

Minutes of the New Jersey Health Care Facilities Financing Authority meeting held on July 26, 2007 on the fourth floor of Building #4, Station Plaza, 22 South Clinton Avenue, Trenton, New Jersey.

The following **Authority Members** were in attendance:

Gus Escher, Public Member (chairing as Vice Chair); Ulysses Lee, Public Member; Maryann Kralik, Designee of the Commissioner of Banking and Insurance; Edward Tetelman, Designee of the Commissioner of Health and Senior Services; and Eileen Stokley, Designee of the Commissioner of Human Services.

The following **Authority staff members** were in attendance:

Mark Hopkins, Jim Van Wart, Steve Fillebrown, Michael Ittleson, Suzanne Walton, Susan Tonry, Bill McLaughlin, Carole Conover, Marji McAvoy, Ron Marmelstein, and Stephanie Bilovsky.

The following **representatives from State offices and/or the public** were in attendance:

Jim Fearon, GluckWalrath; Gary Horan, Paul Dabrowski, Trinitas Hospital; Jack Swire, Karen Fazio, Wachovia; Scott Kobler, McCarter & English; Lopa Kolluri, Treasurer's Office (by phone); and, Rubin D. Weiner, Deputy Attorney General.

### ***CALL TO ORDER***

Gus Escher called the meeting to order at 10:18 a.m. and announced that this was a regular meeting of the Authority, held in accordance with the schedule adopted at the May 24, 2007 Authority meeting. Complying with the Open Public Meetings Act and the Authority's By-laws, notice of this meeting was delivered to all newspapers with mailboxes at the Statehouse, including *The Star-Ledger* and the *Courier Post*, enough in advance to permit the publication of an announcement at least 48 hours before the meeting.

### ***APPROVAL OF MINUTES***

#### ***June 28<sup>th</sup>, 2007 Authority Meeting***

The minutes for the Authority's June 28, 2007 Authority meeting were distributed for review and approval. Ms. Stokley offered a motion to approve the minutes; Ms. Kralik seconded. Mr. Escher voted yes; Dr. Cohen voted yes; Ms. Kralik voted yes; Mr. Tetelman voted yes; and Ms. Stokley voted yes. The motion carried and the minutes were approved.

## ***NEGOTIATED SALE REQUEST***

### ***Trinitas Hospital***

Mark Hopkins began by introducing Gary Horan, President and CEO of Trinitas Hospital (“Trinitas”) and Paul Dabrowski, Senior Vice President and Chief Financial Officer. He then described Trinitas as a New Jersey not-for-profit corporation that operates an acute care hospital in Elizabeth, New Jersey. According to the consolidated audited financial statements provided with the Memorandum of Understanding, Trinitas generated excess revenues over expenses of approximately \$5 million in 2006 and \$6.4 million in 2005. Unaudited information for the first quarter of 2007 shows excess revenues over expenses of approximately \$1.6 million.

Mr. Hopkins reported that Trinitas signed a Memorandum of Understanding with the Authority to finance the costs associated with transitioning the existing Union Hospital, (currently owned by St. Barnabas Health System and subject to a Certificate of Need application for closure) from an inpatient acute care hospital to health care facility. After the transition, Union Hospital’s services will include: an emergency department; radiology and clinical lab services; ambulatory surgery and endoscopy services; a wound healing and hyperbaric medicine center; a sleep disorder center; a renal dialysis program; paramedic and ambulance services; a comprehensive cancer center satellite; long-term and add-a-bed sub-acute care beds; physical medicine, rehabilitation and cardiac rehabilitation satellites; and children’s therapy services as well as physical, occupational and speech therapy services. With costs of issuance and other costs, Trinitas is seeking to finance a total of approximately \$16.8 million through the Authority.

The Authority issued \$130.4 million of bonds on behalf of Trinitas in May 2007, all of which remain outstanding as of June 30th. Those bonds refunded the Authority’s 1997 bonds issued on behalf of St. Elizabeth Hospital, as well as bonds issued in 2000, when the St. Elizabeth and Elizabeth General hospitals were merging to form Trinitas.

Trinitas believes that the transition of Union Hospital to provide the above-mentioned services will enable Trinitas to relocate services from Trinitas’ facilities, thereby freeing space at Trinitas for more inpatient acute care services. Trinitas also believes the satellite services created by the transition will complement its own services. Trinitas is expected to seek State backing for these bonds through the Hospital Asset Transformation Program. However, it should be noted that the approval of a negotiated sale today in no way obligates either the Authority to issue, or the Treasurer to back, bonds under the Hospital Asset Transformation Program.

Because the bonds are likely to involve the sale of a complex or poor credit and are likely to involve programs or financial techniques that are new to investors, the proposed transaction meets the Authority’s requirements for the use of a negotiated sale under Executive Order No. 26. Therefore, staff recommended the consideration of the resolution, included in the meeting materials, approving the use of a negotiated sale and the forwarding of a copy of the justification in support of said resolution to the State Treasurer.

Mr. Hopkins noted that, if the Authority and the State Treasurer subsequently agree to issue bonds under the Hospital Asset Transformation Program, the Treasurer’s office will proceed with their process of selecting an underwriter and the Attorney

General's office will select a bond counsel in accordance with the selection of bond counsel for State-backed bonds.

Mr. Tetelman asked about the status of the Elizabeth General facility, to which Mr. Horan replied that the property is under contract and the developer has submitted plans to the city for the property. The sale cannot be completed until those plans are approved. There is no time line for the approval; however, the developer is working with the city on the plans.

Mr. Tetelman asked about operating losses noted in the unaudited statement. Mr. Dabrowski replied that Trinitas' inpatient revenues are right on target with projections, however, some outpatient programs are lagging, such as the cancer care center where Trinitas is still working to recruit physicians. There were also certain first quarter expenditures that were higher than budgeted, that are non-recurring in nature though they are not listed as such.

Mr. Tetelman moved to approve the pursuit of a negotiated sale on behalf of Trinitas and to approve the forwarding of a copy of the justification in support of said resolution to the State Treasurer. Ms. Stokley seconded. The vote was unanimous and the motion carried. (Note: Mr. Lee was not present for this vote.)

