see Part 2 of this Addendum that confirms modification of this RFP with the removal of any applicable EO271 requirements.</p>
14.	<p>Page 18</p> <p>Does NJEDA have a comprehensive list of grant programs that need to be monitored?</p>	<p>NJEDA estimates and anticipates needing a monitor for about thirteen (13) programs, each of which is valued over \$20 million, including:</p>

		<ul style="list-style-type: none"> <li>• Commuter and Transit Bus Private Carrier Pandemic Relief and Job Program</li> <li>• Child Care Facilities Improvement Program Pilot Program</li> <li>• Child Care Facilities Fund</li> <li>• Startup Business and Nonprofit Assistance Program</li> <li>• University Hospital</li> <li>• Maternal and Infant Health Center Capital</li> <li>• Real Estate Projects Fund - Property Assemblage</li> <li>• 6 proposed programs to be funded through the State Small Business Credit Initiative Programs.</li> </ul> <p>A monitor may also be needed for the third phase of the Sustain and Serve NJ program.</p>
15.	<p>Page 18 – Section 3.2</p> <p>In addition to Coronavirus State Fiscal Recovery Funds, State Small Business Credit Initiative funding, and the United States Economic Development Administration, what Government programs have provided/ are providing COVID-19 Recovery Fund expenditures that the IOM will monitor?</p>	See answer to 5 above.
16.	<p>Section 3.2</p> <p>What is the estimated total value of programs subject to review and the estimated value per program?</p>	See answers to 5 and 6 above.
17.	<p>Page 19 – Section 3.3.1</p> <p>What data management systems/programs does EDA currently use to collect, conduct and reporting compliance and anti-fraud analytics?</p>	The NJEDA performs cross-checks with State of New Jersey agencies including but not limited to the Division of Taxation (Treasury), the Division of Revenue (Treasury), and the Department of Labor. These cross-checks help identify whether an applicant meets the Program's specifications.

		<p>MS CRM system is used to review applications and analyze data, trends, and produce reports, which range from approvals to suspected fraud.</p> <p>Additionally, the NJEDA has an Information Sharing Memorandum of Understanding with other State agencies and authorities that administer COVID-19 Recovery Funds, and maintains a shared database to ensure no duplication of benefits.</p>
18.	<p>Page 19 – Section 3.3.1</p> <p>How often does the Authority anticipate on-site monitoring visits will be required?</p>	<p>At this time, the Authority cannot estimate how often on-site monitoring visits will be required. Site monitoring visits will depend on the specific program and related needs.</p> <p>However, it is anticipated that most of the work can be done remotely.</p>
19.	<p>Page 19 – Section 3.3.1</p> <p>Can you please confirm what professional specialties NJEDA requires from the Contractor, if there are any beyond commercial lending, economic development incentive structuring, and engineering?</p>	<p>Professional specialties include but are not limited to commercial lending, economic development incentive structuring and engineering. It is further recommended that vendors review the RFP and the mission of the New Jersey Economic Development Authority.</p>
20.	<p>Page 18-19 – Section 3.3.1</p> <p>It appears the tasks listed starting on page 18 up to the table “Category 3: Integrity Monitoring / Anti-Fraud” are the ones that should be used to generate the fee schedule to present with the RFP response/proposal. Is this correct? The Category 3 tasks appear to apply to the task orders which will be priced individually (using the same rates included in the fee schedule with the proposal).</p>	<p>Correct. Those tasks are the ones that should be used to generate the fee schedule to present with the proposal submission.</p>
21.	Page 19 – Section 3.3.1	

	<p>For a specific task order that would require the “ability to provide integrity monitoring services for professional specialties such as engineering and structural integrity services, etc.,” we may find it necessary to use a consultant or subject matter expert.</p> <p>It seems reasonable that a subcontractor would be identified at the time of the individual task order (as opposed to including details of that relationship as part of this proposal). Therefore, is it acceptable that a subcontractor related to integrity monitoring services for professional specialties be named as part of a task order rather than included with this proposal? Or does the Authority expect a full list of expected subcontractors at this time?</p>	<p>The subcontractor utilization form should provide a list of the currently expected subcontractors. During the course of the contract in the event there is a need for an additionally unnamed subcontractor, the subcontractor utilization form is to be updated and provided to the Authority for review.</p>
22.	<p>Page 19 – Section 3.3.1</p> <p>Can the Authority elaborate on why engineering and structural integrity services would be unique compared to other professional services mentioned?</p>	<p>NJEDA does not currently anticipate the need for engineering and structural integrity services. These services were mentioned for the sake of completeness similar to September 11, 2020 Request for Quotation for Integrity Oversight Monitoring: Program and Performance Monitoring, Financial Monitoring and Grant Management and Anti- Fraud Monitoring for Coronavirus Relief Funds pursuant to Section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act COVID-19 Recovery Funds and Programs (issued by NJ Department of the Treasury).</p>
23.	<p>Page 19-20 – Section 3.3.1</p> <p>Regarding conditions that require onsite monitoring, can the Agency please provide:</p> <p>A) The actual and anticipated number of sites subject to monitorship?</p> <p>B) A risk profile of the population that one could use to make a determination of the order of magnitude of site visits required?</p>	<p>On-site monitoring is not currently expected unless recommended by the IOM due to conditions or performance issues that are found which could be mitigated by on-site monitoring.</p>
24.	<p>Section 3.3.1</p>	<p>See answer to 14 above.</p>



	<p>Can you provide metrics to standardize the bidding process either by providing a number of programs to monitor (greater than and less than \$20 Million) or an estimate of the quantity of hours required for this engagement on a monthly basis?</p> <p>Based on our review of prior quarterly reports, it seems that prior contractors billed between 100 hours and 4,000 hours per quarter.</p>	<p>The NJEDA's prior integrity oversight monitor billed an average of 237 hours per quarter.</p>
25.	<p>Section 3.3.1</p> <p>Will the Proposer have direct access to application data that can be used to upload into the Proposer's proprietary data analytics programs for the purpose of conducting the initial risk assessment?</p>	<p>Yes. Proposer shall have direct read-only access to application data under certain parameters and safeguards. Please see RFP requirements and contract terms.</p>
26.	<p>Section 3.3.1</p> <p>Does the NJEDA require a specific percentage of grants and expenditures to be reviewed or is that population resultant from the Proposer's risk assessment? If the EDA requires a specific percentage, please provide that number.</p>	<p>The NJEDA does not require a specific percentage of grants and expenditures to be reviewed. Rather will be dependent on the population based upon the Proposer's risk assessment and in discussion with appropriate Authority staff.</p>
27.	<p>Please clarify who the recipients of the grants are. Are they business, individuals, agencies, municipalities, etc.?</p>	<p>Grant recipients may include but are not limited to businesses, individuals, agencies and/or municipalities.</p> <p>Recipients may also include other governmental entities and/or non-profit entities.</p>
28.	<p>Page 18-20 – Section 3.3.1</p> <p>Please estimate the total number of hours, or an approximate range of hours anticipated to be incurred by the Integrity Oversight Monitor ("IOM") in the performance of the Tasks included in the RFP, Section 3.3.1.</p>	<p>Vendor is to review the RFP and make a reasonable assessment and determination in order to estimate the number of hours to be incurred by the IOM.</p>
29.	<p>Page 18-20 – Section 3.3.1</p> <p>Similarly, if the total number of hours is unable to be estimated, please provide any additional details regarding the expected size of the Integrity Oversight Monitor Team, including all contractors and subcontractors, that would be</p>	<p>Please see answer to question 24 and 28.</p> <p>Vendor is to assess and make a reasonable determination as to</p>

	expected to provide integrity monitoring/anti-fraud and supporting services.	the size of the IOM team that it would expect to provide integrity monitoring/anti-fraud and supporting services.
30.	<p>Page 18-19 – Section 3.3.1</p> <p>If the total number of hours or team size is unable to be estimated, for any of the following minimum Tasks (Section 3.3.1), please provide any additional details, such as estimated number of hours incurred, or estimated % of the total budget expected to be used for each.</p> <ul style="list-style-type: none"> <li>• Initial program risk assessments (see template in references);</li> <li>• Ongoing program risk assessments;</li> <li>• Evaluation of program performance;</li> <li>• Evaluation of internal controls associated with the Authority's financial management, cash management, acquisition management, property management, and records management capabilities;</li> <li>• Validation of compliance with sub-grant award agreements, general terms and special conditions;</li> <li>• Review of written documents, such as quarterly financial and performance reports, recent audit results, documented communications with the State, prior monitoring reports, pertinent performance data, and other documents or reports, as appropriate;</li> <li>• Interviews of Authority staff, as well as the constituents they serve, to determine whether program objectives are being met in an efficient, effective, and economical manner;</li> <li>• Sample eligibility determinations and denials of applications for funding;</li> <li>• Review of specific files to become familiar with the progression of the disbursement of funds in a particular program, i.e., are actual expenditures consistent with planned expenditure and is the full scope of services listed in the project work plan being accomplished at the same rate of actual and planned expenditures;</li> <li>• Ensuring that the Authority is retaining appropriate documentation, based on Federal and State regulations and guidance, to support fund disbursement;</li> <li>• Following up with questions regarding specific funding decisions, and review decisions related to emergency situations;</li> <li>• Facilitating the exchange of ideas and promotion of operational efficiency;</li> <li>• Identifying present and future needs; and</li> </ul>	Please see answers to questions 28 and 29.

