

State of Delaware  
Office of Auditor of Accounts

Request for Proposal

For

**Department of Health and Social Services  
Division of Medicaid and Medical Assistance  
Disproportionate Share Hospital Payments Program**

Professional Services

February 6, 2015

**RFP15-CPA-01**

by

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

**Deadline to Respond: 3:00 p.m. (EST), February 27, 2015**  
[AOACContracting@state.de.us](mailto:AOACContracting@state.de.us)

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All “**must**” requirements that will allow proposals to be scored are distinguished by the symbol to the left. However, this does not preclude all proposers from reading the RFP in its entirety and assessing the mandatory requirements on their own. AOA will not be responsible for any errors associated with placement of the symbol.

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## 1. Introduction

- 1.1 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 an engagement in accordance with Section 4. Nature of Services Required, for each of the fiscal years ended June 30, 2014 and 2015.
- 1.2 There is no expressed or implied obligation for AOA to reimburse 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) will be made to any responding firm by AOA for any such costs or expenses.
- 1.3 Public notice has been provided in accordance with 29 Del. C. § 6981.

## 2. Proposal Process

- 2.1 All questions regarding this RFP **must** be submitted in writing and **must** be received by 4:00 p.m. EST on February 13, 2015 via e-mail directly to:  
  
Kathleen Davies  
Chief Administrative Auditor  
[Kathleen.Davies@state.de.us](mailto:Kathleen.Davies@state.de.us)
- 2.2 Questions that reflect a perspective proposer's **failure** to read the RFP in its entirety will **not** be addressed by AOA. Further, questions resulting from inadequate review of the RFP will reflect poorly on a proposer's scoring. If a proposer is seeking clarification regarding a specific aspect of the RFP, the proposer **must** cite the section and page number for reference. AOA will address questions that can be reasonably answered and do not require a significant investment of time. For example, AOA will **not** address questions that are the firm's responsibility during engagement planning.
- 2.3 Including items such as a contingency will improve a proposer's score. Please remember that lowest bid is not a deciding factor in awards. AOA's scoring process values all-inclusive, thoughtful, quality proposals. Any firm identifying contingencies will have their cost proposal adjusted in relation to others that do not include the contingency so that they are comparable from a cost perspective. Firm proposals that include sufficient details and ample hours for contingencies are much more likely to receive a higher score overall.

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2.4 **Direct contact with the State of Delaware or AOA employees** other than the above-referenced contact(s) **regarding this RFP is expressly prohibited without prior consent** from Kathleen Davies. Firms contacting the State of Delaware or AOA employees risk elimination of their proposal from further consideration.



2.5 To be considered, the ***Mandatory Requirements Section, Proprietary Section, and Cost Section*** of the proposal **must** be submitted in **three** separate PDF searchable files. The ***Mandatory Requirements*** and ***Proprietary Sections*** can be submitted in the same email; however, the ***Cost Section*** of the proposal **must** be submitted in a **separate email**. The two email subject lines should clearly state **“Mandatory Requirements and Proprietary Sections”** and **“Cost Section”**. Proposals **must** be sent to [AOAContracting@state.de.us](mailto:AOAContracting@state.de.us) on or before 3:00 p.m. on February 27, 2015.

2.6 AOA will provide an email response of acknowledgement for each email received.

2.7 AOA reserves the right to retain all proposals submitted. AOA reserves the right without prejudice to reject any or all proposals.

2.8 By submitting a proposal, each proposer must 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.

2.9 This RFP is considered part of the contract and will be enforced as such. Further, the Firm is expected to ensure that all staff on the engagement understands the contract requirements as needed to ensure compliance. Failure of the firm to notify its staff as needed is considered contract non-compliance.

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

### 3. Term of Engagement

3.1 The contract period is for two one-year engagements, with the option to renew the contract at AOA’s request for two additional 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. AOA is under no express or implied obligation to renew the contract nor will there be any consultation or negotiating with the firm on the matter of contract renewal.

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#### **4. Nature of Services Required**

##### **4.1 Engagement Description and Cycle**

- a. The proposer shall perform examinations of the Department of Health and Social Services, Division of Medicaid and Medical Assistance (DMMA), Disproportionate Share Hospital (DSH) Payments program for the fiscal years ended June 30, 2014 and 2015. DSH payments for these years are expected to be made to the Delaware Psychiatric Center located in New Castle, DE; Saint Francis Hospital located in Wilmington, DE; and MeadowWood Behavioral Health located in New Castle, DE. The following verifications must be addressed in the examination reports (Code of Federal Regulations – 42 CFR, Part 455 §455.304):

Verification 1: Each hospital that qualifies for a DSH payment in the State is allowed to retain that payment so that the payment is available to offset its uncompensated care costs for furnishing inpatient hospital and outpatient hospital services during the Medicaid State plan rate year to Medicaid eligible individuals and individuals with no source of third party coverage for the services in order to reflect the total amount of claimed DSH expenditures.

Verification 2: DSH payments made to each qualifying hospital comply with the hospital-specific DSH payment limit. For each audited Medicaid State plan rate year, the DSH payments made in that audited Medicaid State plan rate year must be measured against the actual uncompensated care cost in that same audited Medicaid State plan rate year.

Verification 3: Only uncompensated care costs of furnishing inpatient and outpatient hospital services to Medicaid eligible individuals and individuals with no third party coverage for the inpatient and outpatient hospital services they received as described in Section 1923(g)(1)(A) of the Act are eligible for inclusion in the calculation of the hospital-specific disproportionate share limit payment limit, as described in Section 1923(g)(1)(A) of the Act.

Verification 4: For purposes of this hospital-specific limit calculation, any Medicaid payments (including regular Medicaid fee-for-service rate payments, supplemental/enhanced Medicaid payments, and Medicaid managed care organization payments) made to a disproportionate share hospital for furnishing inpatient hospital and outpatient hospital services to Medicaid eligible individuals, which are in excess of the Medicaid incurred costs of such services, are applied against the uncompensated care costs of furnishing inpatient hospital and outpatient hospital services to individuals with no source of third party coverage for such services.

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Verification 5: Any information and records of all of its inpatient and outpatient hospital service costs under the Medicaid program; claimed expenditures under the Medicaid program; uninsured inpatient and outpatient hospital service costs in determining payment adjustments under this Section; and any payments made on behalf of the uninsured from payment adjustments under this Section has been separately documented and retained by the State.

Verification 6: The information specified in paragraph (d)(5) of this Section includes a description of the methodology for calculating each hospital's payment limit under Section 1923(g)(1) of the Act. Included in the description of the methodology, the audit report must specify how the State defines incurred inpatient hospital and outpatient hospital costs for furnishing inpatient hospital and outpatient hospital services to Medicaid eligible individuals and individuals with no source of third party coverage for the inpatient hospital and outpatient hospital services they received.

#### 4.2 Engagement Standards

- a. To meet the requirements of this RFP, the engagement must be performed in accordance with standards established by the American Institute of Certified Public Accountants and U.S. Government Accountability Office, *Government Auditing Standards*.
- b. The firm must immediately notify AOA regarding any known or potential fraud, waste, or abuse identified during the engagement, regardless of materiality. The course of action and additional procedures, if necessary, will be determined by AOA.

#### 4.3 Deliverables

- a. A detailed engagement plan and the various related programs must be submitted to the AOA Liaison for review and approval before work can start for each engagement cycle.
- b. The firm agrees it will **not** prepare the Annual Disproportionate Share Hospital Report, or any supporting documentation or schedules. The firm should notify AOA immediately of any request to perform such services.
- c. The firm agrees it will **not** provide auditor's reports (e.g. audit opinions) to the auditee for incorporation into their reports. The firm **must** obtain the report (e.g. financial statements) from the auditee, insert the firm's opinion and signature, and provide the complete report directly to AOA.

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- d. The audit difference schedule must be provided to AOA with the draft report. The firm must be willing to work with AOA (1) to develop a schedule that works for both parties and (2) to determine how to comprehensively report all audit differences and findings.
- e. In the draft and final reports, all findings must be reported unless they are clearly inconsequential, considering both qualitative and quantitative factors. Inconsequential findings must be presented in writing to AOA for review and approval prior to communicating them to the engagement entity. Once approved, the findings must be presented either verbally or in a separate, written document, depending on their significance. Evidence of the communication must be in the engagement documentation.
- f. Following the completion of the engagement, the firm must provide a written report<sup>1</sup> in accordance with standards discussed above. AOA will distribute copies of the reports to the appropriate officials. The firm is **not** to distribute or issue any work products, reports, or findings without prior written consent from AOA. However, communicating exceptions to management in a timely manner is encouraged, along with discussion and in-depth review of the issue.

#### 4.4 Retention and Access to Engagement Documentation

- a. 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 is required to make engagement documentation available, upon request, to the AOA or its designees. This includes open engagements that may not be completed.
- b. In addition, the firm must respond to the reasonable inquiries of successor firms upon AOA's written approval, via email, and allow the firms to review engagement documentation relating to matters of continuing engagement significance. This process must be completed in a timely manner to avoid delays, or the firm will be in breach of contract.

