



**REQUEST FOR PROPOSALS
TO PURCHASE
OR
GROUND LEASE AND PURCHASE
AT END OF LEASE TERM**

**BLOCK 252, LOTS 1.03 AND 1.06,
NORTH BRUNSWICK TOWNSHIP,
MIDDLESEX COUNTY, NEW JERSEY**

RERFP-000044-P/GL

Event	Date	Time
Proposer's Electronic Question Due Date (Refer to Section 6.c of this RFP for more information.)	1/17/22	1:00 PM EST
Optional Site Visit (strongly recommended) (Refer to Section 6.b of this RFP for more information.)	1/17/22	1:00 PM EST
Proposal Submission Date (Refer to Section 6.d and 6.e of this RFQ/P for more information.)	3/16/22	1:00 PM EST

ISSUED BY:

**THE NEW JERSEY ECONOMIC
DEVELOPMENT AUTHORITY
REAL ESTATE & COMMUNITY DEVELOPMENT
36 WEST STATE STREET
TRENTON, NEW JERSEY 08625-0990**

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EXHIBIT LISTING:

EXHIBIT A-1: DEEDS TO PARCELS 1 AND 2

EXHIBIT A-2: NJDOT DEED OF TAKING FOR A PORTION OF PARCEL 1

EXHIBIT B: SURVEY

EXHIBIT C-1: STORM WATER EASEMENT

EXHIBIT C-2: PSE&G EASEMENT

EXHIBIT D: ENVIRONMENTAL INFORMATION FOR THE PARCELS

EXHIBIT E: TITLE INFORMATION

EXHIBIT F-1: ASSIGNMENT, ASSUMPTION AND MODIFICATION OF DEVELOPER AGREEMENT WITH NJDOT AND F-1a SPECIMEN ASSIGNMENT, ASSUMPTION AND MODIFICATION OF DEVELOPER AGREEMENT

EXHIBIT F-2: CONSENT AGREEMENT BETWEEN DKM PROPERTIES AND ARTKEN AND SPECIMEN CONSENT AGREEMENT WITH ARTKEN

EXHIBITS G and G-1: OFFER FORM AND CERTIFICATION

EXHIBIT H-1: SPECIMEN PURCHASE AND SALE AGREEMENT

EXHIBIT H-2: SPECIMEN GROUND LEASE AGREEMENT

EXHIBIT I: COMPLIANCE REQUIREMENTS

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1. INTRODUCTION

a. General Background

In 2004, the New Jersey Economic Development Authority (NJEDA) purchased from DKM Properties approximately 24 acres of vacant land, Block 252, Lot 1.06 (Parcel 1), and an approximately 2-acre parcel that includes a retention basin, Block 252, Lot 1.03 (Parcel 2) (collectively the "Property") on US Route 1 North, North Brunswick, Middlesex County, New Jersey.

In 2013, NJEDA procured a broker to sell the Property, and on July 8, 2015 entered into a Purchase and Sale Agreement for the Property with KTR NJ IV, LLC (KTR). On March 31, 2017, NJEDA and KTR mutually agreed to terminate their agreement.

Since March 31, 2017, NJEDA has received several unsolicited offers and inquiries to purchase the Property. In response to the unsolicited offers, NJEDA is issuing a Request for Proposals (RFP) to Purchase or Ground Lease and Purchase at end of Lease Term regarding the Property.

b. Offer to Purchase or Ground Lease the Property

A Proposer may submit an offer to:

- purchase the Property and receive fee simple title at a closing.
- ground lease the property, which must include the purchase of the Property at the end of the lease term.

A Proposer also may submit two **SEPARATE** offers: one to purchase the Property and one to ground lease the Property and purchase Property at the end of the lease term.

Proposers should note that so long as NJEDA retains ownership of any portion of the Property, the selected Proposer will be obligated to pay workers employed to install, construct, renovate, refurbish or maintain any improvements on that portion of the Property not less than the prevailing wage rate for the particular trade, as required by N.J.S.A. 34:11-56.25 et seq. These requirements will continue until the initial closing to sell the Property or for the ground lease term. Additionally, any infrastructure improvements installed by the Purchaser within public rights of way shall also be subject to prevailing wage obligations.

Upon a sale of the Property, prevailing wage will apply only to the extent that a project includes "public work" as that term is defined in State Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. or if the Proposer receives financial assistance from NJEDA, the State or any other State entity.

2. DEFINITIONS

Addendum/Addenda – Written clarification or revision to this RFP issued by the Authority.

Agreement(s) – refers to the specimen Purchase and Sale Agreement (**Exhibit H-1**) and/or the Ground Lease Agreement (**Exhibit H-2**) for the Property included in **Exhibit H-1** and **H-2** respectively.

Amendment – An alteration or modification of the terms of an Agreement between the Authority and the winning Proposer. An amendment is not effective until approved in writing by the Authority.

Authority – The New Jersey Economic Development Authority.

Bidder – An individual or business entity submitting a Proposal in response to this RFP. Also, see “Proposer” below.

Board – Responsible for the management of all New Jersey Economic Development Authority operations.

Bulk Variance – means an approval pursuant to N.J.S.A. 40:55D-70(c) of the municipal land use law that will be granted by the appropriate local municipal body.

Business Day – means, for the purpose of this Request for Proposals, Monday through Friday, except for the following state holidays (when observed):

- New Year's Day
- Martin Luther King Jr. Day
- Presidents Day
- Good Friday
- Memorial Day
- Juneteenth
- Independence Day
- Labor Day
- Columbus Day
- Election Day
- Veteran's Day (observed)
- Thanksgiving Day
- Christmas Day

Calendar Day – Any day, including Saturdays, Sundays, State legal holidays, and State-mandated closings unless otherwise indicated.

Evaluation Committee – A committee established, or Authority staff member assigned to review and evaluate Proposals submitted in response to this RFP and to recommend a contract award.

Full-Time Job/Employment – means a permanent job/employment of at least 35 or more hours per week created at the Property upon the completion of construction of the proposed use, excluding full time job/employment created during the construction of the proposed use.

Initial Closing Date – means the number of days from the execution of the Purchase and Sale Agreement or Ground Lease Agreement to the end of the Permit/Approval and Financing Periods.

Joint Venture – A business undertaking by two or more entities to share risk and responsibility for a specific project.

May – Denotes that which is permissible, not mandatory.

NJEDA – New Jersey Economic Development Authority.

Proposal – Proposers timely response to the RFP including, but not limited to, the Qualifications/Experience, fully completed Offer Form Schedule, and any documentation required by the RFP.

Proposer – An individual or business entity submitting a Proposal in response to this RFP. Also see “bidder” above.

Project – The undertaking or services that are the subject of this RFP.

Real Estate Development Division – a Department of the New Jersey Economic Development Authority.

Request for Proposal (RFP) – This series of documents, which establish the offer bidding and Agreement requirements and solicits Proposals to meet the needs of the Authority, as identified herein, and includes, but is not limited to, the RFP, specimen Agreements, Offer Form, attachments and addenda.

Shall or Must – Denotes that which is a mandatory requirement. Failure to meet a mandatory material requirement will result in the rejection of a Proposal as non-responsive.

Should or Will – Denotes that which is recommended, not mandatory.

State – State of New Jersey.

Small business – Not applicable.

Subcontractor – Not Applicable.

Use Variance – means an approval pursuant to N.J.S.A. 40:55D-70d of the municipal land use law that will be granted by the appropriate local municipal body.

3. NJEDA BACKGROUND

The New Jersey Economic Development Authority serves as the State's principal agency for driving economic growth. The Authority is committed to making New Jersey a national model for inclusive and sustainable economic development by focusing on key strategies to help build strong and dynamic communities, create good jobs for New Jersey residents and provide pathways to a stronger and fairer economy. Through partnerships with a diverse range of stakeholders, the Authority creates and implements initiatives to enhance the economic vitality and quality of life in the State and strengthen New Jersey's long-term economic competitiveness.