**AB RESOLUTION NO. HH-36**  
*(attached)*

***RELEASE of DEBT SERVICE RESERVE FUNDS***  
***Barnert Hospital***

Mark Hopkins reminded the Members that the Authority recently ratified staff's actions in not objecting to HUD's approval to release a portion of the Depreciation Reserve Fund, held as security for the Authority bonds issued on behalf of Barnert Hospital ("Barnert"), so that Barnert may use those funds to make monthly mortgage payments for June and July. The Members also approved the release of a portion of the Depreciation Reserve Fund for Barnert's August mortgage payment, if HUD consented to such a request.

Mr. Hopkins reported that on the day prior to this meeting, staff learned that Barnert is expected to make an emergency request to HUD for the release of additional funds from the Depreciation Reserve Fund.

The Depreciation Reserve Fund, which is typically required by HUD when the FHA insures a mortgage, provides additional security for HUD along with the mortgage. Since the fund is established for HUD's benefit, the Authority has traditionally followed HUD's lead regarding requests for the release of reserve funds.

As such, staff requested that the Authority approve a resolution delegating to the Executive Director or Deputy Executive Director the ability to approve or not object to, whichever is legally appropriate, any future requests made by Barnert to HUD for the release of portions of the Depreciation Reserve Fund, as long as the purpose is deemed appropriate by HUD. Mr. Tetelman made the requested motion; Ms. Kralik seconded.

Gus noted that these approvals had been granted on a month-by-month basis. Mr. Hopkins stated that further requests like this are expected from Barnert and this

resolution will allow the Authority to respond in a timely manner, since the Authority's monthly meeting schedule does not necessarily conform to the timelines of the requests.

The Members asked about the request procedure, to which it was stated that Barnert makes the request to the Authority (mortgagee of the bonds), for the release of Depreciation Reserve Funds, and then the Authority forwards the request to HUD (mortgager). HUD then approves or denies the request. In order for an approval for the release of Depreciation Reserve Funds to be effective, HUD requires that the Authority not object. Upon the Authority's non-objection, HUD then sends a letter to the escrow agent directing the transfer of funds. The Authority's not objecting to the release of funds is subject to HUD's approval of the release.

Mr. Tetelman suggested that, in addition to delegating the right to approve or not object to, the Authority may wish to also delegate the ability to disapprove or object to such a request from Barnert. The members agreed and the motion was adjusted to reflect the change. The vote was unanimous and the motion carried.

**AB RESOLUTION NO. HH-37**  
*(attached)*

***REPORT FROM EXECUTIVE ORDER No. 34 COMMITTEE***

The Procurement Procedure Evaluation Committee was created by the Authority in response to Executive Order No. 34's ("E.O. 34") efforts to 'overcome the factors that have operated to prevent or inhibit participation by minority- and women-owned business enterprises in the procurement opportunities offered by the State.' Gus Escher, chairman of the Committee, gave the report, stating that the Committee has had three meetings, two by conference call and one at the Authority. In addition to Mr. Escher, the Committee is comprised of Authority Member Ulysses Lee and staff members Marji McAvoy and Bill McLaughlin. Mark Hopkins, Dennis Hancock, and Cliff Rones also attended some of the Committee's meetings.

In discussing the numerous ways in which the Authority can respond to E.O. 34's requirements, the Committee divided its work into three functional areas. These areas take the following priority:

- 1) **Authority Vendors:** the solicitation and selection of the Authority's own vendors, such as auditors, insurance brokers, CAP program administrators, COMP financial agents, etc.
- 2) **Underwriters:** the solicitation and selection of bond issue financial professionals, such as underwriters, placement agents, remarketing agents and financial advisors
- 3) **Bond Counsel:** the solicitation and selection of the Authority's bond counsel firms

In the near future, the Committee plans to interview several hospital presidents and/or CFOs to review its ideas in addition to interviewing a few underwriting and/or financial advisor firms.

Mr. Escher noted that a pressing matter at this time is the solicitation and selection of senior managers for the Authority's own transactions. Currently, staff has recommended to the Authority for approval as Senior Manager only those firms that have

previously served as a Senior Manager on a health care bond transaction. The Committee would like to eliminate the “health care” requirement and instead request that staff consider firms that have served as Senior Manager on any type of municipal bond offering. This change will open the field to more small businesses.

To enact this change, the Committee asked Dennis Hancock and his project management team to issue letters notifying the Authority’s currently qualified co-managers that do not now qualify as senior manager, but may without the health care requirement. The letter will request that these firms update their information so that the Authority can update its qualified underwriter list accordingly. [Note: Mr. Hopkins noted later in the meeting that these letters have been drafted and will go out to these firms shortly, if there is no counter-opinion at this meeting.] It is expected that a revised Senior Manager list will come before the Authority for approval in August.

Dr. Cohen noted that the Authority could pursue using the role of co-manager as a way to give firms without prior experience a chance to gain some. Members and staff agreed that this is a good idea, however, noted that the Authority’s current policy already allows firms without prior experience to serve as co-manager. The information at this meeting focused particularly on the role of senior manager, since that is the role most desired by interested firms. As the Committee continues its work, the matter of co-managers will be addressed in more detail at a later date. This was an informational report only, therefore, no Authority action was required.

#### ***REQUEST FOR PROPOSAL FOR CAP PROGRAM ADMINISTRATOR***

Ron Marmelstein reminded the Members that in September of 2002, the Authority entered into a contract enlisting the services of Fairmount Capital Advisors as Program Administrator for the Capital Asset Financing Program, Series A-D. The original contract was for a two-year period subject to three one-year extensions. In July 2006, the Authority and Fairmount extended the contract for the third and final one-year extension which expires on September 30, 2007.

On behalf of staff, Mr. Mermelstein requested the Authority’s permission to distribute an RFP, in the form presented, in solicitation of a CAP Program Administrator.

In response to a question from Mr. Escher, Mr. Marmelstein noted that the Authority’s first RFP for this role was disseminated in 1995 and the contract was awarded to Fairmount Capital Advisors. Subsequent RFPs were disseminated in 1997, 1999, and 2001, and though there have been an average of three or four applicants, Fairmount Capital Advisors was awarded the contract, which is relatively small, each of those years.

Mr. Tetelman moved to approve the recommended RFP soliciting a Program Administrator for the Authority’s CAP Program; Ms. Stokley seconded. The vote was unanimous and the motion carried.

