

be offering non-contract items during the Contract may be grounds for terminating the Contract for convenience.

**5.38** Proposers representing multiple manufacturers, or carrying multiple related product lines may also request the addition of new manufacturers or product lines to their Contract to the extent they remain within the scope of this RFP.

**5.39** Proposers may use the multiple tabs available in an Excel workbook to separately list logical product groupings or to separately list product and service pricing as they see fit.

**5.40** All equipment/products and services together with their pricing, whether changed within the request or remaining unchanged, will be stated on each "Pricing" sheet created as a result of each request for product, service, or pricing change.

**5.41** Each subsequent "Single Statement of Product and Pricing" will be archived by its effective date therefore creating a product and price history for any Contract resulting from this RFP. Proposers are required to create a historical record of pricing annually by submitting updated pricing referred to as a "Single Statement of Product/Equipment and Related Services Contract Price Update". This pricing update is required at a minimum of once per contract year.

## J. PAYMENT TERMS

**5.42** Payment terms will be defined by the Proposer in the Proposer's Response. Proposers are encouraged to offer payment terms through P Card services if applicable.

**5.43** If applicable, identify any leasing programs available to NJPA and NJPA Members as part of your proposal. Proposers should submit an example of the lease agreement to be used and should identify:

**5.43.1** General leasing terms such as:

**5.43.1.1** The percentage adjustment over/under an index rate used in calculating the internal rate of return for the lease; and

**5.43.1.2** The index rate being adjusted; and

**5.43.1.3** The "Purchase Option" at lease maturity (\$1, or fair market value); and

**5.43.1.4** The available term in months of lease(s) available.

**5.43.2** Leasing company information such as:

**5.43.2.1** The name and address of the leasing company; and

**5.43.2.2** Any ownership, common ownership, or control between the Proposer and the Leasing Company.

## K. SALES TAX

**5.44** Sales and other taxes shall not be included in the prices quoted. Vendor will charge state and local sales and other taxes on items for which a valid tax exemption certification has not been provided. Each NJPA Member is responsible for providing verification of tax exempt status to the Vendor. When ordering, NJPA Members must indicate that they are tax exempt entities. Except as set forth herein, no party shall be responsible for taxes imposed on another party as a result of or arising from the transactions contemplated by a Contract resulting from this RFP.

## L. SHIPPING

**5.45** NJPA desires an attractive freight program. A shipping program for material only proposals, or sections of proposals, must be defined as a part of the cost of equipment/products. If shipping is charged to NJPA or NJPA Member, only the actual cost of delivery may be added to an invoice. Shipping charges calculated as a percentage of the product price may not be used, unless such charges are lower than actual delivery charges. COD orders will be accepted if both parties agree. It is desired that delivery be made within ninety-days (90) of receipt of the Purchase Order.

**5.46** Selection of a carrier for shipment or expedited shipping will be the option of the party paying for said shipping. Use of another carrier will be at the expense of the party who requested.

**5.47** Proposers must define their shipping programs for Alaska and Hawaii and any location not served by conventional shipping services. Over-size and over-weight items and shipments may be subject to custom freight programs.

**5.48** All shipping and re-stocking fees must be identified in the price program. Certain industries providing made to order product/equipment may not allow returns. Proposers will be evaluated based on the relative flexibility extended to NJPA and NJPA Members relating to those subjects.

**5.49** Proposer agrees shipping errors will be at the expense of the Vendor.

**5.50** Delivery effectiveness is very important aspect of this Contract. If completed deliveries are not made at the time agreed, NJPA or NJPA Member reserves the right to cancel and purchase elsewhere and hold Vendor accountable. If delivery dates cannot be met, Vendor agrees to advise NJPA or NJPA Member of the earliest possible shipping date for acceptance by NJPA or NJPA Member.

**5.51** Delivered products/equipment must be properly packaged. Damaged equipment/products will not be accepted, or if the damage is not readily apparent at the time of delivery, the equipment/products shall be returned at no cost to NJPA or NJPA Member. NJPA and NJPA Members reserve the right to inspect the equipment/products at a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the equipment/products at the time of delivery.

**5.52** Vendor shall deliver Contract conforming products/equipment in each shipment and may not substitute products/equipment without approval from NJPA or the NJPA Member.

**5.53** NJPA reserves the right to declare a breach of Contract if the Vendor intentionally delivers substandard or inferior equipment/products which are not under Contract and described in its paper or electronic price lists or sourced upon request to any member under this Contract. In the event of the delivery of non-conforming equipment/products, NJPA Member will notify the Vendor as soon as possible and the Vendor will replace non-conforming equipment/products with conforming equipment/products acceptable to the NJPA member.

**5.54** Throughout the term of the Contract, Proposer agrees to pay for return shipment on equipment/products that arrives in a defective or inoperable condition. Proposer must arrange for the return shipment of damaged equipment/products.

**5.55** Vendor may not substitute equipment/products unless agreed to by both parties.

**5.56** Unless contrary to other parts of this solicitation, if the product/equipment or the tender of delivery fail in any respect to conform to this Contract, the purchasing member may: 1) reject the whole, 2) accept the whole or 3) accept any commercial unit or units and reject the rest.