Since its inception in 1974, the Authority has provided just over \$28.4 billion dollars in assistance, to over 13,500 projects. These projects have created an estimated 376,387 jobs within the State. In 2018, the Authority provided over \$760 million dollars in assistance to 488 projects and created more than 6,400 new full-time jobs and 2,370 construction jobs. In fact, since 1979, we've developed over 10 million square feet of new and renovated space, valued at more than \$1.5 billion dollars.

Through its Real Estate Development Division, NJEDA offers a full range of real estate development services, which includes, but is not limited to, assembling land, development planning, financing, designing, constructing, owning and managing facilities. This full-service approach produces considerable financing advantages and cost benefits that make it easier and more affordable for companies to locate and stay in New Jersey.

4. PROPERTY BACKGROUND

As part of this RFP, NJEDA has posted information within its possession regarding the Property, which includes the following:

a. Property Description and Deeds

Parcel 1 includes ±23.786 acres of vacant land and Parcel 2 includes ±2.290 acres and a retention basin. The deeds to the Property are posted as part of **Exhibit A-1**. In addition, the New Jersey Department of Transportation deed taking a portion of Parcel 1 is posted as **Exhibit A-2**.

The retention basin on Parcel 2 may serve as storm water retention for Parcel 1. Responses to the RFP must include an offer to purchase or lease **BOTH** Parcels 1 and 2.

IMPORTANT: An offer to purchase or lease that does not include BOTH Parcels 1 and 2 will be considered non-responsive and shall not be considered.

b. Survey

The survey within NJEDA's possession is posted as **Exhibit B** of this RFP.

c. Zoning

The Property is within a O-R, Mid-Rise Office Research District of the North Brunswick land use ordinance, see <https://ecode360.com/8533540>. The current publicly available land use ordinance for North Brunswick can be found here: <http://ecode360.com/8532410>. NJEDA provides this information as a convenience only. Proposer must verify the Property's current zoning.

d. Easements

i. Storm Water Easement

Parcel 2 serves as a retention basin to the adjoining DeVry University site. In addition, there is an easement that permits Parcel 2 to serve as off-site storm water retention for Parcel 1. A copy of the easement is posted as **Exhibit C-1** to this RFP.

ii. Public Service Gas & Electric Easement

Parcel 2 is subject to a PSE&G easement for powerlines on the eastern border of Parcel 2. A copy of the easement is posted as **Exhibit C-2** to this RFP.

iii. Unrecorded Waterline Easement

Parcel 1 has an active water line, originally installed by Johnson and Johnson, a predecessor in title to NJEDA, that runs across the site from east to west. The location of the water line is estimated on the survey which is posted in **Exhibit B**. The land-owner of the adjoining property, Block 252, Lot 6.03, asserts that it is the dominant estate of the unrecorded water line easement.

All Proposers, by submitting and executing the Offer Form and Certification, **Exhibit G** and **Exhibit G-1**, certify that Proposer has reviewed the survey made available as part of this RFP and has considered it in submitting a Proposal in response to the RFP.

e. Environmental

Avery Dennison (formerly known as Permacel), former owner of 621 Route 1 South, Block 194, Lot 29.04, which is adjacent to the north side of the Bioscience Center of New Jersey, 675 Route 1 South, North Brunswick, New Jersey (Bioscience Center), has performed ongoing environmental remedial investigation associated with the former Permacel facility

and property, and continues to perform groundwater investigations within the Bioscience Center property and Parcel 1. Avery Dennison, the environmental “responsible party,” has advised NJEDA that contamination of the groundwater (metals identified as nickel and beryllium) has migrated from the Permacel property onto the Bioscience Center and Parcel 1. Nickel and beryllium are known contaminants of concern (metals) from Permacel’s industrial activities that Avery Dennison is currently in the process of investigating.

Avery Dennison’s licensed site remediation professional (LSRP) has advised NJEDA that the concentrations of nickel and beryllium detected in the groundwater samples collected from the wells located within the Bioscience Center and Parcel 1 marginally exceed the applicable New Jersey Department of Environmental Protection’s (NJDEP) Groundwater Quality Standards (“GWQS”), and that the presumed remedy is monitored natural attenuation. Avery Dennison proposes that groundwater monitoring be performed into the future until such time that the concentrations are found to be acceptable through natural attenuation.

Environmental information regarding the Property is posted as **Exhibit D** of this RFP and the Proposer shall execute a certification stating that it has reviewed the environmental information made available and has considered it in submitting a response to the RFP.

f. Title Information

In conjunction with this RFP, NJEDA has posted title information regarding the Property within its possession as **Exhibit E**. The Proposer by submitting and executing the Offer Form and Certification, **Exhibit G**, certifies that Proposer has reviewed the posted title information and has considered it in submitting a response to the RFP.

g. Development and Easement Agreements

i. Developer Agreement with New Jersey Department of Transportation (NJDOT)

The Property will be subject to an Assignment, Assumption and Modification of Developer Agreement with NJDOT which is posted as **Exhibit F-1**. The successful Proposer must accept the terms of the NJDOT development agreement as part of the Agreement for the Property as provided in **Exhibit F-1(a)**. The Proposer, by submitting and executing the Offer Form and Certification, **Exhibit G**, certifies that Proposer has reviewed the NJDOT development agreement and has considered it in submitting a response to the RFP.

ii. Assignment and Assumption of the Consent Agreement Between DKM Properties and Artken

The Property will be subject to an Assignment and Assumption of the Consent Agreement Between DKM Properties and Artken. The Consent Agreement Between DKM Properties and Artken (Consent Agreement) is posted as **Exhibit F-2** to this RFP. The successful

Proposer must accept the terms of the Consent Agreement as part of the Agreement for the Property and enter into an Assignment and Assumption of the Consent Agreement with Artken. The Proposer by submitting and executing the Offer Form and Certification, **Exhibit G**, certifies that Proposer has reviewed the Consent Agreement and has considered it in submitting a response to the RFP.

5. SUCCESSFUL PROPOSER RESPONSIBLE FOR REQUIRED APPROVALS, LICENSES, AND PERMITS, AS APPLICABLE

Any and all proposed uses must adhere to any and all applicable federal, state, county and municipal laws, regulations, ordinances and any other applicable requirements required to develop the Property for the proposed use included in the RFP.

Sale or Lease of the Property in no way guarantees any required state, county or municipal approval, license, permit, or the financial viability of the Proposer's proposed project. The successful Proposer will be responsible for obtaining any and all necessary approvals, licenses, permits, for Proposer's proposed project.

6. PROPOSAL SUBMISSION

a. Key Events

The dates below are provided to interested Proposers for planning purposes only. These are estimated timeline dates and do not represent firm commitment dates by which NJEDA will take action.

- Question and Answer Period Ends: **January 17, 2022 at 1:00 PM (EST)**
- If required, Addendum with Q&A Responses, estimated: **February 1, 2022.**
- Proposals Due: **March 16, 2022 at or before 1:00 PM (EST)**
- Estimated Recommendation for Award: **May 11, 2022**
- Agreement Execution Date: **June 1, 2022**

b. Pre-proposal Conference / Site Tour

Prior to submitting an Offer, NJEDA strongly recommends that all interested Proposers tour the Property. A Proposer may take an unaccompanied site tour of the Property, at its own risk, between **December 13, 2021 and January 17, 2022.**

Any questions as a result of the Proposer's site tour must be presented as required under Section 6c of this RFP.