	<ul style="list-style-type: none"> <li>• Promotion of cooperation and communication among Integrity Monitors engaged by other Recovery Program Participants (e.g., to guard against duplication of benefits).</li> <li>• Supporting services including analysis of internal processes in support of Federal compliance and efficient and effective delivery of programs.</li> </ul>	
31.	<p>Page 19-20 – Section 3.3.1</p> <p>Please confirm whether on-site monitoring visits will be conducted only if the IOM finds:</p> <ul style="list-style-type: none"> <li>• Non-compliance with reporting requirements;</li> <li>• Problems identified in quarterly progress or financial reports;</li> <li>• A history of unsatisfactory performance;</li> <li>• Unresponsiveness to requests for information;</li> <li>• High-risk designation;</li> <li>• A failure by the Authority to follow-up on prior monitoring findings; and</li> <li>• Allegations of misuse of funds or receipt of complaints</li> </ul>	<p>While the NJEDA cannot limit itself to a specific circumstance, NJEDA can agree that on-site visits are not currently anticipated but for similar conditions to those identified here.</p>
32.	<p>Page 19-20 – Section 3.3.1</p> <p>If numerous on-site monitoring visits end up being required as a result of identification of the above factors, will there be an opportunity for the IOM to request an adjustment to the budget accordingly?</p>	<p>Please see answers to questions 18 and 23 pertaining to on site visits and the anticipation that most of work will be able to be done remotely.</p> <p>Please also see RFP Section 4.2.2 pertaining to the Fee Schedule and the Fee Schedule itself. Note: Failure to submit hourly rate pricing or altering the format of the Fee Schedule will result in the proposal being considered nonresponsive. Merely attaching the Proposer's billing schedule or price list is not acceptable.</p> <p>For each TOR, the Contractor will be asked to submit a not-to-exceed total price, based on the All-inclusive Hourly Rates specified on the Fee Schedule for the Position/Title listed and the total number of hours each Position/Title will require to complete the services. Billing will be based on actual hours</p>

		expended on a given project, as provided on the TOR.
33.	<p>Page 20 – Section 3.3.2</p> <p>Please confirm that the Reporting function (Quarterly and Additional) should be included in the initial fee schedule. Should the initial fee schedule include just the costs for the first year's meetings and not the option years?</p>	<p>Please see answer to question 32. Please review the RFP Section 4.4.2 and the Fee Schedule.</p>
34.	<p>Page 21 – Section 3.5 – Litigation Services</p> <p>Will litigation support be billable separately as needed, or should that support be built into the fee schedule for the RFP and/or task orders?</p>	<p>Please see answer to question 32.</p> <p>However, NJEDA does not currently anticipate the need for litigation support. These services were mentioned for the sake of completeness similar to September 11, 2020 Request for Quotation for Integrity Oversight Monitoring: Program and Performance Monitoring, Financial Monitoring and Grant Management and Anti- Fraud Monitoring for Coronavirus Relief Funds pursuant to Section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act COVID-19 Recovery Funds and Programs (issued by NJ Department of the Treasury).</p>
35.	<p>Page 21 - Section 3.5 - Litigation Services</p> <p>Would NJEDA agree to the following changes in RFP Section 3.5, in order to clarify that the services to be provided would be related to an indemnification obligation?</p> <p>In furtherance of the Contract and its indemnification provision, the Contractor shall, at its own cost, fully cooperate with the State and provide all documentation and/or working papers necessary to represent and defend the State and any of its political sub-divisions at its own cost, in any matter before any federal, state or local regulatory agency if any agency files a proceeding against the NJEDA resulting from the Contractor's indemnification obligations hereunder.</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>

	<p>Litigation Services related to the indemnification provisions of this procurement shall include a full range of litigation support services applicable to the nature of the Contract, including without limitation, expert witness testimony, strategy development, document discovery, deposition assistance, arbitration consulting, computation of damages, and preparation of trial exhibits</p>	
36.	<p>Section 3.6</p> <p>Are the required reviews to be conducted on funds already disbursed, current/future funds pending approval or both?</p>	<p>Both. The required reviews are to be conducted on both funds that have already been disbursed as well as current and/or future funds.</p>
37.	<p>Page 21 - Section 3.6 – Engagement / Task Order Requests</p> <p>Are funds that are subject to review under this RFP disbursed at the state, county or town level?</p>	<p>The NJEDA is an authority of the State of New Jersey. Funds subject to review are disbursed by the NJEDA and may be disbursed to other State, county and/or municipal entities as well as businesses, non-profits and individuals.</p>
38.	<p>Section 3.6</p> <p>How many Task Order Requests does NJEDA anticipate issuing for programs in excess of \$20 million?</p>	<p>Please see answer to question 14. In addition, at this time, NJEDA estimates issuing a task order request to monitor thirteen (13) programs valued at over \$20M.</p>
39.	<p>Section 3.6</p> <p>How many Task Order Requests does NJ EDA anticipate issuing for programs less than \$20 million?</p>	<p>At this time, the NJEDA is unable to anticipate how many Task Order Requests will be issued for programs less than \$20 million.</p>
40.	<p>Section 3.6</p> <p>What is the estimated or typical lead time between when the Task Order Requests will be issued and when the work will commence on any particular grant?</p>	<p>The Authority cannot anticipate the precise lead time between when the Task Order Requests will be issued and when the work will commence. It will be contingent upon the specific of the Task Order. However, the Authority will provide all</p>

		appropriate and reasonable time to the vendor between the Task Order Request issuance and the commencement of the work.
41.	<p>Section 3.6</p> <p>Are there mechanisms in place to check for duplication of benefits? (i.e. is there a central database for the State of New Jersey that contains information pertaining to all benefit distribution for all State agencies, counties, municipalities, townships and districts)</p>	Please see answer to question 17. NJEDA maintains a database for all State agencies and authorities but is unaware of a central database that encompasses all counties, municipalities, townships and districts.
42.	<p>Page 22 – Section 3.6</p> <p>How many current projects are there and how many are anticipated for Future/Planned programs?</p>	See answer to question 14 above.
43.	<p>Page 22 - Section 3.6</p> <p>The Authority list five Federally funded COVID-19 Recovery programs. At this time, is there a complete list of potential programs that can be added during the contract term?</p>	See answer to question 14 above.
44.	<p>Page 22 - Section 3.6</p> <p>Can you please provide additional information as to the total amount awarded and timeline of funds usability for the following current and future/planned grants:</p> <p><b>Current Programs</b></p> <ul style="list-style-type: none"> <li>a. NJEDA Small Business Emergency Assistance Loan Program – Phase II (USEDA)</li> <li>b. Private Carrier (CSFRF)</li> </ul> <p><b>Future Planned Programs</b></p> <ul style="list-style-type: none"> <li>a. NJEDA Child Care Revitalization Fund (CSFRF)</li> <li>b. NJEDA Sustain and Serve NJ Program – Phase 3 (CSFRF)</li> <li>c. SSBCI programs</li> </ul>	<p>Please see answer to question 14 above.</p> <p>The NJEDA received \$11 million from the U.S. Economic Development Administration for its <i>Small Business Emergency Assistance Loan Program – Phase II</i> program but does not currently anticipate the need for monitoring for this program.</p> <p>The NJEDA anticipates receiving a total of \$25,625,000 in CSFRF for its <i>Commuter and Transit Bus Private Carrier Pandemic Relief and Job Program</i>. <u>It has already received applications</u> and anticipates approving eligible applications and funding grants during 2022. Program eligibility</p>

		<p>requirements are available on NJEDA's website.</p> <p>The NJEDA anticipates receiving \$30 million in CSFRF for its <i>Child Care Revitalization Fund</i>. Information about <i>Child Care Facilities Improvement Pilot Program – Phase 1</i> is available on NJEDA's website.</p> <p>The NJEDA anticipates receiving a total of \$53 million in funding (CRF, CSFRF and State General Funds) for its <i>Sustain and Serve NJ Program</i>. Monitoring may be needed for Phase 3 of that program (to which approx. \$18 million is currently allocated).</p> <p>The NJEDA has applied for \$255 million in funding through the State Small Business Credit Initiative (SSBCI) program and anticipates receiving that funding starting in late 2022. The NJEDA proposes to allocate that funding among six (6) different programs:</p> <ul style="list-style-type: none"> <li>• Angel Match Program</li> <li>• SEDI Seed Fund</li> <li>• Life Science Investment</li> <li>• Clean Energy Business Financing</li> <li>• Recovery Loan Loss</li> <li>• Blended Capital Investment</li> </ul>
45.	Are there existing internal Risk methodology/Assessments that should be considered?	This RFP anticipates that the awardee(s) will conduct risk assessments.
46.	<p>Page 22 – Section 3.6.C</p> <p>For future/planned programs, how does EDA intend to use the Coronavirus State Fiscal Recovery Funds (CSFRF), for example: COVID-19 Mitigation &amp; Prevention, Community Violence Interventions, Behavioral Health, Assistance to small businesses, Assistance to Households, etc.?</p>	See answer to question 14 above. Information for current programs is available on the Authority website.

	Same for the State Small Business Credit Initiative (SSBCI) funding; United States Economic Development Administration (USEDA); and Other Federal Agency for this purpose and subject to an Integrity Oversight Monitoring requirement?	
47.	<p>Page 22, Section 3.6.C</p> <p>How many projects are linked to CSFRF, SSBCI, USED A funds?</p>	See answer to question 14.
48.	<p>Page 23 - Section 3.7</p> <p>The Authority introduces some general guidance for the preparation of proposal and potential work. Outside of this information, how has the Authority been measuring and monitoring the performance their COVID-19 Recovery programs to date? Are there any additional state-specific guidelines that bidders should be aware of?</p>	<p>NJEDA had a prior Integrity Oversight Monitor (IOM) that reviewed many of our COVID-19 Recovery Programs. It also has a compliance auditor that reviewed other COVID-19 Recovery Programs. Additionally, NJEDA staff conducts aspects of compliance review and performance management on its programs.</p> <p>The State's Integrity Monitor Guidelines and other relevant materials are available on the Office of the State Comptroller's website at:  <a href="https://nj.gov/comptroller/covid19/oversight/integritymonitors.shtml">https://nj.gov/comptroller/covid19/oversight/integritymonitors.shtml</a>.</p>
49.	<p>Page 23 – Section 3.7</p> <p>In addition to the referenced Risk Assessment Template, Resources for Integrity Monitors, NY Office of the State Controller, would the IOM be able to use other risk assessment tools and present the results in separate reports to the EDA?</p>	<p>As an initial response, the question has an error/typo in that it is the Office of the State Comptroller (OSC) for the State of New Jersey rather than the NY Office of the State Controller.</p> <p>In regards to the remaining inquiry, the IOM would be able to use other risk assessment tools and present the results in separate reports to the Authority.</p>
50.	Page 27 – Section 4.2.1V	Yes.



