State of Delaware
Office of Auditor of Accounts

Request for Proposal

For

Diamond State Port Corporation

Professional Services

November 22, 2017

AOA18001-CPA_PORT

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), December 22, 2017

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State of Delaware
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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 publishing this Request for Proposal ("RFP") and seeking proposals ("Proposals") from qualified certified public accounting firms ("Firms") to perform an engagement in accordance with services described in this RFP at Section 4. Nature of Services Required, for each of the fiscal years ended June 30, 2018 and 2019.

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, and 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 Firm by AOA for any such costs or expenses.

1.3 Public announcement of this RFP has been made in accordance with 29 *Del. C.* § 6981.

1.4 A mandatory pre-bid meeting has not been established for this RFP and is not required.

1.5 This RFP is available in electronic form through the State of Delaware Procurement website at www.bids.delaware.gov. Paper copies of this RFP will not be provided by AOA or otherwise available.

If AOA determines that is necessary to revise any part of the RFP, an addendum will be posted on the State of Delaware Procurement website at www.bids.delaware.gov. The terms of this RFP and any addenda are controlling and any statement related to this RFP made by any State of Delaware employee, contractor, or its agents does not bind AOA.

2. Proposal and Bid Submission Process

2.1 All questions regarding this RFP must be submitted in writing and must be received by 4:00 p.m. EST on December 1, 2017 via e-mail directly to AOA's Designated Contact:

Tammy B. Smith
Senior Audit Manager
tammy.smith@state.de.us

If a Firm is seeking clarification regarding a specific aspect of the RFP, the Firm must cite the section and page number for reference. Answers to all submitted questions will be posted on bids.delaware.gov in the same manner as this RFP.

2.2 The lowest bid is not the deciding or the most significant factor in awarding professional services contracts. Any Firm identifying contingencies will have its proposed cost adjusted

in relation to others that do not include the contingency so that it is comparable from a cost perspective. Proposals that include sufficient details and realistic hours are likely to receive a higher score overall.

2.3 The State of Delaware may retain consultants or legal counsel to assist in the review and evaluation of responses to this RFP. Firms shall not contact the State's consultant or legal counsel on any matter related to the RFP. Such contact may also result in the elimination of the Proposal from further consideration and award.

2.4 The ***Minimum Requirements Section, Proprietary Section,*** and ***Cost Section*** of the Proposal must be submitted in **three** separate PDF searchable files. The ***Minimum 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 **"Minimum Requirements and Proprietary Sections"** and **"Cost Section."** Proposals must be sent to **AOAContracting@state.de.us** on or before **3:00 p.m. EST on December 22, 2017** (the "Submission Deadline"). Any Proposal received after the Submission Deadline will not be considered and will be rejected. The Firm bears all risk of delays in delivery.

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

A Firm may modify or withdraw its Proposal by written request, provided that both the request and Proposal are received by AOA prior to the Submission Deadline. Any changes, amendments, or modifications to a Proposal must be made in writing, submitted in the same manner as the original response and conspicuously labeled as a change, amendment, or modification to a previously submitted Proposal. Changes, amendments, or modifications to Proposals shall not be accepted or considered after the Submission Deadline.

All Proposals shall become the property of AOA upon receipt and are deemed firm offers at that time unless an amended Proposal is submitted prior to the Submission Deadline.

2.5 AOA will not conduct a public opening of Proposals but will maintain a public log of the names of all Firms that submitted Proposals. AOA's evaluation of the Proposals will begin shortly after the Submission Deadline.

All documents submitted as part of the Proposal will be treated as confidential during the evaluation process. As such, Proposals will not be available for review by anyone other than AOA's Proposal Evaluation Team or its designated agents, as well as AOA's legal counsel. The content of Proposals will not be disclosed unless such disclosure is mandated by the State of Delaware Freedom of Information Act, Title 29, Delaware Code, Chapter 100. Once a written Proposal is received by AOA and a decision on contract award is made, the content of selected and non-selected Proposals will likely become subject to FOIA's public disclosure obligations.

AOA expects to receive Proposals that include proprietary information, such as services that may not be provided by other Firms. The Firm must include this information in the Proprietary Section of the Proposal.

A Firm's statement or position as to the confidentiality of any portion of its Proposal shall not be binding on the State. The State shall independently determine the validity of any Firm's confidentiality designation. Any Firm submitting a Proposal or using the procedures discussed herein expressly accepts AOA's absolute right and duty to independently assess the legal and factual validity of any information designated as confidential business information. Accordingly, Firms assume the risk that confidential business information included within a Proposal may enter the public domain.

Firms shall be advised that as a publically bid contract, no Firm shall retain the right to declare its pricing confidential.

2.6 Non-conforming Proposals, defined as those that do not meet the requirements of this RFP, will not be considered. AOA, in its sole discretion, shall determine whether a Proposal conforms to the requirement of this RFP.

2.7 AOA expects that Firm can fully meet and fulfill the representations made in its Proposal and do so in a timely manner. Proposals must be realistic and must represent the best estimate of time, materials, and other costs including the impact of inflation and any economic or other factors that are reasonably predictable.

2.8 A Firm is fully responsible for the completeness and accuracy of its Proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of the Firm. Should the Firm find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, the Firm shall notify AOA's Designated Contact, in writing, of such findings at least ten (10) days before the Proposal opening. This will allow issuance of any necessary addenda. It will also help avoid the opening of a defective Proposal and disclosure of a Firm's Proposal upon which award could not be made. All unresolved issues should be addressed in the Proposal.

2.9 AOA reserves the right to retain, accept, or reject any or all Proposals or any part of any Proposal, and, in its sole judgment and discretion, determine the merit and qualifications of each product offered, or to solicit new Proposals on the same project or on a modified project which may include portions of the originally proposed project, all or any of which as AOA may deem necessary in the best interest of the State of Delaware and as permitted under law.

2.10 By submitting a Proposal, the Firm acknowledges 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.

2.11 This RFP will become part of the awarded and executed contract and its terms will be enforced as such.

2.12 AOA reserves the right to cancel this RFP at any time during the procurement process, for any reason or for no reason. AOA makes no commitments expressed or implied, that the publication of this RFP and the solicitation and submission of Proposals thereunder will result in a business transaction with any Firm.

This RFP does not constitute an offer by AOA. A Firm's participation in this process may result in the Firm's selection ("Selected Firm") by AOA to engage in further discussions and negotiations in furtherance of the execution of a contract. The commencement of such negotiations does not, however, signify a commitment by AOA to execute a contract nor to continue negotiations. AOA may terminate negotiations at any time and for any reason, or for no reason.

2.13 The final award of a contract is subject to approval by the State of Delaware Auditor of Accounts. In accordance with State law, the Auditor of Accounts has the sole right to select the successful Firm(s) for award, to reject any Proposal as unsatisfactory or non-responsive, to award a contract to other than the lowest priced Proposal, to award multiple contracts, or not to award a contract, as a result of this RFP.

After the Evaluation Committee reports its recommendation, and once the contract terms and conditions have been negotiated and finalized, AOA will award the contract. Notice in writing to a Firm of the acceptance of its Proposal by AOA and the subsequent full execution of a written agreement between the Firm and AOA will constitute a the legal relationship between the parties, and no Firm will acquire any legal or equitable rights or privileges until the occurrence of both such events.

AOA is not obligated to award a contract to the Firm that submits the lowest bid or to the Firm that receives the highest total point score, rather the contract will be awarded to the Firm whose Proposal is the most advantageous to the State of Delaware, as determined by AOA in its sole discretion.

2.14 Once AOA has selected a Firm to engage in contract discussions and negotiations with AOA, all Firms that submitted a Proposal within the established RFP deadline will be notified and the contract discussions and negotiations with the selected Firm will begin 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 General Assembly. AOA is under no express or implied obligation, legal or otherwise, to renew the contract.

4. Nature of Services Required

4.1 Engagement Description and Cycle

a. The proposer shall conduct a financial statement audit and any federal audit requirements of the Diamond State Port Corporation for the fiscal years ended June 30, 2018 and 2019.

4.2 Engagement Standards

a. To meet the requirements of this RFP, the engagement must be performed in accordance with the applicable standards established by the American Institute of Certified Public Accountants (AICPA) and *Government Auditing Standards*, issued by the Comptroller General of the United States.

b. The Selected 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. Failure to notify AOA immediately about any identified known or potential fraud, waste, or abuse is considered contract non-compliance.