NJEDA will not provide special consideration after responses to this RFP are opened because the Proposer failed to be knowledgeable of the Property's condition, the Township of North Brunswick's land use ordinance, any other municipal, county, state or federal requirements, and the underlying agreements.

By submitting an Offer, the Proposer represents and agrees that it has satisfied itself, from its own investigation and site inspection, of the Property's condition.

c. Question and Answer Period

The Authority will electronically accept written questions and inquiries from all potential Proposer(s) at QARED@njeda.com up to **1:00 p.m.** on **January 17, 2022**. Phone calls/faxes shall not be accepted.

The subject line of the e-mail should state:

“QUESTIONS – RERFP-0000044-P/GL”

- Questions should be directly tied to the RFP and asked in consecutive order, from beginning to end, following the organization of the RFP.
- Each question should begin by referencing the RFP page number and Section number to which it relates.

IMPORTANT: Questions regarding the Agreements (Exhibits H-1 and H-2) and any requested exceptions or modifications to their mandatory requirements must be posed during the Electronic Question and Answer Period and should contain the Proposer's suggested revisions. The Authority shall be under no obligation to grant or accept any requested changes (i.e., exception requests) to the Specimen Purchase and Sale Agreement and/or the Ground Lease and will post all answers in the Addendum.

A Proposer must not contact the Authority's Real Estate Development Division or any other staff/board member directly, in person, by telephone or by e-mail concerning this RFP.

IMPORTANT: Any Proposer or firm attempting to contact government officials (elected or appointed), NJEDA Board members, and/or NJEDA staff in an effort to influence the selection process shall be immediately disqualified.

The cut-off date for electronic questions and inquiries relating to this RFP is **January 17, 2022 at 1:00 p.m.**

All Questions received, and Answers given in response to this RFP will be answered in the form of an Addendum. Addenda, if any, will be posted on the Authority's website: <https://www.njeda.com/bidding/#REOPP>, after the posted cut-off date. (See RFP Section 6 f.i. for further information.)

d. Submission of Proposals

IMPORTANT: To be considered, Proposals must be received by the Authority at

Request for Proposals to Purchase or Ground Lease Block 252, Lots 1.06 and 1.03, Middlesex County, North Brunswick, NJ

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the designated location by the date and time indicated on the cover page of the RFP. Proposals received after the specified due date and time shall not be considered.

All proposals, once opened, become property of the Authority and cannot be returned to the Proposer. All proposals must be submitted as described below.

i. Electronic Submission (strongly preferred)

Proposers shall submit a complete, signed electronic proposal in Adobe Acrobat Reader .pdf read-only format. The submission must be viewable by Authority evaluators.

The subject line of the proposal and all associated documents submitted must be clearly labeled. **Each file/document uploaded (proposal, attachments, submittals, etc.) should be named using the following format:**

“Proposer’s Company Name – Proposal Submission “RERFP-000044-P/GL” file/document submissions.

Electronic proposals submissions must be uploaded to the Authority’s ShareFile application using the following link:

<https://njeda.sharefile.com/r-raf174536a6844c41be4c61393b0fc654>

NOTE: Copy and paste the ShareFile link above into your web browser, press enter and provide information as prompted.

It is highly recommended that you initiate upload of your Proposal a minimum of four (4) hours prior to the due date and time. This will allow time to identify and troubleshoot any issues that may arise when using the ShareFile application. The Authority shall not be responsible for data transfer delays.

Questions regarding the electronic submission of proposals (upload of documents) may be directed to QARED@njeda.com.

ii. Electronic Signatures

Pursuant to written policy, the Authority allows documents to be signed electronically and hereby agrees to be bound by such electronic signatures. Proposers submitting Proposals electronically, as signatory to the documents, may sign the required forms of this Bid Solicitation, electronically, and agree to be bound by the electronic signatures. The Authority will accept the following types of electronic signatures: (1) Within Microsoft Word, an individual can go to the “Insert” ribbon at the top of the screen, then within the “Text” section go to the “Signature Line” and enter the information, which creates a security procedure/record attributable to the person signing when transmitted via e-mail

or other electronic transfer or; (2) Within Adobe Acrobat DC, go to the “Fill & Sign” “Stamps-Dynamics” or “Certificates” within the “Tools” ribbon and enter the information, which creates a security procedure/record attributable to the person signing when transmitted via e-mail or other electronic transfer; or (3) Digital signatures from Adobe Acrobat DC or produced via similar signature authenticating program (i.e., DocuSign or similar software), which creates a security procedure/record attributable to the person signing.

By submitting an electronic signature, the Proposer is agreeing to be bound by the electronic signature.

Scanned physical signatures will also be accepted, provided that the forms are otherwise properly completed.

This practice applies only to Proposals submitted electronically and the forms listed above. Both electronic signatures and scanned physical signatures will also be accepted, provided that the forms are otherwise properly completed.

Proposers submitting Proposals in hard copy format must provide forms with original, physical signatures, otherwise the Proposal may be deemed non-responsive per Hard Copy Proposal Submission, Section 6.e., below.

e. Hard Copy Proposal Submission

If submitting a hard copy proposal, it must be signed in ink, delivered in a securely SEALED envelope/package, clearly labeled with the RFP Number, Title, proposal due date and proposer name and address, as indicated below.

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Proposals - Due Date
Proposer’s Name and Address

All hard copy submissions of Proposal packages must include the following:

- one (1) original Proposal with all the required signatures,
- one USB drive or compact disc including 2 electronic files:
 - one read-only” PDF file containing the complete signed electronic Proposal including all attachments
 - one “read-only” PDF file containing the Fee Schedule/Offer

Hard copy proposals must be delivered to the following address:

Regular Mail services at:

Real Estate Division - Attn: Cathleen A. Hamilton-Program Manager
New Jersey Economic Development Authority

P.O. Box 990
Trenton, NJ 08625-0990

Overnight delivery service at:

Real Estate Division - Attn: Cathleen A. Hamilton-Program Manager
New Jersey Economic Development Authority
36 West State Street
Trenton, NJ 08625-0990

Directions to this location can be found at: <https://www.njeda.com/about/>

The Authority shall not be responsible for delivery/postal service delays. Postmark dates will not be considered in honoring date and time of receipt. Proposers using the United States Postal Service for delivery should allow additional time to ensure the proposal is received on time, since postal deliveries are not routed directly to the Authority.

PROPOSALS SUBMITTED BY FACSIMILE WILL NOT BE CONSIDERED.

ANY PROPOSAL NOT RECEIVED ON TIME AT THE LOCATION INDICATED WILL BE AUTOMATICALLY REJECTED.

THE AUTHORITY WILL NOT BE RESPONSIBLE FOR LATE POSTAL OR DELIVERY SERVICE'S FAILURE TO DELIVER IN A TIMELY MANNER.

PROPOSALS NOT RECEIVED BY THE DUE DATE AND TIME SPECIFIED IN THE RFP SHALL NOT BE CONSIDERED, REGARDLESS OF METHOD OF SUBMISSION.

i. Offer Adjustment in Hard Copy Proposals

Proposal prices must be typed or written in ink. Any price change (including "white-outs") must be initialed. Failure to initial price changes shall preclude a contract award from being made to the Proposer(s).

ii. Public Opening of Offers

The Offers will be publicly opened as follows:

Date and Time: **March 16, 2022 at 1 p.m.**
Location: New Jersey Economic Development Authority
36 West State Street
Trenton, NJ 08625

It is strongly recommended that Proposers wishing to view the opening do so virtually by accessing the Microsoft Teams link which will be active on the date and time of the opening and posted on the NJEDA website at <http://www.njeda.com/rfq.asp> (Bidding Opportunities - Real Estate Properties for Sale or Lease), RERFP-0000044-P/GL

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Due to current Covid-19 restrictions, in person attendance may be limited. Attendance by Proposers is limited to one representative per firm. Accordingly, any persons wishing to attend in person are required to register with the Authority no later than **March 9, 2022**. In order to reserve space for an in person opening, Respondents must send a request to QARED@njeda.com with the subject line "RERFP-0000044 – PURCHASE OR GROUND LEASE-opening". All in person attendees will be required to comply with current Covid-19 guidelines. Proper social distancing and the wearing of masks will be enforced. No one will be allowed entrance to the building unless a facemask is worn.