	Regarding the References of Key Team Members, are duplicate references allowed for different team members who worked on prior engagements together?	
51.	<p>Page 27 - Section 4.2.1 VII</p> <p>Can an individual's experience working at a governmental agency managing integrity monitors be considered relevant to meet the qualification requirements?</p>	<p>The Evaluation Criteria are set forth in Section 6.7 and include personnel, experience, ability to perform the scope of work and pricing.</p> <p>Proposals will be reviewed and evaluated by the Evaluation Committee members as to same.</p> <p>As such, please provide the description and documentation of Proposer's prior experience and qualifications that you deem sufficient and reasonable to be evaluated by the Evaluation Committee in order to best assess the submission.</p>
52.	<p>Page 28 - Section 4.2.1.1</p> <p>Please clarify what NJEDA is seeking under Section 4.2.1.1 Potential Problems. Is NJEDA asking for examples of frauds or findings that the Proposer anticipates encountering, or is the intention to describe operational obstacles?</p>	<p>The Proposer must set forth a summary of any and all problems that the Proposer anticipates during the term of the contract. For each problem identified, the Proposer should provide its proposed approach. This provision is asking that the Proposer provide any potential operational obstacles rather than the specific examples of fraud or findings.</p>
53.	<p>Page 28 - Section 4.2.2</p> <p>The Authority introduces the fee schedule and pricing. What pricing structure and format would EDA like vendors to provide?</p>	<p>Please review the Fee Schedule that is a mandatory document that must be submitted with the proposal submission.</p> <p>Fee schedule and pricing shall be all and fully inclusive. In regards to the pricing inquiry, please see RFP Section 4.2.2 pertaining to the Fee Schedule and the Fee Schedule itself.</p>

		<p>Note: Failure to submit hourly rate pricing or altering the format of the Fee Schedule will result in the proposal being considered nonresponsive. Merely attaching the Proposer's billing schedule or price list is not acceptable.</p> <p>For each TOR, the Contractor will be asked to submit a not-to-exceed total price, based on the All-inclusive Hourly Rates specified on the Fee Schedule for the Position/Title listed and the total number of hours each Position/Title will require to complete the services. Billing will be based on actual hours expended on a given project, as provided on the TOR.</p>
54.	<p><i>Page 28 – Section 4.2.2</i></p> <p><i>Regarding pricing,</i></p> <p><i>A) Should the bid price only cover a price for just the base year (Year 1) or does the agency also want prices for each of the optional extension years?</i></p> <p><i>B) Does the agency also want to receiving pricing on a month-to-month basis in the event that it wishes to continue the engagement after one year but have not formally continued.</i></p>	<p>Please see answer to question 53. Furthermore, as set forth in Section 4.2.2, the pricing shall remain firm throughout the term of the contract and any extensions.</p> <p>Please review Section 2 of the Contract that also addresses the term and the extensions of same in relation that the pricing shall remain firm.</p>
55.	<p><i>Page 28 – Section 4.2.2</i></p> <p><i>The Fee Schedule instructions note that "the below number of hours are an anticipated number of hours pursuant to a typical engagement." For clarification:</i></p> <p><i>A) Is the agency seeking a Not-To-Exceed billing type engagement or a Master Services Agreement task order-driven time and materials arrangement?</i></p> <p><i>B) Are prices in bidders' proposals binding or are they not congruent with the anticipated detailed Agency Engagement/TOR to follow?</i></p>	<p>A) Please review Section 4.2.2 in conjunction with Section 3.6 that addresses the specific engagement / task order requests process. Please also review Exhibits 1, B2 and B3 pertaining to the TOR process.</p> <p>B) The pricing and hourly rates as set forth in the proposal submission Fee schedule shall be binding</p>

		in regards to the hourly rates as set forth in the TORs that follow.
56.	<p>Page 28 – Section 4.2.2</p> <p>Should number of hours by resource be provided as part of the proposer's response to the RFP since detailed scopes will be provided in TORs?</p> <p>If hours are expected, what programs and project description should be leveraged for estimating hours required? Can Exhibit B1 please be provided for the initial scope of work?</p>	<p>Please see answers above pertaining to the Fee Schedule and pricing including answers to question 20, 32, 53 and 55. Proposers are to undertake all reasonable measures in preparing a response.</p> <p>The hourly rates are the rates for Category 3 and will be utilized pursuant to the TOR process set forth in the RFP, Section 3.6. The number of hours are the anticipated number of hours pursuant to a typical engagement. The total price will be used and analyzed in order to evaluate and rank the pricing of the vendors.</p>
57.	<p>Page 28 – Section 4.2.2</p> <p>Will the IOM selected for the engagement be allowed to recover out-of-pocket costs? If so, how should the anticipated costs be included in the fee proposal? is there a form that should be used to capture this information?</p>	<p>Rates are to be fully inclusive. In regards to the pricing inquiry, please see RFP Section 4.2.2 pertaining to the Fee Schedule and the Fee Schedule itself.</p>
58.	<p>Section 4.2.3</p> <p>Is all the documentation required in Volume 3 required to be submitted with the Proposal or due to EDA by the time of the execution of the contract?</p>	<p>Please closely review Section 4.2.3 and the compliance requirements. Although it is encouraged that all the compliance documentation be provided with the proposal submission, there are certain documents that are mandatory with the bid submission; as other documents are required prior to award.</p> <p>Failure to provide the mandatory compliance documents with the</p>

		bid shall result in rejection of the proposal as non-responsive.
59.	<p>Section 4.2.3</p> <p>If the Proposer will utilize subconsultants, are those subconsultants required to provide all of the documentation in Volume 3?</p>	Please review the compliance requirements in RFP Section 4.2.3 and the requirements to contractors.
60.	<p>Section 4.2.3.7</p> <p>Is the Employee Information Report required for subconsultants or only the Proposer?</p>	The Employee Information Report is required from the Proposer.
61.	<p>RFP Sections 4.2.3.15, Page 33 and 4.2.2, Page 28 regarding Subcontractors</p> <p>If used, can their costs be marked up to cover management and administration by the IOM? Or are subcontractor costs required to be passed on at cost?</p>	Mark-up on rates are not permitted under this contract. Rates are to be fully inclusive. In regards to the pricing inquiry, please see RFP Section 4.2.2 pertaining to the Fee Schedule and the Fee Schedule itself.
62.	<p>RFP Sections 4.2.3.15, Page 33 and 4.2.2, Page 28 regarding Subcontractors</p> <p>If included in the proposal, should their time and costs be included in the same fee schedule that includes the time and costs for the Primary Contractor?</p>	The Fee Schedule shall be submitted with the proposal submission. This Fee Schedule shall not be modified and shall be all inclusive.
63.	<p>Section 4.2.3.17</p> <p>Can a Proposer include team members who are unvaccinated against COVID-19 if the team members will be performing work under this contract remotely?</p>	<p>Please see response to question 13 and the modification in Part 2 of this Addendum.</p> <p>As Executive Order 302 has repealed the requirements set forth in Executive Order 271 a Proposer may include team members who are unvaccinated.</p>
64.	<p>Page 35 - 5.0 Special Contractual Terms and Conditions</p> <p>Proposer requests modification as follows:</p> <p>5.1 Precedence of Special Contractual Terms and Conditions</p> <p>Unless specifically stated within this RFP, <u>and the Authority's Contract for Professional Services- Exhibit A</u> , any Special</p>	The NJEDA is not willing to consider or accept the requested modifications.

	Contractual Terms and Conditions of the RFP take precedence over the Authority's Standard Contract – Exhibit A, accompanying this RFP.	
65.	<p>Page 42 - Section 5.14</p> <p>Does the Authority anticipate awarding additional task orders for “Additional Work and/or Special Projects” as described in Section 5.14? If so, what type of work will be requested under these additional task orders?</p>	At this time, the Authority does not have any specific additional work and/or special projects.
66.	<p>RFP Section 5.15, Page 42</p> <p>Can the IOM's indemnification in Contract Clause 6 be qualified in the same manner as the IOM's liability in Contract Clause 6, so that it is applicable only where the IOM is responsible for a negligent act, error or omission?</p>	The NJEDA is not willing to consider or accept the requested modifications.
67.	<p>Section 5.5 – Contractor Responsibilities</p> <p>Would NJEDA agree to the following changes, in RFP Section 5.5, in order to clarify the length of the warranty as well as client responsibilities and that approval of deliverables would be valid, once NJEDA does so approve?</p> <p>The Contractor shall have sole responsibility for the complete effort specified in the contract, subject to the inclusion of any client responsibilities set forth in an applicable task order. If the RFP permits subcontracting, payment will be made only to the Contractor. The Contractor shall have sole responsibility for all payments due any Subcontractor.</p> <p>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 during the warranty period set forth in the applicable task order.</p>	The NJEDA is not willing to consider or accept the requested modifications.
68.	<p>Page 36 - Section 5.6 – Substitution of Staff</p> <p>Would NJEDA agree to the following changes in the last paragraph of RFP Section 5.6, in order to clarify that substitution of personnel would involve mutual decision making?</p>	The NJEDA is not willing to consider or accept the requested modifications.

	<p>The Authority reserves the right, in its sole discretion, to recommend changes to the Contractor's overall approach to address these advisory needs, if deemed necessary. For instance, the Authority's Designated Contract Manager may determine that the Contractor's staff employee assigned to perform the requisite services may not be meeting the acceptable levels of performance and a replacement staff employee is needed to better meet the needs of the Authority. Any such changes will be set forth in a mutually agreeable change order.</p>	
69.	<p>Section 5.6 - Substitution of Staff</p> <p>The Authority reserves the right, in its sole discretion, to recommend and make <u>mutually agreed to</u> changes, to the Contractor's overall approach to address these advisory needs, if deemed necessary. For instance, the Authority's Designated Contract Manager may determine that the Contractor's staff employee assigned to perform the requisite services may not be meeting the acceptable levels of performance and a replacement staff employee is needed to better meet the needs of the Authority. <u>Notwithstanding anything to the contrary herein, proposed key personnel assigned to meet the requirements of this Agreement shall not be replaced without the written consent of the Authority. In the event that any contractor personnel become unavailable due to resignation, illness or other factors, excluding assignment to projects outside this Agreement, outside of Contractor's reasonable control, as the case may be, Contractor shall be responsible for providing an equally qualified replacement in time to avoid delays to the work plan.</u></p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>
70.	<p><u>Page 37 – Section 5.8 Ownership of Material</u></p> <p><u>Subject to the limitations set forth herein and upon full and final payment to the Contractor under the Contract, (i) Contractor grants to the Authority 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 right, title, and interest in the tangible items specified as deliverables under this contract (the "Deliverables"); (ii) shall be and remain the property of</u></p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>

	<p>the Authority <u>Contractor a royalty-free, irrevocable, fully paid up, non-exclusive, perpetual license to use, copy, make derivative works of, distribute, display, and sublicense the Deliverables, and shall be delivered to the Authority upon thirty</u>  Days' notice by the Authority. With respect to software computer programs and/or source codes developed for the Authority, <del>except those modifications or adaptations made to the Proposer's or Contractor's Background IP as defined below, the work shall be considered "work for hire", i.e., the Authority, 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 Contract, Contractor or Subcontractor hereby assigns to the Authority all right, title and interest in and to any such material, and the Authority shall have the right to obtain and hold in its own name and copyrights, registrations and any other proprietary rights that may be available.</del></p> <p><u>Contractor shall retain all right, title and interest in and to any intellectual property, technology, know-how, methodologies, works of authorship, and other materials pre-existing the Contract, created, acquired, or licensed separately from the Contract, or created in performance of the Contract but not identified by the Contract as Deliverables, including any modifications, enhancements, improvements, or derivative works thereof Should the Proposer anticipate bringing pre-existing intellectual property into a work-for-hire, the intellectual property must be identified in the Proposal. Otherwise, the language in the first paragraph of this section prevails. If the Proposer identifies such intellectual property ("Background IP"). To the extent that Background IP is contained in any of the Deliverables, upon full and final payment, Contractor in its Proposal, then the Background IP owned by the Proposer on the date of the contract, as well as any modifications or adaptations thereto, remain the property of the Proposer. Upon contract award, the Proposer or Contractor shall grants the Authority, under Contractor's intellectual property rights in such Background IP, a nonexclusive, non-transferable, perpetual royalty free license to use any such of the Proposer's/Contractor's Background IP delivered to the Authority solely in connection with the Authority's use of the Deliverables for the purposes contemplated by the contract. Moreover, the Authority agrees that nothing in this Contract shall prevent Contractor from using any generalized knowledge, experience, know-how, or any of the ideas, concepts, methodologies, tools, or techniques derived from or discovered during the provision of services and that are not unique to the Authority (collectively,</u></p>	
--	--	--