#### **AB RESOLUTION NO. HH-38**

**NOW, THEREFORE, BE IT RESOLVED**, that the Authority hereby approves the distribution of the Request for Proposal, in the form presented (*and attached*), seeking a Program Administrator for the CAP Program.

### ***AUTHORITY EXPENSES***

Mr. Escher referenced a summary of Authority expenses and invoices. Ms. Stokley offered a motion to approve the bills and to authorize their payment; Mr. Tetelman seconded. The vote was unanimous and the motion carried.

### **AB RESOLUTION NO. HH-39**

**WHEREAS**, the Authority has reviewed memoranda dated July 19, 2007, summarizing all expenses incurred by the Authority in connection with FHA Mortgage Servicing, Trustee/Escrow Agent/Paying Agent fees, and general operating expenses in the amounts of \$661,123.94, \$51,172.77 and \$83,270.22 respectively, and has found such expenses to be appropriate;

**NOW, THEREFORE, BE IT RESOLVED**, that the Authority hereby approves all expenses as submitted and authorizes the execution of checks representing the payment thereof.

### ***STAFF REPORTS***

Mr. Escher thanked staff for their preparation of reports that were distributed for review, including the Project Development Summary, Cash Flow Statement, Semi-Annual Budget Report and a Legislative Advisory. Mr. Hopkins announced the following items in his Executive Director's Report:

1. The Governor signed an amendment to the Authority's enabling legislation on June 28th. As was described in detail at the June Authority meeting, the Amendment broadens the type of projects eligible for State-backed bonds under the Hospital Asset Transformation Program to include, not only the satisfaction of outstanding bonded indebtedness, but also the satisfaction of any other outstanding indebtedness and pay certain costs of transition and renovations related to the closure of an inpatient acute care hospital.
2. The *Commission on Rationalizing New Jersey's Health Care Resources* released its interim report on June 29th. The report is available on the Commission's website. The Commission held a meeting at the Authority's offices on July 20<sup>th</sup>, and will be holding public meetings around the State on the evenings of July 30th, August 14th and August 28th. The Commission's next meeting at the Authority's offices will be held on August 17th.
3. The Members received a news story stating that certain local variances had been granted to Virtua Health, Inc. with respect to a construction project that is on the Authority's forward going calendar. These variances, however, do not yet satisfy all the permit approvals required for the transaction to go forward, at this point.
4. Dennis Hancock has already begun coordinating a working group to draft a derivatives policy to be presented for the Authority's approval at a later date, as was requested by the Members at the Authority's

June retreat. So far, four out of seven invitees have expressed interest in participating in the group.

During the staff reports, Mr. Escher asked if the new legislation regarding the Hospital Asset Transformation Program was written for a broad use to benefit a number of hospitals or written specifically to the needs of a certain hospital. Staff replied that the legislation is far-reaching and could be of use to numerous hospitals.

Mr. Escher then asked about the "Charity Care Fraud Prevention and Detection Act" to which Mr. Tetelman explained that this legislation better arms health care providers with the ability to pursue individuals who falsely claim to be unable to afford health care in order to have their services fall under charity care when, in fact, that individual is able to fund all or a part of those services.

### ***EXECUTIVE SESSION***

At this point, as permitted by the Open Public Meetings Act and the Authority's By-Laws, Mr. Escher asked the Members to meet in Executive Session to discuss personnel and contractual matters, and to receive advice from the Office of the Attorney General. Mr. Tetelman offered a motion to enter the session; Ms. Stokley seconded it. Mr. Escher voted yes; Dr. Cohen voted no; Mr. Lee voted yes; Ms. Kralik voted yes; Mr. Tetelman voted yes; and Ms. Stokley voted yes. The motion carried.

### **AB RESOLUTION NO. HH-40**

**NOW, THEREFORE, BE IT RESOLVED**, that, as permitted by the Open Public Meetings Act and the Authority's By-Laws, the Authority meet in Executive Session to discuss personnel and contractual matters, and to receive advice from the Office of the Attorney General.

**BE IT FURTHER RESOLVED**, that the results of discussions may be made known at such time as the need for confidentiality no longer exists.

Public session reconvened. As there was no further business to be addressed, Mr. Tetelman moved to adjourn the meeting, Ms. Stokley seconded. The vote was unanimous, and the motion carried at 12:28 p.m.

I HEREBY CERTIFY THAT THE  
FOREGOING IS A TRUE COPY  
OF MINUTES OF THE NEW  
JERSEY HEALTH CARE  
FACILITIES FINANCING  
AUTHORITY MEETING HELD  
ON JULY 26, 2007.

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Carole A. Conover  
Assistant Secretary

**AB RESOLUTION NO. HH-36**

**RESOLUTION OF INTENT TO ISSUE REVENUE BONDS BY  
NEGOTIATED TRANSACTION PURSUANT TO  
EXECUTIVE ORDER NO. 26**

**Trinitas Hospital**

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**WHEREAS**, the New Jersey Health Care Facilities Financing Authority (the “Authority”) was duly created and now exists under the New Jersey Health Care Facilities Financing Authority Law, P.L. 1972, c. 29, N.J.S.A. 26:2I-1 et seq., as amended (the “Act”), for the purpose of ensuring that all health care organizations have access to financial resources to improve the health and welfare of the citizens of the State; and,

**WHEREAS**, the Authority issues its bonds from time to time for the achievement of its authorized purposes; and

**WHEREAS**, on October 25, 1994, the Governor issued Executive Order No. 26 which sets forth procedures by which an issuer may determine the method of sale of bonds or notes; and,

**WHEREAS**, on December 8, 1994, the Authority adopted Section 2 of its policy which was developed to implement Executive Order No. 26, which requires an Authority resolution to pursue a negotiated sale of bonds; and,

**WHEREAS**, on March 28, 1996, the Authority amended its policy related to Executive Order No. 26; and,

**WHEREAS**, the Authority’s policy states that a negotiated sale of bonds will be conducted if it is determined by the Authority that it would better serve the requirements of a particular financing; and,

**WHEREAS**, a negotiated transaction would be permitted in circumstances including, but not limited to, the sale of bonds for a complex or poor credit; the development of a complex financing structure, including those transactions that involve the simultaneous sale of more than one series with each series structured differently; volatile market conditions; large issue size; programs or financial techniques that are new to investors; or, for variable rate transactions; and,