4.3 Other Engagement Information

a. The engagement letter must not have any contract terms or an offer to provide additional services. The engagement letter in no way modifies or adds conditions or terms to the contract and is not considered part of the contract with AOA.

b. A Statements on Standards for Attestation Engagements (SSAE) 16 report performed on the State's accounting and payroll systems is available for the Selected Firm to use during the engagement.

c. The Selected Firm agrees it will not prepare the financial statements, note disclosures, or management discussion and analysis (MD&A). The Selected Firm should notify AOA immediately of any request to perform such services.

d. The Selected Firm agrees it will not provide auditor's reports (e.g., audit opinions) to the auditee for incorporation into its reporting packages. The Selected Firm must

obtain the auditee-prepared report (e.g., financial statements), insert the Selected Firm's opinion and signature, and provide the complete reporting package[1] directly to AOA.

e. AOA reserves the right to review the Selected Firm's engagement difference schedule throughout the engagement and any findings the Selected Firm deems inconsequential to the engagement.

f. Following the completion of the engagement, the Selected Firm must provide a written reporting package in accordance with standards discussed in Section 4.2a. AOA will finalize and distribute copies of the reporting packages, with the exception of the management letter and any confidential information, to the appropriate officials. The Selected Firm is not to distribute or issue any work products, reporting packages, 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. The Selected Firm shall maintain engagement documentation, reporting packages, records, documents, and other evidence pertaining to the workpapers and reports related to this engagement to the extent and in such detail as shall adequately reflect performance hereunder. The Selected Firm agrees to preserve and make available to AOA, upon request, such records for a period of five (5) years from the completion of the engagement. Records involving any litigation-related matters shall be retained for one (1) year following the termination of such litigation. The Selected Firm agrees to make such records available for inspection, audit, or reproduction to any authorized AOA representative in the performance of its duties under the contract. Upon written notice given to the Selected Firm, representatives of AOA or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this contract. The cost of any contract audit disallowances resulting from the examination of the Selected Firm's financial records will be borne by the Selected Firm. Reimbursement to AOA for disallowances shall be drawn from the Selected Firm's own resources and not charged to contract cost or cost pools indirectly charging contract costs.

[1] Financial reporting packages, 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), Supplementary Information (SI), and the Report on Internal Control over Financial Reporting, including findings, if applicable. All reports received must be in compliance with generally accepted government auditing standards (GAGAS). The firm must send each report in one, complete electronic file to AOA. Any management letter comments and communications with those charged with governance must also be provided to AOA.

5. Description of the Engagement Entity

5.1 Engagement Entity

a. For this RFP, the engagement entity is Diamond State Port Corporation.

5.2 Engagement Contact and Location

a. The engagement entity's principal engagement contact will be Mr. Parul Shukla, Director of Finance and Administration, or a designated representative, who will coordinate the assistance to the Selected Firm. The Diamond State Port Corporation is located at 1 Hausel Road, Wilmington, DE 19801.

5.3 Diamond State Port Corporation Background Information

a. Diamond State Port Corporation is a public instrumentality of the State of Delaware and is a discretely presented component unit in the State's CAFR for Fiscal Year 2017. It uses government functions in its acquisition, establishment, construction, rehabilitation, improvement, operation, and maintenance of the Port of Wilmington and related facilities. Diamond State Port Corporation does not have the power to tax, to issue bonds, to exercise the power of eminent domain, or to pledge the credit or create any debt or liability of the State of Delaware. Diamond State Port Corporation's activities are financed and operated as an enterprise fund in that costs and expenses of providing services are recovered primarily through user charges. The Diamond State Port Corporation is governed by 29 Del. C., c. 87, Subchapter II. It's website is located at www.portofwilmington.com. Diamond State Port Corporation uses Oracle Financial software.

6. Time Requirements

6.1 Proposal Calendar

a. Request For Proposal issued	November 22, 2017
b. Deadline for Proposal questions	December 1, 2017
c. Answers to Proposal Questions (Posted)	December 8, 2017
d. Deadline for Proposals	December 22, 2017

6.2 Preliminary Engagement Planning

a. AOA reserves the right to request, modify, and approve the detailed engagement plan and the various related programs. The AOA Liaison will review and provide comments, if necessary, within ten (10) business days.

b. Typically, a complete draft of the financial statements is expected to be available by July 31 of each year.

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 Selected Firm must provide the engagement entity with a time schedule for the engagement and a listing of all information needed.

b. The Selected Firm must work with the AOA Liaison to schedule 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 Selected 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. No information regarding the engagement conclusion should be presented to the entity or the board, if applicable, without AOA's express written approval.

6.5 Reporting Packages

a. Draft Reporting Packages (inclusive of proposed Generally Accepted Government Auditing Standards (GAGAS) opinion, findings, and management letter comments) – Prior to obtaining management's response, but after going through a supervisory and technical review, the draft reporting package 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 Selected Firm. The Selected Firm is required to obtain AOA's agreement from the AOA Liaison in writing prior to making any representation to the engagement entity that requires AOA to decrease the 10 business day review period.

- Fiscal Year 2018 August 31, 2018
- Fiscal Year 2019 August 31, 2019

The Selected Firm must provide an electronic version of the draft reporting package to the engagement entity's principal contact or designee for management response and approval. During management review, the Selected Firm must be available to discuss the engagement reporting package and resolve any issues. After all issues are resolved, an electronic version of the draft reporting package must be forwarded to the AOA Liaison for final review by the following dates:

- Fiscal Year 2018 September 20, 2018
- Fiscal Year 2019 September 20, 2019

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

- Fiscal Year 2018 September 30, 2018
- Fiscal Year 2019 September 30, 2019

Reporting package preparation and editing is the responsibility of the Selected 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 14 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 duly authorized to represent the Firm, submit the bid, and to execute 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.

8.3 If a Firm determines additional items are necessary for the completion of this engagement, including more detail to demonstrate its engagement process, the Firm may include these in its 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.

8.4 The rates quoted in the Proposal shall remain fixed and binding on the Firm for at least 60 days from the proposal due date. AOA reserves the right to ask for an extension of time if needed.

9. Minimum Requirements Section

9.1 There must be no dollars or total costs included in the Minimum Requirements Section of the Proposal. Inclusion of such information will result in disqualification of the Proposal.

9.2 Each Proposal must be accompanied by a transmittal letter that briefly summarizes the Firm's interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP that the Firm may have taken in presenting the Proposal.

Furthermore, the transmittal letter must attest to the fact, at a minimum, that the Firm shall not store or transfer non-public State of Delaware data outside of the United States.

AOA reserves the right to deny any and all exceptions taken to the RFP requirements.

9.3 The Minimum 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 *Government Auditing Standards*, issued by the Comptroller General of the United States."

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 (e.g., component units, related organizations) before they are entered into during the contract period.

b. License to Practice in Delaware and Delaware Business License
The Firm 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[2] 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, from which this information was obtained.

(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. See example of a business license in Appendix F.

c. Firm Qualifications
The Firm 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, and the number and nature of the professional staff to be employed in this engagement.

d. Peer Review
The Firm must submit a copy of the most current peer review and a statement whether the quality control review included a government engagement. The Firm must be in compliance with GAGAS peer review requirements.

e. Suspension and Debarment
The Firm must certify that, within the past five (5) years, the Firm or any officer, controlling stockholder, partner, principal, or other person substantially involved in the contracting activities of the business is not presently suspended or debarred and is not a successor, subsidiary, or affiliate of a suspended or debarred business at Appendix B. In addition, the firm must state that it has not been the subject of any disciplinary action or under referral or inquiry from the American Institute of Certified Public Accountants (AICPA) or any State Board of Accountancy in the past five years.

Any Firm that is currently debarred, suspended, or 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

[2] http://nasba.org/licensure/substantialequivalency/

The Firm must identify the engagement team: engagement partners, managers, supervisors, and specialists.

For each person identified, 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 five years, has been the subject of any disciplinary action or inquiry from the American Institute of Certified Public Accountants (AICPA) or any State Board of Accountancy.

The Firm must also 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, consultants, and Firm specialists may be changed if those personnel leave the Firm, are promoted, are assigned to another office, or for other reasons provided, however, that said replacements have substantially the same or better qualifications or experience as the partners, managers, and supervisors they are replacing. Notwithstanding the foregoing, AOA retains the right to approve or reject replacements.

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
A Non-Collusion Statement, attached hereto as Appendix B, must be completed, signed by an authorized representative of the Firm, and included in the Minimum Requirements Section of the Proposal.

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 and the State of Delaware
All engagements performed for AOA and the State of Delaware (e.g., component units, related organizations) 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 office that will be assigned responsibility for the engagement, the Firm must list the most significant engagements (maximum of five) 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 not limited to, innovative engagement approach, approach to identifying and testing effective controls, unique methods for utilizing software and preparing engagement documentation, and example reporting package templates. In an effort to prevent substandard engagements and to provide the highest quality service to Delaware taxpayers, AOA will award a higher score to Firms that provide an innovative engagement approach. Any additional procedures that generate additional costs should be separately stated in the Cost Section.