IMPORTANT: The Authority will not be held responsible for any health issues that may arise as a result of attendance at the opening.

f. Additional Information

i. Addenda: Revisions to this RFP

If it becomes necessary to clarify or revise this RFP, such clarification or revision will be by addendum. Any addendum to this RFP will become part of this RFP and part of any contract awarded as a result of this RFP.

IMPORTANT: ALL RFP ADDENDA WILL BE POSTED ON THE AUTHORITY'S WEB SITE. TO ACCESS ADDENDA, THE PROPOSER MUST SELECT THE PROPOSAL NUMBER ON THE WEB PAGE AT:

<https://www.njeda.com/bidding/#REOPP>

The section of this web page is entitled "Bidding Opportunities – Real Estate Procurement Opportunities"

There are no designated dates for release of Addenda. Therefore, interested Proposers should check the Authority's "Bidding Opportunities" website daily from the time of RFP issuance through the Proposal submission due date.

NOTE: IT IS THE SOLE RESPONSIBILITY OF THE PROPOSER TO BE KNOWLEDGEABLE OF ALL ADDENDA RELATED TO THIS RFP.

ii. Proposer's Responsibility

The Proposer assumes sole responsibility for the complete effort required in submitting a Proposal in response to this RFP. No special consideration will be given after Proposals are opened because of a Proposer's failure to be knowledgeable as to all the requirements of this RFP.

iii. Cost Liability

The Authority assumes no responsibility and bears no liability for costs incurred by a Proposer in the preparation and submittal of a Proposal in response to this RFP.

iv. Open Public Records Act

Proposers should be aware that responses to this RFP will be available, upon request, for public inspection. The Authority, as an instrumentality of the State of New Jersey, is subject to the “New Jersey Open Public Records Act” (N.J.S.A. 47:1A-1 et seq.), as amended and including all applicable regulations and policies and applicable case law, including the New Jersey Right-to-Know law.

Subsequent to the Proposal submission opening, all information submitted by a Proposer in response to a solicitation is considered public information, notwithstanding any disclaimers to the contrary submitted by a Proposer except as may be exempted from public disclosure by OPRA and the common law. When the RFP contains an evaluation and/or negotiation component, the Proposal will not be subject to public disclosure until an intent to award a Contract is announced.

Any proprietary and/or confidential information in your Proposal will be redacted by the Authority. A Proposer may designate specific information as not subject to disclosure pursuant to the exceptions to OPRA found at N.J.S.A. 47:1A-1.1, when the Proposer has a good faith legal and/or factual basis for such assertion. The Authority reserves the right to make the determination as to what is proprietary or confidential and will advise the Proposer accordingly. The location in the Proposal of any such designation should be clearly stated in a cover letter and identified by Section and page number(s).

The Authority will not honor any attempt by a Proposer to designate its entire Proposal as proprietary, confidential and/or to claim copyright protection for its entire Proposal.

In the event of any challenge to the Proposer’s assertion of confidentiality with which the Authority does not concur, the Proposer shall be solely responsible for defending its designation, but in doing so, all costs and expenses associated therewith shall be the responsibility of the Proposer. The Authority assumes no such responsibility or liability.

v. Proposal Submission

On the date and time Proposals are due under the RFP, all information concerning the Proposals submitted may be publicly announced and those Proposals, except for information appropriately designated as proprietary and/or confidential, shall be available for inspection. In those cases where evaluation and/or negotiation is contemplated, only the names and addresses of the Proposer(s) submitting Proposals will be announced and the contents of the Proposals shall remain proprietary and/or confidential until an intent to award a Contract is announced.

NOTE: All Proposal submissions, once publicly opened, become property of the Authority and cannot be returned to the Proposer.

vi. Proposal Errors Before and After Opening

A Proposer may withdraw its Proposal as described below.

A Proposer(s) may request that its Proposal be withdrawn prior to the proposal submission opening. Such request must be made, in writing, and e-mailed to the Authority's Real Estate Development Division at QARED@njeda.com, referencing the Company Name, RFQ/P number, Title and how the Proposal was submitted (i.e. hard copy or uploaded to the ShareFile link). The written withdrawal request must be signed and submitted by a duly authorized representative of the bidding entity to be valid.

If the request is granted, the Proposer(s) may submit a revised hard copy or upload a revised Proposal to the ShareFile link provided in Section 6.d.i., as long as the proposal is received prior to the announced date and time for proposal submission and at the location or ShareFile link specified. Hard copy Proposals requesting and granted withdrawal will be returned to the Proposer unopened. Electronically submitted proposals requesting and granted withdrawal, will not be opened and will not be evaluated by the Authority.

If, after the proposal submission opening but before contract award, a Proposer(s) discovers an error in its Proposal, the Proposer(s) may make a written request to the Real Estate Development Division, QARED@njeda.com referencing the Company Name, RFQ/P number and Title and how the Proposal was submitted (i.e., hard copy or uploaded to the ShareFile link) for authorization to withdraw its Proposal from consideration for award. The written withdrawal request must be signed and submitted by a duly authorized representative of the bidding entity to be valid. Evidence of the Proposer's good faith in making this request shall be used in making the determination. The factors that will be considered are that the mistake is so significant that to enforce the contract resulting from the Proposal would be unconscionable; that the mistake relates to a material feature of the contract; that the mistake occurred notwithstanding the Proposer(s) exercise of reasonable care; and that the Authority will not be significantly prejudiced by granting the withdrawal of the Proposal. After the proposal submission opening, while pursuant to the provision of this section, the Proposer may request to withdraw the Proposal and the Authority may, in its sole discretion allow the Proposer to withdraw it, the Authority also may take notice of repeated or unusual requests to withdraw by a Proposer(s) and take those prior requests to withdraw into consideration when evaluating the Proposer(s) future bids or proposals.

If during a proposal evaluation process an obvious pricing error made by a potential contract awardee is found, the Authority shall issue written notice to the Proposer(s). The Proposer(s) will have five (5) days after receipt of the notice to confirm its pricing. If the Proposer fails to respond, its Proposal shall be considered withdrawn, and no further consideration shall be given it.

If it is discovered that there is an arithmetic disparity and the Proposer(s) intention is not

readily discernible from other parts of the proposal, the Authority may seek clarification from the Proposer(s) to ascertain the true intent of the proposal.

vii. Joint Venture

The Authority will **NOT** consider Proposals submitted by a joint venture for this RFP.

viii. Subcontractors

Not applicable to this RFP.

ix. Conflict of Interest

The following prohibitions shall apply to all contracts made with the Authority:

- a) No Potential Purchaser 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 Board member, 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 Board member, 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.
- b) The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by a Board member, officer or employee of the Authority from any Potential Purchaser shall be reported in writing forthwith by the Potential Purchaser to the State Attorney General.
- c) No Potential Purchaser 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 Potential Purchaser to any Board member, 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-13(g).
- d) No Potential Purchaser shall influence or attempt to influence or cause to be influenced any Board member, 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 Board member, officer or employee.