	<p><u>"Residual Knowledge") to perform similar services and develop similar work product, results, or technology as that performed or developed under the Contract. Contractor reserves the right to use, disclose, reproduce, sublicense, modify, prepare derivative works from, perform, and display its Residual Knowledge, subject to the obligations of confidentiality set forth in this Contract. Contractor acknowledges that it shall obtain no ownership right in Confidential Information of the Authority. In addition, the Authority acknowledges and agrees that Contractor shall have the right to retain for its files copies of each of the Deliverables and all information necessary to comply with its contractual obligations and applicable professional standards.</u></p>	
71.	<p>Page 37 – Section 5.9.1 – Data Confidentiality</p> <p>Proposer requests modification as follows:</p> <p>All <u>non-public or proprietary</u> financial, statistical, personnel, customer and/or technical data supplied by the Authority to the Contractor are confidential (Authority Confidential Information). The Contractor must <u>implement commercially reasonable measures to</u> secure <u>Authority Confidential Information</u> <del>all data</del> from manipulation, sabotage, theft or breach of confidentiality. The Contractor is prohibited from releasing any <u>Authority Confidential Information</u> <del>financial, statistical, personnel, customer and/or technical data</del> supplied by the Authority that is <del>deemed</del> <u>designated as confidential unless permitted by the Agreement or as otherwise required by law, legal process, or applicable professional standards</u>. Any <u>unauthorized</u> use, sale, or offering of <u>Authority Confidential Information</u> <del>this data</del> 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 Authority contracting. In addition, such conduct may be reported to the State Attorney General for possible criminal prosecution.</p> <p>The Contractor shall assume total financial liability incurred by the Contractor associated with any breach of confidentiality of <u>Authority Confidential Information that is caused by Contractor</u>.</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>
72.	<p>Page 39 – Section 5.9.2 – Data Security Standards</p> <p>Proposer requests modification as follows:</p> <p>Data Security: The Contractor at a minimum must protect and maintain the security of <u>Authority Confidential</u></p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>



	<p><u>Information data</u> traveling its network in accordance with <u>generally-accepted industry commercially reasonable</u> practices.</p> <p>A. Any Personally Identifiable Information must be protected. <u>All Authority Confidential Information data</u> must be classified <u>by the Authority</u> in accordance with the State's Asset Classification and Control policy, 08-04-NJOIT at <a href="https://www.state.nj.us/it/whatwedo/policylibrary/">https://www.state.nj.us/it/whatwedo/policylibrary/</a>. Additionally, <u>Authority Confidential Information data</u> must be disposed of in accordance with <u>commercially reasonable standards</u> <u>the State's Information Disposal and Media Sanitation policy, 09-10-NJOIT at</u> <a href="https://www.state.nj.us/it/whatwedo/policylibrary/">https://www.state.nj.us/it/whatwedo/policylibrary/</a> ; and</p> <p>B. Data usage, storage, and protection is subject to all applicable federal and state statutory and regulatory requirements, as amended from time to time, including which may include, without limitation, those for Health Insurance Portability and Accountability Act of 1996 (HIPAA), Personally Identifiable Information (PII), <u>Tax Information Security Guidelines for Federal, State, and Local Agencies (IRS Publication 1075)</u>, New Jersey State tax confidentiality statute, N.J.S.A. 54:50-8, New Jersey Identity Theft Prevention Act, N.J.S.A. 56:11-44 et seq., the federal Drivers' Privacy Protection Act of 1994, Pub.L. 103-322, and the confidentiality requirements of N.J.S.A. 39:2-3.4, <u>as applicable to Contractor's provision of services. Contractor must also conform to Payment Card Industry (PCI) Data Security Standard;</u></p> <p>Data Transmission: The Contractor must only transmit or exchange State of New Jersey <u>Authority Confidential Information data</u> with other parties when expressly requested in writing and permitted by and in accordance with requirements of the State of New Jersey <u>unless otherwise permitted by the Agreement or required by law, legal process, or applicable professional standards</u>. The Contractor must only transmit or exchange <u>Authority Confidential Information data</u> with the State of New Jersey or other parties through secure means supported by <u>reasonably</u> current technologies. The Contractor must encrypt all <u>Authority Confidential Information data</u> defined as personally identifiable or confidential by the State of New Jersey or applicable law, <u>or regulation or standard</u> during any transmission or exchange of that <u>data over public networks. To this end, the Authority commits to work with Contractor to implement policy-enforced TLS on servers used to exchange email and will not assert that Contractor is in breach of its</u></p>	
--	---	--

encryption obligations hereunder if the Authority's technology is the cause of the encryption failure.

Data Storage: All Authority Confidential Information data provided by the State of New Jersey or State Authority Confidential Information data obtained by the Contractor in the performance of the contract must be stored, processed, and maintained ~~solely~~ in accordance with ~~a project plan and system topology approved by the Designated Contract Manager.~~ No State Authority Confidential Information data shall be processed on or transferred to any device or storage medium including portable media, smart devices and/or USB devices, unless that device or storage medium has been approved in advance in writing by the Designated Contract Manager. The Contractor must encrypt all Authority Confidential Information data at rest defined as personally identifiable information by the State of New Jersey or applicable law ~~or, regulation or standard.~~ The Contractor must not store or transfer State of New Jersey data outside of the United States.

Data Scope: All provisions applicable to State Authority Confidential Information data include Authority Confidential Information data in any form of transmission or storage, including but not limited to: database files, text files, backup files, log files, XML files, and printed copies of the data, subject to the terms of the Agreement.

Data Re-Use: All State Authority Confidential Information data must be used ~~expressly and solely~~ for the purposes enumerated in the Contract unless otherwise required by law, legal process, or applicable professional standards. ~~Data must not be distributed, repurposed or shared across other applications, environments, or business units of the Contractor.~~ Unless otherwise permitted by the Agreement or required by law, legal process, or applicable professional standards, no State Authority Confidential Information data of any kind must be transmitted, exchanged or otherwise passed to other ~~Contractors or interested third~~ parties except on a case-by-case basis as specifically agreed to in writing by the Designated Contract Manager.

Data Breach: Unauthorized Release Notification: The Contractor must comply with all applicable State and Federal laws that require ~~the~~ notification ~~of individuals~~ in the event of unauthorized release of personally identifiable information or other event requiring notification. In the event of a breach of ~~any of the Contractor's security obligations~~ Authority personally identifiable information or other event requiring notification under applicable law ("Notification Event"), the Contractor must assume responsibility for informing the

	<p>Designated Contract Manager within <del>24</del> <u>72</u> hours <del>of confirming such Notification Event and all such individuals</del> in accordance with applicable law and to indemnify, hold harmless and defend the State of New Jersey, its officials, and</p> <p>employees from and against any claims, damages, or other harm related to such Notification Event <del>caused by Contractor. All communications must be coordinated with the State of New Jersey.</del></p> <p>End of Contract Handling: Upon termination/expiration of this contract, the Contractor must first return all State <del>Authority Confidential Information data</del> to the State in a usable format as defined in the RFP, <del>or in an open standards machine-readable a commercially reasonable</del> format if not. The Contractor must then erase, <del>destroy securely dispose of, and or</del> render unreadable all Contractor copies of State <del>Authority Confidential Information data according to the standards enumerated</del> in accordance with <del>the State's most recent Information Disposal and Media Sanitation policy, currently the 09-10 NJOIT form at</del> <a href="https://www.state.nj.us/it/whatwedo/policylibrary/commercially-reasonable-standards">https://www.state.nj.us/it/whatwedo/policylibrary/commercially-reasonable-standards</a> and, <del>upon request, confirm</del> <u>certify</u> in writing that these actions have been completed within 30 days <del>after the termination/expiration of the Contractor within seven</del></p> <p><del>(7) — days of the such request of an agent of the State whichever shall come first. Notwithstanding the foregoing, Contractor may retain a copy of information received, developed, or otherwise relating to this contract in order to comply with its contractual obligations and applicable professional standards. Information stored on routine back-up media for the purpose of disaster recovery will be subject to destruction in due course. Latent data such as deleted files and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files and metadata that can customarily only be retrieved by computer forensics experts and are generally considered inaccessible without the use of specialized tools and techniques will not be within the requirement for the return or destruction of records as contemplated by this paragraph.</del></p>	
73.	<p><i>Page 39 – Section 5.9.2</i></p> <p>Would NJEDA agree to the following changes in Section 5.9.2 of the RFP, in order to clarify the requirements for data breach in a manner which would require?</p> <p>Data Breach: Unauthorized Release Notification: The Contractor must support NJEDA's compliance with all</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>

	<p>applicable State and Federal laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law ("Notification Event"), the Contractor must assume responsibility for informing the Designated Contract Manager within 48 hours in accordance with applicable law. The Contractor will compensate NJEDA for any legally required notifications to individuals of data breaches caused by the Contractor. All communications must be coordinated with the State of New Jersey.</p>	
74.	<p><b>Section 5.13.3</b></p> <p>Would NJEDA agree to the following changes in RFP Section 5.13.3 in order to make the provision conform to reasonable commercial standards?</p> <p>In the event that the Contractor fails to comply with any material contract requirements, the Authority may take steps to terminate the contract in accordance with the Authority's Contract For Professional Services, Exhibit A, 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 Authority by the defaulting Contractor in accordance with the decision of a court of competent jurisdiction, or take any other action or seek any other remedies available at law or in equity.</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>
75.	<p>Page 41 – Section 5.13.4 – Liquidated Damages</p> <p>Would NJEDA agree to discuss reasonable clarifications to Section 5.13.4 of the RFP upon award, in order to clarify the requirements for liquidated damages? For example, would NJEDA agree to clarify that any determination of a violation would be based upon reasonable standards; that the Contractor would not be responsible for circumstances beyond its reasonable control; and that the liquidated damages, once selected, would be the sole monetary remedy of the NJEDA?</p> <p>Also, would the NJEDA agree that the liquidated damages would not exceed 15% of the price of the applicable task order?</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>

