



MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

RE: Internet Service Provider (ISP) / Voice Over Internet Protocol (VoIP) Services
2010-RFQ/P-037 Contract Award.

DATE: October 8, 2010

Summary:

I am recommending the Members approve entering into a contract for Internet Service Provider (ISP) / Voice Over Internet Protocol (VoIP) services with Business Automation Technologies, Inc. - d/b/a Data Network Solutions (Tinton Falls, NJ) for data and voice services for the following locations: (i) NJEDA Headquarters, Trenton; (ii) Waterfront Technology Center, Camden; (iii) NJEDA Satellite, Newark; (iv) Commercialization Centre for Innovative Technologies (CCIT) (1st site); and (v) Commercialization Centre for Innovative Technologies (2nd site). This matter was shared with the Audit Committee at their October 5th meeting and they concurred with this recommendation.

Background:

This is a re-bid of 2010-RFQ/P-035 for which all bids were rejected. That RFQ/P was terminated by final action of the board. On April 12, the Authority issued its second Request for Qualifications and Proposal (RFQ/P) to provide ISP and VoIP services to the Authority (designated as 2010-RFQ/P-037). These critically important services will be used to support the Authority's data communication needs and are expected to become the foundation for the Authority transitioning to a Voice over Internet Protocol (VoIP) environment for its voice communications.

Four (4) proposals in response to 2010-RFQ/P-037 were received and publicly opened:

- ARC Network - a subsidiary of Broadview Network (ARC)
- CTC Communications Corporation d/b/a One Communications (CTC)

- Business Automation Technologies, Inc. - d/b/a Data Network Solutions (DNS)
- PAETEC Communications (PAETEC)

The evaluation committee, comprised of the Authority's Chief Information Officer, ITS Operations Manager and both Systems Administrators, performed a comprehensive evaluation and scoring analysis of the four (4) proposals received. Following the Evaluation Committee's review and scoring of proposals, scores were tabulated and a scoring summary was prepared on May 20. Considering price and other factors, the summary resulted in DNS scoring slightly higher than PAETEC. ARC and CTC scored significantly lower than DNS and PAETEC. It is noted that this original scoring is the only scoring that was conducted by evaluation committee members completely independently and before they gathered to work as a group.

Because of the closeness of the scores for DNS and PAETEC, I determined that the evaluation committee should perform interviews and site visits for the top two (2) proposers, as allowed by the RFQ/P. The Authority's Director – Internal Process Management (IPM) scheduled an interview and site inspection with DNS which took place on June 2. All four (4) Evaluation Committee members, along with the Director of IPM, participated in the interview and site visit together as a group. The PAETEC interview and site inspection took place on June 8, at PAETEC's data center, located in Philadelphia, PA. As with DNS, the four (4) Evaluation Committee members and Director of IPM participated in the interview and site visit together as a group.

Based on the information obtained from proposals, interviews and site visits, the evaluation committee re-scored the three (3) evaluation criteria not related to price. Fee proposals were not discussed at interviews and accordingly, no changes were made to scores relative to price. The post-interview and site inspection scoring matrix showed that, taking into account price and other factors, PAETEC scored higher than DNS.

A memo to the board recommending PAETEC as the winning bidder was prepared and presented at a special board meeting in June based on scoring by all four evaluation committee members after the interviews and site visits. The board decided to table this award due to notification issues related to 2010-RFQ/P-035 raised by DNS principal Isaac Fajerman at the June special board meeting. The Authority voted to hold in abeyance any award of contract under 2010-RFQ/P-037 to allow DNS an "exceptions" period to respond to the hearing officer's report and decision on 2010-RFQ/P-035.

During the exceptions period that was afforded to DNS, to further assure that the winning bidder is capable of providing these critical communication services, I requested that the New Jersey Office of Information Technology (OIT) provide assistance in an advisory capacity to the Evaluation Committee by completing an independent review of the proposals and the facilities and operations of the two (2) highest scoring bidders.