**WHEREAS**, Trinitas Hospital has entered into a Memorandum of Understanding with the Authority to pursue a revenue bond financing (the “Financing”); and,

**WHEREAS**, all or a portion of the requested Financing may be issued under the Hospital Asset Transformation Program; and,



**WHEREAS**, Trinitas Hospital has requested that the Authority consider approving the pursuit of a negotiated sale; and,

**WHEREAS**, the Financing could be considered a complex or poor credit; and,

**WHEREAS**, market conditions could be considered volatile; and,

**WHEREAS**, Trinitas Hospital is considering the use of a program that is new to investors; and,

**WHEREAS**, the Authority is desirous of being responsive to the request made by Trinitas Hospital; and,

**WHEREAS**, the aforementioned resolution and justification in support of such resolution must be filed, within five days of its adoption, with the State Treasurer;

**NOW, THEREFORE, BE IT RESOLVED**, that, based upon the above findings, the Authority hereby determines that it would better serve the requirements of this Financing to conduct a negotiated sale; and,

**BE IT FURTHER RESOLVED**, that the Executive Director is hereby directed and authorized to transmit a copy of this Resolution and justification in support of such resolution to the State Treasurer.

**AB RESOLUTION NO. HH-37**

**RESOLUTION DELEGATING AUTHORIZATION TO THE  
EXECUTIVE DIRECTOR OR DEPUTY EXECUTIVE DIRECTOR  
TO RESPOND TO A REQUEST FROM BARNERT HOSPITAL  
FOR HUD TO RELEASE A PORTION OF THE DEPRECIATION  
RESERVE FUND WITH REPECT TO THE AUTHORITY'S  
BONDS ISSUED ON BARNERT'S BEHALF**

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**WHEREAS**, the New Jersey Health Care Facilities Financing Authority (the "Authority") has issued bonds on behalf of Barnert Hospital for which the mortgage was insured by the Federal Housing Administration ("FHA"); and,

**WHEREAS**, when the FHA insures a mortgage, the Department of Housing and Urban Development ("HUD") typically requires the funding of a Depreciation Reserve Fund as additional security; and,

**WHEREAS**, because the Depreciation Reserve Fund is established for HUD's benefit, the Authority has, in the past, acquiesced to HUD's directives regarding requests for the release of funds from the Depreciation Reserve Fund; and,

**NOW, THEREFORE, BE IT RESOLVED**, that the Authority hereby authorizes the Executive Director or Deputy Executive Director to execute any document indicating the Authority's non-objection to, or approval of, the release of any portion of the Depreciation Reserve Fund authorized by HUD based on future requests made by Barnert to HUD, so long as the purpose is deemed appropriate by HUD;

**BE IT FURTHER RESOLVED**, that the Authority also authorizes the Executive Director or Deputy Executive Director to execute any document indicating the Authority's objection to, or disapproval of, the release of a portion of the Depreciation Reserve Fund, and in either case the Authority Members will be fully informed of the request and staff's response no later than the next Authority Meeting.

**REQUEST FOR PROPOSAL  
FOR  
PROGRAM ADMINISTRATOR FOR THE CAPITAL ASSET PROGRAM**

**INTRODUCTION**

The New Jersey Health Care Facilities Financing Authority (the “Authority”) is the primary issuer of municipal bonds for New Jersey’s health care organizations. The Authority has issued more than \$14 billion in bonds and notes on behalf of over 140 health care organizations throughout the state since its creation in 1972. The majority of the Authority’s financings have been completed on behalf of acute care hospitals and health systems. However, the Authority, under N.J.S.A. 26:2I-1 et seq. (the “Act”), may provide financing for all health care organizations in New Jersey. As defined in the Act, a health care organization is one which is located in New Jersey which is authorized or permitted by law, whether directly or indirectly through a holding corporation, partnership or other entity, to provide health care-related services, including, but not limited to, hospital, outpatient, public health, home health care, residential care, assisted living, hospice, health maintenance organization, blood bank, alcohol or drug abuse, halfway house, diagnostic treatment, rehabilitation, extended care, skilled nursing care, nursing care, intermediate care, tuberculosis care, chronic disease care, maternity, mental health, boarding or sheltered care or day care, or services provided by a physician in his office, or any other service offered in connection with health care services or by an entity affiliated with a health care organization or an integrated delivery system. An integrated delivery system means a group of legally affiliated health care organizations.

At its July 26, 2007 meeting, the Authority approved the dissemination of a request for proposals (RFP) for a Capital Asset Program (CAP) administrator. The firm chosen will be expected to enter into a formal agreement with the Authority in form and content satisfactory to the Authority.

Program administration includes the maintenance of records pertaining to the recycling of loan proceeds and loan rate calculations. The program administrator may also be asked to:

1. Advise as to investment options for the pool's available funds.
2. Evaluate the cost and services of the Remarketing Agent and to assist with the evaluation of alternatives, if warranted.
3. Evaluate whether the current interest rate mode is the most advantageous for the program or whether it would be better to move to a daily or monthly interest rate mode as permitted in the documents.

The program administration function is initially contemplated to be for a contract period of three years with two optional one-year extensions.

## REQUIREMENTS FOR SUBMITTING PROPOSALS

### SUBMISSION DATE AND LOCATION

Proposals must be received by the Authority no later than 2:00 PM EDST, on August 8, 2007 at the following location:

NEW JERSEY HEALTH CARE FACILITIES FINANCING AUTHORITY

**Overnight delivery address:**

Station Plaza, Building #4  
22 South Clinton Avenue  
Trenton, New Jersey 08609-1212

**Mailing address:**

P.O. Box 366  
Trenton, New Jersey 08625-0366

### NUMBER OF COPIES

Six (6) copies of the proposal must be submitted.

### FORMAT

Responses to the questions should be succinct and discussion should be limited to the question asked. Failure to respond to all requested information may result in disqualification.

### QUESTIONS

All questions regarding this proposal should be directed to James L. Van Wart, Director of Operations and Finance at 609-292-8585 or by E-mail to [jvanwart@njhcffa.com](mailto:jvanwart@njhcffa.com). Until such time as a recommendation is made to the Authority, proposers should not contact any other staff member or any member of the Authority.