## A. PROPOSAL EVALUATION PROCESS

**6.1** The NJPA Proposal Evaluation Committee will evaluate proposals received based on a 1,000 point evaluation system. The Committee establishes both the evaluation criteria and designates the relative importance of those criteria by assigning possible scores for each category on Form G of this RFP.

**6.2** NJPA shall use a final overall scoring system to include consideration for best price and cost evaluation. NJPA reserves the right to assign any number of point awards or penalties it considers warranted if a Proposer stipulates exceptions, exclusions, or limitations of liabilities. Strong consideration will be given to the best price as it relates to the quality of the product and service. However, price is ultimately only one of the factors taken into consideration in the evaluation and award.

**6.3** Responses will be evaluated first for responsiveness and thereafter for content. The NJPA Board of Directors will make awards to the selected Proposer(s) based on the recommendations of the Proposal Evaluation Committee. To qualify for the final evaluation, a Proposer must have been deemed responsive as a result of the criteria set forth under “Proposer Responsiveness.”

## B. PROPOSER RESPONSIVENESS

**6.4** All responses are evaluated for level one and level two responsiveness. If a response does not reasonably and substantially conform to all the terms and conditions in the solicitation or it requests unreasonable exceptions, it may be considered non-responsive.

**6.5** All proposals must contain answers or responses to the information requested in the proposal forms. The following items constitute the test for “Level One Responsiveness” and are determined on the proposal opening date. If these are not received, your response may be disqualified as non-responsive.

**6.6** Level One Responsiveness includes:

- 6.6.1** received prior to the deadline for submission or it will be returned unopened;
- 6.6.2** properly addressed and identified as a sealed proposal with a specific opening date and time;
- 6.6.3** pricing document (with apparent discounts), sample certificate of liability insurance and all forms fully completed even if “not applicable” is the answer;
- 6.6.4** original signed, completed and dated RFP forms C, D, and F hard copy signed signature page Only from forms A and P from this RFP and if applicable, all counter signed addenda issued in relation to this RFP;
- 6.6.5** an electronic copy (CD or flash drive) of the entire response; and
- 6.6.6** falls within the scope as determined by the NJPAs Proposal Evaluation Committee.

**6.7** “Level Two” responsiveness is determined through the evaluation of the remaining items listed under Proposal Evaluation Criteria below. These items are not arranged in order of importance and each item may encompass multiple areas of information requested. Any questions not answered will result in a loss of points from relevant Form G criteria and may lead to non-award if too many areas are unanswered resulting in the inability for evaluation team to effectively review your response.

## C. PROPOSAL EVALUATION CRITERIA

**6.8** Evaluation Criteria: Forms A and P includes a series of questions encompassing, but not limited to, the following categories:

- 6.8.1** Company Information & Financial Strength
- 6.8.2** Industry Requirements & Marketplace Success
- 6.8.3** Ability to Sell & Deliver Service Nationwide
- 6.8.4** Marketing Plan
- 6.8.5** Other Cooperative Procurement Contracts
- 6.8.6** Value Added Attributes
- 6.8.7** Payment Terms & Financing Options
- 6.8.8** Warranty
- 6.8.9** Equipment/Products/Services
- 6.8.10** Pricing & Delivery
- 6.8.11** Industry Specific Items

**6.9** Evaluation of each Proposer's Response will take into consideration as a minimum response but not necessarily limited to these items.

#### D. OTHER CONSIDERATION

**6.10** The Proposer is required to have extensive knowledge and at least three (3) years of experience with the related activities surrounding the selling of the equipment/products and/or related services.

**6.11** NJPA reserves the right to accept or reject newly formed companies solely based on information provided in the proposal and/or its own investigation of the company.

**6.12** If a manufacturer or supplier chooses not to produce or supply a full selection and representation of product/equipment and related services it has available which fall within the scope of this RFP, such action will be considered sufficient cause to reduce evaluation points.

**6.13** NJPA reserves the right to request and test equipment/products and related services from the apparent successful Proposer. Prior to the award of the Contract, the apparent successful Proposer, if requested by NJPA, shall furnish current information and data regarding the Proposer's resources, personnel, and organization within three (3) days.

**6.14** Past performance information is relevant information regarding a Proposer's actions under previously awarded contracts to schools, local, state, and governmental agencies and non-profit agencies. It includes the Proposer's record of conforming to specifications and standards of good workmanship. The Proposer's history for reasonable and cooperative behavior and commitment to member satisfaction shall be under evaluation. Ultimately, Past Performance Information can be defined as the Proposer's businesslike concern for the interests of the NJPA Member.

**6.15** NJPA shall reserve the right to reject any or all proposals.

#### E. COST COMPARISON

**6.16** NJPA uses a variety of evaluation methodologies, including but not limited to a cost comparison of specific and deemed to be like equipment/products. NJPA reserves the right to use this process in the event the Proposal Evaluation Committee feels it is necessary to make a final determination.

**6.17** This process will be based on a point system with points being awarded for being low to high Proposer for each cost evaluation item selected. A "Market Basket" of identical (or substantially similar) equipment/products and related services may be selected by the NJPA Evaluation Committee and the unit

cost will be used as a basis for determining the point value. The “Market Basket” will be selected by NJPA from all product categories as determined appropriate by NJPA.