- e) No Potential Purchaser shall cause or influence, or attempt to cause or influence, any Board member, officer or employee of the Authority to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Potential Purchaser or any other person.
- f) 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.

x. Proposal Acceptance and Rejections

The Authority's staff reserves the right to reject any and all Proposals, if deemed to be in the best interest of the Authority, to request redefined Proposals from any entity responding to this RFP, to schedule interviews with no Proposers, all Proposers, or only the most highly qualified Proposers, as determined by the Authority; or to request clarifications of any portion of the Proposal received. Further, the Authority's staff reserves the right, at its sole discretion, to waive minor elements of non-compliance of any entity's Proposal, regarding the requirements outlined in this RFP. The Authority retains the discretion to modify, expand or delete any portion of this RFP or terminate this RFP process at any time.

7. PROPOSAL PREPARATION AND SUBMISSION

a. General Information

Proposals that conflict with those terms and conditions contained in this RFP or the Agreements, as may be amended by addenda, or that diminish the Authority's rights under any contract resulting from the RFP will be considered null and void. The Authority is not responsible for identifying conflicting terms and conditions before issuing a contract award. If prior to the notice of intent to award, the Authority notifies the Proposer of any such term or condition and the conflict it poses, the Authority may require the Proposer to either withdraw it or withdraw its Proposal.

After award of contract:

- i. if conflict arises between a supplemental term or condition included in the Proposal and a term or condition of the RFP, the term or condition of the Authority's Agreement, **Exhibit H-1** or **H-2** and/or the Authority's RFP will prevail; and
- ii. if the result of the application of a supplemental term or condition included in the Proposal would diminish the Authority's rights, the supplemental term or condition will be considered null and void.

The Proposer is advised to thoroughly read and follow all instructions contained in this RFP in preparing and submitting its Proposal. By submitting a Proposal and executing

the Offer Form and Certification, **Exhibit G** and, if proposing a Ground Lease **Exhibit G-1** must be included with **Exhibit G**, the Proposer accepts and acknowledges the terms of the RFP, including all Addenda and Offer Form. Use of URLs in a Proposal should be kept to a minimum and may not be used to satisfy any material term of an RFP. If a preprinted or other document included as part of the Proposal contains a URL, a printed copy of the URL page shall be provided and will be considered as part of the Proposal. Additional URLs on the copy of the URL page shall not be considered as part of the Proposal unless a copy of those URL pages are included in the Proposal.

b. Non-collusion

By submitting a Proposal, the Proposer certifies as follows:

- i. The Offer amount of its Proposal have been arrived at independently and without consultation, communication or agreement with any other Proposer or potential Proposer.
- ii. Neither the price(s) nor the amount of its Proposal, and neither the approximate price(s) nor approximate amount of this Proposal, have been disclosed to any other firm or person who is a Proposer or potential Proposer, and they will not be disclosed before the Proposal submission.
- iii. No attempt has been made or will be made to induce any firm or person to refrain from bidding on this Agreement, or to submit a Proposal higher than this Proposal, or to submit any intentionally high or noncompetitive Proposal or other form of complementary Proposal.
- iv. The Proposal of the firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Proposal.
- v. The Proposer, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last five (5) years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

The forms discussed herein and required for submission of a Proposal in response to this RFP are available on the web at <https://www.njeda.com/bidding/#REOPP> , see RFP #RERFP-000044-P/GL, unless noted otherwise.

c. Proposal Content Submission

IMPORTANT: Proposals will only be scored on the documentation provided in the Proposal. It is important to include all requested documentation for evaluation and scoring purposes.

NJEDA recommends that Proposers use the Checklist - **Exhibit J** as the Table of Contents for the Proposal with the appropriate boxes checked and included as part of the Proposal. The Checklist contains a list of items which are either **Mandatory** (“shall” or “must”) or **Recommended** (“may” or “should”) to be included with the Proposal.

In addition, please also carefully review the Compliance **Exhibit I** for compliance documents that are mandatory or recommended to include in the Proposal.

Items which are mandatory submittals are noted below by the word “must” and “shall”. Items which are not mandatory submittals are noted below by the word “should” and “may”.

i. Proposal Submittal Package Content

The Proposal must include the following:

1. Offer Form and Certification

The Offer Form and Certification is posted as **Exhibit G** and **Exhibit G-1** to this RFP. **Exhibit G-1** is only required if the offer is for Ground Lease. The Offer must be SIGNED in accordance with Section 6.d.ii. or Section 6.e. above. The Proposer must certify that it is willing to execute the Agreement as amended by the final Q&A responses and any addenda.

2. Narrative of Proposer’s Development Experience of Similar Projects as Proposed in this RFP

The Proposer shall submit a narrative of its real estate development experience sufficient to demonstrate its qualifications to develop the “Proposed Use of the Property” it will describe in response to Section 7.c.i.3 in its Proposal.

3. Narrative of the Proposed Use for the Property

The submission must include a narrative that describes the following:

a. Proposed Use

Describe the proposed use of the Property, which should include the type of building – including total square feet, number of floors, and type of activities within the building, and proposed site improvements and parking spaces.

b. Use Variance(s)

The Proposal must describe whether the proposed use will require a use variance(s), if any, and provide the citation to the appropriate subsection(s) under N.J.S.A. 40:55D-70d

which may authorize the variance.

c. Bulk Variance(s)

The Proposal must describe the number and type of bulk variances, if any, that may be required for the proposed use and provide the citation to the appropriate subsections under N.J.S.A. 40:55D-70c which may authorize each variance.

d. Full Time Jobs/Employment Upon Completion of the Proposed Use

The Proposal must provide an estimated number of full-time jobs/employment to be created at the Property upon completion of construction of the proposed use included in the Proposal.

IMPORTANT: The successful Proposer will be held to a minimum job creation number based on the estimate included in the Proposal which will be a condition of the Agreement. The Agreement will provide for monetary penalties should the successful Proposer fail to meet the stated permanent full-time job creation goals. Therefore, the successful Proposer should be prepared to commit to its job creation estimate.

4. Project Schedule

The submission shall include a Gantt chart which includes the activities and time periods to complete all the required items to achieve the closing for the sale or lease of the Property, which must include, but is not limited to:

- Execution of the Purchase and Sale Agreement or Ground Lease Agreement for the Property
- Due Diligence Investigation Period, which should include environmental, title and land use related items
- Permit and Approval Period (i.e., obtaining zoning, planning and other Approvals)
 - Zoning, Planning, Environmental, and Other Approvals
 - Municipal
 - County (if applicable)
 - State (if applicable)
 - Environmental Approvals (if applicable)
 - Other Applicable Approvals
- Financing Period (obtaining final financing commitments, if applicable)

- Initial Closing Date
- For proposed Ground Leases, the schedule should also include:
 - Construction Commencement
 - Construction Completion
 - Property Purchase

The Gantt chart must count the number of Business Days for each task (and/or subtasks) and include a total number of Business Days from the execution of the Agreement to the Initial Closing Date.

NOTE: A schedule with a proposed Initial Closing Date greater than 498 Business Days from the execution of the Agreement will be deemed unresponsive.

IMPORTANT: As provided in the Agreement(s) (see section 5 of the Purchase and Sale Agreement and Section 3.3 of the Ground Lease Agreement) any request to extend the time for Permit and Approvals Period will be at the sole discretion of NJEDA.

5. Evidence of Ability to Finance

The submission must include evidence that the Proposer will have the financial ability to purchase or ground lease the Property by the Initial Closing Date proposed in the Project Schedule. Such evidence may include, but is not limited to the following:

- Statement from a certified public accountant for the Proposer which provides that after reviewing the Proposer's current balance sheet (not more than 60 days old from the submission date), the Proposer has sufficient liquid assets to purchase or ground lease the Property as stated in the Offer
- Evidence of a line of credit or similar facility from a financial institution, regulated by the Federal Deposit Insurance Corporation, which demonstrates that the line of credit or similar facility has sufficient funds available to purchase or ground lease the Property as stated in the Offer
- Publicly filed financial statement, no more than 60 days old from the submission date, that Proposer has sufficient liquid assets and/or credit to purchase or ground lease the Property as stated in the Offer
- Initial commitment letters, with the Proposer, from an equity investor and/or lender, no more than 60 days old from the submission date, providing sufficient funds to purchase or ground lease the Property as stated in the Offer. The commitment letters must provide, at the very least, the rate, amortization, term of the financing, proposed schedule for repayment, and a schedule of how the funds will be made available to the Proposer.