In September, OIT conducted its review and made its report of findings to the evaluation committee and answered any questions that the evaluation committee members had. The OIT report concluded that although PAETEC has better operations and equipment, both firms are

capable of providing the ISP and VoIP services the Authority needs. After OIT provided its report and answered questions, the evaluation committee (consisting of only two members as discussed below) again re-scored both the DNS and PAETEC proposals. The evaluation committee's decision was to recommend PAETEC.

Also in September, the Authority received notification from DNS' attorneys that DNS had conducted Open Public Records Act (OPRA) requests for certain Authority documents. The records included email correspondence between PAETEC representatives and two (2) members of the evaluation committee. DNS' attorney asserted that the emails show PAETEC had an improper influence on the preparation of the bid specification and that two (2) members of the evaluation committee have a bias towards PAETEC.

The Director of IPM (who is also the Authority's Ethics Liaison Officer) interviewed the two (2) staff members involved in the emails requested through OPRA and found that although there is an appearance of possible improper influence and an appearance of possible bias, there is no evidence of actual influence or bias. Based on these findings by the Director of IPM and after conferring with the Attorney General's Office, I concluded it is appropriate to recuse the two (2) evaluation committee members identified in the emails. I also concluded, in order to eliminate any possible influence by the two (2) recused evaluation committee members, the contract award should be based on the original round of scoring (i.e. the May 20th scoring) that was performed before the evaluation committee gathered together for interviews and site visits. The final scoring of proposals uses only scoring by the two (2) remaining members. Using this scoring method, the two top (2) bidders scored as follows:

- Business Automation Technologies, Inc. - d/b/a Data Network Solutions 4.48
- PAETEC Communications, Inc. 4.40

Accordingly, I am recommending the award of this contract to Business Automation Technologies, Inc. - d/b/a Data Network Solutions. Although the scores are close, it is noted that the OIT report confirms that both firms are capable of performing the required services. Also, DNS is the lowest priced bidder. Price is a material factor in this RFQ/P and is 65% of the total evaluation criteria. While this RFQ/P was not designated as a Set-Aside solicitation and no preferential consideration was given during the evaluation of proposals, it should be noted that DNS is registered with the New Jersey Department of Treasury - Division of Minority and Women Business Development as a Category 2 Small Business Enterprise.

This recommendation for award to DNS is not the evaluation committee's recommendation. In order to maintain the highest level of integrity around the evaluation process in light of these unusual circumstances, the final recommendation is based on the first round of scoring which is the only round of scoring where evaluation committee members worked completely independently and without possible influence by other members of the evaluation committee and the OIT report which concludes that DNS is capable of providing the VoIP services.

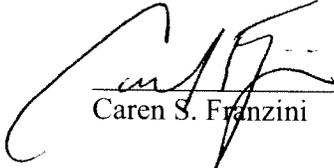
Subject to approval of this recommendation by the Members of the Authority, the Authority will enter into a contract with DNS to provide ISP/VoIP services for a term of one (1) year with an

additional four (4) one-year renewal options, to be exercised at the Authority's sole discretion, at the same terms and conditions. Pricing will remain unchanged for the first two (2) years (i.e. the initial contract term and the first extension option), should the Authority elect to exercise this extension. Pricing for the subsequent three (3) remaining extension options, if so exercised, will be exercised based on the monthly rates stated in the Firm's "Fee Schedule" (i.e. prices applicable to the first two (2) years of the contract) plus a price escalator equal to the average of the preceding six (6) months Consumer Price Index (CPI). A single contract will be entered into by the Authority for all sites. The attached "form of contract" is in substantially final form. The final document will be subject to revision, although basic terms and conditions will remain consistent with those in the attachment.

