**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES**
**Education Insight Warehouse**
**ISSUED BY DELAWARE DEPARTMENT OF EDUCATION**
**CONTRACT NUMBER 2020-04**

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## I. Overview

The State of Delaware Department of Education, seeks professional services to enter purpose for solicitation. This request for proposals ("RFP") is issued pursuant to 29 *Del. C.* §§ 6981 and 6982.

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

| | | |
|---|---|---|
| Public Notice | Date: | **September 17, 2019** |
| Voluntary Pre-Bid Meeting | Date: | September 26, 2019 at 8:00 AM |
| Deadline for Questions | Date: | **October 3, 2019** |
| Response to Questions Posted by: | Date: | **October 9, 2019** |
| Deadline for Receipt of Proposals Time) | Date: | **October 22, 2019** at 2:00 PM (Local |
| Estimated Notification of Award | Date: | **November 2019** |

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. (Applicant exceptions must also be recorded on Attachment 3).

Furthermore, the transmittal letter must attest to the fact, at a minimum, that the Vendor shall not store or transfer non-public State of Delaware data outside of the United States. For technology related solicitations, Vendors may refer to the Delaware Department of Technology and Information identified terms and conditions included in this solicitation.

The State of Delaware reserves the right to deny any and all exceptions taken to the RFP requirements.

**VOLUNTARY PREBID MEETING**

A voluntary pre-bid meeting has been scheduled for **September 26, 2019 at 8:00 AM at the Delaware Department of Education – Townsend Building 3rd Floor Conference Room – 401 Federal Street, Dover, DE 19901.** There will also be a virtual GoToMeeting available. To join the virtual GoToMeeting from your computer, tablet or smartphone: https://global.gotomeeting.com/join/409780149. To dial in using your phone: 872-240-3212, Access Code 409-780-149. **This is a voluntary pre-bid meeting**.

## II. Scope of Services

The Delaware Department of Education (DDOE) is seeking proposals from qualified vendors (Vendor) to supply services to support the state's Education Insight Warehouse. The Education Insight Warehouse is the foundation of current and future DDOE data systems. The service provided under this agreement will help ensure timely completion of state and federal data reporting projects by providing technical support services not available within the Department.

Details of the scope of work are provided in Appendix B - Scope of Work and Technical Requirements

## 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.** Provide Delaware license(s) and/or certification(s) necessary to perform services as identified in the scope of work.

Prior to the execution of an award document, the successful Vendor shall either furnish the Agency with proof of State of Delaware Business Licensure or initiate the process of application where required.

**2.** Vendor shall provide responses to the Request for Proposal (RFP) scope of work and clearly identify capabilities as presented in the General Evaluation Requirements below.

**3.** Complete all appropriate attachments and forms as identified within the RFP.

4. Proof of insurance and amount of insurance shall be furnished to the Agency prior to the start of the contract period and shall be no less than as identified in the bid solicitation, Section V, Item 8, subsection g (insurance).

**B. General Evaluation Requirements**

1. Understanding of the project scope, objectives and requirements
2. The qualifications and experience of the persons to be assigned to the project
3. Familiarity and experience with similar projects
4. References
5. Pricing

## IV. Professional Services RFP Administrative Information

### A. RFP Issuance

**1. Public Notice**

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

**2. Obtaining Copies of the RFP**

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 available.

**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.

**Meaghan Brennan**
**DE Department of Education, Finance Office**
**401 Federal Street, Ste. 2**
**Dover, DE 19901**
**Email: Meaghan.Brennan@doe.k12.de.us**

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 the State's 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) Known 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 **5** paper copies including a price proposal and **2** electronic copies on separate USB memory drives. For electronic copies, please provide a separate pricing file from the rest of the RFP proposal responses.

All properly sealed and marked proposals are to be sent to the State of Delaware and received no later than **2:00 PM (Local Time)** on **October 22, 2019**. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

**Meaghan Brennan**
**DE Department of Education, Finance Office, Rm. 275**
**401 Federal Street, Ste. 2**
**Dover, DE 19901**

**Vendors are directed to clearly print "BID ENCLOSED" and "CONTRACT NO. 2020-04" on the outside of the bid submission package.**

Any proposal received after the Deadline for Receipt of Proposals date shall not be considered and shall be returned unopened. The proposing vendor bears the risk of delays in delivery and any costs for returned proposals. 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 one year from the date of proposal receipt. 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 in the presence of State of Delaware personnel. Any unopened proposals will be returned to the submitting 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 in accordance with Executive Order # 31 and Title 29, Delaware Code, Chapter 100.

**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**

Subject to applicable law or the order of a court of competent jurisdiction to the contrary, all documents submitted as part of the vendor's proposal will be treated as confidential during the evaluation process. As such, 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 unless such disclosure is required by law or by order of a court of competent jurisdiction.

The State of Delaware and its constituent agencies are required to comply with the State of Delaware Freedom of Information Act, 29 *Del. C.* § 10001, *et seq.* ("FOIA"). FOIA requires that the State of Delaware's records are public records (unless otherwise declared by FOIA or other law to be exempt from disclosure) and are subject to inspection and copying by any person upon a written request. Once a

proposal is received by the State of Delaware and a decision on contract award is made, the content of selected and non-selected vendor proposals will likely become subject to FOIA's public disclosure obligations.

The State of Delaware wishes to create a business-friendly environment and procurement process. As such, the State respects the vendor community's desire to protect its intellectual property, trade secrets, and confidential business information (collectively referred to herein as "confidential business information"). Proposals must contain sufficient information to be evaluated. If a vendor feels that they cannot submit their proposal without including confidential business information, they must adhere to the following procedure or their proposal may be deemed unresponsive, may not be recommended for selection, and any applicable protection for the vendor's confidential business information may be lost.

In order to allow the State to assess its ability to protect a vendor's confidential business information, vendors will be permitted to designate appropriate portions of their proposal as confidential business information.

Vendor(s) may submit portions of a proposal considered to be confidential business information in a separate, sealed envelope labeled "Confidential Business Information" and include the specific 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, 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. A vendor's allegation as to its confidential business information shall not be binding on the State. The State shall independently determine the validity of any vendor designation as set forth in this section. Any vendor submitting a proposal or using the procedures discussed herein expressly accepts the State's absolute right and duty to independently assess the legal and factual validity of any information designated as confidential business information. Accordingly, Vendor(s) assume the risk that confidential business information included within a proposal may enter the public domain.

**12. Price Not Confidential**

Vendors shall be advised that as a publically bid contract, no Vendor shall retain the right to declare their pricing confidential.

**13. 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 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.18 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.

**14. 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.

**15. 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, at least 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 shall be received no later than **October 3, 2019**. All questions should be posted on DDOE's website at: https://doeapppublic01.doe.k12.de.us/BidManagementPublic/#home. All questions will be consolidated into a single set of responses and posted on both DDOE's website, as well as the State's website at www.bids.delaware.gov by the date of **October 9, 2019**. Vendor 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

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

**16. 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.

**17. 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.

**18. 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.

**19. Potential Contract Overlap**

Vendors shall be advised that the State, at its sole discretion, shall retain the right to solicit for goods and/or services as required by its agencies and as it serves the best interest of the State. As needs are identified, there may exist instances where contract deliverables, and/or goods or services to be solicited and subsequently awarded, overlap previous awards. The State reserves the right to reject any or all bids in whole or in part, to make partial awards, to award to multiple vendors during the same period, to award by types, on a zone-by-zone basis or on an item-by-item or lump sum basis item by item, or lump sum total, whichever may be most advantageous to the State of Delaware.

**20. Supplemental Solicitation**

The State reserves the right to advertise a supplemental solicitation during the term of the Agreement if deemed in the best interest of the State.

**21. 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.

**22. 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 www.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.

**23. Exceptions to the RFP**

Any exceptions to the RFP, or the State of Delaware's terms and conditions, must be recorded on Attachment 3. Failure to notate exceptions will waive Vendor's ability to negotiate the specifications, terms or conditions outlined in this RFP. Acceptance of exceptions is within the sole discretion of the evaluation committee.

**24. Business References**

Provide at least three (3) business references consisting of current or previous customers of similar scope and value using Attachment 5. Include business name, mailing address, contact name and phone number, number of years doing business with, and type of work performed. Personal references cannot be considered.

**25. 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 or 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.

**26. Cooperatives**

Vendors, who have been awarded similar contracts through a competitive bidding process with a cooperative, are welcome to submit the cooperative pricing for this solicitation. State of Delaware terms will take precedence.

**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. Professional services for this solicitation are considered under 29 *Del. C*. §6982(b). 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 Associate Secretary of Financial Management and Operations, who shall have final authority, subject to the provisions of this RFP and 29 *Del. C.* § 6982(b), 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 shall 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.

**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:

| Criteria | Weight |
|---|---|
| Understanding of the project scope, objectives and requirements | **30%** |
| The qualifications and experience of the persons to be assigned to the project. | **20%** |
| Familiarity and experience with similar projects | **20%** |
| References | **10%** |
| Pricing | **20%** |
| **Total** | **100%** |

Vendors 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 vendor's capabilities so the responding vendor should be detailed in their proposal responses.

**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**

After initial scoring and a determination that vendor(s) are qualified to perform the required services, selected vendors may be invited to make oral presentations to the Evaluation Team. All vendor(s) selected will be given an opportunity to present to the Evaluation Team.

The selected vendors will have their presentations scored or ranked based on their ability to successfully meet the needs of the contract requirements, successfully demonstrate their product and/or service, and respond to questions about the solution capabilities.

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.

## V. Contract Terms and Conditions

### 1. Contract Use by Other Agencies

**REF: Title 29, Chapter 6904(e) Delaware Code.** If no state contract exists for a certain good or service, covered agencies may procure that certain good or service under another agency's contract so long as the arrangement is agreeable to all parties. Agencies, other than covered agencies, may also procure such goods or services under another agency's contract when the arrangement is agreeable to all parties.

