



Office of Auditor of Accounts

Request for Proposals

For

Delaware Economic Development Authority

Professional Audit Services

September 15, 2011

RFP12-CPA-01

by

State of Delaware
Office of Auditor of Accounts
Townsend Building, Suite 1
401 Federal Street
Dover, Delaware 19901

Office of Auditor of Accounts

Request for Proposals

Table of Contents

- I. Introduction
- II. Proposal Process
- III. Term of Engagement
- IV. Nature of Services Required
 - A. Engagement Cycle
 - B. Engagement Standards
 - C. Deliverables
 - D. Retention and Access to Engagement Documentation
- V. Description of the Government
 - A. Engagement Contact
 - B. Background Information
- VI. Time Requirements
 - A. Proposal Calendar
 - B. Preliminary Engagement Planning
 - C. Entrance Conference
 - D. Progress Reporting and Exit Conference
 - E. Reports
 - 1. Draft Reports
 - 2. Final Reports
- VII. Proposal Content
 - A. Technical Proposal
 - 1. Mandatory Criteria
 - 2. Technical Criteria

B. Cost Proposal

1. Transmittal Letter
2. Schedule of Professional Fees and Expenses

VIII. Evaluation Process

- A. Review of Proposals
B. Evaluation Criteria

1. Technical Qualifications
2. Cost

- C. Reservation of Rights
D. Confidentiality of Documents

IX. Contract Conditions

- A. Term
B. Compensation
C. Non-Appropriation
D. Notice of Termination
E. Formal Contract and Purchase Order
F. Indemnification
G. Compliance
H. Insurance
I. Non-Discrimination
J. Covenant Against Contingent Fees
K. Contract Documents
L. Applicable Law
M. Scope of Agreement

X. Additional Services

XI. Manner of Payment Notice

Appendices

- A. Schedule of Professional Fees and Expenses

Office of Auditor of Accounts Request for Proposals

I. Introduction

In accordance with 29 Del. C. Chapter 69, Subchapter VI, *Professional Services*, the Office of Auditor of Accounts (AOA) is distributing this Request for Proposal (RFP) to, and requesting proposals from, qualified certified public accounting firms to perform a financial audit of Delaware Economic Development Authority (DEDA) for each of the fiscal years ended June 30, 2011 and June 30, 2012.

There is no expressed or implied obligation for AOA to reimburse responding firms for any costs or expenses incurred in preparing proposals in response to this request. AOA will **not** pay any costs or expenses incurred by any firm associated with any aspect of responding to this RFP, including proposal preparation, printing, delivery, or the negotiation process. Additionally, no indirect reimbursements (e.g., in the form of credits or reductions to any agreed upon compensation) shall be made to any responding firm by AOA for any such costs or expenses.

Public notice has been provided in accordance with 29 Del. C. § 6981.

II. Proposal Process

A **mandatory** pre-proposal conference for all firms interested in submitting a proposal will be held at 10:00 a.m., September 28, 2011, in the AOA's third floor conference room in the Townsend Building, 401 Federal Street, Dover, DE 19901 to answer questions about the engagement.

All bidders who wish to bid on this proposal must be present and on time at the mandatory pre-proposal conference. **No** proposals will be accepted from bidders who either do not attend the mandatory pre-proposal conference or who are more than 10 minutes late.

After this **mandatory** pre-proposal conference, any inquiries concerning the RFP must be emailed to:

Kathleen A. O'Donnell
Chief Administrative Auditor
Kathleen.Odonnell@state.de.us

Except for confirming receipt of electronic proposals, direct contact with State of Delaware or AOA employees other than the above-referenced contact regarding this RFP is **expressly prohibited** without prior consent. Firms contacting the State of Delaware or AOA employees risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently doing business in the State of Delaware who require contact in the normal course of business.

To be considered, the *technical* proposal and the *cost* proposal **must be emailed separately** to Beth Draper (Beth.Draper@state.de.us) on or before 3:00 p.m. on October 12, 2011.

AOA reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. AOA reserves the right without prejudice to reject any or all proposals.

By submitting a bid, each proposer shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules and exhibits hereto, and has fully informed itself as to all existing conditions and limitations.