Under the contract, DNS will be paid a fixed amount for providing the Multiprotocol Label Switching circuits to our various sites, to carry both our data and voice services. The main return on investment will be realized through a reduction in the Authority's monthly telephone bills. In addition, combining the administrative costs of managing the present four (4) telephone and internet services vendors into a single monthly bill will ease the management of our voice and data services, allowing us to leverage many new cost saving technologies and adhere to our green initiatives by deploying new energy efficient hardware. The cost of the contract (estimated to be \$150,000 per year) will be paid out of the Authority's operating budget.

Recommendation:

In summary, I am requesting the Members' approval to execute a contract for ISP/VoIP services with Business Automation Technologies, Inc. - d/b/a Data Network Solutions for a term of one (1) year with an additional four (4) one-year renewal options. The final form of contract will be subject to review and approval of the Chief Executive Officer and the Attorney General's Office.



Caren S. Franzini

Attachments

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CONTRACT FOR PROFESSIONAL SERVICES
INTERNET SERVICE PROVIDER (ISP) SERVICES**

AGREEMENT made this ____ day of _____, 2010, by and between the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (the "Authority or NJEDA"), having its address at 36 West State Street, P.O. Box 990, Trenton, New Jersey 08625-0990, and _____ (the "Vendor"), having its address at _____.

The Authority and the Vendor agree as follows:

1. **The Work.** The Vendor shall perform or shall provide the services as specifically detailed in the Vendor's Proposal, dated _____, 2010 (and as clarified in the Vendor's revised Proposal dated _____, and _____, 2010) and the Authority's Request for Proposal ("RFQ/P"), dated _____ 2010, which are attached hereto and made a part of this Contract.

2. **Time.** The Vendor shall render the services described in the Vendor's Proposal and RFQ/P as requested by the Authority and generally pursuant to the Fee Schedule included therein.

The term of this Contract is one (1) year, with four (4) one (1) year extension options, to be exercised at the sole discretion of the Authority at the same terms and conditions. Pricing for the first extension year, if exercised, will be the same prices as the initial one (1) year term. Subsequent extensions, if exercised, may be adjusted by a Consumer Price Index (CPI) escalator as more fully defined in the Request for Qualifications / Proposals.

Notwithstanding the expiration or termination of this agreement, the Authority reserves the right in its sole discretion to extend this agreement on a month-to-month basis beyond

expiration or termination until a replacement contract for Information Service Provider (ISP) Services is entered into by the Authority.

3. **Contract Price.** The Authority shall pay the Vendor for the performance of the Work on a time and expense basis as per the Hourly Rate Fee Schedule set forth in the Vendor's Proposal. The total annual Contract Price shall not exceed _____ Thousand (\$____,000.00) Dollars per year unless an increase is approved in writing by the Authority. The Authority may require services in addition to those agreed to in the *RFQ/P* and the Proposal. Compensation to the Vendor for additional services shall be in accordance with the *Hourly Rates Fee Schedule (reference Exhibit R – Section 4)* as set forth in Vendor's Proposal; or if not specified in Vendor's Proposal, then reasonable and customary amounts as negotiated by the Authority.

4. **Ownership and Use of Documents.** All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the contract, including, but not limited to, all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and / or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the services required under this contract shall be and remain the property of the Authority and shall be delivered to the Authority upon thirty (30) days notice by the Authority. Regarding software computer programs and / or source codes developed for the Authority, the work shall be considered "work for hire," that is, the Authority, not the Vendor or subcontractor, shall have full and complete ownership of all software computer programs and / or source codes developed. To the extent that any of such materials may not, by operation of the law, be a work made for hire in accordance with the terms of this Agreement, the Vendor 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.

In the event the Vendor's proposal identifies bringing pre-existing intellectual property into a project, the background intellectual property ("Background Intellectual Property") owned by the Vendor on the date of the contract, as well as any modifications or adaptations thereto, remain the property of the Vendor. This contract, grants to the Authority, a non-exclusive, perpetual royalty-free license to use any of the Vendor's Background IP delivered to the Authority for the purposes contemplated by the contract and any extensions thereto.