### 2. Cooperative Use of Award

As a publicly competed contract awarded in compliance with 29 DE Code Chapter 69, this contract is available for use by other states and/or governmental entities through a participating addendum. Interested parties should contact the State Contract Procurement Officer identified in the contract for instruction. Final approval for permitting participation in this contract resides with the Director of Government Support Services and in no way places any obligation upon the awarded vendor(s).

### 3. As a Service Subscription

As a Service subscription license costs shall be incurred at the individual license level only as the individual license is utilized within a fully functioning solution. Subscription costs will not be applicable during periods of implementation and solution development prior to the State's full acceptance of a working solution. Additional subscription license requests above actual utilization may not exceed 5% of the total and are subject to Delaware budget and technical review.

### 4. General Information

**a.** The term of the contract between the successful bidder and the State shall be for **2 1/2** year with **3** optional extensions for a period of one (1) year for each extension.

**b.** As a Service subscription license costs shall be incurred at the individual license level only as the individual license is utilized within a fully functioning solution. Subscription costs will not be applicable during periods of implementation and solution development prior to the State's full acceptance of a working solution. Additional subscription license requests above actual utilization may not exceed 5% of the total and are subject to Delaware budget and technical review.

**c.** 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.

**d.** 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.

**e.** 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.

**f.** 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 of 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.

**g.** 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.

**h.** The State reserves the right to extend this contract on a month-to-month basis for a period of up to three months after the term of the full contract has been completed.

**i.** Vendors are not restricted from offering lower pricing at any time during the contract term.

**5. 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.

**6. 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.

**7. 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.

**8. 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 may provide working space and sufficient supplies and material to augment the Contractor's services.

**b. Temporary Personnel are Not State Employees Unless and Until They are Hired**

Vendor agrees that any individual or group of temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation shall remain the employee(s) of Vendor for all purposes including any required compliance with the Affordable Care Act by the Vendor. Vendor agrees that it shall not allege,

argue, or take any position that individual temporary staff person(s) provided to the State pursuant to this Solicitation must be provided any benefits, including any healthcare benefits by the State of Delaware and Vendor 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 Solicitation, Vendor 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 Solicitation, 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 Vendor'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. Vendor will waive any separation fee provided an employee works for both the vendor 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.

**c. ACA Safe Harbor**

The State and its utilizing agencies are not the employer of temporary or contracted staff. However, the State is concerned that it could be determined to be a Common-law Employer as defined by the Affordable Care Act ("ACA"). Therefore, the State seeks to utilize the "Common-law Employer Safe Harbor Exception" under the ACA to transfer health benefit insurance requirements to the staffing company. The Common-law Employer Safe Harbor Exception can be attained when the State and/or its agencies are charged and pay for an "Additional Fee" with respect to the employees electing to obtain health coverage from the Vendor.

The Common-law Employer Safe Harbor Exception under the ACA requires that an Additional Fee must be charged to those employees who obtain health coverage from the Vendor, but does not state the required amount of the fee. The State requires that all Vendors shall identify the Additional Fee to obtain health coverage from the Vendor and delineate the Additional Fee from all other charges and fees. The Vendor shall identify both the Additional Fee to be charged and the basis of how the fee is applied (i.e. per employee, per invoice, etc.). The State will consider the Additional Fee and prior to award reserves the right to negotiate any fees offered by the Vendor. Further, the Additional Fee shall be separately scored in the proposal to ensure that neither prices charged nor the Additional Fee charged will have a detrimental effect when selecting vendor(s) for award.

**d. 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.

**e. Notice**

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

**DELAWARE DEPARTMENT OF EDUCATION**
**FINANCE OFFICE, RM. 275**
**401 FEDERAL STREET, SUITE 2**
**ATTN: MEAGHAN BRENNAN**

**f. 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.

**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.

**g. 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, also carry insurance minimum limits as follows:

**a.** Vendor shall in all instances maintain the following insurance during the term of this Agreement.

i. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.

ii. Commercial General Liability
$1,000,000.00 per occurrence/$3,000,000 per aggregate.

**b.** The successful vendor must carry at least one of the following depending on the scope of work being delivered.

i. Medical/Professional Liability
$1,000,000.00 per occurrence/$3,000,000 per aggregate

ii. Miscellaneous Errors and Omissions
$1,000,000.00 per occurrence/$3,000,000 per aggregate

iii. Product Liability
$1,000,000 per occurrence/$3,000,000 aggregate

**c.** If the contractual service requires the transportation of departmental clients or staff, the vendor shall, in addition to the above coverage's, secure at its own expense the following coverage.

i. Automotive Liability Insurance (Bodily Injury) covering all automotive units transporting departmental clients or staff used in the work with limits of not less than $100,000 each person and $300,000 each accident.

ii. Automotive Property Damage (to others) - $25,000

**4.** The vendor shall provide a Certificate of Insurance (COI) as proof that the vendor has the required insurance. The COI shall be provided prior to agency contact prior to any work being completed by the awarded vendor(s).

**5.** The State of Delaware shall not be named as an additional insured, BUT must be named as a Certificate Holder.

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

**h. 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.

**i. BID BOND**

There is no Bid Bond Requirement.

**j. PERFORMANCE BOND**

There is no Performance Bond requirement.

**k. Vendor Emergency Response Point of Contact**

The awarded vendor(s) shall provide the name(s), telephone, or cell phone number(s) of those individuals who can be contacted twenty four (24) hours a day, seven (7) days a week where there is a critical need for commodities or services when the Governor of the State of Delaware declares a state of emergency under the Delaware Emergency Operations Plan or in the event of a local emergency or disaster where a state governmental entity requires the services of the vendor. Failure to provide this information could render the proposal as non-responsive.

In the event of a serious emergency, pandemic or disaster outside the control of the State, the State may negotiate, as may be authorized by law, emergency performance from the Contractor to address the immediate needs of the State, even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

**l. 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.

**m. 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%).

**n. Liquidated Damages**

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

**o. Dispute Resolution**

At the option of, and in the manner prescribed by the Delaware Department of Education, the parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their 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 shall not be rendered inadmissible.

If the matter is not resolved by negotiation, as outlined above, or, alternatively, Delaware Department of Education elects to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to mediation by a mediator selected by Delaware Department of Education, and if the matter is not resolved through mediation, then it shall be submitted, in the sole discretion of the Delaware Department of Education Secretary for final and binding arbitration. Delaware Department of Education reserves the right to proceed directly to arbitration or litigation without negotiation or 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. Each party shall bear its own costs of mediation, arbitration or litigation, including attorneys' fees.

**p. Termination of Contract**

The contract resulting from this RFP may be terminated as follows by Delaware Department of Education.

1. **Termination for Cause**

   If, for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner its obligations under this Contract, or if the Vendor violates any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this 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 this Contract shall, at the option of the State, 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 usable to the State.

   On receipt of the contract cancellation notice from the State, the Vendor shall have no less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). A vendor response shall not effect or prevent the contract cancellation unless the State provides a written acceptance of the vendor response. If the State does accept the Vendor's method and/or action plan to correct the identified deficiencies, the State will define the time by which the Vendor must fulfill its corrective obligations. Final retraction of the State's termination for cause will only occur after the Vendor successfully rectifies the original violation(s). At its discretion the State may reject in writing the Vendor's proposed action plan and proceed with the original contract cancellation timeline.

2. **Termination for Convenience**

   The State may terminate this 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, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.

3. **Termination for Non-Appropriations**

   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. This is not a termination for convenience and will not be converted to such.

**q. Non-discrimination**

In performing the services subject to this RFP the vendor, as set forth in Title 19 Delaware Code Chapter 7 section 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 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.

**r. 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.

**s. 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.

**t. Vendor Responsibility**

The State will enter into a contract with the successful Vendor(s). The successful Vendor(s) shall be responsible for all products and services as required by this RFP whether or not the Vendor or its subcontractor provided final fulfillment of the order. Subcontractors, if any, shall be clearly identified in the Vendor's proposal by completing Attachment 6, and are subject the approval and acceptance of the Delaware Department of Education.

**u. Personnel, Equipment and Services**

1. The Vendor represents that it has, or will secure at its own expense, all personnel required to perform the services required under this contract.
2. All of the equipment and services required hereunder shall be provided by or performed by the Vendor or under its direct supervision, and all personnel, including subcontractors, engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services.
3. None of the equipment and/or services covered by this contract shall be subcontracted without the prior written approval of the State. Only those subcontractors identified in Attachment 6 are considered approved upon award. Changes to those subcontractor(s) listed in Attachment 6 must be approved in writing by the State.

**v. Fair Background Check Practices**

Pursuant to 29 Del. C. §6909B, the State does not consider the criminal record, criminal history, credit history or credit score of an applicant for state employment during the initial application process unless otherwise required by state and/or

federal law. Vendors doing business with the State are encouraged to adopt fair background check practices. Vendors can refer to 19 Del. C. §711(g) for applicable established provisions.

Pursuant to 31 Del. C. §309, any vendor, employee or contractor of a vendor, or independent contractor, that, as a result of this solicitation has regular direct access to children, or provides services directly to a child or children, must complete a background check. This mandatory check will consist of a fingerprinted Delaware and national background check completed by the State Bureau of Identification (SBI) as well as a Child Protection Registry check completed by the Department of Services for Children, Youth and Their Families (DSCYF). No work can begin until these requirements have been successfully met.

**w. Vendor Background Check Requirements**

Vendor(s) selected for an award that access state property or come in contact with vulnerable populations, including children and youth, shall be required to complete background checks on 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 that 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 contract vendors. Should an individual be identified and the Vendor(s) believes their employee's service does not represent a conflict with this requirement, may apply for a waiver to the primary agency listed in the solicitation. The Agency's decision to allow or deny access to any individual identified on a registry database is final and at the Agency's sole discretion.