### SCHEDULE

The Request for Proposal will be distributed on August 1, 2007. Authority staff will review proposals and a recommendation will be made to the Authority. It is possible that oral presentations may be necessary and, if so, firms will be notified and a schedule of presentations will be developed. All firms submitting an RFP will be notified in writing of the Authority's decision as soon as practical after the Governor's approval of the Authority's minutes.

### SELECTION

A recommendation will be made to the Authority on the basis of the following criteria:

- Investment Advisory Experience;

- Experience with pool loan programs and variable rate instruments;
- Quality of prior service to the Authority and its clients;
- Fees and fee arrangements;
- Absence of securities law violations and/or litigation;
- References;
- Status as a Small Business pursuant to the Small Business Set Aside Act (N.J.S.A. 52:32-17 et seq.) and the regulations promulgated thereunder (N.J.A.C.12A:10-1.1 et seq.)

#### RESERVED RIGHTS AND STANDARD TERMS AND CONDITIONS

The Authority reserves the right to modify this Request for Proposal by notification to all recipients of the changes. The Authority also reserves the right to reject all proposals. By submitting a response to this proposal, the bidder agrees to the provisions outlined in the attached “Standard Terms and Conditions.”

TITLE PAGE

Name of Firm :  
Web site, if any :  
  
Primary Contact :  
Title :  
Address :  
  
Telephone Number :  
Fax Number :  
E-Mail Address :  
  
Secondary Contact :  
Title :  
Address :  
  
Telephone Number :  
Fax Number :  
E-Mail Address :

SECTION I: General Information

1. Provide a brief description of your firm and the organizational structure of the department that is responsible for the work that will be completed related to this RFP. Incorporate in your response descriptive information regarding your firm's :

- a. Gross revenues for the three most recent fiscal years (identify the years).
- b. Principal place of business.
- c. Total number of employees.
- d. Location of any of your firm's facilities in New Jersey and number of employees at each of those New Jersey facilities.

2. Provide a list of the professionals who will be assigned to this project. Note whether subcontractors or consultants will be utilized for this project and note what functions they will provide. Please include resumes and a summary of pertinent staff, subcontractor or consultant experience and qualifications, including licensure, if any.

3. What resources are available to your firm to track the market and to determine what investments and financial products are available which might be beneficial for the Authority's purposes?

4. What is your firm's experience with the development and/or assessment and/or application of financial products, which might be recommended for investment by the Authority for its CAP funds? Provide a brief discussion of factors to be considered in the selection of these products.

5. Since 2002, has there been any litigation involving or alleged to involve securities law violations by your firm, officers or employees?

SECTION II:

In 1985, the Authority funded two revolving \$100 million loan pools. Series A-D is still outstanding and was funded through the issuance of variable rate demand bonds secured by a letter of credit, currently provided by JPMorgan Chase Bank. The A-D Bonds may be marketed on a daily, weekly or a monthly basis. Since the inception of the program, the Series A-D Bonds have always been remarketed weekly. UBS currently serves as the remarketing agent. Loans may be originated from the program for any use authorized under the Authority's enabling legislation. The loan rates are a function of the weekly bond index plus attendant program expenses.

At the present time, the debt service reserve and the available program funds are invested in the Morgan Stanley Governmental Fund. There are currently twelve loans amounting to approximately \$36 million outstanding and there are two loan applications in process that approximate \$10 million.

In 2002, the Authority entered into a two-year contract, with three one-year extensions possible, with a consultant to administer the CAP. That contract, along with three of the yearly extensions, expires on September 30, 2007.

Based on the above information, please provide responses to the following questions:

1. Does your firm have experience in program administration for revolving loan pools? If so, please provide a list of programs for which your firm has served in these capacities within the past three (3) years, a brief description of the scope of work and the dates of your engagement. Provide a client reference for each program.
2. Describe your firm's experience with the evaluation of interest rate modes and remarketing agents.
3. Describe your computer systems and capabilities to develop applications to monitor the CAP.
4. Highlight your firm's ability to determine that program funds are recycled in accordance with IRS guidelines.

### SECTION III: Fee Proposals

All fee proposals should clearly identify if they are a lump sum bid or based on an hourly rate. In all events, the fee proposal should include the maximum fee cap. Please provide the following:

1. Provide a fee proposal and "not-to-exceed" cap for out-of-pocket expenses. If your firm plans to charge on an hourly basis, please provide a cap on your firm's total fees.

### SECTION IV: Executive Order 134

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, Executive Order 134 was signed on September 22, 2004, as codified by P.L. 2005, c. 51 on March 22, 2005 ("EO 134"). Pursuant to the requirements of EO 134, the terms and conditions set forth are material terms of any contract resulting from this RFP:

## **New Jersey Health Care Facilities Financing Authority**

### **Standard Terms and Conditions**

By submitting a proposal in response to the Request for Proposal (“RFP”) for services, the bidder certifies that it understands and agrees that all of the following terms, conditions and definitions (collectively, “Standard Terms and Conditions”) are part of any contract(s) awarded as a result of the RFP unless specifically and expressly modified by reference in the RFP or in a writing executed by an authorized officer of the New Jersey Health Care Facilities Financing Authority.

**I. Definitions:** As used in these Standard Terms and Conditions, the following terms shall have the definitions set forth in this paragraph. These definitions shall also apply to the entire contract unless otherwise defined therein.

“Authority” means the New Jersey Health Care Facilities Financing Authority. The Authority is the intended beneficiary of the Contract.

“Authorized Officer” means (i) with respect to the Authority, the Chairman, Vice Chairman, Secretary, Treasurer, Assistant Treasurer, Executive Director or Deputy Executive Director of the Authority or such other Person who is authorized by the by-laws or any resolution of the Authority to act in such capacity.

“Bidder” means any person or entity submitting a proposal in response to the RFP to provide the Authority services specified in the RFP.

“Business Entity” means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. It also includes (i) all principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate; (ii) any subsidiaries directly or indirectly controlled by the business entity; (iii) any political organization organized under 26 U.S.C.A. 527 that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and (iv) if a business entity is a natural person, that person's spouse or child, residing in the same household.

“Contract” means a mutually binding legal relationship obligating the Contractor to furnish services and the Authority to pay for them. The Contract consists of these Standard Terms and Conditions, the RFP, the proposal submitted by the Contractor, the subsequent written document memorializing the agreement (if any), any amendments or modifications and any attachments, addenda or other supporting documents of the foregoing.