76.	<p>Section 6.7 – Evaluation Criteria</p> <p>If a Proposer intends to use certified Minority Owned Businesses or Women Owned Businesses, does this participation have an impact on the Proposer's evaluation?</p>	<p>Please review Section 6.7 as to the Evaluation Criteria that encompasses personnel, experience, ability to perform the scope of work, and pricing. The Evaluation Committee shall review and evaluate the proposal submission based upon the referenced Evaluation Criteria.</p>
77.	<p>Page 45 - Section 6.7.1 and 6.7.2</p> <p>Can you describe the weighting criteria in numeric or percentage values as it relates to the qualifications / experience (6.7.1) and the Proposer's Fee Schedule (6.7.2)?</p>	<p>Pursuant to the Authority Procurement Policy and Procedures, the weights and percentages for the Evaluation Criteria as set forth in Sections 6.7.1 and 6.7.2 are not disclosed in the RFP. However, the weights/percentages have been internally established and confirmed for the Evaluation Committee prior to issuance of this RFP and the opening.</p>
78.	<p>Page 45 - Section 6.7.1</p> <p>With respect to key personnel resumes, please clarify what you are seeking for three business references. Are you requesting contact information regarding prior employment or are you requesting references related to client work performed at the Proposer's firm?</p>	<p>The Authority has requested three (3) business references associated with any of the named relevant positions for the key personnel. Business references <b>must</b> include a Contact Name, Job Title, Daytime Telephone Number and an E-mail Address</p>
79.	<p>Page 46 – Section 6.8</p> <p>Are multiple awards anticipated?</p>	<p>Please review Section 1.1, Section 3 and other relevant sections of the RFP.</p> <p>The intent of this RFP is to award one (1) one primary, and one (1) secondary contract for one (1) year with two (2), one (1) year extension options, if deemed necessary by the Authority and dependent upon funding, to the responsible Proposer(s) whose</p>

		<p>Proposal(s), conforming to this RFP are most advantageous to the Authority, price and other factors considered.</p> <p>For all COVID-19 Recovery programs valued at \$20 million or more, the task order requests will be provided to the Primary and Secondary awardees who will provide responses and pricing; and will be evaluated and awarded accordingly.</p> <p>For all other programs, the task order request will be provided to the Primary Contractor. In the event there is a conflict with the Primary Contractor, the task order will be provided to the Secondary Contractor.</p>
80.	<p>Fee Schedule</p> <p>Can you provide the quantity of hours required for this engagement that can be used in the Fee Schedule so that all proposers can be evaluated on a level playing field?</p>	<p>Please see the above answers to the questions pertaining to the Fee schedule and pricing. The hourly rates are the rates for Category 3 and will be utilized pursuant to the TOR process set forth in the RFP, Section 3.6. The number of hours are the anticipated number of hours pursuant to a typical engagement. The total price will be used and analyzed in order to evaluate and rank the pricing of the vendors.</p>
81.	<p>Fee Schedule</p> <p>Can the Proposer include a software / development fee as a one-time price on the fee schedule?</p>	<p>Fee schedule and pricing shall be all and fully inclusive. In regards to the pricing inquiry, please see RFP Section 4.2.2 pertaining to the Fee Schedule and the Fee Schedule itself.</p>
82.	<b>Contract Exceptions</b>	<p>Questions regarding the Authority's Contract for Services,</p>

	<p>Submission of this proposal is not an indication of [vendor's] willingness to be bound by all of the terms presented in the New Jersey Economic Development Authority ("NJEDA") Request for Proposal for Integrity Oversight Monitor and Supporting Services (the "RFP"). This proposal in response to State's RFP does not constitute a contract to perform services and cannot be used to award a unilateral agreement. Final acceptance of this engagement by [vendor] is contingent upon successful completion of [vendor's] acceptance procedures. Any engagement arising out of this proposal will be subject to negotiation of a mutually satisfactory vendor contract including modifications to certain RFP terms and conditions and including our standard terms and conditions and fees and billing rates established therein.</p> <p>Given our past history of successfully negotiating mutually agreeable terms with NJEDA, we do not anticipate any difficulty in reaching a contractual agreement that will enable us to provide the professional services which you are requesting, while protecting the interests of both parties</p>	<p>please refer to Exhibit A and exceptions or modifications to its mandatory requirements must be requested by the Proposer during this Electronic Question and Answer Period and should contain the Proposer's suggested changes and the reason(s) for the suggested changes. The Authority shall be under no obligation to grant or accept any requested changes (i.e., exceptions taken) to the specimen form of the Contract and will post all answers in the Addendum.</p> <p>Exceptions and/or modifications to the terms of the RFP and/or Contract submitted with the Proposal, subsequent to the expiration of the Question and Answer Period, will result in the rejection of the Proposer's Proposal.</p> <p>Furthermore, if an exception or revision to the contract is submitted with the Proposal and it is a material change, the entire bid must be deemed nonresponsive and cannot be evaluated. See <u>In re Request for Proposals #17DPP00144</u>, 454 NJ Super. 527 (App. Div. 2017). Please be guided accordingly.</p>
83.	<p>As a general observation, we note that certain of the terms and conditions appear to have been drafted broadly. As such, some of the provisions may be inapplicable for specific types of professional services.</p> <p>Depending on services selected, [Vendor]'s services team may have additional terms and conditions which shall be addressed if we move to contracting and will be negotiated in good faith per the above.</p>	<p>Please see answer to question 82.</p> <p>Any additional terms and conditions submitted with the proposal submission shall result in the rejection of the proposal.</p>
84.	Contract, Section 2; RFP Section 5.2	

	<p>Would NJEDA agree to the following change in Exhibit A, Section 2, last paragraph, so that there would be an outer limit to the length of the contract as provided in RFP Section 5.3?</p> <p>Notwithstanding the expiration or termination of this agreement, the Authority reserves the right at its sole discretion to extend this agreement on a month-to-month basis beyond expiration or termination until all services required by the contract are completed or a replacement contract for Integrity Oversight Monitor is entered into by the Authority and the replacement Primary Contractor is prepared to engage in the Work, not to exceed a total of 180 days beyond the expiration date of the Agreement, including any extensions exercised. Pricing will be consistent with the pricing from the RFP Fee Schedule of the executed Contract agreement during any extension on a month-to-month basis, beyond expiration or termination.</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p> <p>However, please review Section 5.3 that provides for "Contract Transition." The provision follows:</p> <p>"In the event that a new contract has not been awarded prior to the contract expiration date, as may be extended herein, the Authority reserves the right, in its sole discretion, to extend the Agreement on a month-to-month basis beyond the expiration or termination, until a replacement Contractor is engaged to provide the requisite services. 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. <b>At no time shall this transition period extend more than 180 days beyond the expiration date of this Agreement, including any extensions exercised.</b>"</p>
85.	<p>Contract, Section 3 – Price</p> <p>Proposer requests modification as follows:</p> <p>In addition to the Professional Fees identified above, additional charges may include reasonable out-of-pocket expenses incurred in connection with the Assignment, and electronic database fees incurred in connection with the Services provided.</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>
86.	<p>Contract, Section 4 – Ownership and use of Document</p> <p>Proposer requests modification as follows:</p> <p><u>Ownership.</u> The final deliverable shall become the property of Client solely with respect to a specified final PDF Deliverable (which for clarification, does not include any supporting material or third party materials): (i) where the parties have agreed in writing under a particular SOW to the transfer</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>



	<p>ownership in such deliverable from [Vendor] to Client; (ii) where such deliverable has been marked/identified as final by [Vendor]; (iii) upon full payment of all amounts due to [Vendor]; and (iv) with such deliverable remaining subject to the use and disclosure obligations below. For clarity, [Vendor] and third parties shall retain ownership rights in their respective proprietary materials (e.g., information, tools, software, know-how, and methodologies) incorporated in, developed, or used in providing the Services/Deliverable or received from third-party sourced information (i.e., licensed material, market or database analysis, comparables, public records or similar indexes).</p> <p><u>Work Made for Hire</u> under US Copyright Act does not apply to [Vendor] or its services.</p> <p><u>Pre-Existing IP.</u> Notwithstanding the foregoing, [Vendor] shall have ownership (including, without limitation, copyright ownership) and all rights to use and disclose our ideas, concepts, know-how, methods, techniques, processes and skills, and adaptations thereof in conducting our business (collectively, "Know-How") regardless of whether such Know-How is incorporated in, or gained in the course of performing, the services under this contract. Work product, property, advice, deliverables, know-how or the like, while subject to obligations of confidentiality as set forth in this contract, remain the property of [Vendor], except as otherwise specifically agreed to by the parties in writing.</p> <p><u>Use of Reports.</u> Client shall be permitted to use [Vendor]'s deliverables solely for its internal business purposes. Client shall maintain [Vendor]'s deliverables as confidential, and shall not disclose, disseminate, redistribute or otherwise make any [Vendor] deliverables available to any third party, whether in whole or in part, without the express written consent of [Vendor]; provided, however, that [Vendor]'s deliverables may be disclosed if required by law or in response to a lawful order or demand of any court of competent jurisdiction, provided, however, that before making such a disclosure, Client agrees to provide [Vendor] with prompt prior notice of any such compelled disclosure so that [Vendor] and/or Client may seek a protective order or other appropriate remedy. Client further agrees and represents that any [Vendor] deliverables/services provided hereunder will not be used for employment purposes, credit evaluation or insurance underwriting purposes related to an individual as defined under the Fair Credit Reporting Act, 15 U.S.C. § 1681 and its applicable state/jurisdictional analogs, and that the Services hereunder are being contracted for, and will only be used in connection with a business, investment or other commercial purpose.</p>	
--	--	--

87.	<p>Contract, Section 4 – Ownership and Use of Documents</p> <p>Delete in its entirety and replace with the following:</p> <p>Subject to the limitations set forth herein and upon full and final payment to Contractor under the Agreement, (i) Contractor assigns and grants to the Authority right, title, and interest in the tangible items specified as deliverables in the Agreement (the “Deliverables”); and (ii) Client grants to Contractor a royalty-free, irrevocable, fully paid up, non-exclusive, perpetual license to use, copy, make derivative works of, distribute, display, and sublicense the Deliverables. Contractor shall retain all right, title and interest in and to any intellectual property, technology, know-how, methodologies, works of authorship, and other materials pre-existing the Agreement, created, acquired, or licensed separately from the Agreement, or created in performance of the Agreement but not identified by the Agreement as Deliverables, including any modifications, enhancements, improvements, or derivative works thereof (“Contractor Property”). To the extent that Contractor Property is contained in any of the Deliverables, upon full and final payment, Contractor grants the Authority, under Contractor’s intellectual property rights in such Contractor Property, a royalty-free, non-exclusive, non-transferable, perpetual license to use such Contractor Property solely in connection with the Authority’s use of the Deliverables. Moreover, the Authority agrees that nothing in this Agreement shall prevent Contractor from using any generalized knowledge, experience, know-how, or any of the ideas, concepts, methodologies, tools, or techniques derived from or discovered during the provision of services and that are not unique to the Authority (collectively, “Residual Knowledge”) to perform similar services and develop similar work product, results, or technology as that performed or developed under the Agreement. Contractor reserves the right to use, disclose, reproduce, sublicense, modify, prepare derivative works from, perform, and display its Residual Knowledge, subject to the obligations of confidentiality set forth in this Agreement. Contractor acknowledges that it shall obtain no ownership right in Confidential Information of the Authority. In addition, the Authority acknowledges and agrees that Contractor shall have the right to retain for its files copies of each of the Deliverables and all information necessary to comply with its contractual obligations and applicable professional standards.</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>
88.	<p>Contract – Ownership and Use of Documents</p> <p>Will NJEDA consider modifying the following term? Proposed</p>	