Once the selection of a firm is completed, all proposers will be notified and the executed contract will be completed reasonably thereafter.

III. Term of Engagement

The contract period is for two years, with the option to renew the contract at AOA's request for two additional years (subsequent fiscal years) subject to the satisfactory negotiation of terms (including a cost acceptable to both AOA and the selected firm) and the annual availability of an appropriation by the Legislature.

IV. Nature of Services Required

A. Engagement Cycle

The engagement entity operates on a fiscal year end June 30.

B. Engagement Standards

To meet the requirements of this RFP, the review must be performed in accordance with audit standards established by the American Institute of Certified Public Accountants and U.S. Government Accountability Office, *Government Auditing Standards*.

C. Deliverables

A detailed engagement plan and programs **must** be submitted to AOA staff for their review and approval before work can start.

The firm will need to give consideration to the DEDA's relationship to the State and applicable accounting standards.

Following the completion of the engagement, the firm must issue a written report in accordance with standards established by the American Institute of Certified Public Accountants and *Government Auditing Standards*. AOA will distribute copies of the reports to the appropriate officials.

In the report, all findings must be reported unless they are clearly inconsequential, considering both qualitative and quantitative factors. Inconsequential findings must be communicated to the engagement entity either verbally or written in a separate document,

depending on their significance. Evidence of the communication must be in the engagement documentation.

Irregularities and illegal acts. All situations or transactions that come to the firm's attention that could be indicative of fraud, abuse, illegal acts, material errors, defalcations, or other irregularities must be promptly reported to AOA. AOA will determine the appropriate course of action.

D. Retention and Access to Engagement Documentation

All engagement documentation and reports must be retained, at the firm's expense, for a minimum of three years, unless the firm is notified in writing by AOA of the need to extend the retention period. The firm will be required to make engagement documentation available, upon request, to the AOA or its designees.

In addition, the firm must respond to the reasonable inquiries of successor firms and allow the firms to review engagement documentation relating to matters of continuing engagement significance.

V. Description of the Government

A. Engagement Contact

The engagement entity's principal engagement contact will be Gary Smith of the Delaware Economic Development Office, or a designated representative, who will coordinate the assistance to the firm.

B. Background Information

- Delaware Economic Development Authority does not have a website.
- Budget Act/Bill
Section 10-03-03 of the State of Delaware Fiscal Year June 30, 2011 Budget Bill (145th General Assembly, Senate Bill Number 310) provides both general funds and appropriated special funds.
- Title 29, Chapter 50, Subchapter IV establishes the Delaware Economic Development Authority.
- Accounting System
Other than one revenue account and one holding account, DEDA does not use the Statewide accounting system, First State Financials (FSF).

VI. Time Requirements¹

A. Proposal Calendar

- Request For Proposal issued September 15, 2011
- *Mandatory* Pre-proposal conference September 28, 2011
- Due date for proposals October 12, 2011

B. Preliminary Engagement Planning

A detailed engagement plan and program(s) must be submitted to the AOA Audit Liaison no later than December 15, 2011 for fiscal year ended June 30, 2011, and September 14, 2012 for fiscal year ended June 30, 2012. The liaison will review; provide comments, if necessary; and approve the documents within 10 business days.

The fiscal records are expected to be available for review by October of each year.

C. Entrance Conference

An entrance conference must be held with the engagement entity's key personnel each fiscal year. At the entrance conference, the firm must provide the engagement entity with a time schedule for the engagement and a listing of all information needed.

D. Progress Reporting and Exit Conference

The firm must keep the engagement entity updated on the progress of the engagement. After the engagement has been completed, an exit conference must be held with the engagement entity's key personnel.

E. Reports

1. Draft Reports – Prior to obtaining management's response but after going through a supervisory and technical review, the draft report will be submitted via email to the AOA Audit Liaison on or before the following dates. The AOA Audit Liaison requires a minimum of 10 business days for review and to return any comments to the firm. Reports **must** be formatted in accordance with AOA's Style Guide.