By Agency request, the Vendor(s) shall provide a list of all employees serving an awarded contract, and certify adherence to the background check requirement. Individual(s) found in the central registry in violation of the terms stated, shall be immediately prevented from a return to state property in service of a contract award. A violation of this condition represents a violation of the contract terms and conditions, and may subject the Vendor to penalty, including contract cancellation for cause.

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. The Vendor(s) shall be responsible for the background check requirements of any authorized Subcontractor providing service to the Agency's contract.

**x. Drug Testing Requirements for Large Public Works**

Pursuant to 29 Del.C. §6908(a)(6), effective as of January 1, 2016, OMB has established regulations that require Contractors and Subcontractors to implement a program of mandatory drug testing for Employees who work on Large Public Works

Contracts funded all or in part with public funds. The regulations establish the mechanism, standards and requirements of a Mandatory Drug Testing Program that will be incorporated by reference into all Large Public Works Contracts awarded pursuant to 29 Del.C. §6962.

Final publication of the identified regulations can be found at the following:
4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects

**y. 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.

**z. 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.

**aa. 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.

**bb. Severability**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

**cc. Assignment Of Antitrust Claims**

As consideration for the award and execution of this contract by the State, the Vendor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to this contract. Upon either the State's or the Vendor notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State and Vendor shall meet and confer about coordination of representation in such action.

**dd. Technology Standards**

The selected vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by it, its subcontractors and its and their principals, officers, employees and agents under this Agreement. Vendor shall provide system diagrams in accordance with State Architecture requirements at https://dti.delaware.gov/about-dti/boards-and-committees/arb-templates/. In performing the specified services, Vendor shall follow practices consistent with generally accepted professional and technical standards. Vendor shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at http://dti.delaware.gov/information/standards-policies.shtml, and as modified from time to time by DTI during the term of this Agreement. Vendor will integrate all delivered services and systems with the DDOE Identity Management System and Single-Sign On system. If any service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, Vendor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused by Vendor's failure to ensure compliance with DTI standards.

**ee. Accessibility Standards**

If services or products provided by selected Vendor utilize Electronic and Information Technology ("EIT") for information delivery, support, or reporting, Vendor shall be responsible for ensuring that any such technology satisfies the Department's Accessibility requirements. In general, all EIT systems must be free of errors and warnings for Level AA of the WCAG 2.0 standard. A complete Statement of Accessibility Requirements for the Department is available at https://www.doe.k12.de.us/Page/3458. EIT is defined at FAR 2.101, which is

available at https://www.acquisition.gov/browsefar. Please note that EIT includes Information Technology, also defined at FAR 2.101.

Vendor must supply a Voluntary Product Accessibility Template ("VPAT") for any EIT supplied, furnished, or created for or on behalf of DDOE by the Vendor in the execution of this contract, including any equipment, software, services, or commercial products. An existing VPAT is acceptable as long as it corresponds to the make, model, and revision (in the case of hardware) or major version number (in the case of software) of the relevant EIT. A sample VPAT template is included as an attachment to this RFP. DDOE reserves the right to request an updated VPAT if Vendor makes a significant change in hardware, software, or service provider during the term of this Agreement. All VPATs must be approved by DDOE prior to production deployment of EIT.

If any service, product or deliverable furnished pursuant to this Agreement does not conform with the Department's accessibility standards, Vendor shall, at its expense and option either (1) modify it to conform, or (2) provide a mechanism for equally effective alternative access. In the case of (2), Vendor must submit an Equally Effective Alternative Access Plan ("EEAAP"), which must be approved by the Department. A sample EEAAP template is included as an attachment to this RFP. Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused by Vendor's failure to ensure compliance with the Department's published accessibility standards.

**ff. 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.

**gg. Affirmation**

The Vendor must affirm 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 currently suspended or debarred and is not a successor, subsidiary, or affiliate of a suspended or debarred business.

**hh. Audit Access to Records**

The Vendor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect performance hereunder. The Vendor agrees to preserve and make available to the State, upon request, such records for a period of five (5) years from the date services were rendered by the Vendor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Vendor agrees to make such records available for inspection, audit, or reproduction to any official State representative in the performance of their duties under the Contract. Upon notice given to the Vendor, representatives

of the State 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 Vendor's financial records will be borne by the Vendor. Reimbursement to the State for disallowances shall be drawn from the Vendor's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

**ii. IRS 1075 Publication**

**Performance**

In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

All work will be performed under the supervision of the contractor or the contractor's responsible employees.

The contractor and the contractor’s employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.

Any Federal tax returns or Federal tax return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.

All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

No work involving returns and return information furnished under this contract will be subcontracted without prior written approval of the IRS.

The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.

The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

**Criminal/Civil Sanctions**

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any

such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as $5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than $1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as $1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of $1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency’s security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for

Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10 ) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

**Inspection**

The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with contract safeguards.

**jj. 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. **Assignment** – Any resulting contract shall not be assigned except by express prior written consent from the Agency.
8. **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.

9. **Billing** – The successful vendor is required to "Bill as Shipped" to the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number.
10. **Payment** – The State reserves the right to pay by Automated Clearing House (ACH), Purchase Card (P-Card), or check. The agencies will authorize and process for payment of each invoice within thirty (30) days after the date of receipt of a correct invoice. Vendors are invited to offer in their proposal value added discounts (i.e. speed to pay discounts for specific payment terms). Cash or separate discounts should be computed and incorporated as invoiced.
11. **W-9** - The State of Delaware requires completion of the Delaware Substitute Form W-9 through the Supplier Public Portal at https://esupplier.erp.delaware.gov to make payments to vendors. Successful completion of this form enables the creation of a State of Delaware vendor record.
12. **Purchase Orders** – Agencies that are part of the First State Financial (FSF) system are required to identify the contract number **2020-04** on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.
13. **Purchase Card** – The State of Delaware intends to maximize the use of the P-Card for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally there shall be no minimum or maximum limits on any P-Card transaction under the contract.
14. **Additional Terms and Conditions** – The State of Delaware reserves the right to add terms and conditions during the contract negotiations.

## VI. RFP Miscellaneous Information

### 1. No Press Releases or Public Disclosure

The State of Delaware reserves the right to pre-approve any news or broadcast advertising releases concerning this solicitation, 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 solicitation or resulting contract shall require the prior express written permission of the State of Delaware.

The State will not prohibit or otherwise prevent the awarded vendor(s) from direct marketing to the State of Delaware agencies, departments, municipalities, and/or any other political subdivisions, however, the Vendor shall not use the State's seal or imply preference for the solution or goods provided.

### 2. 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.

3. **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.

## VII. Attachments

The following attachments and appendixes shall be considered part of the solicitation:

- Attachment 1 – No Proposal Reply Form
- Attachment 2 – Non-Collusion Statement
- Attachment 3 – Exceptions
- Attachment 4 – Confidentiality and Proprietary Information
- Attachment 5 – Business References
- Attachment 6 – Subcontractor Information Form
- Attachment 7 – Office of Supplier Diversity Application – FOR INFORMATION PURPOSES ONLY – THIS IS NOT REQUIRED AS PART OF A RESPONSE TO THIS SOLICIATION.
- Attachment 8 – Delaware Department of Education Standard Contract Template
- Attachment 9 – Delaware Data Usage Terms and Conditions
- Appendix A – Minimum Response Requirements
- Appendix B – Scope of Work / Technical Requirements

*[balance of page is intentionally left blank]*

# IMPORTANT – PLEASE NOTE

- **Attachments 2, 3, 4, and 5 must be included in your proposal**
- Attachment 6 must be included in your proposal if subcontractors will be involved

## REQUIRED REPORTING

One of the primary goals in administering this contract is to keep accurate records regarding its actual value/usage. This information is essential in order to update the contents of the contract and to establish proper bonding levels if they are required. The integrity of future contracts revolves around our ability to convey accurate and realistic information to all interested parties.

In accordance with Executive Order 44, the State of Delaware is committed to supporting its diverse business industry and population. The successful Vendor will be required to accurately report on the participation by Diversity Suppliers which includes: minority (MBE), woman (WBE), veteran owned business (VOBE), or service disabled veteran owned business (SDVOBE) under this awarded contract. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women's Business Enterprise Council, VetBiz.gov).

STATE OF DELAWARE
Department of Education

**Attachment 1**

**NO PROPOSAL REPLY FORM**

Contract No. **2020-04** Contract Title: **Education Insight Warehouse**

To assist us in obtaining good competition on our Request for Proposals, we ask that each firm that has received a proposal, but does not wish to bid, state their reason(s) below and return in a clearly marked envelope displaying the contract number. This information will not preclude receipt of future invitations unless you request removal from the Vendor's List by so indicating below, or do not return this form or bona fide proposal.

Unfortunately, we must offer a "No Proposal" at this time because:

_____ 1. We do not wish to participate in the proposal process.

_____ 2. We do not wish to bid under the terms and conditions of the Request for Proposal document. Our objections are:

_____

_____

_____ 3. We do not feel we can be competitive.

_____ 4. We cannot submit a Proposal because of the marketing or franchising policies of the manufacturing company.

_____ 5. We do not wish to sell to the State. Our objections are:

_____

_____

_____ 6. We do not sell the items/services on which Proposals are requested.

_____ 7. Other:_____

_____

_____ _____
FIRM NAME SIGNATURE

_____ We wish to remain on the Vendor's List **for these goods or services**.

_____ We wish to be deleted from the Vendor's List **for these goods or services**.

**PLEASE FORWARD NO PROPOSAL REPLY FORM TO THE CONTRACT OFFICER IDENTIFIED.**

STATE OF DELAWARE
Department of Education

**Attachment 2**

**CONTRACT NO.: 2020-04**
**CONTRACT TITLE: Education Insight Warehouse**
**DEADLINE TO RESPOND: October 22, 2019 at 2:00 PM (Local Time)**

## NON-COLLUSION STATEMENT

This is to certify that the undersigned Vendor 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**, and further certifies that it is not a sub-contractor to another Vendor who also submitted a proposal as a primary Vendor in response to this solicitation** submitted this date to the State of Delaware, Department of Education.