	<p>language below:</p> <p>All Deliverables provided by Contractor in the performance of the contract, , which are prepared for or are a result of the services required under this contract shall be and remain the property of the Authority, upon full payment due to the Contractor for such Deliverables, shall be delivered to the Authority upon thirty (30) days' notice by the Authority.</p> <p>In the event the Primary Contractor's proposal identifies bringing pre-existing intellectual property into a project, the background intellectual property ("Background Intellectual Property") owned by the Primary Contractor on the date of the contract, as well as any modifications or adaptations thereto, remain the property of the Primary Contractor. This contract, grants to the Authority, a non-exclusive, perpetual royalty-free license to use any of the Primary Contractor's Background IP delivered to the Authority for their internal business purposes and for the purposes contemplated by the contract and any extensions thereto.</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>
89.	<p>Contract – Ownership of Material</p> <p>Will NJEDA consider modifying the following term? Proposed language below:</p> <p>All Deliverables provided by the Contractor in the performance of the contract, , which are prepared for or are a result of the services required under this contract shall be and remain the property of the Authority, upon payment due to the Contractor for such Deliverables, and shall be delivered to the Authority upon thirty (30) Days' notice by the Authority. . <u>The Contractor will own its working papers, pre-existing materials and software, as well as any general skills, know-how, process, or other intellectual property (including a non-client specific version of any Deliverables) which Contractor may have discovered or created as a result of the services.</u> Upon full payment due to the Contractor under the contract, the Proposer or Contractor shall grant the Authority a nonexclusive, perpetual royalty free license to use any of the Proposer's/Contractor's Background IP delivered to the Authority for the purposes contemplated by the contract.</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>
90.	<p>Contract, Section 5 – Manner of Payment</p> <p>[Vendor] may invoice Client on the earlier of on a monthly basis, upon delivery of the [Vendor] Report/performance of the Services or termination/expiration of this Agreement,</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>

	<p>unless otherwise mutually agreed between the Parties in writing. Client agrees to pay [Vendor] within thirty (30) days of the invoice date. Any unpaid balances shall accrue interest at the rate of 12% per annum, as measured from thirty (30) days after the date of each invoice. Client acknowledges its obligation to pay undisputed amounts as set forth above. In the event Client disputes any portion of an invoice, Client will notify [Vendor] in writing of the disputed charges within thirty (30) days of the invoice date. [Vendor] reserves the right to terminate its Services at any time if Client fails to pay [Vendor]'s invoices in a timely manner. Client agrees to reimburse [Vendor] for any costs of collection, including reasonable attorneys' fees.</p>	
91.	<p>Contract, Section 5 – Manner of Payment</p> <p>Would NJEDA agree to the following additional sentence in Exhibit A, Section 5, in order to clarify the payment terms of the contract?</p> <p>If payment is not received within 30 days of receipt of invoice, the Primary Contractor may suspend or terminate the services upon five days written notice to the Authority.</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>
92.	<p>Contract, Section 6 – Indemnification</p> <p>We typically do not indemnify our clients.</p> <p>We require an indemnity from our clients and liability limit.</p> <p><u>Indemnity from Client.</u> Client agrees to hold harmless and indemnify [Vendor] against all claims, damages and costs (including reasonable attorneys' fees and disbursements) arising out of any Assignment, except for such claims, damages and costs resulting from any actions by [Vendor] constituting gross negligence, fraud, or willful misconduct.</p> <p><u>Limitation of Liability.</u> Client agrees, on its own behalf and on behalf of its agents, that [Vendor] will not be liable for any claims, liabilities or expenses relating to this contract or any services provided hereunder for an aggregate amount in excess of the fees paid by Client to [Vendor] pursuant to this contract, except to the extent such liability is finally judicially determined to have resulted from [Vendor]'s gross negligence, fraud or willful</p> <p>misconduct. However, in no event will either party be liable for consequential, special, indirect, punitive or exemplary losses, damages or expenses relating to this engagement, including without limitation damages for loss of data, loss of business profits, business interruption, or other pecuniary</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p> <p>As a State Authority, the NJEDA will not agree to cross indemnification.</p>

	loss, even if such party has been advised of the possibility of such damages.	
93.	<p>Contract, Section 6 – Indemnification</p> <p>Proposer requests modification as follows:</p> <p>The indemnification obligation set forth in Section 6 is <del>not</del> limited <del>in any way</del> by the <u>Primary Contractor's limitation of liability as set forth in Section 15(A) below insurance coverage required pursuant to Section 7 of this Contract and shall survive the terms of this contract.</u></p>	The NJEDA is not willing to consider or accept the requested modifications.
94.	<p>Contract, Section 6 - Indemnification</p> <p>Would NJEDA agree to the following changes to Exhibit A, Section 6, so that the indemnification obligation is in line with commercial and government contract standards, and also to clarify that the warranty would be subject to a mutually agreeable warranty period?</p> <p>The Primary Contractor shall defend, indemnify, protect and hold harmless the State of New Jersey and the Authority, and its officers, agents, servants and employees from and against any and all suits, claims, demands, losses or damages of any kind arising out of or claimed to arise out of any bodily injury, death, or damage to real or tangible personal property to the extent directly and proximately caused by the error or omission on the part of the Primary Contractor, its officers, agents, servants, employees and subcontractors in the performance of services under this Contract. The Primary Contractor shall, at its own expense, appear, defend and pay all charges for attorneys and all costs and other expenses arising from such suit or claim or incurred in connection therewith. If any judgment shall be rendered against the State of New Jersey and the Authority or its officers, agents, servants, and employees for which indemnification is provided under this Section 6, the Primary Contractor shall, at its own expense, satisfy and discharge the same.</p> <p>The Primary Contractor shall be liable to the Authority for any reasonable costs incurred by the Authority to correct, modify, or redesign any technical information, reports, findings, analyses, surveys or drawings generated or produced by Primary Contractor or any Work performed by the Primary Contractor or its subcontractor(s) that is found, during the warranty period as set forth in the applicable task order, to be defective or not in accordance with the provisions of the</p>	The NJEDA is not willing to consider or accept the requested modifications.

	<p>Contract as a result of any negligent act, error, or omission on the part of the Primary Contractor, its officers, agents, servants, employees and subcontractors. The Primary Contractor shall be given a reasonable opportunity to correct any such deficiency.</p> <p>The indemnification obligation set forth in Section 6 is not limited in any way by the insurance coverage required pursuant to Section 7 of this Contract and shall survive the terms of this contract.</p>	
95.	<p>Contract, Section 6 - Indemnification</p> <p>Relevant professional guidelines prohibit accounting firms from indemnifying an attest client for claims that relate, directly or indirectly, to an attest client's acts. Given this prohibition, our proposal assumes that the Authority will modify its proposed contract language in order to allow us to conduct the engagement under the American Institute of Certified Public Accountants (AICPA) Attestation Standards.</p>	<p>Respectfully, the NJEDA is not willing to consider or accept the requested modifications. However, the Authority understands that the engagement will be guided by the American Institute of Certified Public Accountants (AICPA) Attestation Standards, when applicable</p>
96.	<p>Contract, Section 6 – Indemnification</p> <p>Will NJEDA consider modifying the following term? Proposed language below:</p> <p>The Primary Contractor shall indemnify, the State of New Jersey and the Authority, and its officers, agents, servants and employees from and against third-party suits, claims, demands, losses or damages directly arising out of fraud, gross negligence or willful misconduct on the part of the Primary Contractor, its officers, agents, servants, employees and subcontractors in the performance of services under this Contract.. If any judgment shall be rendered against the State of New Jersey and the Authority or its officers, agents, servants, and employees for which indemnification is provided under this Section 6, the Primary Contractor shall, at its own expense, satisfy and discharge the same.</p> <p>The Primary Contractor shall be liable to the Authority for any reasonable costs incurred by the Authority to correct, modify, or redesign any technical information, reports, findings, analyses, surveys or drawings generated or produced by Primary Contractor or any Work performed by the Primary Contractor or its subcontractor(s) that is found to infringe on the U.S. intellectual property right of a third-party as a result of any negligent act, error, or omission on the part of the Primary Contractor, its officers, agents, servants, employees and subcontractors. The Primary</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>

	<p>Contractor shall be given a reasonable opportunity to correct any deficiency.</p> <p>The indemnification obligation set forth in Section 6 is not limited in any way by the insurance coverage required pursuant to Section 7 of this Contract and shall survive the terms of this contract.</p> <p>Notwithstanding any other term herein, and except to the extent finally determined to be prohibited by law, the Contractor's aggregate liability for all claims, losses, liabilities, or damages in connection with this agreement or its subject matter, whether as a result of breach of contract, tort (including negligence), or otherwise, regardless of the theory of liability asserted, is limited to no more than the total amount of fees paid to the Contractor for the particular Service giving rise to the liability under this agreement. In addition, the Contractor will not be liable for any lost profits, consequential, indirect, punitive, exemplary, or special damages. Also, the Contractor shall have no liability arising from or relating to any third-party hardware, software, information, or materials selected or supplied by the Authority.</p>	
97.	<p>Contract, Section 6 – Indemnification</p> <p>Would NJEDA agree to include the following limitation of liability in Exhibit A, which is typical of limitations of liability provided by the State of NJ?</p> <p>The Primary Contractor's liability to the Authority for actual, direct damages resulting from the Primary Contractor's performance or non-performance, or in any manner related to this Agreement, for any and all claims, shall be limited in the aggregate to 200 % of the total value of this Agreement, except that such limitation of liability shall not apply to the following:</p> <ol style="list-style-type: none"> <li>1. The Primary Contractor's obligation to indemnify the Authority 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 Primary Contractor under this Contract caused by negligence or willful misconduct of the Primary Contractor;</li> <li>2. The Primary Contractor's breach of its obligations of confidentiality; and</li> <li>3. The Primary Contractor's liability with respect to copyright indemnification.</li> </ol>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>

	<p>The Primary Contractor's indemnification obligation is not limited by but is in addition to the insurance obligations contained in Section 7.</p> <p>The Primary Contractor shall not be liable for special, consequential, or incidental damages.</p>	
98.	<p>Contract, Section 7 - Insurance</p> <p>Section #7 (c) requires that "Professional Liability Insurance shall include coverage for Contingent Bodily Injury and Property Damage." This is covered under our General Liability insurance, rather than our Professional Liability insurance.</p>	
99.	<p>Contract, Section 7 - Insurance</p> <p>With regards to Exhibit A, Section 7, upon award, would the Authority agree to discuss reasonable clarifications with the Primary Contractor in order to conform the insurance obligations to standard insurance policies maintained by national commercial organizations?</p>	Please see answer to question 82, specifically as to contract exceptions.
100.	<p>Contract, Section 7 – Insurance</p> <p>Proposer requests modification as follows:</p> <p>The Primary Contractor shall procure and maintain, at its own expense, liability insurance for damages of the kinds and in the amounts hereinafter provided, from insurance companies licensed, admitted <u>OR</u> and approved to do business in the State of New Jersey. The Primary Contractor shall obtain this coverage from A VII or better - rated companies as determined by A.M. Best Company. The types and minimum amounts of insurance required are as follows:</p> <p>...</p> <p>3. Professional Liability Insurance, <u>including cyber insurance</u></p> <p>The Primary Contractor shall carry Errors and Omissions and/or Professional Liability Insurance, <u>including cyber insurance</u>, sufficient to protect the Primary Contractor from any liability arising out of professional obligations performed pursuant to this Contract. The insurance shall be in the amount of \$1,000,000 each claim <del>and in such policy form as shall be approved by the Authority.</del></p> <p>Professional Liability Insurance shall include coverage for Contingent Bodily Injury and Property Damage.</p> <p>4. <u>RESERVED Cyber Security Insurance</u></p>	The NJEDA is not willing to consider or accept the requested modifications.