5. **Manner of Payment.** On a monthly basis, the Vendor shall submit to the Division an original invoice, a weekly timesheet for Vendor's employees and subcontractors, a completed "Monthly Status Report", original invoices for any approved costs for which the Vendor expects to be reimbursed (i.e. printing, etc.) and any other documentation, as may be required by the Authority to process payment. The Authority will make prompt payment to the Vendor, following receipt of and approval of the documentation. No project multipliers shall be used in billings submitted under this Contract, as set forth in the proposal. The Vendor must submit a "Monthly Status Report" to the Authority. Invoices will not be processed unless accompanied by the "Monthly Status Report".

6. **Indemnification.** The Vendor shall defend, indemnify, protect and hold harmless 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 act, error, or omission on the part of the Vendor, its officers, agents, servants, employees and subcontractors in the performance of services under this Contract. The Vendor 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 Authority or its officers, agents, servants, and

employees for which indemnification is provided under this Section 6, the Vendor shall, at its own expense, satisfy and discharge the same.

The Vendor 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 Vendor or any Work performed by the Vendor or its subcontractor that is found to be defective or not in accordance with the provisions of the Contract as a result of any negligent act, error, or omission on the part of the Vendor, its officers, agents, servants, employees and subcontractors. The Vendor shall be given a reasonable opportunity to correct any deficiency.

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.

7. **Insurance.** The Vendor 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 and approved to do business in the State of New Jersey. The Vendor shall obtain this coverage from A VII or better - rated companies as determined by A.M. Best Company. All liability insurance policies shall afford coverage on an occurrence rather than claims made basis with the exception of the professional liability coverage. The types and minimum amounts of insurance required are as follows:

(a) **Commercial General Liability Insurance.**

The minimum limits of liability for this insurance shall be \$1,000,000 per occurrence and \$2,000,000 in the aggregate and cover liability based on property damage, death and bodily injury.

The Commercial General Liability Insurance policy shall name the Authority and as additional insured. The coverage to be provided under this policy shall be at least as broad as

the standard, basic, unamended and unendorsed commercial general liability policy and shall include contractual liability coverage.

(b) Workers' Compensation and Employers' Liability.

Workers' Compensation Insurance shall be provided in accordance with the requirements of the laws of this State and shall include an endorsement to extend coverage to any State, which may be interpreted to have legal jurisdiction. Employers' Liability Insurance shall also be provided in an amount acceptable to the Authority.

(c) Professional Liability Insurance.

The Vendor shall carry Errors and Omissions and/or Professional Liability Insurance sufficient to protect the Vendor 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 and in such policy form as shall be approved by the Authority.

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. These Certificates shall contain a provision that coverages afforded under the policies shall not be reduced or canceled unless at least thirty (30) days prior written notice has been given to the Authority. The Vendor shall notify the Authority within forty-eight (48) hours of any changes or cancellations to policies affecting the Authority.

8. **Termination.** The Authority shall have the right without cause and in its complete discretion to terminate the Contract at any time upon seven (7) days' advance written notice to the Vendor. In such event, absent a default on the part of the Vendor, the Vendor shall be entitled to compensation for all services properly provided to the Authority pursuant to the Contract prior to such termination.

In addition to other remedies available under law to the non-defaulting party, this Contract may be terminated by either party upon seven (7) 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.

9. **Confidential Information of the Authority.** In connection with performing the Work, the Vendor, its employees and subcontractors may receive, review and become aware of proprietary, personnel, commercial, marketing and financial information of the Authority, its employees, members, borrowers or business associates that is confidential and/or proprietary in nature ("Confidential Information"). The Vendor agrees that the use and handling of Confidential Information by the Vendor, 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 Vendor agrees not to disclose any Confidential Information, without the prior written consent of the Authority. The Vendor 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 Vendor 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.