## F. MARKETING PLAN

**6.18** A key element of an NJPA awarded a contract will be based on your marketing response to this solicitation. An awarded Vendor’s sales force will be the primary source of communication to the customers and NJPA members directly relating to the contract success. Success in marketing is dependent on delivery of messaging and communication relating to the contract value, knowledge of contract, proper use and the delivery of contracted equipment/products and related services to the end user. Much of the success and sales reward is a direct result of the commitment to the Contract by the vendor and sales teams. NJPA reserves the right to deem a proposer non-responsive or to not award based on an unacceptable or incomplete marketing plan

**6.19** NJPA marketing expectations include:

**6.19.1** Vendors ability to demonstrate the leveraging of a national sales force and/or dealer network. Vendors must demonstrate the ability to sell, service and deliver products and equipment through acceptable distribution channels to customers and NJPA members in all 50 states. Demonstrate fully the sales and service capabilities of your company through your response; outline Vendor’s national sales force network in terms of numbers and geographic location and method of distribution of the equipment/products and related services. Service may be independent of the equipment/product sales pricing but is encouraged to be a part of your response and contract.

**6.19.2** Vendor is invited to demonstrate the ability to successfully market, promote and communicate the opportunity of an NJPA contract to current and potential members nationwide. NJPA desires a marketing plan that communicates the value of the contract to members.

**6.19.3** Vendor is expected to be receptive to NJPA sales trainings. Vendor shall provide a venue for appropriate personnel from both management and the sales force who will be trained. NJPA commits to providing contract sales training and awareness regarding all aspects of communicating the value of the contract itself including: the authority of NJPA to offer the contract to its Members, value and utility the contract delivers to NJPA Members, scope of NJPA Membership, authority of NJPA Members to utilize NJPA procurement contracts, marketing and sales methods, and overall vertical strategies.

**6.19.4** Vendor is expected to demonstrate the intent to a commit to full embracement of the NJPA contract. Identify the appropriate levels of sales management and sales force that will need to understand the value of and the internal procedures necessary, to deliver the NJPA contract solution and message to NJPA and NJPA Members. NJPA shall provide a general schedule and a variety of methods surrounding when and how those individuals will be trained.

**6.19.5** Vendor will outline their proposed involvement in the promotion of a contract resulting from this RFP through applicable industry trade show exhibits and related customer meetings. Proposers are encouraged to consider participation with NJPA at NJPA embraced national trade shows.

**6.19.6** Vendor must exhibit the willingness and ability to actively market and develop contract specific marketing materials including, but not limited to:

**6.19.6.1 Complete Marketing Plan.** Proposer shall submit a marketing plan outlining how the Vendor will launch the NJPA contract to current and potential NJPA Members. NJPA requires the Awarded Vendors to embrace and actively promote the Contract in cooperation with the NJPA.

**6.19.6.2 Printed Marketing Materials.** Proposer will initially produce and thereafter maintain full color print advertisements in camera ready electronic format including company logo and contact information to be used in the NJPA directory and other approved marketing publications.

**6.19.6.3 Contract announcements and advertisements.** Proposer will outline in the marketing plan their anticipated contract announcements, advertisements in industry periodicals and other direct or indirect marketing activities promoting the awarded NJPA contract.

**6.19.6.4 Proposer's Website.** Proposer will identify how an Awarded Contract will be displayed and linked on the Proposer's website. An on-line shopping experience for NJPA Members is desired when applicable.

**6.19.7** An NJPA Vendor Contract Launch will be scheduled during a reasonable time frame after the award and held at the NJPA office in Staples, MN.

**6.20** Proposer shall identify their commitment to develop a sales/communication process to facilitate NJPA membership and establish status of current and potential agencies/members. Proposer should further express their commitment to capturing sufficient member information as is deemed necessary by NJPA.

## G. CERTIFICATE OF INSURANCE

**6.21** Vendors shall provide evidence of liability insurance coverage identified below in the form of a Certificate of Insurance or an ACCORD binder form with their proposal. Upon Award issued pursuant to this contract and prior to the execution of any commerce relating to such award, Vendor will be responsible for providing verification, in the form of a Certificate of Insurance identifying the coverage required below and identifying NJPA as a "Certificate Holder." Vendor will be responsible to maintain such insurance coverage at their own expense throughout the term of any contract resulting from this solicitation.

**6.22** Any exceptions and/or assumptions to the insurance requirements *must* be identified on *Attachment C*. Exceptions and/or assumptions will be taken into consideration as part of the evaluation process; however, vendors must be specific. If vendors do not specify any exceptions and/or assumptions at time of proposal submission, NJPA will not consider any additional exceptions and/or assumptions during negotiations. Upon contract award, the successful vendor *must* provide the Certificate of Insurance identifying the coverage as specified.

**6.23 Insurance Liability Limits:** The awarded vendor must maintain, for the duration of its contract, \$1.5 million in General Liability insurance coverage or General Liability insurance in conjunction with an Umbrella for a total combined coverage of \$1.5 million. Work on the contract shall not begin until after the awarded vendor has submitted acceptable evidence of the required insurance coverage. Failure to maintain any required insurance coverage or acceptable alternative method of insurance will be deemed a breach of contract.