It is agreed by the undersigned Vendor that the signed delivery of this bid represents, subject to any express exceptions set forth at Attachment 3, the Vendor's acceptance of the terms and conditions of this solicitation including all specifications and special provisions.

**NOTE:** Signature of the authorized representative **MUST** be of an individual who legally may enter his/her organization into a formal contract with the State of Delaware, Enter Agency Name.

| | |
|---|---|
| | Corporation |
| | Partnership |
| | Individual |

COMPANY NAME _____Check one)

NAME OF AUTHORIZED REPRESENTATIVE
(Please type or print) _____

SIGNATURE _____ TITLE _____

COMPANY ADDRESS _____

PHONE NUMBER _____ FAX NUMBER_____

EMAIL ADDRESS _____

FEDERAL E.I. NUMBER _____ STATE OF DELAWARE LICENSE NUMBER_____

| COMPANY CLASSIFICATIONS: CERT. NO.: _____ | Certification type(s) | Circle 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.]

PURCHASE ORDERS SHOULD BE SENT TO:
(COMPANY NAME) _____

ADDRESS _____

CONTACT _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

**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, Local government suspension or debarment?

YES _____ NO _____ if yes, please explain _____

**THIS PAGE SHALL HAVE ORIGINAL SIGNATURE, BE NOTARIZED AND BE RETURNED WITH YOUR PROPOSAL**

SWORN TO AND SUBSCRIBED BEFORE ME this _____ day of _____, 20 _____

Notary Public _____ My commission expires _____

City of _____ County of _____ State of _____

STATE OF DELAWARE
Department of Education

**Attachment 3**

Contract No. **2020-04**
Contract Title: **Education Insight Warehouse**

EXCEPTION FORM

Proposals must include all exceptions to the specifications, terms or conditions contained in this RFP. If the vendor is submitting the proposal without exceptions, please state so below.

☐ By checking this box, the Vendor acknowledges that they take no exceptions to the specifications, terms or conditions found in this RFP. Vendor waives the ability to negotiate the specifications, terms or conditions outlined in this RFP.

| **Paragraph # and page #** | **Exceptions to Specifications, terms or conditions** | **Proposed Alternative** |
|---|---|---|
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**Note: Vendor may use additional pages as necessary, but the format shall be the same as provided above.**

STATE OF DELAWARE
Department of Education

**Attachment 4**

Contract No. **2020-04**
Contract Title: **Education Insight Warehouse**

CONFIDENTIAL INFORMATION FORM

☐ By checking this box, the Vendor acknowledges that they are not providing any information they declare to be confidential or proprietary for the purpose of production under 29 Del. C. ch. 100, Delaware Freedom of Information Act.

| **Confidentiality and Proprietary Information** |
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**Note: Vendor may use additional pages as necessary, but the format shall be the same as provided above.**

STATE OF DELAWARE
Department of Education

**Attachment 5**

Contract No. **2020-04**
Contract Title: **Education Insight Warehouse**

BUSINESS REFERENCES

List a minimum of three business references, including the following information:

- Business Name and Mailing address
- Contact Name and phone number
- Number of years doing business with
- Type of work performed

Please do not list any State Employee as a business reference. If you have held a State contract within the last 5 years, please provide a separate list of the contract(s).

| | |
|---|---|
| 1. **Contact Name & Title:** | |
| **Business Name:** | |
| **Address:** | |
| | |
| **Email:** | |
| **Phone # / Fax #:** | |
| **Current Vendor (YES or NO):** | |
| **Years Associated & Type of Work Performed:** | |

| | |
|---|---|
| 2. **Contact Name & Title:** | |
| **Business Name:** | |
| **Address:** | |
| | |
| **Email:** | |
| **Phone # / Fax #:** | |
| **Current Vendor (YES or NO):** | |
| **Years Associated & Type of Work Performed:** | |

| | |
|---|---|
| 3. **Contact Name & Title:** | |
| **Business Name:** | |
| **Address:** | |
| | |
| **Email:** | |
| **Phone # / Fax #:** | |
| **Current Vendor (YES or NO):** | |
| **Years Associated & Type of Work Performed:** | |

**STATE OF DELAWARE PERSONNEL MAY NOT BE USED AS REFERENCES.**

STATE OF DELAWARE
Department of Education

**Attachment 6**

SUBCONTRACTOR INFORMATION FORM

| **PART I – STATEMENT BY PROPOSING VENDOR** | | |
|---|---|---|
| 1. CONTRACT NO.<br>**2020-04** | 2. Proposing Vendor Name: | 3. Mailing Address |
| 4. SUBCONTRACTOR | | |
| a. NAME | 4c. Company OSD Classification:<br><br>Certification Number: _____ | |
| b. Mailing Address: | 4d. Women Business Enterprise ☐ Yes ☐ No<br>4e. Minority Business Enterprise ☐ Yes ☐ No<br>4f. Disadvantaged Business Enterprise ☐ Yes ☐ No<br>4g. Veteran Owned Business Enterprise ☐ Yes ☐ No<br>4h. Service Disabled Veteran Owned Business Enterprise ☐ Yes ☐ No | |
| 5. DESCRIPTION OF WORK BY SUBCONTRACTOR | | |

| | | |
|---|---|---|
| 6a. NAME OF PERSON SIGNING | 7. BY (*Signature)* | 8. DATE SIGNED |
| 6b. TITLE OF PERSON SIGNING | | |

| **PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR** | | |
|---|---|---|
| 9a. NAME OF PERSON SIGNING | 10. BY (*Signature*) | 11. DATE SIGNED |
| 9b. TITLE OF PERSON SIGNING | | |

*** Use a separate form for each subcontractor**

**Attachment 7**

# State of Delaware
# Office of Supplier Diversity
## Certification Application

The most recent application can be downloaded from the following site:
**http://gss.omb.delaware.gov/osd/certify.shtml**

Submission of a completed Office of Supplier Diversity (OSD) application is optional and does not influence the outcome of any award decision.

The minimum criteria for certification require the entity must be at least 51% owned and actively managed by a person or persons who are eligible: minorities, women, veterans, and/or service disabled veterans. Any one or all of these categories may apply to a 51% owner.

**Complete application and mail, email or fax to:**

Office of Supplier Diversity (OSD)
100 Enterprise Place, Suite 4
Dover, DE 19904-8202
Telephone: (302) 857-4554 Fax: (302) 677-7086
Email: osd@delaware.gov
Web site: http://gss.omb.delaware.gov/osd/index.shtml

**THE OSD ADDRESS IS FOR OSD APPLICATIONS ONLY.**
**THE OSD WILL NOT ACCEPT ANY VENDOR BID RESPONSE PACKAGES.**

**Attachment 8**

# Delaware Department of Education Contract

RFP#2020-04

This Agreement ("Agreement") is effective only upon the execution of a State of Delaware Purchase Order and will end on _____, **20**_____, by and between the State of Delaware, Department of Education, hereafter referred to as DDOE, and VENDOR, (VENDOR).

WHEREAS, DDOE desires to obtain certain services to ; and

WHEREAS, VENDOR desires to provide such services to DDOE on the terms set forth below;

WHEREAS, DDOE and VENDOR represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, DDOE and VENDOR agree as follows:

**1. Services.**

1.1 VENDOR shall perform for DDOE the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

1.2 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) DDOE's request for proposals, attached hereto as Appendix ; and (c) VENDOR's response to the request for proposals, attached hereto as Appendix . The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.3 DDOE may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by VENDOR shall be furnished without the written authorization of DDOE. When DDOE desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify VENDOR, who shall then submit to DDOE a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by VENDOR for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 VENDOR will not be required to make changes to its scope of work that result in VENDOR's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under

Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

**2. Payment for Services and Expenses.**

2.1 The Services contemplated in this Agreement shall be completed no later than _____, 20_____.

2.2 DDOE will pay VENDOR for the performance of services described in Appendix A, Statement of Work. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix .

2.3 DDOE's obligation to pay VENDOR for the performance of services described in Appendix A, Statement of Work will not exceed the fixed fee amount of $_____. It is expressly understood that the work defined in the appendices to this Agreement must be completed by VENDOR and it shall be VENDOR's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. DDOE's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in DDOE's purchase order(s) to VENDOR.

2.4 VENDOR shall submit monthly invoices to DDOE in sufficient detail to support the services provided during the previous month. DDOE agrees to pay those invoices within thirty (30) days of receipt. In the event DDOE disputes a portion of an invoice, DDOE agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide VENDOR a detailed statement of DDOE's position on the disputed portion of the invoice within thirty (30) days of receipt.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by VENDOR. If an Appendix specifically provides for expense reimbursement, VENDOR shall be reimbursed only for reasonable expenses incurred by VENDOR in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

2.6 DDOE is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.7 DDOE shall subtract from any payment made to VENDOR all damages, costs and expenses caused by VENDOR's negligence, resulting from or arising out of errors or omissions in VENDOR's work products, which have not been previously paid to VENDOR.

2.8 Invoices shall be submitted to:

**3. Responsibilities of VENDOR.**

3.1 VENDOR shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by VENDOR, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, VENDOR shall follow practices consistent with generally accepted professional and technical standards. VENDOR shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at http://dti.delaware.gov/, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, VENDOR shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. VENDOR shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused by VENDOR's failure to ensure compliance with DTI standards.