## 5. Description of the Engagement Entity

### 5.1 Engagement Entity

- a. For this RFP, the engagement entity is the Department of Health and Social Services (DHSS), Division of Medicaid and Medical Assistance (DMMA).

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<sup>1</sup> Financial reports, for example, include, but are not limited to, the Independent Auditors' Report, Management Discussion & Analysis (MD&A), financial statements, note disclosures, Required Supplementary Information (RSI), and Supplementary Information (SI). The firm must send each report in one, complete electronic file to AOA.

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5.2 Engagement Contact and Location

- a. The engagement entity's principal engagement contact will be Mr. Jackie Myster, Health Care Cost Containment Specialist, or a designated representative, who will coordinate the assistance to the firm. Mr. Myster can be reached at 302-255-9617 or [jackie.myster@state.de.us](mailto:jackie.myster@state.de.us). The location of the audits will be at:

- Delaware Psychiatric Center  
DHSS, Herman M. Holloway Sr. Campus  
1901 North DuPont Highway  
New Castle, DE 19720
- Saint Francis Hospital  
701 North Clayton Street  
Wilmington, DE 19805
- MeadowWood Behavioral Health  
575 South DuPont Highway  
New Castle, DE 19720

5.3 Background Information

- a. Under Medicaid's Disproportionate Share Hospital program (DSH), DMMA is authorized to make annual lump-sum supplemental Medicaid payments to qualified Delaware-based hospitals which serve a disproportionate share of Medicaid and low-income patients. Qualifying hospitals must have inpatient facilities located in Delaware, meet other federal and State requirements and, in some cases, must also have been enrolled as providers with DMMA's Managed Care Organizations and the Medicaid fee-for-service program in the consecutive 24 months immediately preceding the month of DSH payment.
- b. DMMA's website is located at [www.dhss.delaware.gov/dhss/dmma/](http://www.dhss.delaware.gov/dhss/dmma/).
- c. The Disproportionate Share Hospital program is found in the Code of Federal Regulations 42 CFR, Parts 447 and 455 at [www.ecfr.gov](http://www.ecfr.gov).

## 6. Time Requirements

6.1 Proposal Calendar

- |                                    |                   |
|------------------------------------|-------------------|
| a. Request For Proposal issued     | February 6, 2015  |
| b. Deadline for proposal questions | February 13, 2015 |
| c. Due date for proposals          | February 27, 2015 |



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6.2 Preliminary Engagement Planning

- a. For each period under review, a detailed engagement plan and program(s) must be submitted to the AOA Liaison no later than May 22, 2015.<sup>2</sup> The AOA Liaison will review and provide comments, if necessary, within 10 business days.
- b. The engagement records are expected to be available for review by September 30, 2015.
- c. A complete draft of the Annual Disproportionate Share Hospital reports will be available for examination by September 30, 2015.

6.3 Entrance Conference

- a. 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.
- b. The firm must make the AOA Liaison aware of the date and location of the entrance conference in case the AOA Liaison wishes to attend.

6.4 Progress Reporting and Exit Conference

- a. The firm must keep the engagement entity and AOA 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 and the AOA Liaison, unless the AOA Liaison declines.

6.5 Reports

- a. 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 Liaison on or before the following dates. The AOA Liaison requires a minimum of 10 business days for review and to return any comments to the firm. In addition to requirements under the professional standards, reports **must** be formatted in accordance with AOA's Style Guide.
  - Fiscal Year 2014                      November 12, 2015
  - Fiscal Year 2015                      November 12, 2015

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<sup>2</sup> The firm will provide two separate examination reports, one for each fiscal year under review. However, due to the timing of the RFP, the firm shall conduct fieldwork for both fiscal years concurrently.

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The firm must provide an electronic version of the draft report to the engagement entity's principal contact or designee for management response and approval. The engagement entity's principal contact or designee must review 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, an electronic version of the draft report must be forwarded to the AOA Liaison for final review by the following dates.

- |                    |                  |
|--------------------|------------------|
| ▪ Fiscal Year 2014 | December 3, 2015 |
| ▪ Fiscal Year 2015 | December 3, 2015 |

- b. Final Reports – Once the AOA Liaison approves the report for issuance, the final report must be emailed as one, comprehensive report and in an unsecured PDF format to the AOA Liaison by the following dates.

- |                    |                   |
|--------------------|-------------------|
| ▪ Fiscal Year 2014 | December 17, 2015 |
| ▪ Fiscal Year 2015 | December 17, 2015 |

Report preparation and editing is the responsibility of the firm.

## 7. Proposals

- 7.1 **No proposal will move forward for full technical review and scoring unless the mandatory items, as outlined throughout this RFP, are fully addressed as requested.**

## 8. Cost Section

- 8.1 The Cost Section **must** include (1) a transmittal letter with the name of the firm and (2) written certification that (a) the firm agrees to bill AOA only for actual work performed and out-of-pocket expense incurred during its performance of the engagement, (b) billings will be submitted in the format outlined in Section 11.4 b. of this RFP, (c) a statement that the firm will accept reimbursement for travel, lodging, and subsistence at the prevailing rate used by the State of Delaware for its employees; and (d) the person signing the proposal is entitled to represent the firm, empowered to submit the bid, and authorized to sign a contract with AOA.

- 8.2 The Cost Section **must** contain all detailed cost information relative to performing the engagement as described in this RFP **for each fiscal year presented in the schedule as outlined in Appendix A**. Appendix A is an example of a detailed cost schedule, and it should be amended as needed according to the deliverables of the RFP and specific steps within each deliverable.



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- 8.3 If a firm determines additional items are necessary for the completion of this engagement, including more detail to demonstrate their engagement process, the firm may include these in their proposals as separate line items. Any additional items will be considered individually and removed from the total cost when comparing the cost sections of proposals.

## 9. Mandatory Requirements Section



- 9.1 There **must** be **no dollars or total costs** included in the Mandatory Requirements Section of the proposal. Inclusion of such information will result in disqualification of the proposal.

- 9.2 The Mandatory Requirements Section **must** address all the points outlined in the RFP in the following format:



a. Independence

The firm **must** provide the following statement:

“The firm is independent of the engagement entity 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 relationship does not constitute a conflict of interest relative to performing the proposed engagement. **OR** The firm **must** state: “The firm has had no professional relationships involving the engagement entity within the last five years.”



In addition, the firm **must** state that they will give AOA immediate written notice and obtain approval from AOA of any professional relationships with the State of Delaware and its related entities before they are entered into during the contract period.

b. License to Practice in Delaware & Delaware Business License

The applicant **must** provide:



- (1) copies of valid Delaware CPA licenses or valid CPA licenses from a substantially equivalent jurisdiction as defined by the Uniform Accountancy Act (UAA) for all CPAs on the engagement team. A CPA who holds a valid license from any jurisdiction that is not on the substantially equivalent list<sup>3</sup>

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<sup>3</sup> <http://nasba.org/licensure/substantialequivalency/>

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published by the National Association of State Boards of Accountancy (NASBA) may obtain verification from NASBA that such individual's CPA qualifications are substantially equivalent to the UAA. A copy of such verification **must** be included in the proposal.

AOA will also accept screen shots of online license verification from both the State Boards of Accountancy and CPAverify.org, as long as all relevant information is provided in the screen shot, including the name of the state. The firm **must** also indicate the web address, with the date, this information was obtained from.



- (2) a copy of a valid Delaware firm professional license, also known as a permit to practice, issued by the State Board of Accountancy. AOA will accept the firm professional license in the same manner as described above for individual CPA licenses.



- (3) a copy of a current State of Delaware business license for the firm, issued by the Delaware Division of Revenue.



c. 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.



d. 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.



e. Suspension and Debarment

The firm **must** certify that it is not presently suspended or debarred within the past 5 years at Appendix B. In addition, the firm **must** state that it has not been the subject of any disciplinary action<sup>4</sup> or under referral or inquiry from the AICPA or any State Board of Accountancy in the past five years.

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<sup>4</sup> Disciplinary action includes conviction or a civil judgment rendered for (a) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, (b) violation of Federal or State antitrust statutes, or (c)

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

f. Partner, Supervisor, and Staff Qualifications and Experience



The firm **must** identify the engagement team: engagement partners, managers, supervisors, staff auditors, and specialists. If specific staff auditors have not yet been identified for this engagement (e.g. due to scheduling, new hires, etc.), the firm **must** state that specific staff auditors have not yet been identified but **must** give the number of staff auditors to be assigned. The firm must provide the resume for each previously unidentified staff auditor for AOA's review and acceptance prior to the auditor beginning work on the engagement.



For each person, the firm **must** 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.