**6.23.1 Minimum Scope and Limits of Insurance:** Vendor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

**6.23.1.1 Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability and XCU coverage.

**6.23.1.2 Each Occurrence**

\$1,500,000

**6.24 Insurance Requirements:** The limits listed herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. NJPA in no way warrants that the minimum limits contained herein are sufficient to protect the Vendor from liabilities that might arise out of the performance of the work under this Contract by the Vendor, his agents, representatives, employees or subcontractors and Vendor is free to purchase additional insurance as may be determined necessary.

**6.25 Acceptability of Insurers:** Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Minnesota and with an "A.M. Best" rating of not less than A- VII. NJPA in no way warrants that the above required minimum insurer rating is sufficient to protect the Vendor from potential insurer solvency.

**6.26 Subcontractors:** Vendors' certificate(s) shall include all subcontractors as additional insureds under its policies or Vendor shall furnish to NJPA separate certificates for each subcontractor. All coverage for subcontractors shall be subject to the minimum requirements identified above.

## H. ORDER PROCESS AND/OR FUNDS FLOW

**6.27** Please propose an order process and funds flow. The Business-to-Government order process and/or funds flow model involves NJPA Members issuing Purchase Orders directly to a Vendor and pursuant to a Contract resulting from this RFP. Administrative fees may also be used for purposes as allowed by Minnesota State Law and approved by the Board of Directors.

**6.28** Additional Terms and Conditions can be added at the PO level if both Vendor and Member agree.

## I. ADMINISTRATIVE FEES

**6.29** Proposer agrees to authorize and/or allow for an administrative fee payable to NJPA by an Awarded Vendor in exchange for its facilitation and marketing of a Contract resulting from this RFP to current and potential NJPA Members. This Administration Fee shall be:

**6.29.1** Calculated as a percentage of the dollar volume of all equipment/products and services provided to and purchased by NJPA Members or calculated as reasonable and acceptable method applicable to the contracted transaction; and

**6.29.2** Included in, and not added to, the pricing included in Proposer's Response to the RFP; and

**6.29.3** Designed to offset the anticipated costs of NJPA's involvement in contract management, facilitating marketing efforts, Vendor training, and any order processing tasks relating to the Contract resulting from this RFP. Administrative fees may also be used for other purposes as allowed by Minnesota law. Administrative fees may also be used for other purposes as allowed by Minnesota law.

**6.29.4** Typical administrative fees for a B-TO-G order process and funds flow is 2.0%. NJPA does not mandate a specific fee percentage, we merely state that 2% is a typical fee across our contracts. The administrative fee percent varies among vendors, industries and responses.

**6.29.5** NJPA awarded contract holder is responsible for the Administrative Fee and related reporting.

**6.30** The opportunity to propose these factors and an appropriate administrative fee is available in the Proposer's Questionnaire Form P.

## J. VALUE ADDED

**6.31 Examples of Value Added Attributes:** Value-Added attributes, products and services are items offered in addition to the products and services being proposed which adds value to those items being

proposed. The availability of a contract for maintenance or service after the initial sale, installation, and set-up may, for instance, be “Value Added Services” for products where a typical buyer may not have the ability to perform these functions.

**6.32 Where to document Value Added Attributes:** The opportunity to indicate value added dimensions and such advancements will be available in the Proposer’s Questionnaire and Proposer’s product and service submittal.

**6.33 Value added equipment/products and services and expanded services,** as they relate to this RFP, will be given positive consideration in the award selection. Consideration will be given to an expanded selection of TECHNOLOGY SOLUTIONS WITH RELATED EQUIPMENT AND ACCESSORIES and advances to provide products/services, supplies meeting and/or exceeding today’s industry standards and expectations. A value add would include a program or service that further serves the members needs above and possibly beyond standard expectation and complements the equipment/products and services and training. Value added could include areas of product and service, sales, ordering, delivery, performance, maintenance, technology, and service that furthers the functionality and effectiveness of the procurement process while remaining within the scope of this RFP.

**6.34 Minority, Small Business, and Women Business Enterprise (WMBE) participation:** It is the policy of some NJPA Members to involve Minority, Small Business, and WMBE contractors in the process to purchase product/equipment and related services. Vendors should document WMBE status for their organization AND any such status of their affiliates (i.e. Supplier networks) involved in carrying out the activities invited. The ability of a Proposer to provide “Credits” to NJPA and NJPA Members in these subject areas, either individually or through related entities involved in the transaction, will be evaluated positively by NJPA and reflected in the “value added” area of the evaluation. NJPA is committed to facilitating the realization of such “Credits” through certain structuring techniques for transactions resulting from this RFP.

**6.35 Environmentally Preferred Purchasing Opportunities:** There is a growing trend among NJPA Members to consider the environmental impact of the equipment/products and related services they purchase. “Green” characteristics demonstrated by responding companies will be evaluated positively by NJPA and reflected in the “value added” area of the evaluation. Please identify any Green characteristics of the product/equipment and related services in your proposal and identify the sanctioning body determining that characteristic. Where appropriate, please indicate which products have been certified as “green” and by which certifying agency.

**6.36 On-Line Requisitioning systems:** When applicable, on-line requisitioning systems will be viewed as a value-added characteristic. Proposer shall include documentation about user interfaces that make on-line ordering easy for NJPA Members as well as the ability to punch-out from mainstream e-Procurement or Enterprise Resource Planning (ERP) systems that NJPA Members may currently utilize.

**6.37 Financing:** The ability of the Proposer to provide financing options for the products and services being proposed will be viewed as a Value Added Attribute.