- Fiscal Year June 30, 2011 February 15, 2012
- Fiscal Year June 30, 2012 November 1, 2012

The firm must provide an electronic version of the draft report to the engagement entity's principal contact or designee for their review and approval. The engagement entity's

¹ Firms will be evaluated on their compliance with the timetables as outlined in this section.

principal contact or designee should complete their review of the draft report as expeditiously as possible. During management review, the firm must be available to discuss the engagement report and resolve any issues. After all issues are resolved and management has approved the draft report, an electronic version of the draft report must be forwarded to AOA's assigned Audit Liaison for final review by the following dates.

- Fiscal Year June 30, 2011 March 15, 2012
- Fiscal Year June 30, 2012 November 30, 2012

2. Final Reports – Once the AOA Audit Liaison approves the report for issuance, the final report must be emailed in an unsecured PDF format to the liaison by the following dates. AOA will insert the report issuance date on the title page via Adobe Acrobat Standard and the firm will be included on the email distribution.

- Fiscal Year June 30, 2011 March 30, 2012
- Fiscal Year June 30, 2012 December 14, 2012

Report preparation and editing is the responsibility of the firm.

VII. Proposal Content

A. Technical Proposal

The purpose of the Technical Proposal is to demonstrate the qualifications, competence, and capacity of the firms seeking to perform this engagement in conformity with the requirements of this RFP. As such, the substance of proposals will carry more weight than their form or manner of presentation. The Technical Proposal must list the particular staff to be assigned to this engagement and specify an engagement approach that will meet the RFP requirements.

There must be **no** dollar units or total costs included in the technical proposal document. Inclusion of such information will result in disqualification of the proposal.

The Technical Proposal must address all the points outlined in the RFP. The Technical Proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy **all** the requirements of the RFP.

1. Mandatory Criteria

While additional data may be presented, the following items are considered mandatory and must be included in the required format. Those subjects represent the criteria against which the proposal will be evaluated.

a. Required Format

(1) Title Page

The title page must include the RFP subject; RFP reference number; firm name; contact name, address, telephone number, and e-mail address; and the date of the proposal.

(2) Table of Contents

The table of contents must clearly identify each section by page number.

(3) Transmittal Letter

The signed transmittal letter must briefly discuss the following: the proposer's understanding of the work to be done, the commitment to perform the work within the time period, a statement why the firm believes it is best qualified to perform the engagement, and a statement that the proposal is a firm and irrevocable offer for one month after the due date of proposal. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP that the applicant may have taken in presenting the proposal.

(4) Detailed Proposal

The proposal must conform to the proposal requirements of the RFP. AOA specifically reserves the right to waive any informalities or irregularities in the proposal format. The detailed proposal must follow the order set forth in this RFP.

b. Pre-Proposer Conference Attendance – see Section II.

c. Independence

The firm must provide an affirmative statement that it is independent of the engagement entity and the AOA as defined by engagement standards in the U.S. Government Accountability Office's *Government Auditing Standards*.

The firm must also list and describe the firm's professional relationships involving the engagement entity for the past five years, together with a statement explaining why each such relationship does not constitute a conflict of interest relative to performing the proposed engagement. If the firm has had no relationships within the last five years, the proposal must include a declarative statement.

In addition, the firm must give the engagement entity and AOA immediate written notice of any professional relationships before they are entered into during the period of this agreement.

d. License to Practice in Delaware

The applicant must provide evidence of a valid Delaware CPA license or authorization to practice in the State of Delaware from the National Association of State Board of Accountancy (NASBA) for the engagement partner and manager/supervisor in-charge as well as a Delaware State business license for the firm.

e. Firm Qualifications and Experience

The proposer must state the size of the firm, the size of the firm's governmental staff, the location of the office from which the work on this engagement is to be performed, the number and nature of the professional staff to be employed in this engagement on a full-time basis, and the number and nature of the staff to be employed on a part-time basis.

If the proposer is a joint venture or consortium, the qualifications of each firm comprising the joint venture or consortium must be separately identified and the firm that is to serve as the principal auditor must be noted, if applicable.

f. Peer Review

The proposer must submit a copy of the most current peer review and a statement whether the quality control review included a government engagement. A proposer must be in compliance with generally accepted government auditing standards (GAGAS) peer review requirements. Firms that were members of the AICPA's Government Audit Quality Center (GAQC) during the review must disclose such information. If a firm has joined since the last peer review, they must disclose the membership date.

g. Suspension and Debarment

The firm must certify that it has not been suspended or debarred from performing government engagements or other government activity. In addition, the firm must certify that it has not been the subject of any disciplinary action or inquiry in any jurisdiction during the past three years.