Overall, AOA looks for highly credentialed engagement staffing. The firm should indicate staff with credentials directly related to the engagement, if applicable (i.e. Certified Information Systems Auditor [CISA] for information technology engagements). For all contracts, another highly valued certification is the Certified Fraud Examiner (CFE). AOA will award additional points during proposal scoring for staffing with these types of credentials in addition to the CPA.



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

With the express prior written permission of AOA, engagement partners, managers, supervisors, and staff auditors may be changed if those personnel leave the firm, are promoted, are assigned to another office, or for other reasons. However, 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.

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commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

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g. Statement on Subcontracting and Third Party Service Providers

The firm **must** include a statement that the work will not be subcontracted and that none of the work products, including engagement documentation, will be subjected to a third party service provider.

h. Non-Collusion Statement

The form, located at Appendix B, **must** be completed and signed by an authorized representative of the firm.

## 10. Proprietary Section

10.1 There **must** be **no dollars or total costs** included in the Proprietary Section of the proposal. Inclusion of such information will result in disqualification of the proposal.

10.2 The Proprietary Section **must** address all of the following:

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 (e.g., audit, examination, 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, the firm **must** 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 firm should demonstrate why the firm is uniquely qualified to perform the engagement on behalf of AOA. Information presented in this section should include, but is not limited to, innovative engagement approach, approach to identifying and testing effective controls, unique methods for utilizing software and preparing engagement documentation, and example report templates. In an effort to prevent substandard engagements and to provide the highest quality service to Delaware taxpayers, we will award a higher score to firms who provide an innovative engagement approach. Any additional procedures that generate additional costs should be separately stated in the Cost Section.

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The Proprietary Section **must** set forth a work plan including, but not limited to, the following, as applicable:

- (1) Proposed segmentation, phases, and/or milestones of the engagement.
- (2) Level of staff and number of hours assigned to each area proposed in (1) **without dollars**. See Appendix A.
- (3) Sample methodology to the extent which sampling is to be or planned to be used.
- (4) Processes for evaluating and testing internal controls including plans for adequate coverage of information technology infrastructure and data integrity.
- (5) Extent of software to be used in the engagement.
- (6) Type of audit workpaper documentation utilized by the firm. For example, specify the firm's use of paper or electronic workpapers. If electronic workpapers are utilized, indicate the software product (e.g., TeamMate, AutoAudit, Galileo, etc.).
- (7) Process for project management, including (a) how milestones and delays are monitored and communicated and how adjustments to deliverable dates based on client delays are communicated to AOA and the engagement entity and (b) how staff resources are committed to meet AOA deadlines.
- (8) Processes to ensure the quality of the engagement.
- (9) Firms that were members of the AICPA's Government Audit Quality Center (GAQC) during peer review **must** disclose such information. If a firm has joined since the last peer review, they **must** disclose the membership date.
- (10) Explanation of how the firm manages the audit difference schedule during engagements, including what form the audit difference schedule takes.



d. Examples of GAGAS findings

The firm **must** include 2-3 examples of findings issued under a GAGAS engagement. AOA will evaluate the quality of the findings including whether the findings are clear, concise, and easily understood by the public and management.

e. Other work product examples

Firms are encouraged to include examples of prior engagement plans, audit programs, draft reports, unusual analytical procedures, unique data or its procedures, and innovative engagement approaches for AOA's review during the evaluation process.

## 11. Evaluation Process

- 11.1 As discussed previously, no proposal will move forward for full technical review and scoring unless the mandatory items as outlined throughout the RFP are fully addressed as requested. AOA will not notify the firm that they

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**did not meet the mandatory requirements nor will they be given an opportunity to amend the proposal after the submission deadline. Request for such consideration is considered inappropriate and unethical by AOA.**

- 11.2 During the evaluation process, AOA reserves the right to request additional information or clarification from proposers. 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.
- 11.3 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 be subject to disqualification at the sole discretion of the Evaluation Committee.

The Evaluation Committee will use a point formula during the review process to score the proposals. All assignments of points will be at the sole discretion of the Evaluation Committee. Each member of the Evaluation Committee will first score each proposal by each of the criteria described in Sections 8, 9, and 10. The 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 any point a firm may be eliminated from further consideration for unacceptably low technical scores.

b. Evaluation Criteria

Only firms meeting the mandatory requirements and all the “**must**” requirements of the RFP 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<sup>5</sup>, use of specialists, engagement approach and innovation, and realistic time estimates.

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<sup>5</sup> While a firm may not have been formally debarred, repeat and frequent contracting issues will result in substantial lowering of technical scores.



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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 contractors 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 as represented throughout this document and 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;
  - 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 government entity for cause listed in the regulations.

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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 must 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 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 may become public record and nothing contained in the proposal will be deemed to be confidential, unless otherwise declared by law to be confidential.

## 12. Contract Conditions

12.1 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 must be referred to as "Contractor" in the agreement.

12.2 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.

12.3 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 must fulfill every stipulation embraced therein as if they were the party to whom the first award was made.

12.4 The selected firm under this RFP must be subject to contractual provisions including, but not limited 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 must be determined by AOA. The agreement may be terminated by AOA at any time by

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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 must 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 set off for such damages.

b. Compensation

AOA agrees to pay Contractor compensation calculated solely on the amount of engagement work performed by the 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 electronic format for AOA approval. Any additional work outside the contract or for additional fees related to the contract is not permitted without the AOA Liaison's knowledge and approval. Invoices must include the name of the person who performed the work, the nature of work performed, the date(s) work was 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 invoice itself, depending on the engagement.

If the Contractor violates provisions of the Request for Proposal or Contract without prior discussion with and written approval of exception by AOA, including not submitting deliverables timely due to the fault of the Contractor or not providing an advance written request for extension for AOA's approval prior to the due dates, the Contractor is thus in default and may be subject to a penalty. The penalty shall amount to zero point one percent (0.1%) of the total contract price for each day following the violation up to ten percent (10%) of the total price. This provision does not preclude damages for breach of contract for substandard work or damages as enumerated herein.

c. Non-Appropriation

If sufficient funds are not appropriated by the Delaware General Assembly, or other appropriate federal or State organization, to sustain in whole or in part the Contractor's performance under this agreement, or if such appropriation is reduced such that the amount of the appropriation is insufficient to sustain said performance, this agreement shall be null and void at the insistence of AOA. If

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such termination should occur, AOA shall advise the Contractor as soon as possible.

d. Debarment

AOA reserves the right to debar the Contractor from doing business with AOA. Debarment shall be used only in the public interest and for the State of Delaware's protection, not for purposes of punishment. Although this is not an exhaustive list, AOA may debar the Contractor for any of the following reasons:

1. Offering additional services to the engagement entity without AOA's prior consent.
2. Directly billing the engagement entity outside of the terms of the contract.
3. Failing to perform in accordance with the contract terms and conditions.
4. Refusing to provide information or documents required by a contract.
5. Failing to respond to requests for information regarding performance or accumulating repetitive, substantiated complaints regarding performance of a contract.
6. Demonstrating a lack of integrity from the proposing firm partner or principal within the last three years, which could jeopardize AOA's interest. Factors may include, but are not limited to, any of the following:
  - a. A conviction of a criminal offense related to the performance of a contract or subcontract with AOA or any State of Delaware agency, board, or authority.
  - b. A criminal conviction which negatively reflects on the vendor's business integrity, including but not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, negligent misrepresentation, price-fixing, bid-rigging, or a violation of state or federal anti-trust statutes.
  - c. Suspension or loss of license from the AICPA or respective State Board of Accountancy for reasons that are relevant to the contract.
  - d. A loss or suspension of a business license or the right to do business in the State of Delaware.

e. Notice of Termination

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

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

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f. Formal Contract and Purchase Order

The successful firm must promptly execute an agreement incorporating the terms of this RFP within twenty business days after the award of the contract. When purchase orders are applicable, no bidder is to begin any service prior to receipt of a State of Delaware signed purchase order requesting service, properly processed through the State of Delaware Division of Accounting and the engagement entity, where applicable. The purchase order must serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful firm.

g. Indemnification

By submitting a proposal, the proposing firm agrees that in the event it is awarded a contract, the Contractor must defend, indemnify, and save harmless the State from and against all liability, damages, costs or expenses, causes of actions, suits, 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 by the Contractor under such Agreement. The foregoing obligation of Contractor to defend, indemnify, and hold harmless the State must 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.

h. Compliance

In performance of the contract, the firm is required to comply with all applicable federal, state, and local laws and regulations of the jurisdiction in which the Agreement is performed, as well as all applicable professional conduct rules and guidelines. Contractor will also comply with any policies, guidelines, and requirements of the jurisdiction in which the Agreement is performed, provided that such policies, guidelines, and requirements are identified to the Contractor by the jurisdiction and the Contractor states, in writing, that it can comply. The cost of permits and other relevant costs required in the performance of the contract must be borne by the firm. The firm **must** be properly licensed and authorized to transact business in the State of Delaware as provided in 30 Del. C. §2502 and other applicable statutes and regulations.