**6.38 Technology:** Technological advances, increased efficiencies, expanded service and other related improvements beyond today’s NJPA member’s needs and applicable standards.

## K. WAIVER OF FORMALITIES

**6.39** NJPA reserves the right to waive any minor formalities or irregularities in any proposal and to accept proposals, which, in its discretion and according to the law, may be in the best interest of its members.

## 7 POST AWARD OPERATING ISSUES

### A. SUBSEQUENT AGREEMENTS

**7.1 Purchase Order.** Purchase Orders for equipment/products and/or related services may be executed between NJPA or NJPA Members (Purchaser) and awarded Vendor(s) or Vendor's sub-contractors pursuant to this invitation and any resulting Contract. NJPA Members are instructed to identify on the face of such Purchase Orders that "This purchase order is issued pursuant to NJPA procurement contract #XXXXXX." A Purchase Order is an offer to purchase product/equipment and related services at specified prices by NJPA or NJPA Members pursuant to a Contract resulting from this RFP. Purchase Order flow and procedure will be developed jointly between NJPA and an Awarded Vendor after an award is made.

**7.2 Governing Law.** Purchase Orders shall be construed in accordance with, and governed by, the laws of a competent jurisdiction with respect to the purchaser. Each and every provision of law and clause required by law to be included in the Purchase Order shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction. The venue for any litigation arising out of disputes related to Purchase Order(s) shall be a court of competent jurisdiction to the Purchaser.

**7.3 Additional Terms and Conditions.** Additional terms and conditions to a Purchase Order may be proposed by NJPA, NJPA Members, or Vendors. Acceptance of these additional terms and conditions is OPTIONAL to all parties to the Purchase Order. The purpose of these additional terms and conditions is to formally introduce job or industry specific requirements of law such as prevailing wage legislation. Additional terms and conditions can include specific local policy requirements and standard business practices of the issuing Member. Said additional terms and conditions shall not interfere with the general purpose, intent or currently established terms and conditions contain in this RFP document.

**7.4 Specialized Service Requirements.** In the event service requirements or specialized performance requirements such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements not addressed in the Contract resulting from this RFP, NJPA Member and Vendor may enter into a separate, standalone agreement, apart from a Contract resulting from this RFP. Any proposed service requirements or specialized performance requirements require pre-approval by Vendor. Any separate agreement developed to address these specialized service or performance requirements is exclusively between the NJPA Member and Vendor. NJPA, its agents, Members and employees shall not be made party to any claim for breach of such agreement. Product sourcing is not considered a service. NJPA Members will need to conduct procurements for any specialized services not identified as a part or within the scope of the awarded Contract.

**7.5 Performance Bond.** At the request of the member, a Vendor will provide all performance bonds typically and customarily required in their industry. These bonds will be issued pursuant to the requirements of Purchase Orders for product/equipment and related services. If a purchase order is cancelled for lack of a required performance bond by the member agency, it shall be the recommendation of NJPA that the current pending Purchase Order be canceled. Each member has the final decision on Purchase Order continuation. ANY PERFORMANCE BONDING REQUIRED BY THE MEMBER OR CUSTOMER STATE LAWS OR LOCAL POLICY IS TO BE MUTUALLY AGREED UPON AND SECURED BETWEEN THE VENDOR AND THE CUSTOMER/MEMBER.

## B. NJPA MEMBER SIGN-UP PROCEDURE

**7.6** Awarded Vendors will be responsible for familiarizing their sales and service forces with the various forms of NJPA Membership documentation and shall encourage and assist potential Members in establishing Membership with NJPA. NJPA membership is at no cost, obligation or liability to the Member or the Vendor.

## C. REPORTING OF SALES ACTIVITY

**7.7** A report of the total gross dollar volume of all equipment/products and related services purchased by NJPA Members as it applies to this RFP and Contract will be provided quarterly to NJPA. The form and content of this reporting will provided by NJPA to include, but not limited to, name and address of purchasing agency, member number, amount of purchase, and a description of the items purchased.

**7.7.1 Zero sales reports:** Awarded Vendors are responsible for providing a quarterly sales report of contract sales every quarter regardless of the existence or amount of sales.

#### D. AUDITS

**7.8** No more than once per calendar year during the Contract term, Vendor may be required to make available to NJPA the invoice reports and/or invoice documents from Vendor pertaining to all invoices sent by Vendor and all payments made by NJPA members for all equipment/products and related services purchased under the awarded Contract. NJPA must provide written notice of exercise of this requirement with no less than fourteen (14) business days' notice. NJPA may employ an independent auditor or NJPA may choose to conduct such audit on its own behalf. Upon approval and after the auditor has executed an appropriate confidentiality agreement, Vendor will permit the auditor to review the relevant Vendor documents. NJPA shall be responsible for paying the auditor's fees. The parties will make every reasonable effort to fairly and equitably resolve discrepancies to the satisfaction of both parties. Vendor agrees that the NJPA may audit their records with a reasonable notice to establish total compliance and to verify prices charged under of the Contract are being met. Vendor agrees to provide verifiable documentation and tracking in a timely manner.

#### E. HUB PARTNER

**7.9 Hub Partner:** NJPA Members may request to be served through a "Hub Partner" for the purposes of complying with a Law, Regulation, or Rule to which that individual NJPA Member deems to be applicable in their jurisdiction. Hub Partners may bring value to the proposed transactions through consultancy, Disadvantaged Business Entity Credits or other considerations.