	<p><del>The Primary Contractor shall carry Cyber Security Insurance in the amount of \$1,000,000 each claim which shall include coverage for breach of the Privacy Act or HIPAA regulations.</del></p> <p>...</p> <p>ACORD Certificates of Insurance acceptable to the Authority in respect to each of the aforementioned policies shall be filed with the Authority prior to commencement of Work. <del>All policies and corresponding Certificates must show thirty (30) days' prior written notice of cancellation (10 days' notice for non-payment cancellation) to the Authority.</del> If the insurance policies cannot be endorsed to provide notice of cancellation to third parties, then it is the responsibility of the Primary Contractor to provide notice of cancellation to the Authority within forty-eight (48) hours of receipt of notification from their insurance company.</p>	
101.	<p>Contract – Automobile Liability insurance</p> <p>Will NJEDA consider modifying the following term? Proposed language below:</p> <p>The Primary Contractor shall carry Commercial Automobile Liability insurance, at all times. The policy shall cover any, hired or non-owned automobiles/vehicles used by the insured or its staff with minimum limits for liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit and \$2,000,000 in the aggregate.</p> <p>The General Liability, Professional Liability and Cyber Security policies are to be written on a claims-made or occurrence basis. If coverage is written on a claims-made basis; the Primary Contractor shall maintain continuous claims-made coverage for the life of the contract and any extensions thereto.</p> <p>Limits indicated above may be provided through of combination of underlying and excess policies as needed.</p> <p>ACORD Certificates of Insurance acceptable to the Authority in respect to each of the aforementioned policies shall be filed with the Authority prior to commencement of Work.. If the insurance policies cannot be endorsed to provide notice of cancellation to third parties, then it is the responsibility of the Primary Contractor to provide notice of cancellation to the Authority within forty-eight (48) hours of receipt of notification from their insurance company.</p>	The NJEDA is not willing to consider or accept the requested modifications.
102	Contract, Section 8 - Termination	

	<p>Would NJEDA agree to the following clarification in Exhibit A, Section 8, second paragraph, in order to provide a cure period for breaches which is typical in the industry?</p> <p>In addition to other remedies available under law to the non-defaulting party, this Contract may be terminated by either party upon thirty (30) days' advance written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, and provided that such failure is not cured during such notice period.</p>	The NJEDA is not willing to consider or accept the requested modifications.
103	<p>Contract, Section 8 – Termination</p> <p>Proposer requests modification as follows:</p> <p>...</p> <p>In addition to other remedies available under law to the non-defaulting party, this Contract may be terminated by either party upon thirty (30) days' advance written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination; provided that the Authority agrees to <u>provide reasonable written notice to Primary Contractor and opportunity to cure any deficiency that forms the basis for termination for cause pursuant to this Section.</u></p>	The NJEDA is not willing to consider or accept the requested modifications.
104	<p>Contract, Section 8 - Termination</p> <p>Will NJEDA consider modifying the following term? Proposed language below:</p> <p>The Authority shall have the right without cause and in its complete discretion</p> <p>to terminate the Contract at any time upon thirty (30) days' advance written notice to the Primary Contractor. In such event, absent a default on the part of the Primary Contractor, the Primary Contractor shall be entitled to compensation for all services properly provided to the Authority pursuant to the Contract prior to such termination.</p> <p>In addition to other remedies available under law to the non-defaulting party, this Contract may be terminated by either party upon thirty (30) days' advance written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.</p>	The NJEDA is not willing to consider or accept the requested modifications.
105	Contract, Section 9 – Confidential Information of the Authority	

	<p>Please see below for our required internal staff and standard exclusion to confidentiality.</p> <p><u>Permitted Disclosure.</u> The Confidential Information may be disclosed by the [Vendor] only to its and its affiliates' employees, consultants, and others under [Vendor]'s control, reasonably requiring Confidential Information in connection with the purpose ("Representatives"), provided that all Representatives have been informed that the information is Confidential Information subject to protection and handling in accordance with this Agreement. [Vendor] is responsible for all Representatives' use and disclosure of the Confidential Information.</p> <p><u>Exclusions.</u> We would look to also add the following exclusion to confidential information...information that is independently acquired or developed by [Vendor] without violating any of [Vendor]'s obligations under this contract with the Client, any agreement with a third party, or applicable law.</p> <p><u>Retention.</u> All files, documents, and work papers received, created, or developed during the engagement will be retained for professional recordkeeping and legal/regulatory compliance purposes, all in accordance with [Vendor]'s document retention policy. If required by applicable law to disclose any of the documents, [Vendor] will notify the Client so it may seek a protective order, at its discretion.</p> <p>Any NDAs required to be signed by staff or subcontractors should be subject to agreement by the parties, we should not pre-agree to agree to terms of an NDA we have not reviewed and confirmed, especially if we are requiring our staff to enter into an NDA in their individual capacity.</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>
106	<p>Contract, Section 9 – Confidential Information of the Authority</p> <p>In connection with performing the Work, the Primary Contractor, its employees and subcontractors may receive, review and become aware of proprietary, personnel, commercial, and financial information of the Authority, its employees, members, borrowers or business associates that is confidential and/or proprietary in nature ("Confidential Information"). The Primary Contractor agrees that the use and handling of Confidential Information by the Primary Contractor, its employees and subcontractors, shall be done in a responsible manner and solely for furtherance of the Work. Other than to its <u>partners, principals,</u> employees, and subcontractors who have a need to know</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>

	<p>Confidential Information in connection with performance of the Work, <u>or as required by law, legal process, or applicable professional standards</u>, the Primary Contractor agrees not to disclose any Confidential Information, without the prior written consent of the Authority. The Primary Contractor shall be responsible to assure that its employees and subcontractors do not disclose any Confidential Information without the prior written consent of the Authority. The Primary Contractor shall inform each of its employees and subcontractors that receives any Confidential Information of the requirements of this Section 9 of the Contract and shall require each such employees and subcontractors to comply with such requirements. ...</p> <p>Authority, in its sole discretion.</p> <p>Pursuant to Section 6 Indemnification of the Contract, the Primary Contractor shall indemnify and hold the State of New Jersey and the Authority, its employees and members harmless for any breach of Section 9 "Confidential Information of the Authority", by the Primary Contractor, its employees or subcontractors.</p>	
107	<p>Contract – Confidential Information of the Authority</p> <p>Will NJEDA consider modifying the following term? Proposed language below:</p> <p>In connection with performing the Work, the Primary Contractor, its employees and subcontractors may receive, review and become aware of proprietary, personnel, commercial, and financial information of the Authority, its employees, members, borrowers or business associates that is confidential and/or proprietary in nature ("Confidential Information"). The Primary Contractor agrees that the use and handling of Confidential Information by the Primary Contractor, its employees and subcontractors, shall be done in a responsible manner and solely for furtherance of the Work. Other than to its employees and subcontractors who have a need to know Confidential Information in connection with performance of the Work, the Primary Contractor agrees not to disclose any Confidential Information, without the prior written consent of the Authority. The Primary Contractor shall be responsible to assure that its employees and subcontractors do not disclose any Confidential Information without the prior written consent of the Authority. The Primary Contractor shall inform each of its employees and subcontractors that receives any Confidential Information of the requirements of this Section 9 of the Contract and shall require each such employees and subcontractors to comply with such requirements.</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>

	<p>Notwithstanding the foregoing, the term Confidential Information shall not include information which: (I) is already known to the Primary Contractor, its employees and subcontractors from sources other than the Authority; (ii) is or becomes generally available to the public other than as a result of a disclosure by the Primary Contractor, its employees and subcontractors; or (iii) is required to be disclosed by law or by regulatory or judicial process. The Primary Contractor, its employees and subcontractors may be required to execute a Non-Disclosure Confidentiality Agreement, as may be deemed appropriate by the Authority, in its sole discretion.</p> <p>.</p>	
108	<p>Contract, Section 11- Time for Completion and Damages</p> <p>With regards to Exhibit A, Section 11, would NJEDA agree to the following changes, in order to remove the time is of the essence clause which is not reasonable for the services to be provided?</p> <p>The time for beginning of the Work is an essential condition of the Contract, and the Work embraced shall be commenced on the date of the "Notice to Proceed".</p> <p>The Primary Contractor shall proceed with the Work at such rate of progress to ensure full completion as set forth in the RFP and the Primary Contractor's Proposal. For reasons within the Primary Contractor's control, if the Primary Contractor shall fail to complete the Work, or shall be responsible for a delay which results in the failure to complete the Work within the time specified, or extension of time granted by the Authority, subject to the cure period set forth in Section 8, then the Primary Contractor will pay the Authority an amount sufficient to compensate the Authority for its damages incurred as a result of such failure to complete.</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>
109	<p>Contract, Section 11- Time and Completion and damages</p> <p>[Vendor] does not agree to time is of the essence provisions.</p>	<p>See answer to question 108.</p>
110	<p>Contract – Time for Completion and Damages</p> <p>Will NJEDA consider modifying the following term? Proposed</p>	<p>See answer to question 108.</p>

	language below:	
111	<p>Contract – Contract transition</p> <p>Will NJEDA consider modifying the following term? Proposed language below:</p> <p>In the event that a new contract has not been awarded prior to the contract expiration date, as may be extended herein, the Authority reserves the right, in its sole discretion, to extend the Agreement on a month-to-month basis beyond the expiration or termination, until a replacement Contractor is engaged to provide the requisite services. 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 60 days beyond the expiration date of this Agreement, including any extensions exercised.</p>	The NJEDA is not willing to consider or accept the requested modifications.
112	<p>Contract, Section 13 - Political Campaign Contributions</p> <p>Proposer requests modification as follows:</p> <p>Individuals subject to prohibition on contributions under Section 13 shall mean only the direct [Vendor] personnel billing time to the project.</p>	The NJEDA is not willing to consider or accept the requested modifications.
113	<p>Contract, Section 14 – General Conditions</p> <p>Proposer requests modification as follows:</p> <p>L. The Primary Contractor shall not disclose to any third party the contents of the information, reports, findings, analysis, surveys, drawings and creative elements generated or produced in performance of this Contract, or provide copies of same, without the prior written consent of the Authority, except where such information, reports, etc. are legally required, by order of court or administrative agency, state or federal, <u>or applicable professional standards</u>.</p>	The NJEDA is not willing to consider or accept the requested modifications.
114	<p>Contract – Substitution of Staff</p> <p>Will NJEDA consider modifying the following term? Proposed language below:</p> <p>If it becomes necessary for the Contractor to substitute any management, supervisory or key personnel, the Contractor shall identify the substitute personnel and the work to be</p>	The NJEDA is not willing to consider or accept the requested modifications.

	<p>performed. The Contractor must provide detailed justification documenting the necessity for the substitution. Resumes must be submitted evidencing that the individual(s) proposed as substitute(s) have qualifications and experience similar to the individual(s) originally proposed or currently assigned. No substitute personnel are authorized to begin work until the Contractor has received verbal/written approval to proceed from the Authority's Designated Contract Manager.</p>	
115	<p>Contract - Substitution or Addition of Subcontractor(s)/Subconsultant(s)</p> <p>Will NJEDA consider modifying the following term? Proposed language below:</p> <p>The qualifications and experience of the replacement(s) must be similar to those of similar personnel proposed by the Contractor in its Proposal.</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>
116	<p>Contract – Data Confidentiality</p> <p>Will NJEDA consider modifying the following term? Proposed language below:</p> <p>When requested, the Contractor and <del>all project staff including</del> its Subcontractor(s) must complete and sign confidentiality and non-disclosure agreements provided by the Authority. The Contractor may be required to view yearly security awareness and confidentiality training modules, or other training methods provided by the Authority. <del>Where required, it shall be the Contractor's responsibility to ensure that any new staff sign the confidentiality agreement and complete the security awareness and confidentiality training modules within one month of the employees' start date.</del></p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>
117	<p>Contract – Liquidated Damages</p> <p>Will NJEDA consider modifying the following term? Proposed language below:</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>
118	<p>Contract – Maintenance of Records</p> <p>Will NJEDA consider modifying the following term? Proposed language below:</p>	<p>The NJEDA cannot consider or accept the requested modifications.</p>

	<p>The Contractor shall maintain time sheets and expense reports records for products and/or services delivered against the contract for a period of three (3) years from the date of final payment unless a longer period is required by law. Such records shall be made available to the State, including the OSC, for audit and review, upon thirty (30) days prior written notice and no more than once annually.</p>	<p>This requirement is mandated by statute and cannot be modified. Please review <u>N.J.S.A. 52:15C-14(d)</u> and <u>N.J.A.C. 17:44-2.2</u>.</p>
119	<p>Contract, Request for Additional Conditions</p> <p>Proposer requests modification as follows:</p> <p style="padding-left: 40px;">A. Limitation of Liability</p> <p>Notwithstanding anything else in this contract to the contrary, including all attachments, the liability of Contractor on account of any actions, damages, claims, liabilities, costs, expenses or losses in any way arising out of or relating to the services performed under the Agreement shall be limited to the amount of fees paid or owing to Contractor under the Agreement. In no event shall Contractor be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs). The provisions of this paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss asserted, whether in contract, statute, rule, regulation or tort (including but not limited to negligence) or otherwise, and shall survive contract termination or expiration.</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>
120	<p>Contract - Additional Conditions requested</p> <p>Proposer requests modification as follows:</p> <p style="padding-left: 40px;">B. Third Party Usage</p> <p>The Authority acknowledges and agrees that any advice, recommendations, information, Deliverables or other work product ("Advice") provided by Contractor in connection with the services under the Agreement is intended for the Authority's sole benefit and Contractor does not authorize any party other than the Authority to benefit from or rely upon such Advice, or make any claims against Contractor relating thereto. Any such benefit or reliance by another party shall be at such party's sole risk. Contractor may, in its sole discretion mark such Advice to reflect the foregoing. Except for disclosures that are required by law or that are expressly permitted by this Agreement, the Authority will not disclose, or permit access to such Advice to any third party without Contractor's prior written consent.</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>



121	<p>Additional Conditions</p> <p>Proposer requests modification as follows:</p> <p>C. Use of vendors</p> <p>The Authority acknowledges and agrees that Contractor-controlled parties, Member Firms of the [Vendor] and other third party service providers (collectively, "Vendors") may have access to Confidential Information from offshore locations, and that Contractor uses Vendors within and outside of the United States to provide at Contractor's direction administrative or clerical services to Contractor. In addition, Contractor's audit technologies, software productivity tools and certain technology infrastructure and, necessarily, your confidential information, may be hosted in cloud environments operated by Vendors. These Vendors may in the performance of such services have access to the Authority's Confidential Information. Contractor represents to the Authority that with respect to each Vendor, Contractor has technical, legal and/or other safeguards, measures and controls in place to protect Confidential Information of the Authority from unauthorized disclosure or use. Contractor shall be responsible to the Authority for Contractor-controlled, member Firms or Vendor's failure to comply.</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>
122	<p>Contract - Additional Conditions requested</p> <p>Proposer requests modification as follows:</p> <p>D. Disputes</p> <p>The parties agree that any dispute or claim arising out of or relating to the Agreement or the services provided thereunder shall first be submitted to non-binding mediation as a prerequisite to litigation. Mediation may take place at a location to be designated by the parties using the Mediation Procedures of the International Institute for Conflict Prevention and Resolution, with the exception of paragraph 2 (Selecting the Mediator). If, after good faith efforts, the parties are unable to resolve their dispute through mediation within ninety (90) days after the issuance by one of the parties of a request for mediation, then the parties are free to pursue all other legal and equitable remedies available to them. Nothing herein shall preclude Contractor from filing a timely formal claim in accordance with applicable [insert State] law provided, however, that Contractor shall, if permitted, seek a stay of said claim during the pendency of any mediation. Either party may seek to enforce any written</p>	<p>The NJEDA is not willing to consider or accept the requested modifications.</p>

	agreement reached by the parties during mediation in any court of competent jurisdiction.	
123	<p>Contract - Additional Conditions requested</p> <p>Proposer requests modification as follows:</p> <p>E. Volume Rebates</p> <p>Where Contractor is reimbursed for expenses, Contractor's policy is to bill clients the amount incurred at the time the good or service is purchased. If Contractor subsequently receives a volume rebate or other incentive payment from a vendor relating to such expenses, Contractor does not credit such payment to its clients. Instead, Contractor applies such payments to reduce its overhead costs, which costs are taken into account in determining Contractor's standard billing rates and certain transaction charges that may be charged to clients.</p>	The NJEDA is not willing to consider or accept the requested modifications.
124	<p>Contract – Service – Related terms</p> <p>Proposer requests modification as follows:</p> <p>As with all services we provide, there are additional related professional terms that are typically incorporated into the service <b>contract</b> in some manner, as applicable to such service.</p> <p>Assignment. Except as otherwise provided herein, neither party shall assign this Contract or any individual party's rights or privileges without the prior written consent of the other party, which consent shall not be unreasonably delayed, conditioned or withheld; provided, however, that the applicable [Vendor] company may assign the contract to any company which controls, is controlled by, or is under common control with [Vendor], or in the event of a merger, acquisition or sale of all or substantially all of the assets thereof.</p> <p>Subpoena Fees. If any person or entity requests or subpoenas any [Vendor] deliverables or other services-related information or materials within [Vendor]'s custody or control, [Vendor] will, unless legally prohibited, promptly inform Client of such request or subpoena so that Client may seek from a court of competent jurisdiction a protective order or other appropriate remedy to limit the disclosure. If [Vendor] is required to respond to the request or subpoena or to provide testimony, Client agrees to compensate [Vendor] for reasonable costs and expenses incurred (e.g., reimbursement of reasonable attorneys' fees and</p>	The NJEDA is not willing to consider or accept the requested modifications.

	<p>disbursements), including, without limitation, compensating [Vendor] (at hourly rates, as applicable) for responding to legal requests or demands for information and preparing for and testifying at deposition, proceedings and/or trials.</p> <p>Liquidated Damages/Penalty Damages. [Vendor] does not agree to any form of liquidated and/or penalty damages.</p> <p>Audit. Due to confidentiality we can only permit a narrowed audit right as follows: Upon prior written notice to [Vendor], upon no less than thirty (30) days' notice (during [Vendor]'s normal business hours) and not more than once annually during the term of this contract and subject to the appropriate confidentiality undertakings by Client, Client may obtain from [Vendor]: (i) a summary of [Vendor]'s most recent third-party audit report/security certificates as may be applicable (i.e. ISO 27001 or SOC2, or similar) and/or on overview of [Vendor]'s implementation of commercially reasonable information security and privacy practices shared by video/telephone/web conference or by response to questionnaires; and/or (ii) copies of accounting records to enable Client to audit and verify any applicable records that demonstrate [Vendor]'s compliance with its obligations under this contract, limited to [Vendor]'s time and expense records for the prior 12 month period but excluding payroll records. Nothing set forth in this contract shall require and [Vendor] will not grant Client (or any representative on Client's behalf) any access to [Vendor]'s material nonpublic information not related to the services or deliverables, [Vendor]'s premises, facilities, or underlying systems/platforms, infrastructure or similar, or any third-party confidential information. Each party agrees to hold confidential all information learned and determinations made in the course of any inspection or audit.</p> <p>Background Checks – We can provide an attestation that a check was run and completed upon request. We do not provide the full report. Any checks done outside of [Vendor]'s standard process are billed to the client.</p> <p>Work Outside the US – [Vendor] will work within the US, provided requested services do not necessitate otherwise.</p> <p>Data Breach Notification Services – [Vendor] does not provide fees or services for this.</p> <p>Warranty from Client regarding Information Supplied to [Vendor] in connection with the services – [Vendor] requires the Client confirm that the Client has the right to supply [Vendor] with information for the purpose of providing the services (including without limitation PII and/or information covered by HIPAA) and is in compliance with applicable data privacy laws/regulations when providing this information to [Vendor].</p>	
--	---	--

<b>Part 2: Additions, Deletions, Clarifications &amp; Modifications to the RFP</b>		
No.	Description	Clarification/ Modification
1.	Currently, the deadline for proposal submissions is September 20, 2022 on or before 2:00 p.m. ET.	The Authority is extending the date for the proposal submission deadline has been extended from September 20, 2022 to <b>September 26, 2022 on or before 2:00 p.m. ET.</b>