AOA reserves the right to audit conformance to the contract terms and may perform this audit with a third party at its discretion. Contractor shall be under no obligation to permit an audit to the extent that such audit would violate applicable professional standards or undermine the integrity of the audit.

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i. Non-Disclosure and Data<sup>6</sup> Security Agreement

At no point will any information obtained for the purposes of this engagement be used in any transaction that does not include AOA. Additional precautions must be taken if a Contractor uses cloud computing<sup>7</sup> to perform the services of this Contract. If awarded the Contract, the Contractor must agree to the terms specified in Appendix C prior to the commencement of the engagement. The Contractor and its employees are forbidden from signing any agreements related to this engagement (e.g. non-disclosure agreements, data usage agreements, etc.) that are not presented directly by AOA.

j. Confidentiality of Information

Any reports, information, data, etc. given to, prepared, or assembled by the Contractor under this Contract shall not be released or made available to any individual or organization by the Contractor without the prior written approval of AOA. All information must be properly secured to prevent unauthorized access in accordance with Internal Revenue Service (IRS) Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies, the Privacy Act of 1974 (as amended by the Computer Matching and Privacy Protection Act of 1988), the Federal Information Security Management Act of 2002, the Social Security Administration's "Information System Security Guidelines for Federal, State, and Local Agencies Receiving Electronic Information from the Social Security Administration," and related National Institute of Standards and Technology (NIST) guidelines. Notwithstanding the forgoing, the Contractor is authorized to disclose any information related to this Contract when required to by law, legal process, or applicable professional standards.

All Contractor staff working on this engagement must have a criminal background check completed through a process approved by AOA at the Contractor's expense. Prior to staff commencing any work on any part of this engagement, each staff member must sign the form at Appendix E of this Contract/RFP and submit to AOA directly as part of the contract documentation and a successful criminal background check must be received by AOA. If AOA determines that, due to criminal convictions reported on the background check, a staff member cannot work on the engagement, the Contractor shall remove such staff from the engagement at the request of AOA.

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<sup>6</sup> For the purposes of the Contract (including the Non-Disclosure & Data Security Agreements, if applicable) , "data" does not include audit documentation required by the auditing standards.

<sup>7</sup> The National Institute of Standards and Technology (NIST) defines cloud computing as a "model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g. networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort..."

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Audit working papers, summaries, and similar records must be retained electronically for at least three years after the completion of the engagement in accordance with the Delaware Public Archives Local Government General Records Retention Schedule.

At the end of the engagement all non-working papers (documents provided by the State of Delaware to Contractor) must be destroyed in all forms (e.g. disk, CD, DVD, paper) except those items required for audit documentation purposes. See Appendix D.

k. Use of Work Product

All reports developed under this Contract are the sole and exclusive property of the State, and the State has the exclusive right to their use.

l. 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 foregoing, 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.

Prior to signing the Contract, the firm must provide certificates of liability insurance demonstrating coverage as described below. The certificate must include a description of the types of coverage (i.e. general liability, professional liability) covered by any umbrella insurance carried by the firm.

The firm must certify that it must 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 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

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m. 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 must 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.

n. Covenant Against Contingent Fees

The 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, percentage, brokerage or contingent fee excepting bona-fide employees and 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 must 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.

o. Contract Documents

The RFP, the Purchase Order, and the executed Agreement between AOA and the successful firm must 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 must be considered. These documents contain the entire agreement between AOA and the firm. The firm agrees to be bound by the terms of this RFP pending final execution of the Agreement by the parties.

p. Applicable Law

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

q. 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 must 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 must not thereby fail, but the scope of such provisions must be curtailed only to the extent necessary to conform to the law.



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### 13. Additional Services

- 13.1 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.
- 13.2 If it becomes 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 must 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 must be performed at the same rates set forth in the schedule of fees and expenses included in the cost section of the proposal. Further, if these delays cause the firm to perform additional work, the AOA liaison must approve any additional hours **before** they are incurred.

### 14. Manner of Payment Notice

- 14.1 Progress payments may be made no more frequently than 90 and 100 percent of completion based on the hours of work **completed** during the course of the engagement and out-of-pocket expenses incurred in accordance with the firm's cost section of the proposal and not less than a calendar month.
- 14.2 Firms are **not** to advance bill for work not yet performed. AOA reserves the right to audit the firm's timekeeping records to ensure billing is appropriate and done after-the-fact.
- 14.3 The invoice must include the following: (1) name of engagement entity/engagement; (2) amount and if it is 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.
- 14.4 **Contractor is responsible for following up on outstanding invoices with the engagement entity.**

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**Appendix A – Sample Schedule of Professional Fees and Expenses**

NOTE: As much detail as possible will improve technical proposal scores, including line items for innovative procedures. Engagement segments should be changed depending on the engagement, as appropriate.

**COST SECTION EXAMPLE:**

Hourly Rate:	Partner \$180		Manager \$150		Supervisor/Senior \$125		Staff \$85		Subtotals	
Engagement Segment:	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost
Gaining an Understanding of Control Environment	5	900	10	1,500	30	3,750	15	1,275	60	7,425
Engagement Planning Document Preparation	5	900	15	2,250	75	9,375	30	12,750	245	25,275
Audit Program Preparation	2	360	4	600	15	1,875	7	595	28	3,430
Fieldwork:										
Audit Area 1	2	360	8	1,200	10	1,250	5	425	25	3,235
Audit Area 2	2	360	8	1,200	10	1,250	5	425	25	3,235
Audit Area 3	2	360	8	1,200	10	1,250	5	425	25	3,235
Reporting:										
Financial Statement Review	2	360	8	1,200	10	1,250	5	425	25	3,235
Findings: Exception Resolution and Completion	2	360	8	1,200	10	1,250	5	425	25	3,235
[OTHER]	-	-	-	-	-	-	-	-	-	-
	22	3,960	69	10,350	170	21,250	197	16,745	458	52,305
Out-of-pocket Expenses:									Mileage	100
									Lodging	150
									<b>Total Cost</b>	<b>52,555</b>

**TECHNICAL SECTION EXAMPLE:**

Engagement Segment:	Partner	Manager	Supervisor/ Senior	Staff	Subtotals
	<i>Hours</i>				
Gaining an Understanding of Control Environment	5	10	30	15	60
Engagement Planning Document Preparation	5	15	75	15	245
Audit Program Preparation	2	4	15	7	28
Fieldwork:					
Audit Area 1	2	8	10	5	25
Audit Area 2	2	8	10	5	25
Audit Area 3	2	8	10	5	25
Reporting:					
Financial Statement Review	2	8	10	5	25
Findings: Exception Resolution and Completion	2	8	10	5	25
[OTHER]	-	-	-	-	-
	22	69	170	197	458

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**Appendix B – Non-Collusion Statement**

This is to certify that the undersigned Vendor has not, directly nor indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal. The undersigned Vendor further certifies that it is not a subcontractor to another vendor who also submitted a proposal as a primary vendor in response to this solicitation.

Signature of the authorized representative **MUST** be of an individual who legally may enter his/her organization into a formal contract with the State of Delaware, Office of Auditor of Accounts.

Company Name: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email address: \_\_\_\_\_

Certification type(s)	Check all that apply
Minority Business Enterprise (MBE)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Woman Business Enterprise (WBE)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Disadvantaged Business Enterprise (DBE)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Veteran Owned Business Enterprise (VOBE)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Service Disabled Veteran Owned Business Enterprise (SDVOBE)	<input type="checkbox"/> Yes <input type="checkbox"/> No

[The above table is for informational and statistical use only.]

**AFFIRMATION:** Within the past five years, has your firm, any affiliate, any predecessor company or entity, owner, Director, officer, partner, or proprietor been the subject of a Federal, State, or Local government suspension or debarment?

☐ YES ☐ NO

If yes, please explain: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

SWORN TO AND SUBSCRIBED BEFORE ME this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

Notary Public: \_\_\_\_\_ Commission Expires: \_\_\_\_\_

City of \_\_\_\_\_ County of \_\_\_\_\_ State of \_\_\_\_\_

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**Appendix C – Non-Disclosure & Data Security Agreement for Contracted CPA Firms**

We, \_\_\_\_\_ (the “Contractor”) agree to perform auditing services under our contract with the State of Delaware (“State”) <sup>8</sup> through the Office of the Auditor of Accounts (“AOA”) captioned as AOA Original Contract Number [Contract Number] (the “Contract”) to perform and complete the [Description of Engagement] for, *inter alia*, the fiscal year(s) ending [Date(s)] (the “Audit”). In that capacity, and in the performance of our Audit- related duties, we acknowledge and understand the following:

1. The State shall at all times own all right, title and interest in data and information, regardless of format, as set forth in the Contract. We shall not access State user accounts or State data, except as required by the express terms of the Contract. We acknowledge and agree that we shall have no right, title, or interest in such data and information.
2. We shall protect confidential information<sup>9</sup> and proprietary information<sup>10</sup> to ensure that there is no inappropriate or unauthorized use or disclosure of State information at any time. To this end, we shall safeguard the confidentiality, integrity, and availability of confidential information and proprietary information and comply with the following conditions:
  - a) Personally identifiable information (PII)<sup>11</sup> obtained by us is and shall remain property of the State.
  - b) At no time shall any data or processes which either belongs to or are intended for the use of the State or its officers, agents, or employees, be copied, disclosed, or retained by us for subsequent use in any transaction that does not include the State.
  - c) No use shall be made of any information collected in connection with the services provided under the Contract except as necessary to fulfill the auditing services required under the Contract.
  - d) PII, confidential information, and proprietary information shall be safeguarded from loss, theft, or inadvertent disclosure at all times.
  - e) Desktop computers, laptops, tablets, cell phones and all other portable electronic devices/media containing PII and/or confidential information and/or proprietary information shall be encrypted and/or password protected.

