

State of Delaware

**DEPARTMENT OF CORRECTION  
PROFESSIONAL SERVICES REQUEST FOR PROPOSAL  
COMMISSARY SERVICES**

**Contract No. DOC1102-COMMISSARY**

*April 18, 2011*

**- *Deadline to Respond* -  
May 31, 2011  
2:00 PM EST**

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES  
TO PROVIDE COMMISSARY SERVICES TO BAYLOR WOMEN'S CORRECTIONAL  
FACILITY  
ISSUED BY DEPARTMENT OF CORRECTION**

## I. Overview

The Delaware Department of Correction (DOC) is soliciting proposals from experienced vendors to provide complete Commissary Services to the Baylor Women's Correctional Institution. Bidders should be aware that the Department intends to expand to a statewide contract within one (1) year, which may generate a new RFP process. This request for proposals ("RFP") is issued pursuant to 29 Del. C. § 6981 and 6982.

The Baylor Women's Correctional Institution serves an average daily population of 350 female offenders, however the awarded vendor should have the built in capacity to service a population of 450.

The proposed schedule of events subject to the RFP is outlined below:

Public Notice	Date: April 18, 2011
Deadline for Receipt of Proposals	Date: May 31, 2011
Notification of Award	Date: July 1, 2011

Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing 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 which the applicant may have taken in presenting the proposal. Furthermore, the transmittal letter must attest to the fact that no activity related to this proposal contract will take place outside of the United States. The State of Delaware reserves the right to deny any and all exceptions taken to the RFP requirements.

## II. Scope of Services

### A. Equipment and Services

1. Provide all stock, supplies, labor, supervision, packaging, equipment and delivery personnel necessary to provide the services required in the specifications.
2. Provide retail/market brand hygiene products, writing materials, games, food items, candies and a limited clothing selection. Commissary list should also include property items like TVs, guitars, tennis shoes, etc.
3. Maintain a market-price philosophy with regard to retail-selling price of commissary items to the offenders.

4. Provide an accurate, economical and efficient means to process offender commissary orders.
5. Provide a reasonable commission to the DOC, care of Baylor Women's Correctional Institution.
6. Develop and maintain an interface software capability between DOC's offender management system (DACS) and the proposed Commissary System to transfer key admission, identification, population movement, housing location, status and release information and a detailed offender purchase history, so that both the systems are always in synchronization.
7. Provide Kiosk options to include financial, sick calls and commissary, as well as other technological advances should be included as part of the overall proposal.

**B. Employee Information and Requirements**

1. All employees who will work for the vendor must successfully pass a background clearance and be approved by the DOC.
2. Employees with a criminal record shall not enter any DOC facility, nor shall any employee with a criminal record be involved in the packaging or delivery of items to a DOC facility. Failure to comply may result in immediate termination of contract. Any sub-contractors, if authorized, must also pass a background check as described above.
3. The DOC shall have the sole right, at any time, to reject any such employee who poses a risk or potential risk to the security or operations of the DOC.
4. A complete roster of all employees' names and addresses shall be maintained by the successful vendor and shall be updated and submitted to the DOC as requested. Vendor shall also provide the name and emergency contact information for the Site Manager at each facility and provide an emergency contact name and number at the corporate level.
5. The successful vendor shall be fully responsible to DOC for all work performed pursuant to the contract by the successful vendor's employees, sub-contractors, or others who may be retained by the successful vendor with the approval of the DOC.

6. The successful vendor shall be required to conform to the Labor and Employment Laws of the State of Delaware.

**C. Security Requirements**

1. The rules and regulations, policies and procedures, as well as any directives and/or orders by the DOC and facility administrators.
2. The DOC shall issue a photo identification card and require it to be worn by the successful vendor's employees whenever they are present at DOC facilities. The successful vendor shall return all identification cards to the DOC within one (1) day for staff no longer on-site or for staff removed from the premises at the request of the DOC. Employees not previously screened for admittance will not be admitted to the DOC facilities without authorization from the DOC.

**D. Software and Hardware Requirements**

In order to avoid redundant data entry and the potential for data entry errors into different or multiple computer systems, the proposed Commissary provider must develop an interfacing software capability which electronically checks the balances in the offenders accounts and transfers the key information from the proposed Commissary system to the DOC's offender management system.

1. The successful vendor's equipment and hardware/software are required to be compatible with the DOC's network system. If the successful vendor's equipment or hardware/software is not compatible with the DOC's system, it will be the responsibility of the vendor to convert their equipment and/or hardware/software and assume any related costs.
2. In order to facilitate comparisons of equipment and software that may not be familiar to DOC personnel, vendors must include in their proposal all specifications and literature and operating manuals for the proposed system and/or components.
3. All account files and/or any other documentation created for the purpose of this contract will remain the property of the DOC. Offender account services data is owned by DOC and must be left in usable format for DOC upon termination of contract. The successful vendor should provide details on account management system to be used.

**E. Offender Ordering Procedures**

1. The successful vendor shall provide the DOC with commissary order forms listing all approved items, prices and quantity restrictions.
2. The successful vendor shall deliver the forms to the appropriate housing units or other designated centralized areas.
3. Each offender is allowed to place orders as frequently as agreed to in the final contract between the DOC and awarded vendor.