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) Discussion regarding any early planning and interim testing approaches the Firm uses to try to improve timeliness and efficiency of planning and fieldwork.
(3) Level of staff and number of hours assigned to each area proposed in (1) without dollars. See "Appendix A – Sample Schedule of Professional Fees and Expenses."
(4) Sample methodology to the extent which sampling is to be or planned to be used.
(5) Processes for evaluating and testing internal controls including plans for adequate coverage of information technology infrastructure and data integrity.
(6) Extent of software to be used in the engagement.
(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) Membership in the AICPA's Government Audit Quality Center (GAQC) during peer review. If a Firm has joined since the last peer review, it must disclose the membership date.

d. Examples of GAGAS findings
The Firm must include at least two (but more than three) 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. The Firm is encouraged to provide examples not previously reviewed by AOA under a different engagement or contract.

e. Other work product examples
The Firm is encouraged to include examples of prior engagement plans, custom audit programs beyond canned or template audit programs, draft reporting packages, 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 The Evaluation Committee shall be comprised of representatives from AOA. The Evaluation Committee shall determine which Firms meet the minimum requirements pursuant to the selection criteria of the RFP and procedures established in 29 *Del. C.* §§ 6981 and 6982. Neither the lowest price nor highest scoring Proposal will necessarily be selected.

AOA reserves full discretion to determine the competence and responsibility, professionally and/or financially, of the Firm. The Firms is to provide, in a timely manner, any and all information that AOA may deem necessary to make a decision.

The Evaluation Committee shall make a recommendation to the State of Delaware Auditor of Accounts, who shall have final authority for the selection of a Firm, subject to the provisions of this RFP and 29 *Del. C.* § 6982, and to begin contract negotiations with the Selected Firm.

11.2 As stated above, no Proposal will move forward for full technical review and scoring unless the minimum requirements, as outlined throughout this RFP, are fully addressed. AOA will notify the Firm if the Firm's Proposal did not meet the minimum requirements.

11.3 During the evaluation process, AOA reserves the right to request additional information or clarification from Firms; however, a Proposal may not be modified as a result of such clarification requests. Additionally, AOA, at its discretion may request one or more Firms (but not necessarily every Firm) to make oral presentations as part of the evaluation process. All costs associated with participation in oral presentations are the Firm's sole responsibility.

11.4 The Evaluation Committee may contact any client or customer of the Firm, whether or not included in the Firm's list requested at Section 10.2 of this RFP, and use such information in the evaluation process.

11.5 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 minimum requirements of the RFP will have their Proposals evaluated and scored for both technical qualifications and cost.

All Proposals shall be evaluated using the same criteria and scoring process. Firms are encouraged to review the evaluation criteria and to provide a response that addresses each of the scored items. Evaluators will not be able to make assumptions about a Firm's capabilities so the Firm should be detailed in its Proposal responses. The following criteria shall be used to evaluate Proposals:

Criteria	**Weight**
Technical	
Prior experience with AOA or references	10
Quality of work plan, including realistic proposal and time estimates	15
Staffing experience, expertise, and education	15
Sufficient staff assigned	10
Sufficient plan to identify, evaluate, test, and rely on the most important internal controls	10
Adequate risk, materiality, and sampling consideration	10
Engagement approach and innovation, including sufficient detail	10
Quality of reporting package examples	8
Member of GAQC	2
Cost	10
Total	**100**

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

c. Reservation of Rights

The Evaluation Committee reserves the right to:

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

The Evaluation Committee reserves the right to reject any Proposal as represented throughout this RFP and from a Firm that:

- 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.

12. Contract Conditions and Considerations

12.1 After the Selected Firm and AOA have completed successful contract negotiations, the Selected Firm will be required to enter into a written agreement with AOA (the

"Contract"). AOA reserves the right to incorporate standard State of Delaware contractual provisions into any Contract negotiated as a result of an accepted Proposal under this RFP. Any proposed modifications to the terms and conditions of the standard Contract are subject to review and approval by AOA. The Selected Firm must be referred to as "Contractor" in the Contract.

12.2 The Selected Firm will be expected to enter negotiations with AOA, which will result in a formal Contract between the parties. This RFP and the Selected Firm's response to this RFP will be incorporated as part of any formal Contract.

12.3 If the Selected Firm to which the Contract is awarded fails to enter into the Contract as herein provided, the award will be annulled and, at AOA's sole discretion, an award may be made to another Firm.

12.4 The Selected Firm must agree to contractual provisions including, but not limited to, the following, as well as those negotiated and agreed to by the parties and not specifically described herein.

a. Term

The term of the Contract between the Selected Firm and AOA shall be for two one-year engagements, with the option to renew the Contract at AOA's request for two additional years. The Contract may be terminated by AOA at any time by giving written notice to the Selected Firm of such termination. Upon such termination, the Selected Firm will be paid for the hours of work actually completed.

In the event the Selected Firm materially breaches any obligation under the Contract, the Selected Firm 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 Selected Firm for the purpose of set off for such damages.

If the Selected Firm violates any provision of this RFP or the Contract without prior discussion with (and prior written approval of exception by) AOA, including not submitting deliverables timely due to the fault of the Selected Firm or not providing an advance written request for extension for AOA's approval prior to the due dates, the Selected Firm shall be deemed to be in default and subject to liquidated damages in the amount of one-tenth of 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.

b. 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 Selected Firm's performance under the Contract, or if such appropriation is reduced such that the

amount of the appropriation is insufficient to sustain said performance, this Contract shall be null and void at the option of AOA. If such termination should occur, AOA shall advise the Selected Firm as soon as possible.

c. Notice
Any notice to AOA required under this Contract must be in writing and sent by registered mail to:

Attention: R. Thomas Wagner, Jr.
Auditor of Accounts
Townsend Building, Suite 1
401 Federal Street
Dover, DE 19901

d. Formal Contract and Purchase Order
The Selected Firm must execute a Contract incorporating the terms of this RFP within twenty business days after commencement of negotiations. When purchase orders are applicable, the Selected Firm must not 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 Selected Firm.

e. Indemnification
1. General Indemnification
The Firm agrees that, in the event it is awarded a Contract, the Firm will 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 the Selected Firm under the Contract resulting from this RFP to the extent caused by the Selected Firm's negligence or arising from any breach or default by the Selected Firm under such Contract. Further, in no event will the Selected Firm indemnify and hold harmless the State from any claims or liabilities resulting solely from the acts of the State.

2. Proprietary Rights Indemnification
The Selected Firm shall warrant that all equipment, software, documentation, services, and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret, or other proprietary rights of any third party. In the event of any claim, suit, or action by any third party against the State of Delaware, AOA shall promptly notify the Selected Firm in writing and Selected Firm shall defend such claim, suit, or action at Selected Firm's expense, and the Selected Firm shall indemnify the State of Delaware against any loss, cost, damage, expense, or liability arising out of such claim, suit, or action (including, without limitation, litigation

costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services (including methods), products or other intellectual property used or furnished by the Selected Firm (collectively "Products") is, or in the Selected Firm's reasonable judgment is likely to be, held to constitute an infringing product, the Selected Firm shall at its sole expense and option either:

a. Procure the right for the State of Delaware to continue using the Product(s);
b. Replace the product with a non-infringing equivalent that satisfies all the requirements of the Contract; or
c. Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Product(s) to a degree that the AOA agrees to and accepts in writing.

f. Compliance

In performance of the Contract, the Selected Firm is required to comply with all applicable federal, state, and local laws and regulations of the jurisdiction in which the Contract is performed, as well as all applicable professional conduct rules and guidelines. The Selected Firm will also comply with any policies, guidelines, and requirements of the jurisdiction in which the Contract is performed, provided that such policies, guidelines, and requirements are identified to the Selected Firm by the jurisdiction and the Selected Firm states, in writing, that it can comply. The cost of permits and other relevant costs required in the performance of the Contract shall be borne solely by the Selected Firm. For the duration of the engagement, the Selected Firm must be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301(b) and all other applicable statutes and regulations.

The Selected Firm will warrant that it possesses, or will secure at its own expense, all personnel and licenses necessary to carry out and complete the work hereunder in compliance with any and all federal and State laws, and County and local ordinances, regulations, and codes. All of the services required hereunder shall be provided by or performed by the Selected Firm or under its direct supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services. In accordance with 29 *Del. C.* § 6984, information regarding the award of the Contract will be given to the Delaware Division of Revenue.