Any firm ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.

h. Insurance

The firm must certify that it maintains such insurance as will protect against claims under the Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this Contract. The firm is an independent contractor and is not an employee of the State.

The firm must, at its expense, carry insurance of minimum limits as follows:

Commercial General Liability	\$1 million per claim/ \$3 million aggregate
Professional Liability	\$1 million per claim/ \$3 million aggregate

The firm must provide evidence of such insurance.

i. Partner, Supervisory, and Staff Qualifications and Experience

The firm must identify the principal supervisory and management staff, including engagement partners, managers, other supervisors, and specialists who would be assigned to the engagement. For each person, indicate whether the person is registered or licensed to practice as a certified public accountant in the State of Delaware; provide information on the person's government auditing experience, including information on relevant continuing professional education for the past three years and membership in professional organizations relevant to the performance of this engagement; and discuss whether or not that person, within the past three years, has been the subject of any disciplinary action or inquiry in any jurisdiction.

Please provide as much information as possible regarding the number, qualifications, experience, and training, including relevant continuing professional education, of the specific staff to be assigned to this engagement.

The firm must also indicate how the quality of staff over the term of the agreement will be assured.

The proposer must identify the extent to which staff to be assigned to the engagement reflect the State of Delaware's commitment to Affirmative Action.

Engagement partners, managers, other supervisory staff, and specialists may be changed if those personnel leave the firm, are promoted, or are assigned to another office. These personnel may also be changed for other reasons with the express prior written permission of AOA. However, in either case, AOA retains the right to approve or reject replacements and the replacements must have substantially the same or better qualifications or experience.

Consultants and firm specialists mentioned in response to this RFP can only be changed with the express prior written permission of AOA, which retains the right to approve or reject replacements.

Other personnel may be changed at the discretion of the proposer provided that replacements have substantially the same or better qualifications or experience.

j. The work will not be subcontracted.

2. Technical Criteria

a. Prior Engagements with AOA

All engagements performed for AOA within the last three years must be listed in the proposal. These engagements must be ranked on the basis of total staff hours and by type of engagement (i.e., audit, management advisory services, other). The scope of work, date, engagement partners, total hours, the location of the firm's office from which the engagement was performed, and the name and telephone number of the principal client contact must also be detailed.

b. Similar Engagements with Other Government Entities

For the firm's office that will be assigned responsibility for the engagement, list the most significant engagements (maximum of 5) performed in the last three years that are similar to the engagement described in this RFP. These engagements must be ranked on the basis of total staff hours and must indicate the scope of work, date, engagement partners, total hours, and the name and telephone number of the principal client contact.

c. Specific Engagement Approach

The proposal must set forth a work plan, including an explanation of the planned engagement methodology, to perform the services required in Section II of this RFP.

Proposers will be required to provide the following information on their engagement approach as applicable:

- (1) Proposed segmentation of the engagement.
- (2) Level of staff and number of hours to be assigned to each proposed segment of the engagement **without dollars**.
- (3) Sample methodology and the extent to which sampling is to be used in the engagement.
- (4) Extent of software to be used in the engagement.
- (5) Approach to manage the engagement process and ensure appropriate time and staff commitments to meet AOA deadlines.

B. Cost Proposal

The cost proposal must contain all cost information relative to performing the engagement as described in this RFP. The total all-inclusive maximum proposed cost is to contain all direct and indirect costs including all out-of-pocket expenses **for each fiscal year**.

Out-of-pocket expenses for firm personnel (e.g., travel, lodging, and subsistence) will be reimbursed at the prevailing rates used by the State of Delaware for its employees. All estimated out-of-pocket expenses to be reimbursed must be presented on the Schedule of Professional Fees and Expenses. All expense reimbursements will be charged against the total all-inclusive maximum cost submitted by the firm.

In addition, a statement **must** be included in the cost proposal that the firm will accept reimbursement for travel, lodging, and subsistence at the prevailing rate used by the State of Delaware for its employees.