**F. Delivery**

1. The commissary program shall operate based upon the needs of the institution.
2. Vendors shall include a delivery schedule with their proposal describing how items are to be delivered. SBI numbers should not be used for identification purposes; the vendor should propose an alternative method of identification.
3. The successful vendor must provide all delivery personnel, equipment, and transportation to successfully deliver commissary orders to the DOC facility in a timely fashion. The successful vendor will be responsible for supplying the equipment needed to deliver the commissary orders to the facility and/or units.
4. If the successful vendor's main headquarters is located outside the State of Delaware, the successful vendor will be expected to have a satellite office/warehouse within close proximity to the DOC facility to ensure prompt delivery and service.
5. The transportation of all commissary orders to the DOC facility must be handled and delivered by vendor's personnel who have been previously cleared and approved by the DOC.
6. Any spoiled or damaged merchandise shall be replaced or credited to the offender's account. Any credits or replacement of goods must be issued within 48 hours of the original delivery date, excluding weekends and holidays. A credit receipt shall be forwarded to the offender via institutional mail within 48 hours of the issued credit date.

7. The delivery personnel shall deliver the commissary orders to the offenders in their approved location, in an approved bag with a two part receipt form enclosed. The offender will sign for his or her merchandise and will receive one copy as a receipt. Merchandise shall be delivered to the offender who placed the order after producing the offender identification card that verifies his or her identity. Merchandise cannot be left with another offender or staff member for an offender who is not present. A credit shall be issued for merchandise that is undeliverable. A credit receipt shall be forwarded to the offender via institutional mail within 48 hours of the issued credit date. In the event the offender is out of the facility merchandise should be secured by the commissary designee until the offender returns.
  
8. The successful vendor shall develop a procedure and complaint form to handle disputed issues related to the commissary program. The form shall be a two-part form so that the offender has a record of the complaint that is submitted. The procedure shall include provisions for the delivery staff to receive the written complaint at the time the delivery is made. The delivery staff shall be required to submit the complaint forms to the vendor who will be responsible for processing the complaint. The DOC will require that a documented resolution to the complaint be forwarded to the offender prior to the offender's next scheduled ordering date. A copy of the complaint and procedure form shall be submitted with the vendor's proposal. The facility Warden should receive a monthly summary of all offender complaints and the resulting resolutions.
  
9. The vendor will be responsible for engraving the offender's commitment number on all items purchased that are required to be on the offender's electronic property record, prior to distributing the items to the offender. Vendor staff will be responsible for delivering the items to the offenders once engraved and placed on the electronic property record.

## **G. Commissary Menu**

1. The successful vendor and DOC representatives shall meet twice per year and agree upon the items authorized for sale on the commissary menu. After the initial meetings, no items may be added, deleted, or changed in brand, packaging, sizing or pricing without mutual agreement of the Warden of the facility and the successful vendor. As the needs of the facility change, the successful vendor and the facility Warden or his/her designee shall meet to discuss any modifications needed to the commissary menu.
2. The successful vendor shall have a variety of commissary products available to offenders to include the following: hygiene products, stationary materials, greeting cards and envelopes, food items, a selection of food items that meet Kosher and Halal standards, games and limited clothing items to include slip-on footwear. Products should be geared to service a diverse and ethnic female population. Successful vendor should also include products geared to provide healthy food options.
3. Vendors shall submit with their proposal a list of all items they can provide to the offenders. All items shall include an item description, manufacturer, product size, weight and the cost to the offender. Failure to include any or all of this information shall be considered a failure to comply with the RFP specifications.

## **H. Commissary Product Specifications**

1. The following limitations shall apply to all commissary items:
  - All food items shall be wrapped/packaged and dated for individual consumption;
  - All containers shall be made of non-breakable materials and be suitable for a high security institution;
  - No product shall be packaged in metal or glass;
  - No product shall contain alcohol or any CDS-based chemical;
  - No product shall contain tobacco; and,
  - Products must be non-perishable.

2. All clothing products must be of a satisfactory quality and free from manufacturing defects. The facility Warden may require vendors to submit samples of clothing or other products for sale.
3. The DOC reserves the right to include or exclude any items for sale.

**I. Product Pricing**

The DOC reserves the right to determine the final retail selling prices to the offenders. The percent of commission of both parties will remain the same regardless of the retail selling price set by the DOC.

1. The successful vendor must have a retail license for all product sales.
2. Vendors shall submit their own commissary listing and the suggested price for each item with their proposal. Vendors shall use their commissary listing and their pricing to determine the amount of commission to be awarded to the DOC.
3. The pricing of the products agreed to by the DOC shall be in effect for the duration of the contract unless changed by mutual agreement of the Bureau Chief of Prisons and Bureau Chief of Management Services and the successful vendor.
4. Surcharge for all items shall not exceed 20 percent per 11 Del. C. §6517.
5. All products provided by the awarded vendor should be geared to serve a diverse and ethnic female population.

**J. Brand Names**

Any manufacturer's name, trade name, brand name or catalog numbers that are used in these specifications are for the purpose of describing and establishing general quality levels. Such references are intended to be restrictive. Proposals will be considered for any brand that meets or exceeds the quality of the specifications that may be listed for any item.

**K. Inventory and Substitution Requirements**

1. The successful vendor is responsible for all inventory control and shall maintain sufficient inventory levels at their warehouse in order to avoid shortages.

2. Items unavailable at the time the order is filled shall not be substituted by the vendor.
3. No items may be added, deleted, or changed in brands, packaging, or sizing without the agreement of the Warden of the facility and the successful vendor.