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<sup>8</sup> “State” as used here (and hereinafter) shall mean the State of Delaware and any agency or instrumentality of the State of Delaware, including, but without limitation, the Delaware Department of Transportation, the Department’s Transportation Trust Fund, and any other fund administered by the Department.

<sup>9</sup> “Confidential Information” includes, without limitation, tax returns and related information, driver performance records, financial data, claimant or employer names and addresses, and social security and tax identification numbers.

<sup>10</sup> “Proprietary Information” includes, without limitation, cost or pricing data, government spending plan data, contractor technical qualifications data, independent government cost estimates, negotiation strategies and contractor data presented in negotiations, contracting plans, statements of work, together with information about the design and configuration of system, application, network and access information.

<sup>11</sup> Personally identifiable information is defined in [6 Del. C. § 12B-101\(4\)](#), and includes a resident’s name in combination with the resident’s Social Security Number, Driver’s License number, Delaware Identification Card number or bank account or credit or debit card numbers.

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- f) The disclosure of information and details relating to a PII loss shall be limited to those who need to know for purposes contemplated under the Contract.
  - g) All State, non-public data in transit via Secure FTP shall be encrypted, including data that resides on mobile devices.
  - h) Management of our firm (up to and including the engagement partner) is responsible for clarifying what may represent PII or sensitive data/information and how to ensure adequate safeguards are in place to protect such information.
3. State data shall not be stored or transferred outside of the United States except to the extent permitted in the Contract. This includes backup data and data stored at disaster recovery locations.
4. We shall account for all copies of State data that we obtain during the course of the audit engagement, and we shall not disclose such data to any person or entity except to the extent the Contractor is permitted to disclose information as provided in the Contract.
5. We understand our responsibilities under 6 *Del. C.* Ch. 12B (“Computer Security Breach”) and the importance of compliance with the notification provisions of that chapter in the event that a data breach occurs. We further acknowledge that we have read 6 *Del. C.* § 12B-104 that sets forth the enforcement procedures available to the Attorney General in the event of a violation of chapter 12B.
6. Within 24 hours of the discovery of any security breach or suspicious intrusion involving State data, we shall disclose to AOA, in writing, the occurrence of such breach or intrusion and the assets that might have been breached or disclosed.
7. It is understood we are bound by and must comply with all applicable State and Federal laws relating to confidentiality, privacy and non-disclosure. We further understand that the State may seek any remedy available to it to enforce this agreement, including, but not limited to, application for a Court order prohibiting disclosure of information in breach of this agreement. Nothing in this agreement shall affect the applicability or enforcement of the Delaware Return Secrecy Statute (30 *Del. C.* § 368) or corresponding provisions of Federal law (26 U.S.C. §6103(i)(1)); Delaware Bank Franchise Tax Return secrecy statute (5 *Del. C.* §1113); Delaware Department of Labor confidentiality statute (19 *Del. C.* § 3125); Delaware Department of Technology and Information Internal Policy on Confidentiality (Non-disclosure) and Integrity of Data dated 1/3/06 (Doc. Ref. No. DTI-0065); Delaware Department of Transportation confidentiality statute regarding the release of motor vehicle driving history and license records (21 *Del.C.* § 305); HIPAA and the accompanying implementing Administrative Simplification regulations (45 C.F.R. parts 142, 160, 162, and 164) to the extent those laws, regulations, and policies apply to the information covered by this agreement.
8. We understand that Federal tax information received from the IRS and the SSA may be accessed by agency personnel only. This includes file transfers. We understand that unauthorized inspection and use of Federal tax information, such as fax transmittals that are not addressed to Contractor engagement staff or the extraction of Federal tax information that is outside the scope of the engagement can result in civil and criminal penalties under the Internal Revenue Service Code §§ 7213, 7213(A) and 7431 for unauthorized

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inspection. These penalties include fines, not to exceed \$5,000 and/or five (5) years imprisonment, plus any cost of prosecution.

9. Without limitation of additional legal bases, pursuant to the State of Delaware Constitution of 1897 at Art. VIII, §§ 3 and 6, and 29 *Del.C.* § 6519(a) the State of Delaware is not at all permitted to agree to any limitation on liability.

10. We understand that we shall promptly contact AOA, in writing, unless prohibited by law from providing such notice, upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to, State data. Further, we shall not respond to subpoenas, service of process, and other legal requests related to the State without first notifying AOA, in writing, unless prohibited by law from providing such notice.

11. We understand that our staff may be subject to clearance through the State's Security Clearance Program prior to the review of any State data.

12. We agree to safeguard any password or security codes provided to us during the course of this engagement.

13. We agree to follow the Contractor's security procedures and ensure that all data and information relative to this engagement is properly stored, encrypted on portable devices, and password protected at all times.

14. We understand our liability for any losses experienced by the State or any remediation costs associated with a breach and that the State will pursue whatever legal means necessary to recover all such losses and costs, as well as any appropriate equitable relief to prevent unauthorized disclosures.

15. We understand that data shall be permanently deleted in accordance with the terms of the Contract and shall not be recoverable, according to the National Institute of Standards and Technology (NIST) approved methods except for copies retained in work paper files or records, anything that may be stored in back up media or other electronic data storage systems, latent data and metadata. Certificates of destruction must be provided to the AOA. [See example at Appendix D]

16. We understand that we are expected to comply with sections 4.40 through 4.44 of the Generally Accepted Government Auditing Standards as to reporting confidential and sensitive information.

17. We understand nothing in this agreement shall be interpreted in such a way as to relieve the Contractor from its duty to comply with auditing standards, including AICPA ET Section 301.

18. The obligations imposed herein do not extend to information or data which:  
a) is in the public domain at the time of receipt or which comes into the public domain thereafter through no fault of the Contractor;

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- b) is disclosed with the prior written approval of the designated Contracting Officer of the applicable State entity;
- c) is determined to have been developed by the Contractor independently of disclosures made hereunder; or
- d) is disclosed pursuant to Court order after prior notification to the designated Contracting Officer of the applicable State entity.

19. If we subcontract with a Service Provider for cloud or offsite hosting of State data, we agree to assume liability for any noncompliance by the Service Provider. Nothing contained herein or in any subcontractor agreement with the Service Provider shall be construed as creating any contractual relationship between the Service Provider and the State. In addition, we agree to the terms and conditions contained in Appendix G.

Our signature below represents our agreement with the items above for the duration of the Contract and until engagement work papers are properly destroyed under the terms of the Contract. The signature of the authorized representative is of an individual who legally may enter his/her organization into a formal contract with the State of Delaware, Office of Auditor of Accounts.

Contractor:

<u>[NOT TO BE COMPLETED UNTIL A FIRM HAS BEEN AWARDED THE CONTRACT]</u>			
Print Name	Title	Signature	Date

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**Appendix D – Certificate of Sanitization**

At the end of each year's engagement and at the expiration of the firm's retention period, the firm must seek written permission from the assigned Engagement Liaison prior to destroying any engagement-related records.