- Documentation combining any of the above-listed items

This submittal item DOES NOT require a FINAL financial commitment to purchase or ground lease the Property. This submittal item requires the Proposer to provide evidence that the Proposer will have the ability to finance the Proposed Use of the Property and enter into the purchase or ground lease of the Property by the Initial Closing Date.

ii. Compliance Documentation

IMPORTANT: READ SECTIONS BELOW FOR ALL MANDATORY COMPLIANCE DOCUMENTS THAT ARE REQUIRED TO BE SUBMITTED WITH THE BID PROPOSAL.

IMPORTANT: FAILURE TO SUBMIT THE MANDATORY COMPLIANCE DOCUMENTS, SIGNED WITH THE BID PROPOSAL WILL RESULT IN THE PROPOSAL BEING DEEMED NON-RESPONSIVE, RESULTING IN REJECTION OF THE BID.

The Sections below also identify ALL other documents required to be submitted **prior to contract award**.

NOTE: SEE EXHIBIT I FOR ALL STATE OF NEW JERSEY COMPLIANCE REQUIREMENTS UNDER THIS CONTRACT.

The successful Proposer agrees that it shall comply with all requirements of these provisions. If the successful firm fails to comply with the requirements of these provisions, the NJEDA may declare any Contract for these services void.

Proposers must submit Ownership Disclosure Form (**Exhibit I, item 2**) with the Proposal.

Proposers are encouraged to submit all compliance documentation, as specified in this section, "Compliance," with the Proposal. Only the successful Proposer is required to complete and submit Public Law 2005, c.51 and Executive Order 117 (Corzine - 2008), "Political Contributions and Ownership Disclosure". All remaining compliance documents should be fully completed, signed and submitted **WITH** the Proposal.

IMPORTANT: DO NOT LEAVE A COMPLIANCE DOCUMENT BLANK / INCOMPLETE.

If you believe a particular compliance document is not applicable to your firm, you are encouraged to submit a question during the "Questions" period, specified in Section III of this RFP. If the document does not apply to your company, you must complete all information, mark those areas that are not applicable with the abbreviation "N/A", sign and return the document with your Proposal submission. Failure to do so may result in

rejection of the Proposal.

1. Mandatory Compliance to Be Submitted with the Proposal - Ownership Disclosure Form (Exhibit I, Item 2)

IMPORTANT: Failure to include this completed form in the Proposal will make the Proposal nonresponsive and the Proposal will not be scored and/or ranked.

In the event the Proposer is a corporation, partnership or sole proprietorship, the Proposer must complete and sign an Ownership Disclosure Form. A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Proposal.

A Proposer's failure to submit the completed form with its Proposal will result in the rejection of the Proposal as non-responsive and preclude the award of a contract to said Proposer. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Proposal.

NOTE: If the Proposer is a limited partnership, each Ownership Disclosure form must be signed by a general partner. Failure to comply will result in rejection of the Proposal.

NOTE: If the Proposer is a limited partnership, each Disclosure of Investment Activities in Iran form must be signed by a general partner.

2. Recommended Compliance to Be Submitted with the Proposal

As noted in Section 7.c.ii., Proposers are encouraged to submit all compliance documentation, as specified in Exhibit I will be required from the selected Proposer prior to executing the Contract.

a. Disclosure of Investment Activity in Iran Form (Exhibit I, Item 3)

Pursuant to N.J.S.A. 52:32-58, the Proposer must utilize this Disclosure of Investment Activities in Iran form to certify that neither the Proposer, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Proposer, nor one of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Proposer is unable to so certify, the Proposer shall provide a detailed and precise description of such activities as directed on the form.

NOTE: If the Proposer is a limited partnership, each Disclosure of Investment Activities in Iran form must be signed by a general partner.

b. Business Registration (Exhibit I, Item 4)

A Proposer must have a valid Business Registration Certificate (“BRC”) issued by the Department of Treasury, Division of Revenue and Enterprise Services, prior to the award of a contract. To facilitate the Proposal evaluation and contract award process, the Proposer should submit a copy of its valid BRC with its Proposal.

A Proposer otherwise identified by the Authority as a responsive and responsible Proposer but that was not business registered at the time of submission of its Proposal must be so registered and in possession of a valid BRC by a deadline to be specified in writing by the Authority. A Proposer who fails to comply with this requirement by the deadline specified by the Authority will be deemed ineligible for contract award. Under any circumstance, the Authority will rely upon information available from computerized systems maintained by the State as a basis to independently verify compliance with the requirement for business registration. See the following link:

<http://www.state.nj.us/treasury/revenue/busregcert.shtml>

A Proposer receiving a contract award as a result of this procurement will be required to maintain a valid business registration with the Division of Revenue and Enterprise Services for the duration of the executed contract, inclusive of any contract extensions.

c. NJEDA Legal Questionnaire (Exhibit I, Item 5)

The Proposer should submit the NJEDA Legal Questionnaire, with its Proposal, to provide a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings. Persons (entities or individuals) contracting with NJEDA are subject to the Authority’s Disqualification/Debarment Regulations (the “Regulations”), which are set forth in N.J.A.C. 19:30-2.1, et seq. Proposers are required to answer background questions (“Legal Questionnaire”) pertaining to causes that may lead to debarment, disqualification, or suspension from eligibility under the Regulations and Executive Orders 34 (Byrne 1976) and 189 (Kean 1988) after consideration of all relevant mitigating factors. Governmental entities are not required to submit this Legal Questionnaire and may leave it empty.

If a Proposer does not submit the form with the Proposal, the Proposer must comply within seven (7) business days of a request by the Authority or the Authority may deem the Proposal nonresponsive.

d. Requirements of Public Law 2005, Chapter 51, N.J.S.A. 19:44A-20.13 - N.J.S.A. 19:44A-20.25 (Formerly Executive Order No. 134) and Executive Orders No. 117 (2008) (Exhibit I, Item 6)

- i. 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 Lieutenant Governor, to any State, county, municipal political party committee, or to any legislative leadership committee during certain specified time periods.

- ii. Prior to awarding any contract or agreement to any Business Entity, the Business Entity proposed as the intended awardee of the contract shall submit the Certification and Disclosure form, certifying that no contributions prohibited by either Chapter 51 or Executive Order No. 117 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 means of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7.

The required form and instructions shall be provided to the intended awardee for completion and submission. Upon receipt of a Notice of Intent to Award a Contract, the intended awardee shall submit to the Authority, in care of the Real Estate Division-Program Manager-Legal, the Certification and Disclosure(s) within five (5) business days of the Authority’s request. Failure to submit the required forms will preclude award of a contract under this RFP, as well as future contract opportunities.