3.2 Accessibility requirements – Any electronic or information technology developed for or on behalf of DDOE shall have no errors or warnings for WCAG 2.0 Level AA success criteria unless has an exception in writing. Reviewable issues are permitted. VENDOR may be asked to provide documentation to show that delivered work product satisfies all applicable accessibility criteria. DDOE reserves the right to audit the work product at any time for accessibility compliance, and any issues found will be the responsibility of VENDOR to remediate.

3.3 It shall be the duty of VENDOR to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. VENDOR will not produce a work product that violates or infringes on any copyright or patent rights. VENDOR shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.4 Permitted or required approval by DDOE of any products or services furnished by VENDOR shall not in any way relieve VENDOR of responsibility for the professional and technical accuracy and adequacy of its work. DDOE's review, approval, acceptance, or payment for any of VENDOR's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and VENDOR shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused by VENDOR's performance or failure to perform under this Agreement.

3.5 Prior to performing any work under this Agreement, VENDOR and VENDOR's employees and agents shall submit to any criminal history or other background checks that may be requested by Delaware (DDOE). DDOE may

refuse access to any DDOE facility or to any sensitive information possessed or controlled by Delaware (DDOE) for any person whose criminal history or background check results are not acceptable to DDOE, in its sole and absolute discretion. The positions anticipated include:

| Project | Team | Title | % of Project Involvement |
|---|---|---|---|

3.6 Designation of persons for each position is subject to review and approval by DDOE. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, VENDOR will notify DDOE immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by DDOE. If VENDOR fails to make a required replacement within 30 days, DDOE may terminate this Agreement for default. Upon receipt of written notice from DDOE that an employee of VENDOR is unsuitable to DDOE for good cause, VENDOR shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

3.7 VENDOR shall furnish to DDOE's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.8 VENDOR agrees that its officers and employees will cooperate with DDOE in the performance of services under this Agreement and will be available for consultation with DDOE at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.9 VENDOR has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by the State of Delaware or any other political subdivision of the State.

3.10 VENDOR will not use DDOE's name, either express or implied, in any of its advertising or sales materials without DDOE's express written consent.

3.11 The rights and remedies of DDOE provided for in this Agreement are in addition to any other rights and remedies provided by law.

3.12 Fair Background Check Practices - Pursuant to 29 Del. C. §6909B and effective November 4, 2014 the State does not consider the criminal record, criminal history, credit history or credit score of an applicant for state employment during the initial application process unless otherwise required by State and/or Federal law. Vendors doing business with the State are encouraged to adopt fair background check practices. Vendors can refer to 19 Del. C. §711(g) for applicable established provisions.

Pursuant to 31 Del. C. §309, any vendor, employee or contractor of a vendor, or independent contractor, that, as a result of this solicitation has regular direct

access to children, or provides services directly to a child or children, must complete a background check. This mandatory check will consist of a fingerprinted Delaware and national background check completed by the State Bureau of Identification (SBI) as well as a Child Protection Registry check completed by the Department of Services for Children, Youth and Their Families (DSCYF). No work can begin until these requirements have been successfully met.

3.13 By signing this contract, any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors certify they are not currently debarred or suspended by another governmental entity.

If placed on the debarment or suspension list, VENDOR must immediately notify the Delaware Department of Education.

**4. Time Schedule.**

4.1 A project schedule is included in Appendix .

4.2 Any delay of services or change in sequence of tasks must be approved in writing by DDOE.

4.3 In the event that VENDOR fails to complete the project or any phase thereof within the time specified in the Agreement, or with such additional time as may be granted in writing by DDOE, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, DDOE shall suspend the payments scheduled as set forth in Appendix .

**5. State Responsibilities.**

5.1 In connection with VENDOR's provision of the Services, DDOE shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.

5.2 DDOE agrees that its officers and employees will cooperate with VENDOR in the performance of services under this Agreement and will be available for consultation with VENDOR at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by VENDOR under this Agreement shall be subject to review for compliance with the terms of this Agreement by DDOE's designated representatives. DDOE representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform VENDOR by written notice before the effective date of each such delegation.

5.4 The review comments of DDOE's designated representatives may be reported in writing as needed to VENDOR. It is understood that DDOE's representatives' review comments do not relieve VENDOR from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5 DDOE shall, without charge, furnish to or make available for examination or use by VENDOR as it may request, any data which DDOE has available, including as examples only and not as a limitation:

a. Copies of reports, surveys, records, and other pertinent documents;
b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by this Agreement.

VENDOR shall return any original data provided by DDOE.

5.6 DDOE shall assist VENDOR in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.5.7 VENDOR will not be responsible for accuracy of information or data supplied by DDOE or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 DDOE agrees not to use VENDOR's name, either express or implied, in any of its advertising or sales materials. VENDOR reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

**6. Work Product.**

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by VENDOR for DDOE relating to the services to be performed hereunder shall become the property of DDOE and shall be delivered to DDOE's designated representative upon completion or termination of this Agreement, whichever comes first. VENDOR shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by DDOE. DDOE shall have the right to reproduce all documentation supplied pursuant to this Agreement.

☐ 6.2 [Reserved]

OR:

☐ 6.2 VENDOR retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with DDOE's rights to the materials, information and documents

developed in performing the project. Upon final payment, DDOE shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which VENDOR retains title, whether individually by VENDOR or jointly with DDOE. Any and all source code developed in connection with the services provided will be provided to DDOE, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

☐ 6.3 [Reserved]

OR:

☐ 6.3 In no event shall VENDOR be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, VENDOR shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

☐ 6.4 [Reserved]

OR:

☐ 6.4 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by VENDOR prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of VENDOR even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. DDOE's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

**7. Confidential Information.**

To the extent permissible under 29 *Del. C.* § 10001-10007, and as required by 11 Del.C. §4322 and other state and federal laws pertaining to confidentiality the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

**8. Warranty.**

8.1 VENDOR warrants that its services will be performed in a good and workmanlike manner. VENDOR agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by VENDOR for DDOE in connection with the provision of the Services, VENDOR shall pass through or assign to DDOE the rights VENDOR obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

## 9. Indemnification; Limitation of Liability.

9.1 VENDOR shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of VENDOR, its agents or employees, or (B) VENDOR's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) VENDOR shall have been notified promptly in writing by DDOE of any notice of such claim; and (ii) VENDOR shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If DDOE promptly notifies VENDOR in writing of a third party claim against DDOE that any Deliverable infringes a copyright or a trade secret of any third party, VENDOR will defend such claim at its expense and will pay any costs or damages that may be finally awarded against DDOE. VENDOR will not indemnify DDOE, however, if the claim of infringement is caused by (1) DDOE's misuse or modification of the Deliverable; (2) DDOE's failure to use corrections or enhancements made available by VENDOR; (3) DDOE's use of the Deliverable in combination with any product or information not owned or developed by VENDOR; (4) DDOE's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in VENDOR's opinion is likely to be, held to be infringing, VENDOR shall at its expense and option either (a) procure the right for DDOE to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies constitute DDOE's sole and exclusive remedies and VENDOR's entire liability with respect to infringement.

## 10. Employees.

10.1 VENDOR has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by VENDOR in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor DDOE's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

10.3 Possession of a Security Clearance, as issued by the Delaware Department of Public Safety, may be required of any employee of VENDOR who will be assigned to this project.

**11. Independent Contractor.**

11.1 It is understood that in the performance of the services herein provided for, VENDOR shall be, and is, an independent contractor, and is not an agent or employee of DDOE and shall furnish such services in its own manner and method except as required by this Agreement. VENDOR shall be solely responsible for, and shall indemnify, defend and save DDOE harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 VENDOR acknowledges that VENDOR and any subcontractors, agents or employees employed by VENDOR shall not, under any circumstances, be considered employees of DDOE, and that they shall not be entitled to any of the benefits or rights afforded employees of DDOE, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. DDOE will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of DDOE or any of its officers, employees or other agents.

11.3 VENDOR shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, VENDOR has no authority to bind or commit DDOE. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

**12. Dispute Resolution.**

12.1. At the option of, and in the manner prescribed by the, DDOE, the parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All offers,

promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their 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 shall not be rendered inadmissible.

12.2. If the matter is not resolved by negotiation, as outlined above, or, alternatively, DDOE elects to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to mediation by a mediator selected by DDOE, and if the matter is not resolved through mediation, then it shall be submitted, in the sole discretion of the Department for final and binding arbitration. Agency reserves the right to proceed directly to arbitration or litigation without negotiation or 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. Each party shall bear its own costs of mediation, arbitration or litigation, including attorneys' fees.

**13. Suspension.**

13.1 DDOE may suspend performance by VENDOR under this Agreement for such period of time as DDOE, at its sole discretion, may prescribe by providing written notice to VENDOR at least 30 working days prior to the date on which DDOE wishes to suspend. Upon such suspension, DDOE shall pay VENDOR its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. VENDOR shall not perform further work under this Agreement after the effective date of suspension. VENDOR shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from DDOE to resume performance.

13.2 In the event DDOE suspends performance by VENDOR for any cause other than the error or omission of VENDOR, for an aggregate period in excess of 30 days, VENDOR shall be entitled to an equitable adjustment of the compensation payable to VENDOR under this Agreement to reimburse VENDOR for additional costs occasioned as a result of such suspension of performance by DDOE based on appropriated funds and approval by DDOE.

**14. Termination.**

14.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

a. Not less than 10 calendar days written notice of intent to terminate; and
b. An opportunity for consultation with the terminating party prior to termination.

14.2 This Agreement may be terminated in whole or in part by DDOE for its convenience, but only after VENDOR is given:

a. Not less than 10 calendar days written notice of intent to terminate; and
b. An opportunity for consultation with DDOE prior to termination.