Notwithstanding the foregoing, the term Confidential Information shall not include information which: (i) is already known to the Vendor, 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 Vendor or its employees; or (iii) is required to be disclosed by law or by regulatory or judicial process.

Pursuant to *Section 6 Indemnification* of the Contract, the Vendor shall indemnify and hold the Authority, its employees and members harmless for any breach of *Section 9* "Confidential Information of the Authority", by the Vendor or its employees.

10. **Debarment Liability.** The Vendor acknowledges that it shall be rendered liable to debarment in the public interest, pursuant to procedures established by Executive Order No. 34 (1976), and updated by Executive Order No. 189 (1988), and pursuant to N.J.A.C. 19:30-2, for violating any of the following provisions:

- a. No Vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any Authority officer or employee or special Authority officer or employee, as defined by N.J.S.A. 52:13D-13(b) and (e), with which such Vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13(i), of any such officer or employee, or any partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13(g).
- b. The solicitation of any fee, commission, compensation, gift, gratuity, or other thing of value by any Authority officer or employee or special Authority officer or employee from any Authority Vendor shall be reported in writing forthwith by the Vendor to the Attorney General of New Jersey and the Executive Commission on Ethical Standards.
- c. No Vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Vendor to, any Authority officer or employee or special Authority officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Authority, or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13(g). Any relationships subject to this subsection shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the Authority officer or employee or special

Authority officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

- d. No Vendor shall influence, or attempt to influence or cause to be influenced, any Authority officer or employee or special Authority officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- e. No Vendor shall cause or influence, or attempt to cause or influence, any Authority officer or employee or special Authority officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the Vendor or any other person.

11. **Time for Completion and Damages.** The time for beginning and the time for completion of the Work are essential conditions of the Contract, and the Work embraced shall be commenced on the date of the "Notice to Proceed".

The Vendor shall proceed with the Work at such rate of progress to insure full completion as set forth in the *RFQ/P* and the Vendor's Proposal.

For reasons within the Vendor's control, if the Vendor 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, then the Vendor will pay the Authority an amount sufficient to compensate the Authority for its damages incurred as a result of such failure to complete.

12. **Contractual Liability Act.** Notwithstanding any provision in this Contract or in the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., to the contrary, the parties hereto agree that any and all claims made by the Vendor against the State of New Jersey and/or the Authority for damages, including, but not limited to costs and expenses, shall be governed by and subject to the provisions of the New Jersey Contractual Liability Act.

13. **Political Campaign Contributions.**

13.1 For the purpose of this Section 13, the following shall be defined as follows:

a) "Contribution" means a contribution reportable as a recipient under "The New Jersey Campaign Contributions and Expenditures Reporting Act" (P.L. 1973, c. 83 (C.10:44A-1 et seq.)), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq., a contribution made to a legislative leadership committee, a contribution made to a municipal political party committee or a contribution made to a candidate committee or election fund of any candidate for or holder of the office of Lieutenant Governor. Currently, contributions in excess of \$300 during a reporting period are deemed "reportable" under these laws.

b) "Business Entity" - means:

- i. a for-profit entity as follows:
 - A. in the case of a corporation: the corporation, any officer of the corporation, and any person or business entity that owns or controls 10% or more of the stock of corporation;
 - B. in the case of a general partnership: the partnership and any partner;
 - C. in the case of a limited partnership: the limited partnership and any partner;
 - D. in the case of a professional corporation: the professional corporation any shareholder or officer;
 - E. in the case of a limited liability company: the limited liability company and any member;
 - F. in the case of a limited liability partnership: the limited liability partnership and any partner;
 - G. in the case of a sole proprietorship: the proprietor; and
 - H. in the case of any other form of entity organized under the laws of this State or other state or foreign jurisdiction: the entity and any principal, officer, or partner thereof;
- ii. any subsidiary directly or indirectly controlled by the business entity;
- iii. any political organization organized under section 527 of the Internal Revenue Code is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and
- iv. with respect to an individual who is included within the definition of business entity the individual's spouse or civil union partner, and any child residing with the

individual, provided, however, that, this Order shall not apply to a contribution made by such spouse, civil union partner, or child to a candidate for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides unless such contribution is in violation of section 9 of P.L. 2005, c. 51 (C.19:44A-20.1 et seq.) ("Chapter 51").