AOA reserves the right to audit conformance to the Contract terms and may perform this audit with a third party at its discretion. The Selected Firm 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.

g. Non-Disclosure and Data[3] Security Agreement
No services or other related work under this Contract shall be subcontracted or performed by a third party service provider to complete the engagement. [See Section 9.3.g] Notwithstanding the foregoing, the Selected Firm may use third parties to provide administrative and operational support to the Selected Firm's business operations, none of which includes the services to be performed by the Selected Firm under this Contract. All of these third party service providers are subject to confidentiality obligations to protect the confidentiality of client data. Such entities may be located within or outside the United States; however, all AOA or State data, to the extent stored or housed by such third party vendors, shall be stored or housed, in the "cloud[4]" or otherwise, within the United States as required by the Confidentiality and Non-Disclosure Agreement. This includes backup data and disaster recovery locations. The Selected Firm shall be fully responsible to the State for any such third party service providers, including compliance with the Selected Firm's obligations set forth in the Confidentiality and Non-Disclosure Agreement if awarded the Contract, the Selected Firm must agree to the terms specified in Appendix C prior to the commencement of the engagement. The Selected Firm 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.

h. Confidentiality of Information
Any reporting packages, information, data, etc. given to, prepared, or assembled by the Selected Firm under this Contract shall not be released or made available to any individual or organization by the Selected Firm 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 foregoing, the Selected Firm is authorized to disclose any information related to this Contract when required to by law, legal process, or applicable professional standards.

Audit workpapers, summaries, and similar records must be retained electronically for at least five (5) years after the completion of the engagement.

[3] 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.
[4] 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…"

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

i. Use of Work Product
All reporting packages developed under this Contract are the sole and exclusive property of the State, and the State has the exclusive right to their use. The Firm shall seek written permission to use any product created under this Contract.

j. Independent Contractors
The parties to the Contract shall be independent contractors to one another, and nothing herein shall be deemed to cause this Contract to create an agency, partnership, joint venture, or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding, and all other similar matters. Neither party shall be liable for any debts, accounts, obligations, or other liability whatsoever of the other party or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums, or any income or other similar taxes.

Location of work for the Firm's contractual support personnel shall be at AOA's sole discretion. AOA may provide working space and sufficient supplies and material to augment the Selected Firm's services.

k. Temporary Personnel are not State Employees
The Selected Firm agrees that any individual or group of temporary staff person(s) provided to the State of Delaware pursuant to this Contract shall remain the employee(s) of the Selected Firm for all purposes including any required compliance with the Affordable Care Act by the Selected Firm. The Selected Firm agrees that it shall not allege, argue, or take any position that individual temporary staff person(s) provided to the State pursuant to this Contract must be provided any benefits, including any healthcare benefits by the State of Delaware and the Selected Firm agrees to assume the total and complete responsibility for the provision of any healthcare benefits required by the Affordable Care Act to aforesaid individual temporary staff person(s). In the event that the Internal Revenue Service, or any other third party governmental entity determines that the State of Delaware is a dual employer or the sole employer of any individual temporary staff person(s) provided to the State of Delaware pursuant to this Contract, the Selected Firm agrees to hold harmless, indemnify, and defend the State to the maximum extent of any liability to the State arising out of such determinations.

Notwithstanding the content of the preceding paragraph, should the State of Delaware subsequently directly hire any individual temporary staff employee(s) provided pursuant to this RFP, the aforementioned obligations to hold harmless, indemnify, and

defend the State of Delaware shall cease and terminate for the period following the date of hire. Nothing herein shall be deemed to terminate the Selected Firm's obligation to hold harmless, indemnify, and defend the State of Delaware for any liability that arises out of compliance with the ACA prior to the date of hire by the State of Delaware. The Selected Firm will waive any separation fee provided an employee works for both the firm and hiring agency, continuously, for a three (3) month period and is provided thirty (30) days written notice of intent to hire from the agency. Notice can be issued at second month if it is the State's intention to hire.

l. Insurance

The Selected 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 Selected Firm'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 Selected Firm in its negligent performance under this Contract.

The Selected Firm shall maintain the following insurance during the term of this Contract:

- Worker's Compensation and Employer's Liability Insurance in accordance with applicable law; and
- Commercial General Liability - $1,000,000.00 per occurrence / $3,000,000 per aggregate; and either
  - Professional Liability - $1,000,000.00 per claim / $3,000,000 per aggregate; or
  - Miscellaneous Errors and Omissions - $1,000,000.00 per occurrence / $3,000,000 per aggregate; and

- Cyber Liability Insurance as required by Appendix F of this RFP.[5]

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered to AOA in accordance with the policy provisions.

Before any work is done pursuant to this Contract, the Certificate of Insurance specified in this section, referencing the Contract number stated herein, shall be filed with AOA. The certificate holder is as follows:

[5] At minimum, the Firm should describe what specific clauses, if any, in its General or Professional Liability insurance policies would satisfy this requirement.

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

In no event shall the State of Delaware or AOA be named as an additional insured on any policy required under this Contract.

m. Non-Discrimination and Sexual Harassment
In performing the services subject to this Contract the Selected Firm, as set forth in 19 *Del. C.* §711, will agree that it will not discriminate against any employee or applicant with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The Selected Firm shall comply with all federal and State laws, regulations and policies pertaining to the prevention of discriminatory employment practice.

The Selected Firm shall establish and maintain a written sexual harassment policy that addresses not only the Selected Firm's employees but also employees of the engagement entity. The Selected Firm shall inform its employees of the policy, which must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

n. Covenant Against Contingent Fees
The Selected 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 Firm for the purpose of securing business. For breach or violation of this warranty, AOA may 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 Contract, including any supplemental documents, between AOA and the Selected Firm must constitute the Contract between AOA and the Selected 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: Contract, RFP, the Selected Firm's response to the RFP, and the Purchase Order. No other documents shall be considered. These documents contain the entire agreement between AOA and the Selected Firm. The Selected Firm agrees to be bound by the terms of this RFP pending final execution of the Contract 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 Contract must be filed and litigated in a court in the State of Delaware.

In submitting a Proposal, the Selected Firm certifies that it complies with all federal, State, and local laws applicable to its activities and obligations including:

1. The laws of the State of Delaware;
2. The applicable portion of the Federal Civil Rights Act of 1964;
3. The Equal Employment Opportunity Act and the regulations issued there under by the federal government;
4. A condition that the Proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
5. That programs, services, and activities provided to the general public under resulting Contract conform with the Americans with Disabilities Act of 1990, and the regulations issued there under by the federal government.

If the Selected Firm fails to comply with (1) through (5) of this paragraph, AOA reserves the right to disregard the Proposal, terminate the Contract, or consider the Selected Firm in default.

The Selected Firm shall keep itself fully informed of and shall observe and comply with all applicable existing federal and State laws, and County and local ordinances, regulations and codes, and those laws, ordinances, regulations, and codes adopted during its performance of the work.

q. Scope of Contract

If the scope of any provision of the Contract is deemed 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 Contract must not thereby fail, but the scope of such provisions must be curtailed only to the extent necessary to conform to the law.

r. Collusion or Fraud

Any evidence of agreement or collusion among firms and prospective firms acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the offers of such firms void.

By responding, the Selected Firm shall be deemed to have represented and warranted that its Proposal is not made in connection with any competing firm submitting a

separate response to this RFP, and is in all respects fair and without collusion or fraud; that the Selected Firm did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and that no employee or official of the State of Delaware participated directly or indirectly in the Selected Firm's Proposal preparation or submission.

Advance knowledge of information which gives any Firm any advantage over any other interested Firm(s), in advance of the opening of Proposals, whether in response to advertising or an employee or representative thereof, will potentially void that particular Proposal.

s. Lobbying and Gratuities
Lobbying or providing gratuities shall be strictly prohibited. If the Selected Firm is found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware employee or agent of the State of Delaware concerning this RFP or the award of a Contract resulting from this RFP, the Selected Firm shall have its Proposal immediately rejected and shall be barred from further participation in this RFP.

All contact with State of Delaware employees, contractors, or agents of the State of Delaware concerning this RFP shall be conducted in strict accordance with the manner, forum, and conditions set forth in this RFP.

t. Solicitation of State Employees
Until the Contract is awarded, the Selected Firm shall not, directly or indirectly, solicit any employee of the State of Delaware to leave the State of Delaware's employment in order to accept employment with the Selected Firm, its affiliates, actual or prospective contractors, or any person acting in concert with firm, without prior written approval of AOA. Solicitation of State of Delaware employees by the Selected Firm may result in rejection of the firm's Proposal.

This paragraph does not prevent the employment by a firm of a State of Delaware employee who has initiated contact with the Selected Firm. However, State of Delaware employees may be legally prohibited from accepting employment with the Selected Firm or its subcontractor(s) under certain circumstances. The Selected Firm may not knowingly employ a person who cannot legally accept employment under State or federal law. If the Selected Firm discovers that they have done so, they must terminate that employment immediately.