1. Transmittal Letter

The cost proposal transmittal letter must include the following information:

- a. Name of firm.
- b. Certification that the person signing the proposal is entitled to represent the firm, empowered to submit the bid, and authorized to sign a contract with AOA.
- c. A total all-inclusive maximum cost **for each fiscal year**.

2. Schedule of Professional Fees and Expenses

The cost proposal must include a schedule of professional fees and expenses, presented in the format provided in Appendix A, that supports the total all-inclusive maximum cost. The firm **must** use Appendix A to submit their cost information.

VIII. Evaluation Process

During the evaluation process, AOA reserves the right to request additional information or clarification from proposers, or to allow corrections of errors or omissions. Additionally, AOA may request the firm or firms to make oral presentations as part of the evaluation process. Not all firms may be asked to make such oral presentations. All costs associated with participation in oral presentations conducted for the State of Delaware are the firm's responsibility.

The Evaluation Committee may negotiate with one or more of the qualified firms during the same period and may, at its sole discretion, terminate negotiations with any and all firms at any time.

A. Review of Proposals

Proposals that do not meet or comply with the instructions of this RFP may be considered non-conforming, deemed non-responsive, and subjected to disqualification at the sole discretion of the Evaluation Committee.

The Evaluation Committee will use a point formula during the review process to score technical proposals. All assignments of points shall be at the sole discretion of the Evaluation Committee. The Technical Evaluation Committee will then convene to review and discuss these evaluations and to combine the individual scores to arrive at an average technical score for each firm. At this point, firms with an unacceptably low technical score will be eliminated from further consideration.

B. Evaluation Criteria

Only firms meeting the mandatory criteria will have their proposals evaluated and scored for both technical qualifications and cost.

1. Technical Qualifications: (Maximum Points: 90)

Technical criteria will include, but are not limited to, staffing qualification, prior experience, AOA's prior experiences with the firm, use of specialist, engagement approach and innovation, and realistic time estimates.

2. Cost: (Maximum Points: 10)

Cost will **not** be the primary factor in the selection of any firm.

C. Reservation of Rights

The Evaluation Committee reserves the right to:

- Select for contract or for negotiations a proposal other than that with the lowest costs.
- Reject any and all proposals or portions of the proposals received in response to this RFP or to make no award or issue a new RFP.
- Waive or modify any information, irregularity, or inconsistency in proposals received.
- Request modification to proposal from any or all firms during the review and negotiation.
- Negotiate any aspect of the proposal with any firm and negotiate with more than one firm at the same time.

The Evaluation Committee reserves the right to reject any proposal from a firm who:

- Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;

- Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offenses indicating lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;
- Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
- Has violated contract provisions such as:
 - Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;

or

 - Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
- Has violated ethical standards set out in law or regulation;
- Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including debarment by another governmental entity for cause listed in the regulations.

D. Confidentiality of Documents

All documents submitted as part of the firm’s proposal will be deemed confidential during the evaluation process. Proposals will not be available for review by anyone other than AOA and the Evaluation Committee or its designated agents. There shall be no disclosure of any firm’s information to a competing firm prior to award of the contract.

The State of Delaware is a public agency as defined by state law, and as such, it is subject to the Delaware Freedom of Information Act, 29 Del. C., c. 100. Under the law, all of the State of Delaware’s records are public records, unless otherwise declared by law to be confidential, and are subject to inspection and reproduction by any person. Vendors are advised that once a proposal is received by the State of Delaware and a decision on contract award is made, its contents will become public record and nothing contained in the proposal will be deemed to be confidential except proprietary information.

Firms shall not include any information in their proposal that is proprietary in nature or that they would not want to be released to the public. Proposals must contain sufficient information to be evaluated and a contract written without reference to any proprietary information. If a firm feels that it cannot submit its proposal without including proprietary information, it must adhere to the following procedure or their proposal may be deemed unresponsive and will not be recommended for selection. The firms must submit such information in a separate, sealed envelope labeled “Proprietary Information” with the RFP number. The envelope must contain a letter from the firm’s legal counsel

describing the documents in the envelope, representing in good faith that the information in each document is not “public record” as defined by 29 Del. C. § 10002(d), and briefly stating the reasons that each document meets the said definitions.