c) "PL 2005, c.51" – means Public Law 2005, chapter 51 (C. 19:44A-20.13 through C. 19:44A-20.25, inclusive) as expanded by Executive Order 117 (Gov. Corzine, September 24, 2008).

13.2 The terms, restrictions, requirements and prohibitions set forth in P.L. 2005, c. 51 are incorporated into this Agreement by reference as material terms of this Agreement with the same force and effect as if P.L. 2005, c. 51 were stated herein its entirety. Compliance with P.L. 2005, c. 51 by Vendor shall be a material term of this Agreement.

13.3 Vendor hereby certifies to the Authority that commencing on and after October 15, 2004, Vendor (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) has not solicited or made any Contribution of money, pledge of Contribution, including in-kind Contributions, that would bar a contract agreement between Vendor and the Authority pursuant to P.L. 2005, c. 51. Vendor hereby further certifies to the Authority that any and all certifications and disclosures delivered to the Authority by Vendor (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) are accurate, complete and reliable. The certifications made herein are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made in violation of P.L. 2005, c. 51, the Authority shall have the right to declare this Agreement to be in default.

13.4 Vendor hereby covenants that Vendor (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) shall not knowingly solicit or make any contributions of money, or pledge of a contribution, including in-kind contributions, to a candidate committee or election fund of any candidate or holder of the public

office of Governor of New Jersey or to any New Jersey state or county political party committee prior to the expiration or earlier termination of this Agreement. The provisions of this Paragraph 13.4 are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made by Vendor (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) in violation of P.L. 2005, c. 51, the Authority shall have the right to declare this Agreement to be in default.

13.5 In addition to any other Event of Default specified in the Contract Documents, the Authority shall have the right to declare an event of default under this Agreement if: (i) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits a Contribution in violation of P.L. 2005, c. 51, (ii) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) knowingly conceals or misrepresents a Contribution given or received; (iii) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits Contributions through intermediaries for the purpose of concealing or misrepresenting the source of the Contribution; (iv) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits any Contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee; (v) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) engages or employs a lobbyist or Firm with the intent or understanding that such lobbyist or Firm would make or solicit any Contribution, which if made or solicited by Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) directly would violate the restrictions of P.L. 2005, c. 51; (vi) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) funds Contributions made by third

parties, including Firms, attorneys, family members, and employees; (vii) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) engages in any exchange of Contributions to circumvent the intent of P.L. 2005, c. 51; (viii) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) directly or indirectly through or by any other person or means, does any act which would violate the restrictions of P.L. 2005, c. 51; or (ix) any material misrepresentation exists in any Political Campaign Contribution Certification and Disclosure which was delivered by Vendor to the Authority in connection with this Agreement.

13.6 Vendor hereby acknowledges and agrees that pursuant to P.L. 2005, c. 51, Vendor shall have a continuing obligation to report to the Office of the State Treasurer, Political Campaign Contribution Review Unit of any Contributions it makes during the term of this Agreement. If after the effective date of this Agreement and before the entire Contract Price is paid by the Authority, any Contribution is made by Vendor and the Treasurer of the State of New Jersey determines such Contribution to be a conflict of interest in violation of P.L. 2005, c. 51, the Authority shall have the right to declare this Agreement to be in default.

14. General Conditions.

A. The Work shall be performed in a professional manner, in accordance with the standards generally expected or required within the profession and the Work shall also be performed in accordance with all applicable state, federal and local laws, rules, regulations and ordinances.