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CERTIFICATE OF SANITIZATION		
<b>PERSON PERFORMING SANITIZATION</b>		
Name: <a href="#">Click here to enter text.</a>		Title: <a href="#">Click here to enter text.</a>
Organization: <a href="#">Click here to enter text.</a>	Location: <a href="#">Click here to enter text.</a>	Phone: <a href="#">Click here to enter text.</a>
<b>MEDIA INFORMATION</b>		
Make/Vendor: <a href="#">Click here to enter text.</a>		Model Number: <a href="#">Click here to enter text.</a>
Serial Number: <a href="#">Click here to enter text.</a>		
Media Property Number: <a href="#">Click here to enter text.</a>		
Media Type: <a href="#">Click here to enter text.</a>	Source (ie user name or PC property number): <a href="#">Click here to enter text.</a>	
Classification: <a href="#">Click here to enter text.</a>	Data Backed Up: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown	
Backup Location: <a href="#">Click here to enter text.</a>		
<b>SANITIZATION DETAILS</b>		
Method Type: <input type="checkbox"/> Clear <input type="checkbox"/> Purge <input type="checkbox"/> Damage <input type="checkbox"/> Destruct		
Method Used: <input type="checkbox"/> Degauss <input type="checkbox"/> Overwrite <input type="checkbox"/> Block Erase <input type="checkbox"/> Crypto Erase <input type="checkbox"/> Other: <a href="#">Click here to enter text.</a>		
Method Details: <a href="#">Click here to enter text.</a>		
Tools Used (include version): <a href="#">Click here to enter text.</a>		
Verification Method: <input type="checkbox"/> Full <input type="checkbox"/> Quick Sampling <input type="checkbox"/> Other: <a href="#">Click here to enter text.</a>		
Post Sanitation Classification: <a href="#">Click here to enter text.</a>		
Notes: <a href="#">Click here to enter text.</a>		
<b>MEDIA DESTINATION</b>		
<input type="checkbox"/> Internal Reuse <input type="checkbox"/> External Reuse <input type="checkbox"/> Recycling Facility <input type="checkbox"/> Manufacturer <input type="checkbox"/> Other (specify in details area)		
Details: <a href="#">Click here to enter text.</a>		
<b>SIGNATURE</b>		
I attest that the information provided on this statement is accurate to the best of my knowledge.		
Signature:		Date: <a href="#">Click here to enter a date.</a>
<b>VALIDATION</b>		
Name: <a href="#">Click here to enter text.</a>		Title: <a href="#">Click here to enter text.</a>
Organization: <a href="#">Click here to enter text.</a>	Location: <a href="#">Click here to enter text.</a>	Phone: <a href="#">Click here to enter text.</a>
Signature:		Date: <a href="#">Click here to enter a date.</a>



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**Appendix E – Non-Disclosure & Data Security Agreement for Individual Audit Staff**

I, \_\_\_\_\_, am a(n) \_\_\_\_\_ performing certain auditing services on behalf of [Name of Firm] (the “Contractor”) under its contract with the State of Delaware (“State”)<sup>12</sup> through the Office of the Auditor of Accounts (“AOA”) captioned as AOA Original Contract Number [Contract Number] (the “Contract”) to perform and complete the [Description of Engagement] for, *inter alia*, the fiscal years ending [Engagement Period] (the “Audit”). In that capacity, and in the performance of my Audit- related duties, I acknowledge and understand the following:

1. The State shall at all times own all right, title and interest in data and information, regardless of format, as set forth in the Contract. I shall not access State user accounts or State data, except as required by the express terms of the Contract. I acknowledge and agree that I shall have no right, title, or interest in such data and information.
2. I shall protect confidential information<sup>13</sup> and proprietary information<sup>14</sup> to ensure that there is no inappropriate or unauthorized use or disclosure of State information at any time. To this end, I shall safeguard the confidentiality, integrity, and availability of confidential information and proprietary information and comply with the following conditions:
  - a) Personally identifiable information (PII)<sup>15</sup> obtained by me is and shall remain property of the State.
  - b) At no time shall any data or processes which either belongs to or are intended for the use of the State or its officers, agents, or employees, be copied, disclosed, or retained by me for subsequent use in any transaction that does not include the State.
  - c) No use shall be made of any information collected in connection with the services provided under the Contract except as necessary to fulfill the auditing services required under the Contract.

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<sup>12</sup> “State” as used here (and hereinafter) shall mean the State of Delaware and any agency or instrumentality of the State of Delaware, including, but without limitation, the Delaware Department of Transportation, the Department’s Transportation Trust Fund, and any other fund administered by the Department.

<sup>13</sup> “Confidential Information” includes, without limitation, tax returns and related information, driver performance records, financial data, claimant or employer names and addresses, and social security and tax identification numbers.

<sup>14</sup> “Proprietary Information” includes, without limitation, cost or pricing data, government spending plan data, contractor technical proposal data, independent government cost estimates, negotiation strategies and contractor data presented in negotiations, contracting plans, statements of work, together with information about the design and configuration of system, application, network and access information.

<sup>15</sup> Personally identifiable information is defined in [6 Del. C. § 12B-101\(4\)](#), and includes a resident’s name in combination with the resident’s Social Security Number, Driver’s License number, Delaware Identification Card number or bank account or credit or debit card numbers.

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- d) PII, confidential information, and proprietary information shall be safeguarded from loss, theft, or inadvertent disclosure at all times.
  - e) Desktop computers, laptops, tablets, cell phones and all other portable electronic devices/media containing PII and/or confidential information and/or proprietary information shall be encrypted and/or password protected.
  - f) The disclosure of information and details relating to a PII loss shall be limited to those who need to know for purposes contemplated under the Contract.
  - g) All State, non-public data in transit via Secure FTP shall be encrypted, including data that resides on mobile devices.
  - h) Clarification shall be obtained from the Contractor's management (up to and including the engagement partner) on what may represent PII or sensitive data/information and how to ensure adequate safeguards are in place to protect such information.
3. State data shall not be stored or transferred outside of the United States except to the extent permitted in the Contract. This includes backup data and data stored at disaster recovery locations.
4. I shall account for all copies of State data that I obtain during the course of the audit engagement, and I shall not disclose such data to any person or entity except to the extent the Contractor is permitted to disclose information as provided in the Contract.
5. I understand my responsibilities under 6 *Del. C.* Ch. 12B ("Computer Security Breach") and the importance of compliance with the notification provisions of that chapter in the event that a data breach occurs. I further acknowledge that I have read 6 *Del. C.* § 12B-104 that sets forth the enforcement procedures available to the Attorney General in the event of a violation of chapter 12B.
6. Within 24 hours of the discovery of any security breach or suspicious intrusion involving State data, I shall disclose to the Contractor engagement partner and to AOA, in writing, the occurrence of such breach or intrusion and the assets that might have been breached or disclosed.
7. It is understood I am bound by and must comply with all applicable State and Federal laws relating to confidentiality, privacy and non-disclosure. I further understand that the State may seek any remedy available to it to enforce this agreement, including, but not limited to, application for a Court order prohibiting disclosure of information in breach of this agreement. Nothing in this agreement shall affect the applicability or enforcement of the Delaware Return Secrecy Statute (30 *Del. C.* § 368) or corresponding provisions of Federal law (26 U.S.C. §6103(i)(1)); Delaware Bank Franchise Tax Return secrecy statute (5 *Del. C.* §1113); Delaware Department of Labor confidentiality statute (19 *Del. C.* § 3125); Delaware Department of Technology and Information Internal Policy on Confidentiality (Non-disclosure) and Integrity of Data dated 1/3/06 (Doc. Ref. No. DTI-0065); Delaware Department of Transportation confidentiality statute regarding the release of motor vehicle driving history and license records (21 *Del.C.*

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§ 305); HIPAA and the accompanying implementing Administrative Simplification regulations (45 C.F.R. parts 142, 160, 162, and 164) to the extent those laws, regulations, and policies apply to the information covered by this agreement.

8. I understand that Federal tax information received from the IRS and the SSA may be accessed by agency personnel only. This includes file transfers. I understand that unauthorized inspection and use of Federal tax information, such as fax transmittals that are not addressed to [Name of Firm] engagement staff or the extraction of Federal tax information that is outside the scope of the engagement can result in civil and criminal penalties under the Internal Revenue Service Code §§ 7213, 7213(A) and 7431 for unauthorized inspection. These penalties include fines, not to exceed \$5,000 and/or five (5) years imprisonment, plus any cost of prosecution.

9. Without limitation of additional legal bases, pursuant to the State of Delaware Constitution of 1897 at Art. VIII, §§ 3 and 6, and 29 *Del.C.* § 6519(a) the State of Delaware is not at all permitted to agree to any limitation on liability.

10. I understand that I shall promptly contact the Contractor engagement partner and AOA, in writing, unless prohibited by law from providing such notice, upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to, State data. Further, I shall not respond to subpoenas, service of process, and other legal requests related to the State without first notifying the Contractor engagement partner and AOA, in writing, unless prohibited by law from providing such notice.

11. I understand that I may be subject to clearance through the State's Security Clearance Program prior to the review of any State data.

12. I agree to safeguard any password or security codes provided to me during the course of this engagement.

13. I agree to follow the Contractor's security procedures and ensure that all data and information relative to this engagement is properly stored, encrypted on portable devices, and password protected at all times.

14. I understand my personal liability for any losses experienced by the State or any remediation costs associated with a breach and that the State will pursue whatever legal means necessary to recover all such losses and costs, as well as any appropriate equitable relief to prevent unauthorized disclosures.

15. I understand that data shall be permanently deleted in accordance with the terms of the Contract and shall not be recoverable, according to the National Institute of Standards and Technology (NIST) approved methods except for copies retained in work paper files or records, anything that may be stored in back up media or other electronic data storage systems, latent data and metadata. Certificates of destruction must be provided to the AOA.

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16. I understand that I am expected to comply with sections 4.40 through 4.44 of the Generally Accepted Government Auditing Standards as to reporting confidential and sensitive information.