- iii. Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the contract, and any extension(s) thereof, at the time any such contribution is made.

e. New Jersey Tax Clearance Certificate (Exhibit I, Item 7)

In conjunction with Division of Taxation/Department of Treasury authority under the tax clearance certificate program, the NJEDA will require a Tax Clearance Certificate from any Tenant, Landlord, Purchaser or Seller who may be receiving a credit at closing or rent adjustment from NJEDA. Accordingly, Tax Clearance Certificate issued by the Division of Taxation of the State of New Jersey can be obtained by completing the required information via the following link:

https://www16.state.nj.us/NJ_PREMIER_EBIZ/jsp/home.jsp

8. PROPOSAL EVALUATION

a. Right to Waive

The Authority reserves the right to waive minor irregularities. The Authority also reserves the right to waive a requirement provided that all the following requirements are met:

- the requirement is not mandated by law
- all of the otherwise responsive Proposals failed to meet the requirement
- in the sole discretion of the Authority, the failure to comply with the requirement does not materially affect the procurement or the Authority's interests associated with the procurement.

b. Authority's Right of Final Proposal Acceptance

The Authority reserves the right to reject any or all Proposals, or to award in whole or in part if deemed to be in the best interest of the Authority to do so. The Authority shall have power to award orders or contracts to the Proposer(s) best meeting all specifications and conditions.

c. Authority's Right to Request Further Information

The Authority reserves the right to request all information which may assist the Authority in making a contract award, including factors necessary to evaluate the Proposer's financial capabilities to perform the contract. Further, the Authority reserves the right to request a Proposer to explain, in detail, how the Proposal price was determined.

d. Proposal Evaluation Committee

Proposals may be evaluated by an Evaluation Committee composed of the Authority's staff and management and possibly other state agencies and/or industry Subject Matter Experts (SMEs) to evaluate, score and rank Proposals received in response to this RFP, and the criteria established herein.

e. Oral Presentation and / or Clarification of Proposal

After the submission of Proposals, unless requested by the Authority as noted below, vendor contact with the Authority is still not permitted.

After the Proposals are reviewed, one, some or all of the Proposers may be asked to clarify certain aspects of their Proposals. A request for clarification may be made in order to resolve minor ambiguities, irregularities, informalities or clerical errors. Clarifications cannot correct any deficiencies or material omissions or revise or modify a Proposal,

except to the extent that correction of apparent clerical mistakes results in a modification.

f. Evaluation Criteria

Selection of the successful Proposer will be based upon a determination of which Proposal is the most favorable to the Authority, considering the criteria listed below, price and other factors considered. The evaluation criteria categories may be used to develop more detailed evaluation criteria to be used in the evaluation process.

The following evaluation criteria categories, not necessarily listed in order of significance, will be used to evaluate Proposals received in response to the RFP:

Item	Total Eligible Points
i. Purchase Price or Present Value of Ground Lease Payments and final purchase price, discounted at 5%	50
ii. Proposed Use Does Not Require a Use Variance	25
iii. Estimated Number of Bulk Variances for the Proposed Use	10
iv. Total Number of Business Days Until Initial Closing Date (from Execution of Agreement Until Initial Closing Date)	10
v. Estimated Number of Full-Time Permanent Jobs on the Property	5

g. Explanation of Scoring Criteria

- i. Purchase Price or Ground Lease Revenue. The purchase price or net present value ground lease revenue will be ranked from highest to lowest as follows: the highest purchase price or net present value ground lease revenue will receive the highest score and the lowest purchase price or net present of ground lease revenue will receive the lowest score. Please note that nominal ground lease rent over the term and final purchase price will be discounted to present value using a 5% discount rate.
- ii. Proposed Use Does Not Need a Use Variance. If the proposed use does not require a use variance, the Offer will receive 25 points. If the proposed use will require a use variance, the Offer will receive 0 points.

- iii. Estimated Number of Bulk Variances for the Proposed Use. The Proposal with the least amount of estimated bulk variances will receive the highest score and the Proposal with the most bulk variances will receive the lowest score.
- iv. Total Number of Business Days Until Initial Closing Date. The project schedule Initial Closing Date will be ranked from highest to lowest as follows: the Proposal with the least number of business days to the Initial Closing Date will have the highest score and the Proposal with the most Business Days to the Initial Closing Date will receive the lowest score.
- v. Estimated Number of Full-Time Jobs/Employment on the Property. The estimated number of full-time jobs on the site will be ranked from highest to lowest as follows: the Proposal with the most full-time jobs will receive the highest score and the Proposal with the least amount of full-time jobs will receive the lowest score.

h. Eligibility Criteria

i. Proposer's Experience

The Proposer shall submit a narrative describing the respondent's firm, its history and operations, and the respondent's real estate development experience, within the last five (5) years, which includes developing at least 1 project of similar size and scope sufficient to demonstrate its qualifications to develop the "Proposed Use of the Property" it will describe in response to Section 7.c.i.3 in its Proposal. For the purposes of this RFP, "similar size and scope" means a project of the same square footage, within plus or minus 10% of the square feet of Proposed Use of the Property, along with the required parking and other improvements.

NOTE: If the Proposal DOES NOT include the Proposer's experience, the Proposal will be deemed non-compliant and it will not be scored.

ii. Evidence of Ability to Finance

NOTE: If the Proposal DOES NOT include evidence of the ability to finance the purchase or ground lease of the Property as outlined in section 5, the Offer will be deemed non-compliant and it will not be scored.

i. Proposal Discrepancies

In evaluating Proposals, discrepancies between words and figures will be resolved in favor of words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum of the column of

figures.

j. Evaluation of Proposals

The Evaluation Committee considers and assesses price, technical criteria, and other factors during the evaluation process. After the Evaluation Committee completes its evaluation, the Real Estate Development Division will recommend to the Senior Vice President a contract award to the responsible Proposer(s) whose Proposal, conforming to this RFP, is most advantageous to the Authority, price and other factors considered.

k. Negotiations and Best and Final Offers (BAFO)

After evaluating Proposals, the Authority may enter negotiations with one Proposer or multiple Proposers. The primary purpose of negotiations is to maximize the Authority's ability to obtain the best value based on the mandatory requirements, evaluation criteria, and cost. Multiple rounds of negotiations may be conducted with one Proposer or multiple Proposers. Negotiations will be structured by the Authority's Real Estate Development Division to safeguard information and ensure that all Proposers are treated fairly.

Similarly, the Authority's Real Estate Development Division may invite one Proposer or multiple Proposers to submit a best and final offer (BAFO). Said invitation will establish the time and place for submission of the BAFO. Any BAFO that is not equal to or higher in price than the pricing offered in the Proposer's original Proposal will be rejected as non-responsive and the Authority will revert to consideration and evaluation of the Proposer's original pricing.

If required, after review of the BAFO(s), clarification may be sought from the Proposer. The Authority's Real Estate Development Division may conduct more than one round of negotiation and/or BAFO to attain the best value for the Authority.

Negotiations will be conducted only in those circumstances where they are deemed to be in the Authority's best interests and to maximize the Authority's ability to get the best value. Therefore, the Proposer is advised to submit its best technical and price Proposal in response to this RFP since the Authority may, after evaluation, make a contract award based on the content of the initial submission, without further negotiation and/or BAFO with any Proposer.

All contacts, records of initial evaluations, any correspondence with Proposer related to any request for clarification, negotiation or BAFO, any revised technical and/or price Proposals, the Evaluation Committee Report and the Award Recommendation, will remain confidential until approved by the Board, if applicable, and/or a notice to award a contract is issued.

NOTE: If the Authority contemplates negotiation, Proposal prices will not be publicly read at the Proposal submission opening. Only the name and address of each Proposer will be publicly announced at the Proposal submission opening.