**7.10 Hub Partner Fees:** Fees, costs, or expenses from this Hub Partner levied upon a transaction resulting from this contract, shall be payable by the NJPA Member. The fees, costs, or expenses levied by the Hub Vendor must be clearly itemized in the transaction; and to the extent that the Vendor stands in the chain of title during a transaction resulting from this RFP, the documentation shall be documented to show it is "Executed for the Benefit of [NJPA Member Name]."

#### F. TRADE-INS

**7.11** The value in US Dollars for Trade-ins will be negotiated between NJPA or an NJPA Member, and an Awarded Vendor. That identified "Trade-In" value shall be viewed as a down payment and credited in full against the NJPA purchase price identified in a purchase order issued pursuant to any Awarded NJPA procurement contract. The full value of the trade-in will be consideration.

#### G. OUT OF STOCK NOTIFICATION

**7.12** Vendor shall immediately notify NJPA members upon receipt of order(s) when an out-of-stock occurs. Vendor shall inform the NJPA member regarding the anticipated date of availability for the out-of-stock item(s), and may suggest equivalent substitute(s). The ordering organization shall have the option of accepting the suggested equivalent substitute, or canceling the item from the order. Under no circumstance is Proposer permitted to make unauthorized substitutions. Unfilled or substituted item(s) shall be indicated on the packing list.

#### H. TERMINATION OF CONTRACT RESULTING FROM THIS RFP

**7.13** NJPA reserves the right to cancel the whole or any part of a resulting Contract due to failure by the Vendor to carry out any obligation, term or condition as described in the below procedure. Prior to any termination for cause, the NJPA will provide written notice to the Vendor, opportunity to respond and opportunity to cure. Some examples of material breach include, but are not limited to:

- 7.13.1** The Vendor provides products/equipment or related services that does not meet reasonable quality standards and is not remedied under the warranty;
- 7.13.2** The Vendor fails to ship the products/equipment or related services or provide the delivery and services within a reasonable amount of time;
- 7.13.3** NJPA has reason to believe the Vendor will not or cannot perform to the requirements or expectations of the Contract and issues a request for assurance and Vendor fails to respond;
- 7.13.4** The Vendor fails to observe any of the material terms and conditions of the Contract;
- 7.13.5** The Vendor fails to follow the established procedure for purchase orders, invoices and/or receipt of funds as established by the NJPA and the Vendor in the Contract.
- 7.13.6** The Vendor fails to report quarterly sales;
- 7.13.7** The Vendor fails to actively market this Contract within the guidelines provided in this RFP and the expectations of NJPA defined in the NJPA Contract Launch.
- 7.13.8** In the event the contract has no measurable and defining value or benefit to NJPA or the NJPA member.

**7.14** Upon receipt of the written notice of concern, the Vendor shall have ten (10) business days to provide a satisfactory response to the NJPA. Failure on the part of the Vendor to reasonably address all issues of concern may result in Contract cancellation pursuant to this Section. If the issue is not resolved within sixty (60) days, contract will be terminated.

**7.15** Any termination shall have no effect on purchases that are in progress at the time the cancellation is received by the NJPA. The NJPA reserves the right to cancel the Contract immediately for convenience, without penalty or recourse, in the event the Vendor is not responsive concerning the remedy, the performance, or the violation issue within the time frame, completely or in part.

**7.16** NJPA reserves the right to cancel or suspend the use of any Contract resulting from this RFP if the Vendor files for bankruptcy protection or is acquired by an independent third party. Awarded Vendor will be responsible for disclosing to NJPA any litigation, bankruptcy or suspensions/disbarments that occur during the contract period. Failure to disclose may result in an immediate termination of the contract.

**7.17** NJPA may execute Contract termination without cause with a required 60-day written notice of termination. Termination of Contract shall not relieve either party of financial, product or service obligations incurred or accrued prior to termination.

**7.18** NJPA may cancel any Contract resulting from this solicitation without any further obligation if any NJPA employee significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the NJPA is found to be in collusion with any Proposer to this RFP for their personal gain. Such cancellation shall be effective upon written notice from the NJPA or a later date if so designated in the notice given. A terminated Contract shall not relieve either party of financial, product or service obligations due to participating member or NJPA.

**7.19** Events of Automatic termination to include, but not limited to:

**7.19.1** Vendor's failure to remedy a material breach of a Contract resulting from this RFP within sixty (60) days of receipt of notice from NJPA specifying in reasonable detail the nature of such breach; and/or,

**7.19.2** Receipt of written information from any authorized agency finding activities of Vendors engaged in pursuant to a Contract resulting from this RFP to be in violation of the law.

## **8 GENERAL TERMS AND CONDITIONS**

### **A. ADVERTISING A CONTRACT RESULTING FROM THIS RFP**

**8.1** Proposer/Vendor shall not advertise or publish information concerning this Contract prior to the award being announced by the NJPA. Once the award is made, a Vendor is expected to advertise the awarded Contract to both current and potential NJPA Members.

### **B. APPLICABLE LAW**

**8.2 NJPA's interest in a contract resulting from this RFP:** Notwithstanding its own use, to the extent NJPA issues this RFP and any resulting contract for the use of its Members, NJPA's interests and liability for said use shall be limited to the competitive proposal process performed and terms and conditions relating to said contract and shall not extend to the products, services, or warranties of the Awarded Vendor or the intended or unintended effects of the product/equipment and services procured there from.

**8.3 NJPA Compliance with Minnesota Procurement Law:** NJPA will exhaust all avenues to comply with each unique state law or requirement whenever possible. It is the responsibility of each participating NJPA member to ensure to their satisfaction that NJPA contracting process falls within these laws and applicable laws are satisfied. An individual NJPA member using these contracts is deemed by their own accord to be in compliance with their own requirements and procurement regulations.

**8.4 Governing Law with respect to delivery and acceptance:** All applicable portions of the Minnesota Uniform Commercial Code, all other applicable Minnesota laws, and the applicable laws and rules of delivery and inspection of the Federal Acquisition Regulations (FAR) laws shall govern NJPA contracts resulting from this solicitation.

**8.5 Jurisdiction:** Any claims pertaining to this RFP and any resulting Contract that develop between NJPA and any other party must be brought forth only in courts in Todd County in the State of Minnesota unless otherwise agreed to.

**8.5.1** Purchase Orders issued pursuant to a contract resulting from this solicitation shall be construed in accordance with, and governed by, the laws of a competent jurisdiction with respect to the purchaser.

**8.6 Vendor Compliance with applicable law:** Vendor(s) shall comply with all federal, state, or local laws applicable to or pertaining to the transaction, acquisition, manufacturer, suppliers or the sale of the equipment/products and relating services resulting from this RFP.

**8.7 Other Laws,** whether or not herein contained, shall be included by this reference. It shall be Proposer's/Vendor's responsibility to determine the applicability and requirements of any such laws and to abide by them.

**8.8 Indemnity:** Each party agrees it will be responsible for its own acts and the result thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. NJPA's

liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section §3.736, and other applicable law.

**8.9 Prevailing Wage:** It shall be the responsibility of the Vendor to comply, when applicable, with prevailing wage legislation in effect in the jurisdiction of the purchaser (NJPA or NJPA Member). It shall be the responsibility of the Vendor to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of this Contract and adjust wage rates accordingly.

**8.10 Patent and Copyright Infringement:** If an article sold and delivered to NJPA or NJPA Members hereunder shall be protected by any applicable patent or copyright, the Vendor agrees to indemnify and hold harmless NJPA and NJPA Members against any and all suits, claims, judgments, and costs instituted or recovered against it by any person on account of the use or sale of such articles by NJPA or NJPA Members in violation or right under such patent or copyright.

#### C. ASSIGNMENT OF CONTRACT

**8.11** No right or interest in this Contract shall be assigned or transferred by the Vendor without prior written permission by the NJPA. No delegation of any duty of the Vendor shall be made without prior written permission of the NJPA. NJPA shall notify members by posting approved assignments on the NJPA website ([www.njpacoop.org](http://www.njpacoop.org)) within 15 days of NJPA's approval.

**8.12** If the original Vendor sells or transfers all assets or the entire portion of the assets used to perform this Contract, a successor in interest must guarantee to perform all obligations under this Contract. NJPA reserves the right to reject the acquiring person or entity as a Vendor. A change of name agreement will not change the contractual obligations of the Vendor.

#### D. LIST OF PROPOSERS

**8.13** NJPA will not maintain or communicate to a list of proposers. All interested proposers must respond to the solicitation as a result of NJPA solicitation advertisements indicated. Because of the wide scope of the potential Members and qualified national Vendors, NJPA has determined this to be the best method of fairly soliciting proposals.

#### E. CAPTIONS, HEADINGS, AND ILLUSTRATIONS

**8.14** The captions, illustrations, headings, and subheadings in this solicitation are for convenience and ease of understanding and in no way define or limit the scope or intent of this request.

#### F. DATA PRACTICES

**8.15** All materials submitted in response to this RFP will become property of the NJPA and will become public record in accordance with Minnesota Statutes, section 13.591, after the evaluation process is completed. If the Responder submits information in response to this RFP that it believes to be nonpublic information, as defined by the Minnesota Government Data Practices Act, Minnesota Statute § 13.37, the Responder must:

**8.15.1** make the request within thirty days of award/non-award, and include the appropriate statutory justification. Pricing is generally not redactable. The NJPA Legal Department shall review the statement to determine whether the information shall be withheld. If the NJPA determines to disclose the information, the Bids & Contracts department of the NJPA shall inform the Proposer, in writing, of such determination; and

**8.15.2** defend any action seeking release of the materials it believes to be nonpublic information, and indemnify and hold harmless the NJPA, its agents and employees, from any judgments or damages awarded against the NJPA in favor of the party requesting the materials, and any and all costs connected with that defense.

**8.16** This indemnification survives the NJPA's award of a contract. In submitting a response to this RFP, the Responder agrees that this indemnification survives as long as the confidential information is in possession of the NJPA. When the situation warrants, Proposer may be able redact additional nonpublic information after the evaluation process if legal justification is provided and accepted by NJPA.

#### G. ENTIRE AGREEMENT

**8.17** The Contract, as defined herein, shall constitute the entire understanding between the parties to that Contract. A Contract resulting from this RFP is formed when the NJPA Board of Directors approves and signs the applicable Contract Award & Acceptance document (Form E).