17. I understand nothing in this agreement shall be interpreted in such a way as to relieve the Contractor from its duty to comply with auditing standards, including AICPA ET Section 301.

18. The obligations imposed herein do not extend to information or data which:

- a) is in the public domain at the time of receipt or which comes into the public domain thereafter through no fault of the Contractor;
- b) is disclosed with the prior written approval of the designated Contracting Officer of the applicable State entity;
- c) is determined to have been developed by the Contractor independently of disclosures made hereunder; or
- d) is disclosed pursuant to Court order after prior notification to the designated Contracting Officer of the applicable State entity.

My signature below represents my agreement with the items above for the duration of my assignment and until engagement work papers are properly destroyed under the terms of the Contract.

Printed Name: \_\_\_\_\_

Position: \_\_\_\_\_

[NOT TO BE COMPLETED UNTIL A FIRM  
HAS BEEN AWARDED THE CONTRACT]

Signature & Date: \_\_\_\_\_

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**Appendix F – Frequently Asked Questions**

1. How many files are to be submitted for the proposals?  
To clarify the proposal submission process, firms must submit their proposals in **three, separate files**: Mandatory Criteria section, Proprietary section, and Cost section.
2. Who prepares the Annual Disproportionate Share Hospital report? This is a schedule included in the examination report.  
It is DMMA's responsibility to ensure the report is prepared for the examination.
3. What were the prior year audit fees?  
Total fees paid for the Fiscal Year ended June 30, 2013, examination were \$86,400. The firm is encouraged to evaluate the hours they believe are necessary to complete the engagement in accordance with the current standards, including any updates that may have occurred from the prior year to present. Firms that provide a more detailed proposal and related hours tend to score much higher than those that do not. In fact, lack of adequate detail and or hours will result in a reduced scoring.
4. How many hours did the most recent audit take?  
The Fiscal Year ended June 30, 2013, examination took approximately 590 hours. Please see response to question 3 above.
5. Is there a prior report?  
The examination report for Fiscal Year ended June 30, 2013, has been issued and is available at [auditor.delaware.gov](http://auditor.delaware.gov).
6. Were there any difficulties in completing the prior period engagement?  
We are not aware of any difficulties in completing the engagement.
7. Were there any audit adjustments in the prior year engagement? If so, how many were there?  
Based on the lack of a finding, there were no material adjustments in the prior year engagement. AOA did not request the audit difference schedule from the contracted firm, so we would not know the number or amount of adjustments passed on.
8. Did any event occur that would make the current year engagement significantly different from the prior year?  
AOA is not aware of any operational issues. The firm is expected to reflect any and all accounting and standards changes in its presentation to demonstrate adequate professional competencies.
9. In the RFP on page 9, Section 9.2 b. (1) asks for authorization from NASBA. Since Delaware is a State that is part of the Portability Act, can we just say that we meet the requirements of the Act and provide a

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copy of our firm's State license and a copy of the State licenses for the Partner, Manager, and Supervisor in the proposal?

Yes, that is acceptable. Copies of the firm and the partner, manager, and supervisor-in-charge CPA licenses must be provided. Please keep in mind that a copy of a valid State of Delaware business license is also required.

10. In the RFP on page 11, what do you want to see in the proposal pertaining to Affirmative Action? We have a policy, so can we simply say that we have an Affirmative Action Policy?

Yes, you may state that you have an Affirmative Action Policy. Per page 11 of the RFP: "The firm must identify the extent to which staff to be assigned to the engagement reflect the State of Delaware's commitment to Affirmation Action."

11. Can we include an insurance binder showing our limits to satisfy the proof of Insurance requirement? Can the insurance certificate have an expired date?

Yes, however AOA will require the selected firm to provide evidence of actual insurance prior to the contract being signed. The insurance certificate or binder will not be accepted if the certificate is not current as of the date the proposals are submitted.

12. Can you share with us the information given to other bidders in response to their inquiries?

Answers to all questions received are posted at [bids.delaware.gov](https://bids.delaware.gov).

13. What assistance is given to the auditors during the audit?

Per Section 4.3 b. on page 4, "The firm agrees it will **not** prepare the Annual Disproportionate Share Hospital Report, or any supporting documentation or schedules. The firm should notify AOA immediately of any request to perform such services."

14. Is this RFP for a fixed price contract?

No, our contracts are not fixed in price. As described in Section 12.4 b. of the RFP, the Contractor agrees to bill AOA only for actual work performed and out-of-pocket expenses incurred during its performance of the engagement. Therefore, if a firm's work is less than the estimated hours in its proposal, the firm should only bill for actual hours. Any additional work outside the contract or for additional fees related to the contract is not permitted without the AOA Liaison's prior knowledge and approval.

15. Is the proposing partner required to submit clarifying questions to AOA?

Questions may be submitted by any representative deemed appropriate by the firm; however, the proposing partner should sufficiently participate in the proposal process to eliminate unnecessary questions and to ensure the firm's proposal meets all RFP requirements.

16. Does the quality of past engagement work and reports play a role in firm's technical proposal score?

Yes. AOA looks for high quality audit work, including quality writing in both findings and reports. When auditors perform quality audit work in accordance with GAGAS, it can lead to improved

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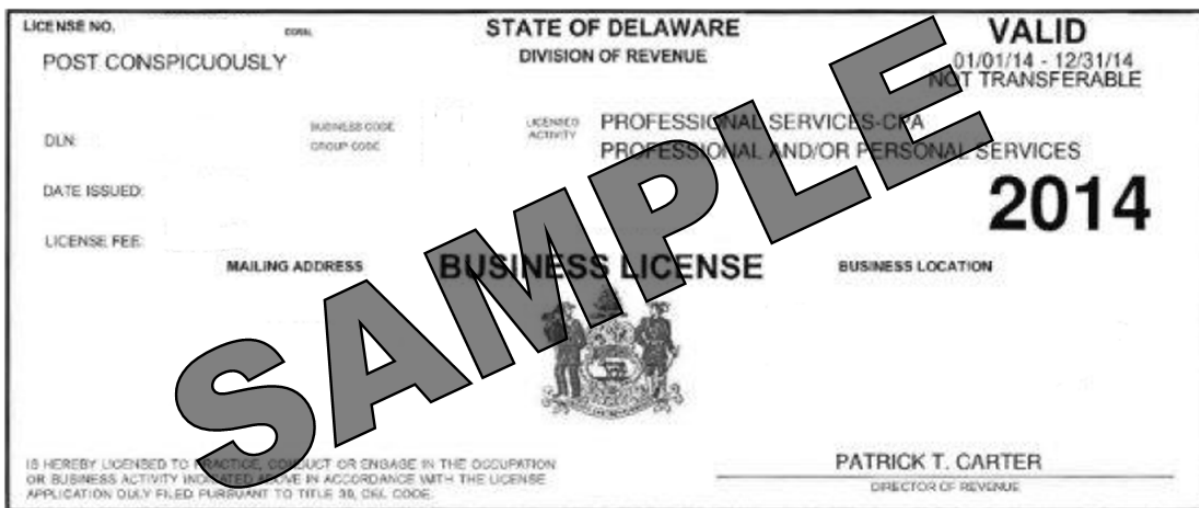
government management, better decision making and oversight, effective and efficient operations, and accountability and transparency for resources and results. (GAGAS 1.05) Audit reports are used to effectively communicate necessary information to both government officials and the public. Therefore, sufficient time should be budgeted and spent on writing user-friendly findings that allow these readers to understand the issues found and their impact. When evaluating a firm on previous work experience, the Evaluation Committee will consider whether previously submitted engagement reports were complete, accurate, objective, convincing, clear, and concise (GAGAS A7.02) and whether sufficient time has been allocated in the current proposal for performing these tasks.

17. If we have provided AOA with copies of CPA licenses previously, do we need to provide them with each proposal?

Yes. AOA will not look up CPA licenses in previous files or from other sources. The firm is required to provide copies in each proposal or its proposal will not move forward for technical scoring.

18. What does a State of Delaware Business License look like?

A sample State of Delaware Business License is as follows:



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**Appendix G – Data Owned by the State of Delaware**

**State of Delaware Cloud and/or Offsite Hosting Specific Terms and Conditions**  
between the State of Delaware Office of Auditor of Accounts and [CONTRACTOR NAME] dated [DATE]  
This document shall become part of the final contract.