I. Recommended Award

After evaluation of Proposals and as applicable, negotiation(s) and/or BAFO(s), the Real Estate Development Division will recommend, to the Senior Vice President, the responsible Proposer whose Proposal(s), conforming to the RFP, is/are most advantageous to the Authority, price and other factors considered. The Senior Vice President may accept, reject or modify the recommendation of the Real Estate Development Division. The Real Estate Development Division may initiate additional negotiation or BAFO procedures with the selected Proposer(s).

m. Protest of Recommended Award

Any Proposer may protest a vendor selection (an award) by the New Jersey Economic Development Authority. In order for a protest to be timely, it must be submitted to the Senior Vice President – Business Support within ten (10) business days of receipt of the notification that the Proposer was not selected. In order to be considered complete, a protest must: (i) identify the Proposer that is submitting the protest, (ii) identify the contract award that is being protested, (iii) specify all grounds for the protest (including all arguments, materials and/or documents that support the protest); and, (iv) indicate whether an oral presentation is requested, and if so, the reason for the oral presentation. A Hearing Officer will be designated by the Authority's Senior Vice President – Business Support. The designated Hearing Officer will review all timely and complete Vendor protests and will have sole discretion to determine if an oral presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest.

After completing his or her review of the protest, the Hearing Officer will prepare a preliminary report, which shall be advisory in nature and not binding, and send to the Protestor. Should the Protestor dispute the findings of the preliminary "Hearing Officer Report", it will be afforded an "Exceptions Period" equal to ten (10) business days from the Authority's issuance of the preliminary "Hearing Officer Report" to refute the findings of the Hearing Officer. At the expiration of the exceptions period, the Hearing Officer will review any "Exceptions to the Hearing Officer's Report" and finalize his or her report.

The Hearing Officer will make a recommendation in his or her final "Hearing Officer Report" which will be sent with any "Exceptions to the Hearing Officer's Report" to either the Authority's Board or the Authority's Chief Executive Officer, as determined by the dollar amount of the potential award as it relates to the Authority's internal Operating Authority Approval Levels, for a final decision to award the contract. The Authority's Board of Directors or Chief Executive Officer will review the final "Hearing Officer Report" and the protestor's "Exceptions to the Hearing Officer's Report" and shall render a final decision regarding the appropriateness of the award. The action of the Authority's Board or Chief Executive Officer, to make a final decision for the award of the contract will be a final Authority action that is appealable to the Appellate Division of the Superior Court of New Jersey.

It is the Authority's intent not to award the contract until it has completed all of the review procedures described above. If, however, in the Authority's sole discretion, it is determined that such an award is necessary to support the uninterrupted and efficient business operations of the Authority; the contract may be awarded.

9. THE AGREEMENT

a. Agreements

The successful Proposer will be required to enter into a form of Agreement for Sale of Property or Ground Lease Agreement for the Property satisfactory to NJEDA. Proposers should review and refer to the Agreements which are included at **Exhibits H-1** and **H-2**.

As noted in Section 7.d., as part of the submission package, the Proposer must certify that it is willing to execute either the Purchase and Sale Agreement or the Lease Agreement as amended by the final Q&A responses.

Following the evaluation of the Proposals, the NJEDA may negotiate the terms of the Sale of Property or Ground Lease Agreement with the highest scoring Proposer. The NJEDA reserves the right to negotiate any term when the NJEDA determines that it is in the NJEDA's best interest to do so. Section 9(b) provides the only terms that will be non-negotiable.

b. Non-Negotiable Terms of the Agreements

The following terms in the Agreements will be non-negotiable:

- For either an Offer to Lease or Purchase, items that are scored in this RFP, including but not limited to:
 - If a purchase is proposed, the purchase price.
 - If a ground lease is proposed, the option payments, lease term, option payments, annual rent, and purchase price at the end of the lease term
 - Proposed Property Use included with the Offer
 - Initial Project Schedule included with the Offer
 - Number of full-time jobs that will be created at the site
 - Any extension of time permitted within the Agreements will be at the Authority's sole discretion
 - Compliance required to execute either the Purchase and Sale or the Ground Lease Agreement
- If a Purchase Offer only, the following:
 - The form of deed the Authority will provide as outlined in Article VIII
 - The Offer must be for all the Property included in the RFP
 - The Conditions of the Property/Environmental Matters of the Purchase and

Sale Agreement as outlined in Article X

- If a Ground Lease Offer only, the following:
 - The Offer to lease must include all the Property included in the RFP
 - The Tenant must purchase the Property at the end of the lease term as outlined in Article XVI
 - The Property will be leased “as-is, where-is” as outlined in Section 16.4
 - The lease will be a triple net lease as outlined in Article IV
 - No abatement of amounts due under the lease as outlined in Article IV
 - Tenant will provide indemnification as outlined in Article VIII

NOTE: Notwithstanding the above, the Authority reserves the right, in its sole and absolute discretion, to negotiate adjustments to the purchase price and/or the payments proposed under a ground lease should the Proposer’s due diligence investigations identify previously unknown or undisclosed conditions adversely impacting the value of the property.

c. Agreement Exceptions

IMPORTANT: In the event the Proposer takes exception to 1 or more points within the Agreement; it shall submit its “exceptions” in the form of a question to be submitted for consideration during the Questions and Answers Period established for this solicitation.

The Authority shall not consider any questions, exceptions or requests for changes to be made to the specimen contract at any time during the RFP process, unless identified and submitted during the Questions and Answers Period.

If submitted proposed revisions are not accepted by the Authority, a Proposer MUST NOT include the revisions again in its Proposal in response to the RFP OR the Proposal will be deemed non-responsive.

If NJEDA does accept a requested revision to the Agreement(s), it will so indicate in an answer during the electronic Question and Answer period. NJEDA will revise the terms and conditions as deemed appropriate in its sole discretion to maximize the value to NJEDA as well as to ensure an equitable process that will allow for a timely and successful closing of the sale or lease of the Property.

The Authority shall be under no obligation to grant or accept any requested changes (i.e., exceptions taken) to the specimen Agreements (**Exhibits H-1** and **H-2**).

d. Firm Offer

Any Proposal submitted in response to this RFP will be considered a firm “Offer” by the responding vendor to enter into the Agreement, as outlined in the RFP and Agreement.

By submitting an Offer in response to this RFP, the Proposer agrees to hold its Offer open for at least 120 days after the response due date. Any provision in a submitted Offer that attempts to limit or condition the time that an Offer is open for consideration by the Authority will not be binding on the Authority.

Accordingly, any Proposal submitted will indicate an acceptance by the Proposer of the form of Agreement.

e. Award

The Agreement award shall be made with reasonable promptness by written notice to the responsible Proposer, whose Proposal, conforming to this RFP is most advantageous to the Authority, price and other factors considered, as determined by the Authority in its sole discretion. Any or all Proposals may be rejected when the Authority determines that it is in the public interest to do so.

The final Agreement shall consist of this RFP, any addenda issued to this RFP, the Proposer's response, and the Agreement, **Exhibit H-1** or **H-2**, with any amendments agreed upon by the parties. The Authority reserves all rights to reject any and all responses based upon exceptions taken to the Agreements.

It is the policy of the Authority that to be considered for award, a Proposer should achieve a minimum score of 55 out of a maximum overall score of 100. The Authority shall be under no obligation to make an award to an entity which does not achieve this minimum scoring threshold.

Award of the Agreement for the sale of the Property outlined in this RFP will be subject to the selected entity entering into a form of Agreement satisfactory to the Authority. Proposers should refer to the Agreements attached to this RFP as **Exhibits H-1** and **H-2**. Proposers are encouraged to carefully review the Agreements Contract and should indicate any exceptions taken to the form of Agreement, only during the Question and Answer period described in Section 6.d. above.

The Proposer is cautioned that it shall not impose conditions under which it will conduct business with the Authority by submitting its own separate and distinct company "Standard Terms and Conditions", engagement letters, agreement(s), master agreements or forms in response to this section requirement. The Proposer shall not submit its company "Standard Terms and Conditions" with the Proposal, as they will not be considered.

Acceptance of a Proposal and award of an Agreement is subject to the approval of the Authority's Board, if applicable.