The Contract and/or its terms cannot be modified or amended by conduct or by course of dealings. Thus, the “contract” does not include the aforementioned actions and such actions, or reliance thereon, afford no rights whatsoever to any party to the Contract. The Contract can only be modified or amended by a writing signed by an authorized officer of the Authority and of the Contractor.

“Contractor” means the person or entity which submits a proposal in response to the RFP and to whom (or which) the Contract is awarded.



“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. 19:2510.1 et seq. Currently, contributions in excess of \$400 during a reporting period are deemed "reportable" under these laws. As of January 1, 2005, that threshold has been reduced to contributions in excess of \$300.

“Request for Proposal” or “RFP” means the request for offers or proposals to provide the sought after services as specified herein.

“Shall” denotes a mandatory condition.

“State” means the State of New Jersey.

**II. Applicability and incorporation of standard terms and conditions:** These Standard Terms and Conditions are automatically incorporated into the Contract unless the Contractor is specifically instructed otherwise in the RFP or in any other amendment thereto. These Standard Terms and Conditions are in addition to the terms and conditions set forth in the RFP and should be read in conjunction with the same unless the RFP specifically indicates otherwise.

**III. Contractor’s Status and Responsibilities:**

**A. Contractor’s Status:** The Contractor’s status shall be that of an independent contractor and not that of an employee of the State or the Authority.

**B. Contractor’s Certification as to its Representations:** The Contractor certifies that all representations made by it in its proposal or other related and/or supporting materials are true, subject to penalty of law. Further, the Contractor agrees that the violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact in the proposal, award or performance of the Contract may be cause for termination of the contract award. In addition, the Contractor’s violation of any statute or regulation relating to public contracts and/or its misrepresentation or concealment of any material fact in the proposal, award or performance of the Contract shall serve as a legal bar to the Contractor’s enforcement of its rights under the Contract including any and all claims at law or equity.

**C. Contractor’s Performance:** The Contractor agrees to perform in a good, skillful and timely manner all services set forth in the Contract. The Contractor has an affirmative obligation to promptly notify, in writing, the Authority of any changes in circumstances which might affect the Contractor’s ability to be awarded or to perform its obligations under the Contract.

**D. Responsibilities of Contractor:**

1. The Contractor is responsible for the quality, technical accuracy and timely completion and delivery of all services to be furnished by the Contractor under the Contract.

2. The Contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its services furnished under the Contract. The acceptance or payment for any of the services rendered under the Contract shall not be construed as a waiver by the Authority of any rights under the Contract or of any cause of action arising out of the Contractor’s performance of the Contract.

3. The acceptance of, approval of, or payment for any of the services performed by the Contractor under the Contract shall not constitute a release or waiver of any claim the Authority has or may have for latent defects or errors or other breaches or warranty or negligence.

4. The Contractor shall not hire, employ or otherwise engage subcontractors to furnish the performance contemplated by the Contract.

5. The Contractor's obligations under this clause are in addition to the Contractor's other expressed or implied assurances under the Contract or law and in no way diminish any other rights that the Authority may have against the Contractor.

- E. **Investigation:** By submitting a proposal in response to the RFP, the bidder certifies and warrants that it has satisfied itself, from its own investigation, of the conditions to be met and that it fully understands its obligations and if awarded the Contract agrees that it will not make any claim for, or have right to, cancellation or relief from the Contract without penalty because of its misunderstanding or lack of information.
- F. **Cost Liability:** The Authority assumes no responsibility and no liability for costs incurred by the bidder prior to the award of the Contract and thereafter only as specifically provided in the Contract.

**III. Contractor's Status and Responsibilities (cont.):**

**G. Indemnity/Liability to Third Parties:**

1. The Contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend and save harmless the Authority, its employees and attorneys from and against any and all claims, demands, suits, actions, recoveries, judgments, liabilities and costs and expenses which may arise out of the breach of any term of the Contract or the default thereunder by the Contractor, its employees, servants or agents and on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the services supplied under this Contract.

2. The Contractor shall hold and save the Authority, its officers, agents, servants and employees, harmless from liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this Contract.

3. The Contractor further agrees that:

- a) any approval by the Authority of the work performed by the Contractor shall not operate to limit the obligations of the Contractor assumed in the Contract;
- b) the Authority assumes no obligation to indemnify or save harmless the Contractor, its agents, servants or employees for any claim which may arise out of its performance of the Contract; and
- c) the provisions of this indemnification shall in no way limit the Contractor's obligations assumed in the Contract, nor shall they be construed to relieve the Contractor from any liability, nor preclude the Authority from taking any other actions available to it under any other provisions of the Contract or otherwise at law or equity.

**H. Availability of Records:** The Authority has the right to request, and the Contractor agrees to furnish free of charge, all information and copies of all records and documents which the Authority requests. The Contractor shall allow the Authority to visit the office(s) of the Contractor periodically, upon reasonable notice, in order to review any document related to the Contract or to otherwise monitor work being performed by the Contractor pursuant to the Contract. Any failure by the Contractor to maintain or produce such records or to otherwise cooperate with the Authority may be, at the Authority's discretion, cause for termination of the contract award and/or suspension or debarment of the Contractor from the Authority.

**III. Contractor's Status and Responsibilities (cont.):**

- I. Data Confidentiality:** All data not otherwise publicly available contained in documents supplied by the Authority after the award of the Contract, any data not otherwise publicly available gathered by the Contractor in fulfillment of the Contract and any analysis thereof (whether in fulfillment of the Contract or not) are to be considered confidential and shall be solely for the use of the Authority. The Contractor is required to use reasonable care to protect the confidentiality of the data. Any use, sale or offering of this data in any form by the Contractor, his employees, agents, servants or assignees will be considered in violation of the Contract and will cause the information to be reported to the State Attorney General for possible prosecution. Penalties for violations of this provision include, but are not limited to, termination of the contract award and/or legal action without the Authority being liable for damages, costs and/or attorney fees. The Contractor shall be liable for any and all damages arising from its breach of this confidentiality provision.
- J. No Waiver of Warranties or Remedies at Law or Equity:** Nothing in the Contract shall be construed to be a waiver by the Authority or any warranty, expressed or implied, except as specifically and expressly stated in a writing executed by an authorized officer of the Authority. Further, nothing in the Contract shall be construed to be a waiver by the Authority of any remedy available to the Authority under the Contract, at law or equity except as specifically and expressly stated in a writing executed by an authorized officer of the Authority.
- K. Ownership of Documents:** All documents and records, regardless of form, prepared by the Contractor in fulfillment of the Contract shall be transmitted to the Authority and shall become the property of the Authority.
- L. Publicity:** Any publicity and/or public announcements pertaining to the services being furnished pursuant to the Contract shall be approved by the Authority.