B. The Vendor shall provide such reports, certificates, and documents as the Authority may reasonably require.

C. The Vendor shall provide to the Authority, at Vendor's expense, copies of all drawings, plans, cost estimates, design analyses, reports, and/or other documents required for the Project.

D. If the Authority or Vendor observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with any of the Contract Documents, prompt written notice thereof shall be given by the party discovering the defect to the other.

E. The Authority shall furnish all information available to the Authority, and reasonably required for the performance of the Work and shall render approvals and decisions as expeditiously as possible for the orderly progress of the Vendor's services and of the Work.

F. The Vendor shall comply with the affirmative action requirements set forth in the Law Against Discrimination, N.J.S.A. 10:5-31 et seq., and the regulations promulgated thereunder by the State Department of Treasury.

G. The Vendor is required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 et seq., which are expressly included within the terms of this Contract, reference "*Exhibit A*" annexed hereto and made a part hereof.

H. In accordance with Public Law 2004, Chapter 57, a subcontractor shall provide a copy of its business registration to any Vendor who shall forward it to the NJEDA. No contract with a subFirm shall be entered into by any Vendor unless the subFirm first provides proof of valid business registrations. The Vendor shall provide written notice to all subFirms that they are required to submit a copy of their business registration to the Vendor. The Vendor shall maintain a list of the names of any subFirms and their current addresses, updated as necessary during the course of the contract performance. The Vendor shall submit to the NJEDA a copy of the list of subFirms, updated as necessary during the course of performance of the contract. The Vendor shall submit a complete and accurate list of the subFirms to the NJEDA before a request for final payment is made to the NJEDA. The Vendor and any subFirm providing goods or performing services under this contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act", P.L. 1966, c. 30 (N.J.S.A.

54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State, refer to "Exhibit B".

I. In accordance with the requirements of N.J.S.A. 52:32-17 et seq., N.J.A.C. 12A:10-1.2 et seq., N.J.A.C. 12A:10A-1.2 et seq., N.J.A.C. 17:13-1.2 et seq., and N.J.A.C. 17:14-1.2 et seq., as amended, the Authority is required to develop a set-aside plan for Small Businesses. The Vendor agrees that, if awarded a contract based on this plan, it shall comply with all requirements of these provisions. If the Vendor fails to comply with the requirements of these provisions, the Authority may declare this Contract void.

J. Pursuant to N.J.S.A. 52:34-13.2, all Work and all subcontractor services performed in connection with or as part of the Work shall be performed within the United States.

K. The Vendor 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.

L. The Authority and the Vendor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party of this Contract and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Contract. Neither the Authority nor the Vendor shall assign, sublet, or transfer any interest in this Contract without the prior written consent of the other party.

M. Any notices required to be given under this Contract shall be mailed to:

New Jersey Economic Development Authority
P.O. Box 990
Trenton, New Jersey 08625-0990
Attn: Thomas Murphy – Chief Information Officer

N. To the extent that there is any conflict between the terms and conditions of the Vendor's Proposal and the terms and conditions of the Contract and the Authority's *RFQ/P*, the Contract and *RFQ/P* shall control.

O. This Contract shall be construed under the laws of the State of New Jersey.

P. The headings of the various paragraphs of this Contract are inserted for the convenience of reference only, and in no way define, describe or limit the scope or intent of this Contract or any of the provisions hereof, and shall not affect the interpretation of this Contract or any of the provisions hereof.

Q. This Contract shall be construed without any presumptions against the drafter and shall be considered as though it were drafted cooperatively by both parties.

R. In the event that any portion of this Contract is found to be contrary to law and unenforceable; the validity of remaining covenants, agreements, terms and provisions contained in this Contract, shall be in no way affected, prejudiced or disturbed thereby.

S. This Contract constitutes the entire agreement between the parties. Any changes or amendments to the Contract must be in writing and signed by the Vendor and an authorized representative of the Authority.