**L. System Support**

The successful vendor shall provide the following services:

1. Be available to respond to any system software problem 24 hours a day, 7 days a week;
2. Provide maintenance for all vendor owned/leased equipment as reasonably required or on notification by DOC staff;
3. Respond to notification(s) from DOC staff to provide repairs for all vendor-owned/leased equipment within twenty-four (24) hours of notification;
4. Provide repair(s) to all vendor-owned/leased equipment within twenty-four (24) hours of notification. The successful vendor shall provide written documentation to the facility Warden as to the nature of the problem and the expected time for the repair(s); and,
5. Provide a toll-free support number accessible to staff 24 hours a day, 365 days a year to address any issues or problems that may arise.
6. If applicable, the vendor shall provide with their proposal, a letter from their maintenance contractor for any leased equipment indicating the contractor's ability to fulfill the DOC's maintenance requirements. Additionally, the letter shall state the contractor's ability to monitor and receive calls 24 hours a day, 7 days a week for the duration of the contract.
7. In the event of a major failure, the response time to make the repair(s) will be within four (4) hours following the notification of the failure.

**M. 'Major Failure' Shall be Deemed to Have Occurred When**

There is a system failure at any location;  
Any one of the system's major functions ceases to operate;  
Any one of the system's major functions fails to respond to an authorized command.

**N. Liquidated Damages**

1. In the event the contractor fails to address a major failure, the DOC will be entitled to liquidate damages in the amount of \$100.00 for each hour beyond the initial fourth (4<sup>th</sup>) hour that the contractor fails to respond.
2. The DOC shall give the contractor written notice of the failure to respond within four (4) hours and the assessment of the liquidated damages.
3. The DOC will calculate and specify to the contractor the total number of hours beyond the initial four (4) hours that the contractor failed to respond. This amount shall be payable to the DOC as liquidated damages.

**O. Installation and Servicing of Equipment**

1. The successful vendor shall deliver and install, at its expense, all required hardware and software. The successful vendor will be responsible for ensuring that the daily operations of the DOC facilities will not be interrupted during the installation process.
2. Materials and computer equipment installation must be coordinated with the DOC facilities and DOC IT staff.
3. The successful vendor shall assume complete responsibility for any tool, test equipment and/or other items that are the property of the vendor and throughout the installation and testing phase of the contract. All such equipment is subject to inspection and inventory when entering or leaving a DOC facility. The DOC assumes no responsibility for lost or damaged items that the successful vendor may leave on the premises during the installation phase of the equipment.
4. The successful vendor will not be responsible for the installation, maintenance, and service charge for any telephone, modem, or ISDN lines existing.

5. The successful vendor shall supply and maintain all equipment, hardware and software during the contract period. If necessary, the successful vendor shall replace any piece of hardware that ceases to function at a level deemed appropriate by the DOC. Any replacement parts or hardware shall be new and supplied at no additional cost to the DOC.
6. The successful vendor will be responsible for any costs associated with the maintenance and repair of all vendor-owned/ leased equipment and computer system hardware/ software. Vendor will be responsible for any charges from the Department of Information and Technology if applicable.

**P. Utilities and Other Considerations**

The DOC will provide a workstation that will include a desk, chair and telephone for local calls. The successful vendor will be responsible for any other equipment or services necessary to fulfill the obligations of the contract. Any other necessary equipment must receive prior approval of the facility Warden before attempting to bring such equipment onto the facility grounds. All technology equipment must be approved by DOC IT unit prior to installation, and installation must be overseen by the DOC IT unit.

**Q. Training**

1. The successful vendor will be required to provide training on their system to all employees as deemed appropriate by the facility Warden at no expense to the DOC.
2. In order to prevent a lapse in commissary services, the successful vendor shall provide initial training before the termination of the previous vendor's contract. The initial training shall consist of familiarizing and training DOC staff on the vendor's system (hardware/software).
3. The successful vendor will be responsible for ensuring that the daily operation of the DOC will not be interrupted during the training process.
4. All vendors submitting a proposal must submit a training plan for each site.
5. Additional training may be required throughout the term of the contract at the expense of the successful vendor. The frequency of the training will be mutually agreed to by the parties as needed.

**R. Commissions**

1. Vendors submitting a proposal shall indicate on the cost proposal page their fixed percentage commission rate of the total gross sales for all requirements set forth in this RFP. Proposals shall also identify the frequency of commission payments – monthly, quarterly, etc.
2. The percentage commission shall remain firm and in effect for the duration of the initial year contract period in accordance with the percentage rate indicated on the cost form. The commission rate for any subsequent renewal periods shall be in accordance with the applicable percentage rate indicated on the cost form pursuant to the applicable renewal period.

**S. Accounting Requirements**

The successful vendor will be required to submit a monthly report indicating the monies collected and to be remitted to DOC. The report shall indicate total gross sales and resulting commission. Commission checks shall be made payable to the Department of Correction.

**T. Audits**

The successful vendor agrees that the DOC, or its designee, reserves the right to audit, examine, and copy any and all books, records, and information relating to the operation of the commissary program. All records shall be maintained until the audit is completed and all questions arising thereof are resolved, or five (5) years after this contract expires or is terminated. Records shall be maintained beyond the fifth year if an audit is in progress or the findings on a completed audit have not been resolved satisfactorily.

**U. Payments**

The successful vendor shall submit a monthly invoice to an employee designated by the DOC. All invoices shall include:  
The monthly total of what the DOC owes the vendor for sales.

1. Amount of refunds credited by the vendor.
2. Amount of any noncommissioned sales.
3. Quantity and amount owed to vendor for indigent hygiene kits.
4. Amount of commission owed to the Offender Welfare Account.

5. The successful vendor's system shall permit a report to be generated by an authorized DOC staff member to verify the invoice submitted for payment.

#### **V. Offender Accounts**

The vendor is responsible for comprehensive management of the offender account as related to commissary. Upon release, method of offender payments should be identified to include provisions for funds for transportation or other immediate necessities upon release (i.e., check vs. debit card).

### **III. Required Information**

The following information shall be provided in each proposal in the order listed below. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of the State.

#### **A. Minimum Requirements**

1. Delaware business license:  
Provide evidence of a Delaware business license or evidence of an application to obtain the business license.
2. Professional liability insurance:  
Provide evidence of professional liability insurance in the amount of \$ \$1,000,000.00.

#### **B. General Evaluation Requirements**

1. Experience and Reputation
2. Expertise (for the particular project under consideration)
3. Capacity to meet requirements (size, financial condition, etc.)
4. Location (geographical)
5. Demonstrated ability
6. Familiarity with public work and its requirements
7. Distribution of work to individuals and firms or economic considerations
8. Other criteria necessary for a quality cost-effective project

## IV. Professional Services RFP Administrative Information

### A. RFP Issuance

#### 1. **Obtaining Copies of the RFP**

This RFP is available in electronic form only through the State of Delaware, Procurement website at [bids.delaware.gov](http://bids.delaware.gov). Paper copies of this RFP will not be available.

#### 2. **Public Notice**

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

#### 3. **Assistance to Vendors with a Disability**

Vendors with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the Designated Contact no later than ten days prior to the deadline for receipt of proposals.

#### 4. **RFP Designated Contact**

All requests, questions, or other communications about this RFP shall be made in writing to the State of Delaware. Address all communications to the person listed below; communications made to other State of Delaware personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the vendor. Vendors should rely only on written statements issued by the RFP designated contact.

<b>NAME</b>	<b>Paul Giery</b>
<b>DEPARTMENT</b>	<b>Department of Correction</b>
<b>ADDRESS</b>	<b>245 McKee Road, Dover, Delaware 19904</b>
<b>EMAIL ADDRESS</b>	<b><a href="mailto:Paul.Giery@state.de.us">Paul.Giery@state.de.us</a></b>

To ensure that written requests are received and answered in a timely manner, electronic mail (e-mail) correspondence is acceptable, but other forms of delivery, such as postal and courier services can also be used.

#### 5. **Consultants and Legal Counsel**

The State of Delaware may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the vendors' responses. Bidders shall not contact consultant or legal counsel on any matter related to the RFP.

## **6. Contact with State Employees**

Direct contact with State of Delaware employees other than the State of Delaware Designated Contact regarding this RFP is expressly prohibited without prior consent. Vendors directly contacting State of Delaware employees risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently doing business in the State who require contact in the normal course of doing that business.

## **7. Organizations Ineligible to Bid**

Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors currently debarred or suspended is ineligible to bid. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.

## **8. Exclusions**

The Proposal Evaluation Team reserves the right to refuse to consider any proposal from a vendor who:

- a) 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;
- b) Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;
- c) Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
- d) Has violated contract provisions such as:
  - 1) Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - 2) Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
- e) Has violated ethical standards set out in law or regulation; and
- f) 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 suspension or debarment by another governmental entity for a cause listed in the regulations.

## **B. RFP Submissions**

### **1. Acknowledgement of Understanding of Terms**

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

### **2. Proposals**

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. The State reserves the right to reject any non-responsive or non-conforming proposals.

Each proposal must be submitted with five (5) paper copies and one (1) electronic copy on CD.

All properly sealed and marked proposals are to be sent to the State of Delaware and received no later than 2:00 PM EST on May 31, 2011. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

**DEPARTMENT** Department of Correction  
**ADDRESS** 245 McKee Road, Dover, Delaware 19904  
Attn: Purchasing Services Administrator

Any proposal submitted by US Mail shall be sent by either certified or registered mail. Proposals must be received at the above address no later than **2:00 PM EST on May 31, 2011**. Any proposal received after this date shall not be considered and shall be returned unopened. The proposing vendor bears the risk of delays in delivery. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

Upon receipt of vendor proposals, each vendor shall be presumed to be thoroughly familiar with all specifications and requirements of this RFP. The failure or omission to examine any form, instrument or document shall in no way relieve vendors from any obligation in respect to this RFP.

### **3. Proposal Modifications**

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 hour and date specified as the deadline for submission of proposals.

#### **4. Proposal Costs and Expenses**

The State of Delaware will not pay any costs incurred by any Vendor associated with any aspect of responding to this solicitation, including proposal preparation, printing or delivery, attendance at vendor's conference, system demonstrations or negotiation process.

#### **5. Proposal Expiration Date**

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through the initial contract period. The State of Delaware reserves the right to ask for an extension of time if needed.

#### **6. Late Proposals**

Proposals received after the specified date and time will not be accepted or considered. To guard against premature opening, sealed proposals shall be submitted, plainly marked with the proposal title, vendor name, and time and date of the proposal opening. Evaluation of the proposals is expected to begin shortly after the proposal due date. To document compliance with the deadline, the proposal will be date and time stamped upon receipt.

#### **7. Proposal Opening**

The State of Delaware will receive proposals until the date and time shown in this RFP. Proposals will be opened only in the presence of the State of Delaware personnel. Any unopened proposals will be returned to Vendor.

There will be no public opening of proposals but a public log will be kept of the names of all vendor organizations that submitted proposals. The contents of any proposal shall not be disclosed to competing vendors prior to contract award.

#### **8. Non-Conforming Proposals**

Non-conforming proposals will not be considered. Non-conforming proposals are defined as those that do not meet the requirements of this RFP. The determination of whether an RFP requirement is substantive or a mere formality shall reside solely within the State of Delaware.

## **9. Concise Proposals**

The State of Delaware discourages overly lengthy and costly proposals. It is the desire that proposals be prepared in a straightforward and concise manner. Unnecessarily elaborate brochures or other promotional materials beyond those sufficient to present a complete and effective proposal are not desired. The State of Delaware's interest is in the quality and responsiveness of the proposal.

## **10. Realistic Proposals**

It is the expectation of the State of Delaware that vendors can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. 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.

The State of Delaware shall bear no responsibility or increase obligation for a vendor's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

## **11. Confidentiality of Documents**

All documents submitted as part of the vendor's proposal will be deemed confidential during the evaluation process. Vendor proposals will not be available for review by anyone other than the State of Delaware/Proposal Evaluation Team or its designated agents. There shall be no disclosure of any vendor's information to a competing vendor prior to award of the contract.

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

Vendor(s) shall not include any information in their proposal that is proprietary in nature or that they would not want to be released to the public. Proposals must contain sufficient information to be evaluated and a contract written without reference to any proprietary information. If a vendor feels that they cannot submit

their proposal without including proprietary information, they must adhere to the following procedure or their proposal may be deemed unresponsive and will not be recommended for selection. Vendor(s) must submit such information in a separate, sealed envelope labeled "Proprietary Information" with the RFP number. The envelope must contain a letter from the Vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by 29 *Del. C.* § 10002(d), and briefly stating the reasons that each document meets the said definitions.

Upon receipt of a proposal accompanied by such a separate, sealed envelope, the State of Delaware will open the envelope to determine whether the procedure described above has been followed.

## **12. Multi-Vendor Solutions (Joint Ventures)**

Multi-vendor solutions (joint ventures) will be allowed only if one of the venture partners is designated as the "**prime contractor**". The "**prime contractor**" must be the joint venture's contact point for the State of Delaware and be responsible for the joint venture's performance under the contract, including all project management, legal and financial responsibility for the implementation of all vendor's systems. If a joint venture is proposed, a copy of the joint venture agreement clearly describing the responsibilities of the partners must be submitted with the proposal. Services specified in the proposal shall not be subcontracted without prior written approval by the State of Delaware, and approval of a request to subcontract shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the work. Further, vendor shall be and remain liable for all damages to the State of Delaware caused by negligent performance or non-performance of work by its subcontractor or its sub-subcontractor.

Multi-vendor proposals must be a consolidated response with all cost included in the cost summary. Where necessary, RFP response pages are to be duplicated for each vendor.

### **a. Primary Vendor**

The State of Delaware expects to negotiate and contract with only one "prime vendor". The State of Delaware will not accept any proposals that reflect an equal teaming arrangement or from vendors who are co-bidding on this RFP. The prime vendor will be responsible for the management of all subcontractors.

Any contract that may result from this RFP shall specify that the prime vendor is solely responsible for fulfillment of any contract with the State as a result of this procurement. The State will make contract payments only to the awarded vendor. Payments to any-subcontractors are the sole responsibility of the prime vendor (awarded vendor).

Nothing in this section shall prohibit the State of Delaware from the full exercise of its options under Section IV.B.16 regarding multiple source contracting.

**b. Sub-Contracting**

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. **The prime vendor shall be wholly responsible for the entire contract performance whether or not subcontractors are used.** Any sub-contractors must be approved by State of Delaware.

**c. Multiple Proposals**

A primary vendor may not participate in more than one proposal in any form. Sub-contracting vendors may participate in multiple joint venture proposals.

**13. Sub-Contracting**

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and subcontractors must be identified by name. Any sub-contractors must be approved by State of Delaware.

## **14. Discrepancies and Omissions**

Vendor is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of vendor. Should vendor find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, vendor shall notify the State of Delaware'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 prevent the opening of a defective proposal and exposure of vendor's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the Designated Contact, in writing, no later than ten (10) calendar days prior to the time set for opening of the proposals.

### **a. RFP Question and Answer Process**

The State of Delaware will allow written requests for clarification of the RFP. All questions will be consolidated into a single set of responses and posted on the State's website at [bids.delaware.gov](http://bids.delaware.gov) by 12:00 PM each Friday. Vendors' names will be removed from questions in the responses released. Questions should be submitted in the following format. Deviations from this format will not be accepted.

Section number

Paragraph number

Page number

Text of passage being questioned

Question

Questions not submitted electronically shall be accompanied by a CD and questions shall be formatted in Microsoft Word.

## **15. State's Right to Reject Proposals**

The State of Delaware reserves the right to accept or reject any or all proposals or any part of any proposal, to waive defects, technicalities or any specifications (whether they be in the State of

Delaware's specifications or vendor's response), to sit and act as sole judge of 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 as the State of Delaware may deem necessary in the best interest of the State of Delaware.

#### **16. State's Right to Cancel Solicitation**

The State of Delaware reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. The State of Delaware makes no commitments expressed or implied, that this process will result in a business transaction with any vendor.

This RFP does not constitute an offer by the State of Delaware. Vendor's participation in this process may result in the State of Delaware selecting your organization to engage in further discussions and negotiations toward execution of a contract. The commencement of such negotiations does not, however, signify a commitment by the State of Delaware to execute a contract nor to continue negotiations. The State of Delaware may terminate negotiations at any time and for any reason, or for no reason.

#### **17. State's Right to Award Multiple Source Contracting**

Pursuant to 29 *Del. C.* § 6986, the State of Delaware may award a contract for a particular professional service to two or more vendors if the agency head makes a determination that such an award is in the best interest of the State of Delaware.

#### **18. Notification of Withdrawal of Proposal**

Vendor may modify or withdraw its proposal by written request, provided that both proposal and request is received by the State of Delaware prior to the proposal due date. Proposals may be re-submitted in accordance with the proposal due date in order to be considered further.

Proposals become the property of the State of Delaware at the proposal submission deadline. All proposals received are considered firm offers at that time.

#### **19. Revisions to the RFP**

If it becomes necessary to revise any part of the RFP, an addendum will be posted on the State of Delaware's website at [bids.delaware.gov](http://bids.delaware.gov). The State of Delaware is not bound by any statement related to this RFP made by any State of Delaware employee, contractor or its agents.

## **20. Exceptions to the RFP**

Any exceptions to the RFP, or the State of Delaware's terms and conditions, must be highlighted and included in writing in the proposal. Acceptance of exceptions is within the sole discretion of the evaluation committee.

## **21. Award of Contract**

The final award of a contract is subject to approval by the State of Delaware. The State of Delaware has the sole right to select the successful vendor(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.

Notice in writing to a vendor of the acceptance of its proposal by the State of Delaware and the subsequent full execution of a written contract will constitute a contract, and no vendor will acquire any legal or equitable rights or privileges until the occurrence of both such events.

### **a. RFP Award Notifications**

After reviews of the evaluation committee report and its recommendation, and once the contract terms and conditions have been finalized, the State of Delaware will award the contract.

The contract shall be awarded to the vendor whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP.

It should be explicitly noted that the State of Delaware is not obligated to award the contract to the vendor who submits the lowest bid of the vendor who receives the highest total point score, rather the contract will be awarded to the vendor whose proposal is the most advantageous to the State of Delaware. The award is subject to the appropriate State of Delaware approvals.

After a final selection is made, the winning vendor will be invited to negotiate a contract with the State of Delaware; remaining vendors will be notified in writing of their selection status.

### **C. RFP Evaluation Process**

An evaluation team composed of representatives of the State of Delaware will evaluate proposals on a variety of quantitative criteria. Neither the lowest price nor highest scoring proposal will necessarily be selected.

The State of Delaware reserves full discretion to determine the competence and responsibility, professionally and/or financially, of vendors. Vendors are to provide in a timely manner any and all information that the State of Delaware may deem necessary to make a decision.

#### **1. Proposal Evaluation Team**

The Proposal Evaluation Team shall be comprised of representatives of the State of Delaware. The Team shall determine which vendors meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in 29 Del. C. §§ 6981 and 6982. The Team may negotiate with one or more vendors during the same period and may, at its discretion, terminate negotiations with any or all vendors. The Team shall make a recommendation regarding the award to the Bureau Chief, Management Services, who shall have final authority, subject to the provisions of this RFP and 29 Del. C. § 6982, to award a contract to the successful vendor in the best interests of the State of Delaware.

#### **2. Proposal Selection Criteria**

The Proposal Evaluation Team shall assign up to the maximum number of points for each Evaluation Item to each of the proposing vendor's proposals. All assignments of points shall be at the sole discretion of the Proposal Evaluation Team.

The proposals all contain the essential information on which the award decision shall be made. The information required to be submitted in response to this RFP has been determined by the State of Delaware to be essential for use by the Team in the bid evaluation and award process. Therefore, all instructions contained in this RFP shall be met in order to qualify as a responsive and responsible contractor and participate in the Proposal Evaluation Team's consideration for award. Proposals which do not meet or comply with the instructions of this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the Team.

The Team reserves the right to:

- Select for contract or for negotiations a proposal other than that with lowest costs.
- Reject any and all proposals or portions of 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 proposals from any or all vendors during the contract review and negotiation.
- Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.
- Select more than one vendor pursuant to 29 Del. C. §6986. Such selection will be based on the following criteria:

**a. Criteria Weight**

All proposals shall be evaluated using the same criteria and scoring process. The following criteria shall be used by the Evaluation Team to evaluate proposals:

<b>Criteria</b>	<b>Weight</b>
Background, staff and financial resources, industry reputation, and references	<b>25</b>
Experience in providing services of comparable specifications/scope and value	<b>20</b>
Availability of electronic solutions/options, such as kiosks, etc.	<b>15</b>
Timing and structure of proposed delivery	<b>10</b>
Approach to performing the tasks set forth in Scope of the Work. Thoroughness and completeness of the proposal relative to the requirements.	<b>10</b>

<b>Criteria</b>	<b>Weight</b>
Management reports and reporting requirements.	<b>10</b>
Pricing Structure	<b>10</b>
<b>Total</b>	<b>100%</b>

### **3. Proposal Clarification**

The Evaluation Team may contact any vendor in order to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Proposals may not be modified as a result of any such clarification request.

### **4. References**

The Evaluation Team may contact any customer of the vendor, whether or not included in the vendor's reference list, and use such information in the evaluation process. Additionally, the State of Delaware may choose to visit existing installations of comparable systems, which may or may not include vendor personnel. If the vendor is involved in such site visits, the State of Delaware will pay travel costs only for State of Delaware personnel for these visits.

### **5. Oral Presentations**

Selected vendors may be invited to make oral presentations to the Evaluation Team. The vendor representative(s) attending the oral presentation shall be technically qualified to respond to questions related to the proposed system and its components.

All of the vendor's costs associated with participation in oral discussions and system demonstrations conducted for the State of Delaware are the vendor's responsibility.

## **D. Contract Terms and Conditions**

### **1. General Information**

- a. The term of the contract between the successful bidder and the State shall be for one (1) year.
- b. The selected vendor will be required to enter into a written agreement with the State of Delaware. The State of Delaware reserves the right to incorporate standard State contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed

modifications to the terms and conditions of the standard contract are subject to review and approval by the State of Delaware. Vendors will be required to sign the contract for all services, and may be required to sign additional agreements.

- c. The selected vendor or vendors will be expected to enter negotiations with the State of Delaware, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected vendor's response to this RFP will be incorporated as part of any formal contract.
- d. The State of Delaware's standard contract will most likely be supplemented with the vendor's software license, support/maintenance, source code escrow agreements, and any other applicable agreements. The terms and conditions of these agreements will be negotiated with the finalist during actual contract negotiations.
- e. The successful vendor shall promptly execute a contract incorporating the terms of this RFP within twenty (20) days after award of the contract. No vendor is to begin any service prior to receipt a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office and the Department of Finance. The purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful vendor.
- f. If the vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.

## **2. Collusion or Fraud**

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

By responding, the vendor shall be deemed to have represented and warranted that its proposal is not made in connection with any competing vendor submitting a separate response to this

RFP, and is in all respects fair and without collusion or fraud; that the vendor 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 vendor's proposal preparation.

Advance knowledge of information which gives any particular vendor advantages over any other interested vendor(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.

### **3. Lobbying and Gratuities**

Lobbying or providing gratuities shall be strictly prohibited. Vendors 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 shall have their proposal immediately rejected and shall be barred from further participation in this RFP.

The selected vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the State of Delaware shall have the right to annul any contract resulting from this RFP without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

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.

### **4. Solicitation of State Employees**

Until contract award, vendors shall not, directly or indirectly, solicit any employee of the State of Delaware to leave the State of Delaware's employ in order to accept employment with the vendor, its affiliates, actual or prospective contractors, or any person acting in concert with vendor, without prior written approval of the State of Delaware's contracting officer. Solicitation of State of Delaware employees by a vendor may result in rejection of the vendor's proposal.

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

## **5. General Contract Terms**

### **a. Independent contractors**

The parties to the contract shall be independent contractors to one another, and nothing herein shall be deemed to cause this agreement 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.

It may be at the State of Delaware's discretion as to the location of work for the contractual support personnel during the project period. The State of Delaware shall provide working space and sufficient supplies and material to augment the Contractor's services.

### **b. Non-Appropriation**

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

**c. Licenses and Permits**

In performance of the contract, the vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2502.

Prior to receiving an award, the successful vendor shall either furnish the State of Delaware with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: (302) 577-8200—Public Service, (302) 577-8205—Licensing Department.

Information regarding the award of the contract will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject vendor to applicable fines and/or interest penalties.

**d. Notice**

Any notice to the State of Delaware required under the contract shall be sent by registered mail to:

<b>DEPARTMENT</b>	<b>Department of Correction</b>
<b>ADDRESS</b>	<b>245 McKee Road, Dover, DE 19904</b>
	<b>Purchasing Services Administrator</b>
<b>EMAIL ADDRESS</b>	<a href="mailto:Paul.Giery@state.de.us"><u>Paul.Giery@state.de.us</u></a>

**e. Indemnification**

**1. General Indemnification**

By submitting a proposal, the proposing vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney’s fees, arising out of the vendor’s its agents and employees’ performance work or services in connection with the contract, regardless of whether such suits, actions, claims or liabilities are based upon acts or failures to act attributable, whole or part, to the State, its employees or agents.

## **2. Proprietary Rights Indemnification**

Vendor shall warrant that all elements of its solution, including 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, the State of Delaware shall promptly notify the vendor in writing and vendor shall defend such claim, suit or action at vendor's expense, and vendor 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 vendor (collectively "Products") is or in vendor's reasonable judgment is likely to be, held to constitute an infringing product, vendor shall at its 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 State of Delaware agrees to and accepts in writing.

## **f. Insurance**

- 1. Vendor recognizes that it is operating as an independent contractor 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

vendor'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 vendor in their negligent performance under this contract.

2. The vendor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The vendor is an independent contractor and is not an employee of the State of Delaware.
3. During the term of this contract, the vendor shall, at its own expense, carry insurance minimum limits as follows:

a	Comprehensive General Liability	\$1,000,000
b	Professional Liability/Misc. Error & Omissions/Product Liability	\$1,000,000/ \$3,000,000

If the contractual service requires the transportation of departmental clients or staff, the vendor shall, in addition to the above coverages, secure at its own expense the following coverage:

a	Automotive Liability (Bodily Injury)	\$100,000 / \$300,000
b	Automotive Property Damage (to others)	\$25,000

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

**g. Performance Requirements**

The selected Vendor will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, 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.