**IV. Contractual Relationship:**

- A. Assignment:** The Contractor shall not assign or transfer its obligations or rights, under the Contract without the prior written consent of the Authority. Any assignment or transfer of the Contractor's rights under the Contract without the prior written consent of the Authority shall not relieve the Contractor of any duty, obligation or liability assumed by it under the Contract and shall be cause for termination of the contract award.
- B. Mergers, Acquisitions and Dissolution:**
  - 1. **Merger or Acquisition:** If, subsequent to the award of any contract, resulting from the RFP, the Contractor shall merge with or be acquired by another firm, the Authority may terminate the contract award upon ten (10) days notice to the Contractor. In such case, the provisions of VI.C. and D. shall apply.
  - 2. **Dissolution:** If, during the term of the Contract, the Contractor's partnership, joint venture or corporation shall dissolve, the Authority must be so notified. Upon receipt of such notice, the Authority may terminate the Contract, in which case the provisions of VI. C. and D. shall apply. If the Contractor is (1) a corporation, it must provide a copy of the corporate

resolution to dissolve; (2) a partnership, the written statement of the partnership, general partner, receiver or custodian thereof that the partnership has dissolved; and (3) a joint venture, the written agreement of the principal parties thereto to dissolve the joint venture.

- C. Notice:** The Contractor shall promptly provide notice to the Authority of all information related to its merger, acquisition and/or dissolution.

- V. Mandatory Compliance with Law:** The Contractor's compliance with the legal requirements set forth in this paragraph as well as any other applicable laws, regulations or codes is mandatory and cannot be waived by the Authority. The list of laws, regulations and/or codes cited herein is not intended to be an exhaustive list and are available for review at the State Library, 155 West State Street, Trenton, New Jersey 08625.

**A. Corporate Authority:**

1. All New Jersey corporations must obtain a Certificate of Incorporation from the Office of the New Jersey State Treasurer prior to conducting business in the State of New Jersey.
2. If a bidder is a corporation incorporated in a state other than New Jersey, the Contractor must obtain a Certificate of Authority to do business from the Office of the New Jersey State Treasurer prior to receipt of the final contract award. Within seven (7) days of its receipt of a notice of intent to award, the successful bidder shall provide either a certification or notification of filing with the State Treasurer. Further, in accordance with Public Law 2001, c. 134, which requires all contractors and subcontractors provide proof of their registration with the Department of Treasury, Division of Revenue, the Contractor must submit a copy of their "Business Registration Certificate" to this Authority within 30 days of enactment of this Agreement. Failure to comply may result in the Authority withdrawing the notice of intent to award.

**V. Mandatory Compliance with Law (cont.):**

**A. Corporate Authority (cont.):**

3. If the bidder awarded the Contract is an individual, partnership or joint venture not residing in this State or a partnership organized under the laws of another state, then the bidder shall execute a power of attorney designating the Secretary of State as his true and lawful attorney for the sole purpose of receiving process in any civil action which may arise out of the performance of the Contract. The appointment of the Secretary of State shall be irrevocable and binding upon the bidder, his heirs, executors, administrators, successors and assigns. Within ten (10) days of receipt of this service, the Secretary of State shall forward same to the bidder at the address designated in the bidder's proposal.

**B. Affirmative Action:** During the performance of the Contract, the Contractor agrees to comply with the requirements of P.L. 1975, c.127 (N.J.A.C. 17:27), as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The Contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, up-grading, 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.
2. The Contractor 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, sex, affectional or sexual orientation.
3. The Contractor 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 Authority's contracting officer, advising the labor union or worker's representative of the Contractor's commitments under the act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**V. Mandatory Compliance with Law (cont.):**

**B. Affirmative Action (cont.):**

4. The Contractor agrees to comply with the regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time, and with the Americans with Disabilities Act.
5. The Contractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time, or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2, promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.
6. The Contractor agrees to inform, in writing, appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
7. The Contractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by applicable Federal Law and applicable Federal Court decisions.
8. The Contractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the status and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal Court decisions.
9. The Contractor shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the Office 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 Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the New Jersey Administrative Code (N.J.A.C. 17:27).

**V. Mandatory Compliance with Law (cont.):**

- C. Americans with Disabilities Act:** The Contractor shall abide by the provisions of the Americans with Disabilities Act, 42 U.S.C., Sec. 12101, et seq.
- D. Bidders Warranty:** By submitting a proposal in response to the RFP, the bidder warrants and represents that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. The penalty for breach or violation of this provision may result in termination of the contract award without the Authority being liable for damages, costs and/or attorney fees or, in the Authority's discretion, a deduction from the Contract price or consideration the full amount or such commission, percentage, brokerage or contingent fee.
- E. Standards Prohibiting Conflicts of Interest:** The following prohibitions shall apply to all contracts made with the Authority.

  - 1. No Contractor 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 officer or employee of the State or the Authority, or special State officer or employee as defined in N.J.S.A. 52:13D-13b and e, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13f of any such officer or employee, or partnership, firm or corporation with which they are employed or associated or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
  - 2. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by an officer or employee of the Authority from any State Bidder or Contractor shall be reported in writing forthwith by the vendor to the State Attorney General.
  - 3. No Contractor 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 Contractor to any officer or employee of the Authority or special State officer or employee, or 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 is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g.



**V. Mandatory Compliance with Law (cont.):**

**E. Standards Prohibiting Conflicts of Interest (cont.):**

4. No Contractor shall influence, or attempt to influence or cause to be influenced any officer or employee of the Authority in his official capacity in any manner which might tend to impair the objectivity or independence or judgment of said officer or employee.
5. No Contractor shall cause or influence, or attempt to cause or influence, any officer or employee of the Authority to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Contractor or any other person.
6. It is agreed and understood that the Authority reserves the right to determine whether a conflict of interest or the appearance of a conflict of interest exists which would under State law adversely affect or would be contrary to the best interest of the Authority.