IX. Contract Conditions

The firm awarded the contract will be required to enter into a written agreement with AOA. AOA reserves the right to incorporate standard State of Delaware contractual provisions into any contract negotiated as a result of a proposal submitted in response to an RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by AOA. The firm shall be referred to as “Contractor” in the agreement.

The selected firm will be expected to enter negotiations with AOA, which will result in a formal agreement between the parties. Procurement will be in accordance with the subsequent contracted agreement. This RFP and the selected firm’s response to this RFP will be incorporated as part of any formal agreement.

If the firm to whom the contract is awarded fails to enter in the agreement as herein provided, the award will be annulled and an award may be made to another firm. Such firm shall fulfill every stipulation embraced therein as if they were the party to whom the first award was made.

The selected firm under this RFP shall be subject to contractual provisions, in a form substantially similar to the following, as well as those agreed to by the parties and not specifically described herein.

A. Term

The term of the contract between the successful firm and AOA shall be determined by AOA. The agreement may be terminated by AOA at any time by giving written notice to the Contractor of such termination. Upon such termination, the Contractor will be paid for the hours of work actually completed.

In the event the successful firm materially breaches any obligation under this Agreement, the Contractor shall not be relieved of any liability to the State of Delaware for damages suffered by it by virtue of any such breach. AOA may withhold any payments to Contractor for the purpose of setoff for such damages.

B. Compensation

AOA agrees to pay Contractor compensation calculated solely on the amount of engagement work performed by firm’s staff, based on actual hours billed and hourly rates as set forth in Appendix A herein, as well as approved out-of-pocket expenses.

Contractor agrees to bill AOA only for actual work performed and out-of-pocket expenses incurred during its performance of the engagement. Contractor must submit all invoices in writing or electronic format to AOA for approval. Invoices must include the name of the auditor who performed the work, the nature of work performed, the date(s)

work performed, the number of hours worked and the corresponding hourly rate, in addition to the amounts, descriptions and dates of all out-of-pocket expenses for which reimbursement is requested. If approved, AOA will forward the invoice to the engagement entity for payment or pay the invoices itself, depending on the type of engagement.

C. Non-Appropriation

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or in part, the agreement shall be terminated, as to any obligation of the State of Delaware requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

D. Notice of Termination

Any notice to AOA required under this Agreement shall be in writing and sent by regular mail and registered mail to:

Attention: Kathleen A. O'Donnell
Chief Administrative Auditor
Townsend Building, Suite 1
401 Federal Street
Dover, DE 19901

E. Formal Contract and Purchase Order

The successful firm shall promptly execute an agreement incorporating the terms of this RFP within twenty business days after the award of the contract. No bidder is to begin any service prior to receipt of a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Division of Accounting and the (Agency) where applicable. The purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful firm.

F. Indemnification

By submitting a proposal, the proposing firm agrees that in the event it is awarded a contract, the Contractor shall defend, indemnify and save harmless the State from and against all liability, damages, costs or expenses, causes of actions, suites, judgments, losses, and claims including reasonable attorney's fees, brought against the State arising out of or resulting from the performance of the auditing services by Contractor under the Agreement resulting from this RFP to the extent caused by Contractor's negligence or arising from any breach or default Contractor under such Agreement. The foregoing obligation of Contractor to defend, indemnify and hold harmless the State shall not extend or apply to any claim alleging that the State's financial statements are inaccurate or incomplete or were not prepared in accordance with generally accepted accounting

principles. Further, in no event will Contractor indemnify and hold harmless the State from any claims or liabilities resulting from the acts of the State.

G. Compliance

In performance of the contract the firm is required to comply with all applicable federal, state and local laws, regulations, policies, guidelines and requirements of the jurisdiction in which the Agreement is performed, as well as all applicable professional conduct rules and guidelines. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful firm. The firm shall be properly licensed and authorized to transact business in the State of Delaware as provided in Section 2502 of Title 30 of the Delaware Code and other applicable statutes and regulations.

H. Insurance

The firm recognizes that it is operating as an independent contractor (and not an employee of the State of Delaware) and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the contractor's negligent performance under this contract, and particularly without limiting the forgoing, caused by, resulting from, or arising out of any act of omission on the part of the contractor in their negligent performance under this contract.