14.3 If termination for default is effected by DDOE, DDOE will pay VENDOR that portion of the compensation which has been earned as of the effective date of termination but:

a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
b. Any payment due to VENDOR at the time of termination may be adjusted to the extent of any additional costs occasioned to DDOE by reason of VENDOR's default.
c. Upon termination for default, DDOE may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event VENDOR shall cease conducting business, DDOE shall have the right to make an unsolicited offer of employment to any employees of VENDOR assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

14.4 If after termination for failure of VENDOR to fulfill contractual obligations it is determined that VENDOR has not so failed, the termination shall be deemed to have been effected for the convenience of DDOE.

14.5 The rights and remedies of DDOE and VENDOR provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

14.6 Gratuities.

a. DDOE may, by written notice to VENDOR, terminate this Agreement if it is found after notice and hearing by DDOE that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by VENDOR or any agent or representative of VENDOR to any officer or employee of DDOE with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

b. In the event this Agreement is terminated as provided in 14.6.a. hereof, DDOE shall be entitled to pursue the same remedies against VENDOR it could pursue in the event of a breach of this Agreement by VENDOR.

c. The rights and remedies of DDOE provided in Section 14.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**15. Severability.**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

**16. Assignment; Subcontracts.**

16.1 Any attempt by VENDOR to assign or otherwise transfer any interest in this Agreement without the prior written consent of DDOE shall be void. Such consent shall not be unreasonably withheld.

16.2 Services specified by this Agreement shall not be subcontracted by VENDOR, without prior written approval of DDOE.

16.3 Approval by DDOE of VENDOR's request to subcontract or acceptance of or payment for subcontracted work by DDOE shall not in any way relieve VENDOR of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

16.4 VENDOR shall be and remain liable for all damages to DDOE caused by negligent performance or non-performance of work under this Agreement by VENDOR, its subcontractor or its sub-subcontractor.

16.5 The compensation due shall not be affected by DDOE's approval of VENDOR's request to subcontract.

**17. Force Majeure.**

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

**18. Non-Appropriation of Funds.**

18.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated DDOE may immediately terminate this Agreement, and absent such action this 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.

18.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and DDOE's obligations under it shall be extinguished at the end of the fiscal year in which the State of Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

**19. State of Delaware Business License.**

VENDOR and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

**20. Complete Agreement.**

20.1 This agreement and its Appendices shall constitute the entire agreement between DDOE and VENDOR with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

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

20.3 VENDOR may not order any product requiring a purchase order prior to DDOE's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

**21. Global Interoperability Standards**

DDOE advocates adoption by all suppliers of applicable open interoperability standards provided by the IMS Global Learning Consortium (IMS), the Ed-Fi Alliance (Ed-Fi) and the Common Education Data Standards (CEDS) project in order to enable safe, flexible and rapid integrations. The aforementioned standards are evolving under the governance of member organizations, which includes a majority of leading educational technology suppliers. The paragraph below describes VENDOR agreement to implement, certify, and stay current with the latest releases of these standards, so that DDOE is not required to communicate on a standard-by-standard basis the availability and requirement to adopt these standards.

VENDOR agrees that all products DDOE purchases will become certified as compliant with any final version of the aforementioned interoperability standards that are applicable to the products procured within six (6) months of the public release of each standard (or a specific later date if mutually agreed to by the parties), provided that: (a) the proposed modifications to the Product would not create a security, privacy or accessibility compromise; (b) the standard can be implemented with approximately the same amount of development resource as integration approaches of similar scope and thus does not create an undue financial burden on VENDOR; and (c) several other institutions (by direct referral) comparable to DDOE agree that the modifications necessary to the purchased product are desirable. At a minimum, VENDOR shall be required to complete an annual technology roadmap session with DDOE.

## 22. Data Privacy, Ownership and Protection Information

22.1 VENDOR shall adhere to the mandates of federal, state, and local ordinances and statutes, and DDOE policy and regulations, including, but not limited to the Family Educational Rights and Privacy Act (FERPA), Children's Online Privacy Protection Act of 1998 (COPPA), and 15 U.S.C. 6501–6505, with regard to the protection of data made available by DDOE.

22.2 VENDOR shall carefully select the personnel entrusted with the data, inform them about all of the legal aspects of data protection, and oblige them to preserve data secrecy. The obligation shall be made on record and evidence of this shall be provided to DDOE upon its request.

22.3 VENDOR shall be obliged to maintain a comprehensive information security program that is reasonably designed to protect security, privacy, confidentiality, and integrity of data with appropriate administrative, technological, and physical safeguards. VENDOR shall store on encrypted volumes all confidential and sensitive data that is placed on mobile computing devices including laptops. All data transmitted over the Internet must be encrypted.

22.4 Upon DDOE's request or at the latest, upon expiration of the Agreement, all existing data acquired during the term of the Agreement or created as part of the Agreement shall be returned to DDOE or shall be irretrievably deleted by the VENDOR. The deletion shall take place, at the latest, upon the expiry of

mandatory data protection law periods. Upon request by DDOE, the deletion is to be confirmed in writing.

22.5 In the event a breach, of the obligations herein detailed or if indications of such a breach exist, VENDOR shall undertake to inform DDOE of the breach without undue delay.

22.6 DDOE or its designee may monitor VENDOR's compliance with the Agreement as it relates to data protection. Such monitoring shall only be available upon the receiver of the data executing a non-disclosure agreement. Additionally, DDOE agrees it will only request additional monitoring if the third party assessment (ISO/ICE 27001 certification) fails to provide satisfaction of compliance with the Agreement.

22.7 VENDOR must provide clear notice to DDOE before making any material changes to VENDOR's privacy policy.

22.8 DDOE shall be entitled to timely access data and correct data held by VENDOR that is factually incorrect in response to a parent/guardian request.

22.9 VENDOR can only utilize the data for the purposes specifically authorized by DDOE and cannot set up a personal profile of a student unless to support purposes authorized by DDOE.

22.10 VENDOR cannot sell data or use/share data for targeted advertising to students.

22.11 VENDOR cannot re-disclose data to sub-contractors, partners, or other third parties unless expressly authorized by DDOE and subcontractors, partners, or other third parties agree to DDOE's Terms of Use.

22.12 DDOE's confidential information, as provided in Paragraph 7 of this Agreement, and all other confidential information and data relating to DDOE's business are DDOE's exclusive property, and VENDOR therefore agrees that:

a. All notes, data, reference materials, sketches, drawings, memoranda, disks, documentation and records in any way incorporating or reflecting any of the Confidential Information and all proprietary rights in the Confidential Information, including copyrights, trade secrets and patents shall belong exclusively to DDOE;

b. At all times while this Agreement is in effect, VENDOR will keep secret and will not disclose to any third party, take or misuse any of DDOE's Confidential Information, or any other confidential information VENDOR acquires or has access to because of its provision of services;

c. At all times while this Agreement is in effect, VENDOR will not use or seek to use any of DDOE's Confidential Information for VENDOR's own benefit or for the benefit of any other person or business or in any way adverse to DDOE's interests;

d. On DDOE's request or on termination of this Agreement, VENDOR will promptly return to DDOE all its property, specifically including all documents, disks or other computer media or other materials in VENDOR's possession or control that contain any of DDOE's Confidential Information;

e. After termination of this Agreement, VENDOR will preserve the secrecy of and will not disclose directly or indirectly to any other person or business any of DDOE's Confidential Information; and

f. VENDOR will promptly advise DDOE of any unauthorized disclosure or use of DDOE's Confidential Information by any person or entity.

22.13 The State's data ("State Data," which will be treated by VENDOR as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Agreement Activities; (b) personally identifiable information ("PII") collected, used, processed, stored, or generated as the result of the Agreement Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("PHI") collected, used, processed, stored, or generated as the result of the Agreement Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Agreement.

22.14 VENDOR is provided a limited license to State Data for the sole and exclusive purpose of providing the Agreement Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Agreement Activities. VENDOR must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Agreement Activities, such use and disclosure being in accordance with this Agreement, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for VENDOR's own purposes or for the benefit of anyone other than

the State without the State's prior written consent. This Section survives the termination of this Agreement.

22.15 As per the Delaware Department of Technology and Information, VENDOR shall agree to the following provisions:

a. The State of Delaware shall own all right, title and interest in its data that is related to the services provided by this Agreement. VENDOR shall not access State of Delaware User accounts, or State of Delaware Data, except (i) in the course of data center operations, (ii) response to service or technical issues, (iii) as required by the express terms of this Agreement, or (iv) at State of Delaware's written request.

b. Protection of personal privacy and sensitive data shall be an integral part of the business activities of VENDOR to ensure that there is no inappropriate or unauthorized use of State of Delaware information at any time. To this end, VENDOR shall safeguard the confidentiality, integrity, and availability of State information and comply with the following conditions:

   i. All information obtained by VENDOR under this Agreement shall become and remain property of the State of Delaware.

   ii. At no time shall any data or processes which either belongs to or are intended for the use of State of Delaware or its officers, agents, or employees, be copied, disclosed, or retained by VENDOR or any party related to VENDOR for subsequent use in any transaction that does not include the State of Delaware.

22.16 Upon completion of this agreement, if requested, all data will be returned in an agreed upon format that is predetermined at Agreement signing.

22.17 If the procured product is part of an acquisition or sold off, at the request of DDOE, the Agreement will be considered null and void.

## 23. Miscellaneous Provisions.

23.1 In performance of this Agreement, VENDOR shall comply with all DDOE policies, applicable federal, state and local laws, ordinances, codes and regulations. VENDOR shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

23.2 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

23.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

23.4 VENDOR covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. VENDOR further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

23.5 VENDOR acknowledges that DDOE has an obligation to ensure that public funds are not used to subsidize private discrimination. VENDOR recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, DDOE may declare VENDOR in breach of the Agreement, terminate the Agreement, and designate VENDOR as non-responsible.