T. The parties hereto represent that they have the proper authority to sign on behalf of the entities entering this Contract and they fully intend for the Authority and Vendor to be legally bound.

This Contract for Professional Services – Internet Service Provider (ISP) Services is entered into as of the day and year first written above.

ATTEST:

NEW JERSEY ECONOMIC
DEVELOPMENT AUTHORITY

Thomas Murphy
Chief Information Officer

By:

Caren S. Franzini
Chief Executive Officer

ATTEST:

VENDOR NAME

Name
Title

By: _____
Name
Title

EXHIBIT A

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq., N.J.A.C. 17:27 et seq.

GOODS, PROFESSIONAL SERVICES AND GENERAL SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to **N.J.S.A. 10:5-31 et seq.** as amended and supplemented from time to time and the *Americans with Disabilities Act*.

The contractor or subcontractor agrees to make good faith efforts to afford equal employment opportunities to minority and women workers consistent with good faith efforts to meet targeted county employment goals established in accordance with **N.J.A.C. 17:27-5.2**, or good faith efforts to meet targeted county employment goals determined by the Division, pursuant to **N.J.A.C. 17:27-5.2**.

EXHIBIT A (Continued)

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE N.J.S.A. 10:5-31 et seq., N.J.A.C. 17:27

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personal testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval
Certificate of Employee Information Report
Employee Information Report Form AA302

The contractor and its subcontractor shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code at N.J.A.C.17:27.**

EXHIBIT B

Business Registration Notice

All New Jersey and out of State business organizations must obtain a *Business Registration Certificate (BRC)* from the Department of the Treasury, Division of Revenue, prior to conducting business with the New Jersey Economic Development Authority ("NJEDA"). Proof of valid *Business Registration* must be submitted by the Proposer with its bid proposal. Failure to submit such valid *Business Registration* with a bid will render the bid materially non-responsive. The *Business Registration* form (Form NJ-REG) can be found online at:

<http://www.state.nj.us/treasury/revenue/gettingregistered.htm#busentity>.

Definitions

"Affiliate" means any entity that (1) directly, indirectly, or constructively controls another entity, (2) is directly, indirectly, or constructively controlled by another entity, or (3) is subject to the control of a common entity. An entity controls another entity if it owns, directly or individually, more than fifty (50%) percent of the ownership in that entity.

"Business organization" means an individual, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof.

"Business registration" means a *Business Registration Certificate* issued by the Department of the Treasury or such other form or verification that a contractor or subcontractor is registered with the Department of Treasury.

"Contracting agency" means the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, or any independent State authority, commission, instrumentality or agency, or any State college or university, any county college, or any local unit.

"Contractor" means a business organization that seeks to enter, or has entered into, a contract to provide goods or services with the New Jersey Economic Development Authority.

"Subcontractor" means any business organization that is not a contractor that knowingly provides goods or performs services for a contractor or another subcontractor in the fulfillment of a contract.

EXHIBIT B (Continued)

Requirements Regarding Business Registration Form

A contractor shall submit a copy of its *Business Registration* at the time of submission of its bid proposal in response to an *RFQ/P*.

A subcontractor shall provide a copy of its *Business Registration* to any contractor who shall forward it to the Authority. No contract with a subcontractor shall be entered into by any contractor unless the subcontractor first provides proof of valid *Business Registration*.

The contractor shall provide written notice to all subcontractors that they are required to submit a copy of their *Business Registration Certificate* to the contractor. The contractor shall maintain a list of the names of any subcontractors and their current addresses, updated as necessary during the course of the contract performance. The contractor shall submit to the New Jersey Economic Development Authority a copy of the list of subcontractors, updated as necessary during the course of performance of the contract. The contractor shall submit a complete and accurate list of the subcontractors to the Authority before a request for final payment is made to the New Jersey Economic Development Authority.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "*Sales and Use Tax Act*", *P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.)* on all their sales of tangible personal property delivered into the State.