The firm must certify that it shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under the Agreement. The firm is an independent contractor and is not an employee of the State of Delaware.

The firm shall, at its expense, carry insurance of minimum limits as follows:

Commercial General Liability	\$1 million per claim/ \$3 million aggregate
Professional Liability	\$1 million per claim/ \$3 million aggregate

The firm shall provide a certificate of insurance as proof that the firm has the required insurance.

I. Non-Discrimination

In performing the services subject to this RFP, the firm agrees that it will not discriminate against any employee or applicant for employment because of race, creed, age, marital status, religion, color, sex, genetic information, national origin, or disability. The successful firm shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.

J. Covenant Against Contingent Fees

The successful firm warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement of understanding for a commission or percentage, brokerage or contingent fee excepting bona-fide employees, bona-fide established commercial or selling agencies maintained by the bidder for the purpose of securing business. For breach or violation of this warranty, AOA shall have the right to annul the contract without liability or at its discretion to deduct from the contract cost or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

K. Contract Documents

The RFP, the Purchase Order and the executed Agreement between AOA and the successful firm shall constitute the Contract between AOA and the firm. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter: Agreement, Purchase Order, and RFP. No other documents shall be considered. These documents contain the entire agreement between AOA and the firm. Firm agrees to be bound by the terms of this RFP pending final execution of the Agreement by the parties.

L. Applicable Law

The laws of the State of Delaware shall apply, except where Federal law has precedence. The successful firm consents to exclusive jurisdiction in the State of Delaware and agrees that any litigation relating to this Agreement shall be filed and litigated in a court in the State of Delaware.

M. Scope of Agreement

If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provisions shall be curtailed only to the extent necessary to conform to the law.

X. Additional Services

If, during the course of the engagement, the firm suspects that there will be significant delays in the timing of the work due to the actions of the engagement entity, such as not providing requested items in a timely manner or not adhering to the agreed-upon time schedule discussed at the entrance conference, the firm must notify AOA immediately. AOA and the firm will discuss the issues and develop a solution for completing the engagement.

If it should become necessary for AOA to request the firm to render any additional services to either supplement the services requested in this RFP or to perform additional work as a result of

the specific recommendations included in any report issued on this engagement, then such additional work shall be performed only if set forth in an addendum to the Agreement between AOA and the firm. Any such additional work agreed to between AOA and the firm shall be performed at the same rates set forth in the schedule of fees and expenses included in the cost proposal.

XI. Manner of Payment Notice

Progress payments up to 90 percent will be made on the basis of hours of work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with the firm's cost proposal. Invoices shall cover a period of not less than a calendar month and must include the following: (1) name of engagement entity/engagement; (2) amount and if it's a progress or final invoice; and (3) a breakdown of staff and hours for each. Ten percent of the contract amount will be retained until the Exit Conference has been held and the final reports have been reviewed and accepted by AOA.

Contractor agrees to bill AOA only for actual work performed and out-of-pocket expenses incurred during its performance of the engagement. Contractor must submit all invoices in writing or electronic format to AOA for approval. Invoices must include the name of the person who performed the work, the nature of work performed, the date(s) work performed, the number of hours worked, and the corresponding hourly rate, in addition to the amounts, descriptions, and dates of all out-of-pocket expenses for which reimbursement is requested. If approved, AOA will forward the invoice to the engagement entity for payment or pay the invoices itself, depending on the type of engagement. **Contractor shall be responsible for following up on outstanding invoices with the engagement entity.**

Schedule of Professional Fees and Expenses
 For the Audit of the Department of XYZ
 For Fiscal Years 20__ - 20__

	<u>Hours</u>	<u>Hourly Rates</u>	<u>Total</u>
Partner	10	\$ 180	\$ 1,800
Manager	15	\$ 150	\$ 2,250
Supervisor	63	\$ 125	\$ 7,875
Senior	-	\$ -	\$ -
Staff	49	\$ 87	\$ 4,263
Other (travel, lodging, meals, etc.)		\$ -	\$ 665
Total	<u>137</u>		<u>\$ 16,853</u>

We will accept the State of Delaware's prevailing rates for travel reimbursement.