#### H. FORCE MAJEURE

**8.18** Except for payments of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented due to force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence including, but not limited to, the following: acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, snow, earthquakes, tornadoes or violent wind, tsunamis, wind shears, squalls, Chinooks, blizzards, hail storms, volcanic eruptions, meteor strikes, famine, sink holes, avalanches, lockouts, injunctions-intervention-acts, terrorist events or failures or refusals to act by government authority and/or other similar occurrences where such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with a Contract resulting from this RFP. Force majeure shall not include late deliveries of equipment/products and services caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or other similar occurrences. If either party is delayed at any time by force majeure, then the delayed party shall notify the other party of such delay within forty-eight (48) hours.

#### I. GRATUITIES

**8.19** NJPA may cancel an awarded Contract by written notice if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Vendor or any agent or representative of the Vendor, to any employee of the NJPA.

#### J. HAZARDOUS SUBSTANCES

**8.20** Proper and applicable Material Safety Data Sheets (MSDS) that are in full compliance with OSHA's Hazard Communication Standard must be provided by the Vendor to NJPA or NJPA Member at the time of purchase.

#### K. LICENSES

**8.21** Proposer shall maintain a current status on all required federal, state, and local licenses, bonds and permits required for the operation of the business that is anticipated to be conducted with NJPA and NJPA members by the Proposer.

**8.22** All responding Proposers must be licensed (where required) and have the authority to sell and distribute offered equipment/products and related services to NJPA and NJPA Members nationally. Documentation of required said licenses and authorities, if applicable, is requested to be included in the proposer's response.

#### L. MATERIAL SUPPLIERS AND SUB-CONTRACTORS

**8.23** The awarded Vendor shall be required to supply the names and addresses of sourcing suppliers and sub-contractors as a part of the purchase order when requested by NJPA or the NJPA member.

#### M. NON-WAIVER OF RIGHTS

**8.24** No failure of either party to exercise any power given to it hereunder, nor to insistence upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under a Contract resulting from this RFP shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. Failure by NJPA to take action or assert any right hereunder shall not be deemed as waiver of such right.

#### N. PROTESTS OF AWARDS MADE

**8.25** Protests shall be filed with the NJPA's Executive Director and shall be resolved in accordance with appropriate Minnesota state statutes. Protests will only be accepted from Proposers. A protest must be in writing and filed with NJPA. A protest of an award or proposed award must be filed within ten (10) calendar days after the public notice or announcement of the award. A protest must include:

**8.25.1** The name, address and telephone number of the protester;

**8.25.2** The original signature of the protester or its representative (you must document the authority of the Representative);

**8.25.3** Identification of the solicitation by RFP number;

**8.25.4** Identification of the statute or procedure that is alleged to have been violated;

**8.25.5** A precise statement of the relevant facts;

**8.25.6** Identification of the issues to be resolved;

**8.25.7** The aggrieved party's argument and supporting documentation;

**8.25.8** The aggrieved party's statement of potential financial damages; and

**8.25.9** A protest bond in the name of NJPA and in the amount of 10% of the aggrieved party's statement of potential financial damages.

#### O. SUSPENSION OR DISBARMENT STATUS

**8.26** If within the past five (5) years, any firm, business, person or Proposer responding to NJPA solicitation and submitting a proposal has been lawfully terminated, suspended or precluded from participating in any public procurement activity with a federal, state or local government or education agency the Proposer must include a letter with its response setting forth the name and address of the public procurement unit, the effective date of the suspension or debarment, the duration of the suspension or debarment and the relevant circumstances relating to the suspension or debarment. Any failure to supply such a letter or to disclose

pertinent information may result in the cancellation of any Contract. By signing the proposal affidavit, the Proposer certifies that no current suspension or debarment exists.

#### P. AFFIRMATIVE ACTION AND IMMIGRATION STATUS CERTIFICATION

**8.27** An Affirmative Action Plan, Certificate of Affirmative Action or other documentation regarding Affirmative Action may be required by NJPA or NJPA Members relating to a transaction from this RFP. Vendors shall comply with any such requirements or requests.

**8.28** Immigration Status Certification may be required by NJPA or NJPA Members relating to a transaction from this RFP. Vendors shall comply with any such requirements or requests.

#### Q. SEVERABILITY

**8.29** In the event that any of the terms of a Contract resulting from this RFP are in conflict with any rule, law, statutory provision or are otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms shall be deemed stricken from an awarded Contract resulting from this RFP, but such invalidity or unenforceability shall not invalidate any of the other terms of an awarded Contract resulting from this RFP.

#### R. RELATIONSHIP OF PARTIES

**8.30** No Contract resulting from this RFP shall be considered a contract of employment. The relationship between NJPA and an Awarded Contractor is one of independent contractors each free to exercise judgment and discretion with regard to the conduct of their respective businesses. The parties do not intend the proposed Contract to create, or is to be construed as creating a partnership, joint venture, master-servant, principal-agent, or any other relationship. Except as provided elsewhere in this RFP, neither party may be held liable for acts of omission or commission of the other party and neither party is authorized or has the power to obligate the other party by contract, agreement, warranty, representation or otherwise in any manner whatsoever except as may be expressly provided herein.

## 9 FORMS

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