**h. Warranty**

The Vendor will provide a warranty that the deliverables provided pursuant to the contract will function as designed for a period of no less than one (1) year from the date of system acceptance. The warranty shall require the Vendor correct, at its own expense, the setup, configuration, customizations or modifications so that it functions according to the State's requirements.

**i. Costs and Payment Schedules**

All contract costs must be as detailed specifically in the Vendor's cost proposal. No charges other than as specified in the proposal shall be allowed without written consent of the State of Delaware. The proposal costs shall include full compensation for all taxes that the selected vendor is required to pay.

The State of Delaware will require a payment schedule based on defined and measurable milestones. Payments for services will not be made in advance of work performed. The State of Delaware may require holdback of contract monies until acceptable performance is demonstrated (as much as 25%).

**j. Penalties**

The State of Delaware may include in the final contract penalty provisions for non-performance, such as liquidated damages.

**k. Termination for Cause**

If for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner his obligations under the contract, or if the Vendor violates any of the covenants, agreements or stipulations of the contract, the State of Delaware shall thereupon have the right to terminate the contract by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such

termination, In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the contract shall, at the option of the State of Delaware, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is useable to the State of Delaware.

**I. Termination for Convenience**

The State of Delaware may terminate the contract at any time by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the contract shall, at the option of the State of Delaware, become its property, and the Vendor shall be entitled to compensation for any satisfactory work completed on such documents and other materials which is useable to the State of Delaware. If the contract is terminated by the State of Delaware as so provided, the Vendor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Vendor as covered by the contract, less payments of compensation previously made. Provided however, that if less than 60 percent of the services covered by the contract have been performed upon the effective date of termination, the Vendor shall be reimbursed (in addition to the above payment) for that portion of actual out of pocket expenses (not otherwise reimbursed under the contract) incurred by the Vendor during the contract period which are directly attributable to the uncompleted portion of the services covered by the contract.

**m. Non-discrimination**

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

**n. Covenant against Contingent Fees**

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

**o. Vendor 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 vendor. The vendor 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.

**p. Work Product**

All materials and products developed under the executed contract by the vendor are the sole and exclusive property of the State. The vendor will seek written permission to use any product created under the contract.

**q. Contract Documents**

The RFP, the purchase order, the executed contract and any supplemental documents between the State of Delaware and the successful vendor shall constitute the contract between the State of Delaware and the vendor. 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, State of Delaware's RFP, Vendor's response to the RFP and purchase order. No other documents shall be considered. These documents will constitute the entire agreement between the State of Delaware and the vendor.

**r. Applicable Law**

The laws of the State of Delaware shall apply, except where Federal Law has precedence. The successful vendor consents to jurisdiction and venue in the State of Delaware.

In submitting a proposal, Vendors certify that they comply 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 any vendor fails to comply with (1) through (5) of this paragraph, the State of Delaware reserves the right to disregard the proposal, terminate the contract, or consider the vendor in default.

The selected vendor 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.

**s. Scope of Agreement**

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

**t. Other General Conditions**

- (1) **Current Version** – “Packaged” application and system software shall be the most current version generally available as of the date of the physical installation of the software.
- (2) **Current Manufacture** – Equipment specified and/or furnished under this specification shall be standard products of manufacturers regularly engaged in the production of such equipment and shall be the manufacturer’s latest design. All material and equipment offered shall be new and unused.
- (3) **Volumes and Quantities** – Activity volume estimates and other quantities have been reviewed for accuracy; however, they may be subject to change prior or subsequent to award of the contract.
- (4) **Prior Use** – The State of Delaware reserves the right to use equipment and material furnished under this proposal prior to final acceptance. Such use shall not constitute acceptance of the work or any part thereof by the State of Delaware.
- (5) **Status Reporting** – The selected vendor will be required to lead and/or participate in status meetings and submit status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken, until final system acceptance.
- (6) **Regulations** – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.
- (7) **Changes** – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the State of Delaware.
- (8) **Additional Terms and Conditions** – The State of Delaware reserves the right to add terms and conditions during the contract negotiations.

## **E. RFP Miscellaneous Information**

### **1. No Press Releases or Public Disclosure**

Vendors may not release any information about this RFP. The State of Delaware reserves the right to pre-approve any news or advertising releases concerning this RFP, the resulting contract, the work performed, or any reference to the State of Delaware with regard to any project or contract performance. Any such news or advertising releases pertaining to this RFP or resulting contract shall require the prior express written permission of the State of Delaware.

### **2. RFP Reference Library**

The State of Delaware has made every attempt to provide the necessary information within this RFP. The State of Delaware will make the reference library available only to the winning bidder.

### **3. Definitions of Requirements**

To prevent any confusion about identifying requirements in this RFP, the following definition is offered: The words *shall*, *will* and/or *must* are used to designate a mandatory requirement. Vendors must respond to all mandatory requirements presented in the RFP. Failure to respond to a mandatory requirement may cause the disqualification of your proposal.

### **4. Production Environment Requirements**

The State of Delaware requires that all hardware, system software products, and application software products included in proposals be currently in use in a production environment by a least three other customers, have been in use for at least six months, and have been generally available from the manufacturers for a period of six months. Unreleased or beta test hardware, system software, or application software will not be acceptable.