The Selected Firm shall not permit a former State employee, State officer, or honorary State official to represent or assist the Selected Firm on State matters related to this Contract for a period of two (2) years after termination of employment or appointed status with the State, where that person (a) gave an opinion, (b) conducted an

investigation, or (c) were otherwise directly and materially responsible. (29 Del. C. §5805(d))

u. Firm Activity

No activity is to be executed in an off shore facility, either by a subcontracted firm or a foreign office or division of the Selected Firm. The Selected Firm must attest to the fact that no activity will take place outside of the United States in its transmittal letter. Failure to adhere to this requirement is cause for elimination from future consideration.

v. Firm Background Check Requirements

The Selected Firm that accesses State property or comes in contact with vulnerable populations, including children and youth, shall be required to complete background checks on all employees serving the State's on premises Contracts. Unless otherwise directed, at a minimum, this shall include a check of the following registry:

Delaware Sex Offender Central Registry at:
https://sexoffender.dsp.delaware.gov/

Individuals who are listed in the registry shall be prevented from direct contact in the service of an awarded State Contract, but may provide support or off-site premises service for the Selected Firm. Should an individual be identified and the Selected Firm believes its employee's service does not represent a conflict with this requirement, may apply for a waiver to AOA. AOA's decision to allow or deny access to any individual identified on a registry database is final and at the AOA's sole discretion.

All Selected Firm staff working on-site for this engagement are required to have a Transportation Worker Identification Credential (TWIC) card obtained from the U.S. Department of Homeland Security, Transportation Security Administration, at the Selected Firm's expense. The card is required by the Maritime Transportation Security Act for workers who need access to secure areas of the nation's maritime facilities and vessels. Additional information about the application process is available at www.tsa.gov.

At AOA's request, the Selected Firm shall provide a list of all employees serving an awarded Contract. Prior to staff commencing any work on any part of this engagement, each staff member may be required to sign the form at Appendix D of this Contract/RFP and submit it to AOA directly as part of the Contract documentation and complete a successful criminal background check. If AOA determines that, due to criminal convictions reported on the background check, a staff member cannot work on the engagement, the Selected Firm shall remove such staff from the engagement at the request of AOA.

Individual Contracts may require additional background checks and/or security clearance(s), depending on the nature of the services to be provided or locations accessed, but any other requirements shall be stated in the Contract scope of work or be a matter of common law.

w. Costs and Payment Schedules
All Contract costs must be as detailed specifically in the Cost Section of the Selected Firm's Proposal. No charges other than as specified in the Proposal shall be allowed without written consent of AOA. The Proposal costs shall include full compensation for all taxes that the Selected Firm is required to pay.

AOA will require a payment notice as detailed in Section 14 of this RFP. Payments for services will not be made in advance of work performed. AOA may require holdback of Contract monies until acceptable performance is demonstrated (as much as 25%).

13. Additional Services

13.1 If, during the course of the engagement, the Selected Firm suspects or has reason to suspect 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 Selected Firm must immediately notify AOA in writing. AOA and the Selected Firm will discuss the issues and develop a solution for completing the engagement.

13.2 If it becomes necessary for AOA to request the Selected 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 reporting package issued on this engagement, then such additional work must be performed only if set forth in a Contract addendum between AOA and the Selected Firm. Any such additional work agreed to between AOA and the Selected Firm must fall within the scope of this RFP and 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 Selected Firm to perform additional work, the AOA Liaison must approve any additional hours before the hours are incurred.

14. Notification and Manner of Payment

14.1 AOA agrees to pay the Selected Firm compensation calculated solely on the amount of engagement work performed by the Selected Firm's staff, based on actual hours billed and hourly rates as set forth in the Cost Section of the Selected Firm's Proposal, as well as approved out-of-pocket expenses.

14.2 Progress payments may be made no more frequently than 30, 60, 90, and 100 percent of completion based on the hours of work completed during the course of the engagement. Frequency of billing shall not exceed once per calendar month.

14.3 The Selected Firm agrees to bill AOA for actual work-performed and out-of-pocket expenses incurred during its performance of the engagement. This is not a fixed-price Contract. The Selected Firm is not to advance bill for work not yet performed. AOA reserves the right to audit the Selected Firm's timekeeping records to ensure billing is appropriate and done after-the-fact.

14.4 The invoice for each engagement must include the following: (1) the name of engagement entity/engagement; (2) the sequential invoice number; (3) the purchase order number; (4) the retainage percentage applied to each invoice total, not the total Contract cost; (5) the total invoice amount and whether the invoice is a progress or final invoice; (6) a breakdown of each staff member, with both budgeted and actual hours for each person for each portion of the engagement, as represented in the Selected Firm's Proposal, including the corresponding hourly rate; and (7) the amounts, descriptions, and dates of all out-of-pocket expenses for which reimbursement is requested. Ten percent of the invoice amount will be retained until the Exit Conference has been held and the final reports have been reviewed, approved, and issued by AOA (also referenced as AOA finalizing the audit).

14.5 The Selected Firm must submit all invoices in electronic format for AOA approval. No paper invoices will be accepted. When applicable, AOA will forward the approved invoice to the engagement entity for payment. 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.

14.6 Any additional work outside of the Contract or for additional fees related to the Contract is not permitted without the AOA Liaison's knowledge and approval.

14.7 The Selected Firm is responsible for following up on outstanding invoices with the engagement entity.

15. Dispute Resolution

15.1 The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Contract promptly by negotiation between executives who have authority to settle the controversy. All offers, promises, conduct, and statements, whether oral or written, made in the course of the negotiation by any of the parties, its agents, employees, experts, and attorneys are confidential, privileged, and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable may not be rendered inadmissible. If the matter is not resolved by negotiation, then the matter will proceed to mediation as set forth below.

15.2 Any disputes, claims or controversies arising out of or relating to this Contract, and not resolved through resolution pursuant to Section 15.1 may be submitted to mediation by a mediator agreed upon by the parties for resolution. Each party reserves the right to proceed directly to nonbinding arbitration without mediation. Any such proceedings held pursuant to this provision shall be governed by Delaware law and venue shall be in Delaware. The parties shall maintain the confidential nature of the arbitration proceeding and the award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, except as may be required for disclosure to professional or regulatory bodies or in a related confidential mediation or arbitration. Each party shall bear its own costs of mediation, or arbitration, including attorneys' fees. The arbitration proceeding shall take place in New Castle County, State of Delaware unless the parties mutually agree to a different location. The proceeding shall be governed by the provisions of the Federal Arbitration Act ("FAA") and will proceed in accordance with the then current Arbitration Rules for Professional Accounting and Related Disputes of the American Arbitration Association ("AAA"), except that no pre-hearing discovery shall be permitted unless specifically authorized by the arbitrator. The arbitrator will be selected from AAA, JAMS, the Center for Public Resources, or any other internationally or nationally-recognized organization mutually agreed upon by the parties. Potential arbitrator names will be exchanged within 15 days of the parties' agreement to terminate or waive mediation, and the arbitration will thereafter proceed expeditiously. The arbitration will be conducted before a single arbitrator, experienced in accounting and auditing matters. The arbitrator shall have no authority to award non-monetary, equitable relief and will not have the right to award punitive damages. The award of the arbitration shall be in writing and shall be accompanied by a well-reasoned opinion. The award issued by the arbitrator may be confirmed in a judgment by any federal or State court of competent jurisdiction. The costs of the arbitrator shall be equally divided by the parties.

16. Press Releases or Public Disclosures

16.1 AOA reserves the right to pre-approve, in writing, any news or broadcast advertising releases concerning this RFP, the resulting Contract, the work performed, or any reference to AOA with regard to any project or Contract performance.

16.2 AOA will not prohibit or otherwise prevent the Selected Firm from direct marketing to the State of Delaware agencies, departments, municipalities, and/or any other political subdivisions, however, the Selected Firm shall not use the State's seal or imply preference for the solution or goods provided.

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:

	Partner		Manager		Supervisor/Senior		Staff		Subtotals	
Hourly Rate:	$180		$150		$125		$85			
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	150	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
									Total Cost	52,555

TECHNICAL SECTION EXAMPLE:

Engagement Segment:	**Partner**	**Manager**	**Supervisor/ Senior**	**Staff**	**Subtotals**
			Hours		
Gaining an Understanding of Control Environment	5	10	30	15	60
Engagement Planning Document Preparation	5	15	75	150	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

Sample

Appendix B – Non-Collusion & Debarment Statement

This is to certify that the undersigned Firm has neither 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 Firm further certifies that it is not a subcontractor to another Firm who also submitted a Proposal as a primary Firm in response to this RFP.

The undersigned authorized representative must be an individual who has legal authority on behalf of the Firm to enter into a formal agreement 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)	☐Yes ☐No
Woman Business Enterprise (WBE)	☐Yes ☐No
Disadvantaged Business Enterprise (DBE)	☐Yes ☐No
Veteran Owned Business Enterprise (VOBE)	☐Yes ☐No
Service Disabled Veteran Owned Business Enterprise (SDVOBE)	☐Yes ☐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 _____

Appendix C – Confidentiality and Non-Disclosure Agreement for Contracted CPA Firms

This Confidentiality and Non-Disclosure Agreement ("Confidentiality Agreement") is entered into as of _____[DATE]_____("the Effective Date") by and between the State of Delaware, Office of the Auditor of Accounts (the "AOA"), 401 Federal Street, Townsend Building, Suite 1, Dover, Delaware 19901 and ___[FIRM NAME]_____ (the "Firm"), a Delaware ___[ENTITY TYPE (e.g. limited liability partnership)]_ with its place of business located at [FIRM ADDRESS]_____ (collectively the "Parties").

WHEREAS, AOA and the Firm have entered into a Professional Services Agreement (the "Engagement Agreement") dated ___[DATE]_____ and captioned as AOA contract number [XX-CPA-XX], under which Firm will provide ____[SERVICE]___ for AOA (the "Engagement");

WHEREAS, the parties intend that this Confidentiality Agreement, by made a part of, subject to the terms of, and incorporated by reference into the Engagement Agreement;

WHEREAS, during the course of and in conjunction with the Firm's performance of its duties under the Engagement in accordance with the Engagement Agreement, the Firm will have access to and possession of certain State of Delaware ("State") data, information and documents that AOA deems to be highly confidential, the unauthorized disclosure of which could expose AOA and the State to significant legal liability.

WHEREAS, AOA desires to obtain assurance and protections for the confidentiality, safeguarding and non-disclosure of such information and the Firm desires to provide such assurance and protections to AOA on the terms set forth herein; and

WHEREAS, AOA and the Firm represent and warrant that each party has full right, power and authority to enter into and perform under this Confidentiality Agreement;

NOW THEREFORE, in consideration of the promises and mutual agreements herein, AOA and the Firm agree as follows:

1. As used herein, the following terms shall have the following meanings:

    a. "Confidential Information" includes, with limitation, tax returns and related information, employment and employee performance records and any related documentations or writings, driver performance records, financial data, claimant or employer names and addresses, and social security and tax identification numbers, in the possession of AOA or otherwise obtained by or provided to the Firm in conjunction with the Engagement.

    b. "Proprietary Information" includes, without limitation, request for quotes, 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 a system, application, network and access information, in the possession of the State or otherwise obtained by or provided to the Firm in conjunction with the Engagement.

c. Personally identifiable information ("PII"), in the possession of AOA or otherwise obtained by or provided to the Firm in conjunction with the Engagement, is defined in 6 *Del. C.* § 12B-101(4), and also includes (1) information or data, alone or in combination, that identifies or authenticates a particular individual, which includes, without limitation, Name, Date of birth, Full address (e.g. house number, city, state, and/or zip code), Phone Number, Passwords, PINs, Federal or state tax information, Biometric data, Unique identification numbers (e.g. driver's license number, social security number, credit or debit account numbers, medical records number), Criminal history, Citizenship status, Medical information, Financial information, Usernames, Answers to security questions or other personal identifiers; and (2) information or data that meets the definition ascribed to the term "Personal Information" under §6809(4) of the Gramm-Leach-Bliley Act or other applicable law of the State of Delaware.

d. Confidential information, Proprietary Information, and PII as used in this Confidentiality Agreement may be collectively referred to herein as "Protected Information."

2. The State shall at all times own all right, title and interest in data, information, and documents, including Protected Information, provided to, used by, or reviewed by me by the State in conjunction with the Engagement, regardless of format. The firm acknowledges and agrees that the Firm shall have no right, title, or interest in such data and information. Further, the Firm shall not access State user accounts or State data, except as required or permitted by the express terms of the Engagement Agreement or any otherwise permitted in writing by AOA.

3. AOA agrees to specifically identify Protected Information in writing as confidential prior to providing to the Firm and strictly limit provision of Protected Information to that which is essential to the Firm's performance of Services under the Contract. Notwithstanding the foregoing, and to the extent it deems necessary, AOA shall de-identify, remove, mask, or obfuscate any information which constitutes Protected Information before providing documents or other records to the Firm. The Firm shall protect Protected Information and any other information related to the Engagement at all times to ensure that there is no inappropriate or unauthorized use or disclosure of State information under any circumstances. To that end, the Firm shall safeguard the confidentiality, integrity, and availability of Protected Information and shall comply with the following conditions:

a. PII obtained by the Firm is and shall remain property of the State.

b. At no time shall any Protected Information or any other 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 the Firm or any employee of the Firm for subsequent use in any transaction that does not involve the Engagement.

c. No use shall be made of any information collected in connection with the Engagement except as necessary to fulfill the Services required under the Engagement Agreement.

d. Protected Information shall be safeguarded by the Firm from loss, theft, or inadvertent disclosure at all times, with me utilizing the same or better standards and controls as used by the Firm for safeguarding the Firm's own confidential information.

e. The Firm's desktop computers, laptops, tablets, cell phones and all other portable electronic devices/media containing Protected Information shall be encrypted and/or password protected.

f. The disclosure of information and details relating to a loss of Protected Information shall be limited to those who need to know for purposes contemplated under the Engagement Agreement.

g. All State, non-bulk data in transit via Secure FTP shall be encrypted, including data that resides on mobile devices.

4. No State data, including Protected Information, shall be stored or transferred outside of the United States by the Firm except to the extent permitted in the Engagement Agreement and this Confidentiality Agreement. This includes backup data and data stored at disaster recovery locations.

5. The Firm shall not disclose any Protected Information to any person or entity except to the extent the Firm is permitted to disclose such information as provided in this Confidentiality Agreement or the Engagement Agreement.

6. To the extent applicable, the Firm understands and acknowledges its responsibilities under 6 *Del. C.* Ch. 12B ("Computer Security Breach") and Appendix F of RFP AOA18001-CPA_PORT. The Firm further understands and acknowledges the importance of compliance with the notification provisions of that chapter in the event that a data breach occurs. The Firm further acknowledges that 6 *Del. C.* § 12B-104 sets forth the enforcement procedures available to the Attorney General in the event of a violation of chapter 12B.

7. Within 24 hours of the discovery of any security breach or actual suspicious intrusion involving State data, the Firm shall disclose to the Firm engagement partner and to AOA, in writing, the occurrence of such breach or intrusion and, to the extent the Firm is aware, the assets that might have been breached or disclosed.

8. The Firm is bound by and must comply with all applicable State and Federal laws relating to confidentiality, privacy and non-disclosure. The Firm further understands that the State may seek any remedy available to it to enforce this Confidentiality Agreement, including, but not limited to, application for a Court order prohibiting disclosure of information in breach of this Agreement. Nothing in this Confidentiality 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); Health Insurance Portability and Accountability Act 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 Protected Information.

9. The Firm understands that Federal tax information received from the IRS and the SSA may be accessed by agency personnel only. This includes file transfers. The Firm understands that unauthorized inspection and use of Federal tax information, such as fax transmittals that are not addressed to the Firm 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.

10. 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 indemnify the Firm, directly or indirectly.

11. The Firm understands that it 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, except to the extent required by law, the Firm 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.

12. The Firm understands that it and its employees may be subject to clearance through the State's Security Clearance Program prior to the review of any State data.

13. The Firm agrees to safeguard any password or security codes provided to it and its employees during the course of the Engagement.

14. The Firm agree to follow its security procedures and ensure that all data and information relative to the Engagement is properly stored, encrypted on portable devices, and password protected at all times.

15. The Firm understands that it and its employees may be liable for any losses experienced by AOA or the State or any remediation costs to the extent required by law associated with a breach and that AOA and/or 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.

16. The Firm understands that data, including Protected Information, shall be permanently deleted in accordance with the terms of the Engagement Agreement 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 in accord with professional standards, 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 AOA upon request.

17. The Firm understands that it is expected to comply with sections 4.40 through 4.44 of the Generally Accepted Government Auditing Standards as to reporting confidential and sensitive information.

18. The obligations imposed herein do not extend to information or data which:
    a. is disclosed with the prior written approval of the designated Contracting Officer of the applicable State entity;
    b. is determined to have been developed by the Firm independently of disclosures made hereunder; or
    c. is disclosed pursuant to Court order after prior notification to the designated Contracting Officer of the applicable State entity.

19. In the event there is a discrepancy or a conflict between the terms of this Confidentiality Agreement and the Engagement Agreement, the terms of this Confidentiality Agreement shall control.

20. The Firm's signature below represents my agreement with the items above for the duration of the Engagement and until engagement work papers are properly destroyed under the terms of Paragraph 16 herein or as otherwise directed by AOA.

[FIRM NAME] (the "Firm"):

Printed Name: _____

Position: _____

Signature & Date: _____

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

Appendix D – Confidentiality and Non-Disclosure Agreement for Individual Audit Staff

This Confidentiality and Non-Disclosure Agreement ("Confidentiality Agreement") is entered into as of _____[DATE]_____("the Effective Date") by and between the State of Delaware, Office of the Auditor of Accounts (the "AOA"), 401 Federal Street, Townsend Building, Suite 1, Dover, Delaware 19901 and _____[EMPLOYEE NAME]_____, employee of _____[FIRM NAME]_____ (the "Firm"), a Delaware ___[ENTITY TYPE (e.g. limited liability partnership)]_ with its place of business located at _ _____[FIRM ADDRESS]__ (collectively the "Parties").

WHEREAS, AOA and the Firm have entered into a Professional Services Agreement (the "Engagement Agreement") dated __[DATE]_____ and captioned as AOA contract number XX-CPA-XX, under which Firm will provide __[SERVICE]__ for AOA (the "Engagement");

WHEREAS, the parties intend that this Confidentiality Agreement, by made a part of, subject to the terms of, and incorporated by reference into the Engagement Agreement;

WHEREAS, during the course of and in conjunction with the Firm's performance of its duties under the Engagement in accordance with the Engagement Agreement, the Firm will have access to and possession of certain State of Delaware ("State") data, information and documents that AOA deems to be highly confidential, the unauthorized disclosure of which could expose AOA and the State to significant legal liability.

WHEREAS, AOA desires to obtain assurance and protections for the confidentiality, safeguarding and non-disclosure of such information and the Firm desires to provide such assurance and protections to AOA on the terms set forth herein; and

WHEREAS, AOA and the Firm represent and warrant that each party has full right, power and authority to enter into and perform under this Confidentiality Agreement;

NOW THEREFORE, in consideration of the promises and mutual agreements herein, AOA and Firm agree as follow:

1. As used herein, the following terms shall have the following meanings:

    a. "Confidential Information" includes, with limitation, tax returns and related information, employment and employee performance records and any related documentations or writings, driver performance records, financial data, claimant or employer names and addresses, and social security and tax identification numbers, in the possession of AOA or otherwise obtained by or provided to the Firm in conjunction with the Engagement.

    b. "Proprietary Information" includes, without limitation, request for quotes, 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 a system, application, network and access information, in the possession of the State or otherwise obtained by or provided to the Firm in conjunction with the Engagement.

c. Personally identifiable information ("PII"), in the possession of AOA or otherwise obtained by or provided to the Firm in conjunction with the Engagement, is defined in 6 *Del. C.* § 12B-101(4), and also includes (1) information or data, alone or in combination, that identifies or authenticates a particular individual, which includes, without limitation, Name, Date of birth, Full address (e.g. house number, city, state, and/or zip code), Phone Number, Passwords, PINs, Federal or state tax information, Biometric data, Unique identification numbers (e.g. driver's license number, social security number, credit or debit account numbers, medical records number), Criminal history, Citizenship status, Medical information, Financial information, Usernames, Answers to security questions or other personal identifiers; and (2) information or data that meets the definition ascribed to the term "Personal Information" under §6809(4) of the Gramm-Leach-Bliley Act or other applicable law of the State of Delaware.

d. Confidential information, Proprietary Information, and PII as used in this Confidentiality Agreement may be collectively referred to herein as "Protected Information."

2. The State shall at all times own all right, title and interest in data, information, and documents, including Protected Information, provided to, used by, or reviewed by me by the State in conjunction with the Engagement, regardless of format. I acknowledge and agree that I shall have no right, title, or interest in such data and information. Further, I shall not access State user accounts or State data, except as required or permitted by the express terms of the Engagement Agreement or any otherwise permitted in writing by AOA.

3. AOA agrees to specifically identify Protected Information in writing as confidential prior to providing to me and strictly limit provision of Protected Information to that which is essential to the Firm's performance of Services under the Contract. Notwithstanding the foregoing, and to the extent it deems necessary, AOA shall de-identify, remove, mask, or obfuscate any information which constitutes Protected Information before providing documents or other records to me. I shall protect Protected Information and any other information related to the Engagement at all times to ensure that there is no inappropriate or unauthorized use or disclosure of State information under any circumstances. To that end, I shall safeguard the confidentiality, integrity, and availability of Protected Information and shall comply with the following conditions:

a. PII obtained by me is and shall remain property of the State.

b. At no time shall any Protected Information or any other 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 involve the

Engagement.

c. No use shall be made of any information collected in connection with the Engagement except as necessary to fulfill the Services required under the Engagement Agreement.

d. Protected Information shall be safeguarded by me from loss, theft, or inadvertent disclosure at all times, with me utilizing the same or better standards and controls as used by the Firm for safeguarding the Firm's own confidential information.

e. The Firm's desktop computers, laptops, tablets, cell phones and all other portable electronic devices/media containing Protected Information shall be encrypted and/or password protected.

f. The disclosure of information and details relating to a loss of Protected Information shall be limited to those who need to know for purposes contemplated under the Engagement Agreement.

g. All State, non-bulk data in transit via Secure FTP shall be encrypted, including data that resides on mobile devices.

4. No State data, including Protected Information, shall be stored or transferred outside of the United States by me except to the extent permitted in the Engagement Agreement and this Confidentiality Agreement. This includes backup data and data stored at disaster recovery locations.

5. I shall not disclose any Protected Information to any person or entity except to the extent the Firm is permitted to disclose such information as provided in this Confidentiality Agreement or the Engagement Agreement.

6. To the extent applicable, I understand and acknowledge 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 6 *Del. C.* § 12B-104 sets forth the enforcement procedures available to the Attorney General in the event of a violation of chapter 12B.

7. Within 24 hours of the discovery of any security breach or actual suspicious intrusion involving State data, I shall disclose to the Firm engagement partner and to AOA, in writing, the occurrence of such breach or intrusion and, to the extent I am aware, the assets that might have been breached or disclosed.

8. 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 Confidentiality Agreement, including, but not limited to, application for a Court order prohibiting disclosure of information in breach of this Agreement. Nothing in this Confidentiality 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); Health Insurance Portability and Accountability Act 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 Protected Information.

9. 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 the Firm 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.

10. 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 indemnify me or the Firm, directly or indirectly.

11. I understand that I shall promptly contact the Firm 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, except to the extent required by law, I shall not respond to subpoenas, service of process, and other legal requests related to the State without first notifying the Firm engagement partner and AOA, in writing, unless prohibited by law from providing such notice.

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

13. I agree to safeguard any password or security codes provided to me during the course of the Engagement.

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

15. I understand the Firm and I may be liable for any losses experienced by the State or any remediation costs to the extent required by law 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.

16. I understand that data, including Protected Information, shall be permanently deleted in accordance with the terms of the Engagement Agreement 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 in accord with professional standards, 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 AOA upon request.

17. 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.

18. The obligations imposed herein do not extend to information or data which:
    a.
    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 Firm 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. In the event there is a discrepancy or a conflict between the terms of this Confidentiality Agreement and the Engagement Agreement, the terms of this Confidentiality Agreement shall control.

20. My signature below represents my agreement with the items above for the duration of the Engagement and until engagement work papers are properly destroyed under the terms of Paragraph 16 herein or as otherwise directed by AOA.

Individual Audit Staff:

Printed Name: _____

Position: _____

Signature & Date: _____

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

Appendix E – Cyber Responsibilities, Liability, and Insurance

A. Firm Protection of Customer Data

1. The Firm shall, at a minimum, comply with all Delaware Department of Technology and Information (DTI) security standards identified in this Request for Proposals and any resultant contract(s).

B. Definitions

Data Breach

1. In general the term "data breach" means a compromise of the security, confidentiality, or integrity of, or the loss of, computerized data for the State of Delaware that results in, or there is a reasonable basis to conclude has resulted in:

   1.1 The unauthorized acquisition of personally identifiable information (PII); or

   1.2 Access to PII that is for an unauthorized purpose, or in excess of authorization,

2. Exclusion

   2.1 The term "data breach" does not include any investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

Personally Identifiable Information (PII)

1. Information or data, alone or in combination that identifies or authenticates a particular individual.

   1.1 Such information or data may include, without limitation, Name, Date of birth, Full address (e.g. house number, city, state, and/or zip code), Phone Number, Passwords, PINs, Federal or state tax information, Biometric data, Unique identification numbers (e.g. driver's license number, social security number, credit or debit account numbers, medical records numbers), Criminal history, Citizenship status, Medical information, Financial Information, Usernames, Answers to security questions or other personal identifiers.

2. Information or data that meets the definition ascribed to the term "Personal Information" under §6809(4) of the Gramm-Leach-Bliley Act or other applicable law of the State of Delaware.

Customer Data

1. All data including all text, sound, software, or image files provided to the Firm by, or on behalf of, Delaware which is occasioned by or arises out of the operations, obligations, and responsibilities set forth in this contract.

Security Incident

1. Any unauthorized access to any Customer Data maintained, stored, or transmitted by Delaware or a third party on behalf of Delaware.

C. Responsibilities of Firm in the Event of a Data Breach

1. The Firm shall notify State of Delaware, Department of Technology and Information (DTI), and the Office of Auditor of Accounts (AOA) without unreasonable delay when the Firm confirms a data breach. Such notification is to include the nature of the breach, the number of records potentially affected, and the specific data potentially affected.

   1.1 Should the State of Delaware or the Firm determine that a data breach has actually occurred; the Firm will immediately take all reasonable and necessary means to mitigate any injury or damage which may arise out of the data breach and shall implement corrective action as determined appropriate by the Firm, DTI, and AOA.

   1.2 Should any corrective action resultant from Section B.1.1. above include restricted, altered, or severed access to electronic data; final approval of the corrective action shall reside with DTI.

   1.3 In the event of an emergency the Firm may take reasonable corrective action to address the emergency. In such instances the corrective action will not be considered final until approved by DTI.

   1.4 For any record confirmed to have been breached whether such breach was discovered by the Firm, the State, or any other entity and notwithstanding the definition of personally identifiable information as set forth at 6 *Del. C.* § 12B-101 the Firm shall:

      1.4.1 Notify in a form acceptable to the State, any affected individual as may be required by 6 *Del. C.* § 12B-101 of the Delaware Code.

1.4.2 Provide a preliminary written report detailing the nature, extent, and root cause of any such data breach no later than two (2) business days following notice of such a breach.

1.4.3 Meet and confer with representatives of DTI and AOA regarding required remedial action in relation to any such data breach without unreasonable delay.

1.4.4 Bear all costs associated with the investigation, response and recovery from the breach, such as 3-year credit monitoring services, mailing costs, website, and toll free telephone call center services.

D. No Limitation of Liability for Certain Data Breaches

1. Covered Data Loss

   1.1 The loss of Customer Data that is not (1) Attributable to the instructions, acts or omissions of Delaware or its users or (2) Within the published recovery point objective for the Services

2. Covered Disclosure

   2.1 The disclosure of Customer Data as a result of a successful Security Incident.

3. Notwithstanding any other provision of this contract, there shall be no monetary limitation of Firm's liability for the Firm's breach of its obligations under this contract which proximately causes a (1) Covered Data Loss or (2) Covered Disclosure, where such Covered Data Loss or Covered Disclosure results in any unauthorized public dissemination of PII.

E. Cyber Liability Insurance

1. An awarded Firm unable to meet the *Confidentiality and Non-Disclosure Agreement for Contracted CPA Firms* (see Appendix C) requirement of encrypting PII at rest shall, ***prior to execution of a contract***, present a valid certificate of cyber liability insurance at the levels indicated below. Further, the awarded Firm shall ensure the insurance remains valid for the entire term of the contract, inclusive of any term extension(s).

2. Levels of cyber liability insurance required are based on the number of PII records anticipated to be housed within the solution at any given point in the term of the contract. The level applicable to this contract is: Level 1. Should the actual number of PII records exceed the anticipated number, it is the Firm's responsibility to ensure

that sufficient coverage is obtained (see table below). In the event that the Firm fails to obtain sufficient coverage, Firm shall be liable to cover damages up to the required coverage amount.

Level	**Number of PII records**	**Level of cyber liability insurance required** (occurrence = data breach)
1	1 – 10,000	$2,000,000 per occurrence
2	10,001 – 50,000	$3,000,000 per occurrence
3	50,001 – 100,000	$4,000,000 per occurrence
4	100,001 – 500,000	$15,000,000 per occurrence
5	500,001 – 1,000,000	$30,000,000 per occurrence
6	1,000,001 – 10,000,000	$100,000,000 per occurrence

F. Compliance

1. The Firm is required to comply with applicable security-related Federal, State, and Local laws.

G. Media Notice

1. No media notice may be issued without the approval of the State.

H. Points of Contact – Data Breach

1. State of Delaware

   Department of Technology and Information
   Elayne Starkey, Chief Security Officer
   elayne.starkey@state.de.us; 302-739-9631

   Office of Auditor of Accounts
   R. Thomas Wagner, Jr., State Auditor
   r.thomas.wagner@state.de.us; 302-739-5055

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**: Minimum Requirements section, Proprietary section, and Cost section. A firm's failure to do so will result in a non-conforming proposal, which will not be considered.

2. Who prepares the financial statements?
   It is the agency's responsibility to ensure the financial statements and related notes are prepared in good form for the audit. Currently, Port contracts with a CPA for a financial statement compilation.

3. What were the prior year audit fees?
   Total fees paid for the Fiscal Year ended June 30, 2017 audit were $59,736. The firm is encouraged to evaluate the hours they believe is 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, regardless of the cost proposal.

4. How many hours did the most recent audit take?
   The Fiscal Year ended June 30, 2017 audit took approximately 484.50 hours. Please see response to question 2 above.

5. Is there a prior report?
   The Fiscal Year ended June 30, 2017 audit reporting package has been issued and is available at auditor.delaware.gov.

6. Were there any difficulties in completing the prior period audit?
   We are not aware of any difficulties in completing the audit.

7. Were there any audit adjustments in the prior year audit? If so, how many were there?
   There was one adjusting entry made in the prior year audit. There were no passed adjustments.

8. Did any event occur that would make the current year audit significantly different from the prior year?
   As stated in Note 17 - Subsequent Events of the Financial Statements for Fiscal Year Ended June 30, 2017, "The Corporation is seeking qualified respondents to enter into a public/private partnership (P3) to improve, develop, finance, and/or operate via long-term concession arrangements for the following port-related infrastructures: the existing facility known as the Port of Wilmington and the newly acquired facility known as Edgemoor." In addition, the firm is expected to reflect any and all accounting and auditing standards changes.

9. Section 9.2.b.1. of the RFP, 3b 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 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 CPA licenses for the firm and the partner, manager, and supervisor must be provided. Please keep in mind that a copy of a valid State of Delaware business license is also required.

10. What do you want to see in the proposal pertaining to Affirmative Action (RFP Section 9.2.f.)? 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 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 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.

12. What assistance is given to management by the auditors during the audit?

    Per section 4.3.e. of the RFP, "The firm agrees it will **not** prepare the financial statements, note disclosures, or management discussion and analysis (MD&A). The firm should notify AOA immediately of any request to perform such services."

13. Is this RFP for a fixed price contract?

    No, our contracts are not fixed in price. As described in Section 14.4 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. Billings that exceed actual work are considered fraud (defined as progress payment fraud by the Association of Certified Fraud Examiners) and grounds for terminating the contract. Further, since the contract is not fixed in price, 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.

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

    Questions may be submitted by any representative deemed appropriate by the firm.

15. Does past experience with AOA, including 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 reporting packages, and compliance with the contract. Repeat non-compliance will affect the firm's technical proposal score.

    When auditors perform quality audit work in accordance with GAGAS, it can lead to improved government management, better decision making and oversight, effective and efficient operations, and accountability and transparency for resources and results. (GAGAS 1.05) Audit reporting packages 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 reporting packages 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.

16. 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.

17. What does a State of Delaware Business License look like?
    A sample State of Delaware Business License is as follows:

LICENSE NO.
POST CONSPICUOUSLY
STATE OF DELAWARE
DIVISION OF REVENUE
VALID
01/01/14 - 12/31/14
NOT TRANSFERABLE
DLN:
BUSINESS CODE
GROUP CODE
LICENSED ACTIVITY
PROFESSIONAL SERVICES-CPA
PROFESSIONAL AND/OR PERSONAL SERVICES
DATE ISSUED:
2014
LICENSE FEE:
MAILING ADDRESS
BUSINESS LICENSE
BUSINESS LOCATION
SAMPLE
IS HEREBY LICENSED TO PRACTICE, CONDUCT OR ENGAGE IN THE OCCUPATION OR BUSINESS ACTIVITY INDICATED ABOVE IN ACCORDANCE WITH THE LICENSE APPLICATION DULY FILED PURSUANT TO TITLE 30, DEL CODE.
PATRICK T. CARTER
DIRECTOR OF REVENUE