23.6 VENDOR warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, DDOE shall have the right to annul this Agreement without liability or at its discretion deduct from the Agreement price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

23.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

23.8 VENDOR shall maintain all public records, as defined by 29 *Del. C*. § 502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of DDOE may inspect or audit VENDOR's performance and records pertaining to this Agreement.

23.9 The State reserves the right to advertise a supplemental solicitation during the term of the Agreement if deemed in the best interest of the State.

## 24. Insurance.

24.1 VENDOR shall, at its own expense, carry insurance with the minimum coverage limits as follows during the term of this Agreement:

a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, **and**

b. Commercial General Liability - $1,000,000.00 per person/$3,000,000 per occurrence, **and**

c. Medical/Professional Liability - $1,000,000.00 per person/$3,000,000 per occurrence, or

d. Miscellaneous Errors and Omissions - $1,000,000.00 per person/$3,000,000 per occurrence, or

e. Product Liability - $1,000,000 per occurrence/ $3,000,000 general aggregate.

VENDOR must carry (a) and (b) and at least one of (c), (d), or (e), depending on the type of service or product being delivered.

If the contractual service requires the transportation of DDOE clients or staff, VENDOR shall, in addition to the above coverage, secure at its own expense the following minimum coverage during the term of this Agreement:

f. Automotive Liability (Bodily Injury) covering all automotive units transporting departmental clients or staff used in the work with limits of not less than $100,000 each person and $300,000 each accident as to bodily injury and $25,000 as to property damage to others.

g. Automotive Property Damage (to others) $25,000

Notwithstanding the information contained above, VENDOR shall indemnify and hold harmless the State of Delaware and DDOE from contingent liability to others for damages because of bodily injury, including death, that may result from VENDOR's negligent performance under this Agreement, and any other liability for damages for which VENDOR is required to indemnify the State and DDOE under any provision of this Agreement.

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

24.3 Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the Agreement number stated herein, shall be filed with the State. The certificate holder is as follows:

Delaware Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

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

**25. Assignment of Antitrust Claims.**

As consideration for the award and execution of this Agreement by the State, VENDOR hereby grants, conveys, sells, assigns, and transfers to DDOE all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the State pursuant to this Agreement. Upon either DDOE's or the VENDOR notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, DDOE and VENDOR shall meet and confer about coordination of representation in such action.

**26. Surviving Clauses**

All indemnification obligations imposed and all licenses and assignments of rights granted under this Agreement shall survive termination

**27. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. VENDOR consents to jurisdiction venue in the State of Delaware.

**28. Notices.**

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

CONTRACTOR: VENDOR

DDOE: Charles A. Longfellow
Associate Secretary, Operations Support
Delaware Department of Education
John G. Townsend Building
401 Federal Street, Suite 2
Dover, DE 19901
Phone No. (302) 735-4040
Fax No. (302) 739-7768

DOE Certificated Staff coordinating activity:

_____

Next Page for Signatures.

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

| VENDOR | Delaware Department of Education |
|---|---|
| _____ | _____ |
| (Official of VENDOR)<br>Project Manager | Associate Secretary, Date<br>Operations Support (or Designee) |
| _____ | _____ |
| Date | Finance Director<br>Initials |
| _____ | _____ |
| (Official of VENDOR)<br>Principal Investigator | Team Associate Secretary Date |
| _____ | _____ _____ |
| Date | Date Work Group Director<br>Initials |

Attachment 9

STATE OF DELAWARE
DEPARTMENT OF TECHNOLOGY AND INFORMATION
801 Silver Lake Blvd., Dover, Delaware 19904

*PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE*

# DELAWARE DATA USAGE TERMS AND CONDITIONS AGREEMENT

Contract/Agreement #/name_____, Appendix _____

between State of Delaware and_____dated _____

| | Public Data | Non Public Data | | DATA USAGE (DU) TERMS |
|---|---|---|---|---|
| **DU1** | √ | √ | **Data Ownership** | The State of Delaware shall own all right, title and interest in its data that is related to the services provided by this contract. The PROVIDER shall not access State of Delaware user accounts, or State of Delaware data, except (i) in the course of data center operations, (ii) response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at State of Delaware's written request. All information obtained or generated by the PROVIDER under this contract shall become and remain property of the State of Delaware. |
| **DU2** | √ | √ | **Data Usage** | PROVIDER shall comply with the following conditions. At no time will any information, belonging to or intended for the State of Delaware, be copied, disclosed, or retained by PROVIDER or any party related to PROVIDER for subsequent use in any transaction. The PROVIDER will take reasonable steps to limit the use of, or disclosure of, and requests for, confidential State data to the minimum necessary to accomplish the intended purpose under this agreement. PROVIDER may not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service. Protection of Personally Identifiable Information (PII, as defined in the State's *Terms & Conditions Governing Cloud Services* policy), privacy, and sensitive data shall be an integral part of the business activities of the PROVIDER to ensure that there is no inappropriate or unauthorized use of State of Delaware information at any time. The PROVIDER shall safeguard the confidentiality, integrity, and availability of State information.<br><br>Only duly authorized PROVIDER staff will have access to the State of Delaware data and may be required to obtain security clearance from the State. No party related to the PROVIDER may retain any data for subsequent use in any transaction that has not been expressly authorized by the State of Delaware. |

Contract/Agreement #/name_____, Appendix _____

between State of Delaware and_____dated _____

| | Public Data | Non Public Data | | DATA USAGE (DU) TERMS |
|---|---|---|---|---|
| **DU3** | √ | √ | **Termination and Suspension of Service** | In the event of termination of the contract, the PROVIDER shall implement an orderly return (in CSV or XML or another mutually agreeable format), or shall guarantee secure disposal of State of Delaware data.<br><br>*Suspension of services:* During any period of suspension or contract negotiation or disputes, the PROVIDER shall not take any action to intentionally alter, erase, or otherwise render inaccessible any State of Delaware data.<br><br>*Termination of any services or agreement in entirety:* In the event of termination of any services or agreement in entirety, the PROVIDER shall not take any action to intentionally alter, erase, or otherwise render inaccessible any State of Delaware data for a period of 90 days after the effective date of the termination. Within this 90-day timeframe, vendor will continue to secure and back up State of Delaware data covered under the contract. After such 90-day period, the PROVIDER shall have no obligation to maintain or provide any State of Delaware data. Thereafter, unless legally prohibited, the PROVIDER shall dispose securely of all State of Delaware data in its systems or otherwise in its possession or control, as specified herein.<br><br>Post-Termination Assistance: The State of Delaware shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established as part of the Service Level Agreement. |
| **DU4** | | √ | **Data Disposition** | At the end of this engagement, PROVIDER will account for and return all State data in all of its forms, disk, CD / DVD, tape, paper, for example. At no time shall any data or processes that either belong to or are intended for the use of State of Delaware or its officers, agents, or employees, be copied, disclosed, or retained by the PROVIDER.<br><br>When required by the State of Delaware, the PROVIDER shall destroy all requested data in all of its forms (e.g., disk, CD/DVD, backup tape, paper). Data shall be permanently deleted, and shall not be recoverable, in accordance with National Institute of Standards and Technology (NIST) approved methods. The PROVIDER shall provide written certificates of destruction to the State of Delaware. |

Contract/Agreement #/name_____, Appendix _____

between State of Delaware and_____dated _____

| | Public Data | Non Public Data | | DATA USAGE (DU) TERMS |
|---|---|---|---|---|
| **DU5** | | **√** | **Data Location** | The PROVIDER shall not store, process, or transfer any non-public State of Delaware data outside of the United States, including for back-up and disaster recovery purposes. The PROVIDER may permit its personnel and subcontractors offshore access to the data, as long as the data remains onshore. |
| **DU6** | | **√** | **Breach Notification and Recovery** | The PROVIDER must notify the State of Delaware immediately of any incident resulting in the destruction, loss, unauthorized disclosure, or alteration of State of Delaware data. If data is not encrypted (*see* DU7, below), Delaware Code (6 Del. C. §12B-100 et seq.) requires public breach notification of any incident resulting in the loss or unauthorized disclosure of Delawareans' Personally Identifiable Information (PII, as defined in Delaware's *Terms and Conditions Governing Cloud Services* policy) by PROVIDER or its subcontractors. The PROVIDER will provide notification to persons whose information was breached without unreasonable delay but not later than 60 days after determination of the breach, except 1) when a shorter time is required under federal law; 2) when law enforcement requests a delay; 3) reasonable diligence did not identify certain residents, in which case notice will be delivered as soon as practicable. All such communication shall be coordinated with the State of Delaware. Should the PROVIDER or its contractors be liable for the breach, the PROVIDER shall bear all costs associated with investigation, response, and recovery from the breach. This includes, but is not limited to, credit monitoring services with a term of at least three (3) years, mailing costs, website, and toll-free telephone call center services. The State of Delaware shall not agree to any limitation on liability that relieves the PROVIDER or its subcontractors from its own negligence, or to the extent that it creates an obligation on the part of the State to hold a PROVIDER harmless. |

STATE OF DELAWARE
Department of Education
DEPARTMENT OF TECHNOLOGY AND INFORMATION

Contract/Agreement #/name_____, Appendix _____

between State of Delaware and_____dated _____

| | Public Data | Non Public Data | | DATA USAGE (DU) TERMS |
|---|---|---|---|---|
| **DU7** | | **√** | **Data Encryption** | The PROVIDER shall encrypt all non-public data in transit, regardless of transit mechanism. For engagements where the PROVIDER stores Personally Identifiable Information (PII) or other sensitive, confidential information, it shall encrypt this non-public data at rest. The PROVIDER's encryption shall meet validated cryptography standards as specified by the National Institute of Standards and Technology in FIPS140-2 and subsequent security requirements guidelines. The PROVIDER and State of Delaware will negotiate mutually acceptable key location and key management details. Should the PROVIDER not be able to provide encryption at rest, it must maintain cyber security liability insurance coverage for the duration of the contract. Coverage must meet the State of Delaware's standard in accordance with the *Terms and Conditions Governing Cloud Services* policy. |