**F. Executive Order 134 Requirements:** In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, Executive Order 134 (McGreevey) was signed on September 22, 2004 as codified by P.L. 2005, c. 51 on March 22, 2005 (“EO 134”) Pursuant to the requirements of EO 134, the terms and conditions set forth in this section are material terms of any contract resulting from the RFP:

**1. Certification and Disclosure Requirements**

- a) The Authority shall not enter into a contract to procure from any Business Entity services or any material, supplies or equipment, or to acquire, sell or lease any land or building, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor, or to any State or county political party committee during certain specified time periods.

**V. Mandatory Compliance with Law (cont.):**

**1. Certification and Disclosure Requirements (cont.)**

b) Prior to awarding any contract or agreement to any Business Entity, the Business Entity responding to the RFP shall submit with their Proposal the Certification and Disclosure form, certifying that no contributions prohibited by Executive Order 134 have been made by the Business Entity and reporting all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C. 527 of the Internal Revenue Code that also meets the definition of a "continuing political committee" within the meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The required forms and instructions are available for review on the State's Purchase Bureau website at <http://www.state.nj.us/treasury/purchase/forms.htm#eo134>. Failure to submit the required forms will preclude award of a contract under this RFP, as well as future contract opportunities.

c) Further, the Contractor is required, on a continuing basis, to report to the Authority any contributions it makes during the term of the contract, and any extension(s) thereof, at the time any such contribution is made. The required forms and instructions are available for review on the States' Purchase Bureau website at <http://www.state.nj.us/treasury/purchase/forms.htm#eo134>.

**2. Breach of Terms of Executive Order 134 Deemed Breach of Contract**

It shall be a breach of the terms of the contract for the Business Entity to (i) make or solicit a contribution in violation of this Order, (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of EO 134; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange of contributions to circumvent the intent of EO 134; or (viii) directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of EO 134.

**V. Mandatory Compliance with Law (cont.):**

**3. State Treasurer Review**

The Authority will provide to the State Treasurer or his designee for their review the Disclosures submitted pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended awardee, prior to award, or during the term of the contract, by the contractor. If the State Treasurer determines that any contribution or action by the contractor constitutes a breach of contract that poses a conflict of interest in the awarding of the contract under this solicitation, the State Treasurer shall disqualify the Business Entity from award of such contract.

**G. Executive Order 271 Requirements:**

Please note that the disclosure requirements under Public Law 2005, Chapter 271 are separate and different from the disclosure requirements under Public Law 2005, Chapter 51 (formerly Executive Order 134). Although no vendor will be precluded from entering into a contract by any information submitted on this form, a vendor's failure to fully, accurately and truthfully complete this form and submit it to the appropriate State agency may result in the imposition of fines by the New Jersey Election Law Enforcement Commission.

### **Disclosure**

Following is the required Vendor disclosure of all Reportable Contributions made in the twelve (12) months prior to and including the date of signing of this Certification and Disclosure to: (i) any State, county, or municipal committee of a political party, legislative leadership committee, candidate committee of a candidate for, or holder of, a State elective office, or (ii) any entity that is also defined as a "continuing political committee" under N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.

The Vendor is required to disclose Reportable Contributions by: the Vendor itself; all persons or other business entities owning or controlling more than 10% of the profits of the Vendor or more than 10% of the stock of the Vendor, if the Vendor is a corporation for profit; a spouse or child living with a natural person that is a Vendor; all of the principals, partners, officers or directors of the Vendor and all of their spouses; any subsidiaries directly or indirectly controlled by the Vendor; and any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the Vendor, other than a candidate committee, election fund, or political party committee.

"Reportable Contributions" are those contributions that are required to be reported by the recipient under the "New Jersey Campaign Contributions and Expenditures Reporting Act," P.L. 1973, c.83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-10.1 et seq. As of January 1, 2005, contributions in excess of \$300 during a reporting period are deemed "reportable."

**VI. Termination of the Contract Award:** An Authorized Officer of the Authority may terminate the contract award at any time during the duration of the Contract, without penalty, subject to the following provisions:

**A. Change of Circumstances:** Where circumstances change and/or the needs of the Authority change, or the Contract is otherwise deemed by the Authority to no longer be in the public interest, the Authority may terminate the contract award upon no less than thirty (30) days notice to the Contractor. In the event of such a termination of the contract award, the Contractor shall furnish to the Authority, free of charge, such close-out reports as may reasonably be required.

**B. For Cause:**

1. Where a Contractor fails to perform or comply with the Contract, the Authority may terminate the contract award upon ten (10) days notice to the Contractor.
2. The Authority's right to terminate the contract award for cause includes violation of state and federal law (as demonstrated by the Contractor's admissions of same or a final decision of an appropriate decision-making body), or any reason related to the ability of the Contractor to fulfill its contractual obligations. The Authority may also terminate any contract with a federally debarred contractor or a contractor which is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

**C.** Upon a termination of the contract award under this or any other paragraph herein, the Contractor shall be entitled to receive as full compensation for services rendered up to the date of termination for that portion of the fee which the services were actually and satisfactorily performed by it, as

determined by the Authority, shall bear to the total services contemplated under the Contract, less payments previously made.

- D.** Upon termination of the contract award, the Authority may acquire the services which are the subject of the Contract from another source and may charge the Contractor whose contract award has been terminated the difference in price, and the said Contractor shall be liable for same.

**VII. Contractor Compensation:** The Contractor shall submit an invoice upon completion of the project. Payment will not be made until the Authority has approved payment.

**VIII. Notices:** All notices required under the Contract shall be in writing and shall be validly and sufficiently served by the Authority upon the Contractor, and vice versa, if addressed and mailed by certified mail to the addressee set forth in the Contract. Notice to the Authority shall be mailed to the following address:

P.O. Box 366  
Trenton, NJ 08625-0366

Overnight Delivery Address:  
Station Plaza, Building #4  
22 South Clinton Avenue  
Trenton, NJ 08609-1212

**IX. Claims:** All claims against the Authority by the Contractor concerning interpretation of the Contract, Contractor performance and /or termination of the contract award shall be subject to the New Jersey Tort Claims Act N.J.S.A. 59:1-1, et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

**X. Applicable Law:** This agreement and any and all litigation arising therefrom or related thereto shall be governed by the applicable law, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles.