

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
REQUEST FOR PROPOSALS
FOR
RFP ADVISORY SERVICES FOR NJEDA PROGRAMS AND PROJECTS
(Reference RFP #2022-RFP-070)

ADDENDUM #1

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.	<p><u>RFP Document</u> Regarding Ownership of Material RFP p. 30, Section 5.8: We take exception to Special Contractual Terms and Conditions, Section 5.8 Ownership of Material, and request the following language be incorporated in the final contract: Notwithstanding any term in the Contract to the contrary, Proposer shall retain all right, title, and interest in any and all intellectual property: (i) created by Proposer prior to this Contract, including (without limitation) Proposer proprietary software programs and processes for providing services and (ii) created by Proposer during the term of the Contract in the normal course of business for Proposer’s clients generally. Upon Authority request, at contract completion Proposer will provide in a format readable by non-proposer proprietary software all Authority computer data and information that Proposer created under the Contract. Rationale: This properly identifies background intellectual property and clarifies situations where the Authority would not take ownership.</p>	<p>Respectfully, the NJEDA is not willing to consider or accept the requested modifications.</p>
2.	<p><u>Contract for Professional Services Specimen Form of Contract</u> Regarding Ownership and Use of Documents Contract p. 2, Section 4: We take exception to Contract for Services, Section 4 Ownership and Use of Documents and request the following language be incorporated in the final contract:</p>	<p>Respectfully, the NJEDA is not willing to consider or accept the requested modifications.</p>

	<p>Notwithstanding any term in the Agreement to the contrary, Vendor shall retain all right, title, and interest in any and all intellectual property: (i) created by Vendor prior to this Agreement, including (without limitation) Vendor proprietary software programs and processes for providing services and (ii) created by Vendor during the term of the Agreement in the normal course of business for Vendor’s clients generally. Upon Authority request, at Agreement completion Vendor will provide in a format readable by non-vendor proprietary software all Authority computer data and information that Vendor created under the Agreement. Rationale: This properly identifies background intellectual property and clarifies situations where the Authority would not take ownership.</p>	
3.	<p><u>Regarding Manner of Payment, Contract p. 2, Section 5:</u> We take exception to Contract for Services, Section 5 Manner of Payment and request the following edits be incorporated in the final contract: Line 3: Insert “within thirty (30) days” between “Vendor,” and “following” Rationale: Thirty-day payment terms are industry standard</p>	<p>Respectfully, the NJEDA is not willing to consider or accept the requested modifications. However, it is confirmed that the NJEDA will comply with the requirements of the NJ Prompt Payment Act, as applicable.</p>
4.	<p><u>Regarding Indemnification, Contract p. 3, Section 6:</u> We take exception to Contract for Services, Section 6 Indemnification and request the following edits be incorporated in the final contract: Line 3: Insert “third party” between “all” and “suits” Line 4: Insert “negligent” between “any” and “act” Line 5: Insert “that results in property damage or personal injury” between “Contract” and “.” Rationale: Indemnity should not be permitted for direct actions between the contracted parties, and should be implemented when the Contractor has acted with negligence, not where it’s acted in accordance with Contract terms or otherwise at Authority’s direction.</p>	<p>The NJEDA is not willing to consider or accept the requested modifications</p>
5.	<p><u>Regarding Termination, Contract p. 5, Section 8:</u> We take exception to Contract for Services, Section 8 Termination and request the following edits be incorporated in the final contract: Line 2: Replace “seven (7)” with “thirty (30)” between “upon” and “days” Rationale: Thirty days provides sufficient time to wind down services, and those of subcontractors, if any.</p>	<p>The NJEDA is not willing to consider or accept the requested modifications</p>

6.	<p>Regarding Consequential Damages: We take exception to the absence of a consequential damages waiver, and respectfully request addition of the following language in the Contract:</p> <p>Consequential Damages. Except to the extent of the obligations in the paragraph “indemnification,” neither party shall be liable, under any circumstances for any anticipatory or lost profit, special, consequential, punitive, exemplary, incidental or indirect damages of any kind (collectively “non-direct damages”) resulting from its performance or non-performance of its obligations under the contract even if such non-direct damages are attributed to breach of the contract, tort or negligence or otherwise caused; such party has been advised of the possibility of such non-direct damages; or under applicable law, any such non-direct damages are considered direct damages.</p> <p>Rationale: Consequential Damage waivers are industry standard and allows us to consider appropriate and foreseeable risks, which allows for best pricing to the Authority.</p>	The NJEDA is not willing to consider or accept the requested modifications
Part 2: Additions, Deletions, Clarifications & Modifications to the RFP		
No.	Description	Clarification/Modification
1.		
2.		
3.		
4.		
5.		