	<b>Terms and Conditions Clauses 1-13 are mandatory for every engagement. Exceptions will be considered non-compliant and non-responsive.</b>
<b>1</b>	<b>Data Ownership:</b>  The State of Delaware shall own all right, title and interest in its data that is related to the services provided by this contract. The Service Provider shall not access State of Delaware User accounts, or State of Delaware Data, except (i) in the course of data center operations, (ii) response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at State of Delaware’s written request.
<b>2</b>	<b>Data Protection:</b>  Protection of personal privacy and sensitive data shall be an integral part of the business activities of the Service Provider to ensure that there is no inappropriate or unauthorized use of State of Delaware information at any time. To this end, the Service Provider shall safeguard the confidentiality, integrity, and availability of State information and comply with the following conditions:  a) All information obtained by the Service Provider under this contract shall become and remain property of the State of Delaware.  b) At no time shall any data or processes which either belongs to or are intended for the use of State of Delaware or its officers, agents, or employees, be copied, disclosed, or retained by the Service Provider or any party related to the Service Provider for subsequent use in any transaction that does not include the State of Delaware.
<b>3</b>	<b>Data Location:</b>  The Service Provider shall not store or transfer State of Delaware data outside of the United States. This includes backup data and Disaster Recovery locations. The Service Provider will permit its personnel and contractors to access State of Delaware data remotely only as required to provide technical support.
<b>4</b>	<b>Encryption:</b>  a) The Service Provider shall encrypt all <b>data in transit</b> regardless of the transit mechanism.  b) For engagements where the Service Provider stores sensitive personally identifiable or otherwise confidential information, this data shall be <b>encrypted at rest</b> . Examples are social security number, date of birth, driver’s license number, financial data, federal/state tax information, and hashed passwords. The Service Provider’s encryption shall be consistent with validated cryptography standards as specified in National Institute of Standards and Technology <a href="#">FIPS140-2</a> , Security Requirements. The key location and other key management details will be discussed and negotiated by both parties. When the Service Provider cannot offer encryption at rest, they must maintain, for the duration of the contract, cyber security liability insurance coverage for any loss resulting from a data breach in accordance with the <a href="#">Cloud and Offsite</a>



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	<p style="text-align: center;"><b>Terms and Conditions Clauses 1-13 are mandatory for every engagement.</b></p> <p style="text-align: center;"><b>Exceptions will be considered non-compliant and non-responsive.</b></p>
	<p><a href="#">Hosting Policy</a>. Additionally, where encryption of data at rest is not possible, vendor must describe existing security measures that provide a similar level of protection.</p>
5	<p><b>Breach Notification and Recovery:</b></p> <p>We understand our responsibilities under 6 <i>Del. C.</i> Ch. 12B (“Computer Security Breach”) and the importance of compliance with the notification provisions of that chapter in the event that a data breach occurs. We further acknowledge that we have read 6 <i>Del. C.</i> § 12B-104 that sets forth the enforcement procedures available to the Attorney General in the event of a violation of chapter 12B.</p> <p>Within 24 hours of the discovery of any security breach or suspicious intrusion involving State data, we shall disclose to AOA, in writing, the occurrence of such breach or intrusion and the assets that might have been breached or disclosed.</p> <p>It is understood we are bound by and must comply with all applicable State and Federal laws relating to confidentiality, privacy and non-disclosure. We further understand that the State may seek any remedy available to it to enforce this agreement, including, but not limited to, application for a Court order prohibiting disclosure of information in breach of this agreement. Nothing in this agreement shall affect the applicability or enforcement of the Delaware Return Secrecy Statute (30 <i>Del. C.</i> § 368) or corresponding provisions of Federal law (26 U.S.C. §6103(i)(1)); Delaware Bank Franchise Tax Return secrecy statute (5 <i>Del. C.</i> §1113); Delaware Department of Labor confidentiality statute (19 <i>Del. C.</i> § 3125); Delaware Department of Technology and Information Internal Policy on Confidentiality (Non-disclosure) and Integrity of Data dated 1/3/06 (Doc. Ref. No. DTI-0065); Delaware Department of Transportation confidentiality statute regarding the release of motor vehicle driving history and license records (21 <i>Del.C.</i> § 305); HIPAA and the accompanying implementing Administrative Simplification regulations (45 C.F.R. parts 142, 160, 162, and 164) to the extent those laws, regulations, and policies apply to the information covered by this agreement.</p> <p>Without limitation of additional legal bases, pursuant to the State of Delaware Constitution of 1897 at Art. VIII, §§ 3 and 6, and 29 <i>Del.C.</i> § 6519(a) the State of Delaware is not at all permitted to agree to any limitation on liability.</p> <p>We understand that Federal tax information received from the IRS and the SSA may be accessed by agency personnel only. This includes file transfers. We understand that unauthorized inspection and use of Federal tax information, such as fax transmittals that are not addressed to Contractor engagement staff or the extraction of Federal tax information that is outside the scope of the engagement can result in civil and criminal penalties under the Internal Revenue Service Code §§ 7213, 7213(A) and 7431 for unauthorized inspection. These penalties include fines, not to exceed \$5,000 and/or five (5) years imprisonment, plus any cost of prosecution.</p>

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	<p style="text-align: center;"><b>Terms and Conditions Clauses 1-13 are mandatory for every engagement.</b> <b>Exceptions will be considered non-compliant and non-responsive.</b></p>
<b>6</b>	<p><b>Notification of Legal Requests:</b></p> <p>The Service Provider shall contact the State of Delaware upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to the data of the State. The Service Provider shall not respond to subpoenas, service of process, and other legal requests related to the State of Delaware without first notifying the State unless prohibited by law from providing such notice.</p>
<b>7</b>	<p><b>Termination and Suspension of Service:</b></p> <p>In the event of termination of the contract, the Service Provider shall implement an orderly return of State of Delaware data in CSV or XML or another mutually agreeable format. The Service Provider shall guarantee the subsequent secure disposal of State of Delaware data.</p> <p>a) Suspension of services: During any period of suspension or contract negotiation or disputes, the Service Provider shall not take any action to intentionally erase any State of Delaware data.</p> <p>b) Termination of any services or agreement in entirety: In the event of termination of any services or agreement in entirety, the Service Provider shall not take any action to intentionally erase any State of Delaware data for a period of 90 days after the effective date of the termination. After such 90 day period, the Service Provider shall have no obligation to maintain or provide any State of Delaware data and shall thereafter, unless legally prohibited, dispose of all State of Delaware data in its systems or otherwise in its possession or under its control as specified in section 7d) below. Within this 90 day timeframe, vendor will continue to secure and back up State of Delaware data covered under the contract.</p> <p>c) Post-Termination Assistance: The State of Delaware shall be entitled to any post-termination assistance generally made available with respect to the Services</p> <p>d) Secure Data Disposal: When requested by the State of Delaware, the provider shall destroy all requested data in all of its forms, for example: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) approved methods and certificates of destruction shall be provided to the State of Delaware.</p>
<b>8</b>	<p><b>Background Checks:</b></p> <p>The Service Provider shall conduct criminal background checks and not utilize any staff, including sub-contractors, to fulfill the obligations of the contract who has been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or any misdemeanor offense for which incarceration for a minimum of 1 year is an authorized penalty. The Service Provider shall promote and maintain an awareness of the importance of securing the State's information among the Service Provider's employees and agents.</p>

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	<p style="text-align: center;"><b>Terms and Conditions Clauses 1-13 are mandatory for every engagement.</b> <b>Exceptions will be considered non-compliant and non-responsive.</b></p>
<b>9</b>	<p><b>Data Dictionary:</b></p> <p>Prior to go-live, the Service Provider shall provide a data dictionary in accordance with the State of Delaware <a href="#">Data Modeling Standard</a>.</p>
<b>10</b>	<p><b>Security Logs and Reports:</b></p> <p>The Service Provider shall allow the State of Delaware access to system security logs that affect this engagement, its data and or processes. This includes the ability for the State of Delaware to request a report of the records that a specific user accessed over a specified period of time.</p>
<b>11</b>	<p><b>Contract Audit:</b></p> <p>The Service Provider shall allow the State of Delaware to audit conformance including contract terms, system security and data centers as appropriate. The State of Delaware may perform this audit or contract with a third party at its discretion at the State's expense. Such reviews shall be conducted with at least 30 days advance written notice and shall not unreasonably interfere with the Service Provider's business.</p>
<b>12</b>	<p><b>Sub-contractor Disclosure:</b></p> <p>The Service Provider shall identify all of its strategic business partners related to services provided under this contract, including but not limited to, all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Service Provider, who will be involved in any application development and/or operations.</p>
<b>13</b>	<p><b>Operational Metrics:</b></p> <p>The Service Provider and the Contractor shall reach agreement on operational metrics and document said metrics in the Service Level Agreement. Examples include but are not limited to:</p> <ul style="list-style-type: none"> <li>a) Advance notice and change control for major upgrades and system changes</li> <li>b) System availability/uptime guarantee/agreed-upon maintenance downtime</li> <li>c) Recovery Time Objective/Recovery Point Objective</li> <li>d) Security Vulnerability Scanning</li> </ul>

**By signing this Agreement, the Contractor agrees to ensure the Service Provider abides by all of the above Terms and Conditions.**

**Contractor Name/Address (print):** \_\_\_\_\_

**[NOT TO BE COMPLETED UNTIL A FIRM  
HAS BEEN AWARDED THE CONTRACT]**

**Contractor Authorizing Official Name (print):** \_\_\_\_\_

**Contractor Authorizing Official Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_