I) The terms of this Agreement shall be incorporated into the aforementioned contract. Any conflict between this Agreement and the aforementioned contract shall be resolved by giving priority to this Agreement. By signing this Agreement, the PROVIDER agrees to abide by the following applicable Terms and Conditions [check one]:

FOR OFFICIAL USE ONLY ☐ **DU 1 - DU 3 (Public Data Only) OR** ☐ **DU 1 - DU 7 (Non-public Data)**

PROVIDER Name/Address *(print):* _____

_____

_____

PROVIDER Authorizing Official Name *(print):* _____

PROVIDER Authorizing Official Signature:_____Date: _____

# Appendix A: MINIMUM MANDATORY SUBMISSION REQUIREMENTS

## 1. Minimum Mandatory Submission Requirements

Each vendor solicitation response should contain at a minimum the following information:

1. Transmittal Letter as specified on page 1 of the Request for Proposal including an Applicant's experience, if any, providing similar services.
2. The remaining vendor proposal package shall identify how the vendor proposes meeting the contract requirements and shall include pricing. Vendors are encouraged to review the Evaluation criteria identified to see how the proposals will be scored and verify that the response has sufficient documentation to support each criteria listed.
3. One (1) complete, signed and notarized copy of the non-collusion agreement (See Attachment 2). "ORIGINAL", MUST HAVE ORIGINAL SIGNATURES AND NOTARY MARK. All other copies may have reproduced or copied signatures – Form must be included.
4. One (1) completed RFP Exception form (See Attachment 3) – please check box if no information – Form must be included.
5. One (1) completed Confidentiality Form (See Attachment 4) – please check if no information is deemed confidential - Form must be included.
6. One (1) completed Business Reference form (See Attachment 5) – please provide references other than State of Delaware contacts – Form must be included.
7. One (1) complete and signed copy of the Subcontractor Information Form (See Attachment 6) for each subcontractor - only provide if applicable.

The items listed above provide the basis for evaluating each vendor's proposal. Failure to provide all appropriate information may deem the submitting vendor as "non-responsive" and exclude the vendor from further consideration. If an item listed above is not applicable to your company or proposal, please make note in your submission package.

Vendors shall provide proposal packages in the following formats:

1. 5 paper copies of the vendor proposal paperwork. One (1) paper copy must be an original copy, marked "ORIGINAL" on the cover, and contain original signatures. Each paper copy must include all required documents including a price proposal.
2. **2** electronic copies of the vendor proposal saved to separate USB memory sticks. Copy of electronic price file shall be a separate file from all other files on the electronic copy.

# Appendix B: SCOPE OF WORK AND TECHNICAL REQUIRMENTS

## 1. Introduction

1.1 Intent of this Request for Proposal

The Delaware Department of Education (DDOE) is seeking proposals from qualified vendors (Vendor) to supply services to support the state's Education Insight Warehouse. The Education Insight Warehouse is the foundation of current and future DDOE data systems. The service provided under this agreement will help ensure timely completion of state and federal data reporting projects by providing technical support services not available within the Department.

This document provides potential respondents with the information and guidelines necessary for developing their proposal.

## 2. Project Overview

2.1 Background

The Delaware Department of Education's Education Insight Warehouse, is a centralized location to house Delaware's educational data in a centralized longitudinal database. The data warehouse is being utilized to unify educational data across all districts in the State of Delaware school system. The collection of this data into our Educational Insight Warehouse allows for Delaware to meet state and federal reporting requirements.

Delaware has moved to become and Ed-Fi compliant state. Delaware's educational data is being pulled into the Ed-Fi 3.1 ODS. The Ed-Fi 3.1 ODS will be the main source of the data being housed in the Education Insight Warehouse for the Delaware Department of Education. Along with the Ed-Fi 3.1 ODS, there will be other data sources that will also be the source for the Warehouse. The Warehouse houses student level, staff level, assessment data, and other educational data that is needed for collection to allow the Delaware Department of Education to get a holistic view of the Delaware school system, and allow the department to make informed decisions for future education initiatives.

## 3. Requirements and Scope of Work

This section of the RFP provides a description of the State's expectations for the work to be completed by the Vendor for the Education Insight Warehouse.

Required deliverables are identified in this section. If additional deliverables are produced as part of the Vendor's standard methodology, they should be identified and described in the appropriate section of the technical response.

Expectations for the content of the Vendor response to these requirements are described throughout this section. The format of that response is addressed in Appendix A – Minimum Mandatory Submission Requirements.

This section addresses a number of management and technical topics of importance to this project. Within this section, the structure of each topic is the same, providing:

- The requirements to be met by the Vendor in the fulfillment of this project (including a list of expected deliverables and work products);
- Background information on any work completed to date by the State, and preferences of the State with regard to the nature of the work to be performed;
- A description of the information to be provided by the Vendor in their proposal.

## 3.1 Warehouse Administration and Management

The Education Insight Warehouse is built on Microsoft SQL Server Infrastructure, using the tools provided with this software. However, it is expected that the proposed solution will include additional tools specific to the Warehouse management of the longitudinal data.

**Vendor Response**

The technical proposal must describe any value added tools and documentation that are included with the proposed solution, and describe the benefits provided to the Sate through use of these tools.

## 3.2 Database Administration

### 3.2.1 Development and Design

The Vendor will be responsible for providing technical assistant in development and maintenance of the Education Insight Warehouse. The Vendor will be responsible for supporting State staff with administration to include analysis and recommendations for configuration of the Warehouse. The Vendor will also be relied on to provide technical assistance in the development of additional domains and expansions. This will include assisting in the expansion of necessary areas of the Education Insight Warehouse to support requirements for future release to Delaware Department of Educations Education Insight Dashboard.

**Vendor Response**

In the response, the Vendor will describe how the Vendor can configure the data warehouse, and how the vendor will do analysis to make recommendation on the current design and future design in the development of additional domains and expansions.

3.2.2 Analysis

The Vendor will be required to help support the analysis of new data sets and assist in design of data that will be housed in the Warehouse domain additions, and expansions to accommodate the new data.

**Vendor Response**

In the response, the Vendor will describe how the Vendor can assist with the analysis of new data domains and expansions to accommodate new data collection.

3.2.3 Data Conversion

The Vendor will design, develop and test new ETL packages or modifications of existing ones.

**Vendor Response**

In the response, the Vendor will describe how the Vendor can assist with the design, development and testing of new ETL packages and modification of existing ones.

3.2.4 Performance

The Vendor will provide technical assistance in the analysis of system performance management of the Education Insight Warehouse, to include management of routine operations of Warehouse software.

**Vendor Response**

In the response, the Vendor shall describe how the Vendor is able to provide technical assistance and analysis of the Warehouse system performance.

3.2.5 Maintenance

The vendor provide annual maintenance for software tools used in the Education Insight Warehouse development.

**Vendor Response**

In the response, the Vendor shall describe the annual maintenance provided for software tools that will be used to support the Education Insight Warehouse.

## 3.3 Project Staffing and Qualifications

The Vendor is responsible to provide and maintain sufficient numbers of qualified management, technical and functional staff to meet the needs of this project and provide the services outlined in the Vendor's response to this RFP. The Vendor is also responsible for development of a detailed resource plan for both Vendor and State staff, which defines the staffing and staff organization, and identifies all team participants and their roles and responsibilities. The Vendor must identify key staff and will be required to commit these staff for the life of the project except for legitimate personal reasons, employment termination, acts of God or mutual agreement between the State and the Vendor. Any replacement of key staff should have skills and qualifications equal to or greater than the individual that departed. In any case, the State reserves the right to interview and agree or not agree on the replacement.

**Vendor Response**

Vendors and their subcontractors shall describe the proposed management structure and identify key personnel who will be assigned to this project. At a minimum key staff will include the Vendor Project Manager and Analysis Lead. Other key staff should be suggested by the Vendor, if appropriate.

Because project methodologies may differ, the proposal must outline State staffing needs based on the Vendor's methodology and describe the recommended working and reporting relationships between State and Vendor staff.

## 3.4 Knowledge Transfer

Knowledge transfer is a continuous process designed to enable the State to properly support the development and extension of the Education Insight Warehouse in the future. The Vendor will be responsible for developing a knowledge transfer plan for the project team. Through training, workshops and mentoring relationships, the Vendor will be responsible for educating the project team in the methodology and task plan to be used on the project, the architecture and design of the solution, and the skills and techniques needed for ongoing maintenance of the system.

The State believes that knowledge transfer should be in integral part of the overall project plan that incorporates formal training, one-on-one coaching and directed work experience. The plan should identify the knowledge and skills team members need to acquire, the methods to be used to obtain these skills, and a mechanism for tracking progress.

**Vendor Response**

The technical proposal must describe the Vendor's knowledge transfer philosophy, the approach that will be used in the project, and provide a discussion of how this approach will ensure that State staff will be able to take ownership and continue the project through

development of the Education Insight Warehouse. The project work plan must identify key milestones in the knowledge transfer process and identify major deliverables or work products of this process.

3.5 Interoperability Standards

In order to increase efficiency, facilitate data sharing and improve data quality, DDOE is advocating the adoption of interoperability standards for all new systems.

**Vendor Response**

The Vendor must review the Statement of Intent. In the technical proposal, the Vendor must describe the extent to which their products does or will incorporate the identified data standards, identify any exceptions to this adoption and provide the